Natalie Cameron

Lead Ombudsman - Banking & Finance

Australian Financial Complaints Authority

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via email: consultation@afca.org.au

Dear Natalie

Joint consultation on AFCA Approaches to family violence and financial elder abuse

Thank you for the opportunity to provide feedback on AFCA's draft Approaches to family violence and elder abuse. Arca's Members are acutely aware of the importance of supporting customers experiencing vulnerability and ensuring they understand AFCA's expectations in relation to these issues.

Arca has actively engaged with its Members and a range of stakeholders including consumer advocates, consumer lawyers and financial counsellors, since 2021 on the issue of domestic abuse in credit and credit reporting. In 2024, we undertook a lived experience consultation facilitated by Catherine Fitzpatrick of Flequity Ventures, which specifically sought insights on the impact of credit and credit reporting in situations of domestic abuse. A copy of that report is **attached.**

It is based on this engagement and the lived experience insights that we respond to the AFCA approach document.

Draft Approach to family violence

In general, Arca is supportive of the changes proposed by AFCA in this draft Approach. We believe that the Approach could be improved further by updating some of the examples and case studies to provide more guidance on AFCA's expectations of financial firms in an environment where financial services are being increasingly carried out online. We would also value some examples that reflect the situation of smaller financial firms who nonetheless strive to do their best to support customers experiencing family violence.

We have outlined our specific comments Approaches below.

Section 2.1

Arca's Members are conscious of the importance of working with a customer's representative where that is in the best interests of the customer, however, we note that our Members regularly experience situations with paid debt management and credit repair firms when they do not believe those firms are acting in the customer's best interests. Arca would suggest some context added to this point reflecting this concern and making it clear that communicating directly with the customer is acceptable in this situation. As an example, Arca has received reports of some less scrupulous operators reporting most, if not all, of their clients as being victim-survivors of family violence (sometimes without knowledge of the client, and as a 'tick box' exercise and without consideration to whether the circumstances do, in fact, reflect a situation of family violence).

Section 2.3

There are several mentions of how to treat loans where it is determined that the customer received no or only partial benefit. There isn't however, any guidance on how to determine benefit and Arca's Members would appreciate some guidance on AFCA expectations of this, especially where there is partial benefit. Arca's Members would also appreciate guidance on AFCA expectations as to what to do in situations where it is subsequently discovered that there was abuse or coercion (and the signs were missed by the financial firm) but the customer received full benefit from the loan (for example a car loan that they were coerced into taking out, but they have full benefit of the use of the vehicle and it is in their possession).

Section 2.3

Arca is supportive of the intention of this section, however, Arca's view is that the need to keep customer contact information confidential, especially those for experiencing family violence, is not just relevant to situations with a co-borrower (which assumes the risk only occurs if there is a shared loan facility) but to a range of other circumstances. Situations where financial firms should take extra care to preserve confidentiality include, but are not limited to, where there is a child's account that both parents have access to, any joint banking facilities including transaction accounts, and joint insurance contracts. In addition, if there is any inadvertent disclosure of contact information, the financial firm should have processes in place to immediately inform the customer and if necessary refer them to an appropriate support service for safety planning.

Section 2.7

Arca notes that this section is prefaced on the assumption that all financial firms have the technical capability to report, suppress, and correct credit reporting data at an individual level. However, the reality is that for many financial firms, there are challenges with that and they may only be able to report at an account level. The credit reporting system has been largely designed and built on the basis of account level reporting, and while Arca is not unsupportive of changes that would allow individual account holder reporting, this is a significant shift and requires significant resource as well as careful management of unintended consequences. Where a financial firm is not able to suppress or correct credit reporting information for a joint loan at an individual level, Arca Members will work with the victim-survivor to make the decision that prioritises their safety first, but also the best outcome for their credit report. In Arca's view, the Approach should be updated to reflect this reality.

> **"If a financial firm is on notice that a borrower is experiencing family violence**
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> *Where a financial firm is aware a borrower is experiencing family violence, the financial firm should not make a default listing or disclose adverse RHI on that individual borrower's credit file. Instead, it should place enforcement action on hold while it works with the individual borrower to overcome their financial hardship with the loan. This does not prevent the financial firm from making arrangements to enter a default listing or disclose adverse RHI against the other borrower, if appropriate."*

Arca acknowledges that credit and credit reporting information can be used to perpetrate abuse and that adverse credit reporting data can be a barrier to recovery. Our Members take seriously their obligations to support victim-survivors and we support AFCA's steps to support victim-survivors. That support extends not just to credit and credit reporting issues, but also to prioritising the safety of customers. This is especially the case where coercive control is present, and the perpetrator of abuse may have extended this control to the victim or victim-survivors' credit accounts and credit reports. As you are aware, Arca is currently developing principles of best practice on domestic abuse which will look to deal with matters including appropriate staff training, protecting the confidentiality of victim-survivors information, limiting the amount of evidence victim-survivors are asked for and design of systems and processes.

In Arca's view the appropriate response to credit reporting treatment in situations where a financial firm is on notice of family violence must focus on what is necessary to ensure the safety of the victim-survivor. By contrast, the actions referred to in the proposed section 2.7 contemplate non-reporting as the only outcome available for the financial firm. However, Arca considers there are options which ought to be identified being:

- Suppression – suppression of the victim-survivor's RHI (ie. Blanks will appear on the credit report for the relevant period)
- Doing nothing and correcting later – allowing the victim-survivor time to ensure their own safety, while giving them information on how to seek correction of their credit reporting information once they are safe.

- Hardship - entering into a hardship arrangement, noting that hardship should not be used as a solution where the initial lending was inappropriate[1].

Navigating these options ought to be undertaken in consultation with the victim-survivor. Suppression or correction of default listing or adverse RHI for the victim-survivor may create a safety risk if the perpetrator becomes aware of this. This is especially true for joint accounts and where that suppression or correction is only applied to the victim-survivor's account. Our lived experience consultation and consultation with FDV experts makes clear that victim-survivors are the experts in their own situation and financial firms should not take action to suppress or correct information without discussing that with the customer first – it may be that the safety of the victim-survivor is best prioritised by leaving their credit report unchanged in the short term and then correcting the adverse information when they have ensured their physical safety.

> **"If a financial firm is unaware family violence is or was present until after a default listing is made or adverse RHI is disclosed**
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> *There may be times where a financial firm has made a default listing and/or disclosed adverse RHI on a borrower's credit file who has experienced family violence because it was not aware of the borrower's circumstances at the time of disclosure. In these circumstances, AFCA considers it to be good industry practice for the financial firm to remove the default listing as well as any adverse RHI it has disclosed on that individual's credit file in a timely manner.*
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> *This is because customers who have experienced family violence are likely to struggle to achieve financial autonomy if they have adverse information on their credit file."*

Arca broadly agrees with the statements in the AFCA approach about the importance of financial firms removing adverse information on credit reports which may otherwise act as a barrier to achieving financial autonomy.

However, we note that underpinning the correction of information from the credit reporting system is also the need to ensure the circumstances for a correction exist. That is, the fact that family violence is present does not, nor should it, automatically mean that adverse credit information must be corrected or removed. Instead, the requirement of paragraph 20(12) of the Credit Reporting Code is that, for adverse information to be corrected, it must be established that this information exists "because of unavoidable consequences beyond the individual's control". In the case of family violence this would mean establishing a link between the abuse (e.g. inaccessibility of payment methods or digital access for a victim-survivor fleeing violence, a perpetrator withholding access to funds or joint accounts, a perpetrator deliberately avoiding making payments to punish the victim-survivor) and the subsequent entry of adverse information.

To be clear, we would expect financial firms to adopt a flexible approach to establishing this link, without asking for significant evidence especially where a victim-survivor may not have access to documentary evidence or it would be difficult or onerous for the victim-survivor to provide it. Victim-survivors are in many cases, already under significant stress and onerous administrative burdens if there are (for example) family court proceedings on foot. It is Arca's view that in most cases this link could be established from the account of the victim-survivor or a representative like a financial counsellor. The financial firm should also consider to what extent its own records may include evidence of this link.

Therefore, it is our view that AFCA's draft Approach should note that in some circumstances – ie. where non-payment has not been the unavoidable consequence of the abuse suffered by a victim-survivor, a correction of RHI may not be the most appropriate choice. However, even where a financial firm assesses that a correction isn't appropriate, there are several other options that we would expect a financial firm to consider – including: was there coercion or abuse involved in the original loan (in which case there may need to be a correction of all information associated with that loan), could the financial firm work with the victim-survivor to

[1] The importance of providing flexible hardship options to all customers but especially victim-survivors is emphasised elsewhere in AFCA's draft Approach, however, we would also like to note that backdating of hardship may also be an option for a victim-survivor who has had adverse RHI reported before the financial firm became aware of their situation.

develop an appropriate hardship arrangement (whether backdated or going forward), and are there other external referrals that the financial firm could make.

Draft Approach to financial elder abuse

We have no specific comments on the draft Approach to financial elder abuse, we note that we have not explicitly considered elder abuse in our work to date and the draft Approach has no specific references to credit reporting.

In the meantime, if you have any questions about this submission, please feel free to contact me.

Yours sincerely

Eliza Twaddell

General Manager – Policy & Stakeholder Engagement