

LENDER WEBSITE REVIEW 2017/2018



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Purpose of this review

- 1 The Credit Contracts and Consumer Finance Act 2003 (CCCF Act) helps to protect consumers when they borrow money in New Zealand. This is its primary purpose. Its objectives include facilitating fair and transparent markets for credit and promoting the confident and informed participation of consumers in these markets.¹ To achieve these purposes, among other rules, the Act provides rules about interest charges, credit fees, default fees, and payments in relation to consumer credit contracts.²
- 2 The Act prohibits lenders from charging unreasonable credit and default fees and provides remedies for consumers who enter into oppressive contracts.
- 3 Changes were made to credit laws in 2015 to strengthen consumer protection and increase penalties for breaking the law. The changes introduced Lender Responsibility Principles that require lenders to exercise the care, diligence and skill of a responsible lender. The changes also introduced requirements that lenders publish their standard form contract terms and their costs of borrowing. This information assists consumers to understand and compare their obligations and the potential costs of borrowing money between credit products.
- 4 As part of our credit work, we have undertaken this review to better understand the potential scale of lender non-compliance with the requirement to publish standard form contract terms and costs of borrowing, and to better understand representations that lenders make about borrowers' rights to cancel their loans. We also sought to gather information about interest and fees displayed by a number of lenders to contribute to more informed prioritisation of the Commission's credit portfolio. We will use the information and analysis along with other relevant information to help identify lenders who may not be complying with the fee provisions or making false or misleading representations about consumer rights under the Fair Trading Act.
- 5 The research was carried out between May and December 2017 and results have been analysed by the Commission. While the research was carried out for internal purposes, we thought our findings may be of wider interest. This report summarises our findings and is intended as a general review of a range of lenders' websites in New Zealand at a point in time.



1. CCCF Act, section 3(2)(a) and (b).

2. CCCF Act, section 3(3)(c).

Methodology

- 6 We compiled the list of lenders that we reviewed from a number of sources:
 - 6.1 Commission enforcement registers
 - 6.2 Commission complaints data
 - 6.3 other lenders which came to the attention of the review project
 - 6.4 lenders registered on the FSPR as providing credit under credit contracts.³
- 7 We removed lenders from the list where we identified that they did not have websites, were not engaged in consumer lending⁴ or had been removed from the Companies Register.
- 8 Where a lender traded as multiple entities, each of which was itself a registered entity, the websites of these lenders were considered separately. Conversely, where a lender traded under multiple trading names, but these were not themselves registered companies, we considered only the lender's central website.
- 9 We reviewed each website to identify:
 - 9.1 whether the lender had published its standard form contract terms and its costs of borrowing clearly and prominently
 - 9.2 what the lender had published about the borrower's right to cancel the contract
 - 9.3 the number, name and amount of fees published by the lender
 - 9.4 the interest rate (or range of interest rates) charged by the lender.
- 10 In assessing whether a lender had clearly and prominently published its costs of borrowing and standard form contract terms we considered whether the information would catch the attention of a reasonable person. In carrying out this assessment we considered that a reasonable person would be able to find the information if it was clearly labelled or in an obvious place.⁵ Where the information was not published in this way we considered it was at risk of not being clearly and prominently displayed.

Dataset limitations

- 11 Our review was essentially a 'snapshot' of each website at the time it was reviewed. This means that not all data in our final spreadsheet is up to date at the time of publication of this document and may have changed since our review. In some cases, we did revisit websites and update the data but most data did not change since the early stages of the review.
- 12 Our review has enabled us to identify the information lenders were displaying on their websites in New Zealand at a point in time. Lenders are constantly changing and updating their websites. Lenders that did not have a website at the time of the review may now have one and information may have changed or been updated.

3. We did not include major banks within this website review.

4. Lenders offering "consumer credit" included those clearly offering personal loans, home loans and finance on vehicles and other products.

5. For instance, if a tab on the lenders' website was clearly labelled "terms and conditions" this may be considered clearly and prominently displayed.

What the law says

Publication of standard form contract terms and disclosure of costs of borrowing

- 13 Section 9J and 9K of the CCCF Act set out lenders' obligations to publish their costs of borrowing and standard form contract terms.
 - 13.1 Section 9J(3)(a) provides that if a lender has an internet site it must display "prominently and clearly" a copy of its standard form contract terms on that site.
 - 13.2 Section 9K(3)(a) provides that if a lender has an internet site it must display "prominently and clearly" on that site its credit fees, default fees and annual rates of interest (and default interest charge rates).
- 14 Some lenders displayed only some of their costs of borrowing, with some of their credit fees, default fees, or interest rates missing from their websites. We identified these lenders separately from those who failed entirely to display any of their costs of borrowing.

Cancellation rights

- 15 Borrowers have 5 working days from the date that the lender gives initial disclosure to cancel a consumer credit contract. When a lender has given disclosure depends on whether disclosure is provided in person, by post or by email.
- 16 A lender must not attempt to contract out of the CCCF Act or misrepresent borrowers' rights to cancel the contract. Wrongly stating the time that a borrower has to cancel a consumer credit contract can breach consumer laws.

Possible breaches of display requirements and cancellation provisions

Data overview

- 17 As part of the data collection stage we identified 420 lenders, excluding major banks, which potentially provide consumer credit.⁶
- 18 We reviewed the websites of 215 lenders⁷ for compliance with display requirements of standard form contract terms and costs of borrowing, as well as cancellation provisions.
- 19 Of these 215 lenders, 46 (21%) may have failed to meet one or more of their obligations to:
 - 19.1 clearly and prominently display the costs of borrowing
 - 19.2 clearly and prominently display standard form contract terms
 - 19.3 accurately represent a borrowers' cancellation rights.

6. Of the 420 potential lenders, we excluded 195 lenders which we were unable to locate websites for; 54 lenders were removed from the Companies Register, a further 14 which were not found on the Companies Register and two which were in the process of being removed; seven which were in receivership or liquidation; and one which was no longer offering loans in New Zealand. In total we removed 205 lenders from the original set of 420.

7. The subset of 215 lenders with websites will be used to draw conclusions.

- 20 Of the lenders who did not comply with the requirement to publish costs of borrowing, 89% also did not comply with the requirement to publish standard form contract terms.
- 21 We observed that lenders often included disclaimers within their terms and conditions and in the costs of borrowing information.⁸ These disclaimers often stated that the lenders have the right to amend the fee and/or interest amounts and that they have the right to charge any other default/recovery fees that may become payable. Lenders are obliged to display accurate costs of borrowing information and therefore websites should be updated if the costs of borrowing change. The use of disclaimers potentially makes it difficult for consumers to have confidence in the accuracy of the information that they are provided and to make comparisons between lenders and make informed decisions.

Standard form contract terms

- 22 Of the 215 lenders reviewed, 39 (18%) failed to comply with the requirement to publish their standard form contract terms clearly and prominently. The review identified that:
 - 22.1 30 lenders did not display terms⁹
 - 22.2 nine lenders displayed terms but may have not done so clearly and prominently.
- 23 For example, one lender’s standard form contract terms provisions were exceptionally difficult to find. To locate these provisions, the borrower would need to click on a small link at the bottom of the page titled “More information”, then click further on “Terms and conditions”.

Costs of borrowing

- 24 Of the 215 lenders reviewed, 38 (18%) failed to comply with the requirement to publish their costs of borrowing terms clearly and prominently. The review identified that:
 - 24.1 nine lenders did not display any of their costs of borrowing¹⁰
 - 24.2 23 lenders displayed only some of their costs of borrowing¹¹
 - 24.3 six lenders displayed their costs of borrowing but may not have done so clearly and prominently.
- 25 The following are examples where lenders appear not to have met the costs of borrowing display provisions:
 - 25.1 One lender’s website did not display all of its costs of borrowing. The website stated that other fees may apply which the borrower could only find out by contacting the lender.
 - 25.2 We had difficulty locating another lender’s costs of borrowing. A potential customer would have needed to look in the FAQ section on the lender’s website under the “customer service” tab in order to find these. We considered that the location of these important terms would potentially not be immediately obvious to borrowers.

8. We did not collect specific data on this point.

9. No standard form contract terms could be found following a thorough examination of the lenders’ websites.

10. No costs of borrowing could be found following a thorough examination of the lenders’ websites.

11. The lenders’ websites display some costs of borrowing but are missing other major costs of borrowing, including credit fees, default fees and annual rates of interest.

Cancellation rights

- 26 While it is not mandatory to display cancellation provisions on the website, it would breach the CCCF Act (and be misleading under the Fair Trading Act) to provide for cancellation rights that are inconsistent with s27 of the CCCF Act.
- 27 Of the 215 lenders reviewed, seven appeared to have misrepresented the borrower's cancellation rights.¹²
- 28 For example, one non-compliant lender displayed the borrower's cancellation rights, however these stated that the borrower may cancel within 5 working days from disclosure being made in any form. In fact, a borrower has different periods within which to cancel depending on how disclosure is made by the lender.¹³

Fees and interest displayed by lenders

Data overview

- 29 The CCCF Act does not prescribe how lenders should name fees or impose a limit on the number of fees that a lender may apply. We found it challenging to categorise the large variety of different fees lenders published on their websites for the purposes of this review. Our experience provided an insight into the potential difficulties consumers may face in trying to understand the costs of borrowing, compare lenders, and make informed borrowing decisions.
- 30 In total we identified over 500 differently named fees.
 - 30.1 While some lenders had clear singular values for their fees, others listed fees as ranges or percentages which create difficulty in trying to harmonise the data to create summary statistics.
 - 30.2 Some lenders varied the amounts of specific fees based on the size and/or type of loan taken.
 - 30.3 While some lenders display a relatively low number of fees, we observed others that displayed up to 44 different fees.¹⁴ The median number of fees displayed per lender was six.
 - 30.4 A number of fees we found on lenders' websites were presented as fees for optional services (such as an additional statement fee), or were avoidable (such as various default fees and repossession charges) or discretionary. The nature and extent of the fees presented could complicate consumers' understanding and make it difficult for consumers to anticipate the total fees payable.
- 31 Some lenders had different names for what seemed to be similar or identical fees. Accordingly, for our purposes we established five general categories of fees and allocated all disclosed fees to the category we considered most likely to apply. These categories are listed below and commentary on each follows:
 - 31.1 establishment fees
 - 31.2 general fees
 - 31.3 default fees.
- 32 We also recorded:
 - 32.1 the rate(s) of interest charged by the lenders
 - 32.2 the default interest rate charged by the lender.

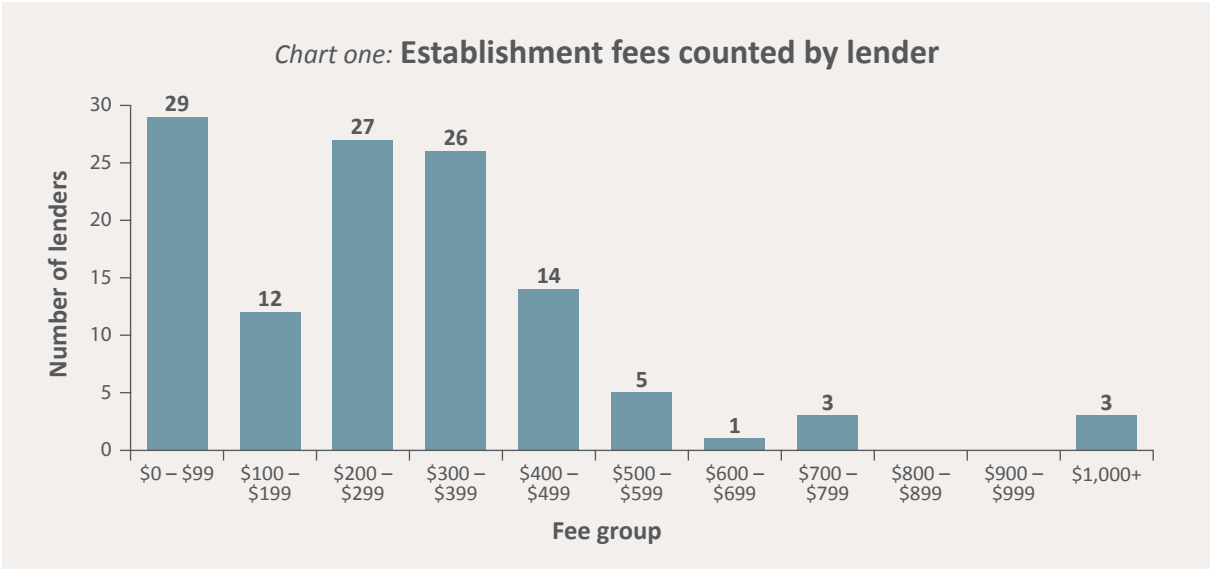
12. 99 lenders (46%) did not display cancellation rights on their website. We have been unable to assess whether or not these lenders accurately represented borrowers' cancellation rights in the terms of the contract.

13. Refer to Attachment A for guidance on the law relating to borrowers' cancellation rights.

14. One lender for example, displayed 44 fees. Fees listed included a "broken promise" fee of \$10, a fee of \$6.50 for a text message, an arrears letter of \$20, and a "monitoring fee" of \$20.

Establishment fees

- 33 For the purposes of this report, we treated all fees associated with setting up the loan agreement and advancing money to the borrower as being “establishment fees” even if they were called something else.¹⁵
- 34 In our review of the 215 lenders’ websites, 120 lenders showed establishment fees. Some lenders displayed multiple fees for establishing a loan with a total of 149 establishment fees across the 120 lenders.¹⁶
- 35 While there were 18 distinct variations on the names of establishment fees listed on lenders’ websites, we consolidated these fees into three distinct sub-categories (numbers include fees represented as a range):¹⁷
 - 35.1 fees titled “establishment fees” (117 fees), varying from \$14 to \$5,000¹⁸
 - 35.2 fees involved with credit checking or registration (26 fees), varying from \$5 to \$40
 - 35.3 application, booking and processing fees (6 fees), varying from \$45 to \$350.
- 36 *Chart one* below shows the distribution of establishment fees between the 120 lenders in the dataset.¹⁹



- 37 The median establishment fee displayed was \$275, with 10% of lenders listing an establishment fee of \$500 or more.²⁰

15. Section 5 of the CCCF Act provides that an establishment fee is a fee or charge to the borrower that relates to costs incurred by the lender in connection with the application for credit, processing and considering an application, documenting a loan contract or advancing credit to a borrower.

16. One lender for example, displayed three fees within this category: a credit monitor fee, a credit check fee and an establishment fee. It is assumed that a new application for borrowing would attract all three fees.

17. Under the broad category of establishment fees we distinguished between fees that are specific and used for narrower purposes or may only apply if a borrower elects a particular option (such as a Personal Property Securities Register (PPSR) check and registration fees) and fees that are broader and seem more compulsory in establishing a credit contract. The latter group included establishment fees, credit check fees, application fees, processing fees and booking fees.

18. One lender listed an establishment fee of \$0.

19. Note that since there was a mean of only 1.3 establishment fees per lender, *Chart one* only includes the highest fee provided by each lender. Where fees were displayed as ranges, the midpoint of each range was used as a data point.

20. In displaying fees and interest data in graph form, we summarised the data as follows: where the particular fee displayed an amount “up to” a certain value, the entire range was considered; where the amount of a particular fee differed depending on the type of loan, we summarised this information as a range with the minimum to the maximum fee stated; where a fee amount was displayed as a range, the midpoint of each range was used as a data point.

38 Three lenders listed establishment fees in excess of \$1,000. All three appear to specialise in the niche mortgage market including short term lending to property investors and high interest lending to undischarged bankrupts. Fees were described as:

38.1 an establishment fee of \$2,000 to \$5,000 depending of the amount borrowed

38.2 a fixed “loan application” fee of \$1,900

38.3 a range of establishment fees between \$500 and \$2,000 depending on the loan amount borrowed.

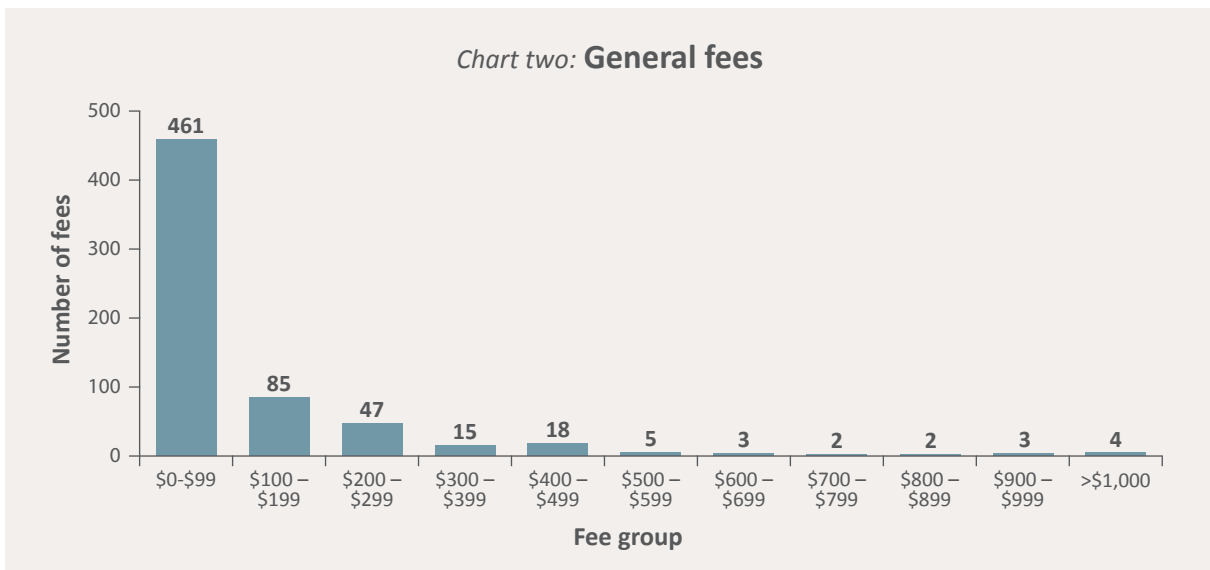
General fees

39 The general fee category encompasses a variety of different fees which relate to the administration and maintenance of a loan or account. These include periodic account administration fees, statement fees, early repayment fees and legal fees, among others.

40 A number of the general fees are only incurred in specific circumstances. For example some lenders listed fees for additional documents or statements which will only be incurred on request by the borrower.

41 135 lenders displayed a total of 706 general fees, with a mean of five fees per lender. Additionally, 61 fees were not stated as numeric values. There were over 250 variations of fee names. 110 lenders had multiple fees displayed in this category, for example one lender displayed 17 general fees.

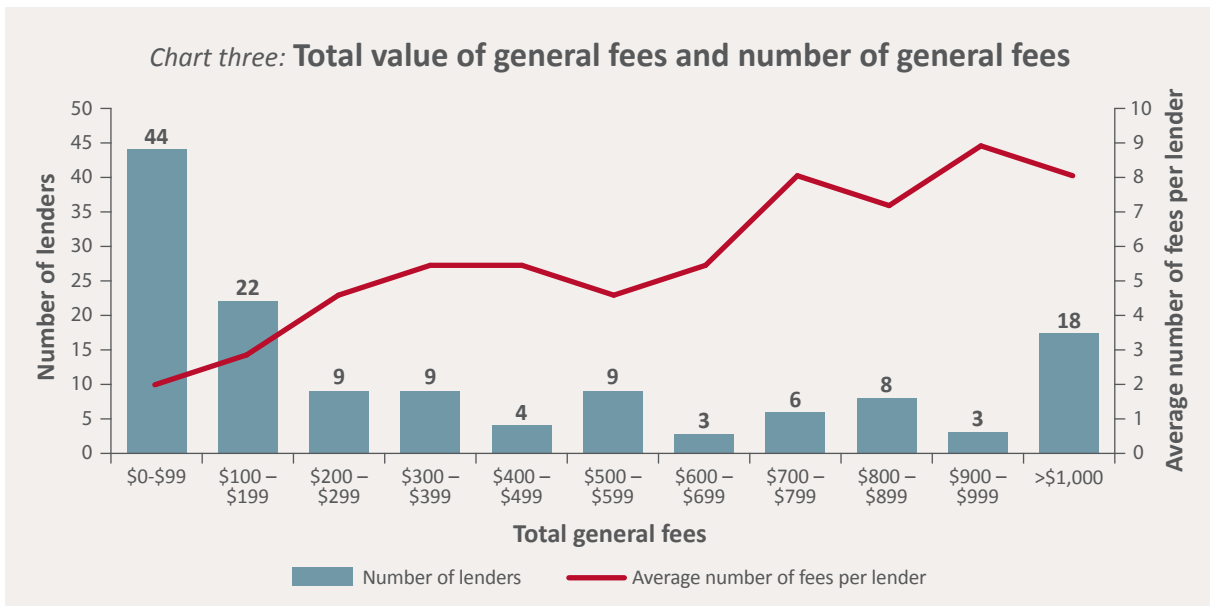
42 *Chart two* shows the distribution of the general fees listed by the lenders reviewed.²¹



43 The most expensive general fees were legal fees of \$1,840.

21. Lenders displayed an average of almost five general fees each. In order to best compare general fees against each other, default fees have been considered with each fee displayed as separate, regardless of how many fees a lender displayed. Where fees were displayed as ranges, the midpoint of each range was used as a data point.

- 44 *Chart three* shows the distribution of the sum of general fees listed by each lender reviewed against the average number of fees displayed by each lender.

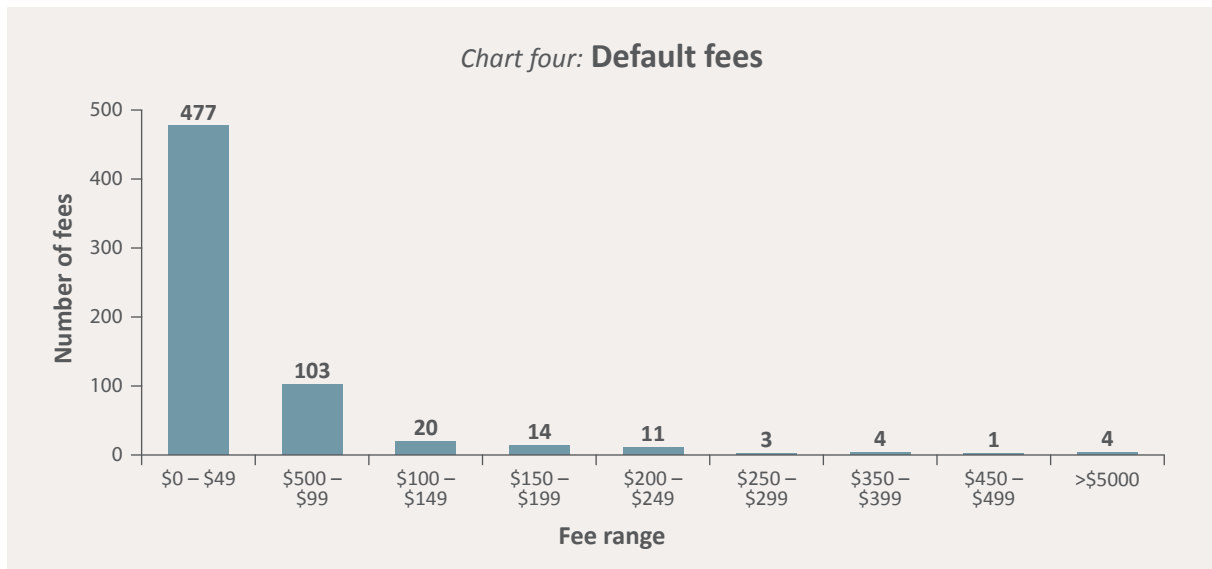


- 45 For example, of the 135 lenders which listed a general fee, there were 44 lenders whose general fees totalled up to \$99 and they displayed an average of two fees each.
- 46 We observed that there is a correlation between the number of general fees a lender displayed and the total sum of these fees. As the number of general fees displayed increased, the total value of those fees also increased.
- 47 We observed that some lenders listed a high number of fees in the general fees category. The largest total amount of general fees from one lender was \$4,890.50. Another lender displayed a total of \$2,625 general fees.



Default fees

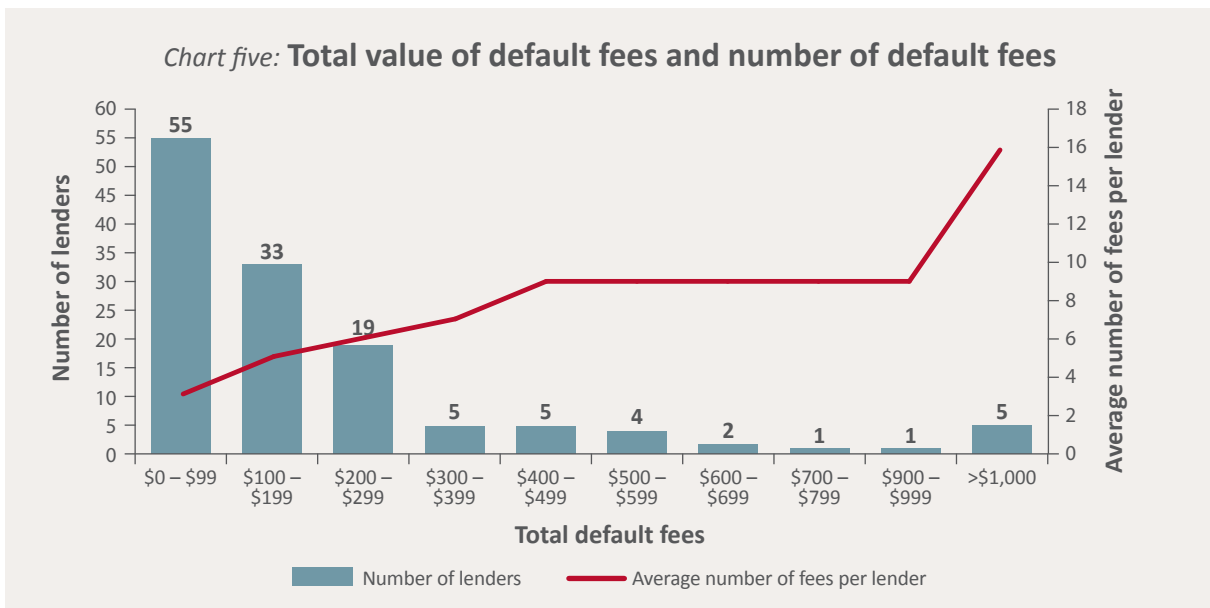
- 48 132 lenders displayed 738 various default fees with 239 variations in fee names. 101 default fee amounts were stated as “based on actual costs incurred”, or similar, rather than a specific amount.
- 49 *Chart four* shows the distribution of default fees listed by the lenders reviewed.²²



- 50 Four lenders listed fees of \$500 or more, with fees described as a:
- 50.1 fee for a Property Law Act notice (\$745)
 - 50.2 “repossessed vehicle sales fee” (\$500)
 - 50.3 “court fee” (\$500)
 - 50.4 default fee (\$500).

22. Lenders displayed a mean of almost five default fees each. In order to best compare default fees against each other, default fees have been considered with each fee displayed as separate, regardless of how many fees a lender displayed.

- 51 *Chart five* shows the distribution of the sum of default fees listed by each lender reviewed. For example, there were 55 lenders whose default fees totalled up to \$99 and they displayed an average of three fees each.



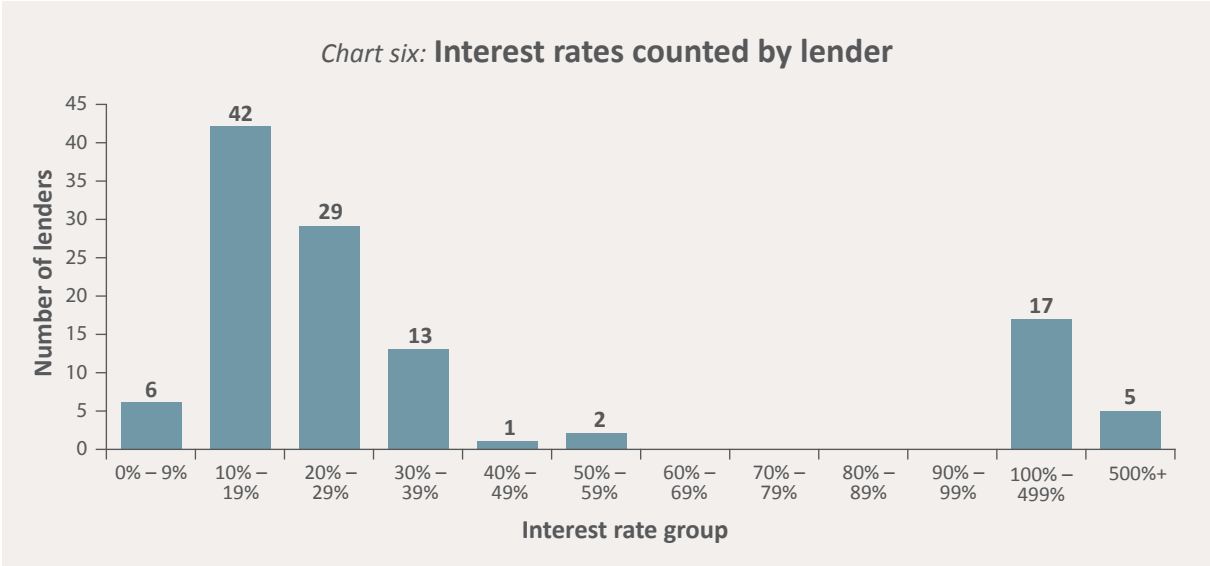
- 52 We observed that there is a correlation between the number of default fees a lender displayed and the total sum of these fees. As the number of default fees displayed increased, the total value of those fees also increased.

- 53 Five lenders listed a total sum of default fees greater than \$1,000, displaying a total of:

- 53.1 \$1,325.65 from the 30 default fees displayed
- 53.2 \$1,299 from the 21 default fees displayed
- 53.3 \$1,105 from the 15 default fees displayed
- 53.4 \$1,080 from the 15 default fees displayed
- 53.5 \$1,020 from the 12 default fees displayed.

Interest rate

- 54 Interest rates are not capped by the CCCF Act. The Act does allow oppressive contracts to be reopened. The courts can reopen contracts where they find interest rates to be oppressive.²³
- 55 This section has been included as an indication of the interest rates we have observed in the sector as part of this website review.
- 56 *Chart six* shows the distribution of interest rates displayed by the lenders that made this information available online.



- 57 Of the 217 lenders reviewed, 115 displayed a borrowing rate of interest. Of these, 23 interest rates were displayed as discrete percentages, while 78 lenders displayed a range.²⁴ 14 lenders, who offered multiple lending products, listed different interest rates for each loan type.²⁵
- 58 Interest rates were displayed either as fixed rates or as ranges. The five lenders which displayed a maximum interest rate (whether a fixed percentage or an upper limit of a range) of over 500% per annum, fall within the definition of high-cost short-term loan providers (also known as payday lenders).²⁶
- 59 23 Lenders displayed a fixed interest rate. The lowest fixed rate displayed was 7.95% per annum and the highest rate, displayed by two lenders, was 547.5% per annum. Both lenders which displayed the highest rate were high-cost short-term lenders which appear to focus on borrowers who need cash urgently. Another lender stated that they do not charge interest on their loans.
- 60 76 lenders displayed interest rates as a range. Among these ranges, the lowest rate displayed was 4.86% per annum and the highest was 803% per annum. Six lenders displayed interest rates above 400%; these were 803%, 694%, 624% (two lenders) and 480% (two lenders).
- 61 16 lenders listed varying interest rates for the types of loans they offered. For example, one lender displayed interest rates from 75%–85% per annum on their secured loans and 95%–130% per annum on their unsecured loans.

23. For instance, the High Court in *Diners Club (NZ) Limited v District Court at Auckland and Brooker* [2017] NZHC 2616 noted that the charging of interest rates over 500% was clearly oppressive: <http://www.comcom.govt.nz/the-commission/media-centre/features/important-ruling-on-credit-contracts/>.

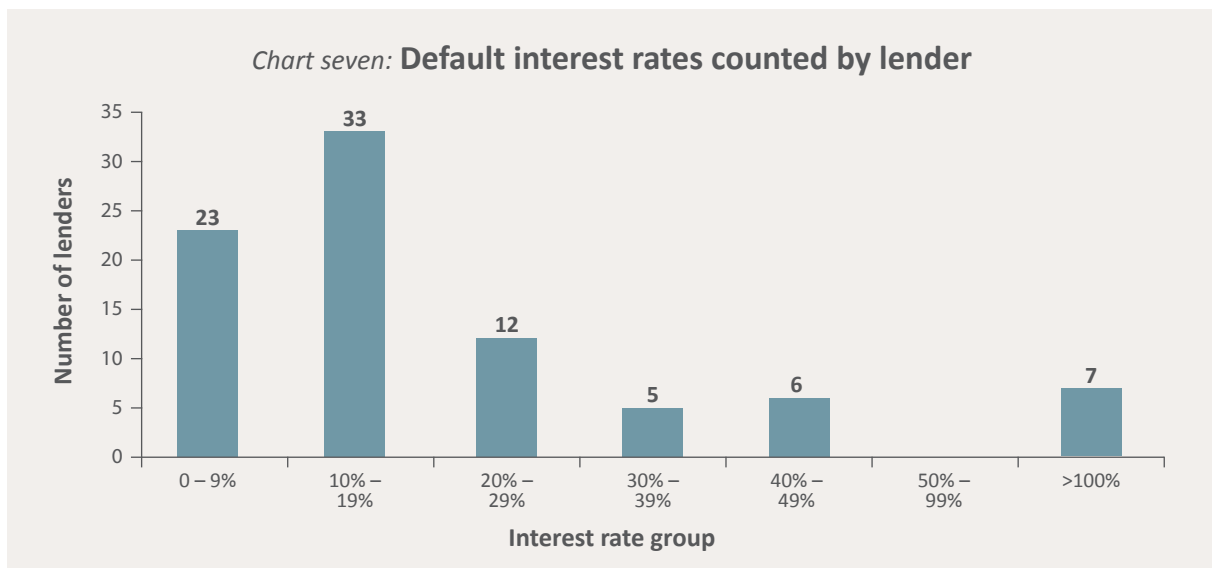
24. Section 9K(5) of the CCCF Act allows lenders to represent rates of interest as a range in publicly available information. The actual rate of interest for each contract will still have to be disclosed as per s17 of the CCCF Act.

25. These were treated as a range for comparisons.

26. The Responsible Lending Code defines a high-cost short-term loan as a loan which is unsecured (other than an assignment of wages) for a term of not more than 12 months and subject to an annual interest rate of 50% or more.

Default interest rate

- 62 88 lenders displayed a default interest rate as part of their costs of borrowing. It is not immediately clear whether the remainder of lenders charge default interest.
- 62.1 Two lenders displayed default interest rates as non-numeric values. One stated that the default interest was “as per loan contract” but the rate is not stated on the website. The other stated that the default interest rate will be the same as the annual interest rate, which itself was stated as a range.
- 62.2 77 lenders displayed their default interest rate as a discrete percentage.
- 62.3 One lender displayed a monthly rather than annual default interest rate (the CCCF Act requires interest to be displayed as an annual rate).
- 63 For those lenders who displayed their default interest rate as a discrete percentage, default interest rates ranged between 2% and 536.55% per annum. The maximum rate was listed as a fixed rate by two lenders.
- 64 While some lenders clearly stated whether the default interest rate applied on top of, or instead of, the borrowing rate of interest, in some instances it was unclear how the default interest applied. For the purposes of this review, we assumed that, unless otherwise stated, default interest rates applied instead of the borrowing rate of interest.
- 65 *Chart seven* shows the distribution of default interest rates between the 86 lenders. The most common single rate was 10%, listed by 25 lenders. As shown, the majority of lenders tend to display default interest rates lower than 30%.²⁷



- 66 The seven lenders that listed a default interest rate of over 100% per annum are high-cost short-term lenders. Those annual interest rates were: 536.55% (two lenders), 440%, 365%, 104% (two lenders) and 100%.

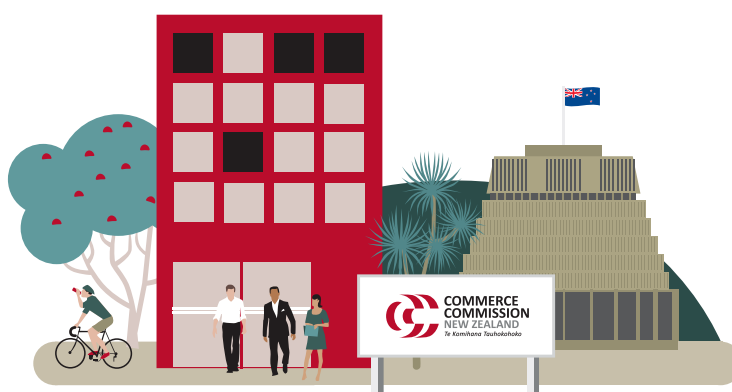
27. Default interest rates, unless otherwise stated, were summarised as compounded annual rates on loan amounts outstanding. Compounded rates include the effects of compounding if compounding happens more often than once per year.

What action have we taken?

- 67 In undertaking the analysis for this project, we identified a number of possible breaches of sections 9J(3) and 9K(3) of the CCCF Act. This is as a consequence of a lender potentially failing to display standard form contract terms and costs of borrowing on their websites, as well as possible misrepresentation about borrowers' rights to cancel contracts.
- 68 If a lender does not comply with sections 9J(3) and 9K(3) of the CCCF Act the Commission can seek a declaration or an injunction effectively requiring the lender to publish the required information.
- 69 The Commission initiated a compliance project to explain what we had observed to lenders, and provide information and guidance regarding their obligation to publish standard form contract terms and costs of borrowing under the CCCF Act.
- 70 We have contacted the majority of the lenders identified and have issued an information letter outlining the possible breaches of the Act.²⁸ Most lenders who were contacted confirmed a willingness to make changes to achieve compliance. Each lender who was issued an information letter will be monitored for ongoing compliance.

What will we do next?

- 71 A review of ongoing compliance by the lenders we contacted as part of the compliance project is scheduled for later this year.
- 72 The data collected will continue to support the Commission's work in the credit sector.



28. We identified some lenders that were providing brokering services or non-consumer lending, rather than consumer lending. We did not issue compliance information to these lenders. See Attachment A for an example of the information letter issued to lenders.

Attachment A: An example of an information letter issued to lenders

Credit Contracts and Consumer Finance Act: Internet site review

The Commission has reviewed the internet sites of registered credit providers. The review was undertaken to establish whether consumer credit providers are complying with their obligations under the Credit Contracts and Consumer Finance Act (the Act) to provide “standing disclosure”.

The Act provides that if a consumer credit provider has an internet site it must display certain information. The Act also has requirements about how that information should be displayed.

As discussed during our telephone discussion we are writing to you as we have identified that you may be failing to display information on your internet site, as required under the Act.

We have also identified that your internet site may provide incorrect information about a borrower’s rights to cancel a credit contract. Misrepresenting a borrower’s right to cancel their contract could breach provisions of the Act or the Fair Trading Act 1986 (FTA).

The Law

Display requirements on a lender’s internet site

Where a lender provides loans to consumers, or enters into loans where it takes security over consumer goods, and has an internet site; sections 9J(3)(a) and 9K(3)(a) of the Act require it to display:

- its standard form contract terms (including the standard terms of any repayment waiver offered); and
- its costs of borrowing.

This information must be displayed prominently and clearly.

Standing disclosure is designed to promote confident and informed participation in markets for credit consumers.

Right to cancel

Under section 27 of the Act, a debtor under a consumer credit contract may cancel the contract by giving written notice of the cancellation to the lender under the contract within 5 working days of the day that disclosure²⁹ is made under section 17 (or at any time if that disclosure has not been made).

Representations that are likely to mislead borrowers about their cancellation rights may breach s13(i) of the FTA which prohibits traders from making misrepresentations about rights, or the lenders responsibility principles set out at 9C(2) and 9C(3)(b) of the Act.

The particular provisions of the Act are set out in [Attachment].³⁰

29. “How disclosure is made” is specified in section 35 of the Act.

30. Please note this is not an exhaustive list of the requirements of a lender under the Act.

The results of the internet site review

From our review of your internet site <url> it appears that:

1. <Company> is not displaying prominently and clearly a copy of its standard form contract terms on its internet site as required by section 9J(3)(a) of the Act.
2. <Company> is not displaying prominently and clearly on its site its credit fees, default fees, and annual rates of interest (and default interest charge rates) in relation to every class of credit contract as required by section 9K(3)(a) of the Act.
3. <Company> has included a statement about the debtor's right to cancel, however the statement does not reflect the borrower's right to cancel set out in sections 27 and 35 of the Act.

We consider the matters raised above, may give rise to <possible breaches of sections <9C(2), 9C(3)(b), 9J(3)(a), 9K(3)(a) and/or 27 of the Act as well as s13(i) of the FTA>.

We recommend that you seek legal advice if you are unsure about your obligations under the Act, and encourage you to regularly review your compliance procedures and policies.

Consequences for breaching these provisions

Only the courts can decide if there has actually been a breach of the Act. The court can impose severe penalties where it finds the law has been broken.

If <Company> breaches the standing disclosure provisions (or the responsible lending principals) the Commission could seek a declaration or an injunction effectively requiring <Company> to publish the required information.

A company that breaches the FTA can be fined up to \$600,000 and an individual up to \$200,000 per offence. Where a company is a repeat offender, directors and those involved in the management of the company can be banned from involvement in the management of any company for a period of up to 10 years.

The Commission will continue to monitor compliance

Please note that the Commission intends to continue monitoring the industry and its compliance with the Act.

We intend to review <Company> internet site in the future to determine whether it has made any changes to its internet site based on the matters outlined above. Our decision not to take further action in this instance does not preclude us from taking further action in the future.

The Commission's role

The Commission is responsible for enforcing and promoting compliance with laws that promote competition in New Zealand and prohibit misleading and deceptive conduct by traders, including the CCCF Act and FTA.

Further information

We have published a series of fact sheets and other resources to help businesses comply with the CCCF Act and the other legislation we enforce. I have attached a link to our “publication of standard form contract terms and costs of borrowing” fact sheet, which may be a useful resource to review³¹. Other fact sheets are available on our website at www.comcom.govt.nz.

You can also view the Act and other legislation at www.legislation.co.nz.

Please contact me on [] or by reply email if you have any questions in relation to this letter.

Yours sincerely

[]

Encl.

Attachment to letter – Legislation

Publication of standard form contracts

Section 9J of the Act states:

- (1) Every lender who, in relation to an agreement, uses standard form contract terms must ensure that those terms are publicly available in accordance with this section.
- (2) For the purposes of subsection (1), a lender does not use particular standard form contract terms if the lender has ceased to offer agreements that contain those terms.
- (3) For the purposes of subsection (1),—
 - (a) if the lender has an Internet site, the lender must display prominently and clearly a copy of the standard form contract terms on that site.

Publication of costs of borrowing

Section 9K of the Act states:

- (1) Every creditor must ensure that information about all the costs of borrowing in relation to every class of credit contract offered by that creditor is publicly available in accordance with this section.
- (2) In this section, credit contract means a consumer credit contract or credit contract to which Part 3A applies.
- (3) For the purposes of subsection (1),—
 - (a) if the creditor has an Internet site, the creditor must display prominently and clearly on that site the creditor’s credit fees, default fees, and annual rates of interest (and default interest charge rates) in relation to every class of credit contract referred to in subsection (1).

31. [Publication of standard form contract terms and costs of borrowing.](#)

Right to cancel consumer credit contract

Section 27 of the Act states:

- (1) A debtor under a consumer credit contract may cancel the contract by giving written notice of the cancellation to the creditor under the contract within 5 working days of the day that disclosure is made under section 17 (or at any time if that disclosure has not been made) and either,—
 - (a) in the case of a contract referred to in subsection (2), paying the cash price of the property or services (or the balance of the cash price after deducting any amount already paid by the debtor) to the creditor within 15 working days of the day the notice is given; or
 - (b) in any other case, returning to the creditor any advance and any other property received by a debtor under the contract within 5 working days of the day that disclosure is made under section 17 (or at any time if that disclosure has not been made).
- (2) A consumer credit contract for the purposes of subsection (1)(a) is—
 - (a) a credit sale of goods if the debtor has taken possession of the goods and disclosure of the information referred to in paragraph (s) of Schedule 1 has been made;
 - (b) a credit sale involving a sale of property by auction;
 - (c) a credit sale of property that the debtor wants to keep or of services the debtor wants to obtain;
 - (d) a credit sale of services that have been performed.

How disclosure is made

Section 35 of the Act states:

- (1) Disclosure must be made by—
 - (a) giving the disclosure statement to the person to whom disclosure is to be made; or
 - (b) sending the disclosure statement by post to that person's place of residence last known to the person making disclosure or to an address specified by the person for this purpose; or
 - (c) in the case of an electronic communication, sending the disclosure statement to the information system specified by the person for this purpose.
- (2) If the place of residence referred to in subsection (1)(b) is the same for 2 or more persons, the disclosure statement given or sent to any of those persons is to be treated as having been given or sent to all of those persons.
- (3) For the purposes of [sections 27](#) and [99 to 102](#), when disclosure is made by sending the disclosure statement to a person by post, the disclosure is to be treated as having been made on the fourth working day after the day on which the statement is posted.
- (4) For the purposes of [sections 27](#) and [99 to 102](#), when disclosure is made by sending the disclosure statement to a person by means of an electronic communication, the disclosure is to be treated as having been made on the second working day after the day on which the statement is sent.
- (5) For all other purposes, when disclosure is made by sending the disclosure statement to a person by post or by means of an electronic communication, the disclosure is to be treated as having been made on the day on which the statement is posted or sent.
- (6) Without limiting [section 32\(4\) and \(5\)](#), sending a disclosure statement by means of an electronic communication may involve sending to the person to whom disclosure is made an electronic communication that allows the disclosure statement to be accessed from a website or by means of the Internet if the person consents to the disclosure being made in this manner.

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