## Introduction

Kia ora koutou. Kei Ratonga Pūtea Puna Manaaki au e mahi ana, he case and early assistance manager au, ko Meryn Gates toku ingoa.

I'm Meryn Gates from Financial Services Complaints, or FSCL for short, and also a Financial Ombudsman Service. I'm a case manager, so I investigate complaints about things that go wrong between lenders and borrowers and have to think about how to put things right. I also support our early assistance team and have a particular interest in consumer outreach.

Thank you to the Commerce Commission for inviting me along today. Good record keeping is so important, and more than just a legislative requirement, it's very useful to you and us when things go wrong.

I'd like to begin by giving you a bit of an update about the complaints that have come through our office in the last year before giving you some observations about the importance of record keeping and share a case we investigated recently.

## Complaint numbers increasing – awareness low

While the number of people bringing complaints to us continues to increase, awareness of the dispute resolution services remains low. In a recent survey only **16% of people surveyed had heard of Financial Services Complaints**. The tricky thing is people only need to know about us when things go wrong. You all play an essential part in directing people to us if, despite your best efforts, a complaint remains unresolved. Please don't see this as a failure on your part. Complaints are part of doing business and provide an opportunity for you to improve.

We have recently released our annual report, Larissa is going to put a link to the annual report in the chat so if you are interested, take a look. In short:

- you resolved about three quarters of complaints that we referred to your internal complaints process
- most of the disputes that come to us are about lenders and are about consumer credit
- most of the disputes we investigate are resolved without our Financial Ombudsman's decision.

I thought I'd **share some observations about record keeping**.

Keeping good records of your interactions with your customers is essential and is your best insurance against complaints.

**Memories are fallible**. Sometimes we misremember events, not with any malicious intent but because of a very human tendency to recall events in a way that favours us.

Clear records can be useful when trying to clarify events with your customer. You might not get the aha moment from your customer, but they may decide to quietly stop pursuing the complaint.

If the complaint does come to us, good records make all the difference.

Whenever we are investigating a complaint we are **balancing the information** available to us to try to work out what happened. Where you are able to give us clear written records made at the time you, for example, assessed the loan affordability, we will place significant weight on those records.

If **you do not have good records and there is a mismatch** between what the borrower says about their financial position at the time the loan was advanced and what you are telling us, we are likely to **prefer what the borrower has to say**.

There are a few reasons why we take this approach. Please bear in mind that every complaint is considered on its merits, so these are general observations only.

**You are the professional**. Careful record keeping gives you credibility. If you can show us persuasive information about what happened we are more likely to believe you if a consumer says something and we can't see it. For example, I recently investigated a complaint where the consumer said they had told the lender that their mailbox had been destroyed and they needed all important documents to be emailed to them. There was no record of this conversation in the diary notes or in the telephone recordings. We decided, on balance, that the conversation the consumer referred to most likely happened months later, well after the repossession warning notice had been issued.

Given our expectation that a professional keeps records, the absence of records will make us start to wonder whether there is something you are not showing us.

Another reason why we prefer a consumer's experience is that this is a **unique experience** for them, and more likely to be memorable. So, if a borrower is telling us that they sat in the car dealer's office with their five children while the dealer entered all the loan application into the system and recorded that the borrower did not have any dependents, we are likely to believe the consumer.

With respect to car loans where the car dealer has gathered the information you are relying on there is a real conflict of interest – they need the loan approved so they can sell a car. So, for example if the dealer says that the consumer told them that they pay only **$50 in board** and the consumer says they were never asked how much rent/board they pay, but if they had been asked they would have said they pay $250 in rent we would be more likely to believe the consumer. However, if the lender asked for confirmation of the $50 board and the borrower confirmed in writing that they pay $50 a week in board and do not see this changing anytime soon this record would change how we would view the $50 board.

**So, what do we expect to see when we are investigating a complaint?**

We'll ask for an **affordability assessment**, showing your thought process. This should have been made at the time of the loan application, and not constructed after the event in response to a complaint.

We would expect to see that you have **checked a person's income**. Ideally, you will be able to give us 3 months of bank statements and pay slips confirming how you calculated the income. Pay slips are important because they will show whether someone is being paid overtime. Not so long ago, I was investigating a complaint where the consumer had recently changed banks the lender only had 6 weeks of statements and during this time the consumer had been paid for a lot of overtime. The bigger picture showed her actual income was much more modest and the loan was unaffordable.

Then we'll look at expenses. Many lenders use **scraping software** to get a picture of the borrower's expenses, and while this can be a **good place to start**, it's not the end of the enquiries we'd expect to see.

If the software shows lots of ATM transactions, we'd expect a record that an enquiry was made, and an explanation given for the use of that money.

If we see lots of BNPL we'd expect these to be factored into the affordability assessment, unless there is a record of a conversation about enquiries made into their use of BNPL that persuades us this is a temporary BNPL use.

If we can't see rent payments, we'd expect to see a record of a conversation about this.

Other things to look out for are any indication of other debt, regular payments out of the account, transactions that indicate dependents.

Many lenders use **statistical information** to calculate food costs, and this can be helpful where it is difficult to work out the food costs from the bank statements. However, we may ask for the source of the statistical information to make sure it is appropriate.

**What does this look like in practice?** I thought you might like to hear about a complaint we investigated recently.

In May 2019, Sandra needed to borrow **$2,500 to pay bills**. A lender approved her loan application and Sandra borrowed a total of $4,000, because the loan included a $300 loan application fee and $1,200 for two add on-insurances.

**Sandra struggled** to repay the loan from the beginning. In **2023, with the help of a financial mentor**, she complained to FSCL about the lender's decision to approve the loan.

The financial mentor said the loan to Sandra was **unaffordable**. Sandra had **existing debts** to a debt collection agency, Work & Income, and a high-cost short term lender. Further, Sandra had a **gambling problem**, which sometimes caused her bank account to go into overdraft.

The financial mentor also said the lender had failed to check whether the add-on insurances were suitable for Sandra's needs.

The lender considered the loan was affordable based on Sandra's income and expenses. The lender also said they had explained the insurance in detail to Sandra and that she had chosen to take them out.

We looked first at **loan affordability**.

We asked the lender for the information they had about Sandra's ability to make repayments. The lender **did not provide an affordability assessment** and said their assessment was based on Sandra's previous loan records and three months' worth of bank statements.

Because the lender had only the three months' of bank statements without any information about how they used this information to assess affordability we looked at Sandra's income and expenses at the time she was offered the loan, using information from her bank statements and from the Statistics New Zealand Household Expenditure Survey.

After assessing Sandra's income against her expenses, she was left with a **weekly surplus of $4.70**. This was not a sufficient surplus, as it did not allow any changes in income and expenses. We found the loan was unaffordable, and that the lender should refund and waive all interest, fees, and charges under the loan contract.

Then we looked at whether the **insurance was suitable**. The lender did not have any information to support their submission that they had fully explained the insurance to Sandra.

Given there was **nothing to show that the lender had enquired into whether the insurances were suitable for** Sandra's needs and given the costs of the insurance against how much Sandra wanted to borrow, we were not satisfied the lender had made reasonable inquiries. We recommended the lender refund the $1,200 for the insurance premiums to Sandra's loan account.

Both Sandra and the lender accepted our preliminary decision, and we closed our file.

Thank you for your time. I hope you have found it useful.