20th May 2019

Fleur Grey
Senior Specialist
Credit, Retail Banking and Payments
Financial Services
Australian Securities and Investments Commission

EARG
ECONOMIC ABUSE REFERENCE GROUP

By email: responsible.lending@asic.gov.au

Dear Ms Grey,

ASIC Consultation Paper 309 - Update to RG 209: Credit licensing: Responsible lending conduct

The Economic Abuse Reference Group is an informal group of ten community organisations[i] which provides input to government and industry responses to the financial impact of family violence. Our work is focused primarily in Victoria, but organisations from outside Victoria join in our work on national issues.

Our member organisations play various roles in assisting and advocating for people who have experienced family violence, which often involves financial abuse. Financial abuse includes preventing access to joint assets, accessing and using joint funds without the knowledge or permission of the other person, and coercion to obtain credit.
Our response to the Consultation Paper focuses on matters that impact on people experiencing financial abuse.

Relationship Debt

The term "relationship debt" doesn't only refer to joint debts, but also debts incurred by one partner for the benefit of both partners, or solely for the benefit of the other partner.
Many family violence clients are liable for debts (either jointly or solely) which were incurred in circumstances where they received no benefit and/or where they were coerced to sign by their partner. In many of these cases, there was a lack of appropriate inquiry by the licensee, or there were indicators of financial abuse that should have alerted the licensee to make further enquires.

> *In 2013 a client entered into a joint loan for approximately $40,000 with her ex-husband. The loan was for her husband to buy a new car and have dental work. The client says that bank staff suggested that she also sign the loan even though they were aware at the time that the client was receiving no benefit under the loan. While the ex-husband was in prison as a result of the violence perpetrated against her, she was contacted by a debt collector for the bank seeking payment of the loan. (Consumer Action Law Centre)*
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> *K signed a joint loan with her husband for over $200,000 because he told her it would pay off a debt to her father-in-law (who had contributed funds to their house purchase 20 years earlier) and remove the father-in-law's name from the title of the family home. While K's husband and father-in-law were involved in discussions with the licensee, K's first contact with the licensee was when a representative came to the home to obtain her*

signature. After she left her abusive marriage, she found that the husband's father was still on title, and he claimed the funds were provided to him for a different reason. (Womens Legal Service Vic)

- *Y's abusive partner took her to interviews at a number of banks and coerced her to apply for credit cards. He coached her on the answers she was to provide at the interviews and told her to lie about whether she worked and how much she earned. (Redfern Legal Centre)*

Consumer requirements and objectives

While there have been increasing obligations and guidance in relation to relationship debt over the years, we believe it is still common for licensees to consider borrowers in an intimate relationship to be one unit, and assume they share objectives and that a benefit to one borrower is also a benefit to the other.

We note that the Australian Financial Complaints Authority (AFCA) expects "financial firms to be alert to the warning signs of potential financial abuse at the time of lending"[1]. AFCA also warns about making further enquiries of a partner who may be subject to abuse in the presence of the other partner, noting that "it is essential that financial firms ask to speak with the customer separately from their companion or co-borrower if any warning signs of potential financial abuse are present"[2].

We believe that ASIC's Regulatory Guide 209 should clearly explain that the term "consumer", when it refers to joint borrowers, raises an obligation by the licensee to each individual borrower. The guide should clarify that a reference to a borrower or consumer means "each and every borrower", and that there may be conflicts between the requirements and objectives of borrowers. It should also reflect AFCA's expectations that licensees should be alert to potential abuse, and in some cases, may need to interview each borrower separately to identify each borrower's requirements and objectives.

We otherwise support the proposal in paragraph 67, regarding the minimum steps a licensee should take to ascertain the consumer's requirements and objectives, and specifically the need (paragraph 67(f)) to resolve and record conflicting objectives.

While there are many indicators of potential abuse, it may assist if some examples were included in the guidance, while noting that it is not an exclusive list. However, financial abuse is often fraud (for example forging a partner's signature or submitting an online application in the partner's name without the person's knowledge) and it may be preferable to combine indicators of potential abuse and/or fraud.

W had a credit card debt that arose because her abusive partner submitted an online application for a credit card without her consent. He made himself a second card holder. Some of the information provided about W in the application was inaccurate or outdated but the credit card application was approved almost immediately (Redfern CLC)

Fraud risks and impact on responsible lending obligations

We note that in its submission, Consumer Action Law Centre provides details of a range of "red flags" of potential abuse or fraud, which we agree should require licensees to investigate further. We also suggest:

- any conflict between the purpose of the loan and the disbursement instructions.

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[1] AFCA, The AFCA Approach to Joint Facilities and Family Violence, page 6

[2] ibid

- Where an email address is provided on an online application form that doesn't appear to match the name of the person making the application or any email address previously held by the bank.
- When a couple apply for a loan application in one person's name, but the non-applicant does all the talking and provides the information.

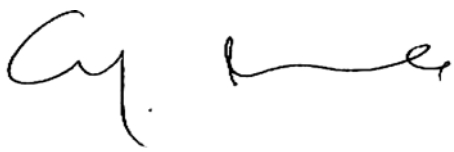
Use of repayment history information

We support the proposal in D3(a), that repayment difficulties on one product will not necessarily mean that a new credit product will in all cases be unsuitable for that consumer, however there are other circumstances where an irregular repayment history may not be an indication of the person's ability to pay.

In family violence situations it is not uncommon for a perpetrator to act in a way that will knowingly impact on the other person's credit history. In many cases the person has no control over the credit that is obtained and/or what payments are made. These people work hard to establish a new life, as they experience the ongoing impact of past abuse. Credit information which results from the conduct of the perpetrator should not be considered in a credit application by the victim survivor. This approach aligns with the AFCA approach which states best industry practice is to not default list a person who has experienced family violence so they are not continued to be disadvantaged in their financial future.

Contact
Please contact Carolyn Bond, on 0412032987 or at carolyn@womenslegal.org.au if you have any questions about this submission.

Yours faithfully



Carolyn Bond AO
On behalf of the EARG

[i] Consumer Action Law Centre, Council of the Single Mother and Her Children, Domestic Violence Victoria, Financial & Consumer Rights Council, Good Shepherd Australia New Zealand, Justice Connect Homeless Law, Kildonan Uniting Care, Redfern Legal Service, WEstjustice, Women's Legal Service Victoria