

CCCFA certification of Directors and senior managers

Consumer finance providers will be aware of the new certification requirements under Part 5A of the Credit Contracts and Consumer Finance Act 2003 (CCCFA). This article provides practical tips for lenders applying for certification.

Certification under Part 5A of the CCCFA became compulsory from 1 October 2021 but a consumer finance provider registered on the Financial Service Provider Register (FSPR) as at 30 September 2021, does not need to be certified until the date of its next FSPR annual confirmation. For example, if your annual confirmation month is September, you will need to be certified by 30 September 2022. From that date, you must be both certified by the Commerce Commission and registered on the FSPR to provide consumer credit contracts.

Certification requires an application to the Commerce Commission and satisfying the Commission that you (if you are a sole trader) or your Directors and senior managers (if you are a company) are fit and proper persons to hold their positions – financially sound, honest, reputable, reliable and competent to do the job.

Here are our top 5 tips for lenders applying for certification:

1. **Start Early:** The Commerce Commission recommends that lenders apply for certification at least 2 months before the date that certification is due, as it takes some time for the Commerce Commission to review and consider the information provided to process an application. If you apply for certification and have provided all requested information more than 2 months before the date your certification is due, you can legally continue to trade after the due date if the Commerce Commission has not yet made a decision by that date (unless you have failed to respond to an information request from the Commerce Commission). Otherwise, you will be unable to trade as a consumer credit contract lender from the date you were required to be certified to the date that you are actually certified.
2. **Know your directors and senior managers:** In order to be certified, the Directors and senior managers of a lender need to each complete an application form detailing their personal details, relevant experience and history. It is important for all Directors and senior managers to be identified at the outset to avoid any delay from additional individuals being identified as Directors or senior managers later. The Commerce Commission provides guidance on who is considered a Director and a senior manager of a business, which should be considered carefully before submitting an application, to ensure all relevant individuals are included at the outset. In summary:
 - a **Director** is an individual with a governance role comparable with that of a Director in a limited liability company, including any person that is a sole trader.
 - a **senior manager** is an individual who is not a Director, but occupies a position to exercise significant influence over the management or administration of a lender, for example a CEO or chief financial officer.
3. **Include all relevant details:** The aim of certification is to set a high standard of personal and professional integrity for those involved in lending to consumers. In line with that aim, the Commerce Commission is very thorough in considering the past experience, reputation and financial integrity of applicants and their Directors and senior managers. We recommend that Directors and senior managers carefully review their previous roles with other organisations when completing the application so that they are able to

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identify any relevant complaints, investigations, warnings or compliance advices in relation to that organisation while they held their role, including any that are not directly connected to their role. Our experience is that the Commerce Commission will make its own investigations into each organisation a Director or senior manager has previously been involved with when processing an application and will query any relevant matters they identify that have not been disclosed. Note there are potential penalties for providing false information in the application.

4. **Do not de-select your existing financial service:**

To apply for certification, a lender needs to initiate this process through the "Maintain Financial Services" tab on its FSPR dashboard. When a lender selects the 'Creditor under a credit contract – Consumer credit contract' service, it will be sent an email which sets out how to pay the required fee(s) and includes the forms to be completed for certification. One issue that has arisen for many lenders when they apply for certification is that they may temporarily appear not to be registered as a consumer credit contract provider after they apply for certification. This is because they have not selected for their existing consumer credit contract financial service to continue and it is therefore cancelled at the time of their application. Although the new 'Creditor under a credit contract – Consumer credit contract' service has been selected, this will not show on the FSPR as a financial service until after certification has been authorised by the Commerce Commission. There are huge potential consequences of not being registered on the FSPR as a consumer credit contract provider when required. To avoid those consequences, an applicant should ensure its existing financial service remains selected when it selects the new 'Creditor under a credit contract – Consumer credit contract' service so that the existing service remains pending certification. If your existing financial service has been de-selected, please contact us for advice on how this

may be able to be rectified.

5. **Most consumer finance providers will also need to be registered to provide non-consumer credit contracts:** Previously, a lender's registration as a credit contract provider covered both consumer credit contracts and non-consumer credit contracts. These are now separate registration categories. Most consumer finance companies will need to register for both categories. This is because some of the finance they provided might not strictly fall within the legislation's definition of a "consumer credit contract" e.g. if a customer purchases a printer on credit for their home office. We recommend that lenders carefully consider which categories they need to be registered for.

Want to know more?

If you have any questions or require assistance with CCCFA certification, please contact [Sarah Simmers](#) or [Sophan Pearson](#).