

What is a consumer credit contract?

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The Credit Contracts and Consumer Finance Act 2003 (the Act) applies to loans. Most of the consumer protections in the Act only apply to loans that are consumer credit contracts.

When we investigate a complaint about a loan, we will decide whether the loan is a consumer credit contract.

If the complaint is in the lender's internal complaints process and the borrower would like to know whether their loan is a consumer credit contract, we suggest that they either:

- > ask their lender, or
- > read their loan agreement – this may say whether the loan is a consumer credit contract.

We can investigate complaints about whether a loan is a consumer credit contract – for example, where the borrower believes the loan is a consumer credit contract, but the lender says it is not.

We can also investigate complaints about whether a loan should have been a consumer credit contract – for example, where the borrower completed a declaration saying a loan was for a business purpose, but the borrower says the lender knew the loan was for personal use.

What is a consumer credit contract?

A loan is a consumer credit contract if the following apply.

1. The borrower is a natural person.

This means the borrower is a person (a human being).

A loan is not a consumer credit contract if the borrower is:

- > a company
- > a body corporate
- > an incorporated society

> acting as trustee for a family trust.

2. The loan is to be used, or is intended to be used, wholly or predominantly for personal, domestic, or household purposes.

This means the borrower will use, or intends to use, more than 50% of the loan for their personal use or for domestic or household use.

A loan is not a consumer credit contract if the loan is for (or primarily for) investing or a business purpose.

3. At least one of the following applies under the loan agreement.

- > **Interest charges are, or may be, payable by the borrower.**
- > **Credit fees are, or may be, payable by the borrower.**
- > **A security interest is, or may be, taken by the lender.**

An example of a credit fee is an establishment fee that the lender charges the borrower when the loan is set up.

An example of a security interest is when a motor vehicle loan is secured by the vehicle the borrower purchased. If the borrower does not repay the loan, the lender may be able to repossess and sell the vehicle to recover the money owed to the lender.

There is also a requirement that the lender is in the business or practice of providing credit, or the loan came about from a paid adviser or broker referring the borrower or lender to the other party. A loan from a person or business that does not usually provide credit is not a consumer credit contract.

It is usually clear whether the financial service provider complained about is in the business of being a lender. Lenders must be registered on the [Financial Service Providers Register](#) and belong to a dispute resolution service.

Loans that are consumer credit contracts by law

A loan is also a consumer credit contract if this is specified by law.

Goods purchased by a person on credit from a mobile trader are treated as consumer credit contracts.

Buy now pay later loans are consumer credit contracts, but not all responsible lending consumer protections in the Act apply to buy now pay later.

See our [buy now pay later consumer guide](#) for more information.

What types of loans are usually consumer credit contracts?

The following types of loans are usually consumer credit contracts if the loan is for the borrower's personal use.

- > Home loans
- > Personal loans
- > Motor vehicle loans
- > Credit cards
- > Arranged overdrafts.

Each case will turn on its facts. If there is a dispute about whether a loan is a consumer credit contract, we will need to consider what the loan was for or what it was intended to be used for when the loan was taken out.

What types of loans are not consumer credit contracts?

A loan is not a consumer credit contract if it is for a business purpose or for investing – for example:

- > a home loan is not a consumer credit contract if the loan is to purchase an investment property
- > a personal loan is not a consumer credit contract if it is taken out to start a business
- > a motor vehicle loan is not a consumer credit contract if the borrower is a business or the vehicle is for business use.

Unarranged overdrafts are not consumer credit contracts. An unarranged overdraft is when a bank account goes:

- > into debt (the account balance falls below zero) and there is no approved overdraft limit, or
- > over the approved overdraft limit.

Case notes

The following are examples of cases we have considered. Each case turns on its facts. More case notes are on [our website](#).

[Lender not obliged to consider hardship request](#)

In Niko's case, we decided that the loan was not a consumer credit contract.

Niko's company had a loan, secured by a property the company owned. Niko lived in part of the property, and he used the other part for his business.

Niko believed the loan was a consumer credit contract because:

- > the lender said the loan was a commercial and consumer loan
- > he lived at the property
- > he guaranteed the loan.

We concluded that the loan was not a consumer credit contract because the borrower was a company. The meaning of consumer credit contract does not extend to business loans secured by a home or guaranteed by a person.

The lender had not said the loan was a consumer credit contract. It appeared Niko had misread the lender's information – the loan agreement said the loan was not a consumer credit contract.

[When a business loan is not a business loan](#)

In Linh's case, we decided the loan should have been a consumer credit contract, not a business loan.

Linh borrowed money to buy a ute. She signed a declaration that the ute was for business purposes.

Linh struggled to make the loan repayments and the ute was eventually sold. Linh was left in debt because the sale proceeds were less than the amount owed to the lender.

Linh complained that she had not been able to afford the loan from the beginning. Her financial mentor also explained that the ute was for Linh's son's personal use and that Linh did not understand that the loan was a business loan.

We concluded that the loan should have been a consumer credit contract. We were not satisfied Linh understood when the loan was taken out that it was a business loan, and we concluded that the ute was probably for personal use (not business use).

[More information about the meaning of consumer credit contract](#)

Consumer Protection have information for consumers about [borrowing money](#). This includes information about the [meaning of consumer credit contract](#).

The Commerce Commission have information for lenders about the [meaning of consumer credit contract](#). The Commission also have guides for consumers about [borrowing money](#).

This guide does not cover leases, which are sometimes treated as consumer credit contracts. The Commerce Commission have information on their website about [consumer leases](#).