

6-1-1998

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Recommended Citation

Cork, Gail (1998) "ADR brings high interest returns in financial disputes - the Credit Union Dispute Reference Centre," *ADR Bulletin*: Vol. 1: No. 2, Article 7.

Available at: <http://epublications.bond.edu.au/adr/vol1/iss2/7>

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ADR in consumer complaints

ADR brings high interest returns in financial disputes — the Credit Union Dispute Reference Centre

Gail Cork

“With mediation as its philosophical base, the CUDRC was always to be a showpiece for what can be achieved by a consensual approach to disputes.”

Uncertain beginnings

When the Credit Union Dispute Reference Centre (CUDRC) opened for business on 1 November 1996, no-one quite knew what to expect. Would it be inundated with calls from disgruntled consumers or would the phones stay silent? How would credit unions interact with their fledgling dispute resolution scheme? Would enough credit unions support the voluntary scheme to secure its viability beyond the first 12 months?

For the CUDRC's managing body, the Australian Commercial Disputes Centre (ACDC), a looming unknown was the extent to which ADR processes could be usefully and cost-effectively applied to disputes between credit unions and consumers. With mediation as its philosophical base, the CUDRC was always to be a showpiece for what can be achieved by a consensual approach to disputes. The question was how such an approach would sit with hardline financial institutions. Persuading them on the idea of negotiated outcomes presented an interesting challenge.

Differing interests

Much depended on how the CUDRC scheme was to be sold to its stakeholders. Paramount from the consumers' side were the credentials of the dispute resolution process in terms of its independence, fairness, transparency and accessibility. Consumer representatives were determined to bring the scheme into line with the Federal Government's recently launched *Benchmarks for industry-based customer dispute resolution schemes*.

Credit union representatives, on the other hand, were more concerned with the cost and regulatory aspects of the scheme. It was one thing for credit unions to accept the CUDRC's watchdog role as a grim fact of life under the new Credit Union Code of Practice, but quite another to expect their willing participation in a mediation. In that sense, the launch of the scheme could hardly have come at a less fortuitous time. Already grappling with an onerous swathe of compliance requirements under the new *Consumer Credit Code* and the Code of Practice, credit unions were unlikely to applaud the simultaneous appearance of a scheme charged with the power to remove disputes from their control and punish breaches to the tune of up to \$100,000. That credit unions themselves were funding the interloper must have looked to some like the 'own goal' of the decade.

Getting started

An intensive round of seminars in capital cities opened the lines of communication between credit unions and the CUDRC, giving voice to early concerns on both sides. The seminars served the threefold purpose of:

- (i) letting credit unions know what to expect from the dispute resolution process;
- (ii) promoting the fundamental importance of effective complaint management; and
- (iii) gathering anecdotal and statistical information about current complaint-handling practices. ➤



➤ This was followed in the first year by a heavily subsidised national training program on complaint handling and complaint management policy. A generic complaint management policy and procedures manual was developed to assist credit unions through the transitional period.

These initiatives became key building blocks in the development of a professional and mutually respectful working relationship with credit unions. Over time, they have also had a significant positive impact on the standard of internal complaint management among participating credit unions, a result borne out by enquiries to the CUDRC: in the past six months or so the per capita proportion of consumer complaints about participating credit unions compared to non-participating credit unions has dropped by up to 30 per cent.

Early practice

In practice, the CUDRC's dispute resolution process has evolved into a range of ADR modules with informal dialogue at the soft end and expert determination (binding on the credit union but not the consumer) at the business end. Somewhere in the middle is the Initial View, a non-binding assessment of the dispute by the CUDRC Investigating Officer. An Initial View is only issued in cases where the issues in dispute are straightforward; it has proved effective in nudging the parties towards settlement without actually bringing in the cavalry.

Not all disputes to the CUDRC are straightforward. The most interesting are multi-faceted with degrees of technical liability on both sides. As each dispute presents its own mix of technical and legal complexity, power imbalances, commercial interests and personalities, the dispute resolution process has enough built-in flexibility to maximise opportunities for negotiation without compromising fairness or expensively labouring the point in disputes which simply don't lend themselves to a negotiated outcome.

Subject to agreement by both parties,

unresolved disputes proceed to a conciliated conference, drawing on a national panel of mediators/lawyers with experience in banking disputes. The process may also include expert assessment and/or full-scale mediation. Determinations are made as a final measure when one or both parties declines to participate further in any form of negotiated process.

The most common areas of complaint in the first year were:

- Interest rates and credit union fees and charges — 18 per cent.
- Service delivery (general) — 17.7 per cent.
- Disputed account debiting or crediting — 16.2 per cent.
- Service delivery (instructions) — 9 per cent.
- Account combination/closure — 8.6 per cent.
- Service delivery (EFT) — 8 per cent.
- Disclosure of fees and charges — 2.6 per cent.
- Handling of guarantees/third party security — 2.6 per cent.
- Other — 17.3 per cent.

Initial evaluations

After 18 months of operation, just two determinations have been made under the scheme. Some 70 disputes have been resolved at various stages in the negotiation process. Hundreds more potential disputes have been averted at the outset by facilitating communication between credit union and complainant. The point has been made: ADR is working.

What's more, credit unions seem to like it. With the odd exception, managers have embraced the consensual approach to disputes with an openness bordering at times on downright enthusiasm. Of course this may have more to do with commercial considerations than commitment to the cause (To take a dispute through to the determination stage could cost the credit union anything up to \$6000, win or lose). The end result, however, is that disputes, even previously intractable ones, are ending in a handshake rather than a judgment

imposed from outside. The more it happens, the more credit unions warm to the non-pecuniary benefits which flow from negotiating with disputants; a negotiated settlement can save time, foster member confidence and loyalty, reduce workplace stress and avoid the removal of problems from the credit union's control.

Case studies

Foreign currency transaction

Mr S arranged to transfer \$8000 from his credit union to a building society in the UK in preparation for his move overseas. He claimed that the credit union officer who arranged the transfer agreed to convert the funds immediately into pounds sterling as the Australian dollar was declining steadily at the time.

As a result of administrative errors which the credit union attributed to the bank which effected the transfer, the money took 46 days to arrive, causing considerable stress and inconvenience to Mr S. When it did arrive, it was still in Australian dollars.

Mr S claimed compensation for his losses arising from the unfavourable exchange rate and lost interest. He also sought reimbursement of the transfer fee and out-of-pocket costs associated with tracing the missing funds.

In view of Mr S's long-term membership, the credit union agreed to make an ex gratia payment to Mr S equivalent to the loss arising from the exchange rate but declined to make reimbursement for the other items. Mr S accepted the offer and the matter was closed.

Charges and fees

Ms E was in Europe when her Visa Card was stolen. She was charged \$70 each for two emergency cash requests which she had cancelled after learning of the charges involved. On her return, Ms E complained about the charges, saying she had not received prior notice of a charge for making the ➤

➤ requests and also that she had received verbal advice from Visa International that it was not Visa's policy to impose a charge in such circumstances.

The credit union agreed to waive one of the charges but this was not accepted by Ms E who subsequently brought the matter to the CUDRC.

On consideration of the credit union's published list of fees and charges and documented evidence of the charges made by Visa to the credit union, the Initial View of the Investigating Officer was that the charges were legitimate and that the list of fees and charges provided to Ms E when she opened her account constituted adequate prior notice. Ms E did not pursue her claim.

courtesy, efficiency, helpfulness and fairness of dispute resolution procedures. Sixty-six responded of which, on average across all categories, 77 per cent rated the service very good or excellent. Early indications from a current survey of consumer users of the scheme are equally encouraging.

The challenge ahead in 1998 is to contain costs in the face of rising demand, while still satisfying the competing interests of stakeholders. In these early years of the scheme, it is crucial that disputes which proceed to determination set reliable precedents able to withstand tough scrutiny from credit union and consumer advocates alike. Much remains to be done in the areas of training, administrative systems and promotion of the scheme to the general public. For all of that, the CUDRC's achievements to date have been considerable. Best of all, the experience of the past 18 months has left no doubt as to the value of ADR as a fine high performance investment in credit union disputes. ●

Further challenges

A survey of 200 participating credit unions conducted soon after the end of the CUDRC's first year asked respondents to rate the CUDRC's service in terms of response time, quality of information supplied, relevance of training programs,

is a Prospect publication

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SUBSCRIPTIONS:

\$345 a year, posted 10 times a year.

Letters to the editor should be sent to the above address.

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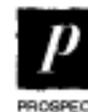
ISSN 1440-4540

Print Post Approved PP 255003-03417

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ACN: 003 316 201



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