

22 November 2023

**Investment Bureau Limited**

C/O [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

By email only: [REDACTED]

Dear [REDACTED]

**Outcome of Commerce Commission's investigation into Investment Bureau Limited and its compliance with the Credit Contracts and Consumer Finance Act 2003 and Fair Trading Act 1986: Warning**

1. As you are aware, the Commerce Commission (Commission) has been investigating the conduct of Investment Bureau Limited (IBL)<sup>1</sup> under the Credit Contracts and Consumer Finance Act 2003 (CCCF Act) and the Fair Trading Act 1986 (FT Act). We have now completed our investigation and can inform you of the outcome.
2. In summary, having fully considered the relevant information and documents received, the Commission's view is that IBL likely breached the following CCCF Act obligations between 16 June 2018 to 20 February 2021:
  - 2.1 Section 17 of the CCCF Act – IBL did not provide complete initial disclosure before entering a consumer credit contract. IBL failed to provide initial disclosure of as much of the key information set out in Schedule 1 as was applicable to the contract;
  - 2.2 Section 99B of the CCCF Act – IBL provided credit without being registered on the Financial Service Providers Register (FSPR) and was not entitled to enforce any right in relation to the costs of borrowing on its borrowers;
3. Additionally, and specifically in relation to [REDACTED] (the Borrower), IBL likely breached the following sections of the CCCF Act between [REDACTED] 2019 to 16 August 2022:

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<sup>1</sup> The director of IBL is [REDACTED].

- 3.1 Section 9C(3)(a)(ii) of the CCCF Act – IBL did not make reasonable enquiries to be satisfied that the Borrower was able to make the payments under the agreement without suffering substantial hardship;
  - 3.2 Section 24 of the CCCF Act – IBL did not supply a copy of the Borrower’s consumer credit contract within the statutory timeframe when it was requested in writing by the Borrower’s budgeting service provider; and
  - 3.3 Section 13(i) of the FT Act – IBL misrepresented to the Borrower through correspondence, notices and demands, its right to recover money to which it was not entitled. By adding further interest to a default judgment without the sanction of the Court or via the operation of the Interest on Money Claims Act 2016, IBL has likely breached this section by making false or misleading representations concerning the existence or effect of a right.
4. The Commission has determined that, in the circumstances of this case, it is appropriate to issue IBL with a warning instead of filing charges against IBL.<sup>2</sup> We note that a warning is not a final finding of non-compliance. Only the Courts can decide whether a breach of the law has occurred.

#### **The investigation**

5. On 5 July 2022, the Commission opened an investigation into IBL following receipt of a complaint from a budgeting service provider on behalf of the Borrower.
6. The complaint alleged that IBL was charging interest on a default judgment for a loan the Borrower had entered and defaulted on. The complaint also alleged that IBL had failed to make reasonable inquiries to be satisfied that the Borrower would make payments under the agreement without suffering substantial hardship. Additionally, the budgeting service provider claimed that IBL had failed to provide the Borrower with request disclosure within 15 working days. The complaint was based on the following summary of facts:
  - 6.1 IBL entered into a consumer credit contract with the Borrower on [REDACTED] 2019. After entering into the consumer credit contract, the Borrower only made three payments before defaulting on his obligations. IBL made insufficient inquiries about the Borrower’s expenses prior to entering into the consumer credit contract with the Borrower.
  - 6.2 Due to the Borrower’s non-payment, IBL applied to the District Court to recover the unpaid debt. On [REDACTED] the District Court made a default judgment allowing IBL to recover \$ [REDACTED] from the Borrower. On [REDACTED] an attachment order was made by the District Court in which the Borrower was to pay [REDACTED] per week to IBL until the outstanding debt of \$ [REDACTED] was paid.
  - 6.3 IBL began to charge default interest on the balance of the default judgment and by 5 June 2022, the Borrower was informed by IBL that the outstanding

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<sup>2</sup> Please refer to the Commission’s published *Enforcement Response Guidelines*, available [here](#).

balance of his loan was \$ [REDACTED]. The balance continued to increase, despite the Borrower never missing a payment under the Court awarded attachment order.

7. Despite the complaint being in relation to only the Borrower, IBL assisted the Commission during the investigation, and provided information about the rest of its loan book in addition to information about the Borrower. IBL has also complied with multiple voluntary requests for information.

### **The Commission's view**

#### *Lender responsibility principles*

8. Section 9C(2)(iii) states:

(1) The lender responsibility principles are that every lender must, at all times,—

(a) exercise the care, diligence, and skill of a responsible lender -

...

(ii) before entering into an agreement to provide credit or finance or a relevant insurance contract and before taking a relevant guarantee; and

(iii) in all subsequent dealings with a borrower in relation to an agreement or a relevant insurance contract or a guarantor in relation to a relevant guarantee.

9. When providing credit, IBL must ensure that it complies with the lender responsibility principles set out in section 9C of the CCCF Act. Section 9C(3)(a)(ii) requires a lender to make reasonable inquiries, before entering into an agreement, so as to be satisfied that it is likely that the borrower will make the payments under the agreement without suffering substantial hardship. From 1 December 2021, making reasonable inquiries includes a requirement to comply with the Credit Contracts and Consumer Finance Regulations 2004 (Regulations), as set out in section 9C(5A).<sup>3</sup>
10. Although IBL made inquiries into the Borrower's income, IBL did not make sufficient inquiries about the Borrower's expenses. IBL stated that no liabilities, debts or bills were disclosed by the Borrower during the application process. The obligation is on the lender to be satisfied it understands a borrower's financial situation – including expenses – to enable it to assess whether a borrower will be able to make payments without substantial hardship.

We consider, having reviewed the material provided by IBL, that it likely failed to conduct reasonable inquiries into whether the Borrower would make the payments under the agreement without suffering substantial hardship as part of an adequate affordability assessment for the Borrower.

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<sup>3</sup> The Regulations can be found [here](#). Specifically Regulations 4AA to 4AO.

*Likely initial disclosure breach*

## 11. Section 17(1) states that:

Every creditor under a consumer credit contract must ensure that disclosure of as much of the key information set out in Schedule 1 as is applicable to the contract is made to every debtor under the contract before the contract is entered into.

## 12. We consider, having reviewed the standard form initial disclosure documents used by IBL, that it has likely breached section 17 by failing to disclose the following key information from Schedule 1 before borrowers entered into consumer credit contracts:

- 12.1 Schedule 1(p) - full prepayment – how a reasonable estimate of IBL’s loss on full prepayment is calculated, and whether a statutory procedure prescribed in the regulations is used;
- 12.2 Schedule 1(q)(iii) - security interest – the extent to which the borrower remains indebted if the secured property was sold and the recovered amount was insufficient to cover the loan (if there was a shortfall);
- 12.3 Schedule 1(q)(iv) - security interest – what the consequences would be if the borrower was to give a security interest over the property to a person other than IBL and, as a result, the borrower was to be in breach of the contract;
- 12.4 Schedule 1(r) - default interest charges and default fees – particulars that describe any default interest charges and default fees that may be payable under the contract, including how they would become payable;
- 12.5 Schedule 1(sa) - grounds for unforeseen hardship – the borrower’s right to apply for relief on the grounds of unforeseen hardship;
- 12.6 Schedule 1(ua) - dispute resolution – the name and the contact details of IBL’s dispute resolution scheme;
- 12.7 Schedule 1(ub) - registration under Financial Service Providers (Registration and Dispute Resolution) Act 2008 (FSPR) – IBL’s registration number under the FSPR; and
- 12.8 Schedule 1(uc) - the name under which IBL is registered on the FSPR.

*Likely request disclosure breach*

## 13. Section 24 of the CCCF Act states that:

- (1) Every debtor or guarantor under a consumer credit contract may request in writing that disclosure of any or all of the matters referred to in subsection (2) be made to them by the creditor.

14. When a borrower makes a request in writing to the lender for any matters set out in section 24(2), the lender must provide disclosure. Under section 24(3) a lender must comply with the request for disclosure within 15 days.<sup>4</sup>
15. On 25 January 2022, the Borrower's budgeting services provider requested the Borrower's loan contract on behalf of the Borrower. IBL provided a copy of the loan contract on 16 August 2022.
16. In the Commission's view, IBL has likely breached section 24 of the CCCF Act by failing to supply a copy of the Borrower's consumer credit contract to the budgeting services provider acting on his behalf, within 15 days of receiving their written request.<sup>5</sup>

*Likely breach of section 99B of the CCCF Act – non-registration on the FSPR*

17. Section 99B of the CCCF Act states:
  - (1) If a creditor who is required to be registered under Part 2 of the Financial Service Providers (Registration and Dispute Resolution) Act 2008 is not registered under that Act,—
    - (a) neither the creditor nor any other person may, in relation to a consumer credit contract to which the creditor is a party,—
      - (i) enforce any right in relation to the costs of borrowing; or
      - (ii) require the debtor or any other person to make a full prepayment or a part prepayment on the basis of a failure by the debtor or other person to pay the costs of borrowing; and
    - (b) neither the debtor nor any other person is liable for the costs of borrowing under such a contract in relation to any period during which the creditor is unregistered.
18. In our view, between 16 June 2018 and 31 March 2022, IBL was not registered on the FSPR when it entered into consumer credit contracts with its borrowers.<sup>6</sup> Because of this, IBL was unable to enforce any right in relation to the costs of borrowing. Additionally, under section 99B(1)(b), the borrowers were not liable for the costs of borrowing under the contract during the period which IBL was unregistered.
19. Under section 48 of the CCCF Act, IBL is required to credit or refund as soon as practicable any payments it received which it was not entitled to.<sup>7</sup>

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<sup>4</sup> The creditor has 15 days from the later of; the date the request was received; or the date on which the creditor receives payment of a reasonable fee for the disclosure as specified by the creditor.

<sup>5</sup> It was noted by the Commission that the budgeting services provider had also requested the Borrower's last three months' worth of statements and affordability assessment. The Commission has taken into consideration that IBL requested a fee to produce the statements, which was not paid by the Borrower and that there was no written record of the Borrower's affordability assessment to provide.

<sup>6</sup> IBL was first registered on the FSPR on 31 March 2022 and subsequently certified by the Commission on 6 April 2022.

<sup>7</sup> For completeness, the Commission notes that IBL has stated in correspondence that it has now returned all costs of borrowing it recovered during the period it was not registered on the FSPR.

*Likely false and/or misleading representations*

20. Section 13 of the FT Act states:

No person shall, in trade, in connection with the supply or possible supply of goods or services or with the promotion by any means of the supply or use of goods or services,—

...

(i) make a false or misleading representation concerning the existence, exclusion, or effect of any condition, warranty, guarantee, right, or remedy, including (to avoid doubt) in relation to any guarantee, right, or remedy available under the Consumer Guarantees Act 1993;

21. The FT Act defines a service as, amongst other things, any contract for, or in relation to, the lending of money or granting of credit, or the making of arrangements for the lending of money or granting of credit.<sup>8</sup>

22. The Commission considers that IBL has likely breached section 13(i) of the FT Act by representing, on at least seven occasions to the Borrower, a right to add interest to a default judgment made by the District Court. IBL was not entitled to charge any additional interest after the default judgment was awarded as interest can only be added to the judgment debt by virtue of the Interest on Money Claims Act 2016.<sup>9</sup> Additionally, the enforcement of a judgment debt is directly connected to the underlying credit contract which is the subject of that judgment and therefore section 13 of the FT Act applies.<sup>10</sup>

23. We note that on this point IBL maintains it made a mistake and relied on incorrect legal advice. In the Commission's view, ignorance of the law, or a reliance on inaccurate legal advice is not a complete defence for a breach of the FT Act.

**Warning**

24. After weighing up the factors set out in our *Enforcement Response Guidelines*, the Commission has decided it is appropriate to conclude our investigation into IBL for the likely breaches outlined above by issuing this warning letter.

25. The Commission has taken the following key factors into account:

25.1 IBL is now registered on the FSPR as of 31 March 2022, and became certified by the Commission on 6 April 2022. IBL has sent notices of registration to its borrowers;

25.2 IBL has updated its initial disclosure and has sent its current borrowers corrective initial disclosure;

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<sup>8</sup> FT Act 1986, Section 2.

<sup>9</sup> The Interest on Money Claims Act 2016 was in force during the relevant period and applied to the default judgment awarded by the Court against the Borrower. Section 25 of the Act says a court may not award interest under the Act unless, the party making the claim states in either their statement of claim or a counterclaim. IBL did not make the claim for interest.

<sup>10</sup> *Budget Loans Ltd v Commerce Commission* [2017] NZHC 695 at [81].

- 25.3 IBL has not, and does not, advertise its lending services. IBL's borrowers were friends, family and acquaintances. The maximum number of contracts IBL has had at one time was 12. IBL currently has eight active credit contracts as of July 2023;
- 25.4 The named borrower is the only borrower IBL pursued for further interest charges following court ordered repayments. IBL, since the investigation was opened, agreed with the Borrower to credit the costs of borrowing against the principal remaining on the Borrower's loan;
- 25.5 IBL has stated that it has returned the costs of borrowing to its existing borrowers paid during the period that IBL was not registered on the FSPR. This was done by crediting the amount owed against its borrowers' respective principal balance until each borrower was respectively given notice of IBL's registration on the FSPR; and
- 25.6 IBL has since ceased entering into new consumer credit contracts, with the most recent consumer credit contract being entered into on 13 June 2022.
26. This warning records our view that the conduct which IBL engaged in is likely to have breached the CCCF Act and that legal action remains available to the Commission in future if the conduct continues or is repeated.

#### **Consequences of the warning**

27. This warning letter is public information and will be published on the Commission's case register on our website. We may also make public comment about our investigation and conclusions, including issuing a media release or making comment to media.
28. This warning will form part of the information that the Commission's certification team considers should IBL make another application in future for fit and proper person certification under section 131F of the CCCF Act. The Commission notes that IBL is certified until 6 April 2027.
29. We may draw this warning letter to the attention of the Court in any subsequent proceedings brought by the Commission against IBL.
30. Finally, we note that our decision to issue this warning letter does not preclude any other person or entity from taking private action through the Courts.

#### **Penalties for breaching the CCCF Act**

31. As stated above, only the Court can decide if there has been a breach of the CCCF Act. The potential penalties for each of the likely breaches are set out below.
32. Where a lender fails to comply with the relevant sections, the Commission may:
- 32.1 In the case of a breach of section 9C of the CCCF Act (including the affordability assessment requirements):

- 32.1.1 for conduct after 20 December 2019: bring civil proceedings against a lender, seeking pecuniary penalties of up to \$200,000 for an individual and \$600,000 for a company. Other civil remedies can also be ordered by the Court such as the lender having to pay damages, refund money, pay compensation or take other steps the Court thinks fit;
- 32.1.2 require the lender to pay statutory damages to borrowers in accordance with sections 88 to 92 of the CCCF Act; and/or
- 32.1.3 apply for an order from the Court directing a person to refund or credit a payment in accordance with section 48 (under section 94(1)(a)).
  - (a) We note that failure to refund or credit payments required to be returned, pursuant to section 48 of the CCCF Act, is an offence under section 103(1), attracting fines as follows:
    - (i) in the case of an individual, a fine not exceeding \$200,000; and
    - (ii) in the case of a body corporate, a fine not exceeding \$600,000.
- 32.2 In the case of a breach of section 17 of the CCCF Act, a lender may:
  - 32.2.1 be required to refund the costs of borrowing paid by borrowers during the period in which the lender failed to comply with section 17 in accordance with sections 48 and 99(1A);
  - 32.2.2 be required to pay statutory damages to borrowers in accordance with sections 88 to 92; and/or
  - 32.2.3 be issued with an infringement notice and required to pay an infringement fee in accordance with sections 105C and 105A, or be charged with an infringement offence and fined up to \$10,000 (in the case of an individual) or \$30,000 (in the case of a body corporate) in accordance with section 102A.
- 32.3 In the case of a breach of section 24 of the CCCF Act, a lender may:
  - 32.3.1 be issued with an infringement notice and required to pay an infringement fee or charged with an infringement offence and fined up to \$30,000 in accordance with sections 105A – 105F; and/or
  - 32.3.2 be required to pay statutory damages to borrowers in accordance with sections 88 to 92 of the CCCF Act.
- 32.4 In the case of a breach of section 99B of the CCCF Act, a lender may:



32.4.1 be required to refund the costs of borrowing paid by borrowers during the period in which the lender failed to comply with section 99B in accordance with sections 48 and 99(1A).

32.5 In the case of a breach of section 13(i) of the FT Act, a lender may:

32.5.1 be convicted of a criminal offence and fined up to \$600,000 per offence for companies and \$200,000 for individuals; and/or

32.5.2 be subject to civil remedies provided for under the FT Act including injunctions, private actions for damages, and other compensatory orders (such as compensation or damages).

**Further information**

33. We recommend that IBL seeks legal advice on its obligations if it intends to recommence its lending services.
34. We have published a series of fact sheets and other resources to help businesses comply with the CCCF Act as well as other legislation we enforce. These are available on our website at: [www.comcom.govt.nz](http://www.comcom.govt.nz). We encourage IBL to visit our website to better understand its obligations and the Commission's role in enforcing the CCCF Act.
35. The CCCF Act and other legislation can be viewed at [www.legislation.govt.nz](http://www.legislation.govt.nz).
36. Please contact [REDACTED] on [REDACTED] or by email at [REDACTED] if you have any questions about this letter.

Yours sincerely

[REDACTED]

[REDACTED]

Credit Investigations and Compliance Manager  
Credit Branch – Auckland