

**From:** David Weusten [REDACTED]  
**Sent:** Friday, March 22, 2024 11:53 AM  
**To:** Commerce Commission Enquiries <[contact@comcom.govt.nz](mailto:contact@comcom.govt.nz)>  
**Subject:** Commission report on mortgage brokers.  
**Importance:** High

[REDACTED]

Hi,

The Comcom is concerned that “Mortgage advisers remain at risk of being “unduly influenced” by commissions”

I have been trying to get this addressed for over 4 years. Please see attached. The lenders have a duty of care and disclosure to its customers yet fail this every time a mortgage is drawn. The other issue is calling the payment to an advisor a “commission”, it is no longer accurate as the requirements of Skill, Care and Diligence, education and compliance have considerably raised the bar on work involved. Does a lawyer refer to their income as a commission, no, it is a fee paid for services provided.

The FMA & Comcom have the ability to fix this situation and by the way, eliminate a huge area of complaint around clawbacks by introducing the process outlined in my emails attached. I hope they take this seriously.

Regards

*David Weusten* [REDACTED]  
*Financial Service Providers NZ Ltd* [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]



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- Mortgages
- Business Finance
- Franchise Advice
- Budgeting
- Business Mentoring



[Redacted]

**Sent:**  
**Subject:**  
**Attachments:**

Friday, 7 December 2018 2:32 pm  
Re: Clawbacks the bane of Financial Advisors survival  
Actual clawback scenarios.docx



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Hi,

I am aware I am a very small (and old) player in a growing industry and that clawbacks is (I guess) small in scale compared to total lending in NZ, but I believe current clawback policy has the potential to grow and cause complaints and create ill will between those affected.

With events and scrutiny in Australia and FSLAB process in NZ, things will likely change which could be significant and maybe imposed.

I have a real issue with clawbacks, you might have read the opinion piece in the latest Mortgage magazine?

Can you provide answers for these questions?

1. What do the lenders pay brokers/advisors for, an introduction, an opportunity to make money, or for service to the client and making assessment easier?
2. Why is the payment not disclosed to the lenders clients/customers?
3. Why does the client/customer have no input in what is paid?
4. Why is the client/customer not informed of the clawback policy of the payment to an advisor?

Below is a suggested solution [Redacted], which I feel has a lot of merit and benefit, no reply received as yet. An early adopter could get significant positive publicity and be a trend setter. I can only hope a lender will see merit in addressing this.

Please excuse me if this is unwelcome and/or I have gone above my station, but feel compelled to seek change. Maybe you will see the benefit to your client/customer by being the first to put client/customer interest first with an open and transparent policy when making a payment for professional service provided to them?

Regards

*David Weusten*  
*Financial Service Providers NZ Ltd*

[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]

[Redacted]  
**Sent:** 19 September, 2018 3:56 PM

**Subject:** Re: Clawbacks the bane of Financial Advisors survival



## FINANCIAL SERVICE PROVIDERS

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- *Business Finance*
- *Franchise Advice*
- *Budgeting*
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Hi,

Updated summary with a suggested solution.

### Background

I love my role of helping clients succeed, (honouring my slogan 'Our aim, your gain') with them benefiting from my experience, expertise and professionalism gained over the 39 years I have been in the finance industry. I have also published some books, the latest co-authored with Mike Pero and available in shops now. Over the years I have also written many articles.

I remain an RFA even though I hold the Level 5 Cert in Financial Advice, as I believe writing a bigger cheque to the government and adding some bureaucracy does not add value to my clients, just so I can call myself an AFA. I set up FSPNZ in 2000 and adopted the slogan "Our aim, Your Gain" before the Government legislated to mandate Financial Advisors need to put clients first and show Skill, Care and Diligence in their dealings with clients.

I have been continuing with my professional development through Massey and latterly SIT.

As I mentioned I enjoy my job but the thing that most offends my sense of justice is the practice of clawbacks. The process of commission payment (better to be referred to as professional fees though) is no longer fit for purpose. The professional gets told what they will be paid, the client is not informed and has no input in whether the amount is fair or reasonable and the client is not told the payment is for work done on their behalf and not an introduction fee or gift!

### Financial Advisor industry risk

The fact that up to 80% of the last **TWO** year's income may be clawed back is a significant risk to any advisor, franchisor or aggregator's survival. While it is accepted that currently the number of clawbacks is minimal, the possibility of a disruptor offering low finance rates would have a significant impact, as would any financial downturn which lead to mortgagee sales. I don't believe I can mitigate this by any insurance and the process of asking the client to cover the fee is difficult to be polite.

### Lender commission payment

This starts from the concept that most lenders have embraced, in recognition that an advisor introduces clients. The bank pays for this introduction, for the opportunity to make money out of the client and it is suggested the client needs to remain with the lender for 2 years so the lender can recover the cost, hence the 28 month clawback period. No concept of value is attached to the work an advisor carries out to save the bank time and effort in on boarding a customer to them. The clients, also, do not consider the care, skill and diligence they benefit from actually has a cost to the advisor, in time, overheads, lost opportunity and in many cases emotional energy spent in putting clients first. Nor does the client have any input on whether they think this is a reasonable payment.

No lender would consider asking a staff member to repay salary if one of the customers loans they had worked to win was repaid within 2 years, yet they would've invested a similar amount of time and energy to

that of an advisor. I note also that a few lenders offer “cash backs” to clients borrowing from them and disclose that this will be clawed back should the customer repay the loan within 2 years. Yet none of the lenders disclose that they will be making a payment, on behalf of the Client/Customer, to an advisor for the work completed on behalf of the client, that enable the lender to consider and accept the clients request, and I wonder why is that?

In the current environment I consider there are issues needing addressed, which are;

- Non-disclosure of fees for service the advisor gets paid by the lender on behalf of the client/customer
- The concept that lenders have, that advisors merely introduce and get paid a commission
- Clients are not aware of the value cost of the service the advisor delivers for the client. They have no input into the amount or are advised of the clawback policy.
- The injustice that client’s actions (often out of ignorance) can often mean an advisor is penalised and left out of pocket should the client decide to refinance/repay their debt, without talking with their advisor, thus suggesting no value add was every provided.
- Churn of lending in that an advisor can move a client every 2 years to maintain their income and the client will be none the wiser.

I would like to suggest that the Government look to change the legislation to protect the advisor and well as the client/customer with transparency. I would suggest Financial Advice NZ considers approaching the lenders to fix the system to something that everyone can accept as fair and reasonable. I would like to present this to the FMA as well as the FSCL for their input, and also consider approaching the banking Ombudsman. But have not done so as yet. [REDACTED]

### **Suggested solution**

Advisors deal with a client as per usual and when disclosing payment for service (lets discourage the use of the term ‘commission’ as this word is misleading) the advisor discloses that once any lending is offered to the client from a lender the lender will disclose what payment the lender will be making to the advisor for the work done on the clients behalf. The client can then negotiate this (within reason) as they will understand that this will be charged to them should they repay this lending within a defined period. This can be included with any cash back/solicitors contribution being offered by the lender. Disclosure in the bank’s offer will advise that should the client/customer repay their lending within a 24 month period the client/customer will be required to repay the bank for any payment direct to the client/customer the lender has made, but also any payment made to their advisor.

This process then addresses

- Full disclosure to the client/customer of the payment being made on behalf of the client/customer to the advisor for services provided
- The client/customer can walk away at any time from dealing with the advisor before the loan goes unconditional or settles
- The client can negotiate the amount of this payment and acknowledges their liability if their future action means the loan is repaid early
- The FMA etc sees transparency and a clean process
- No more advisor complaints as they try to recover clawbacks
- The client/customer relationship with the advisor is reinforced as a professional one and is not provided for free
- The payment to the advisor is clearly shown as a payment for service, to all concerned.
- Prevents churn as clients/customers will become very aware that churned loans have no benefits to themselves

While clawbacks are very infrequent for us, maybe one every two years, the injustice of the concept and process seems unfair. I have had 2 (see attached scenarios) in the last 6 months that are significant for me to now consider leaving the industry I love.

The process above is my first draft at trying to have transparency, full disclosure and clarity of the relationship between client, lenders and advisors, which no doubt can be improved on. I do hope this is a catalyst for discussion and improvement for all concerned.

Your thoughts would be welcome.

Regards

*David Weusten*

*Financial Service Providers NZ Ltd*

[Redacted signature block]

### Actual clawback scenarios

#### Clawback 1

We had a client referred to us, by long time clients, this new Christchurch client owned an unencumbered commercial property he wished to leverage off to buy a home. We submitted a lending request to the bank back in November 2017. The bank provided 2 conditional approvals one for the residential property \$480k (to be found) and one for the commercial property \$120k (Already owned and debt free). I think this was the seeds of our client's confusion and dissatisfaction, as the conditions on the commercial property were not clear. At the time we didn't think to pursue either.

It took our client many months to find a suitable property and on the 6th March 2018 he had his offer of \$550k accepted. Confirmation was due in 10 days and settlement was 28th March 2018. The bank assessor had gone on holiday and I went on holiday on the 9th March. The new letters of offer wanted (I felt reasonably) confirmation of continuing tenancy of the commercial property (this would have been useful when first approval was sent out). Client got really stressed with this and rang me a few times while I was overseas. My office manager was keeping things attended too.

The client managed to get a renewal of tenancy and the bank was prompt in getting everything arranged so settlement went ahead.

On the 26th March I sent this email to our client after his phone call.

*Client,*

*Instruction with your lawyer now, we understand.*

*I would like to apologise for the frustration you felt over the last few weeks and compounded by my absence.*

*Further to the ownership issue and tax efficiency, I understand your accountant can make this work for you as is?*

*The bank has confirmed everything is ready to effect settlement on the 28<sup>th</sup>, they have amended the repayment term on the commercial property to a 15 year P&I basis, but loan approved only for 2 years in line with lease term extension.*

*You mentioned that you will let things settle for a month or 2 before looking to refinance. Some points to consider if you do this.*

- 1. The \$3k bank is paying you, this would have to be paid back, grab it just in case you decide not to refinance.*
- 2. The added effort and cost (including lawyer) to you to find another lender.*
- 3. The Bank will reclaim the commission they pay us, if loans repaid within 12 months, our efforts are rewarded by the bank so we don't need to invoice our clients. Clawbacks mean we are unrewarded and would wish to discuss this with you.*
- 4. Do really wish to go through all this with another lender and their idiosyncrasies?*
- 5. If you decide to stay, for at least a year and you don't need to restructure ownership, based on advice you received, then I would suggest grabbing the 4.15% fixed for 12 months being*

*offered. A saving of \$4,136 for the year (not counting the savings if you did commercial loan as well). Better in your pocket than the banks I would think.*

*It looks like settlement will happen on the 28<sup>th</sup> as desired, so we did get there in the end, just 5 days late.*

Client refinanced to another bank in July and the original bank made a full clawback [REDACTED]. The client really did cut off his nose, irrational, but he really was annoyed.

The original bank did make a small acknowledgement payment back to us (We were grateful for this). We did send an email to client to discuss our clawback process in line with our disclosure and discussions. Client rang after receipt of email and was very stressed and asked if this email was meant for him and was it a joke?

So what do we do, take further action or live up to our slogan? We chose the later.

## Clawback 2

Client referred to us via a website marketing initiative, March 2017, based in Auckland. He was an employee, owned a home in Auckland and wished to buy a motel in the Hawkes Bay.

Considerable time (approx. 40 hours at least) and effort went into preparing a lending summary, fully supported with appropriate documentation. As this involved GSA (lending secured against the business) the application was sent to all lenders at once. Client was disclosed our fee structure in the authority section of the loan application, (an oversight meant it wasn't in our terms of engagement, at that time).

Many emails and phone calls took place and bank offer accepted with settlement for home loan 1<sup>st</sup> May 2017 and business 30<sup>th</sup> June 2017. I flew up and stayed in the client's motel and paid normal tariff for 3 days, flight up was primarily to meet the client and the Business banker who was to look after client. I did meet up with some old friends and a brother while in the Bay.

A final Invoice for our work was also sent, the client objected to this (after the event and after he owned the business). We decided to honour our slogan, not pursue and accept what the bank paid us as some recompense for our efforts.

We followed up with client later in 2017 and they were happy with how things were progressing and happy with banking relationship.

We then get a clawback from the bank as the client had sold his home in Auckland end of August 2018 and repurchased in the Bay. We had assumed client had also changed banks. After speaking with clients he said "No" they were still with the bank we introduced them

too. We asked did the bank disclose that a clawback was to be made on the broker and client said "No"

We went back to the bank and wanted a review as the client was still with them and the bank wasn't disadvantaged. The bank said no this is our policy if security is released and lending replaced.

We then went back to client and was sent this

Hi [REDACTED]

*I said nobody mentioned the clawback and I talked to bank direct as have a good relationship with them. If i knew about them and a clawback i would have called you to discuss and i don't believe what they are trying to do is fair.*

*With that said this is between you and the bank and nothing to do with me.*

So again all my efforts have been for nought and I wonder why I stay in an industry that doesn't protect me?