

The Credit Contracts and Consumer Finance Act 2003

Guidelines for Credit Fees

Purpose of these Guidelines

The Credit Contracts and Consumer Finance Act ([the Act](#)) applies to [consumer credit contracts](#) entered on or after 1 April 2005. The Act sets rules relating to the disclosure of information and the reasonableness of credit fees and default fees. The purpose of these guidelines is to inform creditors, consumers and other interested persons of the Commission's approach to the enforcement of the Act with respect to [credit fees](#) (including [establishment fees](#)) and [default fees](#).

These guidelines represent the Commission's current views about the fees provisions of the Act and will also provide guidance to creditors on what the Commission considers are characteristics of a reasonable credit fee and default fee.

The guidelines are not intended to be a substitute for legal advice or to provide an exhaustive list of the factors the Commission may take into account when assessing alleged breaches of the Act against its [enforcement criteria](#). The Commission will continue to exercise its discretion in determining which conduct or issues it investigates and which enforcement outcomes are appropriate in any given situation.

The guidelines are limited to consideration of the Act as it currently stands; they are not intended to provide a forum to discuss the relative merits of or possible amendments to the Act.

Introduction

The Commission's interpretation of the Act is based on consumer protection, accounting and economic principles.

The key principles creditors can draw from these guidelines are:

- **The Act has a consumer protection focus:** One of the purposes of the Act is consumer protection. Fees need to be disclosed and be set at reasonable levels. These protections should foster effective and efficient competition.
- **The Act allows creditors to recover their costs of lending:** Creditors can recoup their reasonably incurred costs by way of either fees or interest. Costs recovered must be limited to those incurred in providing consumer credit.
- **The Act requires that fees must be cost reflective:** Credit fees and default fees are intended to be compensatory in nature. Fees should be set so as to recover the costs incurred in providing the service or function for which the fee is charged.
- **Fees may recover creditors' direct and indirect costs:** Direct and indirect costs must be apportioned appropriately, according to accepted accounting standards. However the recovery of all costs through fees is subject to the tests of 'reasonableness' specified in sections 42 and 44 of the Act.
- **Each cost component should be recovered no more than once through fees.** Fees should be set to recover all relevant costs, and no more.
- **Estimation of fees:** Fees have to be set in advance on the basis of projected demand and costs and according to accepted accounting standards. This means that fees can be based on reasonable estimates of forward-looking costs or on the actual costs from previous year's financial accounts (if they are likely to provide reasonable forward-looking estimates).
- **Any profit should be earned from interest not from fees.** Fees should recover costs only.

These principles should not be treated as a substitute for complying with the actual provisions of the Act. Subject to this qualification, the discussion in these guidelines will assist creditors in understanding the Commission's approach to fees.

Subject to the provisions of the Act and the principles above the Commission may also take the following concepts into account to assist in assessing the reasonableness of a credit fee. These concepts should also operate to preclude creditors from setting excessive fees.

- A creditor should be able to recoup all prudently incurred costs through fees.
- Fees must be cost-reflective - they must reflect the costs incurred in providing the element of the service for which the fee is charged.
- Fees may recover both direct and indirect costs of the creditor. Costs are measured in an accounting (rather than an economic) sense.
- Direct and indirect costs must be apportioned between the different elements of the service for which the fees are charged on the basis of accepted accounting practice.
- The fee charged to a debtor must be no more than the cost of providing that service element to the debtor or, if that is not possible to discern, the averaged cost for a relevant class of like debtors.

- Each component of cost should be recovered only once through fees. The sum of all fee payments in any year should not exceed the sum of all relevant costs (subject to the qualification in the point below).
- Fees by their nature have to be estimated in advance on the basis of projections of costs, levels of business, and other similar factors. Hence, some variation between actual costs incurred and total fee revenue is to be expected, but these variations should not be large in any year, and should tend towards zero when averaged over several years.
- Any profit (revenues exceeding accounting costs) should be earned from interest charges, not fees.

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Discussion - Credit and Default Fees

The Commission's view is informed by the purpose of the Act

The position taken by the Commission in these guidelines takes particular account of the purposes of the Act as set out in [section 3](#). That section defines the purposes of the Act as:

Purposes

The purposes of the Act are-

- (a) to protect the interests of consumers in connection with credit contracts, consumer leases, and buy-back transactions of land; and
- (b) to provide for the disclosure of adequate information to consumers under consumer credit contracts and consumer leases —
 - (i) to enable consumers to distinguish between competing credit arrangements or competing lease arrangements; and
 - (ii) to enable consumers to become informed of the terms of consumer credit contracts or consumer leases before they become irrevocably committed to them; and
 - (iii) to enable consumers to monitor the performance of consumer credit contracts or consumer leases; and
- (c) to provide rules about interest charges, fees, and payments in relation to consumer credit contracts; and
- (d) to enable consumers to seek reasonable changes to consumer credit contracts on the grounds of unforeseen hardship; and
- (e) to provide for the disclosure of adequate information to consumers under buy-back transactions of land and for the provision of independent legal advice to those consumers-
 - (i) to information consumers of the terms, the effects, and the implications of those transactions before they become irrevocably committed to them; and
 - (j) to enable consumers to monitor the performance of those transactions; and
- (f) to provide rules about fees in relation to buy-back transactions of land; and
- (g) to prevent-
 - (i) oppressive credit contracts, consumer leases, and buy-back transactions of land; and
 - (ii) oppressive conduct by creditors under credit contracts, lessors under consumer leases, and transferees under buy-back transactions of land.

The Commission considers that a principal purpose of the Act is consumer protection. In the area of credit fees and default fees, that consumer protection purpose is achieved by ensuring that the cost of credit is transparent and that any credit fee or default fee charged under a consumer credit contract is reasonable.

An expected outcome of the Act is enhanced competition within the consumer credit market. This is done by ensuring consumers have confidence in the information they are given and are able to make informed decisions about the products and services they purchase and creditors can recover all of their costs associated with such lending.

The Act was also intended to give creditors certainty by setting down particular methods for calculating fees. In this way, the Act promotes effective competition and ensures that creditors who fail to meet the standards set out within the Act do not reap the benefits of non-compliance at the expense of compliant creditors.

The reasonableness requirement

Section 41(1) of the Act states that “[a] consumer credit contract must not provide for a credit fee or a default fee that is unreasonable”. Section 41(1) is a key provision of the Act as it establishes the standard that must be applied to every credit fee or default fee charged under a consumer credit contract.

The term ‘unreasonable’ is not defined in the Act. Although [sections 42](#) and [44](#) (discussed in more detail later in these guidelines) offer some guidance as to what should be taken into account when assessing the reasonableness or otherwise of credit fees and default fees,

neither section gives guidance to a creditor on the characteristics of an unreasonable credit fee or default fee.

What is reasonable will depend on the individual circumstances of each case, having regard to the overall object and spirit of the Act.

When considering whether a fee is reasonable the Commission considers:

- Firstly, have the costs in question been incurred (or in the case of losses can the estimate of loss be substantiated or justified)?
- Secondly, is it then reasonable to recover the cost in question by way of fees?
- Thirdly, is it reasonable to charge a particular debtor or class of debtors the particular fee?

The Commission considers that the Act constrains a creditor from including inappropriate categories of costs in a credit fee or default fee. Likewise, the Act prevents a creditor from inflating the amount of costs it attributes to a credit fee or default fee (e.g. excessive hourly rates for staff) over and above that amount that a Court would consider reasonable.

Recovery of costs through credit fees and default fees

The Commission recognises that a creditor has two avenues for recovering costs: interest rates and fees. The Act does not limit the ability of the creditor to recover costs through interest charges (except as may be provided for under [Part 5 of the Act](#)). In respect of credit fees and default fees, a creditor is free to charge any credit fee, provided it is not unreasonable and it is correctly disclosed.

The Commission believes that the purpose of the fees provisions discussed in these guidelines is to encourage creditors to match their fees to actual costs. Equally importantly, creditors are discouraged from setting fees which do not relate to actual costs, to avoid contravening the Act.

The costs recovered must be limited to costs incurred in the provision of consumer credit.

Fees may recover creditors' direct and indirect costs (both referred to in these guidelines as costs). Direct costs refer to expenses or costs that can be directly related to the performance of specific services or activities, such as the wages of an employee directly involved in establishing and managing a consumer credit contract.

Indirect costs or overheads are those costs that are not directly related to any of the specific services being provided – rather, they are incurred in providing two or more services – and hence are more difficult to allocate than direct costs. Such costs may include depreciation, office accommodation and general administrative expenses. These costs may be recovered by being allocated across multiple fees on the basis of generally accepted accounting practice. Accounting practice uses various techniques to apportion costs according to their cause.

In most cases competitive pressures within financial markets will be sufficient to ensure that firms do not incur excessive costs simply because they can recover costs from debtors by way of fees. However there may be some cases where the Commission considers that the extent of cost recovery is inconsistent with the consumer protection purposes of the Act.

Credit fees and default fees are compensatory in nature

The Commission considers that Parliament intended credit fees and default fees charged under the Act to be compensatory in nature. On this basis, credit fees and default fees should do no more than recover the relevant creditor's actual costs, average reasonable costs, or a reasonable estimate of the creditor's loss associated with the matter giving rise to the fee. A creditor should not make a profit from a credit fee or default fee as this is inconsistent with the compensatory nature of the fee.

Cost accounting approach to setting fees

The Commission considers that creditors should assess costs using acceptable cost based accounting practices which allocate costs according to their cause.

As fees have to be estimated in advance on the basis of projections of costs, revenue, volume of business and other factors, some variation between actual costs incurred and total fee revenue is to be expected. However, these variations should not be large in any given year. Alternatively, creditors may use past financial accounts from previous years to assist in setting their fees, insofar as these are likely to provide reasonable forward-looking estimates.

It is expected that a creditor will take into account any changes to their business (whether this is as a result of changing business structures or operations) and make adjustments to reflect actual costs where this is appropriate.

Costs should be apportioned between different processes and services giving rise to fees and should reflect the costs incurred in providing the service for which the fee is charged. Generally accepted accounting principles should be applied, particularly the principle of causality.

Each cost category (or expense) should be recovered only once through fees. The sum of all fee payments in any year should not exceed the sum of all relevant costs (subject to any slight variance resulting from estimating costs as discussed above).

Establishment Fees

The criteria

Section 42 sets criteria for assessing the reasonableness of an establishment fee. It states

- In determining whether an establishment fee is unreasonable, the Court must have regard to —
- (a) whether the amount of the fee is equal to or less than the creditor's reasonable costs in connection with the application for credit, processing and considering that application, documenting the consumer credit contract, and advancing the credit; or
 - (b) whether the amount of the fee is equal to or less than the creditor's average reasonable costs of the matters referred to in paragraph (a) for the appropriate class of consumer credit contract

The Commission considers that a reasonable establishment fee should compensate the creditor for the actual costs it incurred in connection with the establishment of the loan. In most, if not all cases, the considerations set out in section 42 will be the only matters relevant to the assessment of the reasonableness of an establishment fee¹.

An establishment fee should not exceed actual costs incurred in connection with the establishment of the loan

The first limb of the section 42 test is that establishment fees should not exceed the actual costs incurred by the creditor in connection with the establishment of the loan. The use of the words “in connection with” in section 42 suggests that there must be a causal connection between the costs incurred and the establishment fee. Simply put, the creditor must have incurred the particular costs in setting up the debtor’s contract (or the particular class of consumer credit contract).

When substantiating an establishment fee, creditors should be able to demonstrate through the application of acceptable cost based accounting practices, how these costs have been calculated and attributed to the establishment of the consumer credit contract.

Those costs must be objectively reasonable

The second limb of section 42 is that any cost attributed to an establishment fee must be reasonable. Compliance with the first limb of the section 42 test will not necessarily result in a reasonable establishment fee. The fee calculated in accordance with the first limb must still be objectively reasonable. That is, the costs attributed to the establishment fee must be reasonable when objectively assessed, with particular regard being given to the consumer protection purpose of the Act.

The Commission recognises that this second limb adds a degree of uncertainty as to what costs a creditor can lawfully attribute to an establishment fee. By way of guidance, the Commission sets out below the costs it considers may, or may not be, lawfully attributed to an establishment fee.

What costs may be properly included in an establishment fee?

An apportionment of costs incurred by the creditor in its direct dealings with the debtor may be properly included in an establishment fee. For example, an appropriate apportionment of

¹ This is not to say that other genuine costs incurred by the creditor which do not fall within this provision cannot be recovered. They just cannot be recovered through establishment fees.

the wages or salaries of staff who met with the debtor and processed the loan application may be recovered in establishment fees.

The table below details the Commission's position on the recovery of specific costs within establishment fees. The examples within the tables are indicative rather than exhaustive. Creditors should be taking guidance from these examples and apply it to other costs they may consider recovering by way of fees.

TABLE 1:1 The Commission's view – comments on specific costs

Cost Category	Is the Commission likely to accept the recovery of these costs in establishment fees?
Administration costs (specific to section 42 processes).	Recovery of administration costs within establishment fees is likely to be accepted insofar as those costs relate directly to the establishment of the loan.
Administration costs (general).	Administration costs not relating to the establishment of the loan should not be recovered in establishment fees. This is not to say that other genuine administration costs incurred by the creditor which do not fall within this provision cannot be recovered. They just cannot be recovered through establishment fees.
Staff related costs. (These costs may include salaries/wages, fringe benefit tax and ACC levies).	Recovery of staff related costs within establishment fees is likely to be accepted insofar as those costs relate directly to the establishment of the loan. An apportionment of total staff related costs to establishment fees is acceptable. For example creditors should take into account recovery by way of other credit fees (for example administration and default fees) as well as taking other functions into account (for example those relating to treasury, dealing with investors, shareholders, and business compliance costs) and making an appropriate apportionment between these fees and differing functions.
Premises costs. (These costs may include rent, utilities, cleaning, depreciation and similar costs).	Recovery of premises costs within establishment fees insofar as those costs relate directly to the establishment of the loan. As above an apportionment would be appropriate.
IT costs. (This may include depreciation on computer equipment).	Recovery of IT costs within establishment fees insofar as those costs relate directly to the establishment of the loan. As above an apportionment would be appropriate.
General marketing and advertising costs.	Recovery of general marketing and advertising costs should not be recovered in establishment fees.
Costs related to credit control functions (insofar as these costs relate to pursuing defaults).	Recovery of costs related to credit control functions should not be recovered in establishment fees. This is not to say that other genuine costs related to credit control functions incurred by the creditor cannot be recovered. They just cannot be recovered through establishment fees.
Bad debt write offs, an increase in provision for doubtful debts or the costs involved in pursuing bad debtors.	Recovery of costs related to bad debt write off, provisioning or pursuing bad debtors should not be recovered in establishment fees.
Head office functions or holding	An appropriate allocation of such indirect costs may be acceptable on a

company management fees.	case by case basis.
Entertainments costs.	Recovery of entertainment costs should not be recovered in establishment fees.
Capital expenditure and depreciation on capital expenditure.	Capital expenditure costs should not be recovered in establishment fees. However recovery of an apportionment of depreciation on the assets used during the course of establishing a loan is acceptable.
Costs relating to unsuccessful loan applications.	Recovery of costs relating to unsuccessful loan applications should not be recovered in establishment fees.
Costs relating to creditors' funding arrangements and operating structure.	Recovery of costs relating to creditors' funding arrangements and operating structure will be considered on a case by case basis.

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Other Credit Fees and Default Fees

[Section 44](#) sets out the criteria that the Court must have regard to when assessing the reasonableness of a credit fee (other than establishment fees) or default fee. It states

- (1) In determining whether a credit fee or a default fee is unreasonable, the Court must have regard to,—
 - (a) in relation to the matter giving rise to the fee, whether the fee reasonably compensates the creditor for the following:
 - (i) any cost incurred by the creditor (including the cost of providing a service to the debtor if the fee relates to the provision of a service);
 - (ii) a reasonable estimate of any loss incurred by the creditor as a result of the debtor's acts or omissions; and
 - (b) reasonable standards of commercial practice.

As with establishment fees, the Commission considers that in most, if not all cases, the considerations set out in section 44 will be the only matters relevant to the assessment of the reasonableness of a credit fee or default fee.

The cost or loss must relate to the matter giving rise to the fee

The phrase “matter giving rise to the fee” is not defined in the Act. The Commission interprets “matter giving rise to the fee” as meaning the event (whether an act or omission by the creditor or debtor) which causes the creditor to incur a cost or suffer a loss which it seeks to recover through a credit fee or default fee. The Commission considers that the phrase “matter giving rise to the fee” imports a causative requirement into section 44. The matter giving rise to the fee must have caused the cost to be incurred or the loss to be suffered.

For example with a default fee, the default by the debtor is the matter giving rise to the fee and the creditor is entitled to recover those costs incurred or losses suffered because of the default. For a default letter fee, the need to send the debtor a particular letter is the matter giving rise to the fee and the creditor is entitled to recover those costs incurred or losses suffered as a result of sending that letter.

To ensure that consumers are not misled, creditors must ensure that the name given to the fee accurately reflects the matter giving rise to the fee.

Loss recovered must be a reasonable estimate of the loss suffered as a direct result of the debtor's act or omission

The Commission considers that section 44(1)(a)(ii) limits the recovery of a reasonable estimate of loss to those losses suffered as a result of the particular debtor's acts or omissions. Consistent with the compensatory nature of credit fees and default fees under the Act, the Commission expects that the common law principles relating to damages and the mitigation of loss following a breach of contract apply to the calculation of loss under the Act.

Given the requirement that the loss must be the result of an act or omission of the particular debtor, the Commission would not expect to see creditors averaging losses across classes of consumer credit contracts.

Reasonable standards of commercial practice

When assessing the reasonableness of a credit fee or default fee, in addition to the factors discussed above, the Court must also have regard to “reasonable standards of commercial practice”.

This phrase is not defined in the Act. As Parliament has chosen not to define the standard required of a reasonable creditor, it is a matter for the Courts to ultimately determine. While the Commission may, where appropriate, consider industry practice, it does not consider that the phrase “reasonable standards of commercial practice” is akin to “usual standards of commercial practice”. The Commission’s view is that the commercial practice itself must be objectively reasonable. It does not necessarily follow that just because something is common commercial practice within the consumer credit industry, it is reasonable. Rather, determining the “reasonable standards of commercial practice” requires an objective assessment of the practice adopted by the creditor, having regard to the overall object and spirit of the Act.

What costs may be properly included in a credit or default fee?

As with establishment fees, an apportionment of costs incurred by the creditor in its direct dealings with the debtor may be properly included in other credit fees or default fees.

The approach to investigations which is discussed in relation to establishment fees will also be applied to other credit and default fees.

The table below details the Commission’s position on the recovery of specific costs within other credit fees and default fees. The examples within the tables are indicative rather than exhaustive. Creditors should be taking guidance from these examples and apply it to other costs they may consider recovering by way of fees.

TABLE 1:2 The Commission’s view – comments on specific costs

Cost Category	Is the Commission likely to accept the recovery of these costs in other credit or default fees?
Administration costs (specific to section 44 activities).	Recovery of administration costs within credit or default fees is likely to be accepted insofar as those costs relate directly to the factors set out in section 44.
Staff related costs. (These costs may include salaries/wages, fringe benefit tax and ACC levies).	Recovery of staff related costs within credit fees or default fees is likely to be accepted insofar as those costs relate directly to the factors set out in section 44. The Commission would expect only to see an apportionment of total staff related costs to default or credit fees.
Premises costs. (These costs may include rent, utilities, cleaning, depreciation and similar costs).	Recovery of premises costs is likely to be accepted within credit or default fees insofar as those costs relate directly to the section 44 activities. The Commission would expect to see only an apportionment of total premises costs to default or credit fees.
IT costs. (This may include depreciation on computer equipment).	Recovery of IT costs within credit and default fees is likely to be accepted insofar as those costs relate directly to the section 44 activities. As with establishment fees, an apportionment would be appropriate.
Costs related to credit control functions (insofar as these costs relate to pursuing defaults).	Recovery of costs relating to credit control functions is likely to be accepted if those costs are recovered by way of default fees. The Commission would not expect to see these costs being recovered in any other credit fee.
General marketing and advertising	The Commission would not expect to see these costs being recovered by

costs.	<p>way of default fees.</p> <p>Creditors may be able to justify the recovery of a proportion of these indirect costs by way of other credit fees on a case by case basis.</p>
Bad debt write offs, an increase in provision for doubtful debts or the costs involved in pursuing bad debtors.	<p>The Commission would not expect to see bad debt write offs, or provisioning for doubtful debts recovered by way of fees.</p> <p>The Commission would accept the recovery of costs involved in pursuing bad debtors within default fees.</p>
Head office functions or holding company management fees (for example where a group levy is charged to a creditor).	<p>The Commission would not generally expect to see these costs recovered by way of credit or default fees however these costs will be considered on a case by case basis.</p>
Entertainments costs.	<p>The Commission would not expect to see these costs being recovered by way of default fees.</p> <p>The Commission would not expect to see costs relating to entertainment recovered by way of fees.</p>
Capital expenditure.	<p>The Commission would not expect to see these costs recovered by way of default fees.</p> <p>With regard to other credit fees, these costs will be considered on a case by case basis. However recovery of an apportionment of depreciation on the assets used in providing the loan is acceptable.</p>
Costs relating to unsuccessful loan applications.	<p>The Commission would not expect to see costs relating to unsuccessful loan applications recovered by way of fees.</p>
Costs relating to creditors' funding arrangements and operating structures.	<p>The Commission would not expect to see these costs recovered by way of default fees.</p> <p>With regard to other credit fees, these costs will be considered on a case by case basis.</p>

The Commission's Enforcement Approach

The Commission may investigate where:

- The fee exceeds the costs which have been incurred and which could be legitimately recovered by fees (if a creditor had recovered all accepted costs the recovery of any additional costs may put creditors at risk of enforcement action),
- Fees include recovery of particular costs the Commission considers cannot be recovered by way of establishment fees,
- Fees recover costs which need to be considered on a case by case basis (see table 1.1 and 1.2).

Where the result is the fee is unreasonable enforcement action may result.

When undertaking an investigation the Commission will consider all costs a creditor would have been 'entitled' to recover in an establishment fee, not just what it actually has recovered, in determining whether an establishment fee is likely to be unreasonable.

The Commission applies generic [enforcement criteria](#) to determine whether an alleged breach of the Act is appropriate to investigate. These criteria include:

- Assessing the extent of the detriment occurring as a result of the breach of the Act;
- Considering the seriousness of the conduct; and
- Assessing whether it is in the public interest to address the breach.

It uses the same criteria to determine the appropriate enforcement outcome for each investigation. Investigations can have a range of [enforcement outcomes](#) including:

- The provision of compliance advice to a creditor;
- A warning being issued to a creditor;
- Undertaking a settlement between the Commission and the creditor to remedy the breaches; or
- Taking court action against a creditor.

The Commission also takes into account the existence of compliance programmes and also its Co-operation Policy when determining the appropriate enforcement outcome. The [Commission's Co-operation Policy](#) is available on the Commission's website.

The Role of Compliance Programmes

Compliance programmes are an important tool to identify instances of non-compliance under the Act and mitigate the extent of breaches.

Compliance with the Act should not be overly onerous for a creditor. It is expected that this could generally be met by undertaking the normal cost recording and allocation processes that are adopted by creditors. Generally compliance should be achieved by ensuring creditors put adequate staff training and review or checking systems in place.

Section 106 of the Act provides a [reasonable mistake defence](#) to a claim of statutory damages or to a prosecution under the Act. Section [107](#) of the Act requires the Court to take the

existence of an appropriate compliance programme into account in determining whether the breach is due to a reasonable mistake.

The Commission will take the existence of an appropriate compliance programme into account in determining the appropriate enforcement outcome in any investigation under the Act. Further information about compliance programmes is available on the Commission's website. The general approach outlined in the [Educating Staff](#) and [Reviewing Systems](#) sections of the Commission's publication about [compliance programmes](#) is relevant when the Commission determines the appropriate enforcement outcome for each investigation.

The Commission would also expect to see creditors taking into account the following considerations when establishing CCCF Act compliance programmes.

Fee setting processes

- Processes for setting, reviewing and justifying fees. Creditors should be able to explain and document these processes.
- Processes for prompting a reassessment of fees as a result of changes in business structure, the nature of operations or underlying business costs.
- Processes for ensuring (as far as practicable) that fees are based on current or recent accounting data.
- Processes to prevent costs from being recovered more than once (over-recovery). The Commission suggests that creditors should consider all fees charged (and the various cost components recovered for each individual fee) when setting or changing individual fees to prevent over-recovery of fees rather than attempting to set fees independently of each other.

Disclosure processes

- Processes for adequate disclosure of fees². This should include ensuring that the amount (or method of determining the amount) of fee is specified, that the disclosure meets the required timeframes and standards for the relevant type of disclosure.

Information requested by the Commission

The Commission requests information from creditors to assist in assessing whether a creditor's underlying costs recovered by way of fees can be justified in accordance with the Act. During the course of fees investigations to date, the Commission has requested the following types of information from creditors.

TABLE 1:3 Types of information requested during investigations

Documents	Descriptions
Annual Financial statements for the relevant period.	
Management accounts (or other	The Commission requires information which

² This will either be the amount of the fee or method for determining the amount of the fee if the actual amount is not ascertainable at the time of disclosure.

detailed accounts).	analyses revenue by particular fee type. It is expected that any analyses provided reconcile with the annual financial statements.
Fee justification analyses.	If these are prepared in Excel, the Commission prefers the formula driven model to be provided.
Further details justifying particular costs recovered and the causative relationship between particular costs and the particular fee charged.	
Details of the processes undertaken by the creditor in relation to the various functions for which the fees are charged (including establishment or loan administration).	This may include details of the roles of specific staff and the functions they undertake. It may also include details of the costs of employing those staff.
Invoices for third party charges passed on to debtors by creditors.	

Consequences of breaching the fees provisions of the Act

There can be severe consequences for breaching the Act if a Court finds a breach.

Breaches of the fees provisions may result in, amongst other things:

- the fee being [reduced](#) by the Court; and
- [an offence](#) under the Act being committed.

[Banning orders](#) prohibiting parties from acting as creditors can be sought by the Commission as a result of a creditor's conviction under the Act.

Further Information

For those wanting to consider the provisions of the Act discussed in these guidelines, follow the hyperlinks within these guidelines, or the entire Act is available at www.legislation.govt.nz. The Commission also has credit publications available on its website www.comcom.govt.nz which contain further relevant information.