Financial Counsellor / Community Worker resource

Letter from financial counsellor / worker to Cigno

What is this resource for?

The purpose of this resource is to provide an overview of the Cigno loan models, the legal arguments that may be available for each and to provide an update on recent Court decisions relating to Cigno.

We have built a tool to assist you to write a letter to Cigno on behalf of your clients. You can also use the tool to generate a letter to ASIC.

Click here to write a letter to Cigno

What do I need to know before using this resource?

If you have copies of the loan contract, the Cigno service contract and a statement of account, this will assist you to identify which Cigno model has been used and to write the letter to Cigno.

The information in this resource is not legal advice. If you have any questions about your client's situation, please contact Consumer Action Law Centre.

Worker help

If you have any questions about this resource, please call our *Worker Advice Line* on (03) 9602 3326, or email us at advice@consumeraction.org.au.

Cigno Loans

Cigno says they can assist anyone obtain short term loans from $50 to $1,000. Cigno advertises itself as a simple, easy to use, provider of fast credit for low-income people including students, Centrelink recipients, pensioners, and the unemployed. It specifically advertises to apply for payday loans, emergency loans, Centrelink loans, bad-credit loans, weekend loans, and unsecured loans.

Cigno will process loan applications in a matter of hours with little documentation. Borrowers who need money quickly might not closely check the complex contracts they are given. Cigno contracts are complex because they are deliberately set up to try and avoid regulation under the NCCPA and will involve another lender the borrower is probably unaware of.

Many borrowers are unaware of the high fees and charges attached to a Cigno loan and quickly find the loan taking longer to repay and costing much more than expected. A typical contract may end up requiring a borrower to repay anywhere between two to eight times the principal borrowed.

Even though Cigno has used carefully constructed contracts to avoid the requirements of the NCCPA there are legal arguments a borrower can use to cancel or end their contract. In our experience, if the borrower has repaid the principal borrowed it is highly unlikely that Cigno will pursue them for the remainder outstanding under the contract. In most cases we would recommend a borrower to simply stop making payments to Cigno.

It is unknown exactly how many people borrow from Cigno, but Federal Court documents show that in around six months Cigno arranged 166,045 loans for $46 million that incurred fees of around $61 million.

Cigno Contracts

Cigno does not have a licence to lend money.

A borrower is paying Cigno to arrange a loan with another business that holds a credit licence.

The borrower will have two contracts:

- A service contract with Cigno Pty Ltd
- A loan contract with another company, the actual lender

The Service Contract

The service contract sets out the fees the borrower must pay Cigno for setting up and administering the loan. This contract may include establishment fees, administrative fees, and penalties.

The Loan Contract

The loan contract sets out the amount borrowed, the interest on the loan and when repayments are made. The loan contract is usually with one of the following companies, Gold Silver Standard Finance Pty Ltd (**GSSF**), BHF Solutions Pty Ltd, or BSF Solutions Pty Ltd.

Cigno's lending models

Cigno has used several different structures or models for its loans. It has set up these loans to try and avoid the legal requirements of the *National Consumer Credit Protection Act 2009* (Cth).

Cigno has had to change the legal structure of its loans because of legal action taken by ASIC to ban its lending model. Often the date the loan was entered into will identify which loan type the client has entered.

The main three structures are:

Timeframe	**Name of Model**	**Lending Company**
Before 14 September 2019, and Between 14 March 2021 to 15 July 2022	Short Term Credit	Gold Silver Standard Finance Pty Ltd and BSF Solutions Pty Ltd
After 14 September 2019	Continuing credit	BHF Solutions Pty Ltd
From late 2022	No upfront charge	BSF Solutions Pty Ltd

Legal Arguments to Get Out of the Loans

While all three of these models are carefully designed to avoid legal obligations of the NCCPA there are several legal arguments that a client can make to challenge or get out of a Cigno loan.

All loans issued under the continuing credit model are unlawful, because of a Federal Court decision in July 2023. The Federal Court has prohibited Cigno from collecting further repayments for these loans.

Short Term Credit loans issued between 14 September 2019 and 14 March 2021, and after 15 July 2022 are banned.

Other loans from Cigno can be disputed based on unconscionable conduct and unlicensed credit activity.

What should you do to help your client?

1. Advise client of option to stop direct debit. As this is a breach of the loan contract and service contract, there is a risk that they will be sued by Cigno, but we think this risk is very low. We would recommend stopping direct debit payments by contacting bank.

2. Determine if your client's loan it is the short-term credit model, continuing credit model or no upfront charge model.

3. Use our digital tool to generate a letter that you can send to Cigno, and a complaint to ASIC. If your client has paid back more than they borrowed, then they should seek a refund of all fees and charges. If the client has not paid the amount borrowed, they could write to Cigno asking Cigno to stop contacting them about the alleged debt.

4. If you have any questions about any of this please feel free to call the Consumer Action Law Centre Worker line on 03 9602 3326 or get in touch by email: advice@consumeraction.org.au

'No upfront charge model'

This is the most recent Cigno model which we have seen. We believe that Cigno started to use this model in late 2022. Under this model, the borrower enters:

a. A loan agreement between the borrower and BSF Solutions Pty Ltd; and
b. An account keeping agreement between the borrower and Cigno.

Cigno charge high account keeping fees and default fees under the account keeping agreement. For example, in relation to a $250 loan repayable over 73 days, the minimum fees repayable would be $290.95. If the client defaulted on any repayment, they would have additional $87 fees to pay to BSF and Cigno. These fees are payable each time the client defaults.

In our view these loans are disputable on the basis of unconscionable conduct.

ASIC has indicated that they are investigating this loan model.[1]

Anti-avoidance provisions

An anti-avoidance provision has been introduced to the *National Consumer Credit Protection Act 2009* (Cth) as part of the recent small amount credit contract and consumer lease reforms. These provisions became law on 12 December 2022, and apply to loans entered after this date.

In our view, it can be argued that loans entered under any of the three Cigno models after 12 December 2022 breach the anti-avoidance provisions because:

[1] https://asic.gov.au/about-asic/news-centre/find-a-media-release/2023-releases/23-188mr-cigno-and-bhf-solutions-found-to-have-engaged-in-unlicensed-conduct/

- they provide loans to consumers in a more complex and costly manner than a small amount credit contract would have been, and
- the representations made in advertising Cigno loans are similar to those used to advertise small amount credit contracts (e.g. fast loans).[2]

Continuing credit model

From September 2019, Cigno structured its loans with a 'continuing credit model'. Cigno partnered with lender BHF Solutions, to offer the Loan Contract. The continuing credit model works a bit like a credit card with a maximum limit but, unlike a credit card, the borrower must ask for approval to draw down the amount already paid back. The maximum fee the lender can charge is:

- for the borrower's first contract:
  - $200 in the first year, and
  - $125 for every year thereafter,
- for a borrower's second and following contracts – no fees.

In the contracts Consumer Action Law Centre has seen, the Lender (BHF) has charged a flat fee of $15.

However, the Service Contract with Cigno will include exorbitant fees. For example, the Service Contract might have a $248 establishment fee for a loan of $250.

On 27 June 2022, the Full Federal Court found that the continuing credit model breached the *National Consumer Credit Protection Act 2009* (Cth) because Cigno were in effect charging fees in relation to credit but did not hold a credit licence. This means that all Cigno loans using the continuing credit model are in breach of the *National Consumer Credit Protection Act 2009* (Cth).

On 12 July 2023, the Federal Court ordered Cigno and BHF Solutions not to receive any further money on these loans and not to collect any further on these loans.

ASIC has also used its Product Intervention Power on 15 July 2022 to ban the continuing credit model until 15 January 2024.

Short term credit model

Cigno loans entered:

- before 14 September 2019
- between 14 March 2021 to 15 July 2022

commonly used this structure.

[2] *National Consumer Credit Protection Act 2009* (Cth) s 323A-323B

Up until 14 September 2019, Cigno predominantly worked with lender GSSF to offer the Loan Contract under the "short term credit model".

Short term credit that has:

- repayment period less than 62 days
- maximum charge of 5% of the loan

is exempted from the National Credit Law.

Under this model the fees and charges are in the Service Contract with Cigno. This allows the lender, GSSF, to stay under the 5% threshold. Taking both contracts into account the loan will cost a lot more than 5%.

Example Person borrows $250 from GSSF. Under the loan contract GSSF charges a fee of 5% of the amount borrowed – $12.50. The Service Contract with Cigno requires the borrower to pay a range of other fees (establishment, maintenance, admin, penalties, change fee, termination fee etc). Cigno would argue that the loan contract falls within the short-term credit exemption of the NCCPA because these fees were not paid to the 'lender', GSSF.

ASIC used its Product Intervention Power and made an Order banning the short-term credit model from 14 September 2019.

Cigno challenged ASIC's Order in the Federal Court. On 29 June 2021, the Federal Court upheld ASIC's Order, banning Cigno from using the short-term credit model. ASIC only has power to make a Product Intervention Order for 18 months. Therefore, Cigno was banned from using the short-term credit model from 14 September 2019 to 14 March 2021.[1]

On 15 July 2022 ASIC issued a new Order banning Cigno from using this short-term credit model until 15 January 2024.

Therefore, any Cigno loan using this short-term credit model entered **from 14 September 2019 to 14 March 2021**, and **15 July 2022 to 15 January 2024** is banned.

Any of these types of loans outside of the specific timeframe of the ASIC Orders are not banned.

However, you can still argue that loans that are not banned by the Product Intervention Orders are unconscionable because of significant and widespread consumer harm.