

10 February 2020

Competition and Consumer Policy team
Building, Resources and Markets
Ministry of Business, Innovation and Employment
PO Box 1473
Wellington

By email: consumer@mbie.govt.nz

Dear Sir/Madam

Credit Contracts and Consumer Finance Amendment Regulations

Thank you for the opportunity to make a submission on the Credit Contracts and Consumer Finance Amendment Regulations.

Preliminary comments

The Banking Ombudsman Scheme (BOS) is an independent dispute resolution scheme, and is approved under the Financial Service Providers (Registration and Dispute Resolution) Act 2008.

BOS helps customers sort out problems with registered banks, and related companies, and non-bank deposit takers that meet BOS participation criteria and are members of the scheme (referred to in this submission as 'banks').

Our jurisdiction is defined by our Terms of Reference. Clause 9 states that in making any decision, BOS must be fair in all the circumstances, having regard to the law, any relevant code of practice, and principles of good banking practice. We apply the Credit Contracts and Consumer Finance Act (CCCFA), the Responsible Lending Code and the New Zealand Bankers' Association's Code of Banking Practice as relevant legal and professional standards under clause 9.

This submission provides general observations and comments on the proposed responsible lending requirements. Overall, we strongly support the aims of the regulations in strengthening requirements for assessing affordability and suitability as part of responsible lending in a way which ensures consistency, certainty, clarity and enforceability. To ensure customer protection, we support the requirements applying to all providers of consumer credit.



General comments

We strongly support a legislative and regulatory framework that leads to a reduction in consumer credit-related harm. It is important for consumer confidence that unethical providers are held to account when they do not meet their obligations. Those who are offering credit services should be subject to active monitoring and enforcement activities. We support ensuring that consumers are provided with the same level of protection regardless of which type of lender they choose.

We note the proposal that the regulations do not cover guarantors on the basis the risk is lower for guarantors. However, given that guarantors can become liable for the full amount of the debt, lenders should ensure a guarantor could take over repayments without substantial hardship. We therefore suggest the requirements for assessing affordability for a guarantor should be the same as for the borrower.

Suitability

We support the proposed steps to assess whether the credit or finance will meet the borrower's requirements and objectives.

We would also support a requirement that lenders make clear to borrowers whether other products offered at the same time as lending are optional or compulsory. We commonly hear from customers that they thought loan protection or life insurance offered at the time of lending was mandatory, when in fact it was optional. We therefore believe there would be benefit in requiring lenders to ensure clear information is provided to customers that these products are optional.

Affordability

We support clear requirements for assessing affordability.

We support regulation 4AE requiring the lender to determine that the borrower will have a reasonable surplus after their likely expenses have been subtracted from their likely income (or that other sources of money are available). We note that the likely relevant expenses are to be obtained from borrowers (regulation 4AG(1)(a)), which would be a departure from the process some lenders currently follow using automated processes. However, where processes are automated, we still expect lenders to ensure the lending was affordable: it is not sufficient for a bank to rely solely on account conduct to determine ability to repay.

Other regulations

We support new regulations 5A (2)-(4), which include the requirement to provide information about dispute resolution schemes and financial mentoring services.

Conclusion

BOS is supportive of these regulations and their intention to create rules and standards which are certain, clear and easy to enforce.

Yours sincerely

A handwritten signature in black ink, appearing to read 'N. Sladden', written in a cursive style.

Nicola Sladden
Banking Ombudsman