FACT SHEET

The Credit Contracts and Consumer Finance Act

Credit-related insurance, extended warranties and repayment waivers

This fact sheet provides an overview of credit-related insurance, extended warranties and repayment waivers. It explains a lender's obligations when a borrower buys these services in connection with a consumer credit contract or consumer lease.

When a borrower buys goods on credit or takes out a loan, they may also purchase credit-related insurance, an extended warranty or a repayment waiver. These services insure the goods, or the borrower's ability to repay their debt, or both.

If a borrower buys these services, it is important they understand what they are buying, what they are covered for, and the amount of cover they could get if they need to make a claim.

It is also important for borrowers to know that the Consumer Guarantees Act imposes minimum obligations on businesses to deal with defective consumer goods or services. Borrowers thinking about buying extended warranties should compare the benefits of the warranty with their rights under the Consumer Guarantees Act.

You can read more at www.consumeraffairs.govt.nz/for-consumers/law/consumer-guarantees-act

What is credit-related insurance?

Under an insurance agreement, an insurer agrees to compensate the insured person if certain events happen and those events cause the person loss. The insurer charges a fee or premium for providing this service. Credit-related insurance is insurance connected to a consumer credit contract or consumer lease.

Credit-related insurance can include:

- insurance over bought or leased goods, such as insurance over a car, home, or appliances bought on credit
- insurance to cover any difference between what a borrower's other insurance policies will pay out if the goods are damaged and the amount owed under a credit or lease contract
- insurance to cover any repayments and/or outstanding debt if the borrower is sick or injured, loses their job, or dies. This is sometimes described as consumer credit insurance.

Hardship and payment protection

Under the CCCF Act, a borrower has the right to ask their lender for a change to their credit contract if they suffer a hardship they couldn't have seen coming, such as illness or injury, loss of employment, the end of a relationship, or death of a partner or spouse.

A borrower who has a payment protection plan or insurance may well be covered for financial hardship. However, it is a good idea to apply for hardship at the same time as making an insurance claim, in case the claim is declined.

You can read more in our fact sheet *Consumer rights under a consumer credit contract – hardship* at www.comcom.govt.nz/consumer-rights-under-a-consumer-credit-contract-hardship

What is an extended warranty?

An extended warranty is an agreement where the lender agrees to repair or replace defective goods outside the normal warranty period. These warranties are provided over and above borrowers' rights under the Consumer Guarantees Act.

You can read more about extended warranties in our fact sheet *Misleading consumers about their rights* at www.comcom.govt.nz/misleading-consumers-about-their-rights

What is a repayment waiver?

A repayment waiver is where a lender agrees, for a fee, to give up their right to pursue the borrower for what they owe if the borrower is sick or injured, becomes disabled, loses their job, or dies and cannot make repayments anymore.

Does a borrower have to buy any of these services?

Maybe. Sometimes, a lender won't provide credit unless the borrower buys one or all of these services. But a lender can't require a borrower to buy credit-related insurance, an extended warranty or a repayment waiver, if it's not reasonable in the circumstances.

In the Commerce Commission's view, if a lender doesn't make sure that a borrower understands that buying any of these services is optional, the lender has required the borrower to purchase the service.

If it's unreasonable for a lender to require a borrower to buy these services the lender has to make a choice. The lender can provide credit (without the protections these services would provide) or not give the credit at all. Lenders don't have to give credit to everybody – they can choose who to lend to and who not to lend to.

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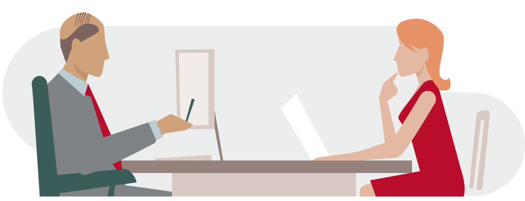

When would it be unreasonable for a lender to make a borrower buy these services?

If a lender requires a borrower to take out credit-related insurance, an extended warranty or a repayment waiver they must have good reason for doing so. In other words, the lender must believe it is necessary to protect themselves or the borrower from any risks to do with the debt.

In our view, it would be unreasonable for a lender to require a borrower to buy:

- income-protection insurance if the lender knew the borrower was unemployed
- insurance for goods bought on credit if the borrower already had contents insurance that would cover the goods
- a warranty that simply duplicates the manufacturer's warranty, such as a 12 month warranty on goods that have an 18 month manufacturer's warranty.

EXAMPLE

A finance company made borrowers insure their car loans against the risk of redundancy and injury. More than 1,500 borrowers were unemployed when they took out the loan, but were still sold redundancy insurance. A clause in the contract meant that even if borrowers got a job after taking out the loan and were then made redundant, they would not be eligible for the redundancy insurance. So there was no possible way for them to benefit from the insurance. In a settlement with the Commission, the company agreed to refund affected customers the cost of the insurance.

It is illegal for a lender to unreasonably require a borrower to take out credit-related insurance, an extended warranty or repayment waiver.

The court can cancel any unreasonably required insurance, warranty or waiver and may require the lender to repay the borrower some or all premiums paid.

If a lender misleads a borrower about the need for insurance, warranty or waiver or fails to get the borrower's agreement to purchase one of these services but still charges them for it, the lender is also likely to breach the Fair Trading Act.

What else must a lender do if a borrower is buying these services?

If a borrower is taking out credit-related insurance, an extended warranty or repayment waiver under a consumer credit contract or consumer lease and it is arranged by the lender, then the lender has a number of obligations.

A lender will have "arranged" insurance if either:

- they or a related company are the insurer or act as an agent for an insurer
- they or a related company receive commission from an insurer for any insurance their borrowers take out

  or
- they require borrowers to obtain insurance from a particular insurer.

Disclosure

The lender must ensure the borrower receives a copy of the terms of the insurance, warranty or waiver within 15 working days of when the cover is arranged.

The lender must also disclose the cost of any insurance, warranty or waiver as part of the initial disclosure required for a consumer credit contract.

You can read more in our fact sheet *Initial disclosure under a consumer credit contract* at www.comcom.govt.nz/intial-disclosure

Commission charge

A lender may charge a commission for insurance, a warranty or waiver but this must be reasonable.

Insurance refund if debt paid early

If a borrower pays back their debt early (this is known as full prepayment) and has consumer credit insurance, then the lender must pay back the borrower the unused portion of their insurance premium. The lender must deduct this amount from what the borrower has to pay to settle their debt.

This requirement does not apply to repayment waivers or extended warranties, only to consumer credit insurance.

The Credit Contracts and Consumer Finance Act (CCCF Act) sets out a formula that the lender must use to calculate this refund.

You can read more in our fact sheet *Payments under a consumer credit contract* at www.comcom.govt.nz/payments

EXAMPLE

A finance company charged borrowers for insurance they didn't need or didn't know about and didn't give them policy documents. The company also charged unreasonable fees for payment protection plans and insurance, and overcharged borrowers who paid back their loans early by not refunding insurance premiums. The finance company and its director were convicted under the CCCF Act and fined. The company also had to refund borrowers and write off loan balances.

Lenders and borrowers

The CCCF Act uses a number of different terms to describe lenders and borrowers, depending on the transaction:

- consumer credit contracts – creditors and debtors
- consumer leases – lessors and lessees
- buy-back transactions – transferees and occupiers.

In these fact sheets we use the terms **lender** and **borrower** to talk generally about credit transactions, but use the specific terms for consumer leases and buy-back transactions where it makes things clearer.

Contact us with information about possible breaches of the laws we enforce:
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