

11 December 2024

Submitted via: [Nicola.Sladden@bankomb.org.nz](mailto:Nicola.Sladden@bankomb.org.nz)

## **Re: Banking Ombudsman Scheme Consultation on proposed rule changes**

Where effective, free and independent dispute resolution can be the best service for whānau and their financial mentors to engage towards getting back on a path of financial wellbeing.

FinCap welcomes the opportunity to comment on the Banking Ombudsman Scheme (**BOS**) *Consultation on proposed rule changes (proposed changes)*. Basic banking by deposit takers is an essential service and BOS needs to continually improve to ensure whānau can access the scheme and be confident of a fair outcome.

Beyond the changes consulted on, FinCap reiterates our previous core recommendations which can improve access to justice:

- That schemes put more resources towards inhouse, specialist community engagement.
- That there is consolidation to one, better practice, financial dispute resolution scheme.

We respond to the consultation questions directly 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.

### **FinCap supports all proposed changes**

#### **Allow the scheme to deal with complaints against recipient banks**

FinCap strongly supports *Option Two: Change the rule to allow complaints to be brought about a recipient bank by the sender of a payment.*

Where a bank should have known that it was enabling a scam and this led to a serious challenge to someone supported by a financial mentor, BOS should have jurisdiction to decide on a fair outcome with adequate compensation.

#### **Enable claimants to waive the amount of their claims in excess of the jurisdictional limit.**

FinCap supports *Option Two: Keep the compensation limit at \$500,000 and allow larger claims if the complainant agrees to limit their claim to the maximum compared to the status quo.* This is on the basis it may improve access in some circumstances.

However, in general on this topic we stand by our comments from 2021:

*“FinCap recommends consistent and much higher caps for redress and flexible caps to allow*

*for what is reasonable in the circumstances where non-financial loss or indirect financial loss has taken place.*

*Hardship caused by financial services can impact whānau and communities for generations. The median house price in Aotearoa on 31 March was reported to be \$826,300 by the Real Estate Institute of New Zealand. If half of all homes sold for that amount and had involved borrowing of up to 80 per cent of the total cost then many whānau would not be able to access dispute resolution where serious misconduct by the bank could cause severe hardship.*

*By comparison to the current caps in Aotearoa, the caps on the equivalent scheme in Australia offer far more access. The Australian Financial Conduct Authority (AFCA) compensation amount limit per claim for credit provided to a person for non-business related purposes is \$542,500 and is capped at \$1,085,000 in total to be in jurisdiction. We believe the financial cap for redress across all schemes should be set well above the median house price figure so that most property owners would not be excluded from dispute resolution or have to limit the amount of a legitimate claim to avoid risking costly court action against a better resourced financial service.*

*Where consistent caps are implemented by this review they should also be appropriately adjusted on a regular basis relative to a price index in order to avoid access to schemes decreasing where costs in Aotearoa rise.”<sup>1</sup>*

**Reflect that the scheme may seek expert advice from a range of experts as it thinks fit**

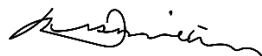
We strongly support *Option Two: Amend the terms of reference and operational guidelines to remove the requirement to consult with the industry and introduce a discretion for the scheme to consult with experts as it thinks appropriate.* This reflects the potential for better practice and fairer outcomes where industry may have gaps in knowledge or insights about what is a fair outcome for whānau.

**Proposed wording changes to the terms of reference**

We generally support the proposed changes to the terms of reference. The change of terminology ‘banking’ to ‘industry’ is likely helpful in avoiding the limiting of what can be looked at to establish what the principles of good industry practice are in the circumstances of a complaint.

Please contact Jake Lilley, senior policy advisor at FinCap on 027 278 2672 or at [jake@fincap.org.nz](mailto:jake@fincap.org.nz) to discuss any aspect of this submission.

Ngā mihi,



Ruth Smithers  
**FinCap Chief Executive**

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<sup>1</sup> FinCap submission to MBIE Review of the Approved Financial Dispute Resolution Scheme Rules Discussion Paper, 5 May 2021