

Amanda Fairbairn
Policy Lawyer, The Behavioural Unit
Australian Securities and Investments Commission
GPO Box 9827, Brisbane, QLD 4001
By email: remediation@asic.gov.au

12 February 2021

Dear Ms Fairbairn,

Thank you for the opportunity to provide feedback on CP333 Consumer Remediation Update to RG256. Feedback from the Financial Counselling Foundation relates to the new Section G Remediation money that cannot be returned to consumers.

About the Financial Counselling Foundation

The Financial Counselling Foundation (the Foundation) was established in December 2017 in response to chronic under funding of the financial counselling sector. The Foundation's purpose is to increase access to free and independent financial counselling for people with money and debt problems.

The Foundation achieves its purpose by making grants to fund:

- Financial counselling positions where a gap exists in government funding and there is a demonstrated need;
- Professional development and support for financial counsellors to help ensure ongoing access for those in need of financial counselling; and
- Research into ways to improve access to financial counselling, for example, systemic barriers, innovative approaches.

In the latest financial year, 2019-20, more than \$6 million was committed for grants, bringing the total amount the Foundation has paid and earmarked for grants since it was established in December 2017 to \$10.4 million.

Examples of the grants awarded are:

- grants to 21 organisations around Australia to support outreach to remote communities to improve access to financial counselling for Indigenous people, and a grant was awarded to establish and promote a National Indigenous Helpline;
- ‘bridging’ grants for 12 months to specialist financial counselling services where government funding had been unexpectedly withdrawn, for example, Southern Youth & Family Services (NSW) which focuses on assisting young people;
- Grants for ten new positions for specialist Domestic Family Violence Financial Counsellors were funded around Australia, six of those within Women’s Legal Services, so filling a funding ‘gap’ and expanding their range of support services;
- Grants to ten organisations around Australia that operate the National Debt Helpline phone financial counselling service.

Impact of the Proposed Guidance

Community Benefit Payments (CBPs) which arise from Enforceable Undertakings due to corporate misconduct have been by far the largest source of funding for the Foundation (and the Foundation reports regularly to ASIC on the use of those CBPs).

Donations and ‘residual payments’ have been an important supplement to CBPs and with CBPs no longer forthcoming, they have become critical to the ongoing work of the Foundation.

The new section G Remediation money that cannot be returned to consumers, says that:

“(b) the residual funds should be sent to a relevant state or federal unclaimed money regime if available; and

(c) if the licensee is unable to lodge money with an unclaimed money regime, as a last resort, the money should be paid as a residual remediation payment to a charity or not-for-profit organisation registered with the Australian Charities and Not-for Profits Commission.”

As drafted, the guidance would direct residual funds into government consolidated revenue and significantly reduce payment of residual funds to the Foundation and other registered not-for-profits and charities. This would reduce the activities of charities and not-for-profits and associated positive impacts in the community, including those relevant to the detriment the remediation is to address.

The policy objective of remediation payments is to return consumers that have suffered loss as a result of a failure on the part of a financial services provider to the position they would have otherwise been in, as closely as possible. Directing residual funds to unclaimed money regimes will not achieve this. Governments expend funds for a wide range of purposes, so the use of funds paid into unclaimed money regimes will in all likelihood be far removed from the remediation policy objective. The alternative, directing residual funds to not-for-profits or charities that operate with the objective of consumer benefit can provide assurance that these funds will deliver consumer benefit.

In addition, directing residual funds to a regulated foundation or trust that then distributes the funds provides assurance that there is appropriate governance over how the funds are used.

Amend Guidance to Recognize Benefits to Consumers

The Foundation submits that after best endeavours have been made to return funds to consumers, licensees should be permitted to choose whether to direct 'residual funds' to a relevant unclaimed money regime or to a charity or not-for-profit organisation registered with the Australian Charities and Not-for Profits Commission (ACNC).

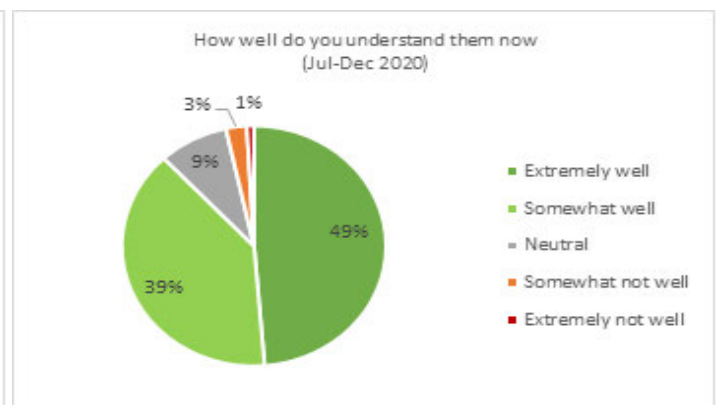
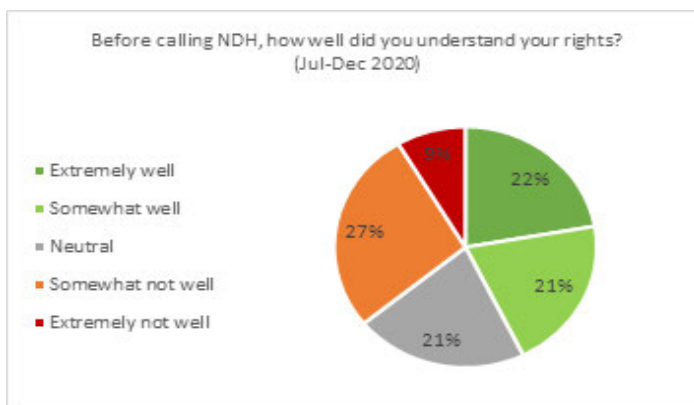
Rather than being a 'last resort' a charity or not-for-profit organisation registered with the ACNC should be a valid option. Financial counselling benefits consumers who are in financial stress or hardship due to actions of financial services providers such as over-indebtedness, bad financial advice or mis-selling.

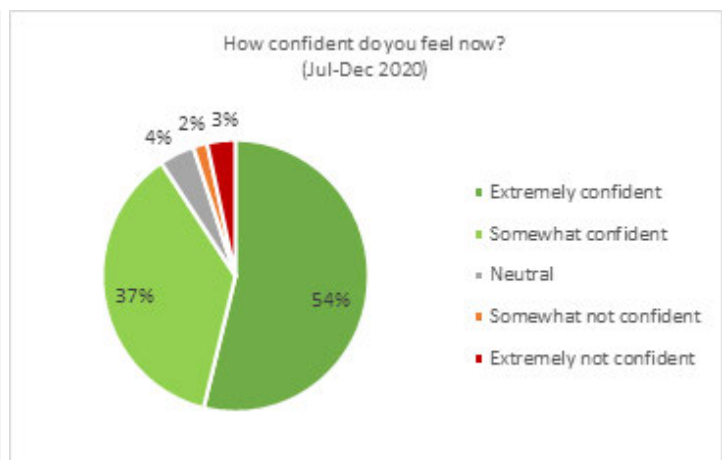
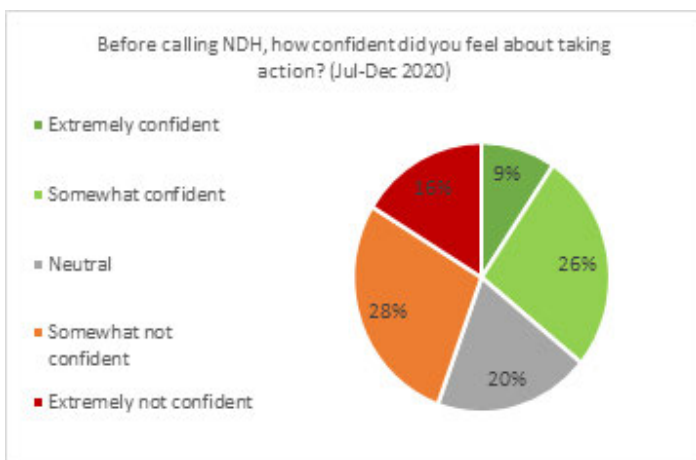
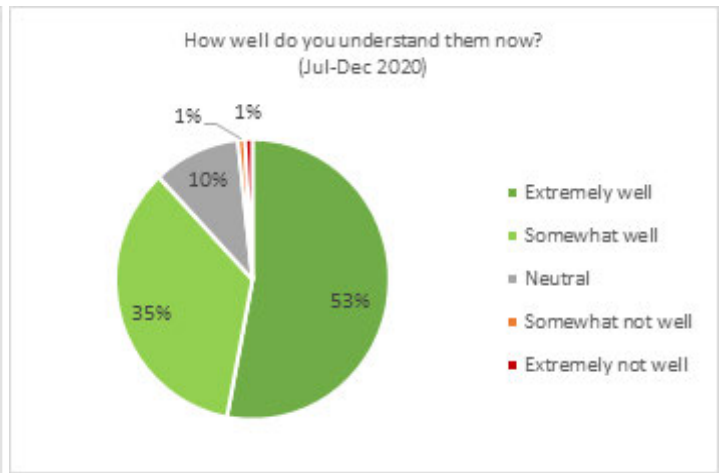
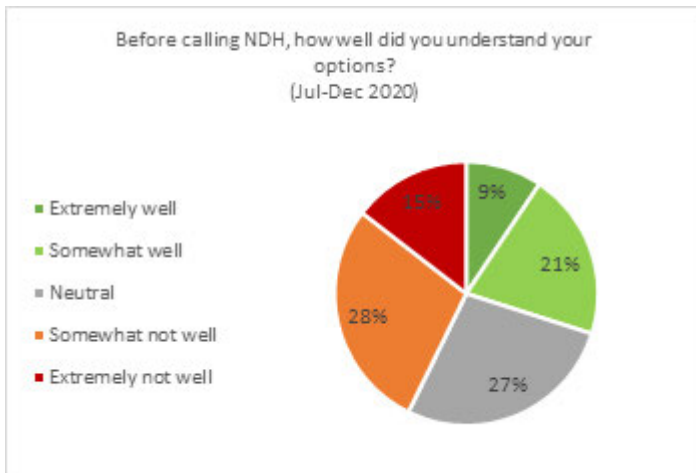
Guidance to financial services providers should recognize the benefits to consumers, particularly vulnerable consumers, of payments to charities or not-for-profits where the activities of the not-for-profits broadly address the consumer detriment or strengthen consumer resilience and/or protection. Consumer protection is strengthened when knowledge of products and how they work, obligations and rights, how to make a complaint and the confidence to ask questions and bring a complaint if necessary is increased.

Evidence exists that financial counselling promotes and contributes directly to consumers' understanding of their rights and confidence to take action to address their situation. For example, Consumer Action Law Centre, which received a grant from the Foundation to support operation of the National Debt Helpline surveyed over 1000 clients who received a telephone financial counselling session during July to December 2020. 117 clients responded and their responses are shown in the charts below. The significant improvement in understanding of rights, courses of action and confidence to take action following financial counselling is clear.

BEFORE FINANCIALCOUNSELLING

AFTER FINANCIAL COUNSELLING





In summary, as it stands the draft guidance would direct funds away from uses that align with the remediation policy objective and benefit consumers. With a large number and value of customer remediations in the pipeline, the amount could be considerable. A more nuanced approach that would permit payments to charities or not-for-profits where the activities of the not-for-profits broadly address the consumer detriment or strengthen consumer resilience and/or protection would be consistent with the remediation policy objective and well-established principles of justice.

Yours sincerely,

CEO, Financial Counselling Foundation