**CASH CONVERTERS/PAYDAY LENDER**

 **RESPONSIBLE LENDING CHECKLIST**

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| PART A Complete this while your client is with you. This will assist in identifying whether there is an argument that Cash Converters/ another payday lender breached the responsible lending laws |
| THRESHOLD QUESTIONS |
| Are the loan(s) payday loans? (Small Amount Credit Contracts) NB: A payday loan is $2,000 or less AND the loan term is between 16 days and one year. If the transaction involves 'pawned' goods, it is a pawn agreement NOT a pay day loan. YES If yes, keep answering the questions in this checklist NO If no, this Guide and Checklist do not apply to the transactions |
| Has your client had loans with Cash Converters (or any other payday lenders) before? YES If yes, note approximately how many times, when and from whom **NO** |
| YOUR CLIENT’S CAPACITY TO PAY |
| **Did your client obtain the loan when they were having difficulty repaying bills and other necessary expenses?** **Yes No****Has your client had difficulty making the payments?** **Yes No****Have they fallen behind on bills for essential services or had to go without basic necessities to make the payday loan repayments?**  **Yes No**If the answer is yes to any of these questions, it is definitely worth getting the loan documents |
| THE LENDING ASSESSMENT BY THE PAYDAY LENDER |
| Did the payday lender ask your client why they wanted the loan? YES If yes, what did you tell them: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  **NO** If no, Cash Converters/payday lender may have breached the credit law. |
| **Record any additional concerns or comments your client has about the transactions, these can be added to their complaint if relevant**OVERALL ASSESSMENTIf the above answers indicate that there are grounds to complain about Cash Converters/payday lender's conduct you can include a complaint in the **Document Request Letter** attached. If you feel more information is needed, you can ask the lender for all the loan and assessment documentation it has on record. If this does not include your client's bank statements from the time of the loan(s), obtain these from your client's bank to check for any other pay day loans and any defaults on these.  |

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| PART B**Complete this after you have received the loan documents, using these to answer the questions** |
| COST CAP |
| Do the charges under the loan fall within the maximum cost cap?NB: the cost cap is: an establishment fee being no more than 20% of the principal, plus a monthly charge of 4% of the principal. You can check the costs using the ASIC payday loan calculator  YES  NO If no, the lender has breached the credit law. Add this complaint to the complaint letter |
| STEP DOWN IN PAYMENTS |
| Under the 'repayments' term in the loan, is the repayment amount reduced after a specified period (usually 13 fortnights)? YES If yes and your client did not know or ask for this reduction, the lender may have breached the credit law **NO** NB: example repayment term: REPAYMENTS: The borrower agrees to make 13 Fortnightly repayments of $150 followed by 13 Fortnightly repayments of $60.REPAYMENT SCHEDULE:13 x Fortnightly $150 start date 01/01/1613 x Fortnightly $60 start date 01/07/16 |
| USE OF BENCHMARK EXPENSES |
| Has a 'default' percentage of income been used to calculate the rent (25% of income) and the living expenses (15% of income) in the loan application?  YES If yes, and the client's actual rent and/or actual living expenses are more than the amount calculated, the lender may have breached the credit law NO |
| THE REBUTTABLE PRESUMPTION ABOUT PREVIOUS LOANS |
| Check your client's bank statements from the time of the loan to answer the followingN.B: There is a rebuttable presumption in the credit law that a payday loan may be unsuitable in some circumstances (as below). |
| At the time of the payday loan, did your client already have another payday loan that was in default? | Yes / No |
| For the 90 days before the payday loan, had your client already had two or more other payday loans? |  Yes / No |
| If the answer is "yes" to either of the above questions the lender may have breached the credit law |
| YOUR CLIENT’S CAPACITY TO PAY |
| Now you have the documents from the time of the payday loan(s), you can use them and this table to work out your client's ability to afford the loan at the time it was entered |
| At the time of the payday loan, your client's after tax income was  | $ per / wk / fnight / month |
| LESS your client's fixed and regular expenses (rent/mortgage, bills, other debt repayments, etc)\* | $ per / wk / fnight / month |
| LESS repayments on the payday loan | $per / wk / fnight / month |
| Amount client was left to live on (if any)\* you can get an idea of the amount your client needed for basic living expenses by looking at the Henderson Poverty Index (HPI) for the relevant quarter as at the time of the loan.  | $ per / wk / fnight / month  |
| Could your client live on what is left without substantial hardship taking into account unexpected expenses?  YES NO If no, Cash Converters/payday lender may have breached the credit law. |
| THE LENDING ASSESSMENT |
| Use the loan assessment documents to answer these questions |
| Did the payday lender obtain your client's actual income and actual fixed expenses  | Yes / No |
| Did the payday lender obtain documents verifying your client's income and expenses (eg. pay slips, rent receipts)?  | Yes / No |
| Did the payday lender accurately record the reason for the loan? | Yes / No |
| Did the payday lender obtain bank statements for the previous 90 days? | Yes / No |
| If the answer to any of these questions is "no", it is arguable the payday lender has breached the credit law |
| OVERALL ASSESSMENTIf the above answers indicate that your client has grounds to complain about the loans, you can lodge a dispute with Cash Converters/payday lenders internal dispute resolution scheme or provide further details of your client’s complaint if you have already lodged one. If Cash Converters/payday lender does not respond within 45 days of the complaint or their response is not satisfactory, you can lodge a complaint with the Credit & Investment Ombudsman |

**ATTACHMENT 'A'**

**DOCUMENT REQUEST LETTER**

It is essential that the information in this letter is a true and correct reflection of your client's circumstances and instructions

[date]

Cash Converters

Internal Dispute Resolution Team

disputeresolutions@cashconverters.com

Dear Dear Sir/Madam

**[INSERT NAME OF CLIENT]**

**[INSERT LOAN ACCOUNT NUMBERS IF KNOWN]**

We act for [client name] in this matter and attach a duly executed privacy authority under the *Privacy Act 1988* (Cth).

1. **COMPLAINT**

[If you don’t have enough information yet, you may wish to delete section: “A. Complaint” in this letter, and just use section “B. Request for Documents”]

My client’s circumstances:

[For example only]:

1. My client’s sole source of income is Newstart. My client has been unemployed for over a year. At the time the loan was granted his/her income was $[amount].
2. My client also receives family tax benefit to cover the care of his/her [No.] children, being [age] and [age] years old.
3. My client has been diagnosed with [insert any medical diagnosis that may impact on client's finances or cognitive functioning] AND/OR My client has been a gambling addict for [X years].
4. My client instructs that she has been obtaining numerous loans through Cash Converters entities/pay day lending entities since [date/year] and that she would regularly borrow approximately $[amount] approximately every [No.] months.
5. My client has been struggling to make the repayments since the loan(s) was first granted.

Irresponsible lending/unjustness:

My client contends that the loan(s) granted to his/her by you are/is unsuitable because:

1. she could not afford to repay the loan(s) without substantial hardship; and/or
2. they did not meet his/her requirements and objectives.

My client contends that the granting of the loan(s) is in breach of:

1. The responsible lending provisions of the *National Consumer Credit Protection Act 2009* (NCCP); and
2. The unjust transaction provisions of the *National Credit Code* (s. 76).

Under the NCCP, you are required to:

1. Make reasonable inquiries about the consumer’s financial situation.
2. Take reasonable steps to verify the consumer’s financial situation.
3. Make reasonable enquiries about the consumer's requirements and objectives in relation to the loan.
4. Make an assessment that the contract is “not unsuitable”.

My client contends that you failed each of the above requirements. Further details will be provided once we have the documents below. In the meantime, I request that you investigate my client’s complaint and respond within the required 45 days.

1. **REQUEST FOR DOCUMENTS**

Please provide my office with the following documents in relation to the loan agreement entered into with my client:

1. Copies of all documents relating to any and all loan contracts entered into between you and my client pursuant to section 185(1) of the *National Credit Code* (the **Code**) including:
* the credit contract
* any credit-related insurance contract in your possession
* any notices you have sent to my client
1. A statement of amount owing in accordance with section 36(1) of the Code setting out:
* the current balance of the account,
* any amounts credited or debited to the loan over the life of the account
* any amounts overdue and when each such amount became due
* any amount payable and the date it became due.
1. A statement of amount payable as at today's date with details of items which make up that amount in accordance with section 83 of the Code.
2. A copy of the assessment of suitability under section 132 of the *National Consumer Credit Protection Act 2009* (Cth) including but not limited to:
	1. any application documents regarding the loan application including but not limited to any documents used to verify information obtained through the assessment and any certification in relation to the provision of independent legal advice and/or independent financial advice, provided to my client.
3. Copies of records of any phone conversations between your company and my client.

I look forward to receiving the above information and documentation within the time limits specified in the Code.

I note that in making this request my client in no way accepts or acknowledges liability for the contracts.

I will contact your nominated external dispute resolution scheme for assistance if you fail to provide these documents to my office within the relevant time limits.

[If enforcement proceedings are imminent]:

I assume you will not take any further action against my client (including making an adverse listing on my client’s credit report) while you are investigating my client’s dispute. If this assumption is incorrect, please advise me in writing immediately.

My client reserves his/her rights to raise additional grounds of complaint once he/she has all the relevant documents.

Please direct any queries to [name] of my office on [phone number].

Yours faithfully

[Name]

Enclosures

**ATTACHMENT "B"**

**COMPLAINT LETTER**

It is essential that the information in this letter is a true and correct reflection of your client's circumstances and instructions

Cash Converters

Internal Dispute Resolution Team

disputeresolutions@cashconverters.com

Dear [name],

RE: Client name

[If less than 3 loans] RE: Loan Account No. [insert all 3 loan accounts]

[If more than 3 loans] RE: Loans in period [date] to [date]

I refer to the above loans and the documents you have supplied to us which I assume are all the documents in your possession relating to my client.

[If you have already made a complaint] :

**FURTHER DETAILS OF MY CLIENT’S COMPLAINT**

On the basis of the documents supplied by you, my client maintains his/her complaint that you have engaged in irresponsible lending. She says further that: [include the points made in the rest of this letter unless they were already raised in the first complaint.

[Insert if a complaint has not been raised] :

**COMPLAINT**

My client wishes to raise a dispute about your conduct in granting my client a loan/ the loans.

My client’s circumstances:

[For example only]:

1. My client’s sole source of income is Newstart. My client has been unemployed for over a year. At the time the loan was granted his/her income was $[amount].
2. My client also receives family tax benefit to cover the care of his/her [No.] children, being [age] and [age] years old.
3. My client has been diagnosed with [insert any medical diagnosis that may impact on client's finances or cognitive functioning] AND/OR My client has been a gambling addict for [years].
4. From the loan documents provided, it is clear that my client has been obtaining numerous loans through Cash Converters entities/pay day lending entities. She instructs that she has been taking out loans since [date/year]. The documents show that she has borrowed money from you approximately every [No.] months.
5. At the time my client obtained the loan(s) with you his/her bank accounts showed she had the following fixed and regular expenses:
* [List Expenses]
1. As a result of getting the loans my client was left in significant financial hardship and was unable to
2. My client has been struggling to make the repayments since the loan was granted.

Irresponsible lending/unjustness:

My client contends that the loan(s) granted to his/her by you are/is unsuitable because:

1. she could not afford to repay the loan(s) without substantial hardship; and/or
2. they did not meet his/her requirements and objectives.

My client contends that the granting of the loan(s) is in breach of:

1. The responsible lending provisions of the *National Consumer Credit Protection Act 2009* (NCCP); and
2. The unjust transaction provisions of the *National Credit Code* (s. 76).

Under the NCCP, you are required to:

1. Make reasonable inquiries about the consumer’s financial situation.
2. Take reasonable steps to verify the consumer’s financial situation.
3. Make reasonable enquiries about the consumer's requirements and objectives in relation to the loan.
4. Make an assessment that the contract is “not unsuitable”.

My client contends that you failed each of the above requirements.

[If your answer to Question 2 in Part B was YES]:

Furthermore:

* + - 1. you have inexplicably and without my client's consent or authorisation, reduced the repayments after 13 weeks and therefore increased the fees and charges you receive. This is further evidence that you did not meet my client’s requirements and objectives when granting the loan(s) and therefore the loan is unsuitable;

[If your answer to Question 3 in Part B was YES]:

* + - 1. you have provided a default expense amount calculated as a percentage of his/her income. This expense is less than his/her true expenses at the time of borrowing which were $[amount]. This is further evidence that my client could not afford the loan and therefore the loan is unsuitable.

[If your answer to Question 4(a) in Part B was YES add]:

Furthermore:

at the time of the payday loan my client already had another payday loan that was in default;

[If your answer to Question 4(b) in Part B was YES add]:

in the 90 days before the payday loan my client already had two or more other payday loans.

PROPOSED SETTLEMENT

My client offers to settle this matter in full and final settlement on the following terms:

[If your client has repaid more than they received as a benefit (cash received)]:

My client is refunded the amount of $[being the amount repaid above the benefit received]:

My client is released from all liability; and

Any default listing on my client’s credit report is removed.

[If your client has paid less than the benefit they have received]:

The amount owing is reduced to $[being the amount received as a benefit less repayments made to date];

No fees or charges will apply; and

Any default listing on my client’s credit report is removed.

Please respond within 45 days of the date of this letter.

Yours faithfully,