

Overview

- The Commission's evolving approach to the collection and use of sampling in investigations
- Obligations under the CCCF Act vary: single incidents, wholesale breaches, or nuanced breaches
- Breaches that apply to an unknown portion of a population
- Common insights - financial hardship, debt enforcement and repossession practices, and the use of benchmarking in affordability assessments.

How the Commission Gathers Information

- The Commission obtains information voluntarily or by compulsion
- Updated June 2025: Investigation Guidelines
- Statutory notice powers under the Commerce Act 1986



Two-stage sampling

- The Commission uses the Notice power in a two-stage approach for collecting a sample of documents from borrower files
- First notice requests a list of all individuals in a population (e.g. all loans over the last two years)
- Second notice collects documents from borrower files (random sample)
- Identify breach rate and extrapolate likely harm
- Practical where impacted population is several hundred to tens of thousands

Examples where sampling applies

Obligations under the CCCF Act:

- Inquiries into suitability or affordability
- Record keeping under section 9CA
- Quality and compliance may vary by employee or lending agent



Final takeaway



- Review compliance with the CCCF Act
- Focus on how lenders are meeting their obligations
- Ensure employees and lending agents are following policies and procedures

Financial hardship

Applications for hardship relief can be considered under:

- Section 55 CCCFA provides that a borrower experiencing an **unforeseen event** meaning they are unable reasonably make their loan payments may apply to a lender to make changes to a contract if certain conditions are met.
- Section 9C(3)(d) CCCFA provides that a lender must treat the borrower and their property reasonably and **ethically when breaches of the agreement have occurred or may occur or when other problems arise.**
- Chapter 12 of the Responsible Lending Code provides guidance about dealing with borrowers in financial difficulty.

Financial hardship continued



- Lenders cannot charge a fee for considering a hardship application regardless of the outcome, if it is declined a reason must be provided.
- If the lender accepts the application and varies the loan for a limited period, they may charge a reasonable fee for costs incurred documenting the changes.
- Where an agreement is varied lenders must:
 - assist the borrower to reach an informed decision to enter the variation
 - provide variation disclosure to the borrower.
- KiwiSaver withdrawals

Debt enforcement

- Lenders can only take enforcement action contractually agreed to.
- If the financed vehicle has a **disabling device**, sections 83L-83M CCCFA must be complied with, and the Lender Responsibility Principles.
- Lenders must not take repossession enforcement action (or continue if it has started)
 - if a hardship application is undecided or
 - **a complaint is made about the repossession action itself** and *that* complaint is unresolved (s 83J CCCFA).

Debt enforcement continued

- A borrower has the right to voluntarily surrender security goods after receipt of a Repossession Warning Notice. It must be treated as if the goods were repossessed.
- If the lender **sells** repossessed goods and there is **a balance left owing** (on the Statement of Account), that amount **must be frozen** – no further interest or fees can be added.
 - **This also applies if the residual debt is sold.**
 - This rule applies even if one of multiple secured goods has been repossessed and sold.



Benchmarking – keeping records

If affordability assessment records are requested it is not sufficient for a lender to simply state it is using a benchmark or only provide the benchmarked amount.

Lenders should record:

- That a benchmark was used
- The amount
- A brief explanation of how they determined it was reasonable

Benchmarking continued



- s 9CA: records must show how affordability was assessed, including inquiries made and the results of those inquiries
- Record benchmarked expenses + brief description of benchmark
- Benchmark must be reliable, current, and reasonable
- Records should reflect appropriateness of benchmark
- Clear, complete records help demonstrate reasonable inquiries under s 9C

Closing thoughts

- Take a proactive and thoughtful approach to hardship support
- Consider the guidance in Chapter 12 of the Responsible Lending Code
- Consider going beyond minimum requirements where possible
- Work constructively with financial mentors where authorised
- Treat borrowers reasonably and consider individual circumstances

Questions

