

22 September 2022

Commerce Commission

Wellington

By email: guidancefeedback@comcom.govt.nz

SUBMISSION on Consumer Remediation Guidance for Businesses

1. Introduction

Thank you for the opportunity to make a submission on the draft Consumer Remediation Guidance for Businesses (Guidance). This submission is from Consumer NZ, an independent, non-profit organisation dedicated to championing and empowering consumers in Aotearoa. Consumer NZ has a reputation for being fair, impartial and providing comprehensive consumer information and advice.

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2. Comments on the Guidance

Subject to our comments below, we support the proposed principles in the Guidance.

Calculating compensation

Paragraph 11 states “Businesses should determine and/or calculate appropriate compensation in a way that is fair, equitable and transparent and takes into account consumers’ interests and needs.”

Fair, equitable and transparent is then further defined as including “using beneficial assumptions where necessary or appropriate.” We think this paragraph would benefit from clarification. We suggest it includes a

statement saying that the only assumptions that can be made are beneficial assumptions and then clearly explain what these are at the start of that paragraph.

Engagement with consumers

Paragraph 15 states that “Businesses should provide remediation in a way that is convenient and accessible and takes into account the needs of consumers.” It then defines convenient and accessible as including “looking to return monetary compensation to consumers either by way of credit (where the consumer is a customer with an existing account with the business) or refund (where the consumer is not, or is no longer, a customer with an existing account to credit).

In our view, it would be preferable for businesses to offer consumers the choice of credit or refund because the consumer may have no use for a credit or may not wish to continue to deal with the business. Also, under the Consumer Guarantees Act, the consumer is sometimes entitled to insist on a refund, so in these cases, a credit would not be sufficient.

Settlement deeds

We are concerned about the use of settlement deeds in the remediation process. Although not all businesses use settlement deeds, in our view, their use is still relatively common. However, these deeds can be detrimental to consumers because they:

- are usually in “full and final settlement” meaning the consumer may be giving up any other rights they have at law;
- can be worded so broadly that they cover any future disputes between the consumer and the organisation, rather than just the problem being addressed;
- can require the consumer to agree to strict confidentiality provisions; and
- require action on the consumer’s part – i.e. reading, seeking legal advice and signing and returning the document.

We recommend the Guidance includes provisions about the use of settlement deeds to ensure they are used appropriately.

Thank you for the opportunity to provide comment.

ENDS