Submission by the
Financial Rights Legal Centre

ASIC

Consultation Paper 309
Update to RG 209: Credit licensing: Responsible lending conduct,

May 2019

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About the Financial Rights Legal Centre

The Financial Rights Legal Centre is a community legal centre that specialises in helping consumers understand and enforce their financial rights, especially low income and otherwise marginalised or vulnerable consumers. We provide free and independent financial counselling, legal advice and representation to individuals about a broad range of financial issues. Financial Rights operates the National Debt Helpline, which helps NSW consumers experiencing financial difficulties. We also operate the Insurance Law Service which provides advice nationally to consumers about insurance claims and debts to insurance companies, and the Mob Strong Debt Help services which assist Aboriginal and Torres Strait Islander Peoples with credit, debt and insurance matters. Financial Rights took close to 25,000 calls for advice or assistance during the 2017/2018 financial year.

Financial Rights also conducts research and collects data from our extensive contact with consumers and the legal consumer protection framework to lobby for changes to law and industry practice for the benefit of consumers. We also provide extensive web-based resources, other education resources, workshops, presentations and media comment.

This submission is an example of how CLCs utilise the expertise gained from their client work and help give voice to their clients' experiences to contribute to improving laws and legal processes and prevent some problems from arising altogether.

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National Debt Helpline 1800 007 007
Insurance Law Service 1300 663 464
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Monday – Friday 9.30am-4.30pm

Executive Summary

Thank you for the opportunity to comment on ASIC's Consultation Paper 309 Update to RG 209: Credit licensing: Responsible lending conduct.

Financial Rights agrees that it is timely to review this guidance. In our advice and casework we continue to see many examples of lending that causes substantial hardship and is arguably in breach of the responsible lending laws. Particular hot spots include:

- Small amount contract lending and consumer leases
- Credit cards (generally and retail based sales in particular)
- Motor vehicle loans, particularly where arranged through dealerships
- Home loans, particularly where a broker has been involved
- Debt consolidation

The nature of the problems we see include:

- Failure to verify income or outright fraudulently created evidence of income (car yards, brokers)
- Using estimates or benchmarks in place of actual expenditure
- Failure to verify expenditure
- Failure to investigate evidence of undisclosed accounts or expenses
- Obtaining information from consumers but not taking this information into account in the assessment
- Ignoring clear signs of financial instability and hardship (particularly Small Amount Credit Contracts (**SACCs**), consumer leases)
- Assuming only minimum repayments will be paid on continuing credit accounts when granting new credit
- Inappropriate use of partner income (or fabricated partners – as occurs in car yard sales)
- Inappropriate signing up of partners or family members as co-borrowers or guarantors
- Failure to obtain accurate information about requirements and objectives or to have regard to that information (interest only loans, credit limits in retail sales scenarios, SACCs, consumer leases).

In our view the guidance should be comprehensive and targeted to ensure it addresses these known issues and hot spots.

With respect to the specific proposed changes we put forward the following views:

Verification of consumer's financial situation

Financial Rights supports clarifying guidance on the kinds of information that could be used for verification of the consumer's financial situation including an expanded list of information.

We also support the guidance clearly stating that it is not sufficient to obtain verifying information but not have regard to it in making the lender's assessment.

We do not support the use of automated systems if it leads to a mere tick a box process that relies on algorithmic decision making.

The guidance should emphasise that such systems need to be continuously evaluated and recalibrated for evidence of:

- their effectiveness compared to conscious human decision-making based on all the relevant information and the objectives of responsible lending;
- their impact on financial exclusion and vulnerable customers.

The guidance should also emphasise that lenders who do rely on fully or largely automated systems do so at their peril.

Financial Rights does not support an "If not, why not" approach to taking reasonable steps to verifying information. There must be reasonable verification on both sides of the income and expenditure equation.

With respect to the concept of scalability the guidance should set a minimum standard from which licensees must scale up their checks.

Specific guidance should be given in relation to refinancing, debt consolidation, the use of partner income and the assumptions used in relation to repayments on existing credit when assessing a new application.

Use of benchmarks

Financial Rights supports clarifying that benchmarks are only useful as a test and can never replace inquiries and verification but we suggest that the guidance be clearer and more direct on this point.

The guidance should state that where a benchmark is used to test expense information and the reported expense estimate is lower than the benchmark then the first step should be to seek further verification of the expense information to determine whether it has been underestimated. If the lower expense figure is verified as correct, an appropriate buffer should be applied, taking the assumed expenditure for the application to at least the level of the benchmark.

Benchmarks should never be relied upon for housing expenses and benchmarks should be sufficiently robust and regularly reviewed for appropriateness. An interest rate buffer should also be applied.

Consumer's requirements and objectives

Financial Rights supports clarifying guidance on inquiring about consumer requirements and objectives including documenting the consumer's objectives and requirements and how and why they will be met by the loan or lease in detailed and specific terms.

The guidance should be strengthened specifically with respect to obtaining a consumer's requirements and objectives for a consumer lease.

Credit card, home loan bundling should be prohibited.

Further specific guidance is required where credit is obtained at point of sale in retail outlets to ensure that consumers obtain the amount of credit they need to make their purchase(s) and no more.

The use of drop down lists for requirements and objectives - particularly on pay day loan apps - should not be allowed.

Areas where the responsible lending obligations do not apply

If the guidance is to include a section on areas where the responsible lending obligations do not apply, then it should not be allowed to become a how-to guide on how not to do responsible lending. The guidance should specifically address using sham arrangements to avoid the consumer credit law.

Fraud risks and impact on responsible lending obligations

Financial Rights agrees that specific guidance about the links between responsible lending and the mitigation of loan fraud should be included in RG209.

Use of repayment history information

Financial Rights supports the inclusion of guidance on the use of negative repayment history information and hardship indicators and believe that it has the potential to help reduce the risk that credit providers consider it necessary to refuse applications for further credit products that may in fact be affordable for the consumer.

The guidance should specifically address the limitations of Repayment History Information (RHI) in approving loans.

Records of inquiries and verification

Including guidance on industry good practice for recording the inquiries and verification steps that have been undertaken is appropriate. ASIC should be empowered to undertake random spot checks and be able to undertake an analysis of content of records for patterns of avoidance

Content of a written assessment

Financial Rights agrees that it would be useful for ASIC to provide an example of a written assessment. The written assessment should be provided to every consumer automatically. The guidance should include a statement requiring that the written assessment be created contemporaneously to the time which the loan was applied not created after the fact.

Verification of consumer’s financial situation

Verification of consumer’s financial information

Financial Rights supports clarifying guidance on the kinds of information that could be used for verification of the consumer’s financial situation including an expanded list of information as outlined in Appendix 1 of the Consultation Paper.

With respect to the list and the types of information that should be referenced we provide the following comments.

Under “existing debts/liabilities” we believe it may be useful to provide examples of what “other credit providers” could include, such as:

- buy now, pay later services;
- small and medium amount credit contracts;
- consumer leases;
- credit cards; or
- other loans such as personal loans.

While some of these will arise from credit listings – this is not necessarily the case.

It may be worth also clarifying when it is appropriate for a lender to seek this further detailed information. Clearly it will not be needed for everyone but may be useful in particular circumstances. Examples of these circumstances could be outlined

A suggested date range should also be included to provide guidance of how far back a lender should go to check this information.

Reasonable steps and new technologies

While we agree that there is the potential for new technologies to aid in responsible lending assessment, it is important to note the limitations of both bank statements now, and open banking when it is available: Bank statements only show how much people actually pay, as opposed to what they are obligated to pay. For significant expenses other verification may still be required, although comprehensive credit reporting (**CCR**) may be sufficient for consumer credit debts (the amount paid is visible from the bank statement and the fact it is meeting the obligation is visible from the repayment history information (**RHI**)). For other major commitments such as rent or private school fees, for example, other evidence may be necessary.

Informed assessment

We support that the updated guidance should clarify that it is not only the responsibility of the lender to make reasonable inquiries but for the lender to obtain the information, have regard to the information and use it to inform their assessment – for the information obtained to act upon the mind of the lender. While in many ways this should go without saying, it is clear that it must be said as we regularly see licensees ignoring information that they have obtained that would clearly demonstrate that a loan would be unsuitable. We have seen evidence of the practice noted where lenders obtain information to confirm income but ignore other aspects of the information which is patently at odds with other details used in their assessment. For example, a bank statement may confirm income but also shows expenses three times higher than those declared (or assumed), a range of other SACCs payments coming out already, or frequent overdrawing and dishonours. This is particularly prevalent in the SACCs sector, but occurs in a range of lending scenarios.

Case study – John's Story - C181741

John is 22 years old. He boards with his parents, and works full time to help support his family including 2 small children. He works as a carpenter and earns about $750 per week. 2 years ago he had an unsecured personal loan of about $8,000 which he was managing. He got his first small amount credit contract loan 18 months ago for $500 for the stated purpose of Valentine's Day. John had declared his monthly expenses as $600 per month, but it was clear from the 90 day bank statements that by the time his weekly pay was due he had none left over.

John would go on to obtain a further 4 small amount credit contracts from the same lender in the following 18 months, at each assessment his stated living costs remained unchanged and his 90 day statements continued to show he lived pay to pay. As the months progressed John was becoming more reliant on online lenders and obtained loans from other providers. He would occasionally default on payments and use the proceeds of a loan to pay another loan. Despite this, all the lenders assessed the loan as suitable. John now has 11 existing loans, 4 are SACCs and an additional 6 high cost online loans on top of his personal loan. In the 18 months he had 16 different loans with 5 different providers. Over 20% over his weekly income was going to pay the loans. He was struggling to make payments, and presented to Financial Rights in a state of high distress when he was forced to get an advance on his next pay to be able to afford to live.

Case study – Susan's Story - C149145

Susan came to Australia five years ago, and works in health care. She sends money home every month to help care for her disabled son. She was recommended by someone at work to attend a property seminar about how she could buy a house. She went to the seminar, and was encouraged that she could afford an investment property. She went to a bank branch and applied for a loan for the deposit as suggested by the property seminar. Susan thought it was normal to get a loan for a deposit from what she was told at the seminar. Susan got the loan, exchanged contracts to buy the property the seminar suggested but lost it when she was unable to obtain a mortgage to complete the sale. She lost the deposit and was struggling to make the repayments on the loan. She saw a financial counsellor who requested a copy of the lending assessment. The bank took over 12 months to produce the assessment, and it was not dated for the time of the loan but the date of the request. The bank had no verifying information on file and had the loan purpose as “home furnishings” even though Susan said it was for the deposit, her expenses were nowhere near what she paid in rent or sending money back for her son. Susan says she never recalls being asked what her expenses were.

The current guidance places an emphasis on simply obtaining the information. It details what information sources there are (RG209.32-33); explains the steps to find out the objectives of the consumer (RG209.34-37) and processes to put in place (RG209.38-45); as well as verifying that information (RG209.46) before making a final assessment.

We support the guidance clearly stating that it is not sufficient to obtain verifying information but not have regard to it in making the lender’s assessment

Automated systems

A lack of an informed assessment is becoming more common with the increased use of automated systems.[1] The Banking Code Compliance and Monitoring Committee (**CCMC**) noted in 2017 that:

> *the majority of applications for unsecured credit are processed using automated systems. Banks also indicated that the use of technology in the credit assessment process is likely to continue to grow over the next 12 months and beyond.*[2]

Automated systems are used to process approximately 97% of applications for unsecured credit.[3] Lenders have increasingly been using systems and adopting policies that preference automation to improve administrative efficiencies (and presumably cost savings associated) over meeting the obligations of responsible lending laws.

The CCMC found that:

> *At this point in time banks have not demonstrated, to the CCMC’s satisfaction, that the use of an automated system or statistical credit scoring model alone is sufficient to comply with the*

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[1] Code Compliance Monitoring Committee Own Motion Inquiry Provision of Credit Examining banks’ compliance with the provision of credit obligations under clause 27 of the Code of Banking Practice, January 2017

[2] Page 5, CCMC 2017

[3] As above

Code obligations[4]*, unless up-to-date information regarding a customer's financial position is incorporated into the credit assessment. The CCMC considers that having a full and current picture of a customer's financial circumstances is fundamental to complying with the Code obligations.*

A reliance on automated processes increases the probability that a lender merely obtains the verifying information, but does not have regard to it. The Financial Rights has no issue with the use of automated systems in circumstances where they are used to develop a genuinely informed assessment – that is one that has impacted the mind of the lender in their decision making process. However we do not support the use of automated systems if it leads to a mere tick a box process that relies on algorithmic decision making. Algorithmic decision making is particularly problematic. It has the potential to lead to discriminatory practices; has the potential to miss important information that is not captured by an automated system; and can lead to a shift of decision making away from a diligent and prudent lender.

Acting as a diligent and prudent lender making informed choices rather than outsourcing decision-making to an algorithm is inherently more expensive. While Financial Rights supports the use of automated processes to assist a lender in being more diligent and prudent as there may be significant cost savings and efficiencies in accessing and processing this information however this should only go to servicing the lender's role of assessing the application in an informed manner – not replace it.

We note that RG209.49 states that:

RG209.49 After inquiries have been made and information about the consumer's financial situation has been gathered, a credit licensee may use benchmarks or automated systems and tools for testing the reliability of the information obtained as part of the process for taking reasonable steps to verify the consumer's financial situation. For example, these kinds of systems and tools can be useful for confirming whether it is reasonable to rely on the information provided by a consumer for the purposes of the unsuitability assessment, or whether further inquiries may be warranted. However, automated systems and tools are not a substitute for making inquiries about the consumer's current financial situation.

RG 209.50 If you use these kinds of systems and tools, you need to ensure that they are adequate and appropriate and that their use is regularly monitored and reviewed to ensure their continued effectiveness.

As more data becomes available in machine readable formats and AI systems become increasingly sophisticated it will more and more likely that lenders may be able to ostensibly comply with their responsible lending obligations using totally automated systems. ASIC Guidance should emphasise that such systems need to be continuously evaluated and recalibrated for evidence of:

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[4] Clause 27 of the Code of Banking Practice requires a bank to exercise the care and skill of a diligent and prudent banker in: • selecting the credit assessment method it will apply to a credit facility or credit increase • applying the selected credit assessment method to the customer, and • forming its opinion on the customer's ability to repay the credit facility.

- their effectiveness compared to conscious human decision-making based on all the relevant information and the objectives of responsible lending;
- their impact on financial exclusion and vulnerable customers.

Further, as noted below in relation to pay day lending and using drop down menus to determine consumer objectives, there are serious limitations to genuinely engaging with consumer requirements and objectives in an automated environment without much more sophisticated processes than a tick a box or drop down menu.

The guidance should also emphasise that lenders who do rely on fully or largely automated systems do so at their peril and will be responsible to remediate customers where their systems get it wrong, and will be at risk of systemic non-compliance if they do not correct weaknesses in the system that are so identified.

The "If not, why not" approach

Financial Rights does not support an "If not, why not" approach to taking reasonable steps to verifying information. Licensees should take all steps reasonable to obtain verifying information in all circumstances and a minimum standard should be set for doing so. While we accept that not all forms of verification available will be necessary in each case, we posit that in order to comply with the law there must be some verification of the person's financial situation and that this verification cover both sides of the equation, both income and expenses.

Davies J states in *ASIC v The Cash Store (in liquidation)* [2014] FCA 926 [28] that

> *"Reasonable" inquiries about the consumer's requirements and objectives in relation to the credit contract must be such inquiries as will be sufficient to enable the credit assistance provider to make* ***an informed assessment*** *as to whether the credit contract will meet the consumer's requirements or objectives: ss 118(2)(b) and 123(2)(b). Similarly, "reasonable" inquiries about, and "reasonable" steps to verify, the consumer's financial situation must be such inquiries and steps as will be sufficient to enable the credit assistance provider to make an* ***informed assessmen****t as to whether the consumer will be able to comply with the consumer's financial obligations under the contract without substantial hardship: ss 118(2)(a) and 123(2)(a)*

It is not possible to make an informed assessment without considering both income and outgoings. The only relevant relationship to a lending decision is not the overall size of either a potential debtor's income or expenses but their relationship to each other. A high income earner can be seriously overcommitted. The act requires verification of the financial situation, not one aspect of it.

A more appropriate use of the "if not, why not" approach would be to enable lenders to use it to justify why they have not used a particular easily obtained form of verification, because they already had sufficient evidence. For example, a lender may have specifically asked about expenses, confirmed those expenses are above a reasonable benchmark, obtained recent rent receipts, reviewed three months of bank statements to find they are largely consistent with the declared expenses, and obtained a credit report. In those circumstances it might be reasonable to argue that it was not necessary to seek copies of utility bills, or credit card statements because those expenses had been reasonably verified. However, we do not support any scenario where the lender has not obtained at least some verification on both sides of the financial ledger. For clarity, comparison to a benchmark alone cannot be sufficient verification.

An “If not, why not” approach that permits a loan to proceed without at least some verification on either side of the income and expenditure equation will provide licensees the ability to establish a set array of reasons why they did not take reasonable steps and reify these into lowered standards for verification. In other words there is a real risk that lenders will simply automate the compliance process by developing a templated taxonomy of reasons for not meeting the requirements to obtain or refer to those forms of verification in the circumstances of the particular consumer involved.

This again goes directly to the nexus of the increasing use of automated decision making and the lack of a genuinely informed assessment. The development of automated “why not” reasons is the inevitable result of a culture of efficiency and cost cutting trumping compliance and diligent and prudent lending standards. The guidance will need to explicitly address this issue.

Scalability

The concept of scalability has been largely interpreted as an ability to scale down what a licensee needs to do to meet their obligations. On the contrary there should be a minimum standard set from which licensees must scale up their checks.

Scaling down to almost negligible levels for smaller loans can and has resulted in serious problems for consumers who pile up a series of small debts that add up to a large overall debt. If the expectation is that verification standards are lowered for these, a consumer can obtain a large sum total debt with few checks. It is critical that a minimum standard of verification is set.

Further, some small value products such as SACCs and consumer leases are high risk as a result of their comparative cost and the vulnerability of the target market. Responsible lending is extremely important to mitigate the risks of extreme hardship to many SACC borrowers and consumer lessees.

Case study – Bob's Story - C138227

Bob rang the National Debt Helpline in October last year, struggling to pay the eight payday loans he had with seven different lenders. Bob was on Newstart, and working casually while studying to become a teacher. He had been using the payday loans to cover living expenses, and ran into trouble when he had to give up his casual work because he needed to attend (unpaid) placements as part of his teaching degree. Bob was in a consistent and worsening pattern of running out of money and borrowing from a range of payday lenders at an increasing frequency. The lenders had not taken into account his multiple ongoing debts, defaults on repayments, failed direct debits for insufficient funds and had not considered his requirements and objectives – which were increasingly to cover his debts.

Financial Rights requested documents and raised responsible lending disputes with each lender.

Also see *John's story* above. As with Bob, all of John's loans were assessed using the same Third Party Provider software to analyse his 90 days of bank statements.

Refinancing

Refinancing existing debt to a lower cost loan is the only situation where Financial Rights can see some sense in scaling down the rigidity of the responsible lending process, but this should not be to the point of non-compliance with the law. The law requires making appropriate enquiries and verification and this should be no exception to that rule. The difference is a more subtle one, in so far as the debtor's ability to meet their existing commitment should provide partial evidence that they could also meet a lesser monetary commitment.

Of course the lender would need to be satisfied that the borrower was in fact comfortably meeting their commitment under the existing loan (no defaults or consistently late payments); would need to ensure that their income was current (they hadn't lost their job last week, for example) and sufficient; and that their banks statements did not expose some glaring inconsistencies or ticking time bombs.

The main point is that refusing a loan that will cost a borrower less than one they have already demonstrated they can pay on responsible lending grounds is a perverse result that will prevent people from refinancing to save money and could ultimately result in a backlash that drives pressure to wind back entirely appropriate responsible lending obligations. Recognising there is a qualitative difference between creating new financial obligations, or increasing obligations, as opposed to reducing financial obligations or even replacing them with like for like is vital. This will enable lenders compete to offer better interest rates to people with existing home loans rather than trap people in potentially uncompetitive loans due to an upgrade in lending standards. We note that the existing guidance in RG 209 about including the costs of switching in any assessment of overall suitability and savings to the consumer would still apply.

Debt consolidation

Debt consolidation, as opposed to refinancing, is a different story. It is not uncommon for borrowers to seek, or for lenders to offer, to consolidate high costs credit, like credit cards onto a home loan in order to reduce the consumer overall repayments. We note that there are a number of downsides to this:

- The interest rate may reduce significantly but the overall cost of credit may increase due to the longer term of the loan;
- There is an increased risk the consumer will default on their (now bigger) home loan, placing their home at risk;
- The consumer may not address the underlying imbalance between their income and expenditure that led to accruing the unsecured credit in the first place and accrue further unsecured credit;
- The consolidation may mask underlying issues with the original unsecured lending (such as failures of responsible lending) that would be more appropriately addressed by reducing or waiving the debt.

It is far preferable that struggling consumers are given the opportunity to convert their high cost continuing credit debts to fixed term loans with lower interest rates, assuming there has been no failure of responsible lending. This gives the borrower the chance to pay off their debt more effectively, save money and obtain much needed breathing space, without putting their home at greater risk. The new guidance should specifically address these issues.

Balance transfers

Consumers accumulating credit accounts due to accepting balance transfers and not closing the initial account is a particular problem. ASIC recently reported that that over 1 million credits cards had a balance transferred onto them at some stage or 7.6% of all open accounts.[5] Adding in cards that were cancelled the total proportion of all cards with a transferred balance at some stage was 8.3%. Where a lender grants a balance transfer in circumstances where the borrower can afford the replacement credit but would not be able to comfortably afford the repayments on both cards then the approval should be <u>conditional</u> on the borrower providing written instructions to the original lender to close the account from which the balance is being transferred, or lower the limit accordingly. These instructions must be provided to the transferee creditor before any credit is made available, and passed on to the original creditor immediately following the transfer.

Inappropriate regard to partner income

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[5] Page 46, ASIC Report 580 *Credit card lending in Australia*, July 2018, https://download.asic.gov.au/media/4801724/rep580-published-4-7-2018.pdf

The guidance should clarify that it is inappropriate to rely on a partner's income to pay a loan under which that partner is not liable. Nor is it appropriate to sign up a partner as a co-borrower in circumstances where they will obtain no substantive benefit under the contract.

On the other hand, it may be appropriate to consider whether a partner is contributing to expenses, but this should only be done where there is verification that the partner exists, has an income from which to contribute and appears to be actively doing so.

Case study – Sachin's Story - C138654

Sachin works full time in IT, earns $3,500 per month and boards in a house. The rent is reasonable, and below market rent. He has a car on finance which he just purchased. However, a few weeks after the purchase his car broke down. Sachin does some online research and becomes concerned that he has bought a lemon. He goes to a dealership, as he wants to trade in his car and purchase a more reliable one.

Sachin's 'lemon car' had a trade-in value $23,000. His finance over the car was $43,000. The new car price is $30,000, plus extras including stamp duty, origination fees and some add on insurance. When the new loan is completed it is for $63,000 over his new $30,000 car. The payments are $645.87 per fortnight. Sachin agrees to the new loan and gives the dealership all of his details. The dealership get him to sign the application form:

I/we the Applicants for finance

- *Declare that the details in this application are true and correct and are not by omission, or otherwise misleading.*
- *Acknowledge that the dealer named in this application (the "Dealer") is not acting as my agent in relation to my application for finance from [Bank] and is not authorized to negotiate in relation to the loan contract on my behalf.*
- *Acknowledge the Dealer may perform some activities under the National Consumer Credit Protection Act on behalf of [Bank] as its agent, except in undertaking customer identification or providing documents as legally required.*
- *Am/Are liable to pay the Origination fee shown in the Loan Agreement to the Dealer for reimbursement of its administrative costs in the amount of $770.00 inclusive of GST.*
- *Authorise the Origination Fee to be included in the Loan Agreement and for [Bank] to make the payment on my/our behalf to the Dealer.*
- *Have requested my total monthly household expenses be reduced when assessing this loan as my spouse/de facto contributes to these expenses, is in permanent (not casual) employment and has a net monthly income as detailed above.*
- *Have chosen to finance one or more insurance products and confirm the agent for the insurance company (Dealer) has explained the benefits, exclusions and cost of the*

products) and the impact and cost of including the premium in the amount financed.*

- *Have selected a balloon repayment (larger final repayment). I understand I will be required to make this final payment on the final repayment date.*

Sachin signs the contract, not really understanding he has just signed an application form that indicates that he has a de-facto who shares his household expenses, a feature the dealer added in without his knowledge. Sachin doesn't have a spouse. His expenses are all paid for by him. The loan repayments represent 50 per cent of his income.

Sachin struggles to make the payments. Shortly after buying the car Sachin is required to leave his residence and needs to rent elsewhere. He struggles to make the payments and he surrenders the vehicle. The shortfall after the sale of the vehicle is approximately $42,000.

See also *Alison's story* below.

Assumptions about repayments on continuing credit

The updated guidance should specifically address the situation where a consumer has existing credit card accounts any subsequent lender must assume a repayment level that would repay the fully drawn limit within three years, regardless of the minimum payment or the amounts actually being paid by the applicant. Any other approach condemns the borrower to being unable to pay down their balance within a reasonable period should they choose to do and undermines the intent of the recent amendments in relation to credit card lending.

Where a consumer has another form of continuing contract, such as a line of credit secured over their home, the appropriate repayment level would need to be determined on a case by case basis with reference to their objectives and requirements, and other aspects of their financial situation, but it would usually be appropriate to use a repayment level that is *at least* as much as principle and interest payments would be over an appropriate term.

Use of benchmarks

Clarifying that a benchmark is only useful as a test

Financial Rights supports clarifying that benchmarks are only useful as a test and can never replace inquiries and verification.

Case study – Skye's Story

Skye is looking to refinance a residential investment property. She rings a lender and makes some inquiries about what they need to assess her application. They tell her they do not need to see Skye's actual expenses and that the law requires the lender to use the HEM to assess affordability.

In the work we undertake in assisting consumers solicitors use benchmarks to stress test whether a licensee has established a plausible expenses calculation. Many times the use of the benchmark makes it very clear that the licensee had not taken reasonable steps to establish the consumer's financial situation. Further, some lenders use benchmarks or assumed levels of expenditure that are even lower than recognised benchmarks.

Case study – Katie's Story - C112687

Katie is a Disability Support Pensioner. When Katie called us on the National Debt Helpline, she asked for some legal advice re an outstanding payday loan that she had. She said she had been paying $20.00 per week, and that she had gotten it 2 years ago, and wasn't sure where it was up to as sometimes the money would come out (and sometimes it wouldn't if she didn't have enough funds). The loan was originally for $400.00, but our client continued to struggle to pay it off due to default fees and other charges that accrued on the account when she wasn't able to make her repayments.

On reviewing the loan documentation when received, it became evident that Katie had had previous loans with the same operator; a total of eight loans.

During the period of her borrowing, Katie was a single mother with three children in her care. She had been at a women's refuge, and was subsequently in housing approved by the Department of Housing. Katie had been struggling to make ends meet on her pension, and had to resort to pay day loans.

In particular, in looking at the lender's assessments, they did not appear to have made any enquiries about Katie's particular expenses at the time. The lender either provided no calculations, used a $154.00 per week figure (without evidence to support what this was based on), or used a "default 15% of income" to calculate her living expenses.

For each loan, we substituted these calculations for expenses with the Henderson Poverty Index. Using the HPI, a conservative indicator, it was clear that Katie would, for each loan, be in deficit of funds of close to a $450 per month, and that the loan repayments in fact worked to further exacerbate Katie's deficit. Katie's actual expenses were higher than HPI.

ASIC's proposed messaging states that

> *Benchmarks can be useful as a tool to test the plausibility of consumer-provided information, but do not give a positive confirmation*

We suggest that the guidance be clearer and more direct. Consideration should be given to the following wording:

- Benchmarks *should not be used as a replacement* for the obtaining of information about the consumer's actual income expenses and other circumstances that are likely to affect their ability to meet the financial obligations.
- Exclusive reliance on a benchmark does not meet responsible lending requirements nor sound risk management standards.
- If they are used at all, benchmarks *should only* be used as a tool to test the plausibility of consumer-provided information. Benchmarks do not confirm a consumer's income and expenses. Benchmarks provide a guide as to whether the expenses and income provided are realistic. Even if they appear realistic, some other corroboration should be sought, such as checking they are largely consistent with expenditure on a bank statement.

Use the higher of the benchmark or the declared expenses figure

In the situation where a benchmark[6] is used to test expense information and the reported expense estimate is lower than the benchmark then the first step should be to seek further verification of the expense information to determine whether it has been underestimated. We support ASIC explicitly including this step in the guidance as proposed. We also propose further steps:

1. The lender should make inquiries about whether the expenses reported are genuine and plausible. There are rare cases where somebody may have low expenses – such as a young person who has inherited a home and is not paying rent or high housing costs.
2. The lender should make an assessment as to whether the borrower's situation is reasonably likely to change resulting in a likely increase in expenditure. For example, we regularly advise young adults who were living at home rent free when they obtained a loan but now cannot meet their repayments because they have left home and need to meet the cost of renting/boarding.
3. If the lender cannot verify the expenses, rejecting the loan should be explicitly acknowledged as an option.
4. If the lender is of the view the lower expenditure estimate is correct, they should apply the correct verified expenditure figure for major costs such as housing and apply ***at least the benchmark*** figure for general living expenses. In cases where the verified

[6] That is a solid benchmark rather than the low income HEM benchmark, which we do not support

expenses are only a little below the benchmark, a larger buffer may be required – similar to that required by APRA's Prudential Practice Guidance.[7]

Information should always be positively verified.

The proposed guidance states:

> *Reliance on benchmarks to test information provided may involve a higher risk that the information is not accurate, particularly with some expenses*

While the above is true, the wording needs to be more direct and state that

> *Benchmarks should not be solely relied on to test information – information should always be positively verified.*

Benchmarks should never be relied upon for housing expenses

Housing is too big an expense to get wrong. Licensees should always use actuals for housing expenses. To do otherwise would not meet the standard of a prudent and diligent banker.

Benchmarks should be sufficiently robust and regularly reviewed for appropriateness

According to the Royal Commissioner, referring to the HEM:

> *much more often than not it will mask the fact that no sufficient inquiry has been made about the borrower's financial position. And that will be the case much more often than not because three out of four households spend more on discretionary basics than is allowed in HEM and there will be some households that spend some amounts on 'non-basics'. Using HEM as the default measure of household expenditure assumes, often wrongly, that the household does not spend more on discretionary basics than allowed in HEM and does not spend anything on 'non-basics'.*[8]

We support the updated guidance specifying that benchmarks should be adjusted for income, numbers of dependents and geographic locations and regularly reviewed for appropriateness and effectiveness. Further inquiries should be made about expenditure items known to be excluded from any applied benchmark.

Apply an interest rate buffer

The Australian Prudential Regulatory Authority (APRA) asks all lenders to apply a minimum of 2% as a buffer to the standard variable rates under its 2018 Reporting Standard ARS 223.0 for Residential Mortgage Lending. This buffer was put into place to

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[7] APRA, Prudential Practice Guide APG 223 Residential Mortgage Lending, https://www.apra.gov.au/sites/default/files/APG-223_0.pdf

[8] Interim report p 28 Royal Commission

> *"help ensure that borrowers are able to service their loan even if interest-rates were to rise to more historically normal levels"*[9]

Despite APRA now relaxing the minimum interest rate floor from 7% it is clear that a buffer is still expected and appropriate.[10] We believe that this is prudent and should be reasonably applicable to all stages of assessment. Such a buffer should be applied to the use of a benchmark as recommended by the Financial Ombudsman Service – now AFCA. This will assist in ensuring that consumers are living comfortably above the level of poverty.

Consumer's requirements and objectives

Financial Rights supports clarifying guidance on inquiring about consumer requirements and objectives including documenting the consumer's objectives and requirements and how and why they will be met by the loan or lease in detailed and specific terms

We support ASIC's observations in relation to interest-only home loans. The National Debt Helpline at Financial Rights has received many calls in the last couple of years from people in interest-only home loans that are not investment properties. There was often no ostensible reason for the consumer to have taken out an interest-only loan except that they had perhaps been unable to afford principle and interest payments. Not only are these loans more expensive for the borrower, as noted in the consultation paper, but they are riskier because a borrower in hardship has no room to move. In many instances the borrower was calling the National Debt Helpline because they were in hardship but the bank was refusing to give any meaningful assistance because their usual payments were already only covering interest and there was little or no accumulated equity in the property. Interest-only loans for a borrower's primary residence are often achieving little more than allowing the broker/lender to avoid the spirit of the responsible lending provisions of the law, often to the detriment of the borrower.

We also make the following observations and points.

Strengthen guidance for obtaining a consumer's requirements and objectives for a consumer lease

Financial Rights regularly speak to clients who are under the mistaken impression that the consumer lease they had obtain would lead to ownership of the goods. Often this impression is actively created by the consumer lease provider or an associated retailer, who makes verbal representations at odds with the consumer's written contractual rights. In some cases the very name of the lease provider, or the product, support this misleading impression. Quite often the consumer will be told that they can own the goods at the end of the contract by taking a

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[9] Review of APRA's prudential measures for residential mortgage lending risks 29 January 2019 https://www.apra.gov.au/sites/default/files/review_of_apras_prudential_measures_for_residential_mortgage_lending_risks_-_january_2019.pdf

[10] APRA proposes amending guidance on mortgage lending, 21 May 2019 http://apra.gov.au/media-centre/media-releases/apra-proposes-amending-guidance-mortgage-lending

particular action, whether that be making an extra payment, or having a friend or family member purchase the goods for a dollar, or some other mechanism that may or may not be reflected in the contract. The contract never gives the consumer a right to own the goods because this would attract the sale of goods by instalments provisions and the attendant higher legal obligations, including the cost cap on consumer loans.

Case study – Janice's Story - C159872

Janice is a 40-something year old from regional NSW. She is a Centrelink recipient, and gets approximately $1500 per fortnight for herself and her four dependents.

Janice came to us after hearing about ASIC's action against a consumer lease provider on the news, and was experiencing difficulties with making repayments on her own consumer leases. She had been a consumer lease customer for over 20 years. The contracts in dispute involved four items (ie TV, home theatre system, washing machine and entertainment unit), where she was paying approximately$100-$120 per fortnight for all the items. This was unaffordable for her, but she kept the contracts because she was under the impression that she would own these goods after the contract ended.

Case study – Rachel's Story - C141578

Rachel suffers severe nerve damage and PTSD. Rachel has not been able to work since this incident and relies on Centrelink as her only source of income. Rachel receives treatment for mental health issues, including severe depression and anxiety.

Rachel visited an electrical goods retailer in late 2011 with intention of purchasing a TV. The salesperson suggested that she rent a TV with a consumer lease provider and told her that she would eventually own the TV. Rachel entered into the consumer lease contract for a TV with a price of $599. The salesperson did not adequately explain the terms of the contract to Rachel and did not inform her that she would not own the goods at the end of the contract, despite knowing that her objective was to own the TV. Rachel has low literacy levels and is given no time to read the contract. Under the contract the amount of approx. $38 was deducted from Rachel's bank account each month. The duration of the contract was 36 months and the amount payable under the contract was approx. $1,300. The contract was due to end in September 2014.

In June 2015, the TV was stolen from Rachel's property. Rachel contacted the consumer lease provide to advise them that the TV had been stolen. The consumer lease provider told Rachel that she should continue to pay the monthly rental amount. Rachel continued to make the monthly payments via direct debit.

Rachel contacted a financial counsellor in early for assistance 2017 by this stage she had paid $2,280

Case study – Deidre's Story - C123195

Deidre is a single parent with 2 children whose sole income is from Centrelink. Deidre had gone to a motor financer in April 2014 to seek assistance in purchasing a car. Deidre signed thinking she had obtained a loan to purchase the car but she discovered she had in fact signed up for a 5 year lease agreement where she will pay, $32,000 for a car valued at $5,200. Deidre could not afford repayments of $240 per fortnight.

Financial Rights submits that this area not only requires more targeted guidance, but that considerable thought is required in relation to monitoring and enforcement. Industry conduct is clearly being driven by the desire to avoid the more stringent requirements of the law for consumer loans compared to leases, including the applicable cost cap. While this opportunity for regulatory arbitrage remains available, there is a high risk that consumers will continue to be told misleading information about the nature of their contract and there is a risk that more documentation by lease providers will only serve to add further to the weight of written evidence that is at odds with any verbal exchange.

Credit card, home loan bundling should be prohibited

The practice of mandatorily bundling credit card with mortgages – where consumers are offered 'discounts' on their home loan interest rates if they sign up to a linked credit card account - needs to be prohibited since the consumer's requirements and objectives have not been explicitly or implicitly considered. Credit limits on such packages are often high (for example $25,000).

Credit obtained at point of sale in retail outlets.

RG 209.37 currently states:

> *In relation to credit cards, the Explanatory Memorandum states that 'a credit card has no particular purpose and therefore there would be a limited requirement to understand the consumer's requirements and objectives in this case': see Explanatory Memorandum, Example 3.5 for further details. However, we expect that you would still make inquiries about the maximum limit the consumer requires on the card, as this is a key feature of the product that relates to the consumer's requirements and objectives.*

We support this guidance.

Case study – Avril's story - C166070

Avril was on Newstart benefits when she applied for a credit card. She wanted a credit limit of $1,000 as she was a gambler and manages her finances by ensuring she does not have access to any large sums. She knew having access to a large credit card would only fuel and exacerbate her addiction and she would never pay the debt off. The lender, a major bank, however approved a $10,000 limit – on the basis of $15,000 per year for income (roughly $288 per week) and allowing for just $5352 per year (roughly $103 per week) for expenses

However, more is required. Going in to a retail outlet to make a specific purchase is a different story to applying online or over the phone for a credit card for general use. When one goes to a store they generally have specific identifiable objectives and requirements.

A considerable amount of unmanageable debt is generated in the context of a specific purchase. If a consumer goes in to a retail environment to purchase goods valued at $1200 then they should receive $1200 worth of credit, not $12,000.

Case study – David's Story - S205437

David is a 60 year old Aboriginal man living in a remote community. At the time he was looking after 4 children under the age of 18. He was on a limited income and was sharing the expenses with his de facto partner. David went into a large retailer in Alice Springs looking for a phone for his kids. The sales representative pressured him to buy a fridge, television and washing machine. He already has most of these products at home. The goods were approximately $4,000. He entered into a contract with a lender in 2015 for a credit card and he was given a $10,000 credit limit. David had never had a credit card before and he did not understand the agreement he was signing. There were also a number of errors in the application form and David's financial circumstances were not appropriately verified. Even minimum repayments were clearly unaffordable for David.

Case study – Alison's story - S214080

Alison visited a furniture store and wanted to purchase a lounge for $1,300. Due to a sale ending she wanted to request that the lounge be put on hold and a "lay-buy" arrangement organised. The salesperson told Alison that the store could help her arrange finance. She was taken to a computer and asked to fill out an online application. Based on the information Alice inputted, and due to the fact that her partner earns a high income, she was immediately approved for a $12,000.00 credit card. Unfortunately Alison has a shopping addiction for which she continues to receive counselling and therapy. When the credit card arrived in the mail, she ended up spending the whole of the $12,000 limit on shopping and other discretionary items. The online assessment didn't take into account real life circumstances, for example that Alison and her partner keep their finances separate and that Alison is a homemaker who earns a casual income. Her partner was neither consulted nor involved in the transaction and was not liable under the contract.

Use of drop down lists on pay day loan apps should not be allowed

As described above we are concerned with increased automation of the responsible lending process by licensees. We are particularly concerned with the use of drop down menus on pay day loan applications to fill in a customer's objectives and requirements. There is no verification of these reasons at all and their use absolves the licensee from making genuine inquiries. Further consumers are highly likely to make a random selection from the list, assuming that it consists of the purposes they are supposed to have in order to secure the loan.

Areas where the responsible lending obligations do not apply

It is not clear what the purpose of new guidance in areas where the responsible lending obligations do not apply.

Whatever the purpose, this section should not be allowed to become a how-to guide on how not to do responsible lending. It should not dissuade licensees away from implementing a conservative and prudent approach to small business lending – which could include applying responsible lending principles to lending that may not strictly fall within the legal requirements for responsible lending. If there is any information in the guidance it should be conservative, and should detail other applicable requirements – such as the small business lending commitments under the Banking Code of Practice as well as good industry practice guidelines, unconscionability laws and any other appropriate rules that do apply.

Such guidance should also emphasise the different between genuine business or investment purpose loans and sham arrangements set up to avoid the consumer credit law. Financial Rights has seen significant avoidance through the application of different responsible lending standards where licensees advise consumers to obtain an ABN, or even set up a company, in order to obtain a business loan rather than a personal loan, whereby avoiding responsible lending and other applicable laws. Guidance should be included about the circumstances where such arrangements may be unsuccessful at ousting the application of the law and the consequences for the lender found to be engaging in such practices.

Case study – Steven's story - S207654

Steven approached a Car Financer in February 2018 to obtain finance to purchase a new car. He discussed his needs with the Car Financer's representative who asked Steven whether he had an ABN. Steven said that he did have one but had never used it. The representative told Steven that since he wasn't working at the time, the only way that he could arrange a new loan was if he used his ABN to obtain it. Steven agreed and provided the ABN details. Steven's only source of income at the time was the Centrelink Newstart allowance. The Car Financer arranged for $47,000 with a bank. A week later Steven realised that he couldn't afford the loan and asked to return the car, but the Car Financer refused.

Fraud risks and impact on responsible lending obligations

Financial Rights agrees that specific guidance about the links between responsible lending and the mitigation of loan fraud should be included in RG209.

In our casework and advice we see serious loan fraud, where for instance fraudulent payslips have been created for the client by an industry participant, particularly in car yards and home loans originated by brokers. While we are not aware of any examples of fabricated documentation in the retail context, we see fairly regular examples of sales staff entering incorrect application information such as monthly income being incorrectly applied as fortnightly, or encouraging the borrower to do so, in order to make approval of the loan more likely.

We are also concerned about links between loan fraud and domestic violence and/or financial abuse. Automation and the anonymity of online application processes have increased the ability of bad actors to obtain loans in partner's names. We encourage ASIC to address measures to address this also being to decrease the incidence of fraud and financial abuse.

Case study – Melissa's story - S212681

Melissa is a single mother of two children. She contacted the National Debt Helpline as she had escaped from an abusive relationship that involved emotional and financial abuse. A number of loans were obtained in her name within a 12 month period with three lenders that she informed us had been part of a pattern of financial abuse. Her former partner had used the finance for his own purposes. She was unable to meet repayments.

Use of repayment history information

Guidance on use of negative repayment history information and hardship indicators

Financial Rights supports the inclusion of guidance on the use of negative repayment history information and hardship indicators and believe that it has the potential to help reduce the risk that credit providers consider it necessary to refuse applications for further credit products that may in fact be affordable for the consumer.

The occurrence of repayment difficulties on one product will not necessarily mean that a new product will in all cases be unsuitable.

The clearest example of this is in cases where a customer may show negative repayment history information on one, high-interest account and are seeking to refinance to a loan with a lower interest rate. Without clear guidance that the occurrence of repayment difficulties should not necessarily preclude a customer from obtaining a new product, the fact of their repayment difficulties on the high-interest product may keep them from being able to obtain the lower interest loan, trapping them indefinitely in a financially unsustainable higher interest loan.

Guidance should be provided to banks relating to appropriate use of repayment history information and hardship indicators, such that those indicators can be best used for responsible lending purposes and to assist consumers. The guidance should centre on ensuring that banks can appropriately use RHI to determine when they should refuse credit to customers for whom that loan would be unsuitable and irresponsible, while also setting out parameters within which banks can and should still provide credit to a customer who has negative repayment history information and/or hardship indicators.

Consumers will benefit from this approach, if it is taken with care.

Firstly, if consumers are no longer in actual financial hardship they should not be prevented from improving their situation with additional credit. It would be unfair to prevent people from accessing credit once their hardship situation has been resolved. We are concerned that a blanket approach to refusal of new credit to any consumer whose credit file shows negative repayment history information or hardship indicators, would prevent consumers from accessing finance even when they are no longer in hardship. This outcome will likely to drive people to avoid working with their lenders when they are in financial trouble – they may instead seek alternative finance sources, to the detriment of lenders and their customers alike.

Recently released research in the 2018 Journal of Consumer Policy[11] has outlined the findings of Australia's first large-scale study on the experiences of people in financial hardship. Of the

[11] Evgenia Bourova, Ian Ramsay and Paul Ali, "The Experience of Financial Hardship in Australia: Causes, Impacts and Coping Strategies", *Journal of Consumer Policy* (2018).

over 1,100 respondents, at least 45% had problems with consumer loans[12], but just 14.3% received assistance from a bank or other credit provider. Many of those who did contact their creditor for hardship arrangements had already experienced serious legal consequences of financial hardship including utility disconnection, harassment by a debt collector, enforcement action or bankruptcy. Rather than contacting creditors, many respondents took steps including:

- cutting down on food (57.8%);
- cutting down on electricity, gas or water usage in their home (55.5%);
- forgoing medical care (32.5%); and
- borrowing more money, predominantly from friends or family (33.6%).

Many took steps which could exacerbate their financial difficulties such as:

- pawning their personal belongings (15.4%)
- entering a debt agreement (9%)
- refinancing their home (6.5%)
- borrowing from a pay day lender (6.3%)
- using for profit credit repair or budgeting services (2.5%).

Some also moved into temporary accommodation (such as staying with family or friends) or postponed separation from their partner in order to make ends meet. These findings are consistent with our experience providing debt advice and assistance. If people become aware that any negative repayment information or hardship indicators on their credit file may preclude them from accessing credit in future, this will increase the incentive for consumers to take alternative, potentially harmful options to attempt to avoid repayment difficulties being recorded on their credit report.

The proposed approach that negative RHI or a hardship flag will trigger further inquiries and not automatically rule out someone from gaining credit will be beneficial to customers seeking genuine refinancing options. The consultation paper lists some potential inquiries:

> *(a) the cause of the difficulty in meeting obligations under the other credit product;*
>
> *(b) whether this is a short-term problem that is being, or has been, addressed, or whether it is ongoing;*
>
> *(c) whether the consumer has taken active steps to manage that problem, or negotiate changes to the obligations under their existing product; and*
>
> *(d) if so, whether the consumer has complied with those changed obligations.*

Financial Rights supports these and more as additional inquiries that will allow banks to gain a more nuanced understanding of customers' situations, and facilitate and encourage communication between lenders and their customers. We submit that the guidance also include additional inquiries such as whether new credit will be more financially sustainable

[12] 45.1% had credit card debts, 15.4% had a mortgage, 9.3% had a personal loan, 6.4% had a car loan, 2% had a pay day loan, 1.5% had consumer leases or hire purchase agreements. It was unclear to what extent these percentages overlapped or accumulated.

than existing credit, and whether the new credit is itself intended to alleviate rather than exacerbate debt stress on the consumer (subject to our comments in relation to debt consolidation above).In the wake of the Global Financial Crisis, many consumers were stuck in high priced, non-bank mortgages with interest rates of 14% or more. At that time the Reserve Bank had been slashing the domestic cash rate and many major banks had reduced their rates to 8% or less. Consumers found themselves with insufficient income to meet their repayments at 14%, but could comfortably have done so at 8%. Unfortunately, many had already had defaults listed on their credit reports as a result of arrears on their mortgages and were no longer considered eligible to refinance. As a result they were forced to sell their homes. Consumers that were able to refinance before negative information was recorded on their credit files were much better off in the long run.

An additional inquiry that banks should make when customers show negative repayment history information is whether or not the new credit will function to reduce a consumer's repayments to a manageable level and reduce their overall cost of credit. This should take into account the length of the new credit contract: a loan refinance may sound cheap and have low repayments, but in the long term may be both more expensive for the customer and expose them to greater default risk.

In situations where new credit is approved on the basis that the customer is transferring the balance from one credit product to another, the bank should pay out the existing credit directly from the loan proceeds where possible and accept a written instruction from the borrower (addressed to the original creditor) to close the existing account as a condition of granting the loan.

Case study –Luke's story

Luke had been unemployed for some months when he sought a hardship arrangement on his credit card. He arranged to pay reduced repayments for 3 months. At the end of the 3 months he had found another job but was waiting to start work. He contacted his lender and made an arrangement to start paying off the arrears in addition to his normal repayments. He met the new arrangements and some months later was close to having caught up.

At that time he was offered an even better job with a higher salary but he would need to get a car loan as the new position did not involve a company car (it did provide a car allowance he could use to meet the repayments). He applied for and received the car loan, allowing him to increase his income and pay not only the new car loan, but the original credit card even faster.

Had his original hardship arrangement been listed on his credit report he could easily have been rejected for the car loan, to the detriment of all concerned.

Source: Financial Rights Legal Centre

The intent of this approach is to allow customers who will benefit from obtaining new credit products, despite their credit report showing repayment difficulties, to obtain such new credit, while ensuring that those customers who would not benefit from obtaining the new credit do not.

Use of Repayment History Information to approve loans

The updated guidance should specifically address the limitations of Repayment History Information (RHI) in approving loans. While it is legitimate to use RHI to:

- determine whether a consumer is meeting their existing commitments or not; and
- confirm that the amount of repayments coming out of a bank account for example, are in fact the payments due and payable.

RHI should not however:

- be used as a substitute for verification of income and expenses;
- to justify lending to a borrower who appears overcommitted but has a good RHI record.

Many consumers are able to meet repayments for an extended period while in serious hardship by for example, making repayments and drawing down further credit to meet the short fall in income. Consumer advocates have amassed many examples over the years of people who can regularly meet their repayments but never really reduce their levels of debt. In short, RHI is useful for detecting repayment propensity or signs of financial stress, but it can be very poor evidence of capacity to pay.

Records of inquiries and verification

Including guidance on industry good practice for recording the inquiries and verification steps that have been undertaken is appropriate.

We believe ASIC should be empowered to undertake random spot checks and be able to undertake an analysis of content of records for patterns of avoidance.

Content of a written assessment

Financial Rights agrees that it would be useful for ASIC to provide an example of a written assessment.

We do however believe that it is not just good practice to provide a written assessment to the consumer but that this should be provided to every consumer automatically.

We also believe the guidance should include a statement requiring that the written assessment be created contemporaneously to the time which the loan was applied not created after the fact. Financial Rights has experience of receiving written assessments that were obviously created on the day of a request.

With respect to what else should be included in the written assessment – we believe the assessment should include the other sources of information that the licensee has relied on and what impact these have had on the assessment.

Concluding Remarks

Thank you again for the opportunity to comment. If you have any questions or concerns regarding this submission please do not hesitate to contact Financial Rights on (02) 9212 4216.

Kind Regards,

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