



Coming to grips with credit contracts

Steps to protect
vulnerable borrowers

Genevieve Sheehan, Therese Wilson
and Nicola Howell

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Brotherhood
of St Laurence

Working for an Australia free of poverty



Brotherhood of St Laurence
67 Brunswick Street
Fitzroy Vic. 3065

ABN 24 603 467 024

Ph: (03) 9483 1183

www.bsl.org.au

Centre for Credit and Consumer Law
Griffith Law School
Griffith University
Nathan Q 4111

ABN 78 106 094 461

Ph: (07) 3735 3590

www.griffith.edu.au

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Summary

The issue

As an organisation which interacts with many people living on limited incomes, the Brotherhood of St Laurence is concerned about their access to appropriate mainstream finance. The law school at Griffith University also has a commitment to exploring issues of social justice. This research project sought the views of low-income people about credit regulations, focusing on disclosure and the safety net provisions in the Uniform Consumer Credit Code (UCCC).

The project

The major element of the research involved discussions with 30 low-income Victorians who had recently signed a credit contract with a bank, credit cooperative or fringe lender. Individual interviews were conducted between December 2007 and February 2008. There were two discussion guides. One, for bank and credit cooperative borrowers, focused on the participants' understanding of information disclosed in the contract. The other, for borrowers from fringe lenders, focused on participants' responses to hypothetical unfair contract terms.

Findings

Discussions showed that most participants managed their finances fortnightly or weekly, and so consider whether something is affordable in the context of their fortnightly or weekly budget. As a result, the repayment rate tended to be the most important aspect of the contract.

I'm not quite sure about the interest—but I'm paying \$46 a fortnight out of my disability pension.

While most participants were clear that they had a responsibility to repay the loan, they were less clear on the ramifications of not repaying.

When asked about their rights as a consumer, most were only able to focus on the lenders' expectations. Many confused the concepts of rights and responsibilities.

Participants' comments generally contradicted the fundamental assumption of the UCCC that disclosure of information assists borrowers in making an informed choice about signing a credit contract. In reality, they signed contracts that they did not understand or felt were unfair because of limited options, powerlessness and their relationship with the lender:

I've got a lot of reservations with the loan, and I've explored other options, but the pension doesn't count as an income [to banks] so we're stuck in the mud-hole at the moment.

The language and length were barriers to consumers understanding contracts. Some participants admitted to being unable to read the contract.

Because I'm illiterate with certain things, but I battle—if I come to a word what I don't understand I skip it, and I have to keep going to the next one. And half the time I skip half the letter because I can't understand what it's trying to say.

Most felt overwhelmed by the length of the contract:

They've got a hell of a lot of pages here. There's about maybe 20 pages here, maybe more. I'm not sure why they have such a big, thick paper. But I think the [financial institution] could make it a little bit more briefer than that for people.

Many participants had difficulty differentiating between information they wished was in the contract and the actual content. Some felt that they had a good relationship with the lender and therefore did not expect them to act upon harsh clauses in a contract. One man spoke of a fringe lender in the manner of speaking of a friend. Others based their assessment on impressions from friends and family and the absence of any adverse outcomes for them. Many based their expectations on past experiences with the lender, rather than the contract.

When asked to comment on a mock unfair contract, most participants said that clauses made them feel powerless, afraid and vulnerable. However, in relation to their own contract, they generally felt that their options were so limited that they had decided to take the risk and proceed.

Participants were asked whom they would approach to discuss a problem with the lender. They were also asked to indicate any legal rights they had in the event of hardship or unjust contract terms. None mentioned that a court could vary a contract or re-open a contract on the borrower's application, indicating that many low-income people do not understand their rights. Most suggested that they would approach the lender; however many considered that they had limited bargaining power compared with the lender.

Overall, the study found that current pre-contractual disclosure documents did not help participants to understand many of the important terms of the contract, or to know their rights. This suggests that the assumptions about human behaviour in the 'truth in lending' model of regulation may not be supported in the case of low-income people such as those involved in this study. As a result, there are four key recommendations for improving the regulatory model so that it better protects vulnerable consumers.

Recommendations

- Regulators should reduce their reliance on disclosure as a consumer protection measure.
- The language and length of contracts should be tailored to meet the needs and capacity of consumers.
- The effectiveness of the safety net provisions (which enable consumers to apply to the court to re-open unjust transactions or to apply to their credit provider for relief on hardship grounds) should be reviewed. Amendments may be needed such as allowing government consumer agencies to act on behalf of consumers.
- The Australian Government should prohibit unfair terms in consumer contracts and create a regulatory unit similar to the UK Unfair Contract Terms Unit, charged with responding to consumer complaints and proactively reviewing consumer contracts for compliance with the unfair terms law.

1 Introduction

A low-income woman participating in this research explained the impact of signing a contract which she later decided was unfair. The experience of negotiating with the fringe lender had been devastating to her confidence and she was ashamed. She felt her ability to function had been shown to be so faulty that she felt discouraged from trying to pass a driving test, or returning to work: it all felt like ‘too much’ for her.

I feel really stupid. I feel really dumb. It’s put me off, in a lot of ways, to the point where I won’t even bother going to go and get my licence now, because I don’t want to ... So I’ll just take it as a sign that I’m not meant to have a car and I’m not meant to drive ... My ego was pretty crushed. Not long after that I hurt my back and I just gave up on work, even though the physio and the doctor said I could go back and do light duties.

The Brotherhood of St Laurence and the Griffith University Law School undertook this research out of concern about whether low-income Australians entering into credit contracts, like this woman, are adequately protected.

Under the Uniform Consumer Credit Code, protections are primarily based upon disclosure of information and the opportunity to commence court proceedings, for example, in the event of hardship or unjust transactions. But are these forms of regulation effective in protecting the most vulnerable consumers? Or do some low-income people behave like the woman quoted above and sign contracts despite not understanding their rights and responsibilities? This research aimed to answer this question by seeking the opinions of a group of vulnerable, low-income consumers.

This section explains the scope of the project and the method used. The balance of the report:

- explains the legal context and describes demographic information about participants in the project (section 2)
- reports on low-income people’s views of the disclosure regulatory system and safety net provisions (sections 3 and 4)
- discusses findings about the regulatory system and sets out recommendations (section 5)

Method

Interviews with low-income people

The major element of the research involved discussions with thirty low-income people in Victoria. People were interviewed individually between December 2007 and February 2008. Participants had recently signed a credit contract with a bank (these loans were provided in partnership with the Brotherhood), credit cooperative or fringe lender. Those that obtained a loan from a fringe lender had been prior customers of an informal, small-scale loan scheme operated by the Brotherhood. Contracts that the participants had signed were compliant with regulations. This project sought to explore regulations and industry-wide practices, rather than particular products or lenders’ contracts.

There were two discussion guides (see Appendix). One focused on the participants’ understanding of information disclosed in the contract: it was used with 22 bank and credit cooperative borrowers (referred throughout the paper as participants of community loan programs). Participants were asked to reflect on the paperwork in general, their rights and responsibilities and the most important aspects of the contract. They were also presented with a one-page summary of the contract and were asked for their opinions on it.

The other discussion guide focused on participants’ responses to hypothetical unfair contract terms and involved borrowers from fringe lenders. Eight participants reflected on the process for obtaining credit from a fringe lender and were asked their feelings about a mock contract which

included terms that consumer groups consider unfair¹ (see for example, Australian Consumers Association 2002; Consumers Federation of Australia 2008; Consumer Affairs Victoria 2006). They were then asked who they would approach about problems with the lender, in order to elicit their understanding of rights under the Consumer Credit Code.

The project followed the Brotherhood of St Laurence research ethics processes. Participants had the right to refuse to be involved, they provided written consent and their comments were confidential. Payment was provided to participants as a way of valuing their time and expertise.

Several limitations of the research methodology should be noted.

- The research was qualitative in nature, and like most qualitative studies, the number of participants was relatively small. Given the sample size, it is not possible to generalise that the views expressed are representative of all low-income consumers. In addition, the results cannot be analysed statistically. However, this research method was chosen because it gave the opportunity to ‘understand the world as seen by the respondents’ (Patton 1990, p. 24). It provided a small number of information rich interviews which are at least indicative of the views and experiences of vulnerable low-income borrowers.
- As noted above, some participants had an existing or previous relationship with the Brotherhood. This may have influenced their responses, although loan officers took no part in the interviews. To minimise this risk, it was emphasised that the loan would proceed regardless of their comments and that there were no right or wrong answers. It was also stressed that their comments would be confidential and have no impact on any future loan applications.
- There was also the risk that participants would overstate their understanding of the credit contract to avoid feeling like a failure. This was overcome by extensive piloting of the interview guide so that the interview would seem quite informal the participants would feel that any opinions would be accepted in a non-judgmental way.
- The discussion about low-income people’s propensity to sign contracts including unfair terms was hypothetical. There is likely to have been a bias towards people saying that they would not sign a contract with unfair terms but then behaving differently in a desperate situation. As a result, this report emphasises opinions on clauses within the contract, rather than views in hindsight about the decision to proceed with the loan. The project also focused on participants’ understandings of their rights and inclination to pursue them, for example through seeking legal advice or commencing court proceedings.
- Finally, this research focused on one component of the mandated disclosure in consumer credit transactions: the pre-contractual statement required by section 14 UCCC. In many cases, the pre-contractual statement is the proposed contract document. The pre-contractual statement normally includes the information statement of rights and obligations. This research did not examine other forms of disclosure required by the Consumer Credit Code, including statements of account, and other notices and warnings.

Literature review

In parallel with the qualitative research, there was analysis of Australian and international literature on the nature and effectiveness of disclosure regulation as a consumer protection measure. In addition, literature on the effectiveness of provisions for relief from unfairness and the safety net provisions was reviewed. The key findings are summarised in the background section and in relation to opinions of participants.

¹ Unfair terms are defined in various pieces of legislation (for example *UK Unfair Contract terms Act 1977* and the *Victorian Fair Trading Act 1999*, as amended by the *Fair Trading (Amendment) Act 2003*). In this research the phrase is used non-specifically for contract details which might reasonably be considered to disadvantage the consumer.

2 Background

The Uniform Consumer Credit Code (UCCC) commenced operation on 1 November 1996, and is now implemented in all Australian states and territories. The code applies to the provision of credit wherever the debtor is an individual (for instance, as opposed to a corporate entity), the credit is provided wholly or predominantly for personal, household or domestic purposes, and a charge (such as interest or fees) is made for providing the credit (see section 6 UCCC). The Uniform Consumer Credit Code seeks to protect consumers in two key ways: disclosure and safety net provisions.

Disclosure

The code relies on extensive disclosure of terms so that consumers are fully informed when entering into credit contracts. The key principle informing the UCCC is ‘truth in lending’ based on the principles behind the US Truth-in-Lending Act 1968. The purpose of the US legislation was to assist the consumer to compare the various credit terms available and avoid the uninformed use of credit (Kofele-Kale 1984, p.117).

Disclosure regulation has been described as a form of regulation that has both ‘command and control’ type characteristics, in that it is mandated by government with penalties attached for breach, and also characteristics aligning it with market based mechanisms. A breach of disclosure requirements (set out in sections 14 and 15 UCCC) can attract a penalty of up to \$500,000 (see section 105 UCCC). This penalty (which is the highest applicable under the Code) demonstrates the centrality given to disclosure as a regulatory tool by the drafters of the UCCC. There is an expectation that consumers will be in a position to protect themselves and make appropriate choices in the market place. In this regard, a UK-based academic, Cartwright, refers to disclosure regulation as a ‘relatively ‘pro-market’ regulatory response because it facilitates the consumer’s making of an informed choice.’ (Cartwright 2004, p.62)

It is said to address consumers’ lack of information.

Neo-classical economics assumes that, for markets to provide the most efficient allocation of resources, the parties to transactions have ‘perfect information’ about the relevant products and their cost. When credit consumers have imperfect information they will not be able to make rational choices about products and this will lead to market failure. (O’Shea & Finn 2005, p.5)

Much of the literature on disclosure regulation suggests that this form of regulation is likely to be of the least benefit to low-income, vulnerable consumers. As long ago as 1976, Day wrote that:

Information disclosure requirements have been aptly described as protection for the middle class. Low-income buyers, who have the greatest need for protection or assistance in making more informed choices, are more likely to lack the characteristics that will allow them to take advantage of the information. (Day 1976, p.49)

One of the characteristics likely to make it difficult for low-income people to take advantage of information is a lack of choice.

Information is only useful if it can be acted upon. The poor may rationally decide not to make use of information if they feel no alternatives will be available to them. (Howells 2005, p. 357)

Safety net provisions

Secondly, the code contains a number of provisions referred to in this report as ‘safety net provisions’.² These include the right to seek a change to a credit contract on the grounds of hardship (see sections 66 and 68 UCCC) and the rights to pursue credit providers through the courts on the grounds that a transaction is unjust (see sections 70 and 71 UCCC), or that certain fees or variations in interest rates are unconscionable (see section 72 UCCC). In particular, if a transaction is found to be unjust a court may re-open, set aside, revise or alter the terms of the credit contract.

There has been much criticism of these safety net provisions. The major concern is that they require individual consumers to initiate legal action; it is not possible for a regulator to take action on behalf of consumers. Court and tribunal records indicate these provisions have been relatively little used by consumers (see for example, Victorian Civil and Administrative Tribunal 2007, p.20).

The difficulties and costs of legal action are likely to be most prohibitive for consumers on low-incomes. For instance, a UK study demonstrated that low-income consumers are unlikely to take legal action in relation to a loan, given the cost, a sense of powerlessness, and a fear of bitter disputes (Genn 1999, p.101). A more recent NSW study of responses to legal problems found that, among a range of civil, criminal and family problems, credit problems were the least likely to result in legal action being taken by disadvantaged consumers (Coumarelos, Wei & Zhou 2006, noting however that the sample size for credit matters was only 26).

Such difficulties have been addressed to some extent in the UK by the Office of Fair Trading which has an Unfair Contract Terms Unit which acts on complaints received from consumers concerning unfair terms. This unit does not pursue claims on behalf of individual consumers. Instead, it acts to protect consumers generally by seeking an undertaking from businesses to abandon or amend standard terms which it views as unfair. It also has the power to seek a court injunction against anyone using an unfair term.

Demographics of participants

As table 2.1 shows, compared with the Australian population as a whole, participants in the research were much more likely to have limited education, half of them having completed only year 10 or below. They were predominantly renters of public housing, receiving income support payments and not in the workforce. Almost two-thirds (63 per cent) of them would have been defined as ‘financially excluded’ (ANZ 2004), in that their only financial product was a single transactional account, prior to taking out the loan under discussion in this research.

² These are characterised as ‘safety net’ provisions in this report because they operate in the event that consumers’ circumstances change or that disclosure and competition have not provided adequate consumer protection.

Table 2.1: Demographics of participants

Characteristic	Percentage of participants	Percentage of Australian population
Gender		
Male	53	50
Female	47	50
(ABS, p. 113)		
Country of birth		
Australia	67	77
Overseas	33	23
(ABS, p. 135)		
Language spoken at home		
English	83	84
Other	17	16
(ABS, p. 385)		
Living arrangements		
Renting privately	10	21
Renting from the government	83	5
Owning or purchasing home	0	70
Other	6	4
(ABS, p. 224)		
Income and employment		
Receive income support payments	100	24
(ABS, p. 201)		
In the workforce	8	65
(ABS, p. 148)		
Highest level of education attained		
Year 9 or below	37	10
Year 10	13	15
Year 11	10	7
Year 12	27	17
Non-school qualification (such as degree or certificate)	13	51
(ABS, p. 313)		
Financial exclusion*		
Own no financial products	0	1
Transactional account only	63	6
Own more than one financial product	37	93
(ANZ, p. 8)		
(Total number of participants)	30	

* Note: financial exclusion of participants describes their situation prior to the loan under discussion

3 Views of people on low-incomes: disclosure documents

Interviews were conducted to ascertain the extent to which the low-income participants understood the terms of credit contracts, and found the disclosure documents useful. For those that had not understood the documents, the interview explored their reasons for still signing the contract and barriers to understanding it.

What they understood

Responsibilities

All participants understood that they had a responsibility to repay the loan. This understanding did not generally come from the lender's paperwork, but rather the borrowers' sense of an unwritten contract along the lines of: 'I promise not to default':

I think my main responsibility is to make sure—which I do every fortnight—that the money's in the bank ... Every time I get my pension I make sure that I leave that money

there for the [financial institution] because it makes me feel good and it makes me feel responsible as a person.

Having made the commitment, this participant felt she did not need the paperwork which she later admitted was beyond her comprehension anyway.

Borrowers gave the impression that they took their obligation to repay very seriously, and were optimistic about their capacity to repay, not contemplating default:

I haven't even started yet. I don't think I'll have any problem with the payments.

This bias towards optimism is consistent with academic research into behavioural economics, a new discipline which combines economics and psychology (see for instance, Howells 2005).

Repayment rate and interest

Most people on low-incomes manage their finances fortnightly or weekly, and so consider whether something is affordable in the context of their fortnightly or weekly budget. As a result, the repayment rate tends to be the most important aspect of the contract:

I'm not quite sure about the interest—but I'm paying \$46 a fortnight out of my disability pension.

While participants usually knew how much they were paying in total in interest and fees, very few understood how interest worked or what the interest rate meant. For those borrowing from fringe lenders, most knew the charges were high when they signed up. They were very clear on the tangible impact of these repayments on their budget:

You end up paying about \$190-something on a \$100 loan. That is a lot of money.

While this participant was clear that she was paying a total of \$90 in interest, she later explained that she did not understand how this was represented as an interest rate:

I don't know about interest rates ... Because I've never had anything to do with interest rates and calculating interest and all that. Their interest rate is absolutely shocking.

Academic findings in relation to consumers' understanding of fortnightly repayment rates, interest rates, terms and total interest is variable. Some studies are consistent with participants in this research. For instance, a UK study found that low-income borrowers had a strong understanding of weekly repayments (Collard & Kempson 1999, p.16) and research in Victoria found little comprehension of annual percentage rates and a tendency to understand the cost of the loan in dollar terms, rather than interest rates. (Wilson 2002, p.77)

In contrast to many participants in this study, research with low-income consumers in Canada and students in Queensland found a low level of understanding of the total cost of the loan (Lott & Grant 2002; O'Shea & Finn 2005). A study of 1600 borrowers from diverse income groups, conducted by Justin Malbon for the Ministerial Council on Consumer Affairs, also showed that borrowers find it easiest to compare loan products in terms of annual percentage interest rates—that is, they understand interest rates (Malbon 1999).

Key points

- Participants generally understood they had the responsibility to repay a loan.
- They also understood the regular repayment amount, the term and total interest to be paid over the loan term.

What they didn't understand

Ramifications of not repaying the loan

While most participants were clear that they had a responsibility to repay the loan, they were less clear on the ramifications of not repaying. One man explained his lack of clarity and inexperience:

I'd assume they'd take me to court I suppose or institute legal procedures, do the usual things. See I'm not really in the field of having loans. It's the first time I've ever taken one, I've never had to do a loan before.

Many participants believed that the lender had the right to repossess assets, although for community loan participants, credit was generally unsecured. One woman felt that the financial institution could take a variety of actions and simply accepted this as a fact of life.

If we fall behind, they've got the right to come and repossess or take legal action against you ... They've got all the rights to come out and repossess some of your furniture.

Another thought that if a borrower defaulted:

[The financial institution] would make an application for the next of kin or something like that, for the default. I don't know really myself.

By law, a credit provider can only pursue someone for a debt if they have signed a credit contract. The credit provider can only pursue a person who is next of kin if that person has signed a guarantee for the loan.

Only one man felt the consequences of not paying would be limited. He spoke in terms of a battle ground between the borrower and lender. This was representative of his approach to life, rather than a response to specific information presented in the contract.

They can be entitled to what they like, but you can't get blood out of a stone ... And I'm damned sure that if they took me to court, the court would say the same thing. He's got to live ... So you know, that sort of stuff is a nonsense, those sort of threats, as far as I'm concerned. They're unenforceable nonsense.

This participant understood that the expense for a financial institution in taking someone to court might exceed the amount owing for a small loan. In this instance, the unpaid debt would most likely be listed on the borrower's credit record, but he was not concerned about that.

Rights

When asked about their rights as consumers, most participants were only able to focus on the lenders' expectations. Many confused the concepts of rights and responsibilities. For instance, one woman commented that she had the right 'to do the right thing, to pay them'.

Some people realised they had rights in relation to privacy legislation but seemed unsure of the specifics:

Probably privacy, something like that. Privacy. And what else? I don't know other things.

Some people repeated what was in the contract, without seeming to understand what it meant in relation to their rights:

I'll be honest with you, I haven't gone right through it as yet ... [The financial institution] is bound by the code of practice for providing a service to you.

One man had a keen sense of fairness, for him there was an unwritten contract with any company of the right to respect, politeness and treatment as a human being rather than as just a number. Unlike most other participants, he didn't have faith that the company was always right, he felt powerful as a consumer:

People are like sheep, you know. One jumps over the cliff and they all follow along. I've never been like that. I'll pay right to the last cent of what I owe, but if someone just comes along and tacks something on, I'll say, sorry, I won't fall for it.

Many borrowers from fringe lenders realised that they had grasped at anything offered and as a result felt that the lender had more rights:

[I borrowed from a fringe lender] because I gambled it. I'm a gambler and sometimes it gets me into a real lot of trouble.... My rights and [the fringe lenders'] rights - it's all [the fringe lenders] rights, nothing to do with my rights.

Many assumed that they would forfeit their rights if they defaulted, but seemed confident that would not happen. They did not consider the possibility of a crisis.

I don't necessarily read the contracts, but I know I'm going to make the payments so I don't worry about the consequences because I'm going to make sure I don't default ... If you don't default you will be protected.

Where the loan is regulated by the UCCC, as noted earlier, if consumers default because of illness, unemployment or other reasonable cause, they are entitled to ask the lender for terms to be varied, and, if this request is refused, they are entitled to ask the court to vary the terms of the contract.

Overall, low-income participants did not understand their rights or the ramifications of not repaying a loan. This suggests consumers are vulnerable to the risk that a lender would behave in an unethical way.

Key point

- Many participants did not understand their rights or the ramifications of not repaying a loan.

Reasons for signing a contract without fully understanding

Limited options

The primary reason low-income people signed a contract without fully understanding was that they realised their options were limited. Participants were able to see that desperate people would accept onerous conditions including poor information or unfair terms:

I felt I was being railroaded, but I was desperate for a car ... I was a single woman, they could see the desperation in my eyes as soon as I walked onto that car lot.

Along a similar line, another woman explained that she borrowed from a fringe lender because of a gambling addiction. She felt so vulnerable that she would have been willing to sign anything:

It's only in very, very desperate times that I've got to go up there and get the money. Very desperate times. When I was gambling a lot I used to go up there and get money. This is when I was spending say \$100 on pokies or \$150 on pokies out of my pension, which I couldn't afford of course. And then I'd think, oh god, I've got no money for this and I've got no money for that, and blah, blah, blah. Then I'd have to go up to [the fringe lender] and get - sort of thing.

Those that borrowed from fringe lenders felt desperate for the money and realised that their choice was constrained by the realities of the market for credit. The contract seemed less relevant to these borrowers as there was no other alternative if they disagreed with the terms or conditions:

I've got a lot of reservations with the loan, and I've explored other options, but the pension doesn't count as an income [to banks] so we're stuck in the mud-hole at the moment.

Participants' opinions are consistent with academic literature. For instance, Malbon found that while comprehension levels seemed to be similar across income groups, lower income groups were more willing to accept loans regardless of their terms, because of a perceived lack of alternatives (Malbon 1999; Wilson 2000):

Most low-income participants stated that their main priority when seeking credit is finding out the credit providers who were prepared to provide them credit. Many said they were unable to get credit from most places ... For some they had no choice but to borrow from a lender who they knew charged high interest rates. Thus choice of lender tended to be determined by a lack of bargaining power rather than ignorance of what loans were on offer. (Malbon 1999)

Powerlessness

Another reason for signing a contract without understanding is a sense of powerlessness compared with the lender. A customer of a fringe lender explained that she went along with whatever the salesman put in front of her. She felt she had no negotiating power:

I didn't really understand much of it ... It was very quick. He just said, 'Sign', so I signed and that was it. He didn't explain anything, nothing.

Another woman likened the experience of dealing with a fringe lender to being rushed to sign a tenancy agreement. She commented that it was not just the length and complexity of the documents but the need to accommodate the other person by hurrying:

[The housing officer] was just nagging me, 'Just take this paper, this paper, this paper' ... The fact that you don't actually get a chance to read it probably only occurs because people just don't give enough time for individual people to read things.

The view of one customer of a community loan program was that the lender held all the power and could do anything. He was resigned to his role of just paying:

I've signed, I have to take it, I have to cop it, there's no problem—but what can I do? I just have to try and pay it and do whatever's got to be done.

While most people felt powerless, they tolerated it. However, one woman spoke strongly of predatory behaviour by fringe lenders:

Why offer somebody a loan if you're going to strangle them with it? That's not going to save them. If they want the loan they need the money ... And they do that to poor people. If you really need the money you will sign it because you need that money then. And you'll have to pay all that money back ... You don't say it's not robbery? Isn't that crook? That's Ned Kelly without a gun, in my opinion. It's about poor people, it is.

Despite understanding that they are signing contracts which contain unfair clauses or realising that they are paying high interest rates, many low-income people still make the choice to proceed. This is because other factors are more important to them than the charges and the clauses in the contract. These factors include access to credit and a service where they are treated with respect.

This finding contrasts with a central aspect of Western contract law known as 'freedom of contract', which means that individuals have the right to make their own bargains on their own

terms. The framework assumes that the contracting parties are both capable of protecting their own interests. However as low-income participants have suggested, this ignores the realities of standard contracts and the unequal bargaining positions of most consumers (for example, see the discussion in Gazal-Ayal 2007).

Key point

- Participants often signed a contract without understanding because they felt a sense of powerlessness and also realised their options were limited.

Barriers to understanding

The language

Many participants spoke of their limited education, which made it difficult for them to understand contracts. As one participant explained, the wording in contracts needs to be simplified:

What they need to do is they need to go over the contract again and maybe word it better for people who are not [educated]— see I've only done Year 10, and I think that's my failing, where I've gone and signed the contract and I couldn't understand a lot of what was being said. It blurred: I see all these words ... I think they need to go back and reword it and maybe put it in more plainer English.

This woman later reflected that she would not have accepted a contract from a fringe lender if she had the capacity to understand it:

If I had been a little bit more contract-savvy, I would have been onto it ... If I knew what I was reading. If it was in layman's terms, like really basic.

Some participants admitted to being unable to read the contract:

Because I'm illiterate with certain things, but I battle - if I come to word what I don't understand I skip it and I have to keep going to the next one. And half the time I skip half the letter because I can't understand what it's trying to say.

These comments demonstrate that legalistic, lengthy documents can be so 'user unfriendly' that the borrower cannot understand the terms of the contract that they are signing. Another participant explained that she could read the words but not comprehend the complicated legal concepts:

I could read but... I can't understand the meaning of the form.

She later explained that she is dependent on friends and family to assist her in completing all types of paperwork. A friend had read the contract to her. The borrower had not understood it herself, but having it read and the other person understanding it helped her to feel that it must be acceptable. She had followed the financial institution's instructions to read the document but had not really comprehended it:

I said to her, 'I know it's a lot to read, but I want you to read it to me just to make sure that everything's all right' ... They state that you've got to read that document clearly to make sure everything is up to date and everything is all right for your piece of mind, and also for theirs as well.

Most participants had not finished school. They had a limited understanding of the language used in contracts. Many words used were not in their common vocabulary. Some were apologetic for their ignorance, rather than complaining about the complex language:

What does that mean, 'impose and ...'? Well it says 'impose and ...': Oh, I'm sorry.

Another participant felt that she was ‘street-wise’ and understood the concept of repaying the loan, her repayments and the dynamic between herself and the lender. However, she found the language in the contract difficult to understand:

I think it’s the wording of it, the way it’s worded. Like I only went to Year 9 at school—I like to think I’m a little bit educated, but that wasn’t from school ... It’s sort of like mumbo-jumbo a lot of it ... I understand there’s got to be laws and that, but I think they should be so everybody can understand them. It should start from there and go up, not start from the top and go down.

One woman who had come to Australia as a refugee advised that she had finished school when she was six years old. When asked about the most important part of the contract to her she pointed at a heading for a relatively unimportant section which stated ‘processing of repayments, additional payments, or other transactions’. Her response demonstrated that people without strong English skills or education have no realistic prospect of understanding complex legal documents.

Length

Most participants felt overwhelmed by the length of the contract:

They’ve got a hell of a lot of pages here. There’s about maybe 20 pages here, maybe more. I’m not sure why they have such a big, thick paper. But I think the [financial institution] could make it a little bit more briefer than that for people.

The length meant that people focused only on a few basics and either trusted the remainder of the contract, or felt unable to do any more than pay the required amount:

I just skipped it and got straight down to the point and looked at what your loan payment, what your interest was, how long it was over, and what was the actual finalising of the loan, what was the actual date that I got signed up for it.

Another woman emphasised that a shorter document would have been easier for her to understand. While she was illiterate, she understood that the contract was not written simply to benefit her:

They should keep it just basic and one or two pages with simple words on it than something really complicated that you can’t read ... Why send out a contract for you to sign and end up having pages and pages of it to deal with? I think more it’s to cover their backside really ... But it’s your risk.

In contrast, another woman believed that a long contract would include every possibility, whereas a short contract might be a financial institution’s way of tricking the borrower. She assumed that the lender would act entirely for their interests and take any chance to exploit her:

If something’s in a short form, I don’t think you know enough about it. I would rather read through 30 pages of the contract than one page which doesn’t tell you anything much at all. And I can assure you I read every page of the contract.

While this woman was willing to place more trust in a longer document than a shorter one and to read it through, in reality, she was unable to fully understand it. She thought the lender had the right to repossess assets, although her loan was unsecured.

It was not surprising that some participants felt contracts were long. In effect, legislated disclosure requirements result in long contracts (see the disclosure requirements set out in clauses 14 and 15 of the UCCC). In addition, the role of lawyers in financial institutions is to protect the commercial interests of that institution rather than to write a contract which is accessible for consumers.

Academic literature also cites problems with the length of contracts. For instance, Howells suggests that many consumers do not take the time to be informed. He finds that consumers have a limited ability to understand and process information:

The human mind handles data by breaking it down into manageable chunks. It has been estimated that roughly seven chunks of information is the most the human mind can handle at any one time. (Howells 2005, p 360)

This is supported by Malbon (1999):

Whilst some participants carefully read the information provided to them, a number found it difficult to use ... Several participants made the point that they had to rely on the bank manager or service officer to explain the loan terms, and that they had to accept their explanation on trust. (p. 71)

Problems for low-income people in understanding the contract are consistent with Howells' study, suggesting that disclosure (that is, spelling out the details in writing) is a 'middle class tool':

Those who take advantage of information are likely to be the more affluent, well-educated middle-class consumers. Evidence from studies of consumer credit disclosure rules suggests that it is better-off consumers who tend to make use of information. (Howells 2005, p. 357)

As a result, there is an argument that reliance on disclosure regulation can actually exacerbate social inequities. Wilhelmsson (1997) states that:

Information measures are neutral as to their recipients, which in practice means an advantage for the consumers who are well-equipped to use the information. In this sense, therefore, measures based on the information paradigm may reproduce and even strengthen existing social injustice. (p.224)

The effectiveness of information disclosure strategies depends upon general and financial literacy in the community. Australian research shows a strong link between financial literacy and socio-economic status, with the lowest levels of financial literacy being associated with consumers with lower levels of education and incomes (ANZ 2005). However, it is not just low-income people who struggle with disclosure documents. The Deputy Chairman of the Australian Securities and Investments Commission has noted that '46 per cent of Australians can't read well enough to understand financial disclosure documents' (Cooper 2008, p.2).

Prejudices

Many participants had difficulty differentiating between information they wished was in the contract and the actual content. Some felt that they had a good relationship with the lender and therefore did not expect them to act upon harsh clauses in a contract. One man spoke of a fringe lender in the manner of speaking of a friend, and expected that the lender would act in his best interests:

But if you do really have a very good connection with the lender, he will do as many things for you.

Others had based their assessment on word of mouth and the absence of any adverse outcomes for friends. For a borrower from a community loan scheme, the reputation of the lender had a stronger impact on the decision making process than clauses in the contract:

Other people I know that have had loans from there never complained ... They said they're pretty fair and pretty good, so I said 'OK, I'll take your word for it'.

Many based their expectations of the contractual agreement on past experiences with the lender, rather than the contract. A customer of a fringe lender read out a phrase from the hypothetical contract and commented:

‘Impose and debit to the Loan Account any new fee or charge’: I’ve never noticed them change their fees or charges ... I think it’d be their obligation to say to you that they’ve changed it. That’s what I think anyway. ‘Change the frequency of your repayment’, now they don’t do that, I know that.

Information overload

Many participants could only focus on a limited amount of detail. For instance, one woman was struggling to manage with many personal problems. This meant she understood a few basics related to a financial transaction, but then dismissed any other information. For her, the contract became pages of information and questions that she could not understand.

Behavioural economics research supports this view, in the sense that too much information can simply cause people to ‘switch off’:

Overwhelmed by too much information, normal consumer reaction is to ignore the disclosures entirely. (Kofele-Kale 1984, p.128)

Lauren Willis refers to ‘information overload’ and writes that:

Consumers today are drowning in financial choices and detailed information about every one of them. Too many choices and too much information may be as harmful as too few and too little. (Willis 2008, p. 16)

The findings of this research are also consistent with theories of behavioural economics more generally, which suggest that many people are overly optimistic, may rationally overlook contract terms because of a lack of choice, and cannot process a large volume of information and therefore only consider salient terms (see generally Howells 2005).

Key points

- Participants’ comments generally contradict the fundamental assumption of the UCCC that disclosure ensures borrowers can make an informed choice about signing a credit contract. In reality, the participants signed contracts that they did not understand or felt were unfair because of limited options and powerlessness.
- The language and length of contracts were barriers to consumers understanding them.
- Behavioural biases also acted as a barrier to understanding the contract. These were based on an expectation that the lender would act in their best interests and a reliance on anecdotal information and past experiences.

4 Views of people on low incomes: legal rights

The interview process sought to ascertain whether there were clauses in the contract which the participants regarded as unfair and their responses to those clauses. Participants were asked about their willingness to enter into the contracts, and their understanding of legal rights in the event of signing an unfair contract.

By law, a court may ‘reopen’ an unjust transaction under section 70 of the UCCC. In determining whether a transaction is unjust, the court can consider factors such as the relative bargaining power of the borrower and lender and whether the contract imposes any conditions that are unreasonably difficult to comply with, or not reasonably necessary to protect the legitimate interests of a party to the contract. In addition to rights under the UCCC, consumers may also have rights under the

common law and legislation to challenge a contract as unconscionable³; or in New South Wales, to challenge a contract on the grounds that it is unjust.⁴

No Australian jurisdiction currently gives consumers the right to challenge a term in a credit contract on the grounds that the term is unfair. However, the Victorian Government has indicated an intention to apply its unfair terms legislation to consumer credit contracts (Consumer Affairs Victoria 2008) In addition, the Ministerial Council on Consumer Affairs (2008) has recently proposed that a new national consumer law include a provision to deal with unfair contract terms, applying to all consumer contracts.

The Australian position contrasts with the situation in the European Union, where member countries give consumers legal rights to challenge unfair terms in consumer contracts (including credit contracts).

Opinions on clauses that accelerate the obligation to repay

Research participants were presented with a one-page summary of the contract (for bank and credit cooperative borrowers) or a mock unfair contract (fringe lending borrowers). Both documents included an ‘acceleration’ clause: ‘If you fail to make a payment when it falls due, the lender will give you 30 days to pay and will then be entitled to demand repayment of the full loan amount’. While this is a standard term of credit contracts, it does not make clear borrowers’ rights under section 84 UCCC to be served with a notice of default, with a certain period to remedy the default before the acceleration clause can operate.

Most participants reflected that the clause made them feel powerless, afraid and vulnerable. A customer of a fringe lender was aware that she had given the lender this right but felt so desperate to obtain the money that she had signed anyway:

I remember them saying that if I don’t pay, if you miss one payment, well they can demand that you pay the whole lot out... [I would have felt] terrified. Petrified that I’m going to get a letter or a phone call saying, ‘Excuse me, but you defaulted on the loan and we want the money straight away.’

A minority of participants felt the acceleration clause was reasonable because they were so committed to repaying and confident they would not end up in a position of default:

I think that’s fair, I think that’s very fair . The [financial institution] gives you [the loan] because they expect people to do the right thing and give them back their money. Because if you remember, [it’s] the [financial institution’s] money, it’s not mine.

Borrowers from a community loans program were shown summarised contracts which included the acceleration term. Some of these participants denied that they had signed contracts with these clauses. This was possibly because of biases (discussed earlier) and because the clauses were embedded within a long document. However in the shorter document, the clauses seemed more prominent, and the participants expressed alarm:

‘If you fail to make a payment’—Oh my god! This is not a contract, this is signing your life over ... No thank you! ... What happens if something happens, a kid dies, or something happens, and you’re in hospital and something happens and the payment hasn’t gone in - OK, you make a double payment next week or next fortnight or something. This is like Adolf Hitler! Entitled to demand repayment of the full loan! That’s a bit harsh! ... I would not take on a contract if I read something like that ... The person who reads this, he’ll say

³ For example, sections 12CA and 12CB, *Australian Securities and Investments Commission Act 2001* (Cwlth).

⁴ Section 7, *Contracts Review Act 1980* (NSW).

you're insane if you put your name on that. You put a signature on something like that, you've just signed your life away.

In fact, the same participant had signed a contract containing this clause and had earlier commented that the contract was just a necessary but tedious part of the process and cost of obtaining a loan:

The paperwork's got to be done. It's the most boring part, but everything was done very quickly, didn't take much time ... half an hour to spend time to talk to someone and do some paperwork for three grand; it was awesome.

One woman very carefully read the contract and understood it. To her, the contract was sufficiently threatening and 'off-putting' for her to decide not to proceed with the loan:

I don't want to be locked into something that could change at somebody else's whim, and being on a pension and getting paid fortnightly, 30 days is only two pays to me, so it's only two pays' notice. I just don't like the idea of somebody being in that much control. I like to be in control myself.

Many other participants did not like the terms in the contract, but felt that their options were so limited that they made the decision to take the risk and proceed.

Opinions on the lender's power to vary the terms of the contract

It is standard for the credit provider to have the power to vary the terms of the contract. The summary contract included the term: 'The terms of this loan may be varied by the lender without your consent.' This is subject to the rights of borrowers under sections 59, 60 and 63 of the UCCC to receive notice before some types of changes are made. Interviewees were unaware of the power of variation in their credit contract, and were certainly unaware of any rights to be given notice of the change.

Most participants commented on the power imbalance inherent in the lender's ability to make changes without their consent:

How can you make a contract ... making it legal to change anything we like within the contract? Is that a contract? That's double-dutch. The reason for a contract is so it can't be changed ... That's like fingers behind your back and crossing them, telling lies. It's crazy ... Well why can't I change it then? Why doesn't it say either party, for instance? That would be fair; I'm all right with that.

Although increased repayments would have been difficult to manage, another woman had resigned herself to being powerless. She had borrowed from a fringe lender because she had limited options. She accepted this as her lot in life:

That would be a problem. During a loan in particular—like if you're actually paying it off at the time and all of a sudden it went bang, up a bit higher from what it was the previous week for example: it'd be a shock wouldn't it? ... I suppose you have less options, it's less options obviously because your income is low ... I suppose I do know that with these kinds of loans, because they are easy, you probably are going to have stuff like this in your contract.

Low-income people generally want certainty with the repayment amount. They want to feel confident that repaying a loan is achievable for them. A community loan borrower was surprised to find out that he was giving the lender the right to vary repayments:

That means every year it could change. Your payments could go up. It could make things a little bit difficult for me, depending on how up they go. When you're used to paying \$48 or whatever and then all of sudden without knowing \$58 is taken out, that's an extra \$10 ...

For someone on a disability pension \$10 is six litres of milk for my kids ... That little extra \$10 that a bank might say they're going to put it on top, it's just shattered me.

Open-ended clauses about variation can cause people to panic. This man was paying a fixed rate of 13.7 per cent and an increase in repayments from \$48 to \$58 per fortnight would have meant a doubling of the interest rate.

Only one man (another community loan borrower) felt confident to challenge the lender. Across all aspects of his life, this man was determined that no-one would 'get the better' of him. This was an attitude, not a capacity which could easily develop through consumer protections:

Well they'd have to consult me first and say they want to alter the contract ... if some unusual circumstances cropped up and they said they were going to have to change this—something reasonable—I'd just say fair enough. But if they put something outrageous out I'd say forget it, I just wouldn't pay it, you know ... I mean the whole thing is a nonsense so I wouldn't even lose a wink of sleep over it. They've lost the plot, and it's their problem, not mine. I really would, I'd just say, 'I'm sorry, you've lost the plot, I can't help you. You're going to have to see someone more professionally skilled than me'.

As previously mentioned, one woman decided not to proceed with the loan because she did not agree with many clauses in the contract:

Because I'm on a set income, which is not very much, if anything did change within a two year contract I'd be lost, I'd have nowhere to go. I don't mean homeless or anything. I just mean I'd be stuck, I'd be in dire straits because of not having enough money as it is now, let alone anything happening.

This indicates that contracts can be very alarming for the consumers who try to understand their rights and responsibilities.

Understanding of rights in the event of hardship

In addition to being asked about their rights as consumers, participants were asked whom they would approach to discuss a payment problem.

Some suggested they would approach legal aid or local community legal centres:

I guess I'd have to call Legal Aid ... And then if there was no other hope I guess I'd just have to try and pay it.

Others suggested friends or family members. This suggests there is the risk of inaccurate advice if people rely too heavily on family and friends.

Participants were also asked to reflect on any legal rights they might have in the event of hardship. No-one mentioned that a court could vary a contract, or re-open a contract on the borrower's application, suggesting that many low-income people do not understand their rights. Most suggested that they would approach the lender, however many considered that they had limited bargaining power:

You go to a solicitor, the solicitor will fight for you. But you are not definitely going to win.

Most intuitively felt that speaking to the lender was the right approach:

I guess it would be the manager there, but I guess if they've got this kind of set up then you're really not supported anyway, are you, they just do whatever they want. So I don't know.

Overall, people's limited networks for advice on legal contracts made it difficult for them to understand their rights.

Key points

- Participants generally did not understand their rights in the event of hardship.
- Many participants had not understood that the contract they signed gave the lender the right to accelerate the obligation to repay or vary terms. Once they were told about the lender's rights they generally felt more powerless and vulnerable.

5 Conclusion and recommendations

As previously discussed, consumer credit law in Australia is largely based on a 'truth-in-lending' model. Lenders have to disclose contract terms, to inform consumers and enable them to shop around, compare products and select the most appropriate product. In this way, disclosure is supposed to encourage competition among credit providers. It is fundamental to this model that consumers behave in an economically rational way, with their own financial self-interest at heart. There is also an expectation that disclosure will ensure that consumers understand their rights and responsibilities.

However, psychology and behavioural economic theory suggest that emotional and other imperatives often take over from economically rational behaviour. People are not driven solely by rationality, but are also influenced by a range of emotional forces, biases and choices that fall outside of their conscious awareness. (See for example the discussion in Howells 2005 and Willis 2008)

This project also suggests that emotions are often more important than the economics of the transaction or the notion of an economically rational decision. These emotions included desperation for the money and the humiliation of admitting an inability to understand. For some; the contract was secondary to the emotional work of admitting they wanted something from another party. There was also the pragmatic realisation that for a person on a low-income, options in the market for credit were limited and therefore it was pointless to try to understand the contract. They realised that the choice to go elsewhere or negotiate did not exist for them. They simply needed to take what they could get.

Borrowers' capabilities were also important. Many admitted to just not having the literacy levels, experience in financial markets or access to advice to be able to understand the contract. As a result, they chose to take the risk and proceed with the hope that the lender would have their best interests at heart. In this connection, the Productivity Commission has recommended that disclosure be 'layered' and that initially only key information, necessary to assist the consumer in making a decision as to whether or not to proceed, should be provided at the pre-contractual disclosure stage with additional information available by right on request. It has also suggested that documents should be tested with consumers (Productivity Commission 2007).

Overall, the study found that current pre-contractual disclosure documents (primarily the proposed contract) did not help participants to understand many of the important terms of the contract, or to know their rights. Instead, emotions and prejudices had a greater influence on their understanding of the contract terms, and their rights and responsibilities. These findings of this project may also be relevant to a range of other financial services, such as insurance.

This suggests that the assumptions about human behaviour in the truth in lending model of regulation are not consistent with psychological research, or the responses of a group of low-income people detailed in this study. As a result, there are four key recommendations for improving the regulatory model so that it better protects vulnerable consumers.

Recommendation 1: The language and length of contracts should be tailored to meet the needs and capacity of consumers.

Participants demonstrated that the language and length of documents were also barriers to understanding contracts. In this sense, the disclosure regulatory regime discriminates against less uneducated and more vulnerable consumers.

As a result, it is recommended that state and territory fair trading agencies revise disclosure requirements so that lenders must provide a summary contract in plain English. This would include details of repayment amounts, term, interest and fees. It would also highlight key terms, particularly those that consumers identified as unfair. The summary document should include a simple explanation of consumers' rights under the UCCC, for example their rights to approach the credit provider to vary the loan in the event of hardship or to apply to court to have contracts re-opened in the case of unjust transactions.

State and territory fair trading agencies should also test documents on consumers, including people on low-incomes. This would help to ensure that consumers are able to understand rights and responsibilities in signing a contract.

Recommendation 2: Regulators should reduce their reliance on disclosure as a consumer protection measure.

Participants' comments generally contradicted the fundamental assumption of the UCCC that disclosure enables borrowers to make an informed choice about signing a credit contract. These participants suggest that disclosure alone is not adequate to protect vulnerable consumers.

Recommendation 3: The effectiveness of the safety net provisions (which enable consumers to apply to the court to re-open unjust transactions or to apply to their credit provider for relief on hardship grounds) should be reviewed. Amendments may be needed such as allowing government consumer agencies to act on behalf of consumers.

Low-income participants demonstrated difficulty in understanding their rights. They were unsure who to approach to obtain advice. Many were unable to advocate for themselves. There is limited value to consumer rights and safety net protections if they are not used.

Since the government has a broad responsibility to protect its citizens, it is appropriate for government consumer agencies to be empowered to take action on behalf of consumers when they are in hardship and to ensure they are not exploited by unfair contract terms. As a result, all state and territory agencies should amend consumer credit codes and related legislation to provide that government consumer agencies can take action under Sections 68, 70 and 72 of the UCCC on behalf of an individual consumer or a group of affected consumers. It is understood that the Ministerial Council on Consumer Affairs (2008) has agreed to amend the UCCC to give government consumer agencies standing to conduct proceedings on behalf of consumers. This amendment should be introduced as soon as possible.

This could be supplemented by additional funding for consumer legal agencies and community organisations to pursue litigation on behalf of vulnerable, low-income consumers.

Recommendation 4: The Australian Government should prohibit unfair terms in consumer contracts, and create a regulatory unit similar to the UK Unfair Contract Terms Unit, charged with responding to consumer complaints and proactively reviewing consumer contracts for compliance with the unfair terms law.

As discussed, many participants had not understood that the contract they signed gave the lender the right to vary terms and to accelerate the obligation to repay. Once they understood these rights

they generally felt powerless and vulnerable. This sense of powerlessness contradicts the basic expectation in Western contract law that each party will have equal bargaining rights.

It has been argued that competition between providers will reduce the incidence of unfair terms. However, participants of this project showed that their options were too limited to shop around for contracts with more appropriate terms. They also did not have the capacity to understand terms when they were embedded in a lengthy document.

This study supports the view that market mechanisms will not operate to reduce the incidence of unfair terms in consumer contracts, and that individual consumers are unlikely to take action to challenge unfair terms. In these circumstances, new legislation is needed, and must be supported by adequate resources. In the United Kingdom, the Office of Fair Trading (OFT) plays an important proactive role in administering the Unfair Contract Terms Act (UCTA):

The work of the OFT's Unfair Contract Terms Unit has had a major impact on the market. The OFT has secured the removal of many unfair terms which were almost certainly invalid under UCTA; and this shows that allowing parties to challenge terms in their individual contracts, while invaluable to them, has a limited impact on contracting practices generally. (Law Commission, quoted in Ramsay 2007, p. 211)

Accordingly, the Australian Government should implement legislation that prohibits unfair terms in consumer contracts and that imposes a duty on the directors of fair trading departments to act on consumer complaints in relation to such terms.⁵ In this connection, at its most recent meeting, the Ministerial Council on Consumer Affairs (2008) proposed that a new national consumer law should incorporate a provision that addresses unfair terms in consumer contracts.

To enable Australians to make effective and appropriate use of credit facilities to enhance their daily lives, it is essential that measures to protect vulnerable and low-income groups are strengthened.

⁵ Victoria has already introduced such legislation, but it does not currently apply to consumer credit contracts. Other state and territory fair trading agencies have also been considering whether unfair contract terms legislation should be introduced in their states.

6 Appendix: discussion guides and mock contracts

Discussion guide: unfair contract terms

1. What did you think of the papers and the way [company name] does things?
2. What did you like about the way they do things?
3. Was there anything you didn't like? [prompt: In the paperwork or in the process] Was there anything you found difficult to understand? [If yes, prompt: Did you do or say anything about this?]

Here is a 'pretend' contract. It includes some sentences which might be similar to the one you signed with [insert name of company they obtained finance from.] We're interested in what you think about this pretend contract and if you can remember, how you felt when you signed up with [company name].

4. Let's have a look at number 1 on this contract. It's likely that you had a similar clause in your contract with [company name]. What do you think of this? [Prompts: How would you have felt if [company name] changed the repayment rate without your okay? How would you feel if they changed the interest rate? Did you realise they could do that?]
5. Let's think about number 2 on the contract. What are your views on this? [Prompts: If [company name] asked you to repay the entire loan in one lump sum, how would you have felt? Did you realise they could do that?]
6. Let's have a look at number 3 on the contract. What do you think of this? [Prompts: How would you have felt if [company name] were able to take household goods like your bed or kitchen utensils if you didn't repay the loan? Did you realise they could do that?]
7. Did you have any disagreement about the loan with [company name]? [If so] Tell me a bit about what happened [Try to get who they spoke to, and why]. [If not] Who would you discuss any difficulties with? [Try to get information on why they would go to this person.] Do you think you have any legal rights in working out any disagreements about the loan? Can you tell me a bit about what these rights might be?

Mock unfair credit contract

Credit Contract

Between: Credit provider (“we”)

And: Borrower (“you”)

1. From time to time we may:
 - a. change the amount of or basis for calculating any fee or charge, change the interest or fee charging cycle, or both, and, except during any fixed interest rate period of the Loan, change any interest rate margin, any link to a reference interest rate and the basis for calculating interest;
 - b. impose and debit to the Loan Account any new fee or charge;
 - c. change the frequency of repayments;
 - d. change the Loan Account number;
 - e. change the way we describe any reference interest rate; and
 - f. change any other terms and conditions.
2. In the event of default we may terminate this agreement, require payment of all monies then due and owing under this agreement, and exercise our rights over security property provided by you in accordance with clause 13.
3. As continuing security for the payment of all of your debts, liabilities and obligations to us, you grant a security interest to and in favour of us over all of your present or after acquired personal property and proceeds therefrom.

Discussion guide: views on disclosure

1. How did you go with the paperwork? What did you think of it? Was it much different to other forms you've completed?
2. Are you interested in what your fortnightly repayment is? (If they don't give the specific repayment rate, prompt: What do you think the repayment rate is?)
3. What do you think about the length of time it will take you to repay the loan? (If they are not specific about the term, prompt: How long do you think it will take?)
4. What do you think about the cost of the loan? (If they don't mention interest, prompt: What do you think about the interest rate? If they are not specific, ask: What do you think the interest rate is?) Apart from the interest payments, are there any other costs to the loan? What do you think they are? Do you know what the loan is costing you in total?
5. Did you realise that you are breaking this contract if you use the money lent to you for something different from what is set out in this letter? What else do you think might be breaking this contract? (Once they answer, ask: What do you think would happen if you [insert their answer]?')
6. Did you realise you have the right to make a complaint if the bank [or cooperative] makes a mistake? What other rights do you think you might have?
7. If you had any problems in making payments, who would you discuss this with?
8. What is the most important thing you have learnt from this paperwork?
9. What don't you like about the paperwork?
10. If you had a choice between this contract (point to summarised version of contract) and the one you've just signed, which would you prefer? Why?
11. How much of the paperwork did you read?

Short form personal loan contract

1. You are borrowing \$ to be advanced on
2. You are being charged an annual interest rate of%, calculated each day, but payable as part of your fortnightly repayment of \$
3. You will pay a loan approval fee of \$
4. The terms of this loan may be varied by the lender without your consent.
5. If you fail to make a payment when it falls due, the lender will give you 30 days to pay and will then be entitled to demand repayment of the full loan amount.
6. You will receive a statement from the lender every 6 months and will need to pay between \$3 and \$14 for an additional statement should you require it.

[Note that loan size, date, interest rate, fortnightly repayment rate and application fee are completed by hand at the interview.]

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