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By email: product.regulation@asic.gov.au

Senior Manager
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Level 7, 120 Collins Street
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Dear Sir/Madam

ASIC Consultation Paper 330 – Using the product intervention power: Continuing credit contracts

Thank you for the opportunity to comment on the Australian Securities and Investments Commission's (ASIC) Consultation Paper 330, *Using the product intervention power: Continuing credit contracts (CP330)*.

Consumer Action Law Centre (**Consumer Action**), WEstjustice and the Financial Rights Legal Centre (**Financial Rights**) strongly support ASIC's proposed intervention to ban the issuing of continuing credit contracts in the manner described in paragraphs 16-22 of CP330. The significant detriment being caused by this lending model is similar to that which justified ASIC's previous intervention *ASIC Corporations (Product Intervention Order – Short Term Credit) Instrument 2019/917 (First PIO)* in September 2019.

We consider the proposed product intervention order (**Draft PIO**), as drafted in the legislative instrument attached to CP330, to be an effective and entirely appropriate means of stopping further detriment of this kind, subject to one suggested amendment. Limiting the fees being charged under a continuing credit contract and any collateral contract collectively to the amount prescribed under reg 51 of the *National Consumer Credit Protection Regulations 2010 (NCCP Regulations)*, would close this loophole and limit the fees charged.

Separate to our strong support for the making of this Draft PIO, we also strongly encourage ASIC to consider the legality of this credit model, and the conduct of those using the model. We consider a continuing credit contract and a services agreement issued as described in CP330 could be considered as a single arrangement that is effectively a small amount credit contract (**SACC**). Such conduct could therefore amount to unlicensed credit activity in contravention of s 29 of the *National Consumer Credit Protection Act 2009 (NCCP Act)*, and breach s 31B of the National Credit Code (**NCC**).

We also submit that the treatment of retail clients by Cigno Pty Ltd (**Cigno**) and BHF Solutions Pty Ltd (**BHFS**) in relation to many of the continuing credit contracts we have seen could additionally amount to unconscionable conduct.

Significant detriment caused by continuing credit model

D1Q1: Do you consider that continuing credit contracts, when issued to retail clients in the way described in paragraphs 16–22, have resulted in, or will or are likely to result in, significant detriment to retail clients? If so, please provide any relevant evidence which supports your views.

The issuing of continuing credit contracts in the manner described in paragraphs 16-22 of CP330 is undoubtedly resulting in significant detriment to retail clients who are taking out these high cost loans.

The continuing credit model described in CP330 and currently employed by Cigno and BHFS is being used to facilitate high cost short-term lending. The lender (or the service agreement provider) does not hold an Australian credit licence, and avoids the responsible lending and dispute resolution legal framework that ordinarily provides some level of protection to consumers for such loans.

While the loans issued by BHFS alone may comply with the continuing credit contract exemption in s 6(5) of the National Credit Code (**NCC**), the reality is that the whole arrangement is spread across two contracts, with the associated Cigno services agreement being part of the one arrangement. The model sees borrowers being charged unjustified and exorbitant fees in relation to the purported management of the loans.

Both Consumer Action and Financial Rights have assisted many people experiencing significant detriment as a result of being issued continuing credit contracts by BHFS and associated services agreements by Cigno. These loans, obtained through Cigno from BHFS, have become a frequent problem raised on Consumer Action's Worker Advice Line, where we provide consumer legal advice to financial counsellors and other community service workers.

In 2020, Consumer Action's financial counsellors have provided advice to consumers with debts involving Cigno on 49 occasions via the National Debt Helpline (**NDH**), and our lawyers have provided advice on matters involving Cigno to 53 consumers.¹ Financial Rights' solicitors and financial counsellors have provided 102 services to 64 people including 32 advices and 50 tasks, representations or non-legal support services, on matters involving Cigno. A significant proportion of these calls have related to loans issued using the model described in CP330 after 12 September 2019, when the First PIO was made. We have provided numerous case studies in the Appendix to this submission.

Significant and unreasonable fees causing significant detriment

Most of the consumers we speak to who have taken out these loans did so while experiencing significant financial vulnerability and distress. Many more reported or exhibited additional vulnerabilities, such as disabilities and mental or physical illnesses, that exacerbated the detriment these loans caused them. For some consumers these loans caused, or contributed to, them falling into a debt spiral, where loans were taken out to repay other debts and resulted in an increasing portion of their income going toward repayments. For some, this was the first debt that led them into seeking further credit, while in other circumstances, a loan was obtained through Cigno to attempt to pay off debt accruing from other loans, such as payday loans.²

The forms of detriment referred to by ASIC in paragraph 24 of CP330 accurately describe much of the detrimental impact we see these loans causing Cigno and BHFS clients. The detriment is essentially the same as that which justified the issuing of the First PIO in September 2019.

The First PIO also addressed a high cost short term credit model involving charges under collateral contracts, which were also most commonly used by Cigno. Despite the introduction of the First PIO it appears Cigno's

¹ Noting there may be some small overlap between NDH callers who spoke with financial counsellors, before also speaking to our lawyers.

² See for example, Financial Rights' case studies 1 and 7.

business hardly skipped a beat. Cigno appear to have adopted the continuing credit contract model with BHFS as a lending partner soon after the First PIO came into effect, with service agreements purporting to permit Cigno to charge largely the same exorbitant fees as under the previous short term credit model.

We were told by one consumer that they had entered a continuing credit contract with BHFS through Cigno as early as September 2019, merely a week after the First PIO was issued. Cigno adopted this new model quickly enough to seemingly retain their customer base, and continue charging the same fees as though little had changed. Many clients reported not even realising that the model had changed in any way.³

As set out at paragraph 23 of CP330, we agree that the high cost of the collective fees under the continuing credit contract with BHFS and associated services agreement with Cigno cause significant detriment to those entering these agreements. These fees are well beyond any amount that a licensed credit provider would be permitted to charge under a payday loan (the most comparable type of regulated form of credit available to consumers), and often result in the consumer owing multiple times more than the amount of the actual loan in fees and charges.⁴

Lack of customer service contributes to detriment

Cigno clients we have spoken with about these arrangements often also report that the fees involved with these loans are not properly understood by them prior to entering the agreement. The size and frequency of the fees often catch consumers completely off guard.⁵ This is an issue made worse by the fact that many consumers report they have found it near impossible to reach anyone by phone at Cigno to discuss the loan and associated fees, or to receive a complete response to a query by email. Ironically, consumers report receiving numerous text messages and emails seeking payment of loans (discussed further in our response to D1Q2).

This is a problem that stems from the fact that lenders and collateral contract providers using this model consider that they do not need to hold an Australian credit licence, meaning they are not required to comply with important consumer protections in the NCC. This includes providing transparent internal dispute resolution processes and responding to financial hardship requests in accordance with s 72 of the NCC. Additionally, they do not maintain membership with the Australian Financial Complaints Authority (AFCA).

Cigno and BHFS clients who we have spoken with have often been left with little to no means of contesting fees or seeking compensation for harmful conduct. Consumers are essentially left with the only option of commencing court proceedings to contest a debt, which is impractical and not financially viable for most Cigno and BHFS clients.

Loans worsening the impact of COVID-19

We share ASIC's concern noted at paragraph 25 of CP330 that the detriment these loans cause may be exacerbated by the economic fallout of COVID-19, and we have already seen some cases where this has occurred.⁶ Some individuals are facing acute financial difficulty for the first time, having lost work and income due to COVID-19. As the government decreases financial support, more and more people will be facing increased hardship, and will be easy prey for high cost lenders looking to exploit financial desperation.

We are concerned this will result in an increase in people turning to short term credit, which makes it all the more important that this detrimental lending model is stopped as soon as possible. The last thing that people in dire financial situations need is exploitative and unregulated high cost credit that will extend their financial hardship.

Restricting access to unaffordable, high cost credit will improve people's financial circumstances – not worsen them. Evidence of this is demonstrated by the Financial Conduct Authority UK's (FCA) 2017 review of its high-cost

³ See Financial Rights' case studies 1 & 3

⁴ See in particular, Consumer Action case study 5 and Financial Rights' case studies 2, 3, 4 and 8.

⁵ See for example, Consumer Action case study 1 and Financial Rights' case studies 1, 3 and 6.

⁶ See for example, Consumer Action case study 2 and Financial Rights' case study 7.

short-term credit price cap, which reduced the availability of short-term high-cost loans to those unlikely to be able to repay them. Key findings of this reported included that:

- There was no evidence that consumers who had been turned down for loans were more likely to have subsequently used illegal money lenders;
- No evidence was found that consumers who had not been able to get short-term high cost loan products since the cap had negative consequences as a result; and
- The majority (63%) of consumers who were turned down for loans since the cap was introduced believed that they were better off as a result.⁷

The high cost loans issued under this harmful model are about the worst possible answer to credit problems that people could turn to. Consumers struggling to pay bills for essentials could instead speak to a financial counsellor for free and independent advice, speak to their creditors about hardship arrangements, or seek assistance through no/low-interest loans made available by charities or other lenders, among other things.⁸

We also note that we are aware Cigno sent an email to some of its clients in March 2020 noting that some lenders may be more reluctant to lend due to COVID-19, but that Cigno would continue to 'stand by' its clients and their very best to assist them. We are concerned that this opportunistic marketing effort directed people who are on in financial stress to unaffordable and expensive credit. The recent experiences we have heard about since then suggest that standing by their clients does not involve any improved hardship response, or leniency in imposing fees and collecting debts.

D1Q2: Do you consider that continuing credit contracts, when issued to retail clients in the way described in paragraphs 16–22, have resulted in, or will or are likely to result in, significant detriment other than, or to a greater or lesser extent than, that identified by ASIC? If other or greater detriment, how should the proposed product intervention order be expanded to address this detriment? Please provide any evidence which supports your views.

Aggressive debt collection causing additional stress and detriment

In practice, we have seen the significant detriment caused by continuing credit contracts issued under the model described in CP330 made worse by the aggressive debt collection used when debts are owed. A number of the clients we have spoken with have reported that when payments are due or outstanding, they are repeatedly contacted by text messages and email. When debts go unpaid, Cigno are also reportedly quick to engage external debt collectors to seek recovery of the debts.

This, coupled with the inability of clients to contact Cigno over the phone, leaves borrowers feeling even more powerless and vulnerable. In some cases, it appears to scare borrowers into prioritising the repayment of these debts over other important expenses.⁹

Detriment occurs even when payments are made on time

Additionally, the scale of the fees being charged on the loans we have seen using this model are such that they are likely causing significant financial detriment regardless of whether a consumer manages to repay them on time, particularly when considering the financial circumstances of the majority of consumers that turn to loans of this nature.

⁷ Financial Conduct Authority, *FS17/2 Feedback Statement: High-cost credit including review of the high-cost short-term credit price cap*, July 2017, available at: <https://www.fca.org.uk/publications/feedback-statements/fs17-2-high-cost-credit>.

⁸ For example, Good Shepherd Microfinance's No Interest Loans Scheme and StepUp Loans: <https://nils.com.au/> and <https://stepuploan.org.au/>.

⁹ See for example, Consumer Action case study 3 and Financial Rights' case study 3.

This is made worse by the fact that responsible lending obligations are not being applied to credit of this nature, including ensuring that credit products are not unsuitable for borrowers and verifying borrowers' financial situations. While we have seen evidence that Cigno will sometimes seek documents to understand the financial position of potential borrowers – more often with new clients - we have also heard of many situations where this information has not been sought.

Even where these checks have been undertaken, we regularly see clients issued credit on terms that are wholly unsuitable for them.¹⁰ This often results in clients defaulting under the contract and incurring further fees. However, in other circumstances, clients might prioritise repaying the debt over other important basic living expenses, especially where amounts are direct debited from their account. This can be a terrible outcome for those clients and the community more broadly. If individuals repay unsuitable loans instead of, for example, using funds to address lingering health issues or take up educational opportunities, their ability to participate in, and contribute to, our community is lessened.

We have seen Cigno refer proudly to the fact that a number of their clients have borrowed multiple loans through their service.¹¹ The client in the Financial Rights' case study 1 in the Appendix would be one such repeat client. Repeat patronage in these circumstances should not be mistaken as an indicator that the service is providing value. This appears to be a model that is cashing in on desperation. It is very likely that many of these repeat clients are in circumstances that limit their ability to make a genuine assessment of the financial value of these loans, or feel they have limited alternative options. In these circumstances, there is a lack of genuine competition. Normal competitive forces do not deliver lower prices or consumer benefit meaning regulator intervention is required.

A number of the case studies in the Appendix also show the cost of Cigno and BHFS's establishment fees under these loans. Repeat clients are being charged large establishment fees each time they take out a new line of credit.

Additional risk of promoting regulatory arbitrage

If this lending model is permitted to continue, there is also a real risk that it could undermine the existing responsible lending laws for SACCs. This model is effectively being used to issue SACCs, without complying with the existing responsible lending framework set out in the NCCP Act, including the NCC.

If the business model is permitted to continue, it seems logical that other SACC lenders would adopt the same model. This would see SACC lenders charge fees beyond that which are permitted under the NCC, and do away with obligations such as responsible lending, having an internal dispute resolution process and maintaining membership with AFCA. This was a risk we identified in our submission to ASIC Consultation Paper 316, that proposed the making of the First PIO,¹² and we submit that the same risk applies in relation to the continuing credit contract model.

Impact on financial counsellors and community legal centres

Another issue that equally applies as it did to the model the First PIO addressed is the impact that the continuing credit contract lending model is having on the resources of financial counsellors and community legal centres. Loans involving Cigno are becoming an increasingly common issue that people seek assistance from our services about, and due to the lack of viable dispute resolution options, providing genuine assistance is more complex than in relation to regulated loans.

As the COVID-19 crisis continues and the economic fallout hits the community, there has never been a greater need to free up these services to assist vulnerable consumers. For as long as this lending model is permitted, it is

¹⁰ See for example, Consumer Action case study 2 and Financial Rights' case studies 5 and 8.

¹¹ See for example, <https://cignoloans.com.au/asic-submission-1/>.

¹² Available at https://consumeraction.org.au/wp-content/uploads/2019/08/190730_ASICCP316CShortTermCredit_FINAL.pdf.

inevitable that there will be people in significant need of assistance to help deal with the harsh financial impact of these loans.

Other entities offering continuing credit models like Cigno and BHFS

D1Q3: Are you aware of entities other than Cigno and BHFS that are issuing, or likely to issue, continuing credit contracts in the way described in paragraphs 16–22?

No, we are not aware of any other entities currently issuing continuing credit contracts in the manner described in CP330. We are aware of other entities that issue credit contracts under the continuing credit contract exception, but not in the same way (certainly none involving a collateral contract charging similarly high fees). The Draft PIO would not impact that model.

We note that we do have concerns over other companies we have come across that also rely on the continuing credit contract exemption such as some buy now pay later arrangements and salary advance lending. We consider this requires separate intervention or reform.

The proposed intervention

D1Q4: Do you agree with our proposal to make an intervention order by legislative instrument prohibiting credit providers and their associates (including directors of such entities) from issuing continuing credit contracts in circumstances where total fees exceed the maximum permitted under the continuing credit exemption and reg 51 of the National Credit Regulations? Please provide details of why, or why not.

Yes, we strongly support ASIC's proposal to make an intervention order, in the format of the Draft PIO, subject to our comments under the subheading 'Suggested amendment to the PIO'.

As detailed above, the use of collateral contracts to charge significant fees via their relationship with a continuing credit contract is causing significant detriment to retail clients. Banning the use of a separate contract to charge fees beyond that which would ordinarily be permitted under a continuing credit contract would be an effective intervention. On our reading, the Draft PIO would effectively achieve this goal, without having any wider unintended impact.

Suggested amendment to the PIO

We suggest that consideration should be given to reducing the allowable fees under the Draft PIO. Many of the loans arrangement we have seen involving Cigno and BHFS concern small amounts. Allowing a \$200 fee to be charged on small loans (such as those up to \$250) could still allow loans to be issued with charges far beyond that permitted for licensed credit providers.

To address this, we suggest ASIC consider additionally requiring under the condition at subsection 5(5) that maximum charges also be capped at 20% of the maximum amount of credit a retail client is able to draw down under the contract, or similar suitable cap. This would be in line with the 20% permitted establishment fee that may be charged in relation to a SACC under s 31A of the NCC. However, if ASIC considers this amendment would require it to undertake another consultation on the Draft PIO, we would encourage ASIC to proceed with the existing Draft PIO, and consider this additional step separately. Any further delay to banning this model would permit further detriment to occur.

Alternative approaches

D1Q5: What alternative approaches could ASIC take that would achieve our objectives of preventing the detriment to retail clients identified in this paper?

We consider the proposed use of the PIP to be the most appropriate mechanism available to ASIC to stop the significant detriment being caused by this lending model. For the reasons above, it is essential that ASIC intervenes to stop this lending model from continuing. We think that this is precisely the kind of conduct and detriment the PIP is intended to address.

However, as a PIO cannot be used to apply to contracts entered into before an order comes into force, we are concerned that further credit might be extended to clients under existing continuing credit contracts. Accordingly, we strongly encourage ASIC to consider additional steps to address past, current and potential future detriment caused by continuing credit contracts entered into prior to the Draft PIO being made.

Unlicensed credit activity and breaches of NCC

We encourage ASIC to consider taking enforcement action for use of the continuing credit contract and services agreement model. In our view, each of the credit contracts issued by BHFS and associated services agreements issued by Cigno that we have reviewed are could be treated as a single SACC under the NCCP Act. We consider that this arrangement arguably falls outside the definition of a 'continuing credit contract' in section 204(1) of the NCC. We note that the definition of 'contract' in the NCC includes 'a series or combination of contracts, or contracts and arrangements'. This view is supported by the fact that Cigno and BHFS appear to have generally required clients to re-apply to draw more credit, even after an initial loan is repaid. This, and the adoption of this model only after the First PIO was introduced, support the conclusion that the contracts issued by Cigno and BHFS are only a continuing credit contract by appearance, rather than substance.

We further note that section 204(4) of the NCC defines 'credit fees and charges', and we consider the account keeping fee and financial supply fee charged by Cigno to fit within that definition. Furthermore, we consider the fee structures of these agreements could be in breach of s 31B of the NCC, as Cigno impose charges which appear to not be permitted under s 31A of the NCC.

Accordingly, we consider Cigno and BHFS are arguably engaging in unlicensed credit activity, in breach of s 29 of the NCCP Act.

While the PIO provides a more certain and direct way of addressing this conduct, it will only operate to ban future loans using this model. We encourage ASIC to seek compensation for the significant detriment caused by those loans that have already been issued. It would also send a strong message to other entities considering attempts to use complex contracting arrangements to avoid the credit licensing regime.

Unconscionable conduct

We also encourage ASIC to consider taking enforcement action against Cigno and BHFS for potential unconscionable conduct, and seek remedies for people who have suffered detriment as a result.

This business model appears to be predicated on prospective borrowers being in urgent need of funds and therefore in a weaker bargaining position, and too often results in credit being advanced on terms that are wholly unsuitable to the borrower and far more expensive than any other regulated credit contract. It is our view that these fees are exorbitant and detrimental, and not necessary to protect legitimate business interests.

This, coupled with the limited ability of ongoing clients to contact Cigno and aggressive debt collection practices discussed above, as well as the poor outcomes seen by so many of their clients, support our view that Cigno and BHFS are engaging in conduct that is potentially unconscionable.

Conclusion

We appreciate the opportunity to comment on CP330, and strongly support ASIC's proposed intervention in the credit market. The proposed intervention would prevent more credit contracts being advanced in a manner which is causing consumers significant detriment. This detriment will take some consumers years to recover from. In the long term, these issues need to be dealt with by more substantive law reform to stop the use of credit models designed to avoid the NCCP Act. However, until this occurs, ASIC's intervention can help significantly reduce the harm being caused by this conduct.

Please contact Tom Abourizk at **Consumer Action Law Centre** on 03 9670 5088 or at tom.a@consumeraction.org.au if you have any questions about this submission.

Yours Sincerely,



Katherine Temple | Director Policy & Campaigns
CONSUMER ACTION LAW CENTRE



Karen Cox | CEO
FINANCIAL RIGHTS LEGAL CENTRE



Melissa Hardham | CEO
WESTJUSTICE

About Consumer Action

Consumer Action is an independent, not-for profit consumer organisation with deep expertise in consumer and consumer credit laws, policy and direct knowledge of people's experience of modern markets. We work for a just marketplace, where people have power and business plays fair. We make life easier for people experiencing vulnerability and disadvantage in Australia, through financial counselling, legal advice, legal representation, policy work and campaigns. Based in Melbourne, our direct services assist Victorians and our advocacy supports a just marketplace for all Australians.

About Financial Rights

Financial Rights is a community legal centre that specialises in helping consumers understand and enforce their financial rights, especially low income and otherwise marginalised or vulnerable consumers. We provide free and independent financial counselling, legal advice and representation to individuals about a broad range of financial issues. Financial Rights operates the National Debt Helpline, which helps NSW consumers experiencing financial difficulties. We also operate the Insurance Law Service which provides advice nationally to consumers about insurance claims and debts to insurance companies, and the Mob Strong Debt Help services which assist Aboriginal and Torres Strait Islander Peoples with credit, debt and insurance matters.

About WEstjustice

WEstjustice provides free legal advice and financial counselling to people who live, work or study in the cities of Wyndham, Maribyrnong and Hobsons Bay, in Melbourne's western suburbs. We have offices in Werribee and Footscray as well as a youth legal branch in Sunshine, and outreach across the West. Our services include: legal information, advice and casework, duty lawyer services, community legal education, community projects, law reform, and advocacy.

APPENDIX A – CASE STUDIES

Consumer Action case study 1 – Chris’ story

Chris (name changed) lives in the south-east suburbs of Melbourne and provides financial support to his family living overseas. Chris told us that he took out a loan arranged through Cigno in mid-2020 when he needed more money for his family.

Chris told us that the loan was for \$200, and required him to repay \$330 in two \$165 instalments. He made the first repayment but missed the second one, for which Chris said he was charged \$90. Chris reported that Cigno then attempted to direct debit the amount owing plus further amounts totalling approximately \$250, without any warning. Chris did not have enough money in his account. Chris said the default fees were not explained to him prior to taking out the loan. He tried to contact Cigno repeatedly to discuss the debt, but his calls and emails were not answered. Chris told us he then put a block on direct debits by Cigno from his account.

Chris recounted that after receiving a notice telling him he owed \$420 and one telling him to remove the direct debit block on his account, he wrote an email to Cigno threatening to take them to court. Cigno finally responded, offering to settle the debt if he paid the original second \$165 payment. Chris said he did this, following which Cigno somehow managed to debit an additional \$30 from his account. He was eventually refunded this amount, after again complaining to Cigno.

Chris found the whole experience extremely stressful, particularly because Cigno’s fees were not explained to him. Cigno was also difficult for Chris to contact about his dispute, despite concurrently sending him repeated demands for payment. He said he would never use Cigno again and hopes they are shut down.

Consumer Action case study 2 - Larni’s story

Larni (name changed) told us she suffers from physical and mental illnesses, and receives the disability support pension. In January 2020, Larni entered into a credit agreement with BHFS for a \$250 loan, and an associated services agreement with Cigno. Under the services agreement, Larni was required to repay nearly \$400 within 2 weeks. Larni was not able to make this repayment and within a month, the total fees charged by BHFS and Cigno were nearly as much as the loan itself.

Larni told us that since January or February 2020 she has been experiencing homelessness, and that COVID-19 related issues have forced her to move multiple times. COVID-19 has also made her search for work more difficult. Despite this, Larni managed to pay Cigno over \$400 in early April, but by this point the fees she had been charged meant over \$100 remained owing on her account. Soon after making this payment, Larni told Cigno she was in financial hardship. She told us she then agreed to a payment plan to repay the remainder of the fees.

Larni made the first two payments under the plan, but a day after making the second payment (and notifying Cigno of this by email), Cigno debited another payment from her account. It took Cigno six days to refund this amount. Larni told us that when this happened she was staying in a hotel and a loss of any small amount of money was extremely difficult to manage. She said that while waiting on the refund she couldn’t afford to buy bread.

Larni has repaid more than double the amount of the loan. Despite Cigno being aware of her hardship, she told us Cigno has repeatedly contacted for further payments, and indicated they are going to refer her case to a debt collector.

Consumer Action case study 3 - Elise's story

Elise (name changed) cares for a family member and receives the disability support pension. In early January 2020, to ensure that she had sufficient funds to provide food for her family and pay for a medical appointment, Elise took out a \$250 loan with BHFS, through Cigno. Elise entered a continuing credit contract with BHFS, and a services agreement with Cigno.

Despite the first payment under both agreements being not being due for over two weeks from the date of the loan, in the second week of the loan Elise was contacted 14 times by text and email by Cigno claiming payments were due. Feeling continually harassed, Elise repaid over \$380 within 12 days of obtaining the loan.

Elise wrote to Cigno multiple times complaining about the impact of Cigno's conduct on her. Elise told us that she was unable to get through to Cigno by phone. Elise complained that Cigno had made a direct debit without her consent when she had been ahead in repayments, resulting in her suffering financial hardship and being unable to make other debt repayments. Cigno continued to contact Elise by email and text to request payments. After Elise complained about Cigno's excessive contact and demanded they cease contacting her, she was still repeatedly contacted by Cigno via text messages and email for further payments and was threatened with further action for a number of weeks.

Elise also had to contact her bank to cancel a deduction made by Cigno from her account during this time without her consent. Despite, on our calculations, Elise being ahead on repayments under the loan and services contract, Cigno subsequently charged Elise multiple default fees within six weeks of her entering the loan.

Consumer Action case study 4

A financial counsellor called Consumer Action's advice line to discuss the options for recourse available to a client living in a remote Aboriginal community, who had repaid two recent loans obtained through Cigno, on time. Under the agreed terms of the credit and services agreements for a \$120 loan advanced in late 2019, the client was required to repay nearly \$280 within 2 months - that is, the combined lender and Cigno fees (without missing any payments) amounted to 133% of the loan value.

The equivalent establishment fee charged by Cigno (the financial supply fee) was approximately 86% of the total loan amount. This is in addition to the \$15 lender fee which is also applied at the start of the loan. Cigno account keeping fees equated to a monthly charge of over 17% of the loan. These costs massively exceed the 20% establishment fee and 4% monthly fees permitted to be charged under s 31A of the NCC for regulated small amount credit contracts.

Consumer Action case study 5 – Ben’s story

Ben (name changed) lives in the outer suburbs of Melbourne on the disability support pension. Early this year, Ben took out a loan through Cigno for \$200, which he told us was to pay for his everyday living expenses.

Cigno contacted Ben by phone and text after he missed the first payment. He was charged a \$79 default fee and a \$49 dishonour fee. Ben told us that more than once, the payments to Cigno caused Ben’s account to be overdrawn, leaving him with no access to money and causing him great stress. Despite Ben repaying \$180 to Cigno, the fees kept piling up. The fees included weekly account keeping fees, missed payment fees, and payment change fees.

Within five months, Cigno was asking Ben for almost \$1000 more, on top of what he had already paid. This meant that the total fees ended up being nearly five times the amount of the loan.

Cigno referred Ben’s loan to a debt collector, who had been calling trying to sign him up to a payment plan. Cigno also sent Ben a ‘final notice’ about the loan, and tried to sign him up to another loan.

Financial Rights case study 1 – Pablo's story C204572

Pablo has had an account with Cigno for some time and used them multiple times. However since September 2019 when changes were enacted, Pablo took out 3 loans with Cigno. Throughout this period, Pablo's financial circumstances were not great. Pablo had taken out and defaulted on a number of payday loans in the past and could only get a loan through Cigno.

First post-September 2019 loan

Pablo applied through Cigno's membership portal and did not see any changes to Cigno's website and/or BHF's products except that at one point the loan he was applying for was referred to as an 'overdraft'. When Pablo applied, he thought it was no different to his previous applications. Pablo did not have to input any new information as he had previously given consent for Cigno to screen scrape his bank details (by handing over his bank password details to Cigno) and his personal details were prefilled under his profile name.

Pablo then received an email from Cigno saying that the loan was approved. This email included a loan agreement with BHF for the amount payable by instalments. This was the first time Pablo appears to have been told that the contract was a "continuing credit contract". Pablo did not notice the other attached document for Cigno's Services Agreement which added additional expenses. Pablo was not able to keep up with the payments and defaulted on the loan two months later.

Second post-September 2019 loan

Despite defaulting, Pablo was approved for a second loan. Pablo still thought he was signing up for a short term loan. Pablo received a number of confusing emails and documents including a drawdown request from BHF with no amount. He also received a services agreement to pay an extra financial supply fee amongst many other documents. Pablo was still was not aware that he signed up to a continuing credit contract. Pablo was not able to meet his repayments because of his financial circumstances and defaulted.

Third post-September 2019 loan

Pablo applied for yet another loan with Cigno in February 2020, again through his Cigno membership portal. Pablo once again did not notice any changes in the application process and only had to input the amount he wanted to borrow. He received a similar set of emails and documents and Pablo was still under the belief he was contracting for a short term credit contract. After starting this third contract, Pablo could not afford any of the repayments because his financial hardship had accumulated

To date Pablo has had to pay an amount equivalent to 197% of the original amount borrowed.

Financial Rights case study 2 – Genia’s story - C205279

Genia had never taken out a loan before with Cigno and had never made contact with them before but in late 2019 Genia received a series of emails from Cigno informing her that her Cigno loan was approved and she only had to click on a link.

Genia eventually went to the Cigno website to take out a small loan. In the application process, Genia provided her personal details, what the loan was for, the loan amount and clicked on tick box next to a text box in words to the following effect “I can afford this loan”.

Genia provided her Centrelink income slip and her bank statement in the application process.

She then received an email from Cigno the same day informing her that the loan application was finalised and she will receive the money in a few hours. In the same email were two PDF documents – one a loan agreement with BHF and the other a services agreement with Cigno to pay a financial supply fee. The BHF loan agreement was for a continuing credit contract. Genia was not aware that it was a continuing credit contract either through the first emails she received, the website she went to or during the application process.

Genia paid the first instalment but ultimately received two default notices. The debt with Cigno reached over 625% of the original loan.

Financial Rights case study 3 – Irma’s story - C204831

Irma had used Cigno over the years before applying for another small loan in late 2019 through their “membership portal”. Irma provided details about her income and expenses including her latest Centrelink income statement and access to her bank statement. At no time did Irma receive any messages from Cigno that there were any changes to Cigno or BHF products from her previous uses, either when she logged onto their portal or by email.

Irma received a loan agreement with BHF for a small amount which was characterised as a ‘continuing credit contract’. Financial Rights explained what this meant six months later in mid-2020 after she contacted us. This was the first time Irma understood it was a continuing credit contract as she always believed it to be a one-off short term loan from her previous dealings with Cigno and Cigno’s website.

A second document sent to Irma was services agreement with Cigno requiring Irma to repay the loan plus an additional \$125 financial supply fee and account keeping fees which she was not aware of when she applied for the loan or when she had previous loans with Cigno.

Throughout the contract, Irma was not able to meet the repayments for the loan and services agreement. By mid-2020, the total amount due was 480% higher than the original amount borrowed.

Irma has since been contacted several times by Cigno’s debt collection agent Milton Graham in a harassing manner.

Financial Rights case study 4 – Oliver’s story - C108841

Oliver is 55 years old, lives in public housing, and his sole source of income is the Disability Support Pension. In March 2020, Oliver opened an email in his junk mail which advertised quick credit. He clicked on the link in the email, and was taken to the Ferratum website, where he applied for a loan ranging from \$1,000-\$2,000. He provided some financial information when he applied for the loan, including that he was unemployed and his Centrelink income. He then he received the three emails from Ferratum, including one confirming receipt of his application.

On the same day a few hours later, he received an email declining his application but letting him know that

We're working hard to find you another lender that would like to assess your application so sit tight and we'll be back in touch with you soon.

Soon after on the same day, he received a text message from Cigno that notified him that a small loan of \$200 would be deposited in his account that afternoon. This amount was deposited in his account shortly afterwards. He had not made any application for a loan with Cigno nor does he recall giving consent to Ferratum to pass on his details to Cigno or to make an application for a loan on his behalf.

After he received the loan, he received a text message from Cigno that requested he click on a link to verify his details and upload his bank statements, after it had already deposited the amount in his account. He says he did not click on the link. He received further text messages from Cigno asking him to make repayments every fortnight and that he must repay a total 340% more than that he borrowed. Oliver could not afford these repayments without substantial hardship.

Cigno did not provide him with any information about its model, the fees it charges or the required repayments for the loan before it deposited the money in his account. Since this amount was deposited, he has not received any loan contract or other documents from Cigno, either by text or email. Further, Cigno has not provided him with a breakdown of the amount it is claiming.

Financial Rights case study 5 – Jane’s story - C204442

Jane applied for a loan with Cigno in late 2019 and was provided with a loan of \$350. Jane provided her financial information to Cigno when she applied for the loan, which showed that her weekly pay was very inconsistent and depended on how many hours she worked during the week.

Jane could not afford to repay the loan without substantial hardship. The loan should have been deemed unsuitable based on the financial information provided at the time. Cigno arranged for a financial hardship repayment option when Jane was unable to afford the repayments.

Jane tried to contact Cigno by email and phone to find out how much is owing on her account but has not been successful. She was logged out of her account and cannot access her account information.

Financial Rights case study 6 – Pam’s story - C206346

Pam could not get through to Cigno to check how much her next payment would be and our number at Financial Rights was the only one she could get through on. Pam is a single parent aged 22 years. Her son turned one and Pam wanted money to help pay for a celebration.

She did a search on line and found Cigno. She applied for the loan because she could see it would be quick, the money would be available straight away, there were not many questions asked and she did not have to give a lot of details. She sent her driver’s licence, bank details bank statement and gave her Centrelink number. Cigno did not explain the different options available to her ie. fast track loan or slow direct loan

Pam borrowed \$250 in March 2020. She missed the first payment. Payments of \$125 were due every 7 days for 3 weeks. Pam received a default notice and was charged \$79 as a dishonour fee. She could now afford the repayments as she is receiving the coronavirus supplement of \$550 per fortnight. Pam made five payments but did not understand why she was charged other payments. Cigno had not explained the fees and charges that were payable under the service agreement. When asked, Pam had no idea what or who BHF Solutions was.

Financial Rights case study 7 – Mark’s story - C203313

Mark is a veteran with long-standing psychological issues, including problem gambling. He has used Cigno a number of times over the years. In January this year, he borrowed \$280 from Cigno, which he gambled and lost. He then lost his job due to Covid-19 and was unable to pay. During the period he had no income (while waiting for JobSeeker), Cigno applied default fees increasing the amount owing to over \$1000, despite Mark telling them he was in hardship and unable to pay his rent. Cigno structured their contract with Mark as a “continuing credit contract”, thus availing themselves of another loophole to get out of complying with the NCC.

Mark contacted our service for assistance, and we were able to negotiate a reduction in the fees and an affordable repayment arrangement. However, because he was so stressed about it, Mark went ahead and applied for early access to superannuation under the Covid-19 arrangements, and used this to pay Cigno in one lump sum. He did not obtain legal or financial advice before taking this step.

Financial Rights case study 8 – Lea’s story - C191542

Lea is an Aboriginal woman in her early 50s. In March 2019, she obtained a loan from Cigno.

At the time, her primary source of income was Newstart, supplemented by some income she earned through Uber driving (which fluctuated considerably).

Lea was unable to afford the repayments for the loan and didn’t make any repayments. Less than two months after she obtained the loan, Cigno was claiming that she owed 366% more than the original loan.

Financial Rights case study 9 – Warren’s story - C199233

Warren is a disability support pensioner who entered into a small continuing credit contract with Cigno/BHF in October 2019 and believes he never should have been given that loan.

Cigno provided Warren a continuing credit contract using the exemption under section 6(5) of the National Credit Code for continuing credit contracts where there is only a periodic or other fixed charge that does not change depending on the amount of the credit provided. The regulations limit these charges to \$200 for the first year, or \$125 for any later years – which the loan between Warren and BHF fell within.

Cigno offer a service to “facilitate, and manage” the non-regulated loan between BHF and Warren, with a contract containing high fees such as default fees of \$79 and change of payment fees of \$22 each. Warren now owes well over twice the amount borrowed.