Banks and Responsible lending.

I have been a Budget Advisor for over 20 years and have over 38 years in the finance industry. 22 of these years were with a bank transitioning away, as has been the trend, from the established ‘service focus’ to a ‘sales focus’, loyalty of customers became irrelevant and it was, for the banks, all about entanglement. We were informed that a customer who had one of two accounts with the bank would find it too easy to change lenders, whereas the customer who had accounts, insurance, loans and anything else the bank was able to ‘sell’ to the customer, were ‘stuck’ to the bank/lender. The untangling involved in changing providers would just become too daunting for them to contemplate.

One major bank is so blatant about their selling focus; it doesn’t have branches or service centres any more, but has ‘Stores’. It is curious that banks are one of the few businesses that have the cheek to charge for service, I just can’t imagine there being a service fee imposed when I shop at a supermarket or visit a service station. I guess they can’t get away with double dipping!

Research shows less than 13% of bank customers ever change banks but when they do it is usually out of disgust and disillusionment at the attitude, pricing or poor advice or service provided.

I feel significant cynicism towards lenders in New Zealand now, for how they treat their customers, their focus on profit rather than people and particularly in their treatment of those who are in financial difficulty, discomfort or distress.

A few years ago my hopes were raised when it appeared the politicians were listening and going to legislate to ‘guide’ the lenders into being responsible. As I suffer from an incurable optimism I expected this would make a difference but unfortunately I was wrong and disappointed, once again!

I can’t help thinking Winston Churchill would have said of our politicians, “That never in the annals of human history have so few, disappointed so many, so often”. But I digress.

In March 2015 the media reported;

Commerce and Consumer Affairs Minister Paul Goldsmith today announced the release of the Responsible Lending Code.

“We know that most lenders are already following responsible lending practices with their customers. However, a percentage of lenders – such as loan sharks and unscrupulous payday lenders – are not,” Mr Goldsmith says. 17 March, 2015

I wonder whether Mr Goldsmith was sincere, as I see his comment being more of a Tui’s billboard, “Yeah right!” Maybe he was poorly informed by the banks!

Full article follows.

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Paul Goldsmith 17 MARCH, 2015

Government issues Responsible Lending Code

Commerce and Consumer Affairs Minister Paul Goldsmith today announced the release of the Responsible Lending Code.

"We know that most lenders are already following responsible lending practises with their customers. However, a percentage of lenders – such as loan sharks and unscrupulous payday lenders – are not," Mr Goldsmith says.

"The Responsible Lending Code provides guidance on the new lender responsibility principles set out in the Credit Contracts and Consumer Finance Act. Last year the Government amended the Act to provide greater protection for consumers when they borrow money.

"The Code and lender responsibility principles come into force on 6 June 2015. They will allow borrowers to have better access to information, and better protection from those lenders who engage in predatory practices. At the same time, they will keep down compliance costs for those lenders who already have good, responsible systems in place.

The Code will not be binding, but evidence of compliance with the Code will be viewed as evidence of compliance with the binding lender responsibility principles set out in the Credit Contracts and Consumer Finance Amendment Act.

"I would like to thank the lenders, consumer groups and other interested parties who have taken the time to give us constructive feedback on the Code, and assisted in its development.

"With their input, officials have been able to develop a document that provides good principles-based guidance for lenders, while maintaining robust protections for consumers.

"I will be closely monitoring the effects of the Code and how well it is achieving its consumer protection objectives," says Mr Goldsmith.

3 Purposes

(1) The primary purpose of this Act is to protect the interests of consumers in connection with credit contracts, consumer leases, and buy-back transactions of land.

Looking at the primary purpose, just how are the lenders protecting the interest of consumers with their current practices of charging fees, denial of help, and applying higher interest rates?

A Case In Point.

In mid 2016 we had a client who hit a few speed bumps in his life which resulted in him getting behind in his mortgage repayments and a few other bills. He had a long and reliable employment history, strong debt servicing ability once he was back at work, a supportive employer and over 38% equity in his home after refinancing/restructuring. Would his bank help? Hell no! He was naughty so had to be punished. Excess interest rates, dishonours and fees galore! They said they would help if he got his arrears covered and account conduct acceptable, but they were not interested in helping him do this. Responsible lending, I think not!

The legislation passed was non-binding; one wonders why they bothered to legislate if it's not binding in the first place. Imagine if tax legislation was non-binding, "Please, people we would really love you to pay your tax, if possible!" Or maybe traffic laws…a Minister tells the media, "We know Kiwis are good drivers, but we need to rein in the poor drivers so we have legislated recommended speed limits and encourage drivers to respect the law!" I guess lenders and especially banks know who to talk to in parliament to ensure they are not reined in.

Some extracts of the legislation;

Principles

Heading: inserted, on 6 June 2015, by section 9 of the Credit Contracts and Consumer Finance Amendment Act 2014 (2014 No 33).

9C Lender responsibility principles

(1) Every lender must comply with the lender responsibility principles.

(2) The lender responsibility principles are that every lender must, at all times,—

(a) exercise the care, diligence, and skill of a responsible lender—

(i) in any advertisement for providing credit or finance under an agreement; and

(ii) before entering into an agreement to provide credit or finance and before taking a relevant guarantee; and

(iii) in all subsequent dealings with a borrower in relation to an agreement or a guarantor in relation to a relevant guarantee; and

(b) comply with all the lender responsibilities specified in subsections (3), (4), and (5).

Let's look at 9C (2) (a) iii, in all subsequent dealing with a borrow act responsibly, really I wonder how that is working for those indebted to the banks and have excesses or arrears.

Subpart 8—Changes on grounds of unforeseen hardship

55 Changes on grounds of unforeseen hardship

(1) A debtor who is unable reasonably, because of illness, injury, loss of employment, the end of a relationship, or other reasonable cause, to meet the debtor's obligations under a consumer credit contract and who reasonably expects to be able to discharge the debtor's obligations if the terms of the contract were changed in a manner set out in section 56 may apply to the creditor to agree to that change.

(1A) An application under subsection (1) must—

(a) be in writing; and

(b) be given to the creditor; and

(c) specify the reasonable cause (for example, illness, injury, loss of employment, or the end of a relationship) for the debtor's inability to meet the debtor's obligations under the consumer credit contract.

Clause 55 calls for responsible action of a lender on the grounds of unforeseen hardship.

So how does the application of honour fees, dishonour fees, excess interest rates and the withholding of providing Care, Diligence and Skill help the borrower work through their hardship, does their current actions actually confirm to the requirements of this legislation?

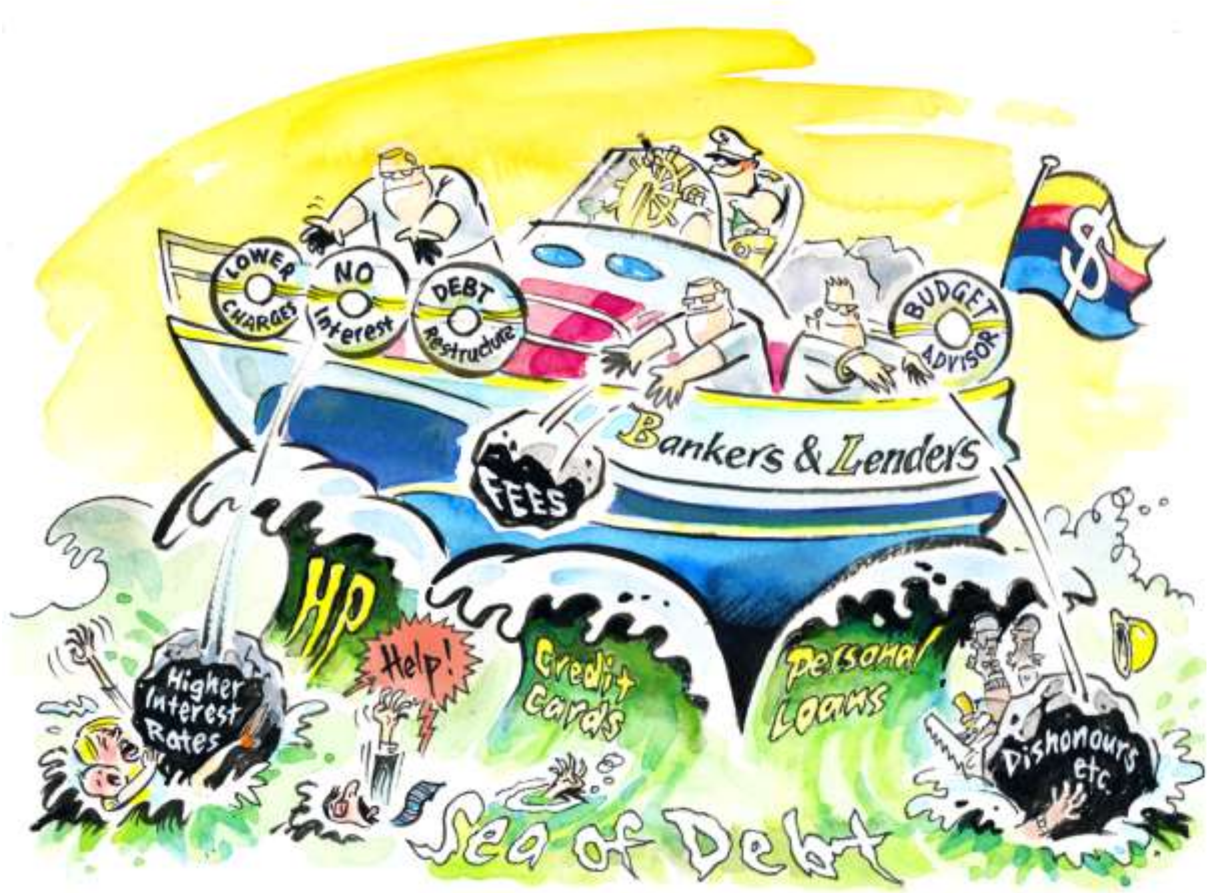
It is interesting to note that while preparing this article the FMA (Financial Markets Authority, -the finance watchdog) has felt concern enough to issue a "Five C's" good behaviour guide for Banks, Insurers and KiwiSaver providers.

> The guide tells consumers what the Financial Markets Authority thinks is 'good conduct'. It comes with a warning that banks, insurers and other financial service providers who do not meet the watchdog's expectations for capability, conflicts, culture, control, and communication with customers will face close scrutiny.
>
> The Five C's are;
>
> CAPABILITY
> The bank, insurer, KiwiSaver, or other financial services provider must have the skills and experience to meet professional standards of care, the FMA said.
> This included being able to demonstrate that their products and services met the needs of their customers, and whether the return being offered on an investment was appropriate for the risk.
>
> CONFLICT
> The provider should clearly disclose any conflicts of interest, particularly how staff are incentivised and any dealings with related parties.
> The FMA wants companies to be able to demonstrate why their incentives to staff, such as sales bonuses to bank staff, do not compromise the interests of customers.
>
> CULTURE
> Companies must have a culture of treating customers fairly and with honesty. It wants to see managers setting the standards for organisations, and the behaviour of staff.
>
> CONTROL
> Financial service providers must have checks and controls in place to support good conduct, and quickly identify and deal with bad conduct. This includes effectively resolving complaints from customers.
>
> COMMUNICATION
> Customers should know what they are getting, what they are paying, and companies should communicate proactively, and in plain language.

As one who has my sleeves rolled up as a volunteer budget advisor and a business mentor, seeing rocks thrown to drowning people frustrates and angers me, instead we should be throwing lifelines and diving in to help.

To be fair the banks and lenders have a considerable and important role to play in New Zealander's wellbeing, and I am aware of banks helping clients in need, on the rare occasion of natural disaster or being shamed into helping. In one instance a bank we know of, waived all interest charges for 12 months for an associate's home loan and business finance, in response to the distress caused by the Canterbury earthquakes. Well done that bank!

Why am I writing this article? It is purely because our legislators and lenders are missing the point. If we wish to arrest and reverse the growing poverty slide kiwis are on, it starts with our lenders no longer defaulting to using a computer to apply penalties, fees and excess rates and “banking” the profit. The alternative is for the lenders to use their systems to refer clients who are out of order or in default to real people; they all have hospital units (credit impaired units) already. Tweak their hospital unit’s focus, from forcing these customers from their books to actually providing practical help to allow them to get back on their feet. Being a realist too, I realise this will not work for some but at least it will give them a chance.



Being the optimist I am, I would hope the banks and lenders will voluntarily use their technology to identify and refer their struggling clients and provide the lifesaving tools that exist. This should include staff intervention initially followed by a referral to a budget advisor (or Financial Mentor as they are now being called). The banks and lenders could contribute funding to a ‘Save the Kiwi’ (people) fund, that helps support those organisations that are out there providing this needed service already.

The Ministry of Social Development (MSD) should be applauded in providing funding to a select few already, even if their process is cumbersome, unreliable and time consuming. The fact funding is only granted for a year at a time must make it very hard for these providers to look at any long term plans and would frustrate me.

I recently became aware of another MSD initiative to help in building financial capability

Strengths-Based Financial Plan

The strengths-based financial plan has been launched as the Financial Plan of Action

The Financial Plan of Action is a resource for clients, their families and whānau to document their goals, supported, where necessary, by a financial mentor.
It is a simple, paper-based document that is easy to update and keep front of mind. It is supported by a Financial Plan of Action: Guide for financial mentors.
With the support of a financial mentor, the Financial Plan of Action supports people to:

- share their aspirations, to understand what they need
- build financial capability and resilience
- identify their strengths and what has worked for them in the past
- view challenges as opportunities, not obstacles

The above is from the website https://www.familyservices.govt.nz

This will be another useful tool to add to those offering help and those seeking help to better manage their finances.

In preparing this article I approached the Banking Ombudsman for some information,

We receive a number of complaints about banks' lending decisions. What might be surprising is that we receive complaints about banks both refusing to lend and allowing customers to borrow when the customers say they could never have afforded the repayments.

So it would seem that the banks can't win whatever their decision is.

All lenders including banks must only provide credit or increase a customer's credit limit when the information they have available leads them to believe the customer will be able to meet the terms of the lending.

Factors we take into consideration

When we are considering complaints about lending, we look at a number of factors:

- *what information did the bank ask for and what information did it receive about the customer's ability to repay the loan?*
- *did the bank consider all information available to it?*
- *did the bank comply with its own policies and procedures on credit assessment?*
- *was there anything that should have prompted the bank to seek more information?*
- *did the bank waive a particular policy requirement, and if so, why?*

A bank must consider all relevant information available to it across departments when making a decision about lending. For example:

- *it may not be enough for a bank to only consider credit card department information when other departments also hold information relevant to a loan application*
- *the fact a customer has previously met payments on a current credit facility may not in itself, establish the customer can repay a higher level of debt so the bank may check other information it holds on that customer.*

Generally we are unlikely to find in the customer's favour in a complaint about a bank's decision to approve a lending application when the customer was subsequently unable to service the loan, if the customer:

- *actively sought a loan*
- *was not under any sort of disability, or affected by a disability at the time*
- *either met the bank's usual lending criteria, or was not far from it, and the bank made appropriate enquiries.*

We are also unlikely to find in favour of the customer if:

- *the bank asked all the right questions and the questions were appropriately worded*
- *the customer didn't provide all the information they should have about their financial position or gave inaccurate responses.*

For more information on the Banking Ombudsman you can go to https://www.bankomb.org.nz

I wonder if a number of current bank practices meet Responsible Lending as our legislators intended.

1. Customer's fixed home loan is expiring, a letter is sent out, without any personal bank contact, the customer is left to decide what to do next with no personal input about options. How are Care, Diligence and Skill, shown here?

2. Using excessive interest rates, as high as 7.8% to calculate debt servicing for home loan calculations. The 5 year fixed rate is only 6.09%. Why use the higher rate?

3. Ageism, demanding unrealistic repayment terms because of age i.e. a 60 year old has to clear loan by 65, yet they may work till they are 70 plus.

4. Declining on "what if reasons". To quote *"if the board/rental income were to lapse he would not be able to service the repayments".* On this basis they would not lend to their staff as they might be made redundant!

5. Denying a bankrupt the opportunity to open a credit account. I am very grateful to Kiwibank for being one who does. A young family I was helping a while ago got into trouble through some poor decisions, their bank wouldn't waive the break fees and forced them into bankruptcy and then off their books, many of the banks declined to open them a saving account.

   Treating bankrupts as lepers, in my eyes is disgraceful; Donald Trump would never have recovered to make his billions if he were in NZ

6. Charging interest rates in excess of 25% p.a. is exploitation tolerated by our legislators.

It was only fair to present a balance to this article so we submitted it to the Bankers Association for comment and we received this back from them, cut and pasted.

Thank you for your email. Here is a response from New Zealand Bankers' Association chief executive Karen Scott-Howman:

"Thank you for the opportunity to comment on your article about banks and responsible lending. It is misleading to conflate banks' lending practices with those of unscrupulous lenders which the responsible lending code was intended to target.

"Banks are committed to being responsible lenders and trusted financial advisers. Banks provide reliable and trusted banking information and encourage financial capability so that customers are able to make informed financial decisions.

"Banks have prudent lending standards and processes in place to support making the best decisions for both the bank and the customer. They continually review portfolios and undertake risk analyses and stress tests at a sector level, and take time to understand and assess individual customer needs on a case by case basis.

"Responsible lending goes hand in hand with responsible borrowing. That includes people providing full and accurate information when seeking a loan from a bank.

"Like any business, banks sometimes make mistakes. That's why they have internal complaints processes. And if you're not satisfied with the bank's response to your issue, you can engage the Banking Ombudsman which provides a free and independent dispute resolution service.

"Banks operate in a highly competitive environment. They work hard to attract and retain customers. If you have any issues, we strongly encourage you to talk to your bank to see how they can help you. They may, for example, be able to recommend different products and services that better suit your particular needs and circumstances.

"If your circumstances change, and you find yourself unable to make your loan repayment obligations, it's a good idea to talk to your bank. The sooner you talk to them, the better they'll be able to assess your particular circumstances and offer assistance.

"Banks stand ready to help their customers in a crisis. For example, immediately after the Kaikoura earthquake in November last year, all retail banks in New Zealand offered assistance to affected customers. Please see: http://www.nzba.org.nz/news-media-releases-and-opinions/media-releases/banks-offer-assistance-to-earthquake-affected-customers/

"The banking industry has also made it easier to switch banks for people who are unhappy with their bank. The new bank takes care of everything and the customer need only provide a single authorisation to allow the transfer of funds from the old bank, and to ensure recurring payments to third parties continue to operate seamlessly. For more on easy switching, please see: http://www.paymentsnz.co.nz/articles/switching-banks-is-easy.

“New Zealanders rate their banks highly. Consumer NZ’s April 2016 banking survey found that 86 per cent of customers were satisfied with their bank.”

I guess it is fair to say the Banks still think they are doing a great job and on the whole they do and satisfy the majority of their customers. This article was never an attempt to bag the Banks, but to provide some feedback on areas that could be improved and in the hope they were acted on.

Finally to summarise, the responsible lending legislation was to stop lenders from lending to people without working out the loan affordability. Mostly this lending was on consumer products and without wealth creation potential, i.e. cars, TV’s, furniture etc. and to be fair this has mostly been successful. It is how our lenders and banks have continued to fail, in the writers opinion, in meeting the obligations now expected of Financial Advisors that cause me concern.

The fact that the banks and lenders still don’t meet the conduct of responsible lenders in providing Care, Diligence and Skill to their customers and especially those in financial distress, (based on my first-hand experience of how some individuals have been treated), have me calling for a review of the legislation.

Being an optimist I could hope the bank and lenders would lift their game voluntarily, but I won’t hold my breath.

David Weusten has over 38 years’ experience in the finance industry, both in NZ and overseas. He is a Registered Financial Advisor, a Budget Advisor and a Business Mentor. He has been published in the Sunday Star Times, the New Zealand Franchise Magazine and RD1.com. He has also published business guides “*What do banks want? So you can get what you want*”, and “*Owning your own business, an overview of what to consider*” and also a money management guide targeting our youth called, “*Money, Your Master? Your Slave? Your Choice!*”