Submission on discussion document: *Fit for purpose consumer credit legislation*

Your name and organisation

Name	Brent Hollows
Organisation (if applicable)	
Contact details	

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Responses to discussion document questions

	1. Options to amend the CCCFA to enable the FMA to carry out its role effectively **A. Options for liability settings**
1	*Do you have any evidence or experience of the due diligence duty and personal liability resulting in overly conservative approaches to complying with the CCCFA? What impact did this have on consumers? How common do you think this is?*
	The personal liability amount is horrendous and the maximum liability is more than my lending book. This has made me hugely conservative resulting in me denying lots of people credit who would have otherwise been approved. The liability is so large and the requirements of making an honest mistake (like Section 99A) are absolutely unforgiving. It is really double jeopardy because there are already adequate statutory penalties for getting it wrong so why double dip with liability for Directors and senior managers. Scrap the requirement altogether. Due diligence is required even for a sole operator which is an unnecessary overkill and duplication; it is also another cost which is passed on to the borrower unnecessarily by an increased interest rate.
2	*Do you have any observations about how the impact of the due diligence duty and personal liability works may or may not depend on the size of the lender?*
	The impact of the personal liability is mind numbing for a small operator and the problems for Directors and senior managers of very large companies are also very real. The Directors and senior managers being so far removed and probably not having an ownership stake in the company should not be personally liable. The company should be liable. Scrap the liability settings because these make a lender take an unnecessarily conservative approach. The liability settings makes a lender more conservative than the affordability requirements and the affordability requirements have recently been basically scrapped.
3	*Are you aware of any other problems with these liability settings?*
	Too much, too stringent and double counting. Results in conservatism.
Option A1: Retain the due diligence duty but remove restrictions on indemnities and insurance (preferred)	
4	*If lenders were able to indemnify their directors and senior managers from liability for pecuniary penalties (and costs), what difference (if any) would you expect that to make to how those individuals and the company as a whole approach the due diligence duty?*
	This would have no effect for a small owner operator lender. Insurance would make me feel more comfortable but it would be just another cost to be recovered ultimately from the borrower through an increased interest rate because it would not be able to be recovered as a cost even though it really is. It would not change my overly conservative lending approval process. Also the insurer is likely to expect such a conservative approach. I don't see much merit in this approach.
5	*If insurance were available for pecuniary penalties liability, what difference (if any) would you expect that to make to how directors and senior managers and the company as a*

	whole meet their due diligence duty? Do you have any information about how affordable that insurance might be for different types of lenders?
	I don't see anything in this option that would change my overly conservative lending approach. As a result of the liability there are a substantial amount of people I stopped lending to. I know of 5 small lenders in Christchurch that told me that the major reason they stopped lending was because of the liability settings.
Option A2: Remove due diligence duty for licenced lenders	
6	*Do you agree that the due diligence duty is less likely to be needed for lenders who are sophisticated enough to be licensed under the CoFI Act? Why/Why not?*
	I think it should be removed for all lenders. This would allow easier access to credit for more borrowers.
7	*How well do you think licensing and ongoing supervision by the FMA could replace the need for due diligence and personal liability? Does this depend on the kind of lender? If so, how?*
	Hard to answer this question until it is known what if any licensing requirements will be needed for NBNDTL's. It really depends on what is required for licensing. We have already recently just had to be certified as fit and proper. Now something else to do and another cost albeit a one off cost to be licensed. Depends on the level of supervision as well. My gut feeling is licensing would be preferable to due diligence and personal liability.
8	*What impacts might options A1 and A2 have on lenders and consumers compared to the status quo? For lenders, how would you expect lender decision-making and compliance cultures to change under these options?*
	No change with Option A1. Could be worse with Option A2 depending on licensing costs and supervision reporting requirements. Option A3 won't change anything. Need an Option A4 –Remove or reduce the liabilities on Directors and senior managers for small companies. Limit the liability to a percentage of the company's total lending book. Certification is enough.
B. Options for regulatory model	
9	*Do you agree that these are a fair reflection of the minimum legislative changes that are required to transition credit to the FMA? If not, please explain*
	Yes. However, the Certification should remain until its expiry date or 3-5 years then go to any required licensing. Quite a few smaller lenders left the market due to the Director senior manager liability and the certification requirements and annual returns etc. etc. Licensing would probably get rid of more lenders resulting in less competition and making it harder for borrowers to access credit. Less competition is not good. It seems that the legislation favours large companies and wants to push smaller lenders out of the market. Small lenders cannot spread the disproportionate cost across their annual profit like a large company can. Any licensing requirements should be scale appropriate.

Option B1: Transition to a market services licence and apply all FMA core and licencing powers to consumer credit (preferred)	
10	*What implications would you expect from adopting a licencing approach and the associated regulatory tools for credit?*
	More lenders will leave the market meaning less choice for borrowers and less competition and licensing costs passed on to borrowers through increased interest rates. I would suggest a 3-5 year time frame in adopting this approach which I think would mean less lenders leaving the market.
11	*What modifications to the FMA's existing regulatory tools, such as stop orders, should we consider if extending them to the CCCFA under this option?*
	The regulatory tools and stop orders should be modified to be suitable and size appropriate for the new CCCFA lenders requiring to be licensed; a more educational and guidance approach should be taken in the transitional period. The same way the DIA approaches administrating the AMLCFT Act. A collaborative approach first then confrontational when collaborative isn't working.
12	*What do you think about the transitional licence approach, including what time periods are appropriate?*
	I think a 3-5 year transitional period. CoFI Fair Conduct programme not to be needed until after the 3-5 year period as well and it and any market services licence criteria for NBNDTL's to be subject to a consultation process with the new stakeholders. The CoFI Fair Conduct programme and the market service licence requirements should be scaled in line with NBDTL and NBNDTL. Should a small NBNDTL licensed under Part 6 and therefore becoming a Reporting Entity under the FMCA have to meet all the requirements that a NBDTL would? One example being to have the additional cost of providing audited Annual accounts. Stakeholder consultation should solve all these issues.
Option B2: Retain 'Fit and proper' certification (status quo) and add FMA core tools for enforcing the regulatory perimeter	
13	*Do you agree with our analysis about the relative benefits and risks of the certification model? Why/ why not?*
	Yes, I agree that the market service licence approach has efficiency advantages and that is the way to proceed. However, I am concerned that the barrier to entry may be too high for some and they will exit the market which is a negative outcome for consumers. The market licence should be tweaked, in consultation with CCCFA lenders to be an appropriate mix between the Certification Model and the market service licence model.
14	*Are there additional tools that you consider the FMA should have to regulate credit, for examples tools like action plans or censures that are usually only available under a licensing model?*
	No, I think CCCFA lenders should head towards the market licence model with an appropriate scaled market service licence and scaled reporting entity obligations.
2. Options to amend disclosure requirements	

	C. Options for what and when information must be disclosed
15	*As a consumer, do you receive the right kind and amount of information to make informed decisions? Why/why not?*
	Consumers should all get the same disclosure information. All disclosure documents should be prescribed as standard forms in Regulations the way initial disclosure has a model document. Every consumer will answer this question differently so how can you comply and each consumer could desire different disclosure next loan. Customisation will not work. Lenders require a safe harbour approach. Please provide in Regulations standard model disclosure documents for every occurrence.
16	*Do you consider any of the disclosure obligations to be irrelevant, confusing, or inappropriate? If so, please tell us what obligations you are referring to and what impact this has.*
	The FMD letters required under CCCFA section 26B(2) lose their effect if sent too often. Variation disclosure is too confusing and guidance by way of a model document should be provided to Lenders by Regulations.
17	*How could disclosure obligations be more targeted to the consumer's circumstances to ensure only relevant information is disclosed?*
	Disagree, this needs to be standardised not targeted. Safe Harbour model disclosure documents are required for Lenders.
18	*Is the information set out in Regulations 4F and 4G both sufficient and do sections 22 and/or 23 require the right information to be disclosed when a contract is varied?*
	The information required to be disclosed is sufficient and well spelt out, however, the problem is ensuring that disclosing the information informs the borrower about the effects of the change. This is the difficult part. All the information, irrelevant or not, is being disclosed to meet this requirement because you cannot afford to get it wrong. Therefore, too much irrelevant information is disclosed. Simplify it to the basics like the extra cost payable and the basic changes. A comparison of the existing situation versus the changes is too much information only the changed amounts and the extra costs should be disclosed. Please develop a Variation disclosure Model Document in Regulations in consultation with Lenders and Finance Software Providers.
19	*Are there any other concerns or issues you would like to raise related to disclosure obligations?*
	Yes, automatically having to advise the borrower to complain for RWN & pre debt collection. This should not be a function of these disclosures nor a way of borrowers avoiding their obligations.
	D. Options for how information must be disclosed
20	*As a lender, do you identify any barriers in the Act to the use of electronic methods of disclosure? If so, can you explain what are these barriers and how they impact your processes?*

	No barriers. The use of electronic methods is easily included in standard terms. Clients prefer electronic methods.
21	*As a lender, are there any practical difficulties with obtaining the borrower's consent for electronic forms of disclosure (section 32(4)(b))?*
	No.
22	*What would be the implications of removing the requirement to obtain borrower's consent for electronic communication and forms of disclosure (section 32(4)(b))?*
	No change personally but agree with removing the requirement.
	E. Options for penalties for incomplete disclosures by lenders
23	*Do sections 95A and 95B meet their objectives? Why/why not?*
	Yes, but it is too expensive to go to court. There should be an option added to allow the Regulator to have the same powers as the court. This would create a fairer and more efficient credit market.
24	*As a lender, to what extent does section 99(1A) impact the time, effort, and costs you dedicate to initial and variation disclosures?*
	You cannot afford to get it wrong so a lot of unnecessary time and effort is spent manually checking and double checking disclosure documents thereby creating a culture of being overly conservative.
25	*Under option E1, what should a materiality test look like?*
	The materiality test would need to provide examples of incomplete or incorrect disclosure. Some of these examples could be quantified in dollar terms and where so guidance given in Regulations. For example if the interest rate was disclosed as 10% when it was really 11% then the penalty until it is corrected should only be the 1% difference not the whole 11%. If for example a one off fee was transposed in error on disclosure documents as $45 instead of $54 then only the $45 should be able to be charged. If a fee was disclosed as $4.50 because of a typo instead of $45 but the extra cost of borrowing was disclosed as $45 then the $45 should be chargeable. Examples of scenarios like this should be developed in Regulations. The other non-quantifiable examples aren't so easy to accommodate. I would suggest looking at case law and write Regulations for them based on what the Judge has decided and use the same thought process and calculations as in any case law.
26	*Under option E1, which party should have the burden of proof and what would this mean for the effectiveness of the option? If the onus is on borrowers to show materiality would that deter them from seeking redress under section 99(1A)?*
	The borrower and lender both have vested interests in an outcome in their favour so if they cannot agree then the onus should be on an independent party viz; the FMA. The FMA should issue guidance on materiality. Well written guidance and Regulations would make materiality clear.
27	*Under option E2, how should the maximum amount the lender forfeits be calculated?*

	The actual harm should be considered not solely the technicality of making an honest mistake. It could be calculated by a range of: 1) prescribing Statutory Damages 2) Percentage of Principal 3) Percentage of the error. The lenders turnover percentage or net profit percentage are not valid methods because they are not linked to the cost/harm of the breach and therefore unlikely to be proportional to the breach.
28	*Under option E3, would there be the right incentives in place to ensure lenders comply with their disclosure obligations?*
	Yes, because lenders would still have to comply with RL and fair conduct provisions.
29	*What would be the risks associated with each option? How could they be mitigated?*
	Get rid of status quo it is too punitive. Option E1 could still be too punitive I am in favour of a blended option of E2 and E1.
	3. Review of the high-cost credit provisions
30	*What specific provisions (high-cost or other) have most impacted lenders' willingness or ability to offer high-cost consumer credit?*
	All of them combined. Total pay back at 2 times is too low but at 3 times it may have worked if the other provisions of not being able to re lend or lend when another loan is in place. The only provision necessary to control this market segment was the total pay back limit and if this had been the case then there would still have been HCL providers. Reducing the HCL Interest Rate threshold below 50% will result in lenders, that are offering that rate below 50%, having to leave the market thereby shrinking the market further and making it more difficult if not impossible for those most in need to be able to access credit.
31	*In the absence of high-cost loans, what other avenues are borrowers turning to?*
	BNPL, I see increased usage. This sector should have to do full affordability assessments like everyone else, especially now that the new affordability process has been simplified. Often I am declining loan applications because, in the last 2 years, I am regularly seeing high BNPL repayments that are out of synch with the loan applicants' repayment ability. How can BNPL providers know if a consumer can afford to make BNPL payments if a budget has not been completed. No budget is cowboy stuff.
32	*Is the unavailability of high-cost consumer credit having positive or negative effects on would-be borrowers?*
	Positive and negative. My clients are no longer missing their payments for HC loans but this is opposite for BNPL. Often when I am analysing 6 months of Bank Statements, for loan applicants, there seems to be a positive correlation between dishonoured payments and the level of BNPL usage. I see ex -HCL borrowers now borrowing a larger amount than they had previously borrowed with a HCL product.
33	*What evidence, if any, is there of debt spirals and/or continued repeat borrowing for vulnerable borrowers across credit contracts with interest rates of 30 per cent to 49.9 per cent?*

No evidence. I have not noticed any change in my loan book. No reports in social media or in mainline media like there was before the HCL provisions were put in place so this seems to strongly suggest that 50% is the correct threshold interest rate. I believe reducing it is unnecessary and would cause harm by there being less options for borrowers.

F. Options to amend the high-cost credit provisions

Option F1: Expanding the definition of a high-cost consumer credit contract to contracts with an interest rate above 30 per cent

34 *Are there any other issues associated with loans in the 30 per cent and 50 per cent interest rate range that we should be aware of?*

Yes, do not change the HCL Interest Rate Threshold and these are my reasons:

The HCL harm occurred in the 100% - 800% Interest Rate range so already the 50% threshold is half of the lowest rate where harm was occurring. That historical harm was backed up by evidence from: budget advisers, regulators, regulatory impact statements & journalists. There were multiple media stories. Nothing much has been presented by these stakeholders during the past 3 years since the HCL measures were put in to place. The media stories have gone. What therefore is the motive to change the HCL Interest Rate threshold? It seems that the market is working well.

There is no evidence from budget advisors to suggest there is the same HCL problem in the 30%-49% Interest Rate market segment and furthermore no regulatory impact statement has been done on the effect of credit restrictions on the people that need credit the most. A decision to drop the threshold rate should not be made without proper robust meaningful data backed up by actual numerous examples.

Annex 1 at point 5c. on page 35 states that mainstream finance companies are lending at an average rate of 36% so by dropping the threshold to 30% are you wanting to destroy finance companies the same way HCL providers were destroyed because it will happen, another so called unintended consequence like it was for HCL lenders post 2021.

There is no evidence presented justifying dropping the threshold from 50% therefore if you do go ahead and drop the Interest Rate threshold I think drop it to no less than 45% and don't destroy another market and another 150,000 + consumers being excluded from credit. Finance Companies could still survive if the threshold was 45% but they would not be able to survive if the threshold was 30%. It would be impossible to operate profitability at 29% for this finance company segment.

Annex 1 Table 2 states there were 21 HCL providers with 150,000 borrowers. Table 2 shows 9 of these HCL are now operating in the 30%-49% market meaning a more competitive market than had been the case. Why muck with this market which is working satisfactorily?

Annex 1 point 11 states that there are at least 26 lenders in the 30%-49% market segment. Annex 1 point 5c. states that most finance companies are charging 36% therefore I would care to say that there will be many more than 26. Nonetheless, these 26 lenders would have more clients than the 21 HCL lenders. Simple extrapolation

suggests that removing these 26 lenders from the market, which dropping the HCL Interest Rate to 30% will achieve, would exclude more than (150,000/21*26) 185,000 consumers from obtaining credit. The total could therefore be a minimum of 335,000 consumers excluded when adding back the 150,000 already excluded from obtaining credit.

The preferred proposal has not considered the effects of the unintended consequences of excluding borrowers not experiencing harm in the 30-49% market segment. Is this what you want to do to innocent bystanders?

Annex 1 point 25 intimates that there is <u>not</u> a problem in the 30%-49% market segment because consumers accessing financial mentoring has dropped by 14% from 70,000 to 50,000 so where is the need and evidence coming from to reduce the HCL Interest Rate threshold?

Annex 1 point 20 strongly suggests that repeat borrowing is not a problem in the 30-49% market segment but in the BNPL segment, this is where the legislation should be targeted. This is another reason not to drop the threshold interest rate.

Annex point 39 provides evidence of the government a.k.a. the tax payer having had to front up with an extra ($866m - $693m) $173m since HCL provisions came into place; following this trend if the threshold Interest Rate was reduced to 30% then a further 185,000 could be excluded from obtaining finance. Is the tax payer, therefore, wanting to and willing to front up with a further ($173m/21*26) $214m+ at a time the Government is wanting to cut expenditure? That would mean, at least, a combined proposed cost of a whopping $387m! Would any moot financial harm in the 30%-49% market segment be at this level of $214m+? I very much doubt it and there is no evidence presented to support that level of harm. I therefore see no reason to change the threshold rate.

Annex 1 point 26 states that the percentage of financial mentoring clients' debts from other sources has increased, however, there is no clarification to demonstrate if this increase is from within the 30%-49% market segment. It could be from bank lending. Moreover, this increased percentage is skewed because: 1) we are going through a temporary cost of living crisis and 2) it is from a much smaller pool of borrowers down from 70,000 to 50,000.

If the HCL trigger is lowered from 50% which I vehemently disagree with then I think it should be done in annual stages backed up by real evidence of harm actually occurring and then only reduced in 5% p.a. increments until the harm is at an acceptable level balanced against the need to not exclude others from obtaining credit. This would give lenders and borrowers an orderly way of adjusting. All borrowers' needs should be considered not just the minority that will probably always be harmed whatever the interest rate is.

A $500 loan at 30%-49% does not cause the same harm as a $10,000 loan at 30%-49% so maybe HCL requirements should only apply for interest rates between 40%-50% when the loan is over $10,000?

A typical Bank mortgage loan over a 30 year period requires a total payback of more than 2 times. However, it is not proposed to place a 2 times payback cap on this type of lending nor should we, I am just using it as an example to suggest that a 2 times payback cap is not always enough and for 30-49% loans is probably not adequate either. However, there could be merit in applying a total payback scale based on the

35	**amount borrowed for example loans up to $1,000 3 times, loans up to $5,000 2.5 times and loans over $10,000 2 times.** **2 times was reasonable for HCL because they were for shorter periods and for smaller amounts. The credit risk was also less therefore the time spent establishing the loan would have been less. However, 2 times is not large enough because loans in the 30%-49% market are for longer durations than HCL and take longer to establish.**
	Are there examples where loans with interest rates between 30 per cent and 50 per cent would breach the 0.8 per cent rate of charge cap?
	Not that I can think of.

Option F2: Expanding the definition of a high-cost consumer credit contract to contracts with an interest rate above 45 per cent

36	*What evidence, if any, is there of debt spirals and/or continued repeat borrowing for vulnerable borrowers across credit contracts with interest rates of 45 per cent to 49.9 per cent? Are there any other issues associated with loans in this interest rate range that we should be aware of?*
	None, the problem with HC loans was not with interest rates of 50% but with the interest rates being in excess of 100% p.a. and up to 800% p.a. so the bar at 50% has already been set well below that and furthermore the 2 times maximum payback is really the hand brake. HCL could not make a profit with this.
37	*For lenders: If the government extended the high-cost provisions to loans with annual interest rate of 30 per cent or more, what would be the impact on your operations (if any)? Are there any changes to the high-cost provisions we should consider to enable those loans to remain profitable, and on what terms?*
	I and plenty of other finance companies would no longer be profitable and would have to exit the market. This proposal would wipe out the 26+ lenders. It was the high-cost provisions not the 50% threshold that decimated the HCL market segment and resulted in every single lender exiting the market. The high-cost provisions were unworkable and still are unworkable. The high-cost provisions make HCL lending impossible. In fact if you dropped the HCL threshold rate to 10% you would no doubt collapse the whole credit market including banks because the HCL provisions make it impossible to lend. I am strongly against this option for all the reasons outlined in my answer to question 34.
38	*How is a revised definition of a high-cost consumer credit contract interest rate threshold likely to affect access to credit for borrowers?*
	That would shut down most mainstream finance companies and there would be lots of borrowers without a place to borrow. If 21 HC lenders exited resulting in 150,000 borrowers being excluded from credit then following this logic if the 26+ lenders exited then this would mean that a further 185, 000 borrowers would be excluded from credit meaning in total 335,000 borrowers excluded from obtaining credit, that is unconscionable!
39	*Do you recommend considering another interest rate threshold? If yes, please explain why.*

	No. 50% is working. It is already hard to make a living with all the regulations and now extra costs with the proposed licensing; it gets harder year by year. Should the 50% not be adjusted upwards in line with inflation the same logic would also apply to the 2 times payback limit? Everything else is going up!
Option F3: Status quo	
40	*Do you have any other feedback on any of the high-cost credit provisions? Have they been effective in reducing financial harm caused by the excessive cost of credit for some types of loans and repeat borrowing by vulnerable consumers?*
	I think we should stick with the status quo Interest Rate of 50% for all the reasons that I have outlined in my answer to question 34. **The 50% threshold has been very effective in reducing financial harm.**
Option F4: Other high-cost provisions	
41	*Is there evidence of certain industry lending practices that are causing harm which the high-cost credit provisions could address?*
	No, none that I have seen or am aware of. Nothing is being reported in the media.
42	*Are there any other industry lending practices that you believe are harmful to consumers?*
	Larger loans above say $10,000 over 5 year periods to purchase cars. I see this when consumers apply for a personal loan to finance the deposit and often see that the larger car loan is unaffordable.
43	*Do you agree with the suggested impacts of each of the identified options? Why/why not?*
	No, my answer to question 34 addresses this for each of the identified options.
44	*Do you have any information or data that would support our assessment of the impacts of each of the options?*
	No, none. Much more supporting data should have been presented to us. Annex 1 was very useful in fact it overwhelmingly suggests that the 50% threshold has been effective and that there isn't a problem in the 30%-49% market. There are Lenders operating in the 45%-49% market segment but no evidence presented that there is undue harm occurring at 45%-49%.
45	*Do you think that the CCCFA could be strengthened to protect consumers who are sold lending products or add-ons that exceed the value of the product? If so, how?*
	Yes, the add-on should be limited to a percentage of the amount borrowed. However, the add-on may be necessary or the client may want it. We live in a free society so let the consumer decide. The add-on should not be compulsory though. The main requirement should be assessing if the loan is still affordable with the add-on.
46	*Finally, are there any other areas and options for change that we should consider that have not been addressed in this discussion document?* ***No.***

Other comments