Commerce Commission lender webinar – Hardship obligations

Kia ora koutou, I'm Carolyn, a lawyer in Credit Branch. Lezanne's talk is a great segue into what I'll be covering off, which are lenders' obligations when it comes to financial hardship. We'll also look at some of the notifications we've received over the last six months. If you have any questions, please put them in the chat and we'll have some time at the end for answers.

If anything raised the bar about Lender's helping borrowers with unforeseen hardship, it was without a doubt the COVID pandemic and supporting victims of cyclones and floods. At the time, the Commission put out guidance for lenders about responding to borrowers under financial stress. This guidance set out the Commission's views that lenders should work with borrowers beyond the limitations of the unforeseen hardship provisions. In other words, we expected more to be done than the minimum standard.

We also want to acknowledge that those times were just as stressful and difficult for lenders as they were for borrowers, and we commend lenders who went the extra mile and helped people when they needed it most.

As you may know, subpart 8 of the CCCFA sets out lenders' obligations when borrowers experience unforeseen hardship, and the Commission considers that to be a minimum standard. I won't be talking about the minimum standards in any great detail today, but you must ensure that at the very least you are providing your customers with their statutory rights when they qualify for relief on grounds of unforeseen hardship.
Larissa will add the links to the chat now:
https://comcom.govt.nz/business/credit-providers/hardship-applications
https://www.mbie.govt.nz/dmsdocument/26304-responsible-lending-code-april-2023

As a high-level overview, subpart 8 requires lenders to consider an application for unforeseen hardship when the borrower experiences an event such as a job loss, a relationship break up, illness or other reasonable cause, and they are unable to meet their regular loan repayments, but with a variation to their repayments, they could. Lenders must consider an application for a variation, but don't have to agree to it.

Lenders cannot charge a credit fee for considering an application, whatever the outcome, but may charge a reasonable variation fee if the application is accepted. If the application is declined, a reason must be provided. Borrowers may lose their eligibility depending on the level of their arrears, and time limits around arrears are set out in the Act. As this framework is only available to borrowers who qualify and is time bound, it can be very limiting.

As mentioned earlier, we thought it would be useful to use some of the notifications we receive as examples of what we are hearing about:

The first example is about a lender's policy and processes when considering hardship applications.

We received information that a lender put hardship applications on hold pending the resolution of complaints. We considered this a breach of the borrower's rights under section 55 to have their hardship application properly considered. If the hardship application was declined because time limits expired before the complaint was resolved, in our view, that is not a reason to reject a hardship application.

Example two is about a lender who failed to consider a hardship application when the borrower had lost their job because they first required the borrower to apply for Kiwisaver Hardship. We considered this to be a breach of section 55 as well as the Lender Responsibility Principles. The Code has specific guidance on this at point 12.44 that a lender should not require that a borrower has made an application for a Kiwisaver hardship withdrawal as a pre-requisite to considering a hardship application.

The third example is about a misrepresentation that borrowers under a secured loan do not have access to statutory hardship. We have also heard of this happening on multiple occasions from financial mentors. This is a serious misrepresentation as the rules under subpart 8 make no distinction between secured and unsecured loans.

These examples indicate that policies and processes are putting lenders at risk of breaching the requirements in the CCCFA and failing to meet the minimum standard.

I am now going to talk about what it means to do more than the minimum.

In our COVID guidance, in relation to financial hardship we said that 'any lender may work with any borrower at any time to provide relief from financial stress. In doing so, lenders should act in compliance with the Lender Responsibility Principles, most importantly, by exercising the care, diligence, and skill of a responsible lender. That means acting fairly and consistently with community expectations.

Our view that the lender responsibility principles require lenders to do more than the minimum is not limited to extreme events like pandemics and natural disasters. We expect lenders to continuously apply the principles when working with borrowers under financial stress. Chapter 12 of the Responsible Lending Code sets out comprehensive guidance regarding hardship.

For instance, lenders need systems in place to identify signs of financial difficulty. Lenders should ensure that staff and agents who communicate with borrowers are trained to recognise key signs of potential repayment difficulties, and to manage them appropriately, including being proactive in contacting borrowers with options to manage their repayments.

Earlier Lezanne mentioned that 67% of financial mentors have told us their clients' hardship was caused by an unforeseen event that led to persistent or permanent hardship, and that people were coming to them when they were already in arrears with their loans. We understand that persistent hardship is probably on the more difficult end of the spectrum for lenders to deal with and requires responses that go beyond the limitations of subpart 8.

Borrowers in this situation are likely to require ongoing help and may need to make some major financial adjustments. The Code suggests lenders should have referral protocols to financial mentors that can help to provide that extra support.

There is a lot more I can say about this topic, but I'll wrap up with this thought. Helping borrowers in financial hardship should not be a one-size-fits-all approach, you may need to offer personalised solutions depending on the circumstances. We encourage all lenders to be proactive and do more than the minimum to support borrowers in hardship.

I hope you found that useful. I will now hand back to Paul to open the floor up for questions.