

Submission on discussion document: *Guidance for lenders on assessing affordability: draft changes to the Responsible Lending Code*

Your name and organisation

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Responses to discussion document questions

Guidance (5.1-5.4)

1

Do you have any concerns with changes proposed to paragraph 5.1, or other changes we should consider?

This needs to be reiterated to lenders to individualise each borrower, don't use a generic template.

Consideration needs to be taken for items purchased throughout the year which may not be reflected on only 3 months bank statements – gifts, vet and pet expenses, vehicle maintenance, school costs (uniforms, camps etc). In depth communication with the consumer needs to be undertaken to properly assess their financial situation alone, not comparing with others. Know the customer and their specific spending habits / priorities / addictions.

We have had several clients who prioritise their pets wellbeing over their own. Benchmarks don't show this, knowing the customer does.

2

Do you have any concerns with any of the changes proposed to guidance on responsibly estimating the payments that will be required/made under the agreement?

DBAS supports lenders stress testing consumers at a reasonable and realistic %.

3

Do you see any other guidance on this topic as desirable? If so, please explain.

We agree with this proposed change as it should allow for consumers to be able to have the means to pay back more than the minimum repayment without causing hardship or stress should they wish.

Alongside this guidance, all lenders should cease early repayment fees as well as oppressive contract terms such as having to give 30 days' notice to a lender to repay early.

Purpose of inquiries (5.5-5.6)

4

Do you have any concerns with the guidance proposed in paragraph 5.5? If so, what changes should we consider?

DBAS does not agree with this. Wills can be changed at any time. Assets can and do depreciate. Deals may not go ahead as anticipated. Lenders need to ensure their future customers can afford their products at the time of applying.

We find this wording confusing and unclear.

5

Do you believe the Code should provide general guidance on use of surpluses, buffers and adjustments to account for uncertainty that the loan will be affordable? If so, what would you suggest it say, noting the potential for excessively conservative approaches by lenders.

DBAS emphasises the only responsible way to conduct an affordability assessment is to know the customer and use at least 3 months of their bank statements.

No benchmarks should be used as each person is an individual with different priorities and needs.

A reasonable surplus is a common-sense way to ensure affordability as 'life happens' to anyone and everyone.

DBAS was recently working with a client whose personal circumstances changed after receiving a loan. The lender had not provided for a buffer in his budget which meant the client was immediately in arrears and hardship with the lender.

We have evidenced the current code is working well by seeing some members of our community not being able to receive credit which they couldn't afford.

For example, in one such case, a client came to us after being declined for a personal loan as the lender had asked them to make changes and to seek out budgeting support. By doing this, the client was able to be shown different options during their engagement with us, and the financial mentor identified an unaffordable loan received from another lender to the client.

In another example, a client who had fallen into mortgage arrears and was trying to get a loan to catch up was declined the loan and referred to us for support. We supported the client with an electricity grant, referred him for food parcels, helped him apply for a rates rebate, helped him apply for the Work and Income Accommodation Supplement and also assisted him with making a KiwiSaver hardship withdrawal. These were all better options than receiving a loan that would only cause more hardship.

Scope of inquiries (5.7-5.11)

6

Do you have any concerns with the changes proposed to guidance on inquiries into income, or believe we should consider any other changes?

A borrowers income used for an affordability assessment should be just that – theirs. We have witnessed and complained about some lenders taking into account all the income being deposited into the customer's account as the customers, which it often isn't, due to some whanau not having their own bank accounts for example. Once again it comes down to due diligence and lenders should be relying on verification of income and all expenses and existing debt.

For example, one of our clients had credit approved due to his brothers child support payments coming to his bank account as his brother doesn't have a bank account.

No responsible or ethical lender would rely on funds a customer tells them is coming, but the customer has not received yet.

A lender should not consider any irregular or volatile income – an assessment needs to be conducted on normal and regular income only.

DBAS is concerned about the wording of this proposed guidance as we already have had some lenders send their customers to us with the express purpose of helping the client retrieve their kiwisaver under hardship so the lender can be paid back.

We feel the wording could open up the flood gates for many more whanau losing their future security and or possessions because the lender relies on this.

Credit should be given based on the current income only.

7

What wording do you think would work best (in paragraph 5.9.c) to capture other, less essential expenses that may be important for the lender to account for?

*The first issue of the wording we have for this question is the word “may”. This needs to be changed to “should” for the sentence “A lender’s inquiries into the borrower’s expenses **should** include inquiring into:”*

Once again we reiterate the importance of knowing the customer and their individual spending habits, needs, priorities. These expenses are based on addictions, behaviour, upbringing, culture, emotion, etc and should be well listened to as they will not change.

It is not up to the lender to identify discretionary spending as all consumers have different reasonings.

This is why the current RLC and regs are working so well as the lender currently needs to take those extra steps to ensure all information is gathered and a good understanding is obtained.

Flippant approaches from lenders when assessing affordability puts our community in hardship and poverty, causes mental health problems, can lead to crime and negatively impacts on the customers everyday wellbeing.

8

Do you have any concerns with other changes proposed to guidance on inquiries into expenses, or believe we should consider any other changes?

When a customer is applying for credit for a vehicle purchase, the lender needs to take into account the upcoming costs for that credit – petrol, rego, wof, maintenance, insurance etc.

DBAS has seen examples of the lender not providing for the costs of the vehicle in the assessment which is negligent at best.

Every section of the borrowers spending needs to be broken down, so the lender has a greater level of understanding of the borrower's situation, not lumped altogether as ‘household expenses’ or ‘utilities.

Lenders should not and cannot make assumptions.

Repayment of Government debt is often something which is missed or dismissed by lenders because it is deducted from Government entitlements before it is deposited in the client's bank account.

9

Do you believe guidance on joint expenses would be worthwhile. If so, would you have any issues with paragraphs 5.28 – 5.32 of the current Code being used?

DBAS has a complaint lodged with a disputes resolution provider and the Commerce Commission at present as a lender assumed an application for credit was a joint application as the partners income was on the bank statements the lender used for the assessment. It is not up to the lender to make assumptions, but to use the proper checks and once again, knowing the customers circumstances.

We often see a joint application where the lender has taken care to include the partners’ income on the affordability assessment but ignores taking the same care when counting those partners debts, expenses and cultural obligations.

10

Do you believe guidance on inquiring into spending through use of Buy Now Pay Later facilities is necessary? If we were to do this, would paragraph 5.33 of the current Code be a good approach?

BNPL is well established in Aotearoa with no regulations so we are seeing many whanau in a debt spiral due to BNPL alone. We find it abhorrent BNPL is used to pay for some food items.

Many consumers don't think of BNPL as debt which is worrisome.

Even though BNPL providers should be using the credit check system later this year, this in itself is a watered down approach since Aotearoa has 3 different credit agencies. This means a BNPL provider needs only to use one agency, with other providers using another one. There is a huge mismatch here and we see a major loophole in which is already a token gesture rule.

A credit check doesn't give any idea of a whanau's' income or expenses.

We have clients being supported by foodbanks due to BNPLs. A credit check does not show how much someone has to spend on food.

We have very few clients who do not have at least 2 BNPL current or outstanding debts.

Unless BNPLs are bought under the current CCCFA, we will continue witnessing the devastating impacts this model has on our society.

We think the 5.33 in the existing code should stay.

11

Would you have any concerns, based on the proposed guidance, about lenders making unreasonable assumptions that the borrower will reduce certain expenditure? If so, please explain why and what the Code might do to address this.

No lender should be making assumptions. Lenders should make decisions on affordability based upon the current evidence alone. This is just plain common sense.

Method inquiries (5.12-5.17)

12

Do you have any concerns with the 2017 guidance on methods of inquiry? Please explain.

Lenders need to be told what methods to use when assessing affordability so all assessments are of the same nature. This guidance needs to be specific for all to follow – proof of all income, 3 months bank statements, evidence of fixed expenses, other debt balances, incl Govt debt, to name a few to start with.

13

Do you believe further guidance on use of statistical information is necessary? If so, why?

The use of HEM benchmarks in Aotearoa is not fit for purpose in our motu. The University of Otago's nutritional survey is a realistic and accessible resource when assessing food costs for a household. This resource is NZ based.

Once again, the need for a conversation with the consumer, backed up with evidence (bank statements for example) will clearly show what the individual person is paying.

14

Do you agree paragraph 5.13 is desirable to make lenders aware of their obligation under the Privacy Act 2020?

This is common sense.

15 What might be the implications of using the 2017 guidance on verification? What changes, if any, would you suggest?

No lender should be supplying credit to a customer based solely on the fact that person is an existing customer. DBAS used to see examples of this often. (A lender would just refinance an existing borrower to incorporate their arrears into new credit) before the strengthened CCCFA came into force, and this was a sure way to keep customers in an oppressive debt spiral.

Again, DBAS feels the wording of this is murky. Clear guidance needs to be given.

New debt, new affordability assessment.

All assessments made need to have the evidence to back up the reasonings to keep the consumer safe.

16 Do you have any other feedback on guidance relating to verification or use of information provided by intermediaries?

Extent of inquiries (5.18-5.21)

17 Do you believe the proposed guidance on extent of inquiries would encourage lenders to make their inquiries more proportionate to affordability risk, as intended? What changes might help to achieve this?

All proof, evidence needs to come from the borrower to ensure they are fully informed.

18 Do you have any other feedback on guidance to support lenders in assessing affordability risk and what that means for how they should approach inquiries?

DBAS urges all lenders to complete a proper and comprehensive affordability assessment for each and every application for credit.

If it is clear to see from a financial mentors' perspective that a client couldn't afford the credit when it was given, why is it so hard for the lender? Care, skill and diligence is what should be worded through the entire RLC, as per the regs.

Record keeping (5.22-5.25)

19 Do you have any views on the need for guidance on record keeping and changes we should consider?

DBAS would urge Govt to have lenders to release all the borrowers documents to the borrowers representative, not just the disputes resolution provider and or Commerce Commission. This approach shows a David and Goliath attitude and we find the power imbalance it creates negatively impacts our clients and their advocates.

The time it takes to not only make a complaint to a lender and then their disputes resolution scheme (DRS) is problematic.

Each DRS has different timeframes for resolution and while we are aware this is changing later this year, we are frustrated to the time frame it will be changing to.

It is extremely difficult to not only make a complaint, but to keep the client engaged in the weeks or months after while it is ongoing.

DBAS finds this system favouring lenders and not the consumer and urge for change so complaints can be made to a fair system.

High-cost consumer credit contracts (5.26)

20 *Do you have any views on the need for guidance on assessing affordability of high-cost credit and whether changes are desirable?*

DBAS believes the questions based around the high cost lending needs to apply for all credit applications.

Pawnbroking (5.27-5.28)

21 *Do you have any views on guidance for assessing affordability in the case of pawnbroking?*

DBAS firmly believes pawnbrokers should not only be covered in their own act, but also the CCCFA as we see the harm pawnbrokers cause by not having to adhere to affordability assessments or other regs under the CCCFA.

Not only should pawnbrokers be included, but also brokers for credit as they are not regulated.

Telecommunication providers who supply credit (for the purchase of new mobile phones and devices) and the like of the TV shop models need to be included in the code and CCCFA.

For example we currently have a client who has purchased 3 cell phones on credit from a Telco Company. One for himself and the other 2 for his daughters. He has no way of being able to afford the repayments for the cell phones without hardship because he is also trying to pay off an expensive car loan and has 26 BNPL purchases he is trying to pay. He is a forestry contractor with a very volatile income which also reinforces our answer to question 6. Also see our response to question 10 regarding BNPL.

Other

22 *Do you have any other feedback on how the draft content for Chapter 5 can better meet its objectives, including anything that might be missing?*

DBAS has concerns regarding the proposed changes. It is its most robust now, don't diminish consumer protection. We are frustrated with what we see – The Government fixing something which isn't broken, seemingly due to the pressure or lobbying of the lenders who benefit from the code being undermined.

Voluntary repossession needs to be included in the code. For example we have a client who is unable to manage financially and wishes to go insolvent. They want to return the car that was security for a loan so that the loan becomes unsecured and can be included in the insolvency, however the finance company refuses to repossess the car despite the loan being 10 months in arrears. If the finance company wishes to hold a security interest over goods then they should exercise this interest when the account is significantly in arrears. There is no clear guidance on this.

23 *Do you have any suggestions for how this content could be presented more clearly or usefully to users?*

We find the timeframe to which to submit feedback on this issue unrealistic and it seems as though it is all trying to be pushed through quickly enough so consumer advocates wont have a chance to have their say.

We are concerned about the overall vagueness of the wording for the proposed changes to the RLC. There needs to be specific guidance and minimum standards clearly prescribed.

The RLC is an important piece of guidance which needs proper time and consultation by those who most use it for the benefit of the communities we serve.

Other comments