

# Submission on discussion document: Consumer Credit Regulation Review

## Your name and organisation

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## Responses to discussion document questions

### Brief summary of the report behind our responses

At Write we conducted a study analysing the clarity of language and presentation in the contracts of short-term loan providers. Clear language makes information more accessible to readers, and is crucial to help consumers avoid fees and higher interest rates. It also benefits businesses by enabling them to build trusting relationships with customers and present transparent organisational practice.

We analysed the contracts and webpages containing the Terms and Conditions of nine different companies that provide short-term loans online. We looked at online companies because they rely more heavily on written forms of communication than stores with customer service representatives. We selected providers of short-term loans because they tend to have the highest penalties for customers when things go wrong. We asked two questions.

- How do short-term loan companies using plain language in their contracts to communicate to customers?
- How can their existing communication improve?

We found that all nine companies failed to write their contracts in plain language. They generally use clear and friendly language to describe information on their homepages, and other pages with general information. But we found recurring problems in their contracts — poor layouts and structures, confusing language, and errors and inconsistencies. Overall, this made all contracts and webpages with terms and conditions harder to read and understand.

The study we conducted looked at the language in the contracts and terms and conditions of online companies providing short-term loans. For more information on the study we did, or to request the report, please contact [enquiries@write.co.nz](mailto:enquiries@write.co.nz)

## Regarding the excessive cost of some consumer credit agreements

1

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?

Our main focus in this comment is the information that people are given on which they base

their decision to take out a high-cost loan.

Lenders assume that their clients understand their terminology. They don't, as Write has repeatedly confirmed when user-testing financial documents. In a study we conducted only five<sup>1</sup> of the nine websites we looked at define what it means to 'default'. It would also help if they clearly defined how compound interest works.

While each website has a loan calculator, consumers have to hunt for interest rates which aren't clear or prominent on their websites. This makes comparisons difficult to make for consumers. Websites should always have current information, and companies need to share how they worked out interest rates and repayment amounts with their consumers.

Companies also write their contracts in ways that imply they have more power than they actually do. Instead, the rights of companies and consumers should be clearly expressed and defined.

An example of unclear rights is in the phrase, 'You revocably assign to us'<sup>2</sup>. Anyone reading this quickly will likely miss the key-word hidden as an adverb. 'Revocably' comes from the word 'revoke'. To revoke something is to 'officially cancel (a degree, decision, or promise)<sup>3</sup>. So in this phrase, the customer might assign the company a right to something, but the customer has the power to take that right away again.

Some contracts also used the word 'irrevocably'<sup>4</sup> in a similar way, where again the key verb is hidden as an adverb. If the customer cannot revoke a right once given, this means it 'cannot be changed, reversed, or recovered.'<sup>5</sup>

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?

For this to be effective it must be written very clearly in the Law. Clear boundaries would need to be created so that companies all act according to the same standard.

Companies already have contracts that are poorly written and structured. These contracts do not make the rights of the customer or the company clear. The contracts also contain much jargon, and complex phrases that inhibit understanding, and alienate readers with lower-levels of literacy or with English as a second language.

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?

<sup>1</sup> , 'Loan Agreement Incorporating Disclosure Statement.', , ' Loan Agreement and Disclosure Statement .', , 'Our Standard Terms and Conditions for Personal Loans.', , 'Terms & Conditions.', and , 'Terms & Conditions.'

<sup>2</sup> , 'Terms & Conditions', accessed June 8, 2018,

<sup>3</sup> English Oxford Living Dictionaries, 'Revoke,' accessed May 30, 2018,

<https://en.oxforddictionaries.com/definition/revoke>

<sup>4</sup> , 'Terms & Conditions', accessed June 8, 2018,

<sup>5</sup> English Oxford Living Dictionaries, 'Irrevocably,' accessed May 30, 2018,

<https://en.oxforddictionaries.com/definition/irrevocably>

	<p>If all laws and regulations are written in plain language for creditors this would make it easier for creditors to communicate clearly to borrowers. Borrowers would find it easier to understand the repayment requirements and repercussions, encouraging borrowers to pay on time and not have a negative impact on their credit rating.</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>Capping interest rates will not necessarily increase consumer understanding or empower consumers — it just limits the power of the companies. Increasing the access consumers have to relevant information and other services (for budgeting, free legal advice, etc.) may prove more effective.</p> <p>If company rights and consumer rights are clearly expressed and defined within the credit contracts, this may prove more effective.</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>No comment.</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>Senior managers should understand and interpret CCCFA, and make sure that each loan complies with the Act before approving the loan.</p> <p>In addition, we recommend that any regulation makes it clear that an 'adequate policy' is one that is easy to read, understand, and act on.</p> <p>We suggest also making it an obligation for directors and senior managers to require plain language instructions for staff so that they understand the firm's obligations and can comply.</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>No comment.</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>

	No comment.
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>Yes, at the least the current requirements should be made mandatory. Risk warnings could be extended to all loans with high interest rates. All advertising, including website text, should be in plain language. They generally use clear and friendly language to describe information on their homepages, and other pages with general information.</p> <p>Both of these would empower consumers to better understand and potentially trust companies that provide loans. It would also raise the credibility of companies as long as it is in line with the expectations they create for consumers.</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>No comment.</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>Require that consumers sign a contract written in plain language with all applications, online and otherwise. Getting their contracts rewritten will cost companies, but in the long run facilitate accurate and open exchanges of information between companies and consumers. This will ensure consumers understand what is expected of them, and what they can expect from the company.</p> <p>Require companies to have a copy of their contract available to consumers and that all webpages with important information are up-to-date. Disclaimers stating that the information on the website may not be accurate and isn't legally binding defeat the purpose of having them there in the first place. The terms and conditions on the website are inaccurate and potentially misleading if they are different to what is in the contracts.</p> <p>Require more than a ticked box to agree to terms and conditions and direct debit authorities. A signed form for each of these would make sure consumers better understand what they are authorising.</p> <p>Credit companies might feel like other companies could copy their contracts. To avoid this, they could ask consumers to request a current copy of the contract so long as they have it somewhere clear on their homepage.</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> <p>We would support any options that reduce the power imbalance between lenders and</p>

borrowers by putting more specific and accurate information in the hands of borrowers.

## 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?
	Using precise and specific language in the regulations will help to maximise the benefits.
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?
	We recommend including a requirement for plain language. A requirement for contracts to be user-tested would further benefit borrowers.
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.
	No comment.

## 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?
	No comment.
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?
	No comment.
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?
	Write the law in plain language. Make it very clear to companies what is required of them so they don't have as much ability to mislead consumers. It will also help them write their contracts in plain language.

	It would also help if fees are calculated at per annum ,and that fee information is displayed prominently on websites.
19	Which options for changes to fees regulation would you support? Which would you not support? Please explain how you made your assessment.
	No comment.
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?
	Our study did not look at this.  However, we found that in the contracts, important information was often grouped together in long-winded sentences, and lengthy paragraphs. Few contracts separated it out into concise sentences or well-structured paragraphs. There were also issues with wording and jargon that made these sections harder to read and understand.

## 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?
	No comment.
22	What information should be provided to borrowers by debt collectors? When and how should this information be provided?
	One suggestion is that the rights of both consumers and debt collectors should be defined for consumers.  The information they provide should be the same as, if not mostly similar to what the CCCFA requires from financial service providers.
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?
	The biggest cost is the stress on those subjected to irresponsible debt collection. This can impact on health, and therefore ability to work, with downstream impacts on the borrower's family and community.

	<p>Increased disclosure benefits borrowers by empowering them with information.</p> <p>An affordable repayment plan likewise empowers borrowers, allowing them to keep their dignity.</p> <p>Limits on contact between debt collectors and borrowers may help to reduce stress. Making debt-collection agencies subject to the CCCFA may also help consumers manage stress.</p> <p>Making fees cost-based, if it reduces fees, will obviously benefit borrowers.</p>
24	<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>Our study did not look at anything linked to this.</p> <p>However, all communication between the parties should be conducted in plain language. Especially any written communication.</p> <p>Companies will incur costs to rewrite templates and change their current communication practices. But this will benefit consumers and companies in the long run by facilitating open communication and transparency.</p> <p>Short term, it would help ensure companies deal with customers in a respectful and informative manner.</p> <p>Long term, it could drive out the less honest companies and raise the reputation of the industry and its standards.</p>
25	<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>No comment.</p>

## Regarding other issues

26	<p>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?</p> <p>Our study did not look into this, but we have some questions.</p> <p>Is there other relevant legislation that they come under?</p> <p>Is this accurate coverage for them?</p> <p>Would a separate law/act specifically for these groups serve better?</p>
27	<p>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.</p>

Yes they should. A credit contract is still a credit contract no matter who takes it out. Companies can be exploited in much the same way as consumers, especially with high interest rates and fees that aren't made clear.

The smaller the business, the more important it is to give them the same level of protection in their enterprise as they have in their private life. Their understanding doesn't expand when they're buying a fridge for their dairy instead of one for their home kitchen.

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?

The CCCFA says that consumers are entitled to information in their own language. But are these translations certified? This could become a requirement of the Act.

If companies write their contracts with precise and specific language (that gets proofread), then the contracts would be easier to translate accurately. Some contracts and webpages for terms and conditions had errors and inconsistencies. Although this might be an issue for the Commerce Commission to address, it raises concerns about the accuracy and validity of information given in other languages to consumers.

## Any other comments

We welcome any other comments that you may have.

If the Act is written in plain language, it will lead by example. Companies would find it easier to comply with legal requirements, and may feel encouraged to communicate to their customers in with similar clarity. If companies find the laws that govern them are vague, their contracts will also be vague.

The Act could identify and define common terms used by these companies using precise and specific language. These terms would include, 'default', 'hardship variation', 'compound interest', 'guarantor', and others. The CCFA could also create the requirement that all contracts define the relevant terms they use with precise and specific language.

The Act currently requires that companies communicate in a straight-forward manner using plain language, but no specifications or guidelines on how to do this are present. As a suggestion, here are some requirements that could be asked of consumer credit contracts.

- Write short sentences that contain one main idea.
- Create clear paragraphs focused on a main idea.
- Minimise jargon and define key terms using specific and precise language.
- Write reader-focussed structures that group relevant information together.
- Make sure that all content is consistent.
- Write informative headings.



- Make sure that the formatting and layout aid readability instead of reducing it.
- Clearly define company writes and consumer rights using specific verbs.
- Use specific and precise language familiar to the reader to make sure that all relevant and important information is present and understandable.

## Other things we noticed that put consumers at risk

The clauses on defaulting were not written for the reader. Companies focused on their rights and powers under default, instead of addressing consumer rights or what could be done to fix it. Two of the five websites that did define 'default' had the definition separate to the clauses that explained the penalties and fees for defaulting<sup>6</sup>.

In the terms and conditions of two websites, they talk about 'on-screen confirmation'<sup>7</sup>. They say that 'by ticking the "confirmed" box titled "I accept the Terms and Conditions, the Privacy Policy and the Direct Debit Authority" you confirm that: (a) you accept these Terms and Conditions, the Privacy Policy and the Direct Debit Authority'<sup>8</sup>. The Direct Debit Authority policy was not found on either website.

Ticking boxes saying that consumers agree to the terms and conditions in the application process should not be allowed. Instead, a copy of the contract should be given to consumers. Ticking boxes is also meaningless when the Terms and Conditions are poorly formatted, poorly written, and lack sufficient information to be legally binding.

## Bibliography

. 'Our Standard Terms and Conditions for Personal Loans.' Accessed June 8, 2018.

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<sup>6</sup> . ' Loan Agreement and Disclosure Statement .' and . 'Terms & Conditions.'

<sup>7</sup> . 'Our Standard Terms and Conditions for Personal Loans.', and . 'Terms & Conditions'

<sup>8</sup> . 'Our Standard Terms and Conditions for Personal Loans,' accessed June 8, 2018,