

# Self-reporting Guidance for Lenders – consultation on draft

April 2024



## Scope and purpose

1. This guidance applies to lenders, mobile traders and other businesses who participate in New Zealand's credit markets<sup>1</sup> (referred to collectively in this guidance as lenders). It relates to potential breaches of the Credit Contracts and Consumer Finance Act 2003 (CCCF Act) and/or the Fair Trading Act 1986 (FT Act).<sup>2</sup>
2. Lenders should use this guidance when considering whether to report a potential breach that they have identified in relation to the above laws (self-report) to the Commerce Commission (Commission). This guidance is intended to help lenders understand the process to follow when reporting potential breaches of the CCCF Act and/or FT Act and the consideration that will be given to the self-report by the Commission. This guidance should be read in conjunction with the [Commission's Consumer Remediation Guidance for Businesses](#) and the [Commission's Cooperation Policy](#).
3. Although it is not mandatory, we encourage lenders to self-report potential breaches that they have identified of the CCCF Act and/or FT Act to the Commission. A self-report helps demonstrate a lender's approach and attitude to its compliance programmes, including how it addresses harm resulting from compliance issues. It will form part of the Commission's consideration of the appropriate enforcement response, but it does not prevent the Commission from taking any enforcement action that it considers appropriate (see paragraph 16 below).
4. The Commission also receives complaints and monitors credit markets to assess lender compliance with the CCCF Act and/or FT Act. Where we uncover non-compliance that was known or suspected, but not self-reported, this will form part of our consideration of the appropriate enforcement response (together with whether the lender's approach to remediation (if any) has been consistent with the [Commission's Consumer Remediation Guidance for Businesses](#)).

## What to report to the Commission and when

5. In determining whether a self-report should be made, lenders should give due consideration to the nature and extent of the issue, the potential harm that has been identified and the grounds on which the lender has formed the view there has been a potential breach of the consumer credit and/or fair trading laws.

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<sup>1</sup> For example, pawnbrokers as applicable.

<sup>2</sup> While only a court can ultimately determine whether a breach of the law has occurred, this guidance assumes that lenders have themselves assessed that an issue they have identified has likely led to a breach of the law. The guidance is therefore phrased to refer to any identified issues as being a "potential breach."

## Early flag

6. It may be appropriate in certain circumstances for lenders to flag a potential issue with us after identifying it, but before they have uncovered all relevant information about the issue. For example, when a lender communicates with another regulator about an issue that likely also relates to the CCCFA and/or FTA, it may be appropriate for the lender to also consider informing the Commission, via an early flag. While we will continue to welcome and engage with this type of early communication, before we can commence and appropriately assess a self-report, we require certain detailed and specific information. This means that an “early flag” will not be treated by us as a self-report.
7. The Commission also recognises that it may take time for the lender to fully assess the extent of the issue and there will be further information that comes to light as the lender continues with their assessment of the potential breach. To enable a lender to progress their assessment during their communications with the Commission, as well as provide the Commission with the appropriate level of information before we commence our assessment of an issue, this guidance sets out a two-stage approach for self-reports.

## Stage one

8. The Commission expects that a lender will have gathered sufficient information, in line with this guidance, before it makes a self-report to the Commission.
9. The following minimum details should be provided at the time the first report is made to the Commission:
  - 9.1 A full description of the identified issue (and whether it relates to an ‘early flag’), including but not limited to:
    - 9.1.1 What the issue is and relevant context as to how the issue arose.
    - 9.1.2 The date the lender first became aware of the issue.
    - 9.1.3 How the issue was identified, including whether the lender had received any complaints about the issue before it was identified (together with the details of those complaints if applicable).
    - 9.1.4 The scope of the issue – an estimate of how many consumers the issue affects/affected,<sup>3</sup> an estimate of the financial impact, and which product/s and/or service/s are impacted. This should include an

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<sup>3</sup> Note that the consumer may be the borrower and/or the guarantor.

explanation of how the consumer numbers, products and/or services have been identified.

- 9.1.5 The length of time the issue occurred for (including dates when the issue arose and when it was resolved or whether it is ongoing).
- 9.1.6 Whether this is a reoccurrence of an issue or a similar issue.
- 9.2 If the issue is going, any steps/action being taken by the lender to mitigate ongoing harm.
- 9.3 Whether the lender is considering any remediation, or has already remediated,<sup>4</sup> affected consumers. Lenders should include full details of the remediation (if any).<sup>5</sup> We note that remediation may be monetary or non-monetary and may need to be given in stages.
- 9.4 Whether the issue has been reported or there are plans to report the issue to any other regulators.
- 9.5 An explanation of why the lender is reporting it and the section/s of the CCCF Act and/or FT Act the issue covers.
- 10. If a lender has multiple issues to self-report to the Commission, we would expect the information contained in [9.1] to [9.5] to be provided for each issue.
- 11. Lenders should send the required information to [creditselfreports@comcom.govt.nz](mailto:creditselfreports@comcom.govt.nz). If the required information is not provided, the Commission will not treat it as a self-report. Self-reporting by a lender to any other regulator will not constitute an early flag or self-report to the Commission for the purposes of the CCCF Act or FTA.

## Stage two

- 12. After stage one, the Commission welcomes ongoing updates from the lender. However, in order to progress the issue in a timely manner, we ask that the further information at [13] below is provided to the Commission **within three months** of stage one. At any time during the process, the Commission may require the lender to provide the information compulsorily.<sup>6</sup>

<sup>4</sup> It is a requirement under s 48 of the CCCF Act for a lender to either refund or credit consumers any payment it is not entitled to receive as soon as practicable.

<sup>5</sup> Please refer to the Consumer Remediation Guidance for Businesses for further information on the Commission's view as to how to conduct a structured and consumer-focussed remediation process.

<sup>6</sup> Under section 98 of the Commerce Act 1986 (via section 113 of the CCCF Act) and/or section 47G of the FT Act.

13. The further information should include updates on the information initially provided to the Commission in stage one, particularly on any remediation completed or planned, and in addition:
  - 13.1 The final number of consumers affected by the issue and the total financial impact.
  - 13.2 The lender's full assessment and analysis of the root cause/s of the issue, including confirmation that the root cause has been fixed (if applicable).
  - 13.3 Whether the Board/Senior Managers have been informed of the issue.
  - 13.4 Any other relevant information about the issue that has come to light.
14. In some circumstances, the Commission may require additional information from the lender after stage two in order to make a decision on the appropriate response. Lenders will be notified as soon as possible if additional information is required.

## How the Commission may use the information from self-reports

15. On receipt of a self-report from a lender, the Commission will review the information and decide on the appropriate response in the circumstances, which may include taking no further action or opening an investigation. This decision is most likely to be made by the Commission after both stages one and two, but if there is sufficient information provided at stage one, the Commission could complete its assessment after that stage. Please refer to the [Competition and Consumer Investigation Guidelines](#) for further guidance on how the Commission screens and prioritises matters for investigation. Once the Commission has completed its assessment, it will notify the lender of its decision and, depending on the outcome, any next steps.
16. The early identification, reporting to the Commission and prompt remedy of any identified issues will form part of the Commission's consideration of the appropriate enforcement response where applicable. However, making a self-report will not prevent the Commission from taking a different view from the lender on whether there was a breach of any of the laws the Commission enforces, or what remediation is appropriate in the circumstances, nor from opening an investigation into the issue and/or taking any form of enforcement action. Please refer to the [Enforcement Response Guidelines](#) for further information on the Commission's enforcement approach.
17. Any remediation that the lender has provided to affected consumers or intends to provide (monetary or non-monetary) will also be taken into account in the Commission's assessment of the appropriate enforcement response where

applicable. For further information on remediation, please refer to the [Commission's Consumer Remediation Guidance for Businesses](#).

## Official Information Act

18. As with all information provided to the Commission, any person may request a copy of the self-report under the Official Information Act 1982 (OIA). Under the OIA all information is to be made available unless good reasons exist to withhold it. This is known as the principle of availability.
19. There are a number of reasons why the Commission may withhold information where it receives an OIA request. In some cases, there are conclusive reasons to withhold the information; the most relevant is where the release would be likely to prejudice the maintenance of the law, including our investigation.<sup>7</sup>
20. In other cases, the Commission must balance the reason for withholding information against the public interest in disclosure. Please refer to the [Competition and Consumer Investigation Guidelines](#) for further detail.<sup>8</sup>

## Sharing information with other agencies

21. The Commission is subject to information sharing provisions under the Commerce Act 1986<sup>9</sup> and is also a party to several memorandums of understanding regarding the sharing of information between different agencies.
22. We are permitted and/or required in a number of circumstances to provide information and documents that we hold in relation to the performance or exercise of our functions, powers or duties to a public service agency, a statutory entity, the Reserve Bank of New Zealand or the New Zealand Police.
23. That said, if there is an issue which requires reporting to more than one regulator, a lender must inform each regulator separately under each relevant regulatory reporting framework. The existence of inter-agency information sharing powers does not provide a valid reason for a lender to not report a relevant matter to the Commission.

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<sup>7</sup> See section 6 of the Official Information Act 1982.

<sup>8</sup> See section 9 of the Official Information Act 1982.

<sup>9</sup> See section 99AA of the Commerce Act 1986.