

Submission on discussion document: Consumer Credit Regulation Review

Your name and organisation

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Organisation	Justice Innovation Centre, Community Law Canterbury

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>Yes, we know anecdotally and from client files at CLC that there are significant problems. An analysis of our files may shed light on this, but we believe that a high quality research project examining all aspects needs to be carried out.</i></p>
2	<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>Neither cap option A nor its extensions provides much relief for low income small loan lenders, but might work for larger loans over longer periods.</i></p>
3	<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>We do not have this data but agree it needs to be collected through quality research. In principle, the closure of a number of smaller agencies may improve lending options and consumer protection for customers.</i></p>
4	<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><i>We believe you need to consult widely on this within the industry.</i></p>
5	<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><i>We do not know, but want to see legislation that protects low income, short term borrowers and people who borrow to meet a shortfall in living costs.</i></p>

Regarding continued irresponsible lending and other non-compliance

6	<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><i>The correct legislative response is effective redress and fines for the company. The duties of senior managers are properly imposed through the company itself and its directors. Keep the focus on the business, not the people.</i></p>
7	<p>If there are to be more prescriptive requirements for conducting affordability assessments, what types of lenders or loans should these apply to?</p>
	<p><i>Well the first point obviously to have clear guidelines and requirements for all. Second, there needs to be a clear balance between meeting the needs of people for a loan and their ability to repay. But there needs to be care that it does not become the responsibility to lenders to overly scrutinise the poor.</i></p>
8	<p>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?</p>
	<p><i>It would be overly onerous and have huge rights issues to take any stance different than this.</i></p>
9	<p>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?</p>
	<p><i>We think it is likely that the current advertising, which presents loans and loan companies in a very positive light, is contributing to the problems and this area needs much more work and research.</i></p>
10	<p>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?</p>
	<p><i>We have no data on this – research needed</i></p>
11	<p>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?</p>
	<p><i>There is no point in designing alternative options until we have a better understanding of the issues. We would warn against big change until the area has been properly researched.</i></p>
12	<p>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.</p>

Again, the problem here is lack of data rather than lack of ideas.

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?

We particularly like the transparent model outlined in the discussion paper. People need to know what they are paying and also need to know that there are alternatives.

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?

None at present.

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.

Needs to be kept simple. The addition of interest into the price of an item before purchase is predatory and needs to be banned.

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?

I think they should apply universally, be simple and very clearly understood. But this is a personal view.

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?

Not sure – research needed.

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?
	<i>I lean towards a relatively flat and simple fee table based on the actual costs of setting up a loan in an averagely efficient organisation.</i>
19	Which options for changes to fees regulation would you support? Which would you not support? Please explain how you made your assessment.
	<i>I quite like option C because of transparency, but again a personal view.</i>
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?
	<i>We may have some cases along these lines.</i>

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?
	<i>Research s badly needed in this area as evidence is highly anecdotal. We need a sober assessment based on real, current circumstances in order to assess whether changes are needed, or whether the problems are historical.</i>
22	What information should be provided to borrowers by debt collectors? When and how should this information be provided?
	<i>Well clear, plain English (possibly other languages) outline of the debt collectors role and the rights of the consumer.</i>
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?
	<i>In principle all the options presented are good. I do not know at present what is required.</i>
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.
	<i>I would like to see some research-based modelling.</i>

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.

As noted above, they all have positive aspects.

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?

No, but they would not come to us.

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.

I don't see why they wouldn't also be protected against predatory practices.

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?

[Insert response here]

Any other comments

We welcome any other comments that you may have.

We wish to emphasise the need for empirical research into the operation of the CCF Act: this could and should start with obtaining data from agencies which regularly deal with borrowers who enter high interest credit contracts. We note fn 3 of the discussion paper does make use of such data, but a much wider research project is necessary. Members of Community Law Centres Aotearoa, budget advisory services, whanau organisations and social support organisations will all have considerable experience in dealing with borrowers who have entered such contracts. It is highly possible that data so acquired will illuminate some of the areas where MBIE acknowledges that it currently does not have adequate information (though there is particularly intending to relate to lenders operating at lower levels of customer credit worthiness and with high interest rates and/or service charges and penalty fees).

In particular information should be sought as to some of the issues mentioned in the options paper but not explored there, such as the operation of the disclosure regime and other parts of the CCCFA in relation to persons with limited command of written and spoken English and

the degree to which adequate disclosure of terms of the loan contract (including penalties and service charges) is made to guarantors of loans.

We agree research needs to be done into the potential effects of the different options outlined in relation to levels of interest charged. Anecdotal information – as we have unfortunately not had time to research Community Law Canterbury files – inclines us to stress the importance of including the effect of service charges and penalty fees when calculating any maximum interest rate. We also offer, as a tentative suggestion, that the legislation could set as a maximum permissible interest rate expressed as a multiple of that set from time to time as the interest rate on judgment debts.

A meta-question – the regulatory model.

Much of the options paper focusses on alteration and tuning of the current regulatory model, without raising the possibility of need for research into the effectiveness of aspects of the architecture of the legislation. We suggest a further level of analysis is needed. Under the CCCFA, credit contracts are not illegal or void for non-compliance with the legislation or breaches of the Responsible Lending Code. The CCCFA does however contain provisions for statutory damages for breaches of the legislation. There are also provisions conferring on the courts a limited power to alter the terms of credit contracts in cases of particular hardship. It is suggested that research into the extent of the use of these provisions by borrowers is, at least, very highly desirable. It may well be that very few debtors are informed of these rights, and even fewer can fund litigation to seek such damages or variation. Without knowing more about the position, it is impossible to judge whether the regime of upholding the validity of contracts subject to a right to seek variation or damages is the best approach to both protect the legitimate interests of lenders complying with statutory restrictions and the interests of borrowers and creditors. If the statutory damages power and the alterations power are not being used in any substantial number of cases, or are not providing appropriate remedies in cases where the Act has been abused or debtors are subject to undue hardship, there may be a case for reconsidering whether non-compliant credit contracts should be illegal and ineffective, but with a power to seek validation from the courts, either under ss 70-82 of the Contract and Commercial Law Act 2017 or some sui generis regime. A change in the legal regime might significantly affect lender behaviour in some parts of the consumer finance market. Again further research and analysis would be necessary.

It may be possible to obtain data from the Department of Courts as to the frequency of any use of the relevant provisions of the CCCFA, but this would need to be supplemented by information from both borrowers and lenders allow judgments to be made as to the effectiveness of the relevant provisions. A survey of lenders - if adequately representative in nature - may be informative. Surveying borrowers is more difficult but again information from Community Law Centres, support organisations and – in this case - members of the legal profession may serve as a reasonable proxy for the viewpoint of borrowers.