Commission for Financial Capability

Monitoring the Effects of the Retirement Villages Act (2003): Financial Services Provided by Operators

Report

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1: Executive Summary

1.1 Background and objectives

The overall objective of this project was to understand the extent of operator lending practices and provision of financial assistance to intending residents and residents of retirement villages. Specific objectives included understanding:

- The different types of financial assistance operators advertise or provide
- The ways in which operators are advertising, representing or informing intending residents and residents about the availability of financial assistance or services in the nature of financial assistance
- The proportion of financial assistance that is in the form of loans to cover shortfalls in entry payments/transfer situations, or progressive loans covering accrued weekly fees
- The amount of financial assistance being provided, loan sizes and the approximate number of intending residents and residents receiving forms of financial assistance
- The manner in which intending residents and residents present themselves if they wish to avail themselves of financial assistance – and whether there are recurring circumstances
- The processes operators use when assessing, offering and administering financial assistance – and the systems they use to comply with the Credit Contracts and Consumer Finance Act 2003
- The dispute resolution schemes used to comply with the Financial Service Providers Act
- The terms of financial assistance offered
- The involvement or practices adopted by Statutory Supervisors.

1.2 Approach

This was a qualitative project, comprising a total of **N=41 in-depth interviews** with a mix of retirement village industry 'participants' and wider stakeholders as follows:

- N=4 interviews with managers and staff members responsible for statutory supervision across four Licensed Statutory Supervisor organisations (some interviews were with more than one person)
- N=4 interviews with industry stakeholders – the Financial Markets Authority (FMA), and the Retirement Villages Association of New Zealand (RVA)
- N=16 interviews with operator representatives – in most cases these were at the CEO/CE, CFO, COO or Chief Legal Counsel level – and represented a mix of larger 'group' retirement villages, independent villages and charitable trusts. In some instances these interviews were attended by two operator representatives (e.g. CEO and CFO or COO and Legal Counsel)
- N=17 interviews with residents of retirement villages.

Interviews ranged from one to two hours in duration (most were one hour). Interviews were a mix of face-to-face and telephone (if outside of Auckland). Interviews were conducted during January and April 2020.

The following documents were also reviewed as part of this project:

- The Retirement Villages Act (2003)
- Retirement Villages Code of Practice 2008 (variations included April 2017)
- Examples of disclosure statements

- Loans and financial assistance provided by Village operators to residents – themes and trends, PWC (prepared for the RVA January 2020)

1.3 Summary of key findings

1.3.1 Overall

Overall this study had found that, at present, the incidence of financial assistance being offered to intending residents and residents of retirement villages is low (note that 'low' in this context refers to the number of loans or deferrals *relative* to the total number of residents in New Zealand retirement villages). The majority of operators providing financial assistance are either complying with the requirements of the Credit Contracts and Consumer Finance Act (2003) (CCCFA) and the Financial Services Providers (Registration and Dispute Resolution) Act (2008) (FSPA) or are not required to (i.e. the financial services/assistance they provide are non-interest bearing).

An analysis by one Statutory Supervisor conducted as part of this study found six instances of non-compliance with the FSPA and these have since been followed up on. For financial assistance provided which is interest bearing, the CCCFA and the FSPA provide clear guidelines regarding operator compliance requirements and most operators are aware of their obligations.

The initiation of this study by the Commission resulted in action being taken by Statutory Supervisors to investigate the incidence of loans being made by the operators they supervise (where there are multiple operators being supervised) and also resulted in a separate study commissioned by the Retirement Villages Association (RVA) to investigate the extent of loans being provided and the credit terms offered. Up until this point there had been no formal exploration of the extent, range and terms of any loans or other financial assistance being provided. All of this combined work has provided an important benchmark for future tracking.

While this study has found the incidence of financial assistance to be low, and in most cases the terms offered to residents to be non-onerous, it has also raised a number of issues that may require further consideration. These include:

- The use of the word 'deferral' by operators to describe financial assistance rather than the use of the word 'loan' or 'financial assistance'. This may have implications for the way in which financial assistance is being reported and interpretations of what may be required i.e. information in disclosure statements, supporting documentation required from residents, documentation provided to residents etc. This raises questions around whether there should be more consistent disclosure of financial assistance arrangements even if these are interest free there are no CCCFA compliance requirements
- The fact that there is no consistency across operators in any documentation being prepared/provided – including standardised arrangement letters across the industry
- The fact that only some operators disclose the details of loans to residents in quarterly reporting to Statutory Supervisors (and that at present there is no specific requirement to do so)
- The fact that there is no disclosure of the total amount of deferred fees that will be balanced with the settlement on exist, and
- The potential need for more access to, and promotion of independent financial advice for residents – once again there is no consistent documentation provided by operators offering financial assistance regarding the steps residents should be taking before making a final decision (irrespective of the immediate financial need that some residents face).

1.3.2 Other key findings

- Operators do not report a significant increase in residents requiring financial assistance over the last several years. There is some anecdotal indication however that financial assistance requirements are likely to increase in the future, as intending residents may not have the funds required to enter a village (i.e. because of possible lower levels of home ownership/equity etc.). In this respect, the RVA has reported that they have been encouraging operators to consider different RV 'models' moving forward.

- There are no obvious patterns evident in terms of the financial assistance behaviour and practices across operators:

    - There are differences in the types of loans offered that are not based around any specific operator characteristics (e.g. size etc.) – other than for not for profit villages which are more likely to offer financial assistance in the form of deferred weekly fees and to charge no interest
    - The profile of 'residents' is more likely to impact on the type of financial assistance offered i.e. particularly in terms of deferred fees – and this can vary across villages (for one operator).

- The most common types of loans are for transfers and for loans on entry (bridging finance – more likely to be interest bearing) but some operators have more deferrals, some more transfers, some will not offer bridging finance as a matter of policy etc.

- Most operators do not currently have any specific criteria they apply in terms of minimum or maximum loan sizes – and interest charged varies between operators, with most charging none because (1) of the costs and time of compliance and (2) the fact that financial assistance is not considered to be core business and is only offered to meet an immediate need of a resident to ensure they can continue to live in a village (i.e. many operators see this as offering a helping hand).

- Many operators appear reluctant to use the term 'loan' instead referring to 'deferrals'. Many say that they have no option but to provide financial assistance – and all instances it is done to meet a very real need – we found no evidence of 'frivolous' loans. No residents are denied financial assistance where there is a genuine need identified. There is also no evidence to suggest that there are any recurring requests for financial assistance by individual residents.

- On the whole, residents receiving financial assistance have required this in order to remain in their village (or to enter a village) – and there have been no formal complaints made regarding the terms of this assistance. From a resident perspective, in most instances, no money changes hands:

    - The transaction for residents appears relatively straightforward and for most has no impact on their day-to-day life
    - For most these are very private transactions
    - Transactions are settled after they exit.

- There is some evidence however of some minor confusion over some terminology in loan agreements.

2: Project background and objectives

At the time of commencing this project there were 420 registered retirement villages in New Zealand, including a small number still under construction. One of the roles of the Commission for Financial Capability (the Commission) is to monitor the effects of the Retirement Villages Act 2003 (the Act), including regulations and codes of practice made under the Act. This includes assessing the effects of the Act, regulations, and code of practice, as they apply to the functions and duties of operators, and any involvement of Statutory Supervisors appointed for the purposes of the Act, when offering or providing financial assistance or services in the nature of financial assistance to residents or intending residents. The Commission wished to exercise its monitoring function to understand the extent of operator lending practices and provision of financial assistance, particularly in the context of falling interest rates and potential pressures on retiree incomes from savings income.

The Commission understands that:

- Different operators conduct entry interviews and arrangements with intending residents in different ways as an additional precautionary measure before an intending resident seeks independent legal advice. Some operators may proactively alert residents to financial implications or represent possible financial assistance to residents in certain situations
- Some operators may not patently advertise financial assistance in the marketplace, although some may do so through salespeople, village management and in other discreet ways
- Operators or statutory supervisors will, at some AGMs, reiterate the availability of financial assistance to residents experiencing financial difficulties.

Around 2016 the Commission was asked to provide recommendations to MBIE regarding a request by the Retirement Villages Association on behalf of its operator members, for an exemption from needing to register to belong to a dispute resolution scheme required under the Financial Service Providers (Registration and Dispute Resolution) Act 2008. Legal advisors for the RVA indicated at the time that there were two main types of financial assistance provided by operators, both in the nature of a credit contract:

- Loans to cover shortfalls in entry payments
- Progressive loans to cover accrued weekly fees.

Operators of retirement villages provide financial services, as defined in the Financial Service Providers (Registration and Dispute Resolution) Act 2008, when they are creditors under a credit contract. A business that offers credit to consumers is required to meet obligations under the Credit Contracts and Consumer Finance Act 2003. The Commerce Commission reminded village operators in 2016 that they must follow lending requirements when offering credit to residents and that residents get all of the information that they need.

Regulation 33(2) of the Retirement Villages (General) Regulations 2006 requires a disclosure statement to set out the nature of financial assistance and the terms on which residents may receive it. The regulation applies when

- Intending residents have been given a disclosure statement and
- An advertisement indicating residents could receive financial assistance may have been published within 6 months of receiving the disclosure statement.

The effect of regulation 15 is that a disclosure statement must clarify if a resident's interest in a residential unit includes the right to mortgage or otherwise borrow against the resident's interest in the unit.

The Commission identified a range of research questions of interest, including:

1. What are the different types of financial assistance operators advertise or provide?
2. How are operators advertising, representing or informing intending residents and residents about the availability of financial assistance or services in the nature of financial assistance?
3. Approximately what proportion of financial assistance is in the form of loans to cover shortfalls in entry payments/transfer situations, or progressive loans covering accrued weekly fees?
4. How much financial assistance are operators providing to intending residents or residents: the approximate number of intending residents and residents receiving forms of financial assistance, the range of loan sizes?
5. How do intending residents or residents typically present to operators when they wish to avail themselves of the opportunity for financial assistance. Are there any recurring circumstances operators see when residents seek financial assistance?
6. What processes do operators use assessing, offering and administering financial assistance to intending residents or residents? What systems do operators use to comply with Credit Contracts and Consumer Finance Act 2003 requirements?
7. What dispute resolution schemes operators belong to for the purposes of complying with the Financial Service Providers Act?
8. What terms of financial assistance do operators offer, what credit terms, interest rates and how they are charged and recouped?
9. What involvement or practices are adopted by statutory supervisors for overseeing:
    a. The lawfulness of operator processes when providing financial assistance; and
    b. That the financial interests of residents are protected?

This work also addressed the following:

- What if any actual or perceived risks to the industry exist from the number of operators offering financial assistance?
- Whether the existing RV regulatory regime is ensuring intending residents' and residents' interests who consider or agree to financial assistance, are financially protected through 'external oversight of the conditions of entry into and continuing operations of retirement villages' (section 3) or whether there are any gaps of matters that could be improved?
- What is the operator's compliance costs in relation to providing financial assistance and are there barriers to providing financial assistance?
- What are the experiences of residents who have received financial assistance regarding how well they understand the financial assistance arrangements they have in place?
- Any other aspects of the Act, Regulations or Code parties interviewed believe could be improved to enable more effective financial assistance by operators.

This report outlines the findings from this research.

3: Approach

3.1 Sample structure

This was a qualitative project, comprising a total of **N=41 in-depth interviews** with a mix of retirement village industry 'participants' and wider stakeholders as follows:

- N=4 interviews with managers and staff members responsible for statutory supervision across four Licensed Statutory Supervisor organisations (some interviews were with more than one person)
- N=4 interviews with industry stakeholders – the Financial Markets Authority (FMA), and the Retirement Villages Association of New Zealand (RVA)
- N=16 interviews with operator representatives – in most cases these were at the CEO/CE, CFO, COO or Chief Legal Counsel level – and represented a mix of larger 'group' retirement villages, independent villages and charitable trusts. In some instances these interviews were attended by two operator representatives (e.g. CEO and CFO or COO and Legal Counsel)
- N=17 interviews with residents of retirement villages.

Interviews ranged from one to two hours in duration (most were one hour). Interviews were a mix of face-to-face and telephone (if outside of Auckland). Interviews were conducted during January and April 2020.

Research participants and/or organisations to be approached and invited to take part were either suggested by the Commission or identified through a snowballing approach during interviews with other participants.

3.2 Background research

The following documents were also reviewed as part of this project:

- The Retirement Villages Act (2003)
- Retirement Villages Code of Practice 2008 (variations included April 2017)
- Examples of disclosure statements
- Loans and financial assistance provided by Village operators to residents – themes and trends, PWC (prepared for the RVA January 2020)**

** When they became aware that the Commission intended to undertake this project, the Retirement Villages Association of New Zealand (RVA) commissioned Price Waterhouse Coopers (PWC) to undertake a survey of the financial assistance being provided to residents by their members. The RVA acknowledged that they had been unsure as to how widespread this was. The RVA kindly provided a copy of their research, which we have been able to quote throughout this report. Overall, findings from the RVA research and the findings from the Commission's project are generally consistent.

4: Research findings

4.1 Types of financial assistance being offered

Across the 16 operators interviewed as part of this project, most offered financial assistance *in some form* to intending residents and residents. However, most referred to the financial assistance they provide and where interest is not charged, as a 'deferral' rather than as a loan. Deferrals were more likely to be where financial assistance is offered to cover a transfer within a village or where there is a shortfall on entry to the village.

We note that the report prepared by PWC on behalf of the RVA referred to 'loans' in their questions and so it is unclear whether the participating operators took into account the financial assistance they offer in the form of 'deferrals', in their responses. The PWC report identified that 40.48% of participating operators provide loans to residents and that **59.42% do not**. In this current study, conducted on behalf of the Commission, it was found that most operators do in fact provide some form of financial assistance, including loans and deferrals. The 40.48% of operators in the PWC report may not, in fact, include deferrals for some operators. Note that operators clearly identified deferrals[1] being different from loans during interviews for this current study.

This study has identified six types of financial services provided by operators. These are presented in approximate order of incidence, although this varies across operators. Some operators report providing some forms of financial services but not others. This includes as a matter of policy (i.e. some do not offer bridging finance on entry) but can also be dependent on the profile of different villages (i.e. the residents in some villages are more likely to require hardship loans/deferrals of weekly fees than in other villages – and this can include villages within one operator organisation).

There were no strong patterns evident in the types of financial assistance offered by smaller operators, independent villages and large operators. This is generally supported by the RVA report, which analysed differences between not for profit, for profit, small and large operators.

The six types of financial services identified were:

1. Loans to cover transfers within villages i.e. between independent units and serviced units/care suites
2. Short-term loans to cover shortfalls in entry payments i.e. bridging finance
3. Hardship loans – deferral of part or all of weekly fees
4. Hardship loans (#2) – one-off lump sum loan to cover a specific need
5. Lump sum on entry/short-fall on entry
6. Advance on termination

This is generally consistent with the findings in the PWC research conducted on behalf of the RVA, which identified the most common type of financial services provided to be "assistance with the advance/capital sum" which (after confirmation with PWC and the RVA) includes transfers within villages (as well as loans to cover shortfalls in entry payments).

[1] From an accounting perspective, deferral accounting refers to entries of payments after they've made. Unlike accrual accounting, deferral accounting does not count revenue until the following accounting period, so it would be considered a liability on a financial statement during the period in which a product or service was paid for.

RVA report – most common types of financial services/assistance

- Assistance with ORA advance/capital sum (53.57%)
- Assistance with weekly fee/other regular payments (14.29%)
- Loans for personal reasons (14.29%)
- Bridging finance while house is sold or some other event (10.71%)
- No loans requested from residents thus far (3.57%)
- Interest fee – for transfers as above. Interest bearing – assistance with weekly outgoings (3.57%)

The RVA report also identified differences in reasons for loans between not for profit operators, small operators and large operators. Differences overall were not significant based on these criteria although not for profits and small operators were more likely to report providing loans for 'personal reasons' compared to for profit and larger operators.

	Not for Profit Operators	For Profit Operators	Small Operators	Large operators
Assistance with ORA advance/capital sum	50%	55.56%	57.89%	40%
Assistance with weekly fee/other regular payments	10%	16.67%	15.79%	0%
Loans for personal reasons	20%	11.1%	21.05%	0%
Bridging finance while house is sold or some other event	10%	11.1%	0%	40%
No loans requested from residents thus far	10%	0%	5.26%	0%
Interest fee – for transfers as above. Interest bearing – assistance with weekly outgoings	0%	5.56%	0%	20%

Sections 4.1.1-5.1.6 provide a brief description of each of the 6 types of financial assistance provided.

4.1.1 Loans to cover transfers within villages

Most (but not all) operators provided examples of this type of financial assistance. This type of financial assistance occurs when a resident needs to transfer from an independent unit to a serviced unit or a care suite and there is a shortfall in the amount they require to transfer (i.e. the original cost of their independent unit is not enough to cover the cost of their new unit/accommodation). This type of loan can also occur when one party remains in the in the independent unit while the other moves into a care suite.

The operators interviewed as part of this project referred to this type of financial assistance as a 'deferral' rather than a loan, because they are not interest bearing – *"this is not a loan because no cash changes hands"*. The operators interviewed also reported that there would be no doubling up of the deferred management fee (DMF) in these instances, although we note that one Statutory Supervisor reported having received contact from a resident who said they had been charged a DMF twice.

4.1.2 Short-term loans to cover a shortfall in entry payments (bridging finance)

These loans are bridging finance loans (sometimes referred to as early occupancy) where an intending resident has not yet sold their home (or the funds are tied up for some reason) and/or they need to move from their own home straight away.

These loans are more likely to be interest bearing, but not in all instances. The length of time for these types of loans varies - some examples were provided of loans being up to 5-6 months. Some of the operators who offer these types of loans report not being overly concerned about timeframes given that the loan will be settled in a relatively short time period (i.e. the assumption is that the house will sell eventually and the funds will become available).

There was no limit specified for the loan amount. One example was provided by an operator of a bridging finance loan of $750,000. Some operators reported carrying out formal due diligence, but others said they do not. One large operator reported that no security is required (and this appears to be the norm).

4.1.3 Hardship loans – deferral or part or all of weekly fees

The third type of loan identified is hardship loans where there is a deferral of all or part of the weekly fees. These are less likely to be interest bearing, with most operators interviewed reporting that no interest is charged.

Examples of the reasons for these types of loans include:

- That the resident has not adequately budgeted. Anecdotally, some operators said that this can be women left on their own who may not have good financial management skills (i.e. their husbands looked after the finances), or
- Where weekly fees have increased (although note that there has been an increasing trend towards fixed fees).

One operator who reported that they offer this option said that it is offered if residents would prefer to spend their money elsewhere (e.g. eating out, travelling, enjoying life). For most operators however these are hardship loans arising out of necessity.

4.1.4 Hardship loans (#2) – one-off lump sum loans to cover a specific need

Another type of hardship loan identified is where the resident requires a lump sum amount to cover a specific need e.g. the resident requires a hearing aid or dentures or the resident has had a car accident and requires additional funds to replace the vehicle. There were some examples of hardship loans that were provided as a result of the Christchurch earthquake.

These types of loans tend to be rare and were also the only types of loans where operators provided examples of having declined the requests of some residents. The examples given for declining these types of loans were where a resident had wanted to purchase a car for his son, or where a resident requested a loan but had just recently purchased a brand new car for cash.

These types of loans are more likely to be interest bearing, and are more likely to be relatively small (under $20,000, and often under $10,000).

4.1.5 Lump sum on entry/short-fall on entry

Lump sum loans on entry, where there is a shortfall in the capital sum required are relatively rare at present, although operators and the RVA report that this is likely to be an increasing need in the future with lower levels of home ownership and equity among older people. These are less likely to be interest bearing and are also most often referred to by operators as 'deferrals', or discounts on entry, with the balance deferred until settlement.

4.1.6 Advance on termination

These are rare.

4.2 The extent, nature and credit terms of financial assistance provided by operators

4.2.1 The number of loans

The number of loans provided by operators to intending residents and residents is currently low overall. By 'low' here we are referring to the number of loans offered *relative* to the number of residents currently in retirement villages across New Zealand.

Interview feedback from operators and Statutory Supervisors as part of this current study provided the following examples:

- One operator reported 6 loans out of 1000 households for deferred weekly fees
- One operator with 6 villages reported 12-15 transfer deferrals per year, with 30-40 transfer deferrals carried at any one time, all interest free
- One operator with 35 villages reported 23 current loans out of 1500 households, with 19 being interest bearing
- One operator with 7 villages reported no loans
- One independent village reported no loans in the last 7 years
- One operator with 2 villages reported 10-12 loans, all interest free
- One operator with 25+ villages reported approximately 1% with loans and the Statutory Supervisor reported approximately 1-2 loans settled every two weeks (this is likely to include short-term bridging finance loans).

This is consistent with the findings in the RVA research, which reports that on average there are *"fewer than three resident loans per operator"*. This is also supported by analysis undertaken by Covenant Trustees Limited as part of this current study on behalf of the Commission.

As part of this project (and prior to an interview with them taking place), Covenant Trustees Limited undertook an analysis of settlements since 2003 to identify the extent to which loans or financial assistance had been in place (and that were required to be dealt with as part of the settlement process).

Since 2003, Covenant identified 31 loans that had been settled across the villages that they act as Statutory Supervisor for (approximately three quarters of all retirement villages). Of these, seven had been settled in FY20 and most had been settled in the last few years. This does not necessarily mean that there have been more loans provided in the last few years, but may be a result of more loans having been offered over a number of years that are now requiring settlement (i.e. that prior to, say a decade ago, fewer loans overall were required to be provided).

4.2.2 Loan amounts

The following table shows the lowest, highest and average loan amount across the villages supervised by Covenant Trustees Limited and settled since 2003. Note that during an interview with an operator as part of this project, a bridging finance loan of $750,000 was identified.

Settled since 2003	Loan amount
Lowest loan amount	$9,000
Highest loan amount	$345,000
Average loan amount	$87,581.34

4.2.3 Interest rates charged

The following table shows the lowest, highest and average interest rate amount across the villages supervised by Covenant Trustees Limited and settled since 2003. Note that during interviews with operators as part of this project, most said the interest charge was 0%, and 6-7% was the highest interest amount quoted. It was reported by most operators that no interest is charged for transfers, deferrals upon entry or for deferred weekly fees.

Settled since 2003	Interest rate
Lowest interest rate	0%
Highest interest rate	7%
Average interest rate	4.78%

One operator provided specific documentation regarding loans during an interview as part of this project. For the loans they provide that are interest-bearing, they charge interest at the current BNZ Standard Home Loan Floating Rate or such other BNZ floating rate they determine, with interest renewable every quarter. Residents are not required to make any interest payments throughout the term of the loan, and the interest will accrue to the exit payment date, being the relicensing of the unit or the buyback date if the unit is not relicensed within 6 months of the termination date. All outstanding amounts of the loan (principle and interest) will be repayable on the exit payment date, and will be deducted from the termination proceeds. The documentation states that the loan may be repaid at any time in multiples of $1000 to the Statutory Supervisor's bank account.

4.2.4 Default interest rates

Covenant's analysis found default interests rates ranging from 0%-12%.

Settled since 2003	Default interest rate
Lowest interest rate	0%
Highest interest rate	12% (2 loans)
Average interest rate	6.25%

The following interest rates were identified in the PWC report on behalf of the RVA. Half of operators reporting charging no interest.

Interest rate charged:	Percentage of operators:
0%	**50%**
2-4%	14.29%
4-6%	**28.57%**
6-8%	3.57%
10-12%	3.57%

4.2.5 Loan set off

Of the 31 loans identified by Covenant, 19 were set off against the ORA.

Settled since 2003	Number of loans
Set of against ORA	19
No set off (not documented)	3
Not mentioned	9

4.2.6 FSPR registration

Across the 31 loans identified by Covenant, the providers of 12 loans had FSPR registration. 19 were not registered, and of these Covenant identified that for 6 of the loans, the operator(s) should have been. Covenant report that they have since followed up with these operators. Note that the RVA study identified three operators who were offering interest-bearing loans but were note CCCFA compliant.

Settled since 2003	FSPR Registration
Registered	12
Not found on FSPR	19 (includes 6 interest bearing loans)

4.2.7 Onerous terms

Covenant identified 6 loans with what they considered to be "onerous terms".

Settled since 2003	Onerous terms Number of loans
Repayment on demand	2
High interest rate (comparatively) of 7%	1
Mortgage	2

4.3 Total loan balances

The total loan balance that will be carried by an operator appears to vary significantly and does not necessarily depend on the size of the operator. For example, one small operator interviewed as part of this project reported currently carrying a loan balance across a very small number of villages of $2.5 million, while a large operator interviewed reported that their total loan balance would never be allowed to be higher than $3 million and was currently in the mid-$500,000's.

While some operators report that they will only carry up to a maximum total loan balance (across all of their villages) it is unclear what would happen (in the future) should that loan balance be reached but more residents were requiring financial assistance.

4.4 The role of operators in providing financial assistance

Operators do not consider providing financial assistance to intending residents and residents as core business and report offering financial assistance only when they need to - *"this is simply a consequential outcome".* Despite not being 'core business' however, many operators do proactively mention financial assistance opportunities at AGMs and other resident meetings. They report however that this is largely positioned in terms of 'not wanting residents to be worried about their finances' and a desire to reassure them that their place in the village is secure regardless of their financial or changing financial circumstances.

Operators report that no resident would ever be ejected for financial hardship reasons and that for this reason they have no option but to offer financial assistance. This study has found no evidence that financial assistance is ever declined - other than for 'unreasonable' lump sum loan requests as already described. Most operators describe offering financial assistance as a 'low key activity'. There was also no evidence of any recurring loan

One operator reported that they transferred all outstanding loans (subsequent to their purchase of a number of villages) to a finance company because they conisdered managing these loans to be *"too difficult, too much hassle".* They report being unaware of the financial arrangements made by the finance company. This operator reports continuing to offer financial assistance in the form of deferrals, *"not loans".*

4.5 Ways of advertising, representing or informing of financial assistance:

Operators report that the availability of financial assistance is not formerly advertised to residents or intending residents – "*we want to discourage it"* and it does not appear to be used as part of any marketing collateral.

Operators also report that 'sales people' do not actively offer financial assistance opportunities and that discussions, for example, about bridging finance or deferrals on entry payments would only arise once a resident had made a decision about a village (i.e. this is not used as a sales tool or enticement for intending residents). One Operator reported however that they would not be averse to using financial assistance as part of their sales approach.

There is inconsistency across operators with regards to what is stated about financial assistance in disclosure documents for example:

- Some but not all operators include information about financial assistance in disclosure documents
- Some statements are short and generic e.g. "financial assistance may be provided on a case by case basis"
- One operator reporting not knowing if this information was in their disclosure statements
- One operator reported that they only refer to deferrals for transfers in their disclosure statements (but other forms of financial assistance are also available and not mentioned in their disclosure statements).

4.6 Processes offered by operators when offering/providing financial assistance

Processes offered by operators when offering or providing financial assistance vary significantly. There are no clear patterns evident in terms of the documentation they may request from residents and the form of 'contract' they may prepare, for example:

- Some report asking for financial statements, others do not
- In most instances the contract is in the form of a letter between the operator and residents
- All operators report that they advise the resident to seek independent financial and/or legal advice – and advise them to speak with family members. There is no evidence to suggest that this is formerly followed up on by operators in all instances (note that Statutory Supervisors do not report any family-related complaints as a result of the financial arrangements residents may have made)
- Some operators are more rigorous in their requirements here e.g. BUPA will not take on a loan unless the resident has obtained external legal advice. BUPA also has more comprehensive information on loans available. The terms are transparent.

4.7 Systems in place to comply with the Credit Contracts and Consumer Finance Act

All of the operators interviewed as part of this project were aware of their obligations under the Credit Contracts and Consumer Finance Act. However, many operators reported that because they charge no interest on their loans/deferrals that they are not required to comply with the CCCFA. Analysis by Covenant Trustees Limited found some examples of non-FSPA compliance and three operators taking part in the RVA survey were also non-CCCFA compliant. The RVA survey asked operators if they were aware of the CCCFA regulations – most but not all said they were.

RVA – awareness of the Credit Contract and Consumer Finance regulations

No – 7.14%
Yes – 92.86%

In 2018 (prompted by interest by the CFFC in financial assistance arrangements) the RVA engaged a law firm to provide a set of recommendations. These included that:

- Only an interest bearing loan constitutes a credit contract and needs to comply with the CCCFA
- Operators should only be using standard template loan documents (where the loan constitutes a credit contract).

As a result the RVA advised all members offering financial assistance in the form of a credit contract to become FSPA compliant. The dispute resolution service offered to members is the Insurance and Financial Services Ombudsman. There have been no disputes reported to date. The main other dispute resolution service used by operators is Financial Services Complaints Ltd.

4.8 The involvement/practices of Statutory Supervisors

An objective of this study was to identify the involvement or practices adopted by Statutory Supervisors for overseeing (1) the lawfulness of operator processes and (2) ensuring that the financial interests of residents are protected. Statutory Supervisors currently have no legislative or contractual duties in this respect.

Statutory Supervisors report that they are generally unaware of financial assistance offered by operators to residents until settlement and that only some operators disclose loan details in quarterly reporting. Statutory Supervisors all report being fully aware of the CCCFA and FSCL requirements but generally do not discuss the issue of financial assistance with operators, although Covenant Trustees Ltd report that *"when villages advise us they are looking into loans to residents we let them know that they may need to comply with the CCCFA and that they should seek legal advice".*

The following information was provided by Covenant –and confirmed with other Supervisors:
"Statutory Supervisors do not have any legislative or contractual duties to determine the lawfulness of operator processes when providing financial assistance. Supervisors of Debt and MIS schemes are also not responsible for CCCFA compliance or directly monitoring the lenders CCCFA compliance. The Commerce Commission is the regulator of the CCCFA. In some Debt and MIS products the supervisor/trustee is the lender, however the CCCFA compliance is delegated to the Manager of the scheme. It is not appropriate for the supervisor to oversee all legal compliance obligations of the operator. Our role is to protect residents as a whole and their ORA interests.

Supervisors check termination payments to exiting residents and ensure that the amount deducted is in line with the loan agreement and statements. We also check the validity/legitimacy of the loan repayment. We also require instruction from the operator or their solicitor to make the loan deductions. The Operator retains liability for any improper instruction under the TCA standard deed of supervision. The refund statement needs to be approved/accepted by the exiting resident/their estate"

4.9 The experiences of residents receiving financial assistance

The process of receiving financial assistance (and in particular for existing residents who may require financial assistance in the form of a transfer, a deferral or weekly fees or other one-off hardship loan) is a generally a very private matter and only discussed between the resident and the village manager and/or directly with the operator. Initial approaches via the chairs of residents associations highlighted the fact that these transactions are private and not discussed among the general resident population (with a number reporting that they had no idea whether residents in their villages were receiving financial assistance). Residents receiving financial assistance can feel embarrassed and admit to being unwilling to discuss their financial circumstances with other residents (just as, in their lives prior to entering a village, these matters would have been kept largely private).

The majority of residents receiving financial assistance have required this in order to remain in their village (or to enter a village) and we note that there have been no *formal* complaints made regarding the terms of this assistance. From a resident perspective, in most instances, no money changes hands.

The transaction for residents appears relatively straightforward and for most has no impact on their day-to-day life and settlement occurs upon exit. There does appear to be some evidence however of some minor confusion over some terminology in loan agreements (in a minority of instances).

4.10 Other questions

4.10.1 Risks to the industry of the number of operators offering financial assistance

The main risks to the industry in terms of the number of operators offering financial assistance is at present more likely to be reputation-related, for example:

- If an operator is not compliant with the CCCFA or the FSPA (where they are required to be) and/or
- If an operator is seen to be providing financial assistance with onerous terms and/or
- Not adequately explaining the terms to a resident or advising them to seek external financial advice and talk to a family member.

There is also the risk that non-compliance with the CCCFA or the FSPA will result in censure and fines for an operator.

Another potential industry risk that should be considered however is to do with the alternative scenario whereby operators do not offer financial assistance to residents – and the resulting impact on their 'hardship' status and/or ability to transfer to a serviced unit or care suite and/or the cost associated should the resident be required to seek a loan from elsewhere (and whether or not they would qualify).

4.10.2 The role of the existing regulatory regime

This study considered the role of the existing regulatory regime in ensuring intending residents' and residents' interests are adequately protected through 'external oversight of the conditions of entry into continuing operations of retirement villages' (Section 3) or whether there are any gaps or matters that could be improved.

The general consensus among operators and Statutory Supervisors is that there are adequate checks and balances in place in this respect including the requirement to comply with the CCCFA and the FSPA, the requirement to have a disputes resolution in place as well as the existing complaints process (via Statutory Supervisors). Note however note that this study, and the RVA survey both identified examples of non-compliance.

To date there have been no formal complaints made by intending residents, residents or their family members (including on settlement) regarding loan activities.

4.10.3 Operator's compliance costs and barriers to providing financial assistance

There were two key drivers of operators offering interest free financial assistance to residents. Firstly, the cost of compliance associated with offering interest bearing financial assistance (the requirement to comply with the CCCFA and the FSPA) and the fact that operators do not consider financial assistance to be part of their core business. Operators offer financial assistance when it is required and to meet a specific need.

4.10.4 Other Act related matters

Regulation 33(2) of the Retirement Villages (General) Regulations 2006 requires a disclosure statement to set out the nature of financial assistance and the terms on which residents may receive it. This regulation applies when intending residents have been given a disclosure statement and an advertisement indicating residents could receive financial assistance may have been published within 6 months of receiving the disclosure statement.

This study has found that most operators do not advertise (in writing at least) regarding the availability of financial assistance and that there is inconsistency in the extent to which financial assistance is outlined in disclosure statements. Some operators provide information about financial assistance in disclosure statements, some do not and others do not provide all of the relevant information (i.e. the disclosure statement may outline one type of financial assistance provided but not another, also provided by the same operator). Operators do 'technically' advertise the availability of financial assistance but this is largely verbal.

Appendix A: Summary of key findings from the PWC RVA survey

Following is a summary of the key findings of the PWC survey conducted on behalf of the RVA (these are reported verbatim from the PWC report).

- Only a minority of villages (40.6%) provide loans or financial assistance to residents. Loans are the exception for most operators. Typically each operator has fewer than 3 resident loans.

- The large operators who do provide a significant numbers of loans (by loan number and dollar value), typically do not charge interest. From the survey, 96.51% of the loan balances outstanding are on interest free terms, even though only 60% of loans provided are interest free.

- Only a minority of loans (35.7%) have interest rates exceeding 4% (i.e. higher than current bank rates). The survey did not ask for details on loan commencement dates but it is reasonable to assume that at least some loans with interest rates above 4% may have been entered into when bank interest rates were above 5%.

- Loans are most commonly used to assist with the capital sum/ORA advance, are typically interest-free and repayable when the ORA sum is repaid by the operator via an offset. The largest operators also provide loans as bridging finance to help residents move into villages.

- 35.7% of lenders were in the 'not for profit' (NFP) sector. 30% of the loans made by NFP operators did not have interest. The loans in the NFP sector are typically for lower amounts than in the 'for profit' sector. The average loan balance for a NFP resident is $25k while the average total loan balance per operator is $85k. Most interest rates in the NFP sector fall within the 2%-6% range.

- 64.3% of lenders were in the 'for profit' sector. This sector mostly offers interest free loans (circa 60% of loans offered (by number) are interest free). The average loan balance per resident in this sector is significantly higher than the NFP sector. For large operators, the average resident loan is over $107k per loan and is circa $34k for smaller 'for profit' operators.

- The interest rates charged in the 'for profit' sector showed significant variation (from 0% to 12%). Nonetheless, the largest lenders in this sector by number of loans and loan balances primarily provide interest-free terms.