

Submission on Review of consumer credit regulation

1/08/18

Contact Person:

Dr Andrew Hubbard

Background

Citizens Advice Bureau New Zealand (CABNZ) Ngā Pou Whakawhirinaki o Aotearoa welcomes the opportunity to comment on the review of consumer credit regulation.

The purpose of our organisation is to:

- Ensure that individuals do not suffer through ignorance of their rights and responsibilities or of the services available; or through an inability to express their needs effectively — Me noho mataara kia kua te tangata e mate i tōna kore mōhio ki ngā āhuatanga e āhei atu ana ia, ki ngā mahi rānei e tika ana kia mahia e ia, ki ngā ratonga rānei e āhei atu ana ia; i te kore rānei e āhei āna ki te whakaputa i ōna hiahia kia mārama mai ai te tangata.
- Exert a responsible influence on the development of social policies and services, both locally and nationally — Kia tino whai wāhi atu ki te auahatanga o ngā kaupapa ā-iwi me ngā ratonga ā-rohe, puta noa hoki i te motu.

We support the principle of partnership reflected in the Treaty of Waitangi - e tautoko ana Ngā Pou Whakawhirinaki o Aotearoa i te mātāpono o te pātuitanga e ai ki Te Tiriti o Waitangi.

We work to empower individuals to resolve their problems and to strengthen communities. The person-to-person service provided by over 2,300 Citizens Advice Bureau (CAB) volunteers is unique in New Zealand. From 84 locations around New Zealand, the CAB provides individuals with a free, impartial and confidential service of information, advice, advocacy and referral. Ka mahi mātou ki te whakakaha i ngā tāngata takitahi ki te whakatika i ā rātou ake raruraru, ki te whakakaha hoki i ngā hapori. He mea ahurei i roto o Aotearoa te ratonga kanohi-ki-te-kanohi e whakaratohia e ngā kaitūao 2,300 o Citizens Advice Bureau (CAB). Mai i ngā takiwā e 84 puta noa i Aotearoa, e whakaratohia ana e te CAB ki ngā tāngata takitahi he ratonga koreutu, tōkeke, matatapu hoki e pā ana ki te mōhiohio, te tohutohu, te tautoko me te tukunga.

In the 2016/2017 financial year we had over 520,000 interactions with clients, including over 200,000 in-depth enquiries where we offered information, advice and support across the gamut of issues that affect people in their daily lives. Every year we deal with about 12,000 enquiries which are primarily related to consumer credit.

1.0 Summary

- 1 This submission is based on analysis of data from our client enquiries. This analysis identified a number of key themes:
 - There is considerable lack of understanding of the total cost of borrowing and in particular the potential financial impact of default interest and fees.
 - The inability to cancel a credit contract once you have taken possession of the goods without paying the full cost of the goods is particularly problematic in relation to car finance.
 - Communication from lenders and clients' understanding of what they have agreed to is often poor.
 - Car finance appears to be an area where there is often poor behaviour and communication, with considerable confusion from clients - due to them often signing multiple contracts at the same time.
 - There are low level but persistent complaints about having purchased insurance in association with a credit contract.

- 2 An in-depth analysis comparing our consumer credit enquiries from 2013/14 and 2016/17 showed that despite the consumer credit reforms which came into effect in June 2015 client are still experiencing numerous issues related to irresponsible lending behaviour.

- 3 Our experience from the implementation of the last reforms to the CCCFA is that one of the most important factors in ensuring success is that enforcement of the law must be supported. There are several key aspects to this:
 - Ensuring the law is clear
 - Providing clear and useful enforcement powers
 - Supporting enforcement of the law

- 4 We consider that the way the Act is currently framed creates unnecessary barriers for consumers whose rights have been breached. In particular we consider that the non-prescriptive nature of the Act does not provide sufficient clarity for consumers to make a judgement about whether their rights have been breached. Nor does it make it easy for consumers to understand whether they should be entitled to redress.

2.0 Direct response to the discussion paper

In the following section we provide feedback on some of the specific issues identified in the discussion paper. We have based our responses to these on the evidence from our client enquiries and our experience in assisting clients.

Do you agree that the problems identified with high-cost lending (even where it is compliant with the CCCFA) are significant? Do you have any information or data that sheds light on their frequency and severity?

The CAB assists with around 12,000 consumer credit-related enquiries every year and a substantial number of these illustrate the potentially negative impact of high cost lending on consumers, regardless of compliance with the CCCFA.

Some of our clients are on low incomes or income support. They continually face pressure on their finances, and may use credit to get by day to day. Some are clients of 'fringe lenders', and can become overburdened by credit repayments and high interest rates. In addition we also see clients who are struggling with over indebtedness to 'mainstream' lenders, particularly where clients have faced an unexpected change in their circumstances such as separation or unemployment.

People who are struggling to get by can often be reliant on credit for unexpected events such as funerals or car repairs. In such circumstances people are in urgent need of credit and may not feel like they have the ability or bargaining power to shop around for credit.

The largest area of enquiry for CAB in relation to consumer credit is when a client has had difficulties with meeting their payment obligations, or has fallen behind in their payments and they want help and support to know what their rights and options are and whether the behaviour and fees from the lender are acceptable.

Client had found themselves in an awkward situation financially, he purchased goods on credit 6 months ago and due to a death in the family, he could not meet repayments and now he is facing repossession and asked for urgent help.

Client's husband died unexpectedly. She is the administrator of the estate. Her husband had a personal loan with a bank and interest charges on the loan have accumulated since his death to more than \$3000. She is unable to cash in the Kiwisaver to repay the loan until the estate is finalised. In the meantime the interest is piling up. She has dealt with the estate person at the bank who said that is simply what happens.

Client's had got into difficulty and owed a bank \$19,000. The husband had had a heart attack and wasn't working at the moment. The wife ran a business from home but was struggling financially. They had put forward a payment plan to the bank, who said "they weren't interested" in any payment plan and the couple should borrow the money from family and friends. The situation had become so bad that when the husband had run out of his medication they couldn't afford to replace it. They had received an email from the bank's recovery department and wanted some advice before they replied to it.

Some of the other key issues we continue to see include:

Suitability

- Issues of suitability normally come to our attention when clients approach us about

another issue relating to their contract and then it becomes apparent that there is an issue with the suitability of the contract in the first place.

- The most obvious issue is where the income of the client is clearly insufficient to realistically meet their basic costs and make payments on the loan.

A client who is a superannuitant came to the CAB because she had got herself into debt through needing car repairs for a warrant. She had taken out a loan through a private loan agency with 26% interest, to pay the bill. She was now finding it hard to meet repayments. Plus she had fines for not having a current warrant added to her debt.

Client had bought a car using finance. She told the salesman that she was on a benefit and could afford \$40-50 per week. She did not understand that the finance agreement she signed was to pay around \$100 in fees per month, as well as nearly \$90 per week in repayments.

- There are also other issues which related to suitability including examples of clients who have significant vulnerabilities

Client's relatives signed up for car finance last week; they cannot afford payments as they are on a benefit. The client's relatives don't understand English very well. The client thought that they should never have been given the loan in the first place and wanted to know if it was possible to cancel it.

- There are also examples where clients had been loaned more money than they had originally applied for.

Client was enquiring for a friend in regard to a loan he got through an online lender. He applied to get a \$1,000 consolidation loan but they offered \$10,000 which he took. Client is concerned that his friend is struggling with repayments.

Cost of Borrowing

One of the very common enquiries clients have is trying to understand the total cost of borrowing, and how that was determined. Often this occurs after a client has made a large number of payments and can't understand why they are being required to continue to make further payments. The degree of confusion around this issue points to a failure of disclosure (including continuing disclosure) and ensuring that clients understand what they are agreeing to.

Client husband has bought a car on credit and they agreed on a price and on the payments. He signed an agreement and was given all the papers. When they reviewed the paperwork and did some calculations they worked out it would be costing them about \$6000 more than the car salesperson had indicated.

Client wanted to borrow \$2000 due to a family crisis in the islands and had gone to a third tier lender to borrow the money. Their charges were \$1824 interest plus \$509 to set up the loan. Making a total of \$4333 for

\$2000 borrowed. The client said that the lender had said she wouldn't be paying back much more than she borrowed.

Client was concerned about a high interest rate charged on her payday loan which was 693.5% and default 104% on top of that.

Often there is a lack of clarity or understanding about the potential costs associated with late payments or missed payment, and the potential impacts of these sorts of costs on the total cost of borrowing. Things can quickly spiral out of control for clients.

The client borrowed money two years ago from a small third tier lender. She only borrowed \$500 and now she has added up all the payment she had already paid to the loan company = \$6000 already. She wanted to understand how this was possible.

Client has been paying \$25 a week for nine years to a company that was charging 150% interest and the total debt has tripled.

Client had taken out a short term loan from a finance company for \$500. The annual interest rate for the loan was 299% per annum plus admin costs. She missed one payment in January and reduced repayment amounts to a level which she could afford. She has requested an account from the finance company so she could pay off the rest of the loan. The company have not provided clear accounts but said that she still owed more than the original \$500 borrowed after having already paid over \$1000.

Clients are often confused or uncertain about additional costs or conditions associated with loans such as a requirement for insurance.

The client has arranged to apply for a loan of \$15,000 through an online lender and has now received a contract for an unsecured loan for this amount which she needs to sign. However, the condition for this loan is that she must pay over \$1000 for insurance, before this loan is approved. The client is worried about this loan condition

Fees

Concerns and questions about fees are common. There are two main concerns about fees; the first is about the establishment fees being charged for setting up a credit contract and the second is how fees are determined and whether a fee was a reasonable amount. This was particularly prevalent in relation to cancelling a credit contract.

Client applied for a loan and was being charged a \$200 establishment fee that wasn't on the original contract.

2

Do you support any of the extensions of Cap Option A? What would be the impact of these extensions on borrowers, lenders and the credit markets? Do you have any information or data that would support an assessment of the impact of these extensions?

3

Do you agree with our assessment of the costs and benefits of the options for capping interest and fees? Are any costs or benefits missing? Do you have any information or data that would help us to assess the degree or estimate the size of these costs and benefits?

One very common issue that we see is clients not understanding how quickly costs can increase due to interest and fees, and in particular high levels of default fees and interest. We support positive action to prevent default fees and interest from spiralling out of control, and therefore support the type of approach being suggested under the proposed Cap options, all of which would limit this.

4

Do you have any suggestions for the design of options for capping interest and fees? If so, what would be the impact of your proposed design on borrowers, lenders and the credit markets?

Our observation is that it is important that the total cost of credit is the basis for any cap, as capping any individual aspect of the cost of credit is likely to simply lead to a shifting of those costs.

5

Which interest rate cap options, if any, would you prefer? Which interest rate options would you not support? Please explain how you made your assessment.

We support the concept of a capped cost of credit, but have not done the policy work to know which would be most effective.

Regarding continued irresponsible lending and other non-compliance

The evidence from our analysis demonstrates significant non-compliance with the current law including irresponsible lending, lack of disclosure and failure to ensure that borrowers understand what they are agreeing to.

We consider that a major factor in this high level of non-compliance is a lack of incentives to comply with the law. We strongly support moves to increase enforcement of the law.

6	If directors have duties to take reasonable steps to ensure that the creditor complies with its' CCCFA obligations, should any duties apply to senior managers?
	Yes, as this would bring the Credit Contract regime into line with other responsibilities that senior managers have and would create a strong operational incentive to comply with the law.
7	If there are to be more prescriptive requirements for conducting affordability assessments, what types of lenders or loans should these apply to?
	<i>[Insert response here]</i>
8	Should there be any change to the requirement that lenders can rely on information provided by the borrower unless the lender has reasonable grounds to believe the information is not reliable? What would be the impact of such a change on borrowers, lenders and the credit markets?
	<i>[Insert response here]</i>
9	Do you consider there should be any changes to the current advertising requirements in the Responsible Lending Code? If so, what would be the impact of those changes on borrowers, lenders and the credit markets?
	<i>[Insert response here]</i>
10	Do you agree with our assessment of the costs and benefits of the options to reduce irresponsible lending and other non-compliance? Are any costs or benefits missing? Do you have any information or data that would help us to assess the degree or estimate the size of these costs and benefits?

[Insert response here]

11

Do you have any suggestions for the design of options for reducing irresponsible lending and other non-compliance? If so, what would be the impact of your proposed options on borrowers, lenders and the credit markets?

We have long had concerns that the law relies too heavily on disclosure to consumers, and this has been a particular concern when credit is being advertised in a language other than English, but all of the loan and disclosure information is only being provided in English. We strongly support a requirement that disclosure information should be provided in the same language that the lending has been advertised in.

12

Which options for reducing irresponsible lending and other non-compliance would you support? Which would you not support? Please explain how you made your assessment.

Given the evidence of relatively high levels of noncompliance with the law as it stands we consider that creating strong incentives to comply with the law is critical to the success of any future reforms. This means:

- Creating a penalties regime which creates a strong incentive for complying with the law. We therefore support the addition of civil pecuniary penalties, statutory damages and expanded injunction orders for breach of lender responsibilities.
- We support an obligation for directors and senior managers to take reasonable steps to ensure compliance with CCCFA obligations.
- Many of the clients we see find it very difficult to raise and follow-up issues of non-compliance with the law. In our experience there needs to be strong enforcement of the law by a regulator. We therefore strongly support an industry levy on lenders to fund monitoring and enforcement of the CCCFA

Regarding continued predatory behaviour by mobile traders

13

Do you agree with our assessment of the costs and benefits of the options for covering additional credit contracts under the CCCFA? Are any costs or benefits missing? Do you have any information or data that would help us to assess the degree or estimate the size of these costs and benefits?

[Insert response here]

14

Do you have any suggestions for the design of options for covering additional credit contracts under the CCCFA? If so, what would be the impact of your proposed options on borrowers, lenders and the credit markets?

[Insert response here]

15

Which options for changes to cover additional credit contracts would you support? Which would you not support? Please explain how you made your assessment.

Despite the excellent work of the Commerce Commission in this space we continue to see harmful behaviour from mobile lenders such as truck shops. We support moves to limit the harm caused by these traders by ensuring that they need to comply with the CCCFA.

Regarding unreasonable fees

16

If prescribed fee caps were introduced, who should they apply to, and what process and criteria should be used to set them?

[Insert response here]

17

Do you agree with our assessment of the costs and benefits of the options for capping interest and fees? Are any costs or benefits missing? Do you have any information or data that would help us to assess the degree or estimate the size of these costs and benefits?

[Insert response here]

18

Do you have any suggestions for the design of options for reducing unreasonable fees? If so, what would be the impact of your proposed options on borrowers, lenders and the credit markets?

[Insert response here]

19

Which options for changes to fees regulation would you support? Which would you not support? Please explain how you made your assessment.

Clients frequently come to us in relation to fees and want to know whether the level of fees is acceptable, and currently this is very difficult to assess. We support having much more clarity in this space.

20

Have you seen issues with excessive broker fees, or other unavoidable fees charged by third parties, being added to the loan? If so, are there any specific changes that should be made to the regulation of third-party fees? What would be the impact of these changes on lenders, borrowers and third parties?

[Insert response here]

Regarding irresponsible debt collection practices

21 Is this an accurate picture of the problems for consumers experiencing debt collection? Do you have information that confirms or refutes these issues, or sheds light on how widespread or severe they are?

We generally get just under 2000 enquiries per year which are primarily related to debt collection. There has been a small but steady decline in the number of debt recovery and repossession enquiries over the last five years. Most of this appears to be a decline in repossession enquiries following the last reforms to the CCCFA, notably a decline in threats of repossession being used in a punitive manner.

One of the most common issues that clients approach us about in relation to debt collection is the costs associated with debt collection. We support greater clarity around debt collection fees and what is reasonable to charge.

22 What information should be provided to borrowers by debt collectors? When and how should this information be provided?

[Insert response here]

23 Do you agree with our assessment of the costs and benefits of the options for addressing irresponsible debt collection? Are any costs or benefits missing? Do you have any information or data that would help us to assess the degree or estimate the size of these costs and benefits?

[Insert response here]

24 Do you have any suggestions for the design of options for addressing irresponsible debt collection? In particular, what is an appropriate frequency of contact with debtors before (and then after) a payment arrangement is entered into? Please state the likely impact of your proposed options on borrowers, lenders and the credit market.

[Insert response here]

25 Which options for changes to the regulation of debt collection would you support? Which would you not support? Please explain how you made your assessment.

Regarding other issues

26 Are you seeing harm from loans to small businesses, retail investors or family trusts as a result of them not being regulated under the CCCFA?

[Insert response here]

27 Do you think small businesses, retail investors or family trusts should have the same or similar protections to consumers under the CCCFA? Please explain why/why not.

[Insert response here]

28 Are there any other issues with the CCCFA or its impact on vulnerable people that are not addressed in this discussion paper? If so, what options should MBIE consider to address these issues?

Cancelling credit contracts can be a complex process to understand as your rights depend on whether you have taken possession of the goods. In particular there are lots of enquiries related to cancellation fees, and whether these are reasonable. These enquiries were consistent across both time periods.

Some of the common issues include:

- Disputes about whether the contract has actually been cancelled

Client cancelled a credit contract with a truck shop within a few days of signing but they kept on taking instalments out of her bank account. Four payments had been taken before the client came to see the CAB.

One persistent issue relates to consumers who purchased something on credit and want to cancel the credit contract but have already taken possession of the goods. In the (very common) case that they are unable to purchase the goods without the credit they are left with no option but to continue with the credit contract. This might be despite them wanting to cancel the contract after deciding that the contract was not financially sustainable.

Client bought a weight-loss machine on credit, but was told by his budget adviser that he could not afford the payments and to take the product (still in its original wrapping) back. He did this but retailer would not take product back. Client said that he did sign something but did not receive, or even read, a copy of what he signed.

Communication appears to be particularly poor in relation to guarantors with many enquiries where guarantors have not understood what they are agreeing to.

The client's husband agreed to be a guarantor for his daughter's loan. Her husband died and she was confused about whether she automatically became the guarantor. The finance company is harassing her for payments as the daughter did not keep up the payments.

A large number of the credit issues that come to the CAB are related to car finance, as this is often one of the most substantial purchases a client will make. Other factors also make it particularly problematic for clients, including:

- often the relationship between the car sales company and finance company are not clear to the client;
- often the client has taken possession of the car and so can't cancel the credit contract without having to pay outright for the car (which is normally beyond their means), which effectively means they are unable to cancel the contract during the normal cooling off period
- cars tend to lose value quickly

One of the most pervasive issues that we see is clients feeling pressured to accept the finance agreement proposed by the car salesperson. Clients are often confused by the terms of the condition, with often three separate agreements being signed for the car sale, the car finance and insurance.

Any other comments

We welcome any other comments that you may have.

[Insert response here]

Yours sincerely

Dr Andrew Hubbard
Deputy Chief Executive