

## THE CREDIT CONTRACTS AND CONSUMER FINANCE ACT

# RULES RELATING TO FEES – CONSUMER CREDIT CONTRACTS

### CREDIT AND DEFAULT FEES

A **credit fee** is a charge a debtor must pay under a credit contract, or pay to a creditor or for a creditor's benefit in connection with a credit contract. This includes any insurance premiums payable if the creditor requires the debtor to obtain insurance cover from a particular insurance. Fees or charges payable by the debtor to a creditor under related contracts such as mortgages or security arrangements will also be credit fees.

A credit fee does not include interest charges, charges for optional services or government charges, duties, taxes or levies. Likewise, the Commerce Commission does not consider fees payable by a debtor directly to a third party in connection with a contract (but not specified as a term of the contract) and that provide a creditor with an indirect benefit to be credit fees.

A **default fee** is a charge payable by a debtor on breach of a credit contract or on the enforcement of a credit contract by a creditor. It differs from default interest which is an additional interest charge that is payable by a debtor on breach of a credit contract.

Under the Credit Contracts and Consumer Finance Act (CCCF Act) any credit or default fee must be clearly disclosed at the beginning of a contract. The creditor must describe the fee, including when it is to be paid and the amount if this is known or

ascertainable. If the amount cannot be provided at the outset of the contract, the method of calculating the fee must be stated. Any fees which are subsequently imposed must be allowed for under the terms of the contract and they must be disclosed within five working days of being imposed.

A credit or default fee must also be reasonable.

When determining the reasonableness of credit or default fees, the courts must consider:

- whether the fee reasonably compensates the creditor for costs incurred; or
- whether the fee reasonably compensates the creditor for a reasonable estimate of loss incurred because of a debtor's actions or omissions; and
- reasonable standards of commercial practice.

#### EXAMPLE

A motor vehicle dealer charged its customers a fee to check the Personal Properties Security Register, but never undertook the checks and simply kept the money. In a settlement with the Commerce Commission the dealer admitted breaching the CCCF Act and undertook to refund customers.

### ESTABLISHMENT FEES

An establishment fee is a charge payable under a credit contract that relates to the costs incurred by the creditor in connection with setting up the loan. Any establishment fees charged should be no more than the actual or average cost of setting up that particular type of consumer credit contract and advancing the credit.

The fee should reflect only costs that can be attributed to processing, considering, documenting and advancing funds under a consumer credit contract.

#### EXAMPLE

A pawnbroker charged its debtors an establishment fee of between \$300-500 on a loan. This fee included costs to the business of processing other loan applicants' unsuccessful applications. Successful applicants were essentially covering the cost of processing up to five unsuccessful applicants.

The pawnbroker was convicted, fined and ordered to refund customers.

Under the CCCF Act any credit or default fee must be clearly disclosed at the beginning of a contract.

### THIRD PARTY FEES

If a third party charges a fee in relation to a consumer credit contract, this must be passed on to the debtor at cost. This means that while a creditor has the right to pass that fee on to the debtor, they must only claim the actual amount they paid the third party for it, and must not charge any premium, commission or mark-up on the fee. They must also pass on any discounts or allowances.

Likewise, if a creditor expects to get an account from a third party and charges the debtor accordingly, and the actual charge turns out to be less than estimated, the debtor must be refunded the difference.

The only exception is where a creditor charges a reasonable commission in the case of credit related insurance being taken out by the debtor. For more information on credit related insurance, see the separate factsheet, *Credit-related Insurance, Extended Warranties and Repayment Waivers*, available to download at [www.comcom.govt.nz/consumer-credit](http://www.comcom.govt.nz/consumer-credit)

### PREPAYMENT FEES

If a debtor pays off their loan in part or full at a date earlier than contractually agreed, a creditor may charge a reasonable fee to cover any losses they may incur. This includes any administration costs as well as any further losses, such as those incurred in re-lending money at a lower interest rate. The procedure used to calculate the losses being claimed must be set out in the contract. If a creditor does not set out the amount or method for charging fees in a debtor's disclosure documents, then the creditor may breach the disclosure and full prepayment provisions of the CCCF Act.

More information on prepayment, including a formula for calculating loss on full prepayment is available on the factsheet, *Consumer Rights under a consumer credit contract – Prepayment*, available to download at [www.comcom.govt.nz/consumer-credit](http://www.comcom.govt.nz/consumer-credit)

### LENDERS AND BORROWERS

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

- Consumer credit contracts – creditors and debtors.
- Consumer leases – lessors and lessees.
- Buy back transactions – transferees and occupiers.

For the purposes of these fact sheets the terms creditor and debtor are used when referring generally to credit transactions, but the specific terms are used where relevant.

To check for updates to this fact sheet visit:  
[www.comcom.govt.nz/consumer-credit](http://www.comcom.govt.nz/consumer-credit)

This fact sheet is part of a series looking at the Credit Contracts and Consumer Finance Act. Other fact sheets can be downloaded from  
[www.comcom.govt.nz/consumer-credit](http://www.comcom.govt.nz/consumer-credit)

#### CONTACT

Contact the Commerce Commission with information about possible breaches of the Credit Contracts and Consumer Finance Act.

#### TELEPHONE

Our Contact Centre during office hours on 0800 943 600

#### WRITE

To us at Contact Centre,  
PO Box 2351, Wellington 6140

#### EMAIL

Us at [contact@comcom.govt.nz](mailto:contact@comcom.govt.nz)

This fact sheet is a guideline only, and reflects the Commission's view. The publication is not intended to be definitive, and should not be used instead of legal advice. It is traders' responsibility to remain up to date with legislation.

Only the courts can make an authoritative ruling on breaches of the Credit Contracts and Consumer Finance Act.