

Monitoring project – Advertising standards

Early 2024 we reviewed > 40 finance company websites for compliance with advertising standards

Top three concerns identified:

- ❖ Loan calculators showing regular payment amount but not total payment amount
- ❖ References to speed of approval of loan applications without reference to responsible lending obligations
- ❖ References to interest rates without references to mandatory credit fees and amounts

Purpose of advertising guidelines

The guidelines outline lender obligations when advertising consumer credit under:

- ❖ Credit Contracts and Consumer Finance Act
- ❖ Credit Contracts and Consumer Finance Regulations
- ❖ Responsible Lending Code (non-binding)
- ❖ Fair Trading Act

Responsible Lending Principles

Lenders must comply with responsible lending principles in their advertising.

The core principle is that a lender must always exercise the **care, diligence, and skill**, of a responsible lender in any advertisement for providing:

- ❖ Credit under a consumer credit contract
- ❖ Credit under a buy-back transaction
- ❖ Credit-related insurance under a relevant insurance contract

What is an Advertisement?

Advertising is broadly defined for the purposes of responsible lending obligations to mean any form of communication:

- ❖ That is, or has been, **distributed** to a person
- ❖ That is reasonably likely to induce a person to inquire about or apply for an agreement
- ❖ That is authorised or instigated by, or on behalf of, the lender or an associated person of the lender with the co-operation of any of those persons.

Assisting consumers to make an informed decision

Assisting the borrower to reach an **informed decision** as to whether or not to enter into the agreement requires ensuring that any advertising:

- ❖ Complies with the **advertising standards** in the Regulations.
- ❖ Is not, or is not likely to be, **misleading, deceptive, or confusing** to borrowers.

Advertising standards



The advertising standards in the Regulations **mandate** certain advertising practices and **prohibit** others.

Where the standards require that a matter be included in an advertisement it must be stated in plain language in a **clear, concise, and intelligible** manner

Advertising of payment amounts

If an advertisement is being distributed to the public, or a section of the public, and it refers to an amount of a payment under a consumer credit contract the advertisement must state in a **prominent manner**:

- ❖ the **total amount** of the payments
- ❖ the **annual interest rate** or rates
- ❖ in the case of a credit sale that requires the debtor to make one or more lump sum payments, **the amount of each lump sum** payment

Advertising of interest rates or charges

If an advertisement is being distributed to the public, or a section of the public, and it refers to an interest rate or an interest charge the advertisement must state:

- ❖ the **annual interest rate** or rates
- ❖ the **range of rates** or charges
- ❖ that **other interest rates apply** in addition to those rates
- ❖ the period during which the **annual interest rate is fixed**

Advertising of interest rates or charges

Continued...

- ❖ if the annual interest rates is not fixed for the term, a statement to that effect
- ❖ each mandatory **credit fee**
- ❖ the **amount of those fees**, if ascertainable or, if that amount is not ascertainable that other fees apply
- ❖ where information can be found on when other fees apply and **how they are calculated.**

Prohibited advertising practices

An advertisement must not make any of the following representations:

- ❖ that the lender will **not inquire** into the borrower's circumstances
- ❖ that the lender will **not take into account** a borrower's circumstances in assessing whether or not to enter into a consumer credit contract.
- ❖ that a loan has **already been approved** or granted, if the required responsible lending suitability and affordability inquiries have not been completed
- ❖ If an advertisement includes a reference to the **speed of approval** in minutes or hours, it must also contain a prominent reference to responsible lending criteria or inquiries.

Fair Trading Act

- A lender must not engage in conduct that is
 - **misleading** or **deceptive** or is likely to mislead or deceive (s9)
 - liable to mislead the public as to the **nature, characteristics, suitability for purpose** or quantity of services (s11)
- A lender must not make
 - false and misleading representations (s13)
 - unsubstantiated representations (s12A)

Cases

New Zealand (Fair Trading)

- ❖ *Commerce Commission v Bepeay Services Ltd (1990)*
- ❖ *Godfrey Hirst v Cavalier Bremworth (2014)*

Australia

- ❖ *Australian Securities and Investments Commission v Latitude Finance Australia (No 2) [2024]*

Questions

