Consumer Credit Implications of Domestic and Family Violence

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Abstract

Research shows that people subjected to domestic and family violence often suffer from economic abuse and experience financial hardship within and after their relationships. This research paper focuses on the financial hardship experienced, specifically the consumer credit implications, by people who have left a violent relationship. It is found that people who experience domestic and family violence are often left with debts from joint and personal loans accrued during and after the relationship, and sometimes even accrued without their knowledge. It is found that there is difficulty in dealing with lenders to resolve these debts. While the banking industry has introduced new industry guidelines in dealing with such matters, further changes are still required in order to prevent the consumer credit implications suffered.

1. Introduction

Consumer Credit Legal Service (WA) Inc. (CCLSWA) is a not-for-profit community legal centre that provides free legal advice and assistance on behalf of consumers with issues arising out of their credit and debt issues. After receiving calls and cases from clients seeking consumer credit advice, whom later revealed they experienced domestic violence, CCLSWA found a correlation between domestic violence and the consequences surrounding consumer credit. After spending a considerable amount of time per case file in relation to these matters, CCLSWA observed the failure in aspects of the legal system (in which CCLSWA works) to recognise the impact of family violence on financial stability, and a corresponding lack of recognition in the policies and processes of many credit lenders.

Research has shown the inability to finalise debt issues has significant impacts on persons' emotional and economic well-being when leaving a violent relationship, therefore providing realistic and effective solutions are imperative in enabling their financial independence. This paper specifically explores and identifies the consumer credit implications people experience after leaving a violent relationship, and analyses the current systems in place to provide solutions. The paper aims to understand how people subjected to domestic violence experience financial vulnerability, and what implications these experiences have on CCLSWA.

2. Background

Consumer credit is a debt that a person incurs when purchasing a good or service. The law governing consumer credit in Australia is the *National Consumer Credit Protection Act 2009* (Cth) (NCCP Act) and is designed to protect consumers' interests. In response to the NCCP Act, the two associations that provide regulations and guidelines in the consumer credit and banking industry, the Australian Banker's Association (ABA) and the Customer Owned Banking Association (COBA), have developed Codes of Practice for lenders. Members of ABA and COBA are bound by their respective Codes of Practice.

From 1 July 2010, all lenders, finance brokers, mortgage managers and mortgage originators who arrange or provide credit under the NCCP Act must be members of an Australian Securities and Investments Commission (ASIC) approved external dispute resolution (EDR) scheme as a condition of their licence (or registration). This means that if a consumer has a dispute, and either the NCCP Act or the relevant Code of Practice applies, then (in most circumstances) consumers are able to go to the relevant EDR scheme about the dispute.

In March 2016, the Royal Commission into Family Violence (Vic) (Royal Commission) called upon financial and utility institutions, and the regulatory regimes that govern them to "introduce clear and accessible processes to enable victims to resolve on-going financial complexities". The Royal Commission identified gaps in the law and policy regarding service responses to people who have experienced domestic violence. With specific reference to the consumer credit industry, there was a lack of information, awareness and identification of economic abuse; and there was a failure to identify and prevent ongoing economic abuse post-separation through institutional and bureaucratic processes.

The ABA industry guideline regarding financial abuse and family and domestic violence released in November 2016 was in response to the Royal Commission. These guidelines called for lenders to: provide training to their staff to be able to recognise the potential economic (and domestic) abuse; understand that it is difficult for customers to seek help or report the abuse; understand that customers may be under significant stress; and develop internal banking guidelines and procedures to respond to instances where employees may identify economic abuse.

3. Discussion

Domestic violence is a major cause of financial hardship for people who experience violence (Braaf and Meyering, 2011). This is because most leave abusive relationships with few or no financial resources, resulting in a lifetime of economic disadvantage. Financial hardship occurs when a borrower is willing, but unable, to meet their contractual debt obligations because of unexpected events or unforeseen changes that impacts cashflow. CCLSWA has encountered several instances where people who experience domestic violence have suffered financial hardship as a result of their previous relationship, and consequently are unable to pay back loans (either in their sole name or a joint loan from the relationship). Additionally, some of these clients have signed on as borrowers or as guarantors for loans for which they did not receive any benefit. Subsequently the lenders sought to enforce the loan or the guarantee against them.

The two main consumer credit implications people who experience domestic violence face are: sole responsibility to pay back loans; and as a result or otherwise, financial hardship.

3.1 Sole responsibility to pay back loans

Three issues are identified in the consumer credit implications of the sole liability (of the person who experiences domestic violence) to pay back loans: First, issues arise from joint loans; second, there are the issues of loans where they did not benefit; and third, the inability to pay loans back due to financial hardship. The third issue will be discussed in a separate section below.

3.1.1 Joint loans

It is common for people in relationships to enter into joint loans as co-borrowers or open joint bank accounts. However, issues arise when the relationship ends. Due to the nature of joint debts, such as loans (home or car) and credit cards, abusive partners are able to accrue debts in the name of their partner (who is subjected to violence), against their wishes, or even without their knowledge.

Economic abuse tends to survive the termination of a domestically violent relationship. Ex-partners remain in control by accruing debts during the course of the relationship (and sometimes after), and then refusing to pay off the debt. Generally, to alter the terms of a joint loan contract, both co-borrowers must consent, this includes entering into hardship agreements or payment plans. The only way to sever a joint loan is for one of the borrowers to refinance the loan into their sole name.

Perpetrators may refuse to consent to the other borrower's hardship application; or to refinance the loan into their sole name. This leaves lenders able to pursue the person subject to violence for large debts for which they are legally liable. Even if the perpetrator has agreed with the other borrower, to repay the loan, this agreement is not binding on the lender. If the perpetrator does not repay the loan as agreed, the other borrower has no recourse against the lender, and may only take a civil action against the perpetrator.

Due to the nature and laws surrounding joint loan agreements, CCLSWA is only able to advise clients that they are jointly and severally liable for the loan. As a result, clients are legally liable to pay for the whole of the debt, and consequently suffer financial hardship.

3.1.2 Loans where they did not benefit

As domestic violence is attributed to the pattern of coercive and controlling behaviour, partners can be coerced into signing up to loan agreements from which they did not receive a benefit. This includes joint loans where only the perpetrator benefited from the loan or did not allow their partner to access the joint funds; where partners are pressured into signing up to a loan in their own name for the sole benefit of the perpetrator; or signing a guarantee as a guarantor for the benefit of the perpetrator. In the case of both joint and sole loans, people who experience violence have received poor credit ratings which have impacted their ability to obtain further credit, and in extreme circumstances had judgments entered against them.

The perpetrators exhibit control and coercion in the relationships, with their partners signing into agreements they do not understand out of fears for their own safety. This coercion and control can be either physical, or non-physical, with many CCLSWA clients disclosing they were verbally threatened to enter into agreements that did not clearly benefit them.

In several cases where a person has entered into a joint loan agreement for which they did not receive a benefit, CCLSWA has been able to advocate on the person's behalf and successfully negotiate with the lender to have the debt waived, because the lenders are in breach of their responsible lending provisions under the NCCP Act. CCLSWA has continually dealt with lenders who failed to make reasonable inquiries about the person's financial situation, and failed to make an assessment of the 'suitability' of loan contracts where the client exhibited that they would not benefit from the agreement. Additionally, these lenders failed to provide the clients with sufficient information regarding their rights and obligations as a co-borrower or guarantor.

While CCLSWA was able to successfully negotiate to waive some debts, in other cases, clients were still liable for the shortfall of debts, and the fees and interests incurred over time. The process of negotiations was also time-consuming, with limited responses from the lender often taking up to a year to reach a solution. The lengthy negotiations resulted in one client withdrawing from the dispute resolution process and filing for bankruptcy, and another had received judgement against her before coming to CCLSWA.

3.2 Financial Hardship

Evidence suggests that people who leave a violent relationship are often left without financial resources (Smallwood, 2015). This is because they may have little or no control of finances in their relationship, may need to leave jobs out of safety, or are left solely responsible to repay large loans they cannot afford. The implication of being left responsible for a joint loan (or a sole loan) following a relationship breakdown can leave the person escaping violence in financial hardship as they are unable to repay loans. As a result, they can receive poor credit history for not settling loans and continue to suffer long-term financial hardship.

It is evident that financial hardship is a consequence suffered from a domestically violent relationship. In the first 12 months after divorce, 60% of women experience financial hardship (Fehlberg, 2015). Financial hardship is experienced whether the violence occurs before or after entering into loan agreements. CCLSWA clients have demonstrated the suffering of physical violence or coercion prior to signing a loan agreement, as well as the suffering of domestic violence after signing a loan agreement and then falling into financial hardship. The violence and consequent financial hardship can also continue after the end of the relationship.

CCLSWA assisted their clients in applying for hardship variations by disclosing the prevalence of domestic violence. While the lenders did acknowledge the consequence of the domestic violence, most lenders required the client to provide evidence of the violence. This can put the client in emotional distress given the sensitive nature of the relationship, and possibly in danger with the perpetrator. Many people who experience family violence do not disclose the violence out of fear of their own safety, and cannot provide such evidence.

4. Policy and Practice Recommendations

The new guidelines from ABA and EDR schemes in place provide protections for many gaps the credit industry previously suffered from. However, analysis into the process of resolving disputes and available information, has suggested further changes should be implemented.

4.1 Penalties imposed to lenders who continually breach their responsible lending provisions

While CCLSWA was able to successfully negotiate to waive some debts, some clients were still liable for the shortfall of debts, and the fees and interest incurred over time. The process of negotiations was also time-consuming, with limited responses from the lender, taking up to a year to settle negotiations. Therefore, a preventative system should be in place to deter lenders from entering into such agreements in the first place. While the industry guidelines do recommend lenders to exercise due diligence and skill if the presence of family violence is detected, evidence suggests that lenders will continue to sign agreements in breach of their responsible lending obligations.

It is suggested that power be conferred to regulatory schemes such as ASIC to impose penalties for financial institutions that continually breach their responsible lending provisions. Administrative financial penalties can act as deterrence to unwanted behaviours (Ogus, Faure, and Philipsen, 2006). Alternatively, rather than imposing a fixed penalty on financial institutions, the financial institutions should be held accountable for the breach in responsible lending obligations, and therefore waive the shortfall debt regardless of what the debt was for, and whether any benefit was enjoyed.

4.2 Financial institutions to provide clearer information about their responses to economic abuse

The Royal Commission found that people who experience family violence continue to face difficulties in practice, including a lack of readily accessible information regarding hardship policies and adverse credit findings, which had resulted from an abusive partner failing to meet obligations with respect to joint debts.

While many banks, such as Commonwealth Bank of Australia and Australian and New Zealand Banking Group, have released press releases in response to the ABA guidelines, there is no evidence on their respective websites that any changes have been implemented. Given the distress and pressure clients may feel (and have reported to feel) when dealing with financial institutions regarding their debts, it is important that all information that may help be available.

4.3 Changes to legal framework

Family and domestic violence protection laws differ in each state and territory. As present, only Victoria, South Australia, Tasmania and the Northern Territory have recognised ‘economic abuse’ as a form of family violence. In Western Australia, ‘economic abuse’ is not recognised in the *Restraining Orders Act 1997* (WA). By withholding financial support or through the use of deception or coercion, abusive partners can leave victims with substantial liabilities and debts. The inadequate recognition of economic abuse results in gaps in legislation and consumer credit regulating bodies. These gaps leave people who experience domestic violence in compromising positions when leaving the abusive relationships; they often struggle to move forward from relationships as they struggle with financial independence. Thus, it is suggested that the *Family Law Act 1975 (Cth)* and the state and territory family protection laws be expanded to include definitions and examples of economic abuse, and address the complexity and multifaced nature of this form of family violence.

5. Conclusions and Future Work

People who experience domestic violence often unknowingly suffer economic abuse too. This economic abuse can occur during the relationship, or even survive the termination of the relationship. People who experience family violence are left in financial distress after leaving the relationship, and as such, financial hardship is a consequence of domestic and family violence. Therefore, appropriate policies and systems should be in place in order for these people to regain financial independence. While the banking industry may have recently released guidelines in appropriately handling cases where domestic violence is disclosed or detected, further policy changes and legal reform needs to be made, in order to prevent the occurrence and suffering of economic abuse. Thus, it is suggested that financial penalties be put in place to deter lenders from continually breaching their responsible lending obligations, and hold them accountable. Conversely, the individual states and territories need to recognise economic abuse as a form of family violence, to hold lenders responsible to prevent the use of economic abuse.

Given the limitation, nature and time frame of this project and the recent policy changes of the ABA guidelines, further research is required to determine the outcomes and effectiveness of these industry guidelines. When conducting such research, it is necessary to compare the time taken to negotiate and resolve disputes with financial institutions before the industry guidelines were announced, with the time taken now the guidelines have been implemented, to determine the effectiveness of the changes. It is also recommended that empirical research be conducted to assess whether lenders have considered these changes in their internal policies, and also consider the satisfaction of outcomes with dealing with the such financial institutions.

6. References

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