

FINANCIAL SERVICES CASEWORKERS SURVEY REPORT

CONSUMER CREDIT LEGAL CENTRE (NSW) INC

INDEX

Part A **Introduction**

Part B **Survey of Financial Services Caseworkers**

Part C **Caseworker Comment and Experience**

Appendix I

PART A

Introduction

This Report sets out the results of a national survey of the experience of Financial Services' caseworkers in relation to a range of consumer issues in Financial Services. The survey and associated activities were undertaken by Consumer Credit Legal Centre (NSW) Inc. ("CCLC") pursuant to grants received from the Law Foundation of NSW and the Consumer Advisory Panel of the Australian Securities and Investments Commission. The financial support of these bodies is gratefully acknowledged.

The Report is intended to inform the submissions of consumer organisations and other stakeholders to current and/or forthcoming Reviews of the Bank, Building Society and Credit Union Codes of Practice ("the Financial Institutions' Codes").

Work undertaken by CCLC:

- distribution of preliminary information about the Financial Institutions Codes of Practice to financial services caseworkers nationally;
- preparation and distribution of surveys to NSW caseworkers;
- preparation of workshop materials and other information concerning the Financial Institutions Codes of Practice;
- conduct of workshops in 4 NSW locations — metropolitan Sydney, Campbelltown, Bathurst and in the Hunter region — to raise issues concerning the Financial Institutions Codes of Practice;
- provision of training on the Financial Institutions Codes of Practice;
- collation of feedback from workshops;
- follow up consultations with caseworkers who attended these workshops, regarding specific casework experiences;
- collation of survey material, which involved the tabulation of quantitative data and the transcription of comments;
- survey follow-up interviews with caseworkers;
- co-ordination of the project on a national level;
- the production of survey Report.

Work undertaken by consultants engaged by CCLC:

- distribution of surveys and workshop materials prepared by CCLC;
- conduct of one workshop in each of Victoria, Queensland, Tasmania and West Australia;
- collation of feedback from surveys and workshops;
- forwarding of completed consultation materials to CCLC.

Interstate consultations and workshops were conducted by: Consumer Credit Legal Service (Vic) Inc; Consumer Credit Legal Service (WA) Inc; Anglicare Tasmania Inc; Paul O'Shea, University of Queensland.

The statistical results of the survey are set out in Section B of the Report .

Section C of the Report documents and analyses case studies and comments collected course of workshops, interviews and surveys undertaken. The emphases in Section C reflect caseworkers' work and experience.

Please direct any further queries about this material to Michael Funston, Coordinator, CCLC (NSW) Inc, ph: 9212 4249, email: Michael_Funston@fcl.fl.asn.au or Catriona Pike, Project Worker, ph: 9212 4135, email Catriona_Pike@fcl.fl.asn.au.

PART B

Survey of Financial Services Caseworkers

National Survey Information

1. Compiled by
 - CCLS (Vic) Inc.
 - CCLS (WA) Inc.
 - CCLC (NSW) Inc.
 - Anglicare Tasmania Inc.
 - Paul O'Shea (Qld)
2. 67 surveys completed.
3. Original survey form: attached.

A. The Codes of Practice Regulating Financial Services

<i>Awareness of Codes:</i> How aware are you of the Codes of Practice and their provisions?			
	Not at all	Some awareness	A reasonable knowledge
Banking Code	5	46	14
Credit Union Code	20	39	6
Building Soc. Code	30	34	1

<i>Usage of Codes</i> How often do you refer to the Codes of Practice in connection with your casework?			
	Never	Occasionally	Regularly
Banking Code	21	42	2
Credit Union Code	40	24	
Building Soc. Code	52	12	

B. Experience of the Conduct of Financial Institutions

Response Types

1. Not in a position to comment (little or no experience of relevant area)
2. Generally positive or favourable experience of industry sector practice/conduct
3. Concerned about some practices in this area
4. Concerned about industry sector practices/conduct generally.

1. Accessibility	How accessible are financial institutions and their services to people with disabilities/special needs, rural and remote consumers, low income consumers etc?			
Institution	Response Type			
	1	2	3	4
Bank	9	2	31	24
Credit Union	17	20	19	9
Building Soc	33	7	18	7

2. Advertising	How would you assess the advertising of products and services by financial institutions in terms of accuracy, information, content etc?			
Institution	Response Type			
	1	2	3	4
Bank	12	4	30	20
Credit Union	17	17	23	8
Building Soc	32	10	19	5

3. Selling Practices	How do you rate the selling practices of Financial Institutions staff and agents?			
Institution	Response Type			
	1	2	3	4
Bank	6	3	33	25
Credit Union	17	13	23	13
Building Soc	34	7	13	11

4. Disclosure of Terms and Conditions	How do you rate practices relating to disclosure of terms and conditions applying to products and services? Issues include: timing of disclosure; form of disclosure; availability of Terms and Conditions; prominence given to key terms; clarity and plain English usage; availability in community languages; whether Terms and Conditions distinguished adequately from advertising material etc.			
Institution	Response Type			
	1	2	3	4
Bank	3	11	28	33
Credit Union	13	15	23	14
Building Soc	30	9	14	12

5. Unfair Terms or Conditions	Have you encountered unreasonably onerous, one sided or substantively unfair terms or conditions? For example: in Conditions of Use for banking services and payment instruments, mortgages, loan application forms etc.			
Institution	Response Type			
	1	2	3	4
Bank	14	10	23	16
Credit Union	24	11	20	7
Building Soc	38	5	16	4

6. Disclosure of Fees and Charges	How do you rate the conduct of financial institutions in relation to disclosure of fees and charges, interest rates and other costs applying to products and services? This includes timing of disclosure, form of disclosure; notification of fee increases; whether any hidden fees including disclosure of application fees; mortgage discharge fees, early termination payments etc.			
Institution	Response Type			
	1	2	3	4
Bank	6	13	24	21
Credit Union	19	13	16	16
Building Soc	34	11	11	8

7. Unfair Fees and Charges	Have you come across cases of fees or charges which you consider unreasonably onerous or unfair?			
Institution	Response Type			
	1	2	3	4
Bank	15	5	20	24
Credit Union	29	8	17	10
Building Soc	45	5	11	3

8. Credit Assessment	How do you rate the credit assessment procedures of Financial Institutions? This includes procedures for ensuring borrower has the capacity to repay and use of Credit Reference checks to establish creditworthiness.			
Institution	Response Type			
	1	2	3	4
Bank	4	9	25	27
Credit Union	16	16	18	14
Building Soc	33	9	16	7

Response Types

1. Not in a position to comment (little or no experience of relevant area)
2. Generally positive or favourable experience of industry sector practice/conduct
3. Concerned about some practices in this area
4. Concerned about industry sector practices/conduct generally.

9. Ongoing Information about Accounts	How do you rate provision of ongoing information about accounts, loans etc by Financial Institutions, eg: account statements; provision of copies of documents; cost of obtaining information and documents?			
Institution	Response Type			
	1	2	3	4
Bank	6	15	30	14
Credit Union	16	20	20	9
Building Soc	33	16	10	5

10. Joint Accounts/ Additional Cardholders	What is your experience of the conduct of Institutions in relation to joint deposit accounts, joint loan accounts and subsidiary cardholders? This includes provision of information to customers about rights and responsibilities; handling of joint accounts issues in the context of relationship breakdown; processes for cancelling subsidiary or additional cards etc.			
Institution	Response Type			
	1	2	3	4
Bank	15	5	17	28
Credit Union	26	8	12	19
Building Soc	38	8	8	11

11. Guarantees and other Securities	How do you rate the practices and conduct of Financial Institutions in relation to guarantees? This includes: the processes for ensuring prospective third party guarantors are properly informed and act freely; provision of information post-contact (including where borrower defaults)?			
Institution	Response Type			
	1	2	3	4
Bank	11	6	20	27
Credit Union	27	7	15	15
Building Soc	29	5	11	9

12. Customer Information	How do you rate the practice and conduct of Financial Institutions with regard to the collection and use of customer information? This includes: the nature and accuracy of information collected; provision for customer to check and correct inaccurate information; maintenance of confidentiality; information provision to third parties (including related entities)?			
Institution	Response Type			
	1	2	3	4
Bank	22	11	17	27
Credit Union	26	12	13	15
Building Soc	44	4	11	9

13. Customers with Financial Difficulties	When customers get into financial difficulties, what is the response of the financial institution? This includes: willingness to negotiate, reasonableness of stance, limiting additional costs to customer etc.			
Institution	Response Type			
	1	2	3	4
Bank	1	2	28	33
Credit Union	12	14	21	17
Building Soc	27	11	14	11

Response Types

1. Not in a position to comment (little or no experience of relevant area)
2. Generally positive or favourable experience of industry sector practice/conduct
3. Concerned about some practices in this area
4. Concerned about industry sector practices/conduct generally.

14. Debt Recovery	How do you rate the debt recovery practices of financial institutions? This includes: recovery through the court system, extra judicial recovery using collections officers or mercantile agents; repossession of goods; sale of property by Financial Institution as mortgagee in possession; use of 'combination of accounts'; listing with Credit Reference Limited.			
Institution	Response Type			
	1	2	3	4
Bank	6	3	29	25
Credit Union	16	4	28	16
Building Soc	32	5	15	9

15. Unauthorised Payment	How are claims dealt with when a customer alleges unauthorised use of a payment instrument like a cheque, credit or debit card, direct debit facility etc? How do you rate the systems for limiting unauthorised use and the adequacy of Financial Institutions staff understanding of required procedures? Is there a fair balancing of interests of customer and institution?			
Institution	Response Type			
	1	2	3	4
Bank	22	3	22	16
Credit Union	28	7	17	6
Building Soc	43	6	13	1

16. Cheques	How do Financial Institutions deal with cheque related issues (like instructions to stop payment on a cheque; dishonour of bank cheques; post-dated cheques)?			
Institution	Response Type			
	1	2	3	4
Bank	27	10	16	10
Credit Union	38	8	14	4
Building Soc	48	7	6	3

17. Uncleared Funds	How are issues dealt with when a customer has been allowed to draw on uncleared funds and funds subsequently fail to clear? Are the customer's interests and those of the institution fairly balanced in resolving such issues?			
Institution	Response Type			
	1	2	3	4
Bank	30	2	17	13
Credit Union	39	3	12	8
Building Soc	48	1	8	6

18. Institutional Error	How are issues dealt with when an account has been credited or debited wrongly as a result of an error by the Financial Institution, eg: error in calculation of repayments or where amount is credited to the wrong account? Are the customer's interests and those of the institution fairly balanced?			
Institution	Response Type			
	1	2	3	4
Bank	23	6	19	16
Credit Union	31	9	11	8
Building Soc	45	7	8	4

Response Types

1. Not in a position to comment (little or no experience of relevant area)
2. Generally positive or favourable experience of industry sector practice/conduct
3. Concerned about some practices in this area
4. Concerned about industry sector practices/conduct generally.

19. Dealing with Customer Complaints	How do you rate the handling of customer queries, complaints and disputes by financial institutions generally? This includes: willingness to listen; recording of complaints; taking steps to deal with complaints; responding within reasonable time; providing fair, accessible internal dispute resolution processes and providing information to customers about dispute resolution processes etc.			
Institution	Response Type			
	1	2	3	4
Bank	6	9	25	25
Credit Union	24	9	20	12
Building Soc	39	7	14	5

20. External Industry Dispute Schemes	How accessible, independent, fair and effective are external industry dispute schemes like ABIO and CUDRC which are used by Financial Institutions?			
Institution	Response Type			
	1	2	3	4
ABIO	21	21	12	7
CUDRC	42	7	6	6
Other CU	44	5	5	5
Building Soc	47	2	6	4

Response Types

1. Not in a position to comment (little or no experience of relevant area)
2. Generally positive or favourable experience of industry sector practice/conduct
3. Concerned about some practices in this area
4. Concerned about industry sector practices/conduct generally.

Section C

**Caseworker Comment
and Experience**

PART C — Caseworker Comment and Experience

INDEX

A. AWARENESS OF CODES

B. APPLICATION OF FI CODES TO SMALL BUSINESS

C. SPECIFIC ISSUES

	Relevant Code Provisions
1. ACCESS TO SERVICES	no coverage
2. ADVERTISING/ SELLING PRACTICES	s 18 (s 17 Building Soc Code)
3. DISCLOSURE OF TERMS AND CONDITIONS	s 2
4. UNFAIR TERMS AND CONDITIONS	no coverage
5. DISCLOSURE OF FEES AND CHARGES	ss 4; 5; 7.2; 9
6. UNFAIR FEES AND CHARGES	no coverage
i) Overdraw fees	
ii) Account-keeping fees	
iii) Other Fees	
7. CREDIT ASSESSMENT	s 15 (s 14 Building Soc Code)
i) Assessing future capacity to repay	
ii) loan application forms	
8. ONGOING INFORMATION ABOUT ACCOUNTS	s 14 (s 13 Building Soc Code)
i) Obtaining contracts, account statements etc	
ii) Inclusion of advertising material etc with account statement mail-outs	
9. JOINT ACCOUNTS AND SUBSIDIARY CARDS	s 16 (s 15 Building Soc Code)
i) Withdrawal of "nest egg" funds by one party in relationship breakdown context	
ii) Consumer understanding of joint liability	
iii) Maladministration in lending to co-borrowers	
iv) Subsidiary cards	
10. GUARANTEES	s 17 (s 16 Building Soc Code)
11. CUSTOMER INFORMATION/ PRIVACY & CONFIDENTIALITY	s 12 (s 11 Building Soc Code)
12. CUSTOMERS WITH FINANCIAL DIFFICULTIES	no coverage
i) issue of flexibility in negotiation	
ii) Refusal to deal with representative	
13. DEBT RECOVERY	no coverage
i) Debtor harassment	
ii) Account combination	s 10
14. UNAUTHORISED PAYMENTS	s 13 (s 12 Building Soc Code)

INDEX (cont.)

15. CHEQUES	s 6.2; 13 (s 12 Building Soc Code)
16. UNCLEARED FUNDS	no coverage
17. INSTITUTIONAL ERROR	no coverage
18. CLOSURE OF ACCOUNTS	s 19 (s 18 Building Soc Code)
19. DIRECT DEBITS	no coverage
20. DEALING WITH CUSTOMER COMPLAINTS	Part C
i) Practical barriers to making a complaint to the Institutions	
ii) Delay and non-responsiveness in dealing with complaints	
iii) Refusal to compensate, or adjust accounts, for losses suffered as a result of Institutional error following complaint	
iv) lack of referral to external ADR where dispute not resolved	

A. AWARENESS OF CODES

[see Survey results, at Part A]

Surveys to monitor the level of caseworker awareness of the FI Codes were distributed to caseworkers across NSW, and by consultants nationally. 67 survey responses were received (although not all were fully completed) and the following patterns emerged:

- the bulk of respondents claimed no awareness, or some awareness of the Banking and Credit Union Codes with less than 20% claiming a reasonable working knowledge.
- respondents reported low usage levels of the Codes in their day to day work; more than 90% of respondents referred to the Codes only occasionally, or never, in the course of their casework.
- a very low level of awareness and usage of the Building Society Code of Practice were reported.

Generally, the survey results indicated that the Codes of Practice are largely unused by caseworkers and that their detailed provisions are little known. In spite of this, the areas which the Codes regulate generate a considerable range of complaints for caseworkers.

B. APPLICATION OF FI CODES TO SMALL BUSINESS

[see FI Codes, sec 1, *Definitions and Application*; not dealt with in Survey]

Although the issue of the application of the FI Codes to small business customers (or Members, in the case of Credit Unions) was not raised by the Survey or in workshops (apart from the Queensland workshop), a number of caseworkers expressed the view that small business customers ought to be covered by the Codes.

The following points were made:

- extension to small business would be consistent with the general trend both in legislation (eg *Financial Services Bill 2000*; s51AC *Trade Practices Act* etc) and self regulation (eg *Terms of Reference of the Australian Banking Industry Ombudsman*; 2nd draft Revised *Electronic Funds Transfer Code of Conduct*) in the financial services area;
- particularly in relation to larger Financial Institutions, the small business customer is typically in much the same position of unequal bargaining power/knowledge as the consumer customer;
- small business borrowers should be afforded the minimum protection of a product disclosure regime. Apart from its importance in the pre-contract situation, ongoing disclosure, after the contract has been entered into, is also critical. It was noted, in this context, that the absence of an ongoing obligation to provide account information, statements etc can be used oppressively by Institutions in situations where a dispute arises with the customer. See attached article, *Bank 'shadow' ploy keeps clients in dark*, [Sydney Morning Herald, 19/6/2000]: Appendix 1; and the following comments by rural counsellors:

Caseworker Comments

‘A clearer application of codes of conduct to the farming sector would be useful as the existing principles and agreements are often unclear and ambiguous in particular fact situations. Also, farmers do not know, generally their rights, when dealing with financial institutions. Often the fairness and personal side of transactions is missing in dealings with the banks.’

Mal Mathews, Rural Counsellor, DPI, Kingaroy

‘I’m not in favour of a formal process such as the NSW Farm Debt Mediation Act because it tends to formalise the process without doing anything substantial. However, we do have to have the means to compel the bank or other financial institution to give us the information we need. Often the bank will tell the client ‘you are in default’ because of a deterioration of financial circumstances because its contract will allow it to. This kind of ‘unilateral default’ is being relied on by the banks and is not applied with any allowance for the particular circumstances of the customer particularly in the rural situation. Clients need to know what they can do to remedy a default and be given a reasonable time to do it in.’

Roger Herden, Rural Counsellor, DPI, Goondiwindi

‘We not only need more tools (in the form of regulations or provisions in a code of conduct) to buy time but to stop some practices such as choosing a particular industry and ‘clearing out’ loans in that industry relying on ‘deterioration in circumstances’ clauses.’

Roger Herden, Rural Counsellor, DPI, Goondiwindi

C. SPECIFIC ISSUES

1. ACCESS TO SERVICES

[no coverage in FI Codes; Survey sec 1]

As the Survey results indicate [see sec. 1], caseworkers saw access to *Bank* services — including the provision of low fee / fee free accounts, access to counter services and access to services in rural and remote areas — as a major issue. A more specific theme was that, even where Institutions provide a lower cost “basic” account, there appears to be an unwillingness to promote the existence of that account to low income customers. The view was expressed that a “best practice” Code would mandate the provision and promotion of a “basic” banking account with no account-keeping fees and an agreed minimum number of fee-free counter transactions. The following comments (among many others) indicate the sorts of access problems caseworkers report:

Caseworker Comments

““Basic” accounts should be advertised more, even offered to low income consumers: I had a quadriplegic client paying for an account with expensive cheque and other features which she did not need.’

Jane Palese, Financial Counsellor, The Smith Family, Parramatta

‘Fees on Pensioner Deeming Accounts are increasing. There’s no such thing as a fee-free account.’

Financial Counsellor, Sydney workshop [general agreement of participants]

‘I am concerned at arrogance of banks, which are an essential service, in diminishing access to services and refusing to provide an appropriate fee free product for low income people. Closing of branches, decreased staffing, increased queues and increasing fees are all access and equity issues.’

Jan Pentland, Financial Counsellor, Bauyule Community Health, Vic (s)

‘For many people, one of the best ways of passing on information used to be through personal contact with tellers. The push to electronic banking and the reduction in face-to-face service means that this source of information is being lost.’

Jane Hutchison, Financial Counsellor, Tasmania

‘Closure of branches and move to electronic banking disenfranchises many consumers.’

Nick Trehwella, Financial Counsellor, Dranella Community Health, Vic (s)

‘Banks on pension paydays are frightening places to be, there is little consideration of needs of access by elderly, infirm and disabled customers: electronic banking doesn’t suit everyone.’

Jenny Lawton, Coordinator, Carlton/Fitzroy Financial Counselling, Vic (s)

‘Small rural communities surrounding Narrogin - 100km radius have no banking facilities at all following recent closures.’

Margaret Lally, Financial Counsellor, Narrogin WA (s)

‘In general, credit unions do better in this area. Banks are less focussed on the relationship with the customer whereas Credit Unions still have the idea of a standing relationship with their Members. Service is more personalised, branches are still the focus.’

Reg Singh, Financial Counsellor, Centacare, NSW

2. ADVERTISING/ SELLING PRACTICES

[Advertising covered sec. 18 Banking Code, sec. 18 CU Code, sec. 17 Building Soc Code

See Survey secs. 2, 3]

It was widely acknowledged that advertising and selling practices varied greatly from Institution to Institution and within Institutions. Most caseworkers thought that there had been too much emphasis in recent years on ‘pushing’ credit; whether through the media, through staff at Institutions or by direct marketing; and that this had contributed to the unsustainable levels of indebtedness of many of their clients. Concern about the availability of credit was closely related to concern about credit assessment procedures: see *Credit Assessment* below. In terms of product areas, credit card lending was the area most frequently referred to, with particular concern being expressed at the apparent readiness of

some Institutions to increase credit limits on cards. While it was thought that Credit Unions generally took a more cautious / less 'pushy' approach to lending, a number of caseworkers criticised the practices of some Credit Unions in relation to motor vehicle financing, in particular; including the advertising of "bait" interest rates that would only apply to a small minority of potential customers. There were numerous general comments disparaging the lack of prominence given to information about fees and charges in print and broadcast advertising.

It was noted that the current secs. 18.1 Banking Code, sec. 18.1 CU Code and sec. 17.1 Building Soc Code do not go beyond the Institutions' statutory obligations under the *Trade Practices Act*, *ASIC Act*, *Uniform Consumer Credit Code* etc. The view was expressed that a "best practice" approach to advertising in the FI Codes would require not merely that advertising not be 'deceptive or misleading' but also, for instance, that it be 'accurate'. Views were also expressed regarding credit assessment provisions under the Codes: see *Credit Assessment* below.

Caseworker Comments

'Bank tellers are now required to act like salespeople. Every time I go into my Bank, the teller tries to sell me something.'

Financial Counsellor, Tamarian workshop

'I saw in the media that [overseas bank] was trying to sell credit cards after the football the other night. It shows how weak the regulators are that nothing is done about this kind of thing!'

Financial Counsellor, Sydney, workshop

'Tellers are under pressure to become salespeople; they're making it too easy.'

Hunter Region Financial Counsellor

'Advertising low cost home loans can cause considerable problems when interest rates rise.'

Barry White, Anglicare Financial Services, Vic (s)

'I am very concerned about advertising: it is the starting point for many consumer problems, there is a lack of regulation.'

Chris Connolly, Director, Financial Services Consumer Policy Centre

'There's too much unsolicited touting of expensive credit card credit to individual consumers. Both in the mail and through bank staff, consumers are constantly being invited to increase the limit on their credit cards. Nobody is checking first to see if they can actually afford more credit.'

Financial Counsellor, Sydney Workshop

'Tellers are being pressured to become salespeople; they're making it too easy to obtain more credit.'

Financial Counsellor, Hunter Region Workshop

Case Study

A 16 year old client recently began receiving Austudy payments. Although the customer never advised the bank he was in receipt of these payments, [major bank] sent a letter advising that because he was receiving these payments, he would

be eligible to receive a personal loan of a specified amount. No repayments would be required for 5 years. He has been advised by Centrelink not to take up the offer, as he would end up paying more than 3 times the amount lent.

Murray Sayers, financial counsellor — Anglicare Western

Customer was seeking information from various institutions prior to opening a savings account. She went to [regional bank], and was taken into an office, her details entered onto a computer, and was all but signed up for a new account. She also had associated products thrust at her, and was put under undue pressure to sign up then and there, despite her explanation that she was just shopping around.

personal experience from consumer [Victorian workshop]

3. DISCLOSURE OF TERMS AND CONDITIONS

[see FI Codes, sec.2; Sec. 7.1; Survey, pt 4]

Many caseworkers commented in general terms on what they saw as the complexity of much banking and credit contractual documentation, reflecting the increasing complexity of services themselves. The following comments are typical of many:

Caseworker comments:

‘Contracts are too wordy for many consumers to process.’

Lorraine Joyce, Financial Counsellor, Mandurah, WA (s)

‘There is a failure generally to take into account the needs of people with low literacy. Plain English usage is still infrequent.’

Jenny Lawton, Coordinator, Carlton/Fitzroy Financial Counselling, Vic (s)

‘Clients generally find terms and conditions confusing and hard to understand.’

Margaret Lally, Financial Counsellor, Narrogin WA (s)

‘Everything is in writing. This is a problem for people with limited or no literacy. There are few opportunities these days for people to be taken through contracts by staff. Some of the Credit Unions are better in this respect.’

Financial Counsellor, Tasmania [workshop participant]

Apart from this general issue, two more specific concerns emerged in relation to the disclosure of terms and conditions. First, it was noted that terms and conditions booklets etc - as distinct from advertising material - were not generally given to people at, or prior to, the time they made their application for a credit card or to establish a deposit account; but only subsequently when they received their card (and were probably already psychologically committed). Moreover, a number of caseworkers reported that, in their experience, some branches of Banks and other Institutions did not, in fact, keep terms and conditions booklets on site and, therefore, could not provide copies, even on request, to prospective customers: cf sec. 7.1.

Secondly, it was noted that, even if requested to do so, many (if not most) Financial Institutions will not supply sample copies of contract and mortgage documents to prospective home loan borrowers *before* they make a loan application (and usually pay an application fee). Both these phenomena were thought to be contrary to consumer protection disclosure principles.

Caseworker comments:

‘You should be able to get all the information about a financial service, including copies of loan contracts if you want to see them, before you become a customer. This isn’t always possible.’

Financial counsellor, Campbelltown area, NSW [workshop comment]

‘The advertising material is always prominently displayed in the branch. But the actual conditions of use may only come in the mail after you’ve signed up.’

Chris Connolly, consumer advocate, Sydney

‘Copies of Terms and Conditions are not always available when you make an application to open an account - particularly, if you are going through a sub-agency (as many people in the bush do).’

Financial counsellor, Bathurst area, NSW [workshop comment]

‘It may be legally correct for Financial Institutions to say that they are not required to provide consumers with copies of sample contracts before the consumer applies for a loan - for example, a home loan. However, from a consumer protection perspective, it is unsatisfactory if the consumer is required to make an application (and probably pay an application fee) before they are made aware of the full terms and conditions of the contract.’

Caroline Bond, consumer advocate, CCLS Victoria

Case Studies

Client went into Randwick branch of [major] Bank recently seeking to obtain copies of terms and conditions for deposit account and credit card facilities. She was given ‘glossy brochures’ but was told terms and conditions booklets were not kept on site. Bank staffer did offer, unprompted, to arrange for copies of booklets to be posted to client. However, client decided to apply for facilities anyway, without waiting to receive terms and conditions booklets.

CCLC (NSW) advice [11211]

Client wanted to make detailed comparison of home loan products without having to make an application/ pay an application fee. He was unable to obtain copies of standard form loan and security documents from a number of mortgage originators or from [regional] Bank. On being advised by CCLC, he went back to Bank. The Bank sent a consultant to his workplace who brought a booklet of terms and conditions and informed him that the Bank did not provide home loan documents until loan application is made. Client was concerned that terms and conditions booklet did not cover everything, including provisions relating to the loan security.

CCLC (NSW) advice [11118]

[Major] Bank Ltd issues/ issued a consumer guide entitled *Understanding the Mortgage Market*. In that guide, the following advice is offered to consumers: “Ask for a sample copy of a mortgage contract. Seeing it early will save you time completing an application form if there are unacceptable clauses.” Mr. P. complained to CCLS that he had requested that the Bank provide him with a copy of its Fixed Rate Home Loan contract Terms and Conditions. The Bank replied to him by letter, stating that the bank was unable to provide a copy, and that the Bank was only legally obliged to provide a pre-contractual copy of loan contract after a loan application is accepted.

CCLS (Vic) File

4. UNFAIR TERMS AND CONDITIONS

[no coverage in FI Codes; Survey sec 5]

Although a large proportion of caseworkers indicated in the Survey that they saw the use of onerous or one-sided terms in consumer finance and banking contracts (apart from price-related terms) as a source of concern, few provided specific comments or case studies in their responses. CCLC intends to undertake further research into this issue. It was commented that:

‘There is a major problem with unfair terms in relation to liability for loss while using new technology banking – especially Internet banking.’

Chris Connolly, consumer advocate, FSCPC, Sydney

Case Studies

‘I personally obtained a loan for a house through [regional] Building Society — in their terms and conditions they have listed 12 insurance companies and have stated that we must choose from one of these for our building insurance.’

Pam Hartcher, Financial Counsellor, Granny Spiers Community House WA (s)

Client had home loan with [overseas bank]. Loan package was very basic and includes a clause that indicates that the interest on the loan will be varied according to the decision of the bank’s executive management and that it may be varied more than other loans and will not necessarily reflect movements in the standard home loan rate. Client can pull out of the loan before draw down but will lose valuation and establishment fees.

CCLC (NSW) advice [11001]

Client wants to take out personal loan with [major bank] but is disturbed at clause in contract that says bank can unilaterally change any clause in the contract without his consent as long as they give him notice.

CCLC (NSW) advice [11073]

5. DISCLOSURE OF FEES AND CHARGES

[see FI Codes, sec. 4, 5, 7.2 and 9; Survey Pt. 2, Pt. 6]

Survey of Financial Services Caseworkers — Consumer Credit Legal Centre (NSW) Inc 2000

This area was not addressed in detail. Some caseworkers reported having clients who claimed not to know about fixed home loan termination fees at the time they sought to re-finance. Otherwise, few negative comments were received regarding flyers, booklets etc setting out fees and charges. However, there were some general expressions of concern about the effectiveness of disclosure of increasingly complex fee structures to ‘ordinary consumers’. In general, the focus of caseworkers attention was on the level of fees and charges and their impact on their clients rather than on disclosure issues: see under *Unfair Fees and Charges* below.

One specific issue relevant to the FI Codes which emerged concerned situations where a “fee free” floor on a transaction account had been raised without customers being advised in advance that this was going to happen. It was generally thought that it was not fair for institutions to rely on newspaper notification where floor limits were to be increased and that individual notification at least 30 days in advance (eg with preceding account statement) should be mandatory. The following comment reflects the general view of those who commented on this issue:

‘Some people on fixed incomes organise their finances quite carefully to ensure that they maintain the minimum balance and avoid fees. They should get plenty of warning if the limit is to be increased. They should not learn about the increase when they discover that they have been charged for an account-keeping fee.’

Chris Connolly, consumer advocate, FSCPC, Sydney

6. UNFAIR FEES AND CHARGES

[no coverage in FI Codes; see Survey sec. 7]

The following fees, in particular, attracted critical comment:

i) Overdraw fees

There was considerable criticism of overdraw fees, both the size of the fees and the way, in the case of some accounts, a fee is imposed for each transaction while the account is overdrawn. Caseworkers reported that their clients were often not aware that their accounts *could* become overdrawn. It was noted that the increasing use of direct debit facilities inevitably lead to an increased probability of an account holder inadvertently allowing their account to go into overdraft. Some caseworkers thought that Institutions were exploiting this situation to generate additional fee income.

Caseworker comments

‘Dishonour fees for lack of funds for direct debits are far too high.’

Barry White, Anglicare Financial Services, Vic (s)

Overdraw fees hit people who can least afford them. What is the relation to the cost to the Institution? I can't believe that fees of \$30 or more, which some banks charge can reflect the costs to the Institution. I think these fees are being used to generate revenue.

Narelle Brown, Financial Counsellor, Ryde Eastwood FC, NSW

Case studies

The client had a keycard that she used to access her account. As far as she knew it was only a debit account with no overdraft facility. One month she made a series of withdrawals using EFTPOS, which did not give her any information on the balance left in the account. Inadvertently she had overdrawn her account and made several withdrawals after that. The total amount overdrawn was a few hundred dollars. However she was charged a \$25.00 overdraft fee every time she overdrawed the account. This totalled \$250.00 by the end of the month. Even though an amount equivalent to the amount overdrawn was deposited into the account during the month, the account remained overdrawn due to the overdraft fees.

Jim Wolton, Esperance Districts Agcare

A matter taken to the Supreme Court [of NSW] involved very high overdraft fees charged no matter how small the excess or the time in which they were repaid. The overdraft fees were not advertised in any brochures and not apparent in any of the contracts signed by the client. The matter was settled in favour of the credit union due to the membership documents signed months earlier by the client allowing for this type of fee to be levied.

Rachel Francois, Legal Officer, Legal Aid Commission (NSW)

Client has a \$15 transaction fee deducted by bank at the end of the month which overdraws account by \$15, client deposits \$15 but subsequent overdraft fee of \$20 overdraws account again, causing second overdraft fee.

Stephen Symons, Financial Counsellor, C&FS Ballarat

Client dealing with credit union who charged a \$15 fee with each letter notifying that an account was overdrawn. The letter did not notify of this fee so if the exact amount pre-existing in arrears was paid, the account would remain in arrears (because of unmentioned overdraft fee) and so accumulate more fees.

Rachel Francois, Legal Officer, Legal Aid Commission (NSW)

Customer was sick one week, and so unable to deposit her pay cheque. During that week two direct debits of \$18 and \$10 proceeded, and as there were insufficient funds in the account a default fee of \$35 was charged in respect of each.

Carol Francis, financial counsellor, Victoria

ii) Account-keeping fees

The absence of account-keeping and/or administration fees on some credit products is generally heavily promoted by the Institutions which retail such products, both in their advertising and at point of sale. On the other hand, similar emphasis

is not given to such lenders' usually-reserved contractual right to introduce additional fees and charges (including account-keeping fees) at any point during the life of the contract. Some caseworkers commented to the effect that heavy promotion of the absence of account-keeping fees works against consumer awareness that the benefit in question may be withdrawn at any time. This was thought to be of particular concern in the case of long-term loans with high break costs, eg home loans. It was also thought that statutory disclosure obligations under the *UCCC* (in the case of consumer credit) were ineffective in the face of the heavy promotion of "fee free" accounts. The view was expressed that the FI Codes should require that all advertising and point of sale promotion of fee free accounts include specific reference of equal prominence to the lender's contractual right to introduce account keeping, administration etc fees in the future (where such a right is reserved).

The following case study is illustrative of caseworkers' concerns:

Case study

Two separate sets of clients were looking for home loans. Both responded to advertising by [regional] Building Society which referred to a 'fee free home loan.' Both sets of clients were impressed by this feature and both recall asking staff members of the Society (at two different branches) to confirm that there were no account keeping or administration fees on the loan. They were told that there were no fees. As the interest rates were competitive they entered into the loans.

Building Society was taken over by another Building Society to form [new Building Society]. After the takeover, the clients receive notification that an 'account keeping fee' of about \$95.00 per year was being imposed on their loans. When the disparity with the previous representations by [first Building Society] were put to the solicitors for the new Building Society, the 'any other fee or charge' clause in the contract and disclosure documents was referred to.

In response to the clients' allegation that the absence of fees had been confirmed orally at the time they entered into the contracts, the Building Society's internal dispute resolution mechanism said that the staff in question said that there were no fees on the loans and that, at that time, this was correct. These staff did not say that there would never be fees on the loans and had been specifically trained not to say so.

Paul O'Shea, former consumer advocate, Queensland

iii) Other Fees

'Fees for making an enquiry about your fees! Fees for incorrect PIN entry! Incoming cheque dishonour fees?'

Chris Connolly, consumer advocate, FSCPC, Sydney

Case Studies

Client has been in a loan arrangement for 10 years with [regional] Credit Union and renegotiated payments after hardship. Now pays \$50/month off the loan, that includes \$10 as a payment to the Credit Union for variation, and interest. In this instance, hardship variation of a loan becomes a penalty and makes it very difficult to clear a debt.

Jennifer Gracie, Hunter Moneycare

Customer had a home loan with [major bank]. Her financial situation led to her defaulting on the loan, but even with the assistance of a financial counsellor the bank refused to make any concessions to assist her. Finally she was forced to put the house on the market and pay out the bank. Although aware of her circumstances the bank charged over \$1,700 as an early termination fee. The financial counsellor complained to management and the fee was eventually waived.

Stephen Symons, financial counsellor — Ballarat Children's Homes and Family Services

7. CREDIT ASSESSMENT

[see Provision of Credit, sec. 15 Banking Code, sec. 15 CU Code, sec. 14 Building Soc. Code;

Survey sec.8]

i) Assessing future capacity to repay

Concern that the credit assessment procedures of Institutions had slipped in recent years and are now frequently inadequate was a pronounced theme emerging from the consultation. The concern was most frequently expressed in relation to Banks; but was also levelled at some Credit Unions. In particular, it was most commonly expressed in relation to the assessment of borrowers for credit card accounts; with particular emphasis being placed on a perceived general failure by Institutions properly to assess capacity to repay before inviting customers to apply for higher limits on their credit cards. Survey and workshop participants were generally hostile to the use of 'pre-approved' limit increases for credit cards (requiring merely that the approval form be signed and returned) and generally thought that it ought to be mandatory for Institutions to seek up-to-date details of income and liabilities etc before they increased card limits. Criticism was also made of the loan application forms of some Institutions: see ii) below.

Points made in relation to credit card limits included the following;

- caseworkers regularly come across cases where invitations to increase their credit card limit were made to clients who either had existing repayment problems of which the Institution ought to be aware or had a history of making minimum repayments only;
- Institutions should not just rely on the pattern of use/ repayment of the credit card facility itself when determining whether to offer to increase a customer's limit. Among other things, the impact of a recent deterioration in the customer's financial position, eg as a result of unemployment, sickness etc, will not be shown up by the account history;

- easy access to increased credit card credit is a particular problem for people with addiction, gambling and similar problems; as well as people faced with a recent financial crisis;
- the cost of credit card credit is high compared with that of most personal loans from Banks etc. There appears to be a relation between the high margins that Institutions enjoy in respect of their credit card products and their willingness to increase lending via such facilities with minimum/ no assessment of the customer's capacity to repay.

Caseworker Comments

'I'm seeing a lot of young people who have been committed to loans after getting their first job and, upon losing that, can't make repayments and end up in bankruptcy before they even turn 20.'

Mary Maclean, Financial Counsellor, LifeLine Toowoomba

Bank credit assessment practices 'allow people to obtain credit way beyond their income and then put themselves through tremendous hardship'

Financial Counsellor, Hunter Region workshop

'Overcommitment is a significant problem with Banks, through credit unions generally are more careful to avoid this.'

Jenny Lawton, Coordinator, Carlton/Fitzroy Financial Counselling, Vic (s)

'There's too much unsolicited touting of expensive credit card credit to individual consumers. Both in the mail and through bank staff, consumers are constantly being invited to increase the limit on their credit cards. Nobody is checking first to see if they can actually afford more credit.'

Financial Counsellor, Sydney [general view of workshop participants]

'I am concerned that with most, especially credit cards, the information on forms isn't a true indication of capacity to repay and using CRA isn't always a good indication of creditworthiness.'

Anne Marie Paulsen, Financial Counsellor, Fremantle CLC (s)

This problem is evidenced by increased bankruptcy of seniors on pensions who have continued to accept additional credit card levels until they are sunk.'

Lorraine Joyce, Financial Counsellor, Mandurah, WA (s)

Case Studies

Husband and wife had an overdraft facility with [Regional] Credit Union. Due to the husband's gambling problem they were in financial difficulties, and had arranged to repay the bank at a rate of \$70/month. In order to further protect themselves they attended the Credit Union in early August 1999 to request that no further credit be extended, and that no transaction be approved without both their signatures. This request was also made in writing. Later that month they received a 'Pre-Approved Visa/Overdraft Offer Extended' letter in the mail.

Jan Pentland, financial counsellor — Banyule Community Health Service Inc.

Approximately 5 years ago [regional bank] lent \$115,000 to a young couple, aged 17 and 20. Only one of them was employed at the time, earning approximately \$350/week. Not surprisingly they have had great difficulty making repayments, defaulting on at least two occasions.

Financial counsellor, Victoria

Customer and husband applied to an outer suburban branch of a major bank for a \$60,000 home loan, but the application was rejected. Both have gambling problems, which cause financial difficulties for them. They subsequently inspected a display home in a residential development, and were told by the developer that a loan could be arranged for the house, valued at approximately \$130,000. They were sent to a different branch of the bank to which they had earlier applied, and the loan was granted.

Anita Smith, financial counsellor — Sunbury Community Health Centre Inc.

Customer is a 60 year old widow, and has been unemployed and on a widow's pension for many years. She has had a credit card with [regional bank] for at least 15 years, and periodically has had trouble maintaining required payments. During at least one difficult period the bank offered to increase the limit, and issued her with a Gold Card with a limit over \$10,000. Again the customer fell into default, at which point she sought assistance from a financial counsellor. Her financial counsellor asked the bank for a copy of the written notice of variation, which it was unable to produce. When the issue of the customer's capacity was raised, the bank alleged that it was the customer's responsibility to assess capacity, not the bank's.

Carol Francis, financial counsellor

{Major bank} customer held credit card account that previously had a \$2000 limit. The customer was diagnosed bipolar and under long term serious medical treatment. In spite of this condition, he was asked by the bank whether he wanted a higher limit (\$4000) on his card. All that was required to raise the limit was that he sign the relevant documents. There were no further financial or personal checks made assessing his ability to pay an accrued debt. Shortly afterwards the client's medical treatment was changed due to a change in condition and his father died. In personal crisis he hit his \$4000 limit and now is in considerable debt. Counsellor asks: 'Why was he allowed to accrue an even bigger debt?'

Hunter Region Financial Counsellor [workshop participant]

Customer with a gambling problem, received an unsolicited offer of a credit card from her bank. She contacted the bank, and after ensuring her husband would not be informed (which included an arrangement that all statements be sent to her mother's address) she applied for a card with a \$500 limit. When she attended the bank to pick up the card she was told she had a \$2,000 limit. She was also told it would take a week to reduce the limit to the requested \$500, but that if she left the limit as it was she could use it immediately. She decided to take the card as it was, and soon used the card up to its limit.

Having fallen into further financial difficulty she received assistance from a financial counsellor, who requested a copy of the credit application form. This confirmed her request had been for a \$500 limit, but also revealed her 1974 Toyota — which she had advised was worth approximately \$3,500 — was shown with a value of \$35,000. The application also clearly showed her income was \$1,500 pa. The financial counsellor raised this issue with the bank, which agreed to waive all amounts outstanding.

Jackie Bramwell, financial counsellor — Break Even Eastern Problem Gambling Service

Client had credit card debt for \$5770 with [major bank]. Originally client agreed to a credit limit of \$2500 which was exceeded to \$2700. Client was struggling to pay, putting whole pension each week to credit card and then drawing against card. Needed more money and rang and asked for a \$1000 extension. Bank refused a \$1000 extension but granted a \$2500 extension which was agreed to. Client spent money and now cannot afford to pay. Financial counsellor requested a part write off of the debt that was refused. Client is a disability pensioner and cannot afford to pay more than \$50 per month.

CCLC (NSW) advice [11159]

ii) loan application forms

A more specific issue identified by several caseworkers was that the loan application forms of some Institutions did not give customers sufficient space or enough prompts to list all their commitments. It was thought that this worked against full disclosure by the consumer and could lead to inappropriate lending decisions. Typical comments included:

'Often there's only space to list, say, Loan 1 and Loan 2 under 'Other loans'. What if, like many of our clients, you've got half a dozen other loans? Whether deliberately or not, it gives people a signal not to list other debts'

Narelle Brown, Ryde Eastwood Financial Counselling, Sydney

'People quite often don't think of their credit card indebtedness as a loan and the Institutions' application forms sometimes don't explicitly ask about card debts. But, of course, many people are carrying a lot of card debt and its non-disclosure can lead to serious understatement of existing liabilities.'

Financial Counsellor, Sydney [workshop participant]

'Clients end up misrepresenting their financial position - sometimes without intending to do so - because there isn't enough space.'

Financial Counsellor, Sydney [workshop participant]

8. ONGOING INFORMATION ABOUT ACCOUNTS

[see Statements of Account, sec. 14 Banking Code, sec. 14 CU Code, sec. 13 Building Soc. Code; Survey sec.9]

i) Obtaining contracts, account statements etc

The main issues arising in connection with sec. 9 of the Survey concerned:

- delays in obtaining copies of client documents. In many cases, caseworkers seek, on behalf of their clients, copies of contracts and account statements for loans regulated under the *Uniform Consumer Credit Code*, in such cases, they are able to rely upon the relevant provisions of the *UCCC* mandating the borrower's right to documents: see, in particular, ss 31, 163, *UCCC*. There were a significant number of expressions of concern, however, about delays in the provision of *UCCC*-regulated documents within the required statutory periods. Some caseworkers commented that they found the Banks 'more professional' by and large than the Credit Unions when it came to the provision of documents in a timely fashion; however, this was not a universal view;
- excessive charges imposed for providing copies of previous account statements. Fees in the range \$5 to \$10 per statement were noted. For many customers/ clients, such fees were thought to impose an unreasonable (even prohibitive) barrier to obtaining accurate information regarding their Accounts in situations where a dispute had arisen with the Institution. Considerable scepticism was expressed as to whether the fees in question represented the true cost of providing copies of previous statements;
- refusal to provide client documents. Some caseworkers complained that they had encountered significant resistance to the provision of clients' contractual and related documents and account statements in cases where the Institution was not under a statutory obligation to provide the documentation in question. This problem was alluded to in connection with pre-*UCCC* Credit Union loans by some workers; however, the issue mostly surfaced in connection with clients who had had business loans (eg farmers): see further under *Application of Codes to Small Business* above.

It was noted that the FI Codes do not give customers any general right to contractual and account information/ documentation regarding their ongoing Accounts; the *Statements of Account* provisions of the Codes being limited to the provision of 'a record of all transactions relating to a *deposit account* of the Customer *since the previous statement*' only. The view was expressed that the Codes ought to mandate a more general right to obtain copies of contracts and other documents (including account statements). The right to obtain such documentation was regarded as indispensable in situations where a conflict had arisen between the Institution and the customer and the customer's records were (as is often the case) incomplete.

ii) Inclusion of advertising material etc with account statement mail-outs

Some of the caseworkers consulted thought that the inclusion of flyers and other advertising material in mail-outs of account statements and notices was negative from a disclosure point-of-view. Comments included the following:

‘Some Banks send out too much advertising with account statements etc. Relevant customer information, like notices about fees, gets lost amid all the blurb.’

Financial Counsellor, Tasmania [general view of workshop participants]

‘Not only are account statement mailouts full of glossy stuff flogging the bank or credit union’s other products, they are also used to market wine clubs and the rest. All this additional material works against effective disclosure.’

Financial Counsellor, Bathurst [general view of workshop participants]

‘The non-essential material debases the coinage. People are more inclined to toss the lot in the bin.’

Financial Counsellor, Sydney [general view of workshop participants]

Case Study

Long term client had an account at [Major] Bank and apparently without notification began incurring extra fees on that account.irate, she went to the bank to query the fee and was told that the only thing to do was swap accounts. Client did this but commented that she had completely changed her banking habits to try and avoid incurring transaction fees. She now takes out post office money orders (which have a \$2 fee anyway) instead of drawing cheques. Although she acknowledges that the Bank probably did send out notification, she thinks it got lost in the other material sent out. Client’s general comment is that, amongst all the literature that is sent out by the banks, it is very difficult to understand what they are getting at. All the relevant information is ‘camouflaged’ by tricky design and layout.

Ursula Hind, Chippendale Counselling

9. JOINT ACCOUNTS AND SUBSIDIARY CARDS

[see sec. 16 Banking Code, sec. 16 CU Code, sec. 15 Building Soc. Code;
Survey sec. 10]

While the Survey and consultation processes indicate continuing high levels of concern about practices relating to joint accounts and subsidiary cards, some more positive notes were also struck:

Client held a joint account with a violent partner. As the relationship was breaking down and the client was concerned that her partner was going to withdraw the remaining joint funds, the bank was contacted to close the account. The counsellor commended the bank for their handling of the situation, which included providing interpreters, information and cooperation in its resolution.

Ruth Henderson, Ryde Eastwood Financial Counselling

Client is an NESB pensioner acting as a co-borrower on her son’s business loan without understanding terms of the loan. In effect, she is a guarantor. This is a relatively frequent phenomenon, with banks still taking

insufficient steps to ensure independent legal advice; however, the problem is not as great as it was a few years ago.

Natalie Ross, Solicitor/CLE Worker, Marrickville Legal Centre, NSW

A number of issues were nonetheless identified:

i) Withdrawal of "nest egg" funds by one party in relationship breakdown context

An increasing trend noted by caseworkers relates to the accessing of jointly held "nest egg" funds or available credit (eg home loan equity accessible by redraw facility) by one joint account holder either following a relationship breakdown or where one partner has a gambling or similar problem. In some cases, caseworkers' clients report that, although they had understood that jointly held investment account funds and/or available credit under redraw facilities could only be accessed if both account holders executed a written withdrawal, they had subsequently discovered – when the joint funds were removed by the other party – that this was not the case. In this context, concern was expressed regarding the adequacy of procedures for giving instructions to Institutions as to how funds may be withdrawn. Several caseworkers were also of the opinion that written authority by both account holders before funds can be removed ought to be mandatory in the case of, at least, home loan redraw facilities.

ii) Consumer understanding of joint liability

Many caseworkers believe that Institutions are not doing enough to inform customers of the nature of liability for indebtedness on joint accounts. They report that there remains considerable genuine confusion about this issue among clients of Financial Counsellors and legal services. Comments included:

‘People believe when they take out credit in joint names that they are each liable for half the debt. They think if I’ve paid my half, I’m fine.’

Hunter Region Financial Counsellor

‘This is a very big problem in new relationships. A fuller explanation of joint 100% liability is needed.’

Lorraine Joyce, Financial Counsellor, Mandurah, WA (s)

iii) Maladministration in lending to co-borrowers

As might be expected, survey respondents and workshop participants also provided several case studies highlighting issues of maladministration in lending to co-borrowers (often female partners). A representative sample of these case studies is set out below:

Customer's de facto partner was sole owner of his business, which he had run for approximately 4 years. In mid-1997 the business was experiencing financial difficulties, and he decided to consolidate outstanding debts and obtain further capital. The application was initially rejected, but following a meeting between the de facto

and the bank the customer was told by her de facto that he could get the loan if she would sign. She refused despite protracted and intimidatory pressure, but finally agreed to meet with the branch manager of the bank. She attended the bank, and was told by the manager that there shouldn't be any problems and that the business would be fine. She was also told that only by signing the loan could the business be saved. The customer felt she had no choice but to sign. Her obligations were not explained to her, and even having signed she did not realise she was a co-borrower. She received no benefit from the loan. The business ultimately failed and her de facto declared himself bankrupt. The bank began to pursue the customer for the amounts still owing.

The customer sought assistance from a financial counsellor, who obtained copies of relevant documentation and raised a number of serious issues with the bank. After the matter was referred to the ABIO the bank decided to release the customer from any liability.

Jacqui Marshall, financial counsellor — Child & Family Services Daylesford

Customer claims her son asked her to come to the bank to sign a contract as a witness three years ago. She says the bank officer asked her some questions about whether she owned a house, then showed her where to sign. She didn't realise she was jointly liable for her son's loan until a recent loan application was declined due to a default on her son's loan.

Credit Helpline (Vic) 19432

Client accompanied her husband in 1993-4 to apply for a loan from [regional bank] to buy a car and said nothing through the process. When asked at the end to sign she refused but the bank officer told her she had to co-sign because loan was going through a joint account. She resisted but eventually signed. Husband purchased car, drove it, and when the couple divorced in May 99, took the car. Husband paid loan for a while but car was eventually repossessed and bank claimed shortfall. He was served in April 2000 and initially said he didn't know where she was and then a month later gave her whereabouts to the bank. She was served with statement of claim for \$9342.03. Bank initially refused to give her the documents because she is not the primary borrower. Client now lives with her children on a sole parent's pension. She has an \$8000 debt for car and rents privately. She cannot afford to pay any more debts. Bank refused to extend time to repay because loan already overdue.

CCLC (NSW) advice [11195/11206]

iv) Subsidiary cards

See FI Codes at sec. 16.2; Building Society Code at 15.2. Several caseworkers noted that, in relationship breakdown contexts, it will often be difficult, if not impossible, for an account holder to force an ex-partner who is a subsidiary card holder to surrender their card. Notwithstanding this, caseworkers' experience is that most Institutions will not cancel credit card accounts or overdraft facilities until any subsidiary cards are surrendered (or the card expiry date has passed): see 16.2. This has the consequence that the account holder may be exposed to liability for ongoing use of a credit facility

by the subsidiary card holder even after the former has notified the Institution of the withdrawal of the latter's right to use the card.

Caseworkers emphasised the following points:

- clients generally say they were not aware of the above-mentioned potential liability at the time they provided secondary card holder access. Clients say they believed that they could cancel the card whenever they liked and that that would be the end of the matter;
- it is unrealistic to expect that reference in a brochure, or the inclusion of a provision in the Terms & Conditions, will be sufficient to put most consumers on notice of the potential risk [cf 16.1(i)];
- Institutions do not generally take any steps, apart from those just mentioned, to put customers on notice of the potential risk [cf 16.1(i)];
- in any case, that risk, even if brought to their attention, would seem too remote and abstract to most consumers at the time when they are contemplating giving another person access to their credit or debit facility;
- it is in the financial interests of Institutions to encourage multiple account users (ergo, Institutions should shoulder some responsibility in respect of continuing use by ex- secondary card holders) [cf 16..2(ii)];
- Institutions have the power to stop all further use of a facility where automatic electronic authorisation of the transaction is required; or where a merchant must ring in to get authorisation. (Ergo: in such cases at least, there is no good reason why the account holder's withdrawal of authority should not be effective.) It is only in cases where the merchant is not linked electronically and the amount is below the threshold above which the merchant must obtain authorisation by telephone that the Institution is not able to control further use by the secondary card holder. Even here, however, it is not clear to consumer representatives why the account holder should necessarily bear the loss. As one caseworker noted:

“Institutions could require that all merchant terminals be on line or that merchants not on line get authority for all transactions or bear the loss (as against the account holder) if the secondary card holder's mandate has been withdrawn. If they choose not to do so, that's a commercial decision for the Institution. But why make the consumer pay in these circumstances when the consumer is powerless?”

Rachel Francois, Legal Officer, Legal Aid Commission (NSW)

[cf 16..2(ii)]

Case studies

Client had a number of joint debts arising from a relationship breakdown. On a joint credit card her estranged husband spent \$10K without notifying client even though she had been trying to cancel the card. There was a general failure to deal with irresponsible spending by the Institution.

Rachel Francois, Legal Officer, Legal Aid Commission (NSW)

When customer's marriage broke up he contacted a major bank to cancel a credit card account which was in his name. His wife was a secondary card-holder. The bank told him that he had to return his wife's card, which he was unable to do. When he contacted the bank again, he was told they could put a stop on the card, but he would still be liable if either card was used. He understood that no amounts could be debited if transactions were done electronically, or where authority was required for the transaction. Subsequently a monthly amount for insurance was debited, relating to an authority signed by his wife. The bank said that he would need to contact the insurer to stop the authority.

CCLS file 5278

10. GUARANTEES

[see sec. 17 Banking Code, sec. 17 CU Code, sec. 16 Building Soc. Code;
Survey sec. 11]

While a high proportion of caseworkers indicated ongoing concern with practices in relation to guarantees, there were also a number of comments to the effect that practices had generally improved in recent years. This area was not explored in any detail in workshops or in follow-up interviews with survey participants.

Caseworker Comments

'Drastic revision of obligations of financial institutions is required in relation to guarantees: the financial institution gets everything and the guarantor gets nothing except exposure to risk.'

Jenny Lawton, Coordinator, Carlton/Fitzroy Financial Counselling, Vic (s)

'There should be no guarantees. If a bank is not prepared to accept the risk, why should a third party be expected to?'

Barry White, Anglicare Financial Services, Vic (s)

'Appalling, especially for older people who lose their nest egg.'

Brian Clarke, Financial Counsellor, Djerriwarrah Health Service, Vic, (s)

Case Studies

The delay in notifying guarantor of borrower's default was six months in one recent case.

Kate Cahill, Financial Counsellor, Anglicare Yarra Resources, Vic

Customer's husband had a business, and she had entered into guarantees with a major bank. Her house was part of the security for the debt. The company was liquidated and the bank served demands on the customer and other guarantors. It took her 6 weeks to get statements from the bank. Customer was aware that the other guarantors had agreed to settle their debt, and that securities would be transferred to the other guarantors. She complained that the bank refused to give her access to any documents relating to the settlement, claiming that a confidentiality agreement related to the settlement.

Credit Helpline (Vic) 20211

11. CUSTOMER INFORMATION/ PRIVACY AND CONFIDENTIALITY

[see Privacy and confidentiality, sec. 12 Banking Code, sec. 12 CU Code, sec. 11 Building Soc. Code; Survey sec.12]

In general, breaches of privacy and other confidentiality issues did not figure largely in the comments of consumer representatives. However, the disclosure of personal information to third parties in the context of non-court debt collection was an issue of concern: see under *Debt Collection Practices* below. Of the respondents who said they had concerns about privacy issues, probably a majority were in fact concerned about what they saw as Institutions using privacy obligations as a way of illegitimately restricting access to information; for example, restricting access to information by co-borrowers and guarantors.

Case worker comments

‘What I find is banks telling referees on loans, like parents and employers, that their customer is in financial difficulty.’

Financial Counsellor, Hunter Region workshop

‘Young people who are operating their own bank accounts are finding that the financial institutions, and this is more common with the non-bank institutions, are telling their parents, in answer to a telephone inquiry, details of the account, including its balance and recent withdrawals.’

Damien Bartholemew, Solicitor, Youth Advocacy Inc.

‘All institutions try to hide behind privacy clauses when questioned.’

Peter Undy, Senior Financial Counsellor, Anglicare Werribee Vic, (s)

Case Studies

Client, who is a bankrupt, went to his local bank branch [regional Tasmanian bank] to access his Centrelink benefit. When he presented his withdrawal the teller announced that his account had been frozen and proceeded to yell the full width of the bank to a supervisor: “Got a bankrupt here. What do I do?” Client was completely humiliated by this action and, as it was a small regional centre, was unhappy with everybody knowing his business.

Financial Counsellor, Tasmania [workshop participant]

Customer had a personal loan with [major] Bank, secured by mortgage over a vehicle. The customer decided to sell the vehicle. During negotiations for the sale a prospective purchaser asked who had financed the customer's loan, as he was seeking finance himself. The prospective purchaser then contacted Bank, and was provided with a significant amount of information about the customer's loan. The Bank subsequently apologised.

Financial counsellor, Victoria [workshop participant]

A financial counsellor wrote to the [major] Bank asking for copies of documents and information in relation to a personal loan on behalf of a client. The Bank then rang the financial counsellor and advised that they would not provide the information sought because the other party to the contract (the husband) had not provided an authority. The financial counsellor had written advice from the Privacy Commissioner on the issue which was sent to the Bank together with a letter of complaint. The financial counsellor was then contacted by the General Manager of Sales and Service who advised that she would be briefing all staff at the branches about how to apply the Privacy Act and would be arranging to have the information sought posted out.

Shelley Lester, Creditcare Perth

The client's son was in a serious car accident and was declared brain dead. However, he was still on life support. The client was contacted by various of the son's creditors including a bank and a credit union who told her that her son's accounts were in arrears and insisted that she make payments on these accounts. However, both the bank and the credit union refused to provide her with any copies of documents relating to these accounts or to give her any information on the accounts such as the amount outstanding or the arrears. The reason given was that she could not access the information because she did not have any authority.

Ann Elder, Lockridge Community Group

Client borrowed \$13000 from [regional NSW] Credit Union in 1993 for car. Payments were being made until husband had to have dialysis and a heart operation. They arranged to reduce payments until husband went back to work. Client's child diagnosed with a spinal tumour further holding up resumption and credit union is now threatening to take action to repossess the car. Credit union will not give her authority to get account documents and she has not received a statement for the last two years.

CCLC (NSW) advice [11067]

12. CUSTOMERS WITH FINANCIAL DIFFICULTIES

[Not dealt with in FI Codes; see Survey sec 13]

Not surprisingly, caseworkers had a great deal to say about the issues that they and their clients confront when attempting to negotiate debt repayment arrangements. A couple of the key themes are documented in what follows. As, to some extent, identical issues also emerge when the client / customer has a complaint against, or dispute with, an Institution,

reference should be made as well to *Dealing with Customer Complaints*, especially *Practical barriers to making a complaint* below.

i) issue of flexibility in negotiation

Lack of flexibility in negotiation was a common theme during the consultation; however, many caseworkers were careful to state that the degree of inflexibility they encountered varied considerably depending upon the Institution and/or individual representative with whom they were negotiating. Considerable frustration was expressed with what caseworkers saw as the *uncommercial* approach of some/ many representatives of Institutions; in particular, an insistence on repayment arrangements that clients simply could not afford and which ultimately forced the client into bankruptcy where, if there had been greater flexibility, the Institution might have been paid, at least in part. Interestingly, given the generally more favourable attitude of those interviewed to Credit Union practices, there was a pronounced degree of dissatisfaction with Credit Union representatives' attitudes when it came to willingness to negotiate. In this context, many caseworkers complained about what they saw as a moralistic stance and/or a lack of professionalism on the part of Credit Union representatives. Finally, there were a number of comments to the effect that the spirit (and sometimes the letter) of the hardship variation application provisions under the *Uniform Consumer Credit Code* was not being complied with. In particular, the view was expressed that customers seeking variations were often given just a couple of weeks to rectify arrears when what they had requested, and clearly needed, was a more extended period of months.

Caseworker Comments

'Banks tend to move to instigate legal recovery, even to their own detriment.'

Peter Undy, Senior Financial Counsellor, Anglicare Werribee Vic, (s)

'By and large, I find the banks much more professional and objective in their approach than many of the credit unions. I find them easier to get to an arrangement for the client.'

Reg Singh, Financial Counsellor, Centacare, Liverpool (NSW)

'Sympathy seems pretty hard to come by these days; however, Financial Institutions should at least take a commercial approach to debt recovery. Often this does not happen.'

David Tenant, Solicitor, CARE, ACT

'Smaller credit unions, in particular, need to take a more commercial approach when clients cannot pay back their loans. They are often a bit too moralistic: you're responsible to the other Members, you've got to pay, no matter what. Sometimes this means that the client is pushed into bankruptcy when, if the Credit Union had been a bit more flexible, they might have got some of their money back. The Banks are better in this respect.'

Financial Counsellor, Tasmania [workshop participant]

'I have experienced while advocating on behalf of clients all the financial institutions lack willingness to negotiate although applications were made to vary the contracts on the grounds of hardship under the Credit Code. They are all eager to lend but reluctant to assist the consumers who are experiencing financial hardship. They encourage consumers to overcommit.'

Dolly Holzinger, Financial Counsellor, MIDLAS Inc, WA (s)

‘Inflexibility, especially with credit unions in negotiating payments (temporary or permanent) with regard to each customer’s personal situation.’

Kate Cahill, Financial Counsellor, Anglicare Yarra Resources, Vic (s)

Case Studies

At least three of our clients have been experiencing difficulties since the takeover of [regional bank] by [major bank]. In the first two cases, the clients were seen approximately three years ago and long-term repayment arrangements, to which the clients were keeping, were put in place. Since the takeover, the repayment arrangements have been overridden and aggressive debt collection practices used - demanding money clients haven’t got and issuing writs when they fail to pay. In both cases, the clients have ended up having to declare themselves bankrupt. In the most recent case, the bailiff has taken possession of the client’s caravan, annex and household goods in pursuit of an old debt of \$900. It looks as though this will be another bankruptcy.

Financial Counsellor, Tasmania

Client with brain damage who had been receiving a disability pension for decades and had a history of failed businesses borrowed from [regional] Credit Union under a business start-up package. The business failed and there was no prospect of recovering the debt. The Credit Union aggressively pursued the debt (through collection agency) and client was forced to declare bankruptcy.

Peter Fryer, Legal Officer, Legal Aid Commission, Fairfield NSW

Unemployed client was receiving sickness benefits and could not meet her loan commitments. Bank now threatens to commence legal proceedings even though she is due to start work in a fortnight and has a letter from her employer to that effect which indicates that she will be able to resume regular payments.

Denise Brown, Financial Counsellor, Creditline Penrith

Client took out personal loan to buy car and made regular payments until employer went bankrupt and client lost his job. Car repossessed three days before Christmas after receipt of only one default notice. There has been no note about estimated value of vehicle since repossession. Car removed by debt collectors without consent. Client is now employed and wants to get the contract back on foot, but even in the face of an offer of double payments, credit union won’t negotiate.

CCLC (NSW) Advice [10396]

We recently had a case where a client had entered into a Part 9 Agreement with a [regional Tasmanian Credit Union] and other creditors at 100c in the dollar. The client found that she could not maintain payments and still have enough for basic living; so with our assistance, she put through a variation to 80c in the dollar. The Credit Union knocked this back and cancelled all the client’s accounts and various insurance policies. Although the client’s financial position had by this

time become critical, the Credit Union would not reconsider its position. So the client sought release from the Part 9 and opted to declare bankruptcy.

Financial Counsellor Tasmania [workshop participant]

A financial counsellor wrote to the [major bank] requesting that the repayments on the debt be lowered to \$30.00 per fortnight. The client had become unemployed and had not obtained work after three months, and it was not clear when he would obtain employment. The bank wrote back, ostensibly in response to the letter, but giving a two month moratorium, followed by resumption of the full payment. (copies of correspondence provided)

Joan Rudd, Armadale Information & Referral Service

ii) Refusal to deal with representative

A number of Financial Counsellors also expressed frustration with the unwillingness of the representatives of some Institutions to deal with them, notwithstanding that appropriate authorities had been provided by their clients. A number of case studies illustrative of this concern were provided:

Case Studies

A financial counsellor wrote to [regional bank] on behalf of her client, requesting a variation on his loan account. She provided signed authority addressed to the Bank. The Bank proceeded to contact the client directly in order to negotiate a variation, without any correspondence with the financial counsellor.

Financial counsellor , Victoria [workshop participant]

The customer was unable to make payments on his [major bank] credit card due to medical problems. He had sent written authorities to the bank so they would talk to his wife, but the bank refused. A financial counsellor made an offer to pay half the amount owing to settle the matter, but customer claims this offer was followed by an abusive call from the bank. The customer says the bank continues to leave abusive messages.

Credit Helpline (Vic) 21793

The [major] Bank in [regional location] told a financial counsellor that they would not accept faxed authorities from clients and that this was standard policy. The reason given was that the bank would not know who signed the authority. The financial counsellor involved was able to physically hand deliver the authority as the Bank has a branch in [regional location]. However, she indicated that a number of other communities do not have local branches and in the North West of Western Australia the mail service is unreliable and can take up to a week to arrive. The financial counsellor also indicated that the bank would accept verbal authority over the phone from clients.

Susan Harris, remote West Australian Community Legal Centre

13. DEBT RECOVERY

[Not dealt with in FI Codes apart from Account Combination re which see at sec. 10; see Survey sec 13]

i) Debtor harassment

Most survey and workshop participants expressed concern with the debt collection practices of at least some of the Institutions they dealt with; however, there were also many comments to the effect that it was impossible to generalise across Institutions and/ or sectors. There was some feeling that out-sourced debt collection agencies tended to have less acceptable practices, by and large. Most participants did not distinguish Bank and Credit Union practices and there were a number of comments to the effect that some Credit Unions adopted a very zealous or moralistic approach “that sometimes ignored the legal or practical issues” and tended to condone debtor harassment. Survey follow up and workshop discussions did not focus on this issue to any extent; and we did not receive very much specific material. A number of consumer representatives expressed the view that either the FI Codes or separate industry debt recovery codes ought to set out acceptable/ unacceptable practices in detail, along the lines of the *Australian Competition and Consumer Commission Guideline to s60 of the Trade Practices Act*.

ii) Account combination

This issue was discussed in detail in consultation workshops. Many participants (as well as survey respondents) expressed a strongly negative view of (what was seen as) the widespread use of the procedure of ‘combination of accounts’ as a mechanism for dealing with arrears: cf 10.1. There was also widespread concern at the apparent lack of understanding of the requirements of the *Code of Operation for Social Security Direct Credit Payments* on the part of staff at branch level - both as regards combining accounts and more generally: cf 10.2.

Points emphasised included:

- the impact of account combination on defaulting customers can be sudden and severe, in some cases leaving people with no funds in their accounts for daily living expenses;
‘The impact is more severe than, for instance, a garnishee order pursuant to a Magistrates Court judgment.’
Jane Hutchison, Financial Counsellor, Tasmania
- account combination is arbitrary in that it impacts only on those customers of the Institution who do not know to protect themselves by withdrawing their surplus funds in time;
‘If the client comes to us in time, we tell them to open an account at another Bank and have their wage or benefit transferred.’
Financial Counsellor, Campbelltown, [general view of workshop participants]

- the policy behind the *Code of Operation for Social Security Direct Credit Payments* is that no-one should be left without sufficient funds for essential living expenses. This principle should apply equally to defaulting customers who are, for instance, low income earners but not in receipt of a Social Security benefit;

Regarding these last-mentioned customers, the general view was that, if it is to be exercised at all, the so-called “right to combine accounts” should only be exercised in respect of account balances above an agreed minimum amount. (This amount might be to be determined by reference to Social Security welfare payment levels.). However, case workers were generally hostile to the use of the procedure at all.

Caseworker Comments

‘This is a common practice of banks in Tasmania. Its application can be very brutal leaving people with nothing to live off.’

Financial Counsellor, Tasmania [comment of workshop participant]

‘Staff [of Financial Institutions] *generally* do not know that Centrelink payments are protected. In some cases, even people at management level do not understand their obligations. We recently had to involve Welfare Rights [legal service] to get a transaction reversed.’

Financial Counsellor, Tasmania [comment of workshop participant]

‘When clients complain about deduction of Centrelink benefits from their accounts, they often meet with no response. We [Anglicare Tasmania] are able to get the transaction reversed. But what happens to those people who don’t know about Anglicare?’

Financial Counsellor, Tasmania [comment of workshop participant]

‘There is a lack of familiarity with codes of operation for Centrelink direct payments in some banks, that is, that customers are allowed to draw up to 90% of Centrelink payment even if account is overdrawn.’

Kate Cahill, Financial Counsellor, Anglicare Yarra Resources, Vic (s)

‘I’ve been doing counselling work for 10 years and I did not know what ‘account combining’ means [ie prior to workshop]; but the phenomenon is all too familiar.’

Jennifer Gracie, Hunter Region Financial Counsellor

Case Studies

Client had the following accounts with [unspecified Bank]: house loan for \$72,500 (secured by a mortgage); overdraft account for \$3047; deposit account; Visa card account with \$2,000 limit. In May 1998, client’s house was burnt to the ground during a fire. Client’s car was also burnt out. Client’s subsequent insurance claim was unsuccessful, in respect of the house; however, he did recover \$11,725 for the car.

Client then deposited this sum into his deposit account and subsequently withdrew and spent \$6,000 of the amount. This left a balance of \$5725 to which a social security payment was then added, bringing the total credit balance to \$6211. At this point, the Bank froze the account without notice so that the client could not withdraw any money. At the time of this action, client’s home loan repayments were in arrears by \$1297.

When asked to explain his action, the Bank Manager said the \$6211 had been frozen to cover past *and future* home loan arrears, and the overdraft. Client's Visa account was also cancelled, also without notice, even though the account was not in arrears on this account at the time.

Financial Counsellor, Tasmania

Customer had a credit card and a savings account with the same bank. Her credit card account fell into default, and the bank combined the accounts, leaving her with nothing in the savings account. No notice was provided until after the event. Upon being advised of the severe hardship this caused, the bank responded by confirming that they were entitled to take this action (and referred to the Code of Banking Practice), and offered no further assistance.

Jan Altair, financial counsellor — FAST session 4/5

The customer had been ill, and his mother transferred \$1,800 into the customer's [major] bank account for specific purposes. The bank combined the accounts with the customer's credit card account, and took \$1,100 from the \$1,800. The customer protested to the bank, and claimed that the money was not income but was intended to be used for specific purposes. However, the bank refused to refund the money. The customer closed the account and is now obligated to pay \$75 per month.

Credit Helpline (Vic) 21640

Client had \$1,700 in a term deposit with the [major] Bank. By a telephone inquiry, she asked what the minimum amount required was for a term deposit to operate and was told \$500. She wanted \$700 to remain in the account as an emergency fund and gave instructions for the balance to be transferred to her operating account. Unilaterally the bank deposited all the funds into her 'operating account' leaving the term deposit empty. Client spent all of the funds on non-essentials as she believed the extra funds in the operating account were a present from her mother who had, previously, made substantial deposits in that account for her benefit. No notice of the combination of the accounts was received by my client except as a statement of the operating account. No notice was given of the zero balance in the term deposit account. Some time later (about six months) she rang to inquire about the maturity of her term deposit to be told that the bank now required \$1,000 as a minimum term deposit and that the accounts had been combined. Client has made a complaint to the ABIO. Bank questions her 'good faith' and denies the earlier conversation but does not have proof of it. Matter is still unresolved.

Loretta Kreet, Legal Aid Queensland.

The client was a social security recipient with 6 children. She became overdrawn by \$500.00 on her bank account. The bank contacted her and stated that they were going to withdraw the entire \$500.00 from her next social security payment unless she came into the bank to make an arrangement to make minimum payments. The client was unable to do this because of lack of transport and childcare arrangements, and tried to make an arrangement over the telephone. The bank refused to accommodate this and initially refused to deal with the financial counsellor as well.

Ann Elder, Lockridge Community Group

Due to a computer error, a client had an incorrect amount debited to her account which made her overdraw her account. She was significantly overdrawn and the next pension payment was half gone. [Regional] Bank reluctantly agreed to allow her to pay back the overdrawn amount slowly.

Jean Lewis, Lifeline Financial Counselling, Sydney

Customer had both a personal loan and a residual home loan, as well as a savings account, all with [major Bank]. The bank took \$1,000 out of her savings account to cover arrears accrued in respect of the other accounts. This was apparently in contravention of the Code of Operation for Social Security Direct Credit Payments, however the matter was not pursued as by the time this issue was raised by an adviser the client had decided to petition for bankruptcy.

Credit Helpline (Vic) 19912

Client is in gaol. Before imprisonment he obtained a \$500 advance from Centrelink. This amount was applied in full by [Regional Bank] to his personal loan of \$4000.

CCLC (NSW) advice [11192]

14. UNAUTHORISED PAYMENTS

[See Payment Instruments, sec. 13 Banking Code, sec. 13 CU Code, sec. 12 Building Soc. Code; sec 15, Survey]

The *Payment Instruments* section of the FI Codes was considered in detail in the four NSW workshops conducted as part of the consultation. Participants noted that, even in the absence of the FI Codes, a prudent Institution would be likely to ensure that it supplied the information referred to in sec. 13 to its Customers in its Terms and Conditions documents. Perhaps, not surprisingly, therefore, we did not receive any comments suggesting that written information failed to comply with the section. On the other hand, the following issues were identified:

‘Section 13.2 of the Bank and CU Codes, and section 12.2 of the Building Society Code, are merely discretionary and do not impose any obligations on the Institution at all. In effect, the way is left open for liability in the event of unauthorised use of a payment instrument to be allocated contractually to the customer, as against the Institution, in virtually all circumstances of unauthorised use. Further, even if the Institution takes up the implied suggestion to allocate liability to the customer only if s/he fails to inform the Institution “as soon as possible of the loss, theft or misuse” of the payment instrument, this requirement is potentially still very one-sided in its application. (When is “as soon as possible”?)

In practice, Institutions appear to take a more ‘balanced’ approach in their Terms and Conditions by allocating liability to the customer, apart from the first \$50, only if the customer “unreasonably delays” in notifying the Institution. What the T&Cs do not typically do, however – in contrast to the equivalent provision of the *Electronic Funds Transfer Code of Conduct* – is to indicate that “unreasonable delay” is to be understood by

reference to the particular position/ state of knowledge of the customer; ie when the customer became aware, or should reasonably have become aware, of the loss, theft or misuse. This may seem somewhat academic; however, in practice, it really matters. For instance, when we have cases where, for a good reason, there has been a significant delay in notifying loss (eg the instrument is one which the customer rarely uses and so the loss is not noticed for an extended period), the representative of the Institution will invariably seek to rely on a narrow approach to what constitutes “unreasonable delay” in notification.’

Michael Funston, consumer advocate, CCLC (NSW)

15. CHEQUES

[See sec. 6.2, 13 Banking Code, sec. 6.2, 13 CU Code, sec. 6.2, 12 Building Soc. Code; sec 16, Survey]

The following cases highlights the lack of obligation, on the part of Institutions, under the FI Codes, to safeguard payment instruments in the form of blank cheques:

Case Studies

Client deposited bank cheque in credit union. The funds (\$6000) were cleared and the client withdrew them and spent them. The cheque was subsequently found to be stolen by the person who paid the client. The Credit Union alleged that because the cheque was stolen, the client did not have title to it. So, the Credit Union is pursuing the client for the \$6000 overdraw. Client argues that it was the Credit Union’s error and it should make good the damage.

Paul Batley, Solicitor, Legal Aid, Coffs Harbour

Client sold car privately and was paid with a \$61,000 [major bank] bank cheque. Before accepting cheque client’s husband called bank manager who assured him that there was no problem accepting bank cheques. There was nothing on the face of the cheque or in the manner of the sellers to indicate fraud and when client asked for a check to be done by the bank teller nothing came up so possession of the car passed to the buyers. The next day client was contacted by the bank staffer who informed her that the cheque was illegal as it was stolen and that the bank is not liable for the amount.

CCLC (NSW) advice [10641]

16. UNCLEARED FUNDS

[not referred to in FI Codes; see Survey at sec.17]

Most caseworkers had not encountered issues involving uncleared funds. On the other hand, a number had and, among this group, there was concern about dishonour of cheque/ reversal of transaction occurring well after the (three day)

cheque clearance period – months later in one case set out below. There was also concern that some Institution systems apparently still did not automatically block withdrawals of funds until they were cleared.

Caseworker Comments

‘Charges for an overdrawn account should only be charged after the customer has been warned that funds are not available.’

Carolyn Joy, Eastern Access Community Health, Financial Counsellor, Vic (s)

‘ATM balances often include the amount of uncleared cheques. This causes problems.’

Financial Counsellor, Tasmanian workshop participant

‘Recently I was advised by my bank that a cheque I had deposited three months previously has been dishonoured. If I had still been in business I would have fried them. Research showed it was an ATO refund so I told them to stop wasting my time and sort it out and make sure I lost no interest because of this.’

Lorraine Joyce, Financial Counsellor, Mandurah, WA (s)

‘Funds should be available in 24 hours. This is better than 2 years ago but could improve further.’

Barry White, Anglicare Financial Services, Vic (s)

Case Studies

Client had gone bankrupt and rebuilt a business. The terms settled with ITSA were such that creditors were to be paid in cash. Client deposited cheque and because funds were available, thought the cheque had cleared and withdrew amount (large) and repaid creditors. Cheque had not in fact cleared and the client was forced to go bankrupt a second time.

Ruth Henderson, Ryde Eastwood Financial Counselling

Client had a standing arrangement with a regional Tasmanian Credit Union where his wages cheque was deposited to cash the cheque upon presentation. This arrangement continued until the business which employed the client went into liquidation. Immediately prior to this, the client presented and cashed his wages cheque, as usual; however, the cheque did not clear. Client was subsequently subjected to accusations of fraud as well as to very heavy-handed debt collection tactics in respect of arrears to his account resulting from the failure of the cheque to clear. Client states that he had no knowledge that liquidation of the company was imminent when he presented the cheque. Case has not yet been resolved. Client regards the attitude of the Credit Union as completely unwarranted in the circumstances.

Financial Counsellor, Tasmania

Due to a previous experience where a dud cheque given to him bounced, client is cautious about writing cheques. Client called bank to check whether he had sufficient cleared funds before writing a cheque for \$4600 and was told that he did have the funds. He wrote the cheque and the bank paid it but 11 days later he was informed that he actually did not have the money in his account at the time and so they had overdrawn the account.

CCLC (NSW) advice [11083]

Client was a small business panel beater selling a car. His purchaser agreed to the sale price of \$3,000 which was to be deposited into the client's account as the purchaser was at some distance away. Client checked his [major bank] account and found the sum of \$3,000 deposited. He sent the car, by transport, to the purchaser. Eight months later, the bank informs him that the \$3,000 has been paid by mistake and threatened to combine this debt with his overdraft and other deposit accounts and to close his overdraft unless the \$3,000 was repaid in 24 hours. There was no notification of the availability of the ABIO by the Bank.

Loretta Kreet, Legal Aid Queensland.

17. INSTITUTIONAL ERROR

See discussion below under *Dealing with Customer Complaints*, at iii) *Refusal to compensate, or adjust accounts., for losses suffered as a result of Institutional error following complaint.*

18. CLOSURE OF ACCOUNTS

[See sec. 19, Banking Codes; sec 19, Credit Union Code; sec 18, Building Soc Code.]

Notwithstanding the apparent policy behind the above sections of the FI Codes, some caseworkers reported clients' experience of having difficulties closing credit card and other accounts even where there was a credit balance. This could cause difficulties, in particular, in the case of joint accounts where the relationship between the account holders subsequently soured but one party was able to keep using, or 'reactivate', the joint credit facility. A number of caseworkers were also critical of Institutions' refusal to close accounts in situations where the client was clearly not able to meet the repayments and the client (or Counsellor) had requested closure as a means of avoiding the incursion of additional account-keeping fees.

Caseworker Comment

'Clients have difficulties with closing joint accounts, not only when money is owing, but also when the balance is nil.'

Jane Palese, Financial Counsellor, The Smith Family, Parramatta (s)

Case Studies

Client accrued overseas charges on her [major bank] credit card account about which there was some query and so she wanted to close the account. Finally got through to central authority who said they could not do anything because she had not done anything previously. Client claims that she lodges complaints at the bank within a month of the problem emerging. Went back to the branch and finally spoke to manager to resolve the dispute. Not adequate information flow between central authority and branches and not sufficient training of staff to know how to resolve the dispute.

Hunter Region Financial Counsellor [workshop participant]

Client's account had gone into arrears/default but the bank still charged fees on the account, effectively making the debt bigger. Fees accumulated in spite of a letter written to close the account. Even when client's account finally went into the black, the bank refused to close the account.

Jennifer Gracie, Hunter region workshop [Other Counsellors had had similar experiences]

19. DIRECT DEBITS

Concern about the operation of direct debit facilities emerged as a significant theme during the consultation. A number of issues were identified including:

- the prevalence of Institutional error (eg double debits, early debits etc);
- failure to refund overdraw fees *automatically* when the Institution was in error. In other words, the client (or their adviser) had to request a refund before it was given. In some cases cited, refunds were refused even following a request;
- undue delay in re-crediting funds which had been erroneously deducted;
- excessive overdraw fees when account goes into overdraft because of the operation of direct debit arrangements;
- consumer (and adviser) confusion about the procedure for cancelling direct debits; in particular, lack of understanding of the need to cancel the authority in writing with the merchant;
- a failure on the part of Institution staff to properly advise customers of the procedure for cancelling direct debits; including confusion about the issue on the part of staff;
- a failure on the part of Institution staff to properly advise customers that, by closing an account, they do not thereby automatically cancel direct debit arrangements linked to the account; including confusion about the issue on the part of staff; and
- the inefficiency of the procedure for stopping unauthorised billing by merchants after the customer has cancelled the merchant's mandate; in particular, the fact that, under the credit card system rules, the Institution cannot simply deny any further requests for payment once it has been advised by the customer that the merchant's mandate has been withdrawn

Caseworker Comments

‘Unable with some banks and credit unions to cancel direct debit authority on own account — creditor has to cancel it.’

Jan Pentland, Financial Counsellor, Banyule Community Health, Vic (s)

‘Dishonour fees for lack of funds for direct debits are far too high.’

Barry White, Anglicare Financial Services, Vic (s)

Customer was sick one week, and so unable to deposit her pay cheque. During that week two direct debits of \$18 and \$10 proceeded, and as there were insufficient funds in the account a default fee of \$35 was charged in respect of each.

Carol Francis, financial counsellor, Victoria

‘I believe the customer’s credit history influences the way they are dealt with. Direct debits are difficult to stop and unreasonably slow process is followed. Some staff are inadequately trained; every deal and negotiation is dealt with for final benefit of financial institution.’

Lorraine Joyce, Financial Counsellor, Mandurah, WA (s)

‘A lot of problems with overdrawn fees arise because [the Financial Institution] has direct debited the client’s account too early; in other words, before the client’s income has been deposited. This is a particular issue for Centalink recipients and other low income people who use all their income each pay period.’

Financial Counsellor, Sydney workshop participant

Case studies

Customer authorised a direct debit from her bank account. The bank accidentally deducted the same amount 5 times. Having received her account statement and noticed the error the customer immediately contacted the bank, and was told the error would be corrected by the following day. Approximately a week later she went in to her bank, found that the matter still had not been rectified, and upon querying what was happening was told the bank were waiting for her to provide details of her complaint in writing. The bank took approximately 3 months to reimburse her for the amounts incorrectly deducted.

Financial counsellor, Sydney workshop participant

Customer had a direct debit facility with [major bank]. An incorrect amount was debited by the bank, leaving her account overdrawn. A \$20 fee was debited to her account. As the account remained overdrawn further transactions resulted in additional fees being charged, all as a result of the bank’s initial mistake. The customer’s financial counsellor contacted the branch manager, detailing what had taken place and pointing out this had caused the customer substantial hardship. The manager refused to refund any of the fees on the basis that many customers faced the same problems.

Jessica Goldsworthy, Uniting Care — Sunshine Mission

[Major] Bank had falsely direct debited client’s account for payment to an ISP. When error was registered, bank refused to make good the error.

Client entered into contract with an introduction agency. He made a cash payment at the interview and then signed a direct debit for \$900. He then cancelled the credit card but [major bank] continued to debit his account with the transaction. The first debit was for \$900, then another for \$500, then two for \$4000. Client was travelling at the time and statements were sent to his parents house. Despite the fact that the credit card was cancelled and that it had a limit of \$3000, it was linked to a savings account from which the debits were paid. Although there was written authorisation of the closing of the account, Bank told the client to go back and sort it out with the introduction agency.

CCLC (NSW) Advice [10842]

The customer's husband filed a debtor's petition for bankruptcy, but the customer was responsible for the payment of half of a debt owing to a large credit union. The customer was concerned that the credit union may use a direct debit authority to take the total amount she owed out of the account. She went to the local branch and spoke about withdrawing the direct debit authority or withdrawing her money. The manager told her that her money wouldn't be touched without her authorisation, and 'froze' the account. She decided not to close the account. Subsequently the credit union used the direct debit to withdraw the total amount she owed. The matter was referred to CUDRC. Although the customer had been greatly inconvenienced and distressed by the credit union's actions, she was unable to show financial loss. CUDRC said they could not help unless consumer could show financial loss. Although the customer did not want to deal directly with CUDRC, CUDRC suggested that client contact them directly, and did not appear to appreciate the involvement of the customer's solicitor.

CCLS File 4734

20. DEALING WITH CUSTOMER COMPLAINTS

[see FI Codes, part C; Survey sec. 19,20]

As the Survey results indicate, there was fairly general dissatisfaction among caseworkers with Bank processes for resolving customer complaints/ disputes. There was also considerable concern with Credit Unions and Building Societies; however a number of caseworkers commented to the effect that the fact that complaints to the latter were generally still dealt with at branch level made it easier for customers to get a response. Concern about internal complaint resolution processes emerged prominently during discussion of a number of the areas identified in the Survey and workshops including: account combination issues; joint loan and subsidiary card issues; problems with direct debits; and account disputes and other problems arising as a result of Institutional error. For many caseworkers, dissatisfaction with complaint handling procedures was closely bound up with (and not necessarily distinguished from) the problems they have when trying to negotiate repayment arrangements on behalf of their clients: see under *Customers with Financial Difficulties* above.

Among the themes emerging from the consultation in relation to the resolution of complaints/ disputes, the following might be noted:

i) Practical barriers to making a complaint to the Institutions

[See FI Codes, Part C, Resolution of Disputes; sec 19, Survey]

There was a strong perception among caseworkers that, in recent years, particularly in the case of the large Institutions, it had become considerably more difficult, in practical terms, for clients (and their advisers) to make a complaint to an Institution. Specific issues included: getting past poorly trained call centre and counter staff to officers of the Institution who understood the issues and had authority to make decisions; and being able to deal with a single individual/ section of the Institution, rather than different sections dealing with different accounts. At least in part, the problem was seen as a function of the shift of decision-making within bigger Institutions away from branch networks/ branch managers to centralised call centres. Caseworkers complained that many of the people they had to deal with in such centres, at least at first instance, had little understanding and were often reluctant to refer a matter to a supervisor. Even for the Counsellor, it could be difficult to get through the initial barrier represented by such front line staff. Caseworkers in regional centres (including WA and Tasmania) were particularly concerned about these issues. It was noted that the FI Codes do not make provision for dealing with *complaints* as such but only for the situation where a complaint has graduated to become a *dispute* (ie because the customer does not accept the Institution's response to the customer's complaint: see sec. 20).

Caseworker Comments

'The three hour time difference between Perth and the Eastern States has a huge impact.'

Ann Elder, Lockridge Community Group

'I just have trouble getting hold of anyone. Especially [major bank] who are over East in Brisbane. I sent a letter to them on the 14th of March 2000. To this day I have not had a response.'

Financial Counsellor, WA

'I tried for two weeks to get in touch with [major bank]. Finally I was able to locate a private number and was able to contact a manager.'

Financial Counsellor, WA

'It is getting harder to find the right person to talk to by phone: very time consuming and often frustrating.'

Dolly Holzinger, Financial Counsellor, MIDLAS Inc, WA (s)

'We need to be able to deal with people who know about the Credit Code and so on. And who know about the role of Financial Counsellors. Most bank staff do not know what financial counsellors do.'

Dianne Meek, Communicare, WA (s) 'There are problems dealing with different staff and different offices. You may reach an agreement with one officer, the next one doesn't know about it and doesn't agree to it'

Ann Elder, Lockridge Community Group

'There is no phone number in the phone book or at the bank of the "customer service manager". All clients have is the call centre number.'

Jane Palese, Financial Counsellor, The Smith Family, Parramatta (s)

‘Client disputes are handled by too many people. There is normally no one person to deal with and clients get differing information from staff who are reluctant to give phone contacts. The debt negotiation is inflexible, the excuse is that the computers can’t accept low payments. The length of time for banks to respond to correspondence is sometimes very long and defaults have occurred and clients have incurred fees. Banks have been very reluctant to consider STD cases on their merits. Banks need to be more responsible for pre-approved limits.’

Anne Marie Paulsen, Financial Counsellor, Fremantle CLC (s)

‘Nobody knows what’s going on in each section’ (referring to call centres)

Hunter Region Financial Counsellor [workshop participant]

‘There is a severe lack of knowledge amongst front line staff, particularly in collections, of either codes of conduct or even the general law. It’s only when a complaint is made that one comes across anyone who seems to know anything about either. Front line staff need more training. Since consumers are usually ignorant of the position, probably the most important time for them to be informed of their rights is when the institution seeks to enforce their obligations.’

Greg Mowles, Financial Counsellor, LifeLine Capalaba

Case Studies

An Aboriginal client asked the [major] Bank to cancel a direct debit on her account. When this did not occur she went into her local branch to find out what had occurred. The staff member that she spoke to was annoyed at having to provide an explanation. She raised her voice, spoke to the client like a ‘little kid’, and made no attempt at meaningful explanation, using the bank terminology. The client was ‘shamed’ at being treated in that manner in front of other bank customers and left the bank without any further understanding of what had occurred.

Sandie Groves, Anglicare Financial Counselling Service Busselton

Customer was sick one week, and so unable to deposit her pay cheque. During that week two direct debits of \$18 and \$10 proceeded, and as there were insufficient funds in the account a default fee of \$35 was charged in respect of each. The customer found that \$130 had been debited to her account, and contacted the bank. She was advised that \$70 constituted the default fees, but received no explanation in respect of the further \$60. The customer was understandably unhappy about what was happening, and conveyed this to the staff member with whom she was dealing. She was told by this person that the bank had done nothing wrong, and was invited to take her complaint ‘as high as you like’.

Carol Francis, financial counsellor, Victoria

Client is an aged pensioner with a personal loan and a Visa card account with [regional bank]. Client was up to date with her personal loan as this was regularly direct debited from her deposit account following deposit of her Centrelink payment. However, client’s Visa card account was in arrears and the Bank was demanding \$50 per fortnight towards this. Client could not afford to pay the amount demanded as nearly 50% of her pension income already went in payment

of the personal loan. Counsellor tried unsuccessfully to have the Visa card debt tacked on to the personal loan. Counsellor's attempts to negotiate on behalf of the client were made much harder because the personal loan was handled from the Sydney office and the Visa card from the Adelaide office; and neither appeared to communicate with the other. Counsellor found that she was explaining to one part of the Bank what was happening in another part. Client could have negotiated on her own behalf. For one thing, the cost of the phone calls [from Tasmania] would have been prohibitive.

Jane Hutchison, Financial Counsellor, Tasmania

Customer had a personal loan with a major bank, and was having difficulty making payments. She spoke to the local branch manager who said he had negotiated with head office for her to pay \$400 per month. She was told by the local branch that if she paid \$400 for 3 months it would be acceptable. She then got a call from the bank saying she was in arrears. Someone from head office said the agreement had not been formally accepted. Customer says that the local branch manager is standing by her, but head office insist on \$590 per fortnight.

Credit Helpline (Vic) 1996

ii) Delay and non-responsiveness in dealing with complaints

Closely related to caseworkers' concerns about the difficulty of establishing contact with someone who can handle the complaint, were concerns about non-responsiveness and undue delay in dealing with the complaint.

Caseworker comments

Institutions are 'very slow to admit there is a problem and fix that problem'

Shelley Lester, Financial Counsellor, Creditcare WA (s)

'Very lengthy negotiations: letters lost, bank departments lost as they appear to be in constant evolution.'

Lorraine Joyce, Financial Counsellor, Mandurah, WA (s)

'I have ongoing difficulties getting to the appropriate decision making area — different staff all the time and very poor response. The difference in WA from NSW/Vic (where dispute resolution is centred) is a problem — there is a very poor response time.'

James Darish, Financial Counsellor, Southcare WA, (s)

'Often the bank will not respond. On one occasion I had to fax an authority to the bank six times because they either lost it or did not receive it.'

Our workload has increased because of the additional work involved in contacting and re-contacting the bank.'

Diane Meek, Communicare

Case studies

Customer authorised a direct debit from her bank account. The bank accidentally deducted the same amount 5 times. Having received her account statement and noticed the error the customer immediately contacted the bank, and was told the error would be corrected by the following day. Approximately a week later she went in to her bank, found that the

matter still had not been rectified, and upon querying what was happening was told the bank were waiting for her to provide details of her complaint in writing. The bank took approximately 3 months to reimburse her for the amounts incorrectly deducted.

Financial counsellor, Hunter region [workshop participant]

Client a refugee who has lived in Australia for less than 2 years, living off his savings, supplemented by casual work. [Major Bank] sent his ATM card to the wrong address (due to data entry error) and the person who received the card emptied the account of funds. The bank took an unreasonable time to respond with letters unprocessed and complaints not being passed onto the relevant bank officials. In the meantime destitute client forced to apply for Centrelink temporary special benefits. Eventually the money was reimbursed by the bank but with no apology or compensation for damage.

Natalie Ross, Solicitor/CLE Worker, Marrickville Legal Centre, NSW

Client went to the [major bank] on 26 April to find out whether pension had been paid. Advised that no money had gone into his account and that it may have been delayed due to public holidays. Followed up with Centrelink who told him the amount had been credited on 26/4. He went back to the bank who told him that the money had been withdrawn. Client told bank this was impossible as he had the keycard with him that day. Bank said they would investigate surveillance video for that day to check withdrawals. Six weeks have passed and the problem is still not resolved. Client is on sole parent's pension and got behind in rent payments. Had to go to the Salvos for help and got \$100 advance from Bank and was subsequently charged a dishonour fee.

CCLC (NSW) advice [11221]

Customer is a 60 year old widow, and has been unemployed and on a widow's pension for a long time. She has had a credit card with [major bank] for at least 15 years, and periodically has had trouble maintaining required payments. During at least one difficult period the bank offered to increase the limit, and issued her with a Gold Card with a limit over \$10,000. It is possible this decision was based on the bank's knowledge that she had significant equity in her home, as her income clearly was insufficient to justify the increase. Again the customer fell into default, at which point she sought assistance from a financial counsellor. Her financial counsellor asked the bank for a copy of the written notice of variation, which it was unable to produce. When the issue of the customer's capacity was raised, the bank alleged that it was the customer's responsibility to assess capacity, not the bank's. The financial counsellor advised the bank that the matter might be referred to the ABIO, and was told that there was no point in doing so as the customer would not win. The financial counsellor then put a written proposal to the bank, allowing 14 days for a response. As no response was provided she referred the dispute to the ABIO. She was subsequently contacted by a staff member of the bank who was unaware that the ABIO had become involved, and when advised of this by the financial counsellor was clearly annoyed. Despite the involvement of the financial counsellor the bank continued to contact the customer directly, on one occasion at 8.50pm. Following the involvement of the ABIO the bank settled the dispute.

Carol Francis, financial counsellor

Clients presented for counselling after a long standing unresolved complaint with [unnamed Bank], being a matter of lost funds, namely the sum of \$23,500. This sum “went missing” after clients had sold a residential property. A letter from the Bank confirmed that a bank cheque had been received from clients’ solicitors; it also ‘confirmed’ that the sum had been credited to the clients’ cheque account. However, clients’ account statements did not show any such amount as having been credited. Despite this, the matter was only resolved after the intervention of the Banking Ombudsman.

Financial Counsellor, Tasmania

The clients income dropped significantly in 1999. The husband worked on the mines but was switched to desk duties with a 50% drop in income, due to reduced overtime etc. The wife became pregnant and gave up work. The client saw a financial counsellor to rearrange their finances. One debt was with a major bank. The bank refused to negotiate lower payments, saying that their system did not enable them to do this until the account fell into default. The financial counsellor referred the matter to the ABIO. The ABIO did not investigate the matter or form an initial view, as the bank then found a way around their system, by referring the account to a collection agent. The bank also agreed to lower repayments on the account.

Anne-Marie Paulsen, Fremantle Community Legal Advocacy Centre

iii) Refusal to compensate, or adjust accounts, for losses suffered as a result of Institutional error following complaint

This theme also emerged in a number of the case studies forwarded and was remarked upon by some Survey participants:

Case studies

Customer had a direct debit facility with [major bank]. An incorrect amount was debited by the bank, leaving her account overdrawn. A \$20 fee was debited to her account. As the account remained overdrawn further transactions resulted in additional fees being charged, all as a result of the bank’s initial mistake. The customer’s financial counsellor contacted the branch manager, detailing what had taken place and pointing out this had caused the customer substantial hardship. The manager refused to refund any of the fees on the basis that many customers faced the same problems.

Jessica Goldsworthy, Uniting Care — Sunshine Mission

[Major] Bank had falsely direct debited client’s account for payment to an ISP. When error was registered, bank refused to make good the error.

Ruth Henderson, Ryde Eastwood Financial Counselling

Ms. R deposited a cash cheque for \$60.00 at a [major] Bank ATM in January 2000. The money was credited to her account. Subsequently the bank wrote to her and said that they had lost the cheque during processing and requested details of the drawer of the cheque and the bank and branch the cheque was drawn on. The letter stated that ‘since you have not been of any assistance with this matter you leave me no choice but to debit this money from your account’.

Survey of Financial Services Caseworkers — Consumer Credit Legal Centre (NSW) Inc 2000

CCLS (WA) Case File

Mr. and Mrs K entered into a home loan with [regional bank] in May 1993. Payments for the first twelve months were to be interest only, but for the 'balance of term: principal and interest'. The borrowers made payments as advised by the Bank.. In 1999, Mrs. J phoned the bank to get some information on her account and was told that the bank's records did not show her to be a borrower. She then took her copy of the loan contract to the [successor major] bank for verification of identity. She was then told that the bank had failed to convert the loan to a principal and interest loan at the end of the first twelve months. During the loan the borrowers had paid over \$40,000 with no reduction to the outstanding balance. This had not been picked up by the borrowers as the only ongoing information they received from the bank was a monthly account for the interest charged the previous month. The bank proposed to rectify the situation by converting the loan to a principal and interest loan as of 1999.

CCLS (WA) Case File

Client signed up for a [major] Bank home loan. She was told that in the first year of her repayments she would get a honeymoon rate of interest and subsequently a discount of 1% under a university scheme. On investigation caller found that she had been paying 1% higher interest than she needed to and contacted the bank. Although the bank lowered her rate to the correct figure, they would not provide a refund for their error. Client contacted the bank with little success.

[CCLC (NSW) Advice 10511]

Major bank recorded a default against customer 3 years ago. Client was never advised and only recently found out. Bank has agreed it was a mistake and agreed to remove default, but are insisting that customer sign a disclaimer before it is removed. Customer doesn't want to sign a disclaimer and believes if bank made a mistake it should simply remedy the mistake.

Credit Helpline (Vic) 20887

Client had a mortgage with [regional] Building Society and payments were direct debited from her bank fortnightly. The building society decided to change the frequency of payments to weekly rather than fortnightly without notifying the client. There was insufficient money in the client's bank account to pay the unexpected deduction, so the account was overdrawn and the bank charged a \$25.00 overdraft fee. The client also withdrew a small amount of money not realising that the account was in overdraft and was charged a second \$25.00 fee. The building society agreed to compensate the customer for the first \$25.00 fee but refused responsibility for the second, placing the blame on the bank asking 'why did the bank let you overdraw?'

Anne Marie Paulsen, Fremantle Community Legal Advocacy Centre

iv) lack of referral to external ADR where dispute not resolved

Caseworkers report that, in many cases, clients are not being told about the external dispute resolution processes available to them in circumstances where the client and the Institution are unable to resolve a dispute. The following comments are characteristic:

‘Several of my clients were not informed at all of the existence of this option for clients in the case of Building Societies and Credit Unions and only by telephone in the case of a Bank. There do not seem to be as many ABIO brochures in banks as there used to be.’

Loretta Kreet, Consumer Protection Solicitor, Legal Aid Queensland

‘Where are the brochures?’

Mary Maclean, Financial Counsellor, LifeLine Toowoomba
