

Submission on discussion document: Consumer Credit Regulation Review

Your name and organisation

Name	Mark Francis
Organisation	Intercoll Limited

Responses to discussion document questions

Regarding the excessive cost of some consumer credit agreements

1	<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><i>Our company has no empirical evidence of problems resultant from high-cost lending as we, as a debt purchasing company, are selective as to what ledgers we tender for.</i></p> <p><i>As a debt collection company with strong and ever-increasing working relationships with budgeting services we are, however, repeatedly told of situations where high-cost lending is impacting on some borrower's ability to climb out of debt.</i></p> <p><i>Whilst risk is reflected through rate (high-cost lending) there should perhaps be consideration to a system whereby credit cannot legally be supplied to somebody who is over a "borrowing threshold" or has a certain dollar amount in unpaid defaults. This would be in the same way an intoxicated person cannot be served alcohol or a repetitive gambler can have themselves barred from gambling.</i></p> <p><i>Such a system however could lead to illegal lending so it would need to be introduced with a stronger commitment to the investigation of finance institutions and subsequent increased enforcement.</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>
2	<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>

3	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?
4	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.

Regarding continued irresponsible lending and other non-compliance

5	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?
6	If there are to be more prescriptive requirements for conducting affordability assessments, what types of lenders or loans should these apply to?
7	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?
8	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?
9	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?
10	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?

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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.

Regarding continued predatory behaviour by mobile traders

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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?

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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?

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

Regarding unreasonable fees

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

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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?

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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?

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

19

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?

Regarding irresponsible debt collection practices

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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?

Our company is only cognisant of our own practices which include:

- Refusal to purchase or attempt collection on statute barred debt
- Refusal to purchase debt that is not evidenced by documentation supporting the claim
- Demand for payment only being made against the party or parties that are legally liable however if the debtor authorises communication with a third party we may discuss the debt with them.
- No charges are to be added on purchased or assigned debt. This includes interest (pre or post Judgment), loading costs, quarterly payment fees or traces fees even if the initial contract makes provision for the addendum of these costs. Our belief is that a debtor who has not paid a debt for a time period sufficient to cause the debt to be assigned needs to be fiscally rehabilitated and not kept in a state of constant payment. We believe to keep adding charges to an account is at the detriment to our industry. It is our belief that we are unique in respect to the zero fees addendum and that we have been for many years.

Whilst Intercoll does make makes a demand for the debt to be paid in full at the commencement of the collection process we readily negotiate and agree to repayment amounts that are, we understand, similar to MSD and their recommended schedule when they require debts to be repaid to the NZ Government.

Many WINZ offices help their client base (who may have minimal budgeting skills) make payments on debt by setting up voluntary deductions on benefits so that the client is assured of making payments at regular intervals and amounts. This allows the creditor to collect the debt without resorting to expensive legal action that is invariably on-charged to the client through the Courts.

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

Intercoll Limited believes that the consumer must be provided with information supporting the debt and be afforded the opportunity to dispute that if evidence. In the case of assigned

debt this would include a copy of the Assignment Notice that was sent out at the time of purchase. Documentation would be, at a minimum:

- a) The name of the original creditor, the date of which the debt was passed to the debt collector and a copy of the original credit contract and any agreed variations
- b) A summary of the amount owing, and its compositions.
- c) Information about the rights of the borrower and contact information for budget advisory services

Intercoll Limited suggests the easiest and most practical way to address these issues is to make it a pre-requisite before negotiations begin that a debt collector must tell a defaulting consumer that they have a right, at any time, to request the above.

The delivery of such information can be either through email or hard copy and negotiations can be requested to be ceased until the information has been forwarded. We believe then that both parties will have all of the information to make relevant decisions.

Due to the nature of many defaulters there will be, we expect, significant claims that the information has not been received so, in fairness, the collection should be able to be commenced if the debt collection company can show receipt of email or proof of delivered hard copy.

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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?

23

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.

A definition of a contact must first be agreed to before the quantum of contacts can be discussed.

This is not semantics but there needs to be pragmatic discussion around contacts.

Is a voicemail that is not responded to an attempted contact or a contact? Is a text message that is not acknowledged an attempted contact or a contact and is an email that is not acknowledged an attempted contact or a contact?

Intercoll Limited believes a contact is, by very definition, an act of reciprocating communication and therefore voicemails, texts and emails not responded to are defined as contact attempts.

Consideration here also needs to take into account that contact attempts on discontinued email addresses, letters to last known address and calls and texts to numbers long since discarded are in fact not even contact attempts because the defaulting consumer has no

knowledge of them. The majority of these contact attempts are never received by the defaulting consumer so no stress could possibly be caused.

The number of contacts, as defined by Intercoll Limited, definitely needs some boundaries put in place but due to the practice of debt avoidance this figure needs to be a lesser number than contact attempts.

To make the matter more difficult to discuss the question should be asked, we suggest, about whether a judgment debtor can be contacted more than a defaulting consumer.

Again it must be brought to awareness that any restrictions on debt collection practices that are the catalyst for lowered collection rates will lead to the increased costs of goods and services due to higher write-off amounts for finance companies and utility companies. Once again this means that those customers that pay on time will be penalised. Lowered collection rates on assigned consumer debt will mean the purchase price for distressed ledgers will drop and again this will lead to higher costs for, ultimately, paying consumers.

It must also be mentioned that reducing or limiting the amount of contacts and contact attempts will impact on the ability of MOJ, IRD and MSD collection staff to collect fines, taxes and other government debt which will, in turn, cause what we assume will be a significant loss of government revenue. The impact of this can only be discussed by Senior Government staff but does need to be considered. We believe it is impossible to have one set of rules for the Government and one for private business so the application of any changes here will have to be considered from the impact on the collection of NZ Government debt.

The idea that a defaulting consumer can be protected from actual contact from a debt collector by stating that no further contact is possible will have a severe and detrimental effect on business in New Zealand. The Australian model that is considered as a guideline in New Zealand is seen by many in Australia as an overly constrictive document that resulted in a total and complete inundation of civil action that could have possibly been amicably collected. The irony again that the costs of legal action are likely borne by the debtor in the long term.

This cannot be understated.

Intercoll Limited fully supports an authorised third party asking a debt collection company to cease all further contact with a defaulting consumer. This offers protection to a defaulting customer who is experiencing stress for any reason however a system that allows the cessation of debt collection activity for any reason will force debt collection companies to resort to collection through the District Court automatically. As stated previously this will add substantial costs (if granted) in the form of service fees and legal costs and will also clog a civil debt recovery process that is already struggling. Staff costs in the Courts will increase to deal with the increase in civil litigation and again we believe a negative impact on collection rates cause inflation in financial and utility services.

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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.

Intercoll Limited would support a move that all debt collectors should be licenced in a manner similar to the Private Investigator licence.

This is a practice we, as a company, have adopted for many years by making all of our collection staff be licenced as Private Investigators. This ensures that all of our collection staff are independently vetted and approved. It is our belief that this would eliminate those

people from the industry that may be acting in such a way that brings negative health and social consequences.

Intercoll Limited would also support the banning of any debt collection activity on a Sunday.

Again this is a practice that we, as a company, have adopted for many years and we believe it gives those defaulting consumers that are under pressure a hiatus from the collection process.

Regarding other issues

25

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?

We have no experience of this.

26

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.

27

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?

Any other comments

We welcome any other comments that you may have.

Intercoll Limited suggests that debt collection companies must contact a debtor annually if they are repaying a debt and the purpose of the contact should be to ascertain if the current arrangement suits their current situation.

Many defaulting consumers actively avoid being located or contacted so a debt collection company must be able to contact third parties to ask questions to try and locate the consumer. Intercoll Limited believes these questions must be within the confines of the Privacy Act.

Paragraph 131 suggests that only the actual costs incurred by debt collectors acting as agents of creditors could be passed on to borrowers.....

Intercoll Limited has been advised anecdotally that in parts of Europe this strategy was adopted at legislative level and it was found in some cases to add more than the set percentage fee as is currently used in the NZ contingency model.

Costs were, we understand, aligned to the costs generated by law offices in Europe and were therefore added for letters, calls and texts.

Perhaps a limit should be set on the collection fee that can be charged on a debt based on the amount that is owed. A suggestion may be that a maximum amount for a sub <\$1000 debt be charged (20%) and a maximum for a >\$1000 debt (25%).

Discussion could be considered as to the extent that Government should set costs and rates in commercial enterprise. There is no doubt that collection cost charges must be capped but an understanding of costs inherent to debt collection companies must be achieved before the carte blanche capping of costs. Are those advocating such capping of costs aware, for example, of the costs of using data from the overseas owned credit bureaus and, if so, should these also be capped.

It may be a timely place to mention that more education needs to occur in the market that recoverable collection costs must only be added if they are agreed to at time of contract. It is a widely held belief that notification at time of invoice is sufficient and Intercoll Limited finds itself continually educating the disbelieving public over the contractual requirement related to these costs.

Intercoll Limited would appreciate and sees mutual value in being invited to discuss the NZ debt-purchasing market with the Select Committee meeting on this topic.

INTERCOLL LIMITED

CODE OF PRACTICE – OPERATION OF COLLECTION SERVICES

Code of Practice

Introduction

This document is a Code of Conduct for Intercoll Limited and its staff to provide assurance and accountability of best practice behaviour when carrying out its business as a debt recovery and investigation practice.

Principles

Intercoll is committed to the following underlying principles in the conduct of its business:

- To treating debtors fairly, in a professional and respectful manner.
- To being transparent in its dealings with debtors and their representatives.
- To ensuring clear, effective and appropriate policies and processes for engaging with debtors and that staff are trained in these policies and procedures.
- To engaging with stakeholder organisations to continuously improve standards and practice.

Application

A copy of this Code will be readily available and displayed at Intercoll's offices and published on its website.

Copies are available on request.

General Conduct

In the day to day conduct of its business, Intercoll will:

- Conduct its business lawfully and comply with all relevant legislation and regulation of the industry.
- Ensure staff and all authorised representatives are trained to undertake their collection activities in accordance with this Code including ongoing training in respect of best practice.
- Ensure that its identity is clearly disclosed by staff and/or representatives at all times, including contact details, and that its business is conducted in a way that will not confuse or mislead debtors, their representatives or any member of the public or imply an association or connection with any other organisation or person that does not exist.
- Use plain English in all communications.
- Treat all debtors with respect and fairness by ensuring compliance with the company's approved standards for approaching and communicating with debtors and their representatives when undertaking debt collection.

Communication

When communicating with debtors or their representatives or advisors, Intercoll will:

- Communicate in a courteous and respectful manner using plain language.

- Where it is identified as appropriate by the staff member or collecting agent, recommend or provide information to debtors about third party agencies that may provide external advice and/or support.
- Where applicable and reasonably possible, make all communications using any specified preferred method.
- Ensure telephone calls and physical visits are conducted at reasonable times and intervals as set out in company procedure, the size of the debt and previous conduct of the debtor (e.g. breach of court order, change of identity and address).
- Explain Intercoll's right to take further action, including initiating court proceedings, and identify its right to seek additional costs for such action (but not imply that action is underway or has been approved where that is not the case).
- Respond to all requests for information in a timely and reasonable manner, including to duly authorised representatives.

Privacy and Confidentiality

Intercoll recognises the importance of ensuring the right to privacy and confidentiality about a person's financial affairs and in order to protect these rights it will:

- Not leave phone messages that disclose the nature of the call or any details of the debt or debtor's personal information.
- Not discuss the debt with any person other than the identified debtor unless it has been authorised to do so by the debtor.
- Not disclose any information to any person in the course of trying to locate a debtor that might lead to identification of the purpose of any contact.
- Not unnecessarily intrude at a person's place of work in a manner that could cause distress or embarrassment or jeopardise the person's employment relationship.

Physical Visits

When visiting a residential or work address, Intercoll will:

- Act in accordance with the privacy principles in the Privacy Act 1993 and the standards set out above.
- If calling at a work address, take care not to interfere with the person's conduct of their employment duties.
- Clearly identify who they are prior to engaging in any discussion.
- Clearly identify the purpose of the visit.
- Advise that for the assurance of both parties all conversations are recorded.
- Provide information about Intercoll, including FAQs, as approved by the business from time to time and allow the person time to read such information.
- Leave copies of any documentation being relied upon or that has been signed with the person.
- Leave when requested to do so.

Arrangements to Pay

Intercoll will work with debtors and stakeholders to accommodate a reasonable and practical resolution, including:

- Agreeing to budgeting projections to identify residual income available for debt reduction, taking into account reasonable expense allowances (provided the debtor is open to providing information about proof of income, outgoings and other information that may be relevant to an accurate assessment of their financial position)
- Fair consideration of a reasonable offer to satisfy the debt through regular instalments or lump sum repayment.
- Automatic acceptance of repayment of \$10 per week in respect of debts less than \$5000 or \$20 per week for debts greater than \$5000 where such repayments are made through a voluntary WINZ or wage deduction (subject to any required approvals by Work and Income, MSD and/or the employer) if requested.
- Suspension of all collection and recovery action for a reasonable time.
- Suspension of all communication while any repayment plan is in place and obligations are met, subject to any legal disclosure obligations.

Hardship

Intercoll will assist debtors who are facing financial difficulty through genuine hardship (provided the debtor is willing to provide information and/or proof of their circumstance e.g. illness, redundancy).

This may include:

- referrals to not-for-profit financial mentoring and/or budgeting services for independent advice and support
- postponement of any collection or recovery action
- reduction in repayment amounts and/or a postponement of the payment period.
- Reduced settlements where possible.

Complaints and Engagement

Intercoll is committed to continuous improvement and ongoing engagement with community organisations assisting debtors manage their financial liabilities. In this context it undertakes to manage complaints promptly and to engage and consult with community services and budgeters with the intention of reasonably addressing issues relating to responsible financial accountability and genuine hardship.

In the first instance any formal complaints, including complaints arising from alleged breaches of this Code, should be addressed to:

Complaints Manager
Intercoll Limited
PO Box 21654
Henderson
Auckland
Email: complaints@intercoll.co.nz
Telephone: 09 8277701

For urgent matters or to discuss in person, calls can be made to the number above. However, for audit and control purposes all complaints must be registered in writing at some stage.

Intercoll will, from time to time contact budgeting services to discuss issues relating to maintaining best practice in the debt collection industry.

Status of the Code

This Code has been prepared by Intercoll Limited for the exclusive use of Intercoll in the management of its internal assurance and best practice procedures.

Breach of the Code is not in any way an admission of liability or breach of legal obligation by Intercoll and the Code cannot be used by third parties to support any action against the company or its employees or representatives.

Intercoll has the right to amend the Code at any time.