Submission on discussion document: Consumer Credit Regulation Review

Your name and organisation

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Organisation	National Building Financial Capability Charitable Trust

Responses to discussion document questions

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?**
	Yes, we agree that the problems identified with high-cost lending, even where that lending is compliant with the CCCFA, are significant. Yes, we have information and data that sheds light on the frequency and severity of these problems. The National Building Financial Capability Charitable Trust (the "Trust") is the umbrella organisation for the 198 free budgeting services ("services") located throughout New Zealand. Those independent agencies offer the services of over 1200 trained financial mentors – formerly known as budget advisers - to the general public. The approach they take is to work alongside clients who are in debt or are facing financial challenges to assist them to find solutions that will work best in their own particular situation, supporting their decisions and advocating when requested. 60,000 people used those services in 2017. We have sought information from each of the services to inform our response to this Discussion Paper. The list of the agencies which

responded to us is detailed in ***Appendix A.***

The information that we have from services is that the problems identified with the lending industry are significant, and that they are enduring. Trends in this area are detailed in ***Appendix B***, indicating that the impact of debt related to the lending industry is significant and has been unchanging. ***Appendix C*** contains information from one of the services of debt broken down by type, as an illustration.

In our response to this question we initially address problems where the lender is CCCFA compliant. The main issue here is with excessive interest rates and fees. We agree with the problems mentioned in the Discussion Paper associated with high-cost lending.

Next, we address the situation where the lender is not CCCFA compliant. The main issue here is that the lenders commonly lend to people who cannot afford the loan, meaning that the affordability assessment has not been undertaken properly. Since the introduction of the Responsible Lending Code, lenders have not collectively shown that they are prepared to take appropriate care. So the Trust sees the most effective way to reduce significant harm as being to cap interest rates and fees (There is also harm caused by longer-term loans, but if affordability assessments were correctly applied then the harm could be significantly reduced.)

In terms of the frequency of these problems, all services that have responded to us have seen evidence of excessive interest rate lending. We regard “excessive” as any rate over 50%, but the rates which services are seeing are often far in excess of that, up to 800% pa in reports received.

In the typical case, the client will have come to the budget service because their debt has ballooned in a way that they had not expected. This is the result of extremely high interest rates, the addition of fees and of people having been lent money which they were never able to pay back on time. The majority of borrowers taking up high-cost loans are financially stressed due to insufficient incomes, fluctuating incomes, having been refused grants or advances from agencies such as Work and Income, and/or needing funds quickly to pay for food, rent arrears, utility payments or to meet repayments on other loans.

In ***Appendix D*** we have presented a selection of case examples relating to the hardship caused by high-cost lending.

Appendix E contains a copy of a formal demand letter from a debt collection agency itemising threatening actions under current law (see Question 25).

Appendix F contains a copy of the covering letter that accompanies this submission, in which the Trust highlights the four key reforms that are sought.

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?**
	Yes. The Trust supports both of the proposed extensions to Cap Option A. The general evidence is that high-cost lending, even where the lender is CCCFA-compliant, is causing serious hardship for many borrowers. Payments are sometimes being made at the expense of necessities like food and power. If a borrower has defaulted on a high-cost loan and has not repaid it, then the law should prohibit the provision of another high-cost loan to that borrower (by any high-cost lender) until such time as the first loan has been repaid. The Trust also supports the proposal that, if Cap Option A is adopted, there must be a cooling-off period between the repayment of one high-cost loan and the advancing of another high-cost loan. The cooling-off period should be no less than 90 days, and apply to a new high-cost loan from any high-cost lender. The Trust, however, is firmly of the view that Cap Option C should be adopted, so sees other options as fallback options. If Cap Option C is not chosen then in our view the next best option is Cap Option B, which sees some reduction in the interest rates and combines that with a limit so that borrowers would never pay back more than 100% of the original loan (in addition to the original loan amount). We consider that even having to pay back 100% of the original loan is excessive and would prefer a lower cap of 50% of the original loan.

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?**
	The Trust generally agrees with the assessment of costs and benefits set out in the table in the Discussion Paper. In relation to the item in the costs column, indicating that Cap Option B (to a limited extent) and Cap Option C would cause harm to borrowers with genuine short-term cash flow difficulties, the view of the Trust and of services is that the harm from high-cost lending far outweighs this potential cost. The Trust and services have given consideration to the adoption of a “halfway house” option to address the concern noted in the Paper that people who are genuinely in need of short term cash, who can afford to repay it even at high rates, would be harmed if Cap Option C was adopted alone. A halfway house option might be, for example, that - in addition to implementing Cap Option C - the law could permit any loan to be made (subject of course to affordability assessment and all the other regulation) up to a maximum of $1,000 per borrower per year, with the interest rate being any amount. The maximum that would become repayable on the loan, including all fees, could be capped at 100% of the original loan amount. After consideration however the Trust and services do not support any such halfway house. The reason for coming to this view is that borrowers can apply for small loans currently from a finance company, many of whom lend amounts under $1000 over short terms. We are not aware of any detailed research undertaken in New Zealand into why borrowers turn to high-cost lenders, but the experiences of services is that the extra money is sought for reasons mentioned above, namely borrowers need funds quickly to pay for food, rent arrears, utility payments - or to meet repayments on other loans. We are aware of this sort of research having been done overseas. Our experience on the ground, informed by services and financial mentors seeing daily how the lives of borrowers are adversely affected by high cost loans, leads us strongly to the view that Cap Option C is the correct option for New Zealand. In relation to the suggestion in the

	costs column that Cap Option B and Cap Option C might increase illegal lending, the Trust and services understand that this concern is not borne out by the evidence from overseas jurisdictions where interest rate caps have been introduced. That overseas evidence suggests that illegal lending is not likely to happen at a significant level.[1] If that does eventuate then the law should be enforced by the Commerce Commission, to prosecute illegal lenders. We do not suggest that any costs or benefits are missing.

[1] The(UK) National Association of Citizens Advice Bureaux in *Payday Loans After the Cap: Are Consumers Getting a Better Deal?* (August 2016) have reported at page 24 of that "*While improved outcomes for payday loan customers post-regulation is a positive development, it is also important to understand the experiences of those who are no longer lent to. We asked our advisers what their clients were doing after being turned down for payday loans. Nearly half (40%) of advisers were unsure. The most common response from the other advisers was that clients are relying on their friends and family for borrowing (28%).* ***Only a small number (6%) are indicated that borrowers were turning to illegal lending or unauthorised credit.*** *Advisers were unable to supply significant evidence that this was happening and we cannot conclude that many consumers are turning to illegal lenders after being turned down for payday loans.*"
Retrieved from:
https://www.citizensadvice.org.uk/Global/CitizensAdvice/Debt%20and%20Money%20Publications/Payday%20Loan%20Report%202.pdf

4	**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?**
	The Trust supports Cap Option C and would propose that the maximum interest rate including fees is capped at 25%. Interest and fees would be combined to generate an equivalent interest rate. The rate could be subject to review and able to be changed by Order in Council, which might be appropriate if - for example - market lending rates were to rise materially. Any cap should be expressed as a per annum rate using a standardised method of calculation. New York State and 14 other US states have imposed caps on interest rates in recent years. New York State outlaws any loans at rates above 25%. Rates over these amounts are considered usurious, with debts being written off when lenders are prosecuted. We note that the Additional Information to Support the Discussion Paper also references other countries with rates as low as 15%. As that document points out, many countries and states prohibit high-cost lending. In New Zealand, particularly at this time - with the current and previous Governments making significant investments to reduce child poverty and build financial capability - reforms during this process need to be robust enough to make significant and specific changes. The credit market is unbridled and is creating havoc. This is already well known, and was clearly documented in previous submissions when the law was reviewed in 2014. Lending reform in 2018 cannot be driven by concern with protecting the profit and success of businesses in the industry, as this will stymy the response required. Note that even with a cap in place it is essential that responsible lending principles continue to apply and be enforced.

5	**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.**
	The Trust and the services strongly support Cap Option C at an interest rate of 25%. This would have the effect of removing high cost lenders. The Trust and services believe that this is the best outcome for their clients and New Zealanders generally. This is the considered view of the services that the Trust works with, after seeing the hardship that high cost lending is causing. Cap Option C eliminates short-term high-cost lending. There is a suggestion that if such a law was in place, people may be forced to take up larger loans. That is not necessarily harmful - it is the reported experience of the UK Financial Conduct Authority that one large loan is often paid off faster than many small loans, see *Financial Lives Survey, 2017*. Simply put, low weekly incomes of people on benefits and people earning low wages already place many New Zealanders in hardship and restrict their ability to service any debt. "*There are consumers for whom their economic welfare improves if they do not have access to credit*" (High Cost Credit-What Next? 2018).

Regarding continued irresponsible lending and other non-compliance

6	**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?**
	Yes, because people holding the positions of directors and of senior managers both have a significant level of control over the relevant financial service provider. There will be a discrepancy if only directors are obliged to take reasonable steps, but senior managers are not required to, as senior managers are more likely to be the people in control of the operations of the organisation. To place obligations only on directors creates an incentive to have puppet directors, leaving the control of the lender with the manager.

7	**If there are to be more prescriptive requirements for conducting affordability assessments, what types of lenders or loans should these apply to?**
	More prescriptive requirements for conducting affordability testing are supported by the Trust and services. There should be a defined procedure for assessing affordability. These mandatory requirements should apply to high-cost lenders, to finance companies and to banks. The Trust and services consider that banks should be covered by these mandatory requirements (and be subject to consequences of non-compliance) just as finance companies and high-cost lenders would be, because credit card debt is a particular issue for clients seen by services. There is a high incidence of credit card debt appearing in New Zealand on debt schedules of clients engaging with budgeting services. Making it a legal requirement that the banks undertake mandatory and clearly prescribed affordability assessments before they issue a credit card is important, and current rules do not appear to be working well. Credit cards have also been a particular focus for the government in the UK recently.[2] Please see ***Appendix D*** for case stories demonstrating that some high-cost lenders make no effort to undertake proper affordability assessments and rely on very minimal and incomplete information from the borrower. This is particularly an issue with online lenders, by the nature of the way they operate.

[2] The Financial Conduct Authority (FCA) in the United Kingdom, in a press release statement dated 27 February 2018, reports that new credit card rules were to come into force in the UK on 1 March 2018, with companies having until 1 September 2018 to comply. "*The changes will provide more protection for credit card customers in persistent debt or at risk of financial difficulties*."
The FCA states that "*under these new rules firms will be required to take a series of escalating steps to help customers who are making low repayments over a long period, beginning when the customer has been in persistent debt over 18 months. After this time firms need to contact customers prompting them to change their repayment and informing them their card may ultimately be suspended if they do not change their repayment pattern. Once a consumer has been in persistent debt for 36 months, their provider will have to offer them a way to repay their balance in a reasonable period.* ***If they are unable to repay the firm must show the customer forbearance.*** *This may include reducing, waiving or cancelling any interest, fees or charges. Firms who do not comply with the new rules could be subject to action by the FCA*."
Retrieved from: https://www.fca.org.uk/news/press-releases/new-credit-card-rules-introduced-fca

8	**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?**
	Yes. The lender should have to verify the information that the borrower provides about the borrower's income and expenses. At the moment it is too easy for a lender to turn a blind eye to the fact that a borrower really cannot afford the loan. We suggest that the way forward should be as follows. The requirements for an affordability assessment should be clearly defined in law. This includes, for example, looking at the borrower's likely income in the future (not just their last bank statement) - this is a particular issue with seasonal workers, and with people facing the reality of fluctuating wages where their hours of work vary each week. There should be severe consequences for non-compliance. Some would be automatic, for example the loan should be written off if it is established that the lender failed to undertake proper affordability assessment (*see Question 11*). If the lender claims that they relied on the information provided by the borrower, and that is why there has been a breach of the affordability assessment, then the lender should be responsible for the breach unless the lender can prove that the borrower deliberately misled the lender on the particular matter. We propose that the mandatory requirements for affordability assessments include the lender going through a standardised checklist with the borrower, including the following matters: - **Loan comprehension** - the borrower was fully cognisant of the total cost of the loan - lenders should be able to prove this. - **Language comprehension** - the borrower has sufficient grasp of English to understand the loan documentation, or the documentation has been provided in a language appropriate to the borrower.

- **Mental capacity** - the borrower has sufficient mental capacity to understand the obligations imposed by the loan.
- **Financial literacy** - the borrower has sufficient financial literacy skills to understand how the loan works.
- **Within budget** - the borrower presents a budget of income and expenses that include all day-to-day and yearly costs related to individual family and children to cover the life of the loan. The living costs of large families should be accounted for.
- **Contingency planned** - the lender is required to record in notes the borrowers' contingency plan if they are met with an unexpected life event, e.g. if they can't meet their repayment obligation, what are they going to do?
- **Credit check**.
- **Ongoing affordability** – the lender is required to make ongoing checks on ability to pay (utilising alarm bells such as initial repayments not made) which can be factored into hardship applications.

9	**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?**
	Yes, there should be changes. The experience of services is that some lenders are not advertising responsibly. In particular, the experience is that some advertising infers that loans will be made to people that should not be offered credit, such as people who are unemployed or bankrupt. Another problem is that advertising of high-cost loans normalises the action of taking out a loan to cover basic living costs. In particular, advertising suggests that we all need certain things and that we can all have them if we borrow money to buy them. Advertising suggests that a “normal” lifestyle involves having things that are actually not essential and are out of the reach of many people on low incomes. Tactics used by loan companies include images of cuddly animals, celebrity endorsements and flower-filled pastures. Pressure associated with persistence of salespeople (for example, mobile truck companies) is sometimes misleading, deceptive or confusing. Methods include emotional blackmail, and targeting vulnerable populations. Examples include an advertising image on the back of a bus saying ‘*provide for your family at Christmas*’ (targeting families living on low incomes) or an advertisement on TV showing how easy it is to get finance for a car, so that a borrower can take their grandmother to church (targeting Pacific Islanders). Loan promotion stalls inside malls are using sensory marketing approaches (psychological techniques) to make potential borrowers believe that they need the product more than they actually do, by encouraging them to touch/feel/smell the product. We are aware of instances where lenders bombard customers by email with loan offers, particularly when a customer is successfully making repayments and will soon have paid off the loan. All of these types of behaviours by lenders cause significant stress and are increasing the problems associated with high cost lending. Lenders must be placed under a legal obligation to act in good faith in all dealings with the borrower. The view of the Trust and services is that advertising of high-cost lending and finance companies should be significantly restricted, and

tempered with clear and unequivocal warnings. The product that is being advertised is a harmful product, and the approach should be predicated on that. At the very least a clear warning statement should have to accompany all forms of advertising for high-cost lending.

For all lending, the rules around advertising should be more prescriptive. In all cases, it is essential that the total amount the borrower may end up repaying is clearly stated.

Online lending is a particular concern, both in relation to the ease with which a loan can be approved from an online lender (which raises issues of affordability assessment) and also the ease with which online lenders can advertise the product, or suggest that a borrower take out another loan once one loan has been provided. A common practice involves texting their clients with new deals or options to increase lending. Apps make advertising to vulnerable borrowers very simple and easy, with minimum opportunity for the person to say no. Computer analysis of bank statements in online lending is not precise enough, as statements can include non-sustainable and irregular income like board payments, overtime, or amounts from another lender. Many clients have told services that they now use the apps. This is how the lender keeps track of them. We urge that reform of existing legislation clarifies the status of online lending, and that the potential harm caused is also addressed in the reform.

10	**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?**
	The Trust agrees in general with the assessment of costs and benefits of each option. It considers that some of the costs are a little overstated, for example the references to “higher interest rates” can be alleviated with caps on interest rates and fees. The Trust suggests that the benefits of more prescriptive affordability assessment requirements are a little understated and are a key part of the response to the problems currently being faced.

11	**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?**
	In relation to Enforcement Option A, we propose that one consequence of non-compliance with the lender responsibilities should be that the loan is written off. The Trust and services suggest that loan write-off should be an automatic consequence of failure by the lender to comply with section 9C (3)(a)(ii) of the CCCF Act; in other words, if the lender has failed to make reasonable enquiries so as to be satisfied that the borrower will be able to make the payments under the loan without suffering hardship. This should be coupled with more prescription around what the lender has to do to satisfy its obligations under this provision, so that there is a defined procedure to be undertaken. If that procedure is breached, an automatic consequence should be the writing off of the loan. In relation to Responsibility Option A, regarding more prescriptive requirements for affordability assessments, the Trust and services would like the law to exclude certain items from income when assessing the ability of the borrower to make repayments, meaning that any items not deemed as income by the IRD (e.g. board payments received, Family Tax Credits, Child Support and Disability Allowances) should not count as income available to repay the loan. None of these should be relevant to affordability assessments. The reality is that benefit levels and low incomes barely cover minimum basic expenses, so there is no room for loan repayments at this level of income. Also in relation to Responsibility Option A, one design feature we advocate is that lenders are required to be regularly audited by the Commerce Commission to see if they are complying with their obligations around affordability assessments. Currently it is up to the client and their financial mentor/budget adviser to make all the effort to prove that irresponsible lending has happened. This should be enforced as a matter of course by the regulator using a systematic model.

The evidence we have is that online lenders, in particular, appear to be very lax with affordability assessments. This is inevitable given the nature of online services, and the new law should clearly state that online services are subject to the new defined affordability assessment criteria in the same way as all lenders.

Multiple debts are a significant problem as evidenced by debt schedules created for clients who use services. An element of the prescribed affordability assessment requirements should be that if a borrower already has a high-cost loan or other finance company debt they should not be given another one until the first has been paid off.

We consider it essential that lenders must be required by law, on request, to provide information on how they conducted the affordability assessment, to both the borrower and the borrower's advocate, and whether or not the debt has been passed on to a debt collector. Advocates currently face the impossible task of proving that the affordability assessment was not properly done without having access to the information from the lender. There is a case example in ***Appendix D*** that illustrates the problem.

12	**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.**

The Trust and services support all of these options::

- **Increased prescription around affordability assessments** with automatic consequences for breach, including writing off the loan. The Trust and services see this as a particularly essential reform and the Trust would like to have input in the development of the criteria.

- Requiring lenders to **substantiate their affordability and suitability assessments**, and having to supply a copy of those assessments to the borrower on request and to their advocate, (as well as to the Commerce Commission).

- **Pecuniary penalties, statutory damages and injunction orders** for any breach of the responsible lending principles.

- **Requiring lenders to verify the information made available by borrowers** when applying for a loan.

- **More prescriptive requirements around advertising**, and a significant restriction on advertising for high-cost loans.

- If a consumer requests, there is **a legal obligation on the lender to work with their advocate**, and to do so in good faith. This should be backed up with an offence for breach.

- **A comprehensive creditor licensing system for all lenders providing consumer credit.** The requirements for a license should include all the matters set out in para 50 of the Discussion Paper, and in particular "*adequate systems and procedures*" include having systems for training all staff on the responsible lending obligations. The regulator should have the power to de-license in the case of serious breach of the license conditions, with those conditions including a commitment to compliance with the responsible lending principles. The damage caused by aspects of the consumer finance industry is such that a barrier to involvement to give greater surety of the quality of lenders needs to be established and sustained.

- **Expanded powers to de-register lenders and ban directors** for non-compliance with the responsible lending principles (i.e. broader than "*causing harm to consumers*").

- **Application of an industry levy** on all lenders providing consumer credit, coupled with increased enforcement powers for the Commerce Commission.

- **Requiring disclosure to be in the same language as the advertising**.

- **Imposing duties on directors and senior managers**.

- **Fit and proper person testing on registration**.

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?**
	In relation to the benefits of Scope Option A, the Trust and services see an important benefit being the fact that this option would see credit-based payment systems such as AfterPay brought within the CCCFA. At present, these new types of arrangements rely on customers defaulting in order for the business model to work, and are not consumer credit contracts. We also note that Harmoney, promoting a new model of peer-to-peer lending, have argued that they are not covered by the CCCFA. The legislation must have a wide enough scope and sufficient flexibility to handle new models likely to emerge through an inventive industry and technological change.

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?**
	There is a particular problem with mobile traders using direct debits to get the instalments of the purchase price repaid. Experience reported by services is that it is extremely difficult to get the trader to cancel a direct debit once the goods are paid off. Often a credit balance arises which the trader tries to get the purchaser to utilise on another purchase, but in the meantime avoids providing information on what the credit is. One option for addressing this might be an instant fine if a trader (or any lender) does not cancel a direct debit as soon as the price is paid – after all, the money subsequently taken has been in effect stolen from the purchaser. While a borrower can cancel the direct debit themselves, this is not well understood by borrowers. The banks are often at fault here, and services report situations where banks have provided misinformation, for example saying that only the person (i.e. the lender) who lodged the direct debit can cancel it. In addition, we have reports of cases where the lender will ask customers to fill in a number of direct debit forms so they can lodge them when an existing direct debit finishes. One client said she had signed 5 or 6 forms and then, when she defaulted on payment, they put through the second one, and so on and so on. Payments kept going out of her account although she didn't have the funds to pay and she incurred multiple bank fees for the default payments. This practice should not be allowed,

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.**

The Trust supports both Scope Option A “*include credit contracts that charge default fees in the definition of consumer credit contract*” and Scope Option B “*prohibit the price of goods or services sold on credit from exceeding the cash price*”. We believe that the options address different problems and are both required, to work in tandem.

In regard to Option A, we support it because such an approach would bring new layby company business models, such as AfterPay, Oxipay and Partpay, into the scope of the CCCFA. These business models involve consumers purchasing goods, receiving them up-front and paying for the goods in weekly instalments. If a weekly payment is missed, then a default fee is charged. These business models are relatively new and, in our opinion, should be covered by the CCCFA. Services are seeing increasing numbers of cases, especially involving young solo mothers, where clients have suffered hardship as a result of using these types of products. Because the business model relies on a proportion of customers defaulting, there is potential for unfair conduct - for example, not disclosing the level of default fees that are charged, charging unreasonable fees, operating unreasonable debt collection practices.

The Trust and services also believe very strongly that it is essential that Scope Option B, to “*prohibit the price of goods or services sold on credit from exceeding the cash price*”, be implemented for the following reasons:

- Through this option, by charging the additional element of the price as interest, mobile traders will be subject to the CCCFA and, therefore, will be subject to disclosure requirements. This means that mobile traders will be required to advise the borrower that the sale is a consumer credit contract and that the consumer has rights under the CCCFA, such as being able to make a hardship application.
- One implication of bringing mobile trader transactions under the CCCFA would be that the borrower would need to be advised of their rights, including being informed that they can purchase the

item for the cash price up-front.

A particular problem being reported by services regarding mobile traders is that a purchaser/borrower is able to enter into a second or subsequent purchase agreement before the first is paid off. The law should prohibit the entry into a second one of these types of arrangements before the first is paid off. More generally, if high-cost lenders are to be continued to allow to operate, the law should prohibit an individual entering into one high-cost borrowing arrangement while there is still money owing on another one.

The services are seeing a variety of other irresponsible trading practices by some mobile traders. For example, contracts of sale do not necessarily identify the item sold, so that the purchaser can end up with an item different to what they thought they bought. Also, there is usually no indication of the recommended retail price anywhere in the paperwork, so the purchaser has no idea they are paying too much for the goods, and are also unable to cancel the contract and receive a refund before the goods are actually delivered. All of these matters should be the subject of legal requirements. The Trust would also support (in particular) a ban on food purchases from mobile trucks.

Appendix D contains a selection of cases that illustrate typical examples of the problems being faced by customers of mobile traders.

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?**
	The view of the Trust and services is that fee caps should apply to all lenders - in other words including banks, finance companies and high-cost lenders. We believe that the legislation should set out the types of fees that can be charged, by category (e.g. establishment fees, early repayment fees, default fees) and then - for each category - there should be a cap. Meaning that - for example - all fees in relation to a loan that came under the category “establishment fee” would be controlled by a cap of (for example) 1% of the loan amount. No matter what the fee was called, if it came within the definition of “establishment fee” then the cap would apply. Other caps might be in relation to default fees – for example, a total of 1% of loan or $100 per loan (whichever is less). There could also be a cap on the level of charges/fees per letter, set at a realistic amount based on cost of production (e.g. $10 per letter sent). A particular issue we are aware of involves excessive cancellation fees, which must also be subject to a cap. The feature of this structure would be that, no matter what the fee was called, the cap for that type of fee would apply. The caps should be set after consultation with the industry and other stakeholders, but would reflect the amount of time the lender spent carrying out the activity and would not be able to include any element of profit. We believe that Option B is the clearest way to set fee caps, and - combined with an interest rate cap - negates the concern expressed regarding lenders increasing interest rates to recoup revenue.

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?**
	The Trust agrees with the Discussion Paper’s assessment of the costs and benefits of the three different options put forward in relation to the issue of unreasonable fees.

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?**
	The design option which the Trust and services support is as set out in the relevant section under Question 16. We note the following evidence of the proliferation of the different types of fees currently being charged by lenders. It is essential that fees be regulated, and submit that fee caps are the best way to do this. We also note that the UK has introduced fee caps on payday loans. From the Commerce Commission's Lender Website Review 2017/8*:* *In total, we identified over 500 differently named fees. Some lenders had clear singular values for their fees, others listed fees as ranges or percentages. Some lenders varied the amount of specific fees based on the size and/or type of loan taken. (3 categories: establishment fees, general fees, and default fees).* ● *For establishment fees, there were 18 distinct variations in the names of establishment fees. But ComCom identified 3 distinct sub-categories: establishment fees, fees involved with credit checking or registration, and application, booking and processing fees.* ● *General fees encompass a variety of different fees which relate to the administration and maintenance of a loan or contract. Include periodic account administration fees, statement fees, early repayment fees, legal fees, among others. 135 lenders displayed a total of 706 general fees, with a mean of five fees per lender. There were over 250 variation of fee names".* The Commerce Commission found in the same report (Page 7) that some lenders listed fees as ranges or percentages – they should be obliged to list fees as clear singular values. There is particular issue with optional fees. Some contracts provide for additional fees to be payable if certain optional services are selected. Fees for optional services, or fees that were avoidable, have been

complicating consumers' understanding and making it difficult for consumers to anticipate the total fees payable. We suggest there be a clear indication of those fees which are optional.

19	**Which options for changes to fees regulation would you support? Which would you not support? Please explain how you made your assessment.**
	The option that the Trust and the services support is Fees Option B. This is because it will make clear the maximum amount that may be charged for each type of fee. Certain types of fees would also be banned under this approach. Different types of fees (with caps) would be permitted for different types of transactions. Option B is the clearest option for capping fees. ***Appendix D*** contains stories of typical examples of unreasonable use of fees by lenders.

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?**
	We have not seen evidence of this practice, but in principle advocate that all mandatory third party fees should be treated as credit fees and so be subject to regulation, as fees are under the CCCFA.

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?**
	Yes, the Discussion Paper draws an accurate picture of problems for consumers experiencing debt collection. The experience of services is that all of the issues noted in the Paper are happening daily, and causing immense harm. In terms of how widespread the problems are, services commonly report experiences of debt collectors harassing borrowers. A common example is hounding debtors with phone calls and texts at all times of night and day. Even when payment arrangements are in place or payments are being made to creditors, debtors are being bombarded with calls, emails and/or text messages. As an illustration, one debt collector states in their paperwork *'unless the debtor pays their minimum, calls, emails and letters will still be actioned by the collector'*. Essentially this statement reflects the collectors desire to harass the debtor until they give in to the collector's demands. It is not uncommon for a debt collector to harass the debtor (usually until the debtor applies for bankruptcy), calling many times per day, or using automated dialer technology (Robo calls) that can call the debtor multiple times per day. In one case we know of, 33 calls were made in one day. Evening visits are also sometimes made (between 6pm and 10pm). It may be an unintended consequence of tighter repossession rules that services are seeing an increase in accounts going to debt collection.

22	**What information should be provided to borrowers by debt collectors? When and how should this information be provided?**
	In general, the Trust and services support a proposal to require key loan information to be shared with the debtor at the beginning of the debt collection process. We recommend that the disclosure document should be limited to one page, and only include key information. Terms and conditions should be limited. Lenders should explain and go through the document - that is already a requirement in the Act, but often not followed. In particular, all fees and charges should be disclosed and must be as stipulated in the loan contract, which would prevent debt collectors from inventing new fee types to further impact the debtor. Fees caps must apply to all debt collectors (agents or third parties).

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?**
	Yes, the Trust and services agree with the assessment of costs and benefits of the options. The concern raised about extra cost to borrower will be captured in the interest rate cap.

24	**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.**
	In terms of the design of the options, the Trust and services suggest that the appropriate level of contact in Debt Collection Option C is as follows: ● Once a third party is involved, be it a financial mentor/budget adviser, Debt Manager, or other service provider, no further contact should be permitted to be made directly by the lender or debt collector to the debtor other than legal document service. ● There should be a prohibition on a debt collection agent or third party contacting the employer of a borrower. This is embarrassing and unnecessary, and constitutes unreasonable harassment. ● Before a financial mentor/budget adviser or other advocate has become involved there should be a limit on the number of texts, phone calls and emails a debt collector can send to the borrower. In addition, the Trust and services submit that in the case of a debt having been on-sold to a debt collection agency, the original lender remains responsible in law to prove that the responsible lending principles were adhered to, in particular that the affordability assessment was undertaken (and to provide evidence of the affordability assessment done, to the borrower or their advocate). At present, the experience of services is that the original lender is often uncooperative once a loan is on-sold, typically saying that they are no longer responsible for any legal obligations in relation to it. In relation to Debt Collection Option E, which we also support, this should be combined with provisions in law that a debt (including a credit card debt) that is 180 days old should cease to accrue any interest or fees; in other words, the amount of the debt is fixed at the total amount owing as at 180 days.. This would need to be combined with a cap on penalty/default fees. It is essential that there be a cap on the amount to

be collected, as – currently - creditors can outsource a debt to a collection agency, or sell a debt to a debt collector, who can charge interest at retail interest. In addition, we have evidence of debt collection fees of to up to 30%.

The proposal we put forward of 'capping' the debt or crystallising the debt is in line with the Credit (Repossession) Act 1997 when dealing with a 'bad debt'. It also provides a reason for a creditor to enter an arrangement rather than not action a debt, accrue substantial fees, and then take the debtor to court for every cost involved / interest accrued over the period (which would seem unconscionable).

All debt collection agencies (and all lenders) should have a legal obligation placed on them to work in good faith and constructively with the borrower and their agent (i.e. the financial mentor/budget adviser) when working through debt collection issues. At present, services see many instances where debt collection agencies avoid working with the financial mentor/budget adviser, refusing to answer phone calls or provide requested information. The impression which services receive is that it is in the interests of debt collection agencies to be uncooperative, because that means more interest and fees accrue on the loan. If a creditor (or collector) refuses to allow contact by the debtor's agent, that creditor should have no legal claim to the debt.

The law also needs to address the issue created by creditors not relinquishing their security, even over loans that have been sold to debt collection agencies. This action effectively prevents debtors entering into insolvency (in particular the SIO procedure) to address all their debt. Due to recent legal cases (in respect of crystallising loan interest) there has been a growing reluctance by creditors to repossess goods. There needs to be a 'do it or remove security' clause which allows a debtor to request that the creditor repossess the goods or remove the security (and crystallise the loan). If a debtor has given security over property for a debt, that debt cannot be included in the SIO procedure. This proposal would oblige finance companies that take finance over furniture or household goods to either not issue loans which a debtor can't afford, or at least give a debtor the ability to be able to use an insolvency procedure and include the loans made by 'semi' secured lenders.

25	**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.**
	The Trust supports all five options to address irresponsible debt collection. Requiring key loan information to be shared at the beginning of the process is a good discipline for the debt collector, and usefully informs the borrower of their rights. Contact information for a budget/building financial capability service is also helpful. This information should be short and concise, ideally not more than one page. We support requiring debt collectors to offer an affordable repayment - and, if it appears the loan has become unaffordable, to restructure the repayment schedule accordingly, based on a new affordability assessment. We strongly support limiting contact with the borrower. Services have seen many cases where debtors have been unreasonably harassed during the debt collection process. ***Appendix D*** contains relevant stories. Third party debt collection agencies should definitely be subject to the CCCFA, so that they become subject to the lender responsibility principles and fees caps. External debt collection fees must be limited to the actual costs incurred and must be subject to a cap on fees as with other fees. As an example we refer to the case discussed on RadioNZ Nine to Noon on 25/7/18, "*Living and Retiring in Debt*" feature, in which a bank on-sold a debt of $13,000, with a fee of $3,100 being added, i.e. 25% of the outstanding principal. The formal demand letter sent to the debtor outlined threatening steps allowable under current law. See ***Appendix E***. The Federal Court of Australia recently found against a debt collection agency for using harassment, coercion and unconscionable behaviour towards a vulnerable customer of a utility company. It sets a precedent

that high pressure debt recovery techniques are inappropriate [3]

[3] See Australian Competition and Consumer Commission v ACM Group Limited (No 2) [2018] FCA 1115, discussed in: ITNews. (2018).Telstra's debt collector flamed in Federal Court..Retrieved from https://www.itnews.com.au/news/telstras-debt-collector-flamed-in-federal-court-499300

Regarding other issues

26	**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?**
	Services are not seeing problems with these types of borrowers.

27	**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.**
	In principle, yes. In relation to retail investors, “retail” means these people are not experienced investors and many will be investing not because they have discretionary income but because they have been encouraged by the Government to save in particular for their retirement. They can be regarded therefore as financial consumers, and the law should extend consumer protection measures to them. In relation to small businesses, many of these are family run and the people running these businesses are faced with many of the same financial struggles as regular consumers. They are not in a position of equal bargaining strength with lenders, and can be just as vulnerable as some consumer borrowers. In Australia certain consumer protection measures are extended to small businesses in recognition of their lack of bargaining power. In relation to family trusts, these are entities that are ultimately acting for the beneficiaries, in other words ordinary persons who are the family members for whom the assets are held in trust. Consumer protection measures can be extended to family trusts in the interests of the beneficiaries who will themselves be consumers. Arguments might be made that family trusts should not be borrowing from high cost lenders, nor should retail investors. But those are not arguments for not extending the protections against high cost lending to those types of borrowers.

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 Trust and services recommend these specific additions to the reforms proposed: **A** Many of the services have expressed concern about **wage attachment orders, or wages deduction authorities**. Under these procedures, loan repayments are being taken off the borrower's income before they receive their wages. Although the borrower must sign their approval, this often seems to be obtained under some degree of duress There should be a ban on wage attachment orders for beneficiaries or low income earners, as any amount automatically deducted from the gross wage or benefit would immediately cause hardship. For people in receipt of benefit, or on a low income, the income level is simply not high enough to take on such a burden. Court-ordered attachment orders from debt collection agencies and the Tenancy Tribunal should be included within the ban. Currently, court-ordered attachment orders are being attached to Work and Income benefits at up to $30 per week, which causes ongoing hardship especially where, from the same benefit, Work and Income advance and debt repayment, as well as Ministry of Justice fines, may under current law also be deducted. **B** The paper lacks any focus on **credit cards**, which clearly have significant impact and are the focus of much policy debate in Australia and the UK at present. Credit card debt is a significant source of hardship amongst the clients seen by services. The rates are excessive by comparison with market rates for loans made by banks. Our proposals above include recommending interest rate caps on credit cards and mandatory affordability assessments. We additionally recommend an active work programme to consider other initiatives in this area. Consumers are increasingly being issued with credit cards and store cards when purchasing consumer items. The credit limits are often in excess of 3 or 4 times the price of the goods, and can easily become a never-ending debt. This extra credit is unsolicited and the practice can be considered predatory.

C **Hardship applications** (i.e. when a borrower applies to a creditor for relief from the strict terms of the loan contract on the grounds of hardship) require regulation. Based on what services are seeing from the experiences of their clients, the criteria for hardship applications are frequently too rigid, sometimes the hardship application process is deliberately prolonged, and it is common for hardship applications to not be accepted. The law should state precise and unique reasons on the basis of which a hardship application may be declined, and require the lender to state which of the reasons applied in any particular case. The hardship application process should also be more clearly defined in law and be easy to understand.

D We recommend that a **financial hardship hotline** be set up to give borrowers ease of access to all the support services they require.

E We would like to make one final comment. This is not raised in the Paper but is a matter that would greatly benefit the services that we act as a voice for. We urge that the law or regulation be amended to provide that any “leftover” funds that result from **Commerce Commission-facilitated settlement arrangements with lenders** who have breached their obligations under the CCCFA, be channeled to funding for consumer advocacy services. We are aware that funds arise that are not allocated to any particular purpose when settlement arrangements are entered into, and not all affected parties claim their settlement amount for whatever reason. Given the lack of resourcing and the degree of unpaid hard work undertaken by local budgeting/building financial capability services, it would be appropriate for these funds to be allocated to services for general purposes.

Any other comments

We welcome any other comments that you may have.

APPENDIX A

List of services that have contributed to the submission made by the Building Financial Capability Trust's submission on MBIE's review of the consumer credit regulation 2018.

- Agape Budgeting Services
- Anglican Trust for Women and Children
- Auckland North Community and Development Inc
- BFC Trusts Advocacy Group
- Budget Advisory Service (Whakatane) Inc
- Budget Advisory Trust – Timaru
- Budget First Hastings
- Budget Service Marlborough
- Budget Service Rangitaiki
- Budgeting Services North Canterbury
- Buller Budget Advisory Service
- Cambridge Community House
- Care Waitakere Trust
- Care Ranui Budgeting Service
- Catholic Family Support Services
- Christchurch Budget Service
- Christchurch Methodist Mission
- Christian Assist Trust
- Christians Against Poverty
- Citizens Advice Bureau Lower Hutt
- Citizens Advice Bureau Wellington
- Clutha Budget Advisory Service
- Compassion Trust Budget Service
- Dannevirke and Districts Home Budgeting Service
- Dunedin Budget Advisory Service
- East Auckland Home and Budget Service Charitable Trust
- Family Finance Upper Hutt
- Family Works Upper South Island - Christchurch
- Fonua Ola Pasefika Providers Network
- Foxton Districts Budget Service
- Franklin Family Support Services
- Gisborne Budget Service Inc
- Golden Bay Community Centre
- Gore Budget Service
- Hinengakau Maatua Whangai

- **Hornby Community Ministries (Salvation Army)**
- **Hutt City Budget and Advocacy Service**
- **Iosis**
- **Jubilee Budget Service**
- **Kapiti Family Budgeting Service**
- **Lender Matters Network Dunedin**
- **Manawatu Home Budgeting Services**
- **Mangakino Family Services Inc**
- **Matamata Budget Advisory Service**
- **Mid North Budgeting Service**
- **Morrinsville Ezekiel Trust**
- **Napier Family Centre**
- **Nelson Budget Service Te Ratonga Whakarite Putea o Whakatu**
- **Newtown Budgeting and Advocacy Service**
- **Nga Tangata Microfinance**
- **North Harbour Budgeting Services**
- **Northcote Baptist Christian Trust**
- **Northern Community Budget Service (Kerikeri)**
- **Overdale Family Financial Services**
- **Paeroa Community Support Trust**
- **Pakuranga and Howick Budgeting Service**
- **Papakura Budgeting Service**
- **Papamoa Family Services**
- **Papatoetoe Budget Service**
- **Petone Budget Service**
- **Porirua Community Ministries**
- **Presbyterian Support Northern**
- **Presbyterian Support Otago**
- **Presbyterian Support Upper South Island – Ashburton**
St Vincent de Paul, Otahuhu
- **The Salvation Army**
- **The Salvation Army – Royal Oaks Community Ministries**
- **Strathmore Community Budget Services**
- **Strathmore Park & Raukawa Community Centres**
- **Tamaki Budgeting Services**
- **Taumarunui Community Kokiri Trust Budget Service**
- **Taupo Budget Advisory Service**
- **Te Aroha Family Budgeting Service**
- **Te Hau Ora O Ngāpuhi**

- **Te Hunga Aroha Compassion Trust**
- **Te Runanga o Kirikiroa**
- **Te Whare Putea**
- **Thames Budget Service Inc**
- **Timaru Budget Advisory Trust**
- **Training and Budget Service Inc Papatoetoe**
- **Tokoroa Budget Advisory Service**
- **Vaiola Pacific Island Budgeting Service**
- **VisionWest Budgeting and Financial Literacy**
- **Waahi Whaanui Trust**
- **Wai Free Budget Advisory**
- **Waiuku Family Support**
- **Wanganui Budget Advisory Service**
- **West Auckland Budget Service**
- **Wellington City Mission**
- **Whakatu Te Korowai Trust**
- **Whānau Family Support Services**
- **Whangarei Anglican Care Trust**
- **Whangarei Budgeting Service**

APPENDIX B

This information is obtained from central analysis of thousands of client cases handled by individual local services.

NFBCCT - Total Debt Distribution 2010-2016

	2010-2011	2011-12	2012-13	2013-14	2014-2015	2015-2016
Government Departments	**19.20%**	**22.85%**	**26.17%**	**26.89%**	**21.93%**	**25.44%**
Courts	**4.10%**	**3.78%**	**3.26%**	**6.06%**	**3.06%**	**2.37%**
Communications	1.37%	1.15%	0.93%	0.92%	0.97%	0.85%
Utilities	1.62%	1.92%	1.90%	1.60%	1.63%	1.47%
Accommodation	2.98%	2.08%	2.17%	1.64%	1.61%	1.52%
Retail goods	7.88%	9.80%	8.57%	7.00%	7.29%	7.45%
Professional Services	4.87%	4.71%	6.01%	5.76%	5.23%	5.07%
Bank loans	**27.45%**	**21.68%**	**19.81%**	**18.12%**	**23.73%**	**28.32%**
Finance company loans	**26.56%**	**27.45%**	**25.63%**	**27.94%**	**30.44%**	**22.73%**
Family	3.96%	4.59%	5.56%	4.07%	4.11%	4.77%
Total without mortgages	$255,031,510.23	$258,921,788.92	$255,944,352.83	$257,469,567.83	$288,273,322.51	$238,530,558.35

APPENDIX C

This represents the current list of clients as at July 2018

Quick Facts from One Budgeting Service

Overview of Debt

Total Number of Debts	**437**
Total Number of Clients	**95**
Avg. Number of Debts per Schedule	**5**

Type of Debt	# of Debts	% of Debts
Finance Companies	134	31%
Banks (Including Credit Cards)	101	23%
Govt. Agencies/Ministries	91	21%
Debt Collection	89	20%
High Interest loans	22	5%
Total	**437**	**100%**

Government Debt Breakdown

Agency/Ministry	# of Debts
WINZ Debt	25
WINZ Advances	21
MOJ Court Fines	16
Inland Revenue	14
Student Loan	5
IRD Child Support	3
HNZ Arrears	1
Housing NZ Corp	1
Lawyer for child	1
Legal Aid	1
Ministry of Transport	1
MSC Collections	1
MSD Debt	1
Total	**91**

Debt Collection Breakdown

Agencies	# of Debts
Baycorp	19
Dun and Bradstreet	19
EC Credit Control	16
Receivables Management	10
Collection House	5
Credit Consultants	5
Debtworks NZ	2
Pioneer Credit Solutions	2
TPS Credit Control	2
ARL Collect	1
Broadlands Finance	1
Collector Credit Consultancy	1
Financial Holdings	1
Intercoll Ltd	1
Jade Financial	1
JFS Recoveries	1
MFL Servies LTd	1
UDC Finance	1
Total	**89**

Finance Companies Breakdown

Company	# of Debts
Q Card	21
Gem Visa	15
Instant Finance	12
Finance Now	11
Farmers Finance	7
Avanti Finance	6
Warehouse Red Card	5
GEM Finance	4
Rapid Loans	4
UDC Finance	4
GE Finance	3
Harmony loans	3
Red Rat Ltd	3
Aotea Finance	2
DTR	2
Geneva Finance	2
Money Shop	2
Linsa Finance	3
Adelphi Finance	1
Admiral Finance Ltd	1
Akshaya Holdings	1
Club Finance	1
Credit Union	1
Dorchester Finance	1
DTR Thorn Group	1
Easyway Finance	1
G Mana Finance	1
Gilrose Finance	1
I finance	1
Latitude Finance Services	1
Layby	1
Marac Finance	1
Motor Trade Finance	1
Nissan Finance Ltd	1
NorthBridge Finance	1
Panthera Finance	1
Pioneer Finance	1
Southern Cross Finance	1
Sovereign	1
Stadium Car Finance	1
Sumita Finance	1
Warehouse HP	1
WeCare Finance	1
Broad Spectrum Ltd	1
Total	**134**

Bank Debt Breakdown

Company	# of Debts	Total
Bank Loans		**44**
ASB	15	
ANZ	11	
Westpac	6	
Kiwibank	4	
Co-operative	4	
Heartland Bank	2	
BNZ	1	
Sovereign	1	
Credit Cards		**43**
Westpac	13	
BNZ	10	
ASB	9	
ANZ	8	
Kiwibank	2	
Co-operative	1	
Overdrafts		**9**
ASB	8	
ANZ	1	
Mortgages		**5**
Westpac	2	
Sovereign	2	
BNZ	1	
Total debts for Banks		**101**

High-interest Loans Breakdown

Lenders	# of Debts
Cash Converters	9
Pretty Pennies	4
Home Direct Ltd	3
Cashburst	1
Ca$hland	1
Dollar Dealers	1
Moola Loans	1
Pawn Shop	1
Save My Bacon	1
Total	**22**

APPENDIX D

This Appendix contains a selection of typical case examples to illustrate the problems seen by services.

Examples of high cost lending:

Story 1:

Our clients took out a joint loan with their daughter in October 2012. The original amount was for $3139.22, inclusive of interest. Their daughter was supposed to be making weekly payments of $60 but failed to be consistent in repayment. In the contract, it stipulated clauses relating to default interest, and we were aware that it was their legal obligation to pay fees pertaining to this matter.

However, after requesting full disclosure, we analysed their statement and found that the interest charged on this account was 963.76% more than what was agreed in the contract. This was an immense difference and was seen to be an oppressive contract, where the lender exercised their legal rights to obtain excessive amounts of profit.

Story 2:

A client had an account referred to a debt collection agency in March 2008 by a lender. The initial amount owing was $9008.15. Since that day, the client had paid $13,187.00. We understood that the client had an obligation to pay interest and other charges that were stipulated in the contract with the lender. However, after requesting full disclosure, we analysed their statement of accounts and found that the charges on the account were 113% more than the original amount referred. The total charges on the account at that date (17 Jan 2017) were $19,257.58, of which $12,302.95 was interest.

Story 3:

Someone in receipt of benefit sought $300 from a high-interest lender through one of their stores. The sales staff encouraged a $1000 personal loan and this was approved with a quick affordability assessment that included accepting a budget that included $50 for food costs even though the Family Tax Credit was known to be over $280, which indicates at least 4 children in the family. Within a month another $300 was approved without any repayments being made on the previous $1000. Both loan contracts had interest rates of 485% with repayments of $100 and $80 per week respectively. The debt schedule totaled $20,000 - the two high interest loans mentioned, two accounts with debt collectors, Work and Income debt and advances. The family often sought food parcels, and had difficulty paying utility accounts and rent arrears as well as not being able to meet many of the children's expenses. When questioned by the Financial Mentor and after the complaint being referred to a number of lower level managers, a manager with a higher level of authority asked a question of the Financial Mentor –'What do you want to happen.' The reply 'To have the loans written off'. This was actioned.

Examples of hardship caused:

Story 1:
A borrower, to meet regular living expenses, borrowed $400 from an online payday lender charging 547% interest per annum. She entered into a contract on 16 November 2016 to make 3 payments of $147 per fortnight, with a total amount to pay of $441.00 by 7 December 2016. Loan repayments required a large proportion of her net pay. After 5 weeks of failed payments, the loan balance was $1682.25.
She failed to make payments which attracted fees of $60 per missed payment. Interest continued to accrue and compound daily.
After 5 weeks of failed payments, the lender exercised a WDA to recover a loan balance of $1682.25.
Deductions of $140 per week from her net pay of $347 left Mary with only $217.85 after other regular deductions were made. This was insufficient to meet her car payment, rent, food and other weekly living expenses.

Story 2:
Someone in receipt of benefit was given a loan through a finance company for $2,500, with a loan processing fee of $320. This loan was settled and refinanced three months later with an infamously named 'top-up' loan of $500. A settlement fee of $75 was charged as well as a new loan processing fee of $170. Three months after that another 'top-up' of $300 was approved causing another $75 settlement fee and a loan processing fee of $110. Three months later another 'top-up' of $600 was approved with a loan processing fee of $125. This generated charges not including interest totaling $630 for $1400, not taking into account the account maintenance fee and interest being charged at

35.5%!

When the finance company was questioned by the Financial Mentor about what amounts to a gouging practice, the company replied by email "*The credit fees and interest rates have been charged and fully disclosed as per the current cost of borrowings at the time of execution of each loan. Our Credit fees are calculated in accordance with the Commerce Commission's Credit Fee guidelines and reviewed regularly to ensure continued compliance. In regards to (this persons) lending requests, we are a responsible lender and do a full application and assessment on every request at that time and the appropriate decision given. (The person) has been a customer of ours for many years and we will continue to lend to (the person) should requests be made for finance at any time."*

This effectively represents gouging over many years as the person was not aware that a 'top-up' was actually a refinanced loan each time. The small amounts requested were to supplement basic living costs, and the repayments levels were always higher than could be realistically afforded - meaning that requests to food banks and other financial assistance have become a necessary part of this person's life. The debt schedule showed three finance company debts, three debt collectors, pawned items, high interest lender and Work and Income debt – totaling $8,000.

Story 3:
A 58 year old Tongan woman, living with her husband and 4 adult children - all employed – presented with $79,450 of debt (all hers), including 5 high interest loans, 1 bank loan and 1 debt in collection. She was working 2 jobs, earning $796 per week to cope with the $656 combined weekly debt repayments. Too shameful to discuss matters with her own family, she came to us for support and was guided into a debt payment plan. This included access to a microfinance (no interest) loan used to repay the most damaging debt, whose compounding interest outweighed that of the other 5. Of note, this lender appeals widely to the local Pacific Island community and had used cultural items as security in the past. She is making amazing progress 1 year later, having repaid over $21,000 to date, however the interest rates on her remaining loans mean she will not be debt free for several years yet.

Story 4:
A 40 year old single mum with 3 children ran out of power (prepaid meter) over a long weekend; family/friends were unable to help and social services were closed for the weekend. High cost lender agreed to loan a minimum of $100 (she only needed $40) with repayments of $33pw required for 6 weeks. Mum couldn't see any other option but to take the loan. She repaid much more for this underestimation than she wished to ($198), for an essential household item (power) and this impacted on her limited food budget for 6 weeks thereafter.

Examples of the problems being faced by customers of mobile traders:

Story 1:
Mobile shops claiming to be laybys to escape CCCFA. Contracts mirror credit contracts in every way except instead of getting goods immediately, customers must make 1-3 payments first. This is no different to a lender requiring a deposit. It is a loophole that is being viciously exploited.
There is no dispute resolution track for these contracts. Clients make their first three payments, then default because they couldn't afford payments in the first place and end up with nothing to show for the money they have paid. Often the goods do not arrive or are of very poor quality and there is no way to complain.
Cancellation fees for these contracts are outrageous – often totally more than the goods were worth and there is no way to complain.

Story 2:
Door to door sale of loan contracts for items such as phones, tablets, TVs (in relation to oppressive contracts, so that lenders do not exercise a right or power in an agreement in an oppressive manner). Contracts are oppressive as all are in favour of the lender, e.g. Goods not delivered until so many payments are made, often goods delivered are not the ones the client thought they were getting, they tell us the lender has the right to swap the goods, etc., instead of delivering what they promised. These lenders are skirting the law and selling at inflated costs to our most vulnerable.

Story 3:
One of our clients went to pick up his son from daycare and saw a mobile trader truck parked outside. He went in for a look and ended up purchasing a (very overpriced) cellphone for several hundred dollars, payable weekly by Direct Debit from his personal bank account. He was not asked any questions about his ability to pay for this. When he realised his mistake he sent the phone back (within 7 days) to the mobile trader, but they returned it saying there was a scratch on the screen and it had not been reset to factory settings.
When we became aware of this we examined the phone and could not find any scratch. We reset it to factory settings and returned it again to the mobile trader with an accompanying letter asking what procedures were followed to ascertain if the client could afford to buy the phone. Following this, the mobile trader agreed to refund the client.

Story 4:
A couple in their late 50s in receipt of benefits, with debt totaling $5,000, were approached by a door to door company selling a fridge/ freezer. Their budget included $8.74 per week for food so they didn't need the chest freezer they had been sold. There were clear signs the couple would be unable to make repayments. Letters sent to all lenders and contracts were cancelled.

Story 5:
A client was approached by a mobile shop trader while living in shared accommodation. The salesperson had been to see someone else at the house. The client signed a contract, which she clearly could not afford. The client had kept a copy of the contract that she had signed and her budget adviser requested a copy of the contract from the company. The salesperson had written a “budget” in for the client without consulting her. All the figures were completely wrong, including the rent the client paid.
Adviser contacted the company and the company “lawyer” cancelled the contract and refunded the two payments the client had paid.

Story 6:
The following is a staff member’s story of recent contact with a mobile trader while visiting whānau in a low socio-economic area.
Three family members were at home when a mobile trader visited,

selling packaged deals. The seller took all their information at their word without any verification required.

When our staff member questioned the seller, he explained that he gets the customer to complete a budget sheet which shows that they are not already in hardship. On examination of the budget sheets our staff member saw that the only entry on the budget sheet was the payment of the intended purchase. There were no entries for income or any other expenses.

Our staff member asked her family why they didn’t fill out the budget sheet properly and they replied “Cos we didn’t have to”. They were baited into the package deals with lures of free offers for goods that they did not need.

The Aunty of the whānau had already signed up for her purchase which concerned our staff member, as she knew she had mental health issues that impacted on her ability to be able to make a sound decision. Our staff member felt that she had been taken advantage of.

Our staff member was also concerned that the family was already in financial hardship and their priorities are cigarettes and alcohol – when she questioned them as to how are they going to pay another $50 a week they replied that they’ll cut back on drinking for a TV. Unfortunately our staff member doubts this will happen as they regularly look for family loans to buy cigarettes now.

Our staff member questioned the seller asking if he ever had any trouble while doing ‘this’ job? He replied that he had a gun pointed at his head around the corner today after persisting when told repeatedly ‘No’ and also told to ‘p*** off’. He ignores ‘Do Not Knock’ stickers with the justification that people move house and it may not have been them that put it up. He also said that it’s not that bad here, he had worse in another part of New Zealand.

Story 7:

A 2017 burglary influenced a single mum (8 children in care) into signing a contract with a mobile trader for a lounge suite when a door to door salesman presented. No credit checking or affordability assessments were made. The total cost of the contract was $5,150 including a $650 phone (retailing for $349 elsewhere) and a $1000 TV (retailing for $799 elsewhere). The sales contract boasted ‘No interest, No hidden costs, free delivery.' Mum was missing payments after 3 months, having made 12 payments totaling $1,029 by that time. She asked to cancel the contract - cancellation fees were $640. The trader suggested she downsize her order to reduce the repayments, so mum signed a 2nd contract thinking her $1,029 would be credited to the new account. However the original cancellation fees remained so only $389 was transferred to the new account. Mum was unable to make any further payments after that – the trader charged a further $525 cancellation fees on the 2nd account meaning mum now owed them $136 despite never having received any goods which are only delivered after 24 payments.

Stories of typical examples of unreasonable use of fees by lenders:

Story 1:
Client obtained finance for a car and was charged $1,000 broker commission from the car dealership. This was shown on the credit contract as a separate figure, but there was no mention of what the cost was for. The budgeting advisory service then requested a copy of the form signed by the client for the broker's commission form, which did not have the amount of the commission written on the form. This meant that the client was open to ridiculous fees being charged. The client couldn't remember being told how much the commission was going to be and didn't query this at the time, and was shocked the charge was $1,000. The lender also lent the client considerably more than the approved limit. The client was also charged for an Autosure Mechanical Breakdown and Indemnity Policy which was very expensive, and the client didn't remember if this was in place if the car broke down.

***Story 2*:**
A client in receipt of a benefit was trying to pay back a $3,250 debt in $25 per week payments. He had paid 16 installments and defaulted 15 times - each default costs $10. The Financial Mentor requested a copy of the contract and payment history, a fee of $20 was added to the loan for the copy. A cancellation fee of 13% of the balance was added plus other fees. The lender refused to cancel the direct debit in the meantime. The total cost to cancel the contract was $638.50

Story 3:
In this case the client had paid $1,000 on layby but decided to cancel (having not yet received the goods), and was then charged a $600 cancellation fee, so will only get a $400 refund.
It appears that the commission paid to the salesperson ($200) was part of the cancellation fee. This means that even if the company has

responsible lending processes the sales person is not incentivised to act responsibly. This is especially the case when he gets to keep the commission even when the customer cancels.

Examples of irresponsible lending:

Story 1:
A low income earner supporting a family of six paid out an existing finance company loan with a Kiwi Saver Hardship withdrawal. The low wage work had fluctuating hours which meant meeting the financial commitments of the family was always a struggle. The Kiwi Saver hardship withdrawal was noted in a journal entry in the finance company accounts. One month later the finance company approved a new loan to the person and again three months later a 'top-up' on the loan was approved. The person already had three existing finance company loans, one store card debt and one bank credit card with a debt schedule totaling $53,000 (that didn't include an $8000 student loan for the partner which would never be paid off as the partner would never be able to earn enough money.) The Financial Mentor forwarded scenario to Commerce Commission, who subsequently investigated the company. Leading to the company changing their policy (or created a new one) not to loan to someone for a period of three years who pays out a loan with a KiwiSaver Hardship withdrawal. Redress not forthcoming from the finance company for the person concerned who is still struggling to meet all repayments even though the family now have 3 to 4 income streams and still have to contend with fluctuating hours of work. He is being referred to disputes resolutions seeking compensation for the hardship caused to this family.

Story 2:
A person was supporting a family of six on a salary of $1,400 per week and paying over $500 in private rent. He approached a new online lender for an extra $1,800 on top of an existing loan from them to supplement the shortfall from car insurance to purchase a car after an accident. He was approved $9,000 after online lender made a number of assumptions without checking with borrower, bringing the total of debt to $15,000. The total on the person's debt schedule was $63,000 and included two bank credit cards, a bank overdraft, three store cards, two finance company loans and school fees debt. After persistent investigation by the financial mentor that lead to laying a complaint with

the disputes resolution scheme the person was contacted by the Operations Manager of the company asking them if they would like their loan to go away! The loan of $15000 was written off with a polite request to the person to withdraw their complaint from the dispute resolution process as it had been resolved internally!

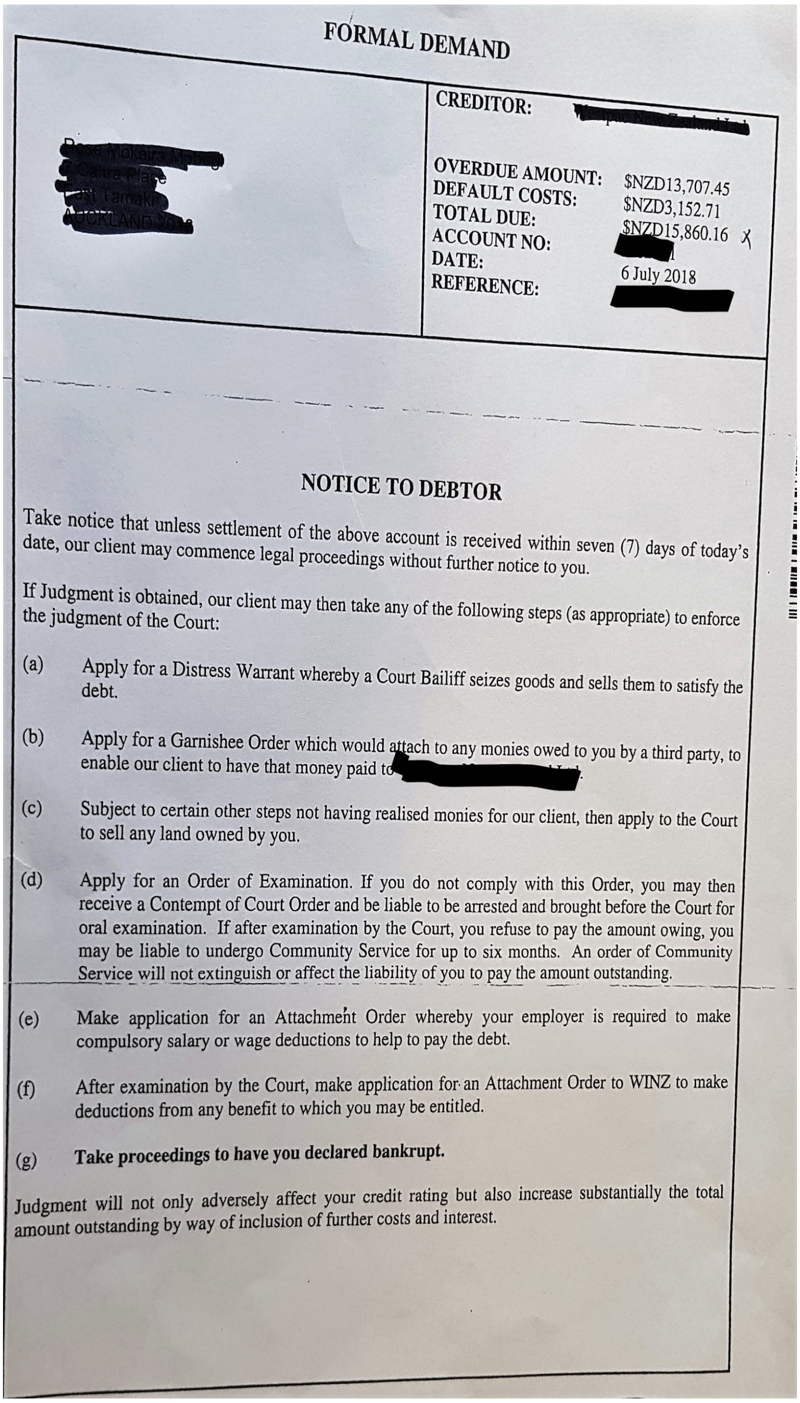
Story 3:
A bank lent $20,000 unsecured to a 19 year old client. When the advocate heard how the lending came about it didn't sound quite right, so she contacted the bank asking for the associated paperwork. They replied saying that the debt was in the process of being passed to a debt collector for collection and subsequently was off their books, also, I needed to contact the debt collector to arrange repayment. The implication was that they didn't need to supply me with any of the paperwork because the file had been closed. The debt collector then confirmed that they hadn't bought the debt, but were just collecting it on behalf of the bank, I went back to the bank which finally provided me with the credit contract & account statement as required (but no affordability assessment info).

Stories relating to poor debt collection practices:

Story 1:
A client had already told the trading company that she could not afford the agreed repayments and was going to be seeing a financial mentor. The financial mentor also contacted the company and asked them for a week to come back with a proposal. They agreed, but a debt collector from the company still turned up at the client’s home after 7pm, unannounced, and harassed the client, refusing to leave until she had signed an agreement to pay (more than she could afford). The financial mentor phoned the company the next day to cancel this agreement and get some clarification, and was stonewalled. The person she spoke to didn’t know which Financial Services Disputes Organisation they were registered with (actually didn’t know what the financial mentor was talking about), and finally suggested that the financial mentor was at fault and their collectors would never act in that way.

APPENDIX E

Letter of demand showing threatening debt collection action available under the current law.



FORMAL DEMAND

[redacted]

CREDITOR: [redacted]

OVERDUE AMOUNT: $NZD13,707.45
DEFAULT COSTS: $NZD3,152.71
TOTAL DUE: $NZD15,860.16
ACCOUNT NO: [redacted]
DATE: 6 July 2018
REFERENCE: [redacted]

NOTICE TO DEBTOR

Take notice that unless settlement of the above account is received within seven (7) days of today's date, our client may commence legal proceedings without further notice to you.

If Judgment is obtained, our client may then take any of the following steps (as appropriate) to enforce the judgment of the Court:

(a) Apply for a Distress Warrant whereby a Court Bailiff seizes goods and sells them to satisfy the debt.

(b) Apply for a Garnishee Order which would attach to any monies owed to you by a third party, to enable our client to have that money paid to [redacted].

(c) Subject to certain other steps not having realised monies for our client, then apply to the Court to sell any land owned by you.

(d) Apply for an Order of Examination. If you do not comply with this Order, you may then receive a Contempt of Court Order and be liable to be arrested and brought before the Court for oral examination. If after examination by the Court, you refuse to pay the amount owing, you may be liable to undergo Community Service for up to six months. An order of Community Service will not extinguish or affect the liability of you to pay the amount outstanding.

(e) Make application for an Attachment Order whereby your employer is required to make compulsory salary or wage deductions to help to pay the debt.

(f) After examination by the Court, make application for an Attachment Order to WINZ to make deductions from any benefit to which you may be entitled.

(g) **Take proceedings to have you declared bankrupt.**

Judgment will not only adversely affect your credit rating but also increase substantially the total amount outstanding by way of inclusion of further costs and interest.

APPENDIX F
This is a copy of the covering letter that accompanied this submission.

To:

Competition & Consumer Policy
Building, Resources and Markets
Ministry of Business, Innovation & Employment
PO Box 1473, Wellington 6140, New Zealand

By email: consumer@mbie.govt.nz

Date: 2 August 2018

Cover letter for Submission on Review of Consumer Credit Regulation from the National Building Financial Capability Charitable Trust

The National Building Financial Capability Charitable Trust was established and is funded to support and develop the large and vibrant network of agencies in New Zealand providing free budgeting services (the services). Those organisations provide financial mentoring and peer-to-peer learning to around 60,000 people a year, around 60% of whom are Māori or Pacific, two thirds of whom are women and who – on initial contact with the service – commonly have debt of between $15,000 and $60,000.

Included in this role is activity to ensure that those services, and especially the clients of those services, enjoy the very best law and public policy to protect and enhance their interests. Lending reforms should not be seen in isolation. In our view the continued permission for high cost lenders works against the previous and current Governments' investment into child poverty reduction and building financial capability. It is also necessary at the same time as considering consumer credit law reform to consider ways of encouraging and improving access to more philanthropy, grants being available through NGOs and WINZ, and 'no interest' micro finance lending. In short, household indebtedness is being overlooked as a major contributor to child poverty.

Thank you for the opportunity to submit on the Discussion Paper ('the Paper'), which proposes important law reforms in this area of law.

This submission has been prepared through a process of exhaustive information provision and contact with the services, and specifically incorporates material provided by the services listed in the attached first schedule to this letter. They are advocates for people facing extreme problems which would be significantly eased by effective law reform. Our submission includes examples of what people are currently facing, and who are not enjoying the protection afforded by the state in many other areas of life. We can provide many more examples than those given in the submission, if that would assist.

The Trust wishes to make four key points up front in response to the matters traversed in the Paper, which are enhanced and complemented by additional proposals in our submission:

- In relation to the interest rate cap options, the Trust and the services strongly support Cap Option C, in other words a cap on interest and fees (the cap range proposed in the Paper is between 30% and 50% per year, equivalent interest rate). The cap should however be set at 25%. The rate we propose is 25% primarily because people already borrowing at rates of between 30% and 50% are already in hardship. We have considered but rejected (for the reasons set out in the submission), having in addition, a modified version of Cap Option A to address the argument that prohibiting high cost lenders will cause harm to some borrowers.

- It is essential that the law around affordability assessments be reformed. This comment applies whatever Cap Option is the preferred option of MBIE. The law should set out a defined procedure for assessments, lenders' compliance should be monitored by the regulator by an audit process, and non-compliance should lead to immediate consequences. We suggest that the loan should be written off in the event of demonstrated non-compliance. The lack of compliant affordability assessments to vulnerable and under-resourced individuals and families is currently causing significant problems and hardship.

- Mobile traders and deferred payment arrangements such as AfterPay must be brought with in the CCCFA regime and regulated as consumer credit contracts. This would require both Scope Option A and Scope Option B proposed in the Paper to be adopted. Deferred payment schemes are increasingly recognised as causing financial hardship.

- In relation to debt collection regulation, a major problem is harassment of borrowers by debt collectors. The law should provide as a minimum that contact with a debtor must cease once the debtor has made contact with a financial mentor or financial advocate.

These four reforms will go a long way to addressing the major problems faced by borrowers in what has escalated into an unbridled market, evidenced by our stories and the experience of the services, due to the lack of robust legislation.

We also provide (as an Appendix to the submission) data indicating that a combination of finance company and bank debt is a significant element of household debt, and also indicating that this is a long term problem. This is backed up by many stories, and these stories show that the same problems are faced by services in a wide range of geographic locations and across all income streams.

We welcome the opportunity to discuss this aspect and any other aspect of our submission with you.

Kind regards,

Tim Barnett
Chief Executive

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