

Submission on discussion document: Consumer Credit Regulation Review

Your name and organisation

Name	Sue Leader
Organisation	Family Finances Service Trust – Upper Hutt (formerly Upper Hutt Budget Advisory Service)

Responses to discussion document questions

Regarding the excessive cost of some consumer credit agreements

	<p>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?</p> <p>We agree.</p> <p><i>Unfortunately we have had to prioritise end-of-financial-year work and so have to limit our responses and/or evidence to this Review, but the importance of the proposed changes to our clients means we want to at least provide some comment. Thank you for the opportunity to comment. We heartily support the overall intention and direction of the Review.</i></p> <p><i>We would also like to congratulate the team at the Commerce Commission for all their work – not to mention successes – in improving Lender behaviour despite the severe limitations on their resourcing. The time lag between complaint and action, and the limitations on what can be investigated, may be reduced by better funding. Of most immediate value to our clients have been the extensive work on Mobile Traders, and the successful prosecutions of lenders which have resulted in significant fines, company closures, banned and/or jailed Directors, and some compensation for customers. More enforcement powers and more funding for the Commerce Commission is essential.</i></p>
1	<p>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?</p> <p><i>We support both #31 and #32.</i></p>
	<p>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?</p> <p><i>Yes, though 'cost' of the loss of revenue we would see as a potential 'benefit' as it might eliminate the worst of the lenders from the market place – this comment applies every time this "cost" is listed. A high percentage of our clients already seek new loans to pay off existing loans, so we don't think that this would change significantly.</i></p>

	<p>One local lender (Cash Converters, Lower Hutt) has recently adopted this model, and have gone further in that the moment they become aware their customer is in difficulties (either direct from the customer or via a Budget Service/Building Financial Capability Provider) they stop chasing the customer for payment and stop charging interest, effectively freezing the account. We have always found this creditor easy to work with and we get win-win solutions for all parties. The new self-imposed 'caps' make a significant difference to the client and their families and whanau.</p>
2	<p>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?</p> <p>[Insert response here]</p>
3	<p>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.</p> <p>Option A - limit all costs to maximum of twice the amount borrowed. It was obvious to us that for smaller loans (under \$1000) from High Cost Short Term (HCST) lenders that clients would benefit. It was less obvious if this would also work for bigger loans, for example, vehicle purchases which are another regular debt problem with which we deal.</p> <p>We therefore did the numbers for a car at two price points (\$8,490 and \$12,000). We were somewhat surprised to discover that even without late payment penalty interest and other penalty fees, the doubling time was consistent across price and interest ranges (fees included). For either loan at 15.95% (which is on offer locally to customers with excellent credit ratings) the doubling time is well over 60 months (the limit of the calculator). However, at 22.5% and 26.82% respectively the doubling time is 48 months and at 29.95% and 35.6% respectively the doubling time is 36 months. Given that we typically see clients in arrears at the twelve to eighteen months' mark, usually with significant penalty fees and interest, the doubling time would be shorter. We would therefore like to see the Cap Option A applied to all consumer loans.</p> <p>Cap Option B is also of value and would be our second preference. Please see comments in #1 re 'costs'. We do not see the possibility of illegal lending as a problem – they are already out there and the Police have the power to take action. Failure to use the law doesn't mean it needs replacing.</p> <p>Cap Option C would only be useful for HCST loans. Given the current state of the market this would be a good option.</p>

Regarding continued irresponsible lending and other non-compliance

4	<p>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?</p> <p>Absolutely.</p>
5	<p>If there are to be more prescriptive requirements for conducting affordability assessments, what types of lenders or loans should these apply to?</p>

All types of lending. *If the customer can't afford to repay a loan it does not matter what the interest rate is, nor the type of lender. We have seen poor assessment across the range of lenders from banks to pay-day lenders.*

We still see clients who have been asked by 'main stream' non-bank lenders only what their income and rent totals are. In one case, even when the customer's Support Person pointed out that food, power, and phone were the absolute minimum costs which needed be included the Lender did not include these in the total for assessment.

6

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?

We believe that the customer needs a recent, full, and accurate budget and debt schedule *in order to apply for finance. Given the time it takes to establish an accurate budget with clients, this is unlikely to take place at the actual loan application stage.*

With respect to HCST loans, by the time most people have recourse to this type of borrowing they are desperate and they would be abnormal if they didn't present themselves in the best light possible.

7

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?

Make the current voluntary code mandatory and assign sufficient funds for enforcement. *For example, we have made regular complaints about HCST-lender websites. Currently there are limits on the Commerce Commission's jurisdiction and we would like to see these limits removed. For example,*

This is far from the only website about which we have concerns and/or have made complaints to the Commerce Commission.

8

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?

Yes. Once again the risk that some lenders would move 'underground' which is identified as a 'cost' sits in the same place as our comments with respect to 'caps' in question 3 Option B: "We do not see the possibility of illegal lending as a problem – they are already out there and the Police have the power to take action. Failure to use the law doesn't mean it needs replacing."

9

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?

[Insert response here]

10

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.

***Registration Options A-C all supported.** Anything would be an improvement to current situation, and the reduction/removal of 'phoenix companies' would be beneficial. As it is, many of these lenders actually operate under a number of apparently separate companies and sometimes on-sell debt to a related company whilst collecting extra fees at both ends. (Examples will be supplied on request.) See #8 re 'underground' risks.*

***Enforcement Option A not supported.** The Commerce Commission has done a tremendous job in tackling offenders and getting some major Court victories, so we do not wish to take away from this work.*

***Enforcement Option C not supported.** No obvious benefit from client perspective.*

Enforcement Options B, D, E all supported.

- Directors' Duties is a "no brainer".

- Commerce Commission needs more funding.

*- In an ideal world consultation with a Budget Advisor/Financial Mentor would be compulsory before any loan of any type is made so that both the customer and the lender can be reasonably sure that the loan is able to be serviced, and all advertising would have to include a link/reference to finding a local Budget Service/Building Financial Capability Provider. In the real world, however, this won't happen, but the example of Kiwisaver Financial Hardship Withdrawal application requirements could be followed. For the first application, no external advice is required. However, for a second or subsequent application the applicant is required to work with a Budget Service/Building Financial Capability Provider to establish that all other avenues have been explored and that the client has done their best to sort things out before applying. For loans, this requirement could apply to anyone who has either defaulted on a previous loan from **anyone**, and/or is paying or has paid off a loan under a negotiated repayment plan.*

Responsibility Options A-C all supported. Need is self evident.

Regarding continued predatory behaviour by mobile traders

11	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?
	<i>Yes. From our perspective, based on our clients' experiences, none of these businesses have been established as public-benefit operation, they are there to make money. Judging by the ongoing influx of businesses into this market it would appear to be lucrative. On that basis, extending the legislation to include them is appropriate – if only to 'level the playing field'. If they then have to re-examine their business model that is appropriate too.</i>
12	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?
	<i>[Insert response here]</i>
13	Which options for changes to cover additional credit contracts would you support? Which would you not support? Please explain how you made your assessment.
	<i>Scope Option A and B both supported.</i>

Regarding unreasonable fees

14	If prescribed fee caps were introduced, who should they apply to, and what process and criteria should be used to set them?
	<i>All lenders. The March 30 2015 comments by the Appeal Court on the original ruling on "Commerce Commission vs Sportzone Motorcycles Limited and Motor Trade Finance Limited" made sense from our perspective – can they be refined?</i>
15	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?
	<i>Yes.</i>
16	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]

17

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

*Fees Options A-C all supported, with a slight preference for **Option A** as this looks the easiest to establish and enforce keeping in mind Justice Toogood's comments in the October 2014 ruling.*

18

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

19

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?

Yes. Our clients have ongoing issues with Debt Collectors, especially harassment, and our clients have experienced all the situations outlined.

We would like to add the following specific comments about Debt Collection Notification Letters and "Privacy Waivers".

1. In our experience many Debt Collection Notification Letters are over-stated and needlessly or incorrectly threatening. For example:

- 'Final Demand' letters which arrive as the first indication that a defaulting loan has been referred to a Debt Collection Agency (or department of the company). The tone is often threatening rather than informative. One company prints the words Final Demand in capital letters and red ink and the recipient is terrified before they even read the contents – if they can read at all (a far too frequent occurrence.)

- Final Demand or Repossession Notices which overstate the case. For instance, a notice which sets out all the powers the Creditor/Debt Collector has under the law but in terms of "We Will" rather than "We Can".

- Final Demand or Repossession Notices which set out illegal intended actions. For example, 'We can enter your [home] and remove items to the value of the [debt]' when the debt is in fact not secured.

2. "Privacy Waivers" demanded by Debt Collectors. *We have sighted, and complained about, so called Privacy Waivers required by at least one Debt Collector as a part of the on-the-spot repayment arrangement (see section 114.b page 35 in Discussion Paper). These "Privacy Waivers" essentially give the Debt Collector unlimited access to every record held by any party with whom the customer has a relationship forever. These are in our opinion illegal and should be banned. (Example available on request.)*

20	<p>What information should be provided to borrowers by debt collectors? When and how should this information be provided?</p>
	<p><i>[Insert response here]</i></p>
21	<p>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?</p>
	<p><i>Yes, except as noted in 23 below.</i></p>
22	<p>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.</p>
	<p><i>Before: once a week. After: none unless arrangement is breached.</i></p> <p><i>We have had clients driven to consider and/or attempt suicide from the ongoing harassment by Debt Collectors.</i></p> <p><i>In one instance, the client came to us because of the harassment and in the first fifteen minutes of the session the particular agent texted three times and rang once. Despite a formal complaint to his Manager, and to the Commerce Commission (about this and other issues including impersonating an officer of the Court/a Police Officer) the behaviour did not change even after setting in place a repayment arrangement.</i></p>
23	<p>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.</p>
	<p><i>Any of the Options would be better than the current situation.</i></p> <p>Option C and Option D are essential changes.</p> <p>Option C would significantly reduce the ongoing harm to people who are already in hardship. This is the only case where we disagree with the assessed 'cost'. The cost to the Debt Collection agency to have an employee/contractor constantly call/txt/door-knock people would be reduced. We believe that recovery rates would not decrease significantly or would possibly increase somewhat across the entire sector. This is a matter of psychology – when a person is bombarded through all avenues of communication they simply 'turn off' and stop opening letters, emails, and texts, and do not answer the phone or the door. This has a flow-on effect for communications from all other parties.</p> <p>Option D would, assuming the other changes such as fees limitations (as per #14 above) are adopted, take care of the sometimes outrageous collection fees imposed.</p>

Regarding other issues

24	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?
	<i>No. We do not work with business clients.</i>
25	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.
	<i>[Insert response here]</i>
26	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?
	<p><i>We remain concerned about the impact of borrowing by people with poor or no Literacy skills (native English language speakers), Numeracy skills, and/or people for whom English is a second language. The general population's Financial Literacy skills seem to be limited with respect to borrowing as well, but the impact is much greater on the former, more vulnerable, people.</i></p> <p><i>We do not know what the government can do about this at the time of borrowing – though continuing and increased funding for Budget Services/Building Financial Capability Providers and Literacy & Numeracy Services helps prevent some of the abuse in advance, or assists in reducing the impact afterwards.</i></p> <p><i>Perhaps one requirement could be put in place: the intending Borrower must read out loud one paragraph in the Contract to establish that they at least can read what they are being asked to sign.</i></p>

Any other comments

	We welcome any other comments that you may have.
	<p><i>1. Guarantors.</i> <i>Guarantors are mentioned at 39.d. on page 17 of the Discussion Paper but not addressed later and we believe that there is a significant issue here.</i></p> <p><i>1.a. More specific explanations to potential Guarantors should be required,</i> e.g., <i>“Do you understand that if the person whose loan you are guaranteeing cannot or does not pay it that you will be required to pay the balance in full (including all penalty interest and fees)?”</i></p> <p><i>Most Guarantor issues we see arise from well-meaning parents/grandparents acting as Guarantor/s for their child/grandchild (usually for a vehicle) and then the borrower defaults (usually because of loss of employment or after an accident in the vehicle). They are then devastated to discover that they are liable for the balance. In one case a bank officer explained to the mother of the young, but adult, borrower that she had to sign as Guarantor purely because she had a full Drivers' Licence and the young person was on a Learners' Licence. The car was subsequently written off in an accident, and the young person lost their job, and the mother was faced with a debt which she had no ability to pay.</i></p>

In some instances, the person has stood Guarantor for whanau/fono members as a cultural obligation. As a result there seems to be a lower sense of obligation to pay on the part of the original borrower – presumably again because of lack of clarity around the responsibility of the Guarantor. In one case our client stood guarantor for two different extended family members and both left the country a short way into the loan term and the lender did not attempt to pursue them, instead placing the demand on the Guarantor.

1.b. It could be useful to limit the ability to stand Guarantor to one loan at a time and until that loan is paid off. *Is there a mechanism, or could one be developed, to allow for this?*

2. Disproportionate 'liens' put on secured loans. *We are currently dealing with a creditor who has included an \$80,000 "caveatable interest" (a lien) on the land on which the borrower's home stands for a \$3,000* loan secured against their vehicle. With another client they have put a lien of \$25,000 against their home for a debt of \$4284** again secured against their vehicle.*

We are attempting to establish the legality of this. If it is legal, we consider that the amounts set do not meet the criteria of 'equitable'.

** at 18.95% interest plus fees for a total of \$3588.00*

*** at 18.95% interest plus fees for a total of \$6004.44*

3. Impacts of reduced physical postal services on time limited communications. *We often deal with clients who have a "limited time of action" set out in a letter from a Creditor or Debt Collector where the letter arrives after the time when action was required. This is especially important with respect to Repossession Notices and Notice of Court Dates.*

Some of this in some cases might be because the client did not open the letter when it arrived. However, in the course of our day to day business we frequently receive physical mail on or after the date in which action was required, so we are inclined to believe that there are underlying issues which need a solution. As we often receive letters seven to fourteen days after the apparent date of posting, our inquiries suggest one or a combination of the following causes:

*- **NZ Post delays.** In some cases this may be because of reduced delivery days to homes. In other cases there is no apparent explanation of what happened between the postmarked date and the delivery date.*

*- **Delays because of automation.** Inquiries have been made with creditors and also government departments and it appears that many letters are "auto-generated" by the computer system. The date on the letter may not reflect the actual time of either printing or enveloping, nor the actual posting. (Ironically, we have experienced a similar effect with some emails which arrive up to three days after their "send" date. Since we do not wish to suggest that these have been 'post-dated' we can come up with no credible explanation.)*

*- **Incorrect data entry.** It is possible that the auto-generating program has incorrect data input by the organisation.*

*Given how often this happens, we would like to see that **at least for all communications which have an 'action by' date** the following is implemented:*

- 1. An extra seven days is added to the 'action by' date to make allowance for postal delays;*
- 2. That all 'action by' dates fall mid-week, e.g. Wednesday, so that for instance, something which arrives on a Friday can be actioned even if it has been delayed in the post. It would also allow people time to make an appointment with an advocate such as a Budget Service/Building Financial Capability Provider to look for a solution short of whatever penalty is announced in the communication.*
- 3. That all such 'action by' communications be declared invalid if the first two points are not met.*