



Cabinet

CAB Min (11) 40/5

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Minute of Decision

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Responsible Lending Requirements for Consumer Credit Providers

Portfolio: Consumer Affairs

On 31 October 2011, following reference from the Cabinet Business Committee, Cabinet:

Background

- 1 **noted** that in September 2009, the Cabinet Economic Growth and Infrastructure Committee (EGI) agreed to the release of a discussion document entitled *Review of the Operation of the Credit Contracts and Consumer Finance Act 2003* [EGI Min (09) 20/11];
- 2 **noted** that on 5 October 2011, EGI considered a submission on proposed changes to the Credit Contracts and Consumer Finance Act 2003 (the CCCFA), and invited the Minister of Consumer Affairs to give further consideration to the proposals and to submit a revised paper which:
 - 2.1 includes further advice on whether taking more enforcement action in respect of those credit providers who are not registered, as required under the Financial Service Providers (Registration and Dispute Resolution) Act 2008, would be sufficient to address irresponsible lending issues;
 - 2.2 takes a broader approach to the proposed Responsible Lending Code;

[EGI Min (11) 22/3]
- 3 **noted** that there has been reform of the financial sector over the last four years which has significantly changed the regulation of financial investments and advisers, but has only had a marginal effect on credit providers;
- 4 **noted** that the CCCFA is the prime legislation applying to consumer credit contracts;
- 5 **noted** that following concerns that the CCCFA is not providing adequate consumer protections against unscrupulous lenders, a Financial Summit was held on 11 August 2011 to identify actions to address irresponsible lending leading to problem debt;
- 6 **noted** that there was consensus amongst the participants at the Financial Summit supporting the need for responsible lending regulation and the enforcement of registration requirements, alongside non-regulatory industry initiatives and the promotion of financial literacy;

Responsible lending

- 7 **noted** that a package of initiatives has been developed to address irresponsible lending and to promote the responsible provision and management of consumer credit arrangements;
- 8 **agreed** to amend the CCCFA to:
- 8.1 add a new responsible lending purpose to section 3 and principles that exercising the care, diligence, and skill of a responsible lender before entering into and throughout the management of a consumer credit contract or lease includes:
 - 8.1.1 credit offered must be reasonably expected to meet the needs or purposes of the borrower (similar language to the Consumer Guarantees Act 1993 services guarantee);
 - 8.1.2 the borrower must be reasonably expected to repay the loan without substantial hardship;
 - 8.1.3 the lender must be honest and transparent in dealing with the borrower;
 - 8.2 provide for the issue of a Code of Responsible Lending (the Code) that sets out the types of practices that are accepted as meeting the principles of responsible lending;
 - 8.3 provide that not lending responsibly in accordance with the Code or the provisions of the Credit (Repossession) Act 1997 is grounds for the regulator to seek a Court Order under section 108 of the CCCFA so that a person may be prohibited from providing credit contracts or leases (and have their registration cancelled under the Financial Service Providers (Registration and Dispute Resolution) Act 2008 (the Financial Service Providers Act));
 - 8.4 provide that the regulator can impose conditions on the renewal of the registration of a credit provider under the Financial Service Providers Act if, after formal warning, a provider has not complied with the Code;

Contracts with unregistered providers

- 9 **noted** that credit providers are required to be registered under the Financial Service Providers Act, but that there is evidence that not all third-tier lenders are registered;
- 10 **agreed** to amend the CCCFA to provide that borrowers will not be liable for the costs of borrowing (interest, fees, and penalties) that would otherwise be owed to a credit provider, that are incurred while that credit provider is not registered as a financial service provider as required by the Financial Service Providers Act;

Credit advertising

- 11 **noted** that irresponsible advertising messages targeting vulnerable, lower socio-economic borrowers are contributing to problem debt;
- 12 **noted** that the Financial Advisers Act 2008 requires that advertising by financial advisers must not be misleading, deceptive, or confusing;

- 13 **agreed** to amend the CCCFA to provide that:
- 13.1 credit advertising must not be misleading, deceptive or confusing, and must comply with any requirements of the Code;
 - 13.2 the regulator also has powers to prohibit advertisements if they are misleading, and to give directions to credit providers if they fail to comply with the advertising requirements of the Code;
 - 13.3 all advertisements for credit (including goods for sale on credit) carry the credit provider's registration number and the name under which they are registered on the Financial Service Providers Register;

Disclosure

- 14 **noted** that the purposes of the CCCFA include the disclosure of adequate information under consumer credit contracts, consumer leases, and buy-back transactions of land ("credit arrangements") to allow consumers to compare products and to be well-informed before making contract commitments;
- 15 **noted** that although the CCCFA requires lenders to disclose specific information about the credit arrangement, there are problems with the timing and content of the disclosure that compromise the purposes of the CCCFA;
- 16 **agreed** to add to the CCCFA that the form and content of disclosure requirements may be prescribed by regulation;
- 17 **agreed** to amend the disclosure requirements for credit arrangements in the CCCFA to:
- 17.1 require that the full contract, key information, and terms of any credit-related insurance products or extended warranty arranged by the lender are disclosed before the contract is signed;
 - 17.2 require that the key information includes information about access to dispute resolution and the hardship provisions;
 - 17.3 require that any goods over which security is taken must be specified in the contract, and the goods that are protected on bankruptcy under the Insolvency Act 2006 are also protected from secured creditors (e.g. tools of trade, necessary household furniture and effects, and a motor vehicle up to the value of \$5,000), except if the credit contract is for the purchase of the item;
 - 17.4 provide for the standard terms and conditions of a lender's credit contracts to be available on the lender's website, or on request by a consumer;
 - 17.5 require the particulars of all credit arrangement variations (even if they reduce a debtor's obligations) to be provided to the debtor in writing;
 - 17.6 delete the detailed "statement of the right to cancel" in Schedule One (which will be replaced by a plain English statement in the amendments proposed below);

- 18 **directed** the Ministry of Consumer Affairs (MCA) to prepare amendments to the Credit Contracts and Consumer Finance Regulations 2004 to provide for standard forms to be used for disclosure of the key information of consumer credit contracts within six months of the passage of the CCCFA amendments;

Cooling-off period

- 19 **noted** that the CCCFA provides for a three working day cooling-off period for credit arrangements, but that other consumer law is moving to a five working day cooling-off period;
- 20 **agreed** to amend the CCCFA to provide that consumers have five instead of three working days to cancel a consumer credit arrangement;

Fees

- 21 **agreed** to amend the CCCFA to remove the uncertainty concerning the principles for the provisions concerning reasonable fees under consumer credit contracts, and to provide for the Code and the new disclosure requirements to cover reasonable fees;

Hardship

- 22 **noted** that the CCCFA includes hardship provisions under which consumers may request a change to the terms of a consumer credit contract if the consumer has an unforeseeable change in circumstances (e.g. illness, loss of employment) and is not in default or over their credit limit;
- 23 **noted** that requests under the hardship provisions are assessed and approved at the discretion of the lender, and that any agreed contract variation does not reduce the overall amount due under the contract;
- 24 **agreed** to amend the CCCFA to:
- 24.1 provide that debtors can make an application under the hardship provisions if they have been in default for less than two months;
 - 24.2 require the written acknowledgment of receipt of hardship applications within five working days that outlines any further information needed to process the application;
 - 24.3 require lenders to make a decision on a hardship application within 20 working days of receiving the application, or from when the lender received any further information requested from the debtor;
 - 24.4 provide that if a lender does not make a decision on a hardship application within 20 working days, the debtor may apply to the Disputes Tribunal or Court to vary the credit contract as it sees fit;
 - 24.5 preclude the charging of application fees or imposing other obstacles for hardship applications;
 - 24.6 preclude the charging of penalty fees and/or penalty interest while hardship applications are being considered;

- 24.7 require lenders to advise applicants of the reason their hardship application was declined, and of their right of review;

Oppressive contracts

- 25 **noted** that the CCCFA includes the ability for borrowers or the regulator to apply to the Courts for oppressive credit contracts to be re-opened and modified, but that there is no evidence that the oppression remedy has been providing effective protection from unscrupulous creditors;
- 26 **agreed** to amend the test for oppressive credit contracts in the CCCFA to provide that the Courts must have regard to specific consumer protection factors when considering whether a consumer credit contract is oppressive, including the lender's responsible lending obligations;
- 27 **agreed** that disproportionate enforcement and recovery actions by creditors against consumers is one of the factors that the Courts must have regard to in deciding whether the exercise of a right or a power under a consumer credit contract is oppressive;
- 28 **agreed** that the regulator has the ability to apply to the Court for an order re-opening all or any of a class of a creditor's consumer credit contracts that are found to be oppressive;

Monitoring and enforcement

- 29 **agreed** in principle, **subject to** paragraphs 30 and 31 below, to the further investigation of the Financial Markets Authority (the FMA) being the regulator responsible for monitoring and enforcement of the CCCFA and monitoring of credit repossession practices under the Credit (Repossession) Act 1997;
- 30 **directed** MCA to consult the Treasury, the Ministry of Economic Development, the Commerce Commission, and the FMA on the proposal that the FMA have regulatory responsibility for the CCCFA and the Credit (Repossession) Act 1997, any transitional arrangements and financial implications;

Report back

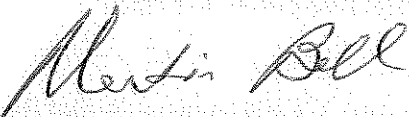

- 31 **directed** MCA to report to EGI on outstanding issues, progress with the drafting of the Consumer Credit Law Amendment Bill (the Amendment Bill), the outcome of any further consultation (which may include consultation on an Exposure Draft Amendment Bill) and the timetable for implementation, by 31 March 2012;

Legislation

- 32 **noted** that the Amendment Bill has a category 4 priority on the 2011 Legislation Programme (to be referred to a select committee in 2011);
- 33 **invited** the Minister of Consumer Affairs to issue drafting instructions to the Parliamentary Counsel Office for the Amendment Bill to give effect to the above decisions;
- 34 **agreed** to the release of an Exposure Draft of the Amendment Bill to allow for consultation on the proposed detailed responsible lending provisions;

Publicity

- 35 noted that the paper under CAB (11) 620, the corresponding minute and the Regulatory Impact Statement will be published on MCA's website, at an appropriate time;
- 36 noted that a press release may be made on the main elements of the above decisions.

Secretary of the Cabinet

Reference: CAB (11) 620

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