

10 April 2018

UDC Finance Limited  
PO Box 91145 Victoria Street West  
Auckland 1142

[www.comcom.govt.nz](http://www.comcom.govt.nz)

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Attention: [REDACTED]

cc. [REDACTED]

Dear [REDACTED]

### **Credit Contracts and Consumer Finance Act 2003: Warning**

1. The Commerce Commission has been investigating UDC Finance Limited (**UDC**) under the Credit Contracts and Consumer Finance Act (**CCCFA**). We have completed our investigation and write now to you to alert you to our concerns.
2. In summary, the Commission considers that UDC is likely to have breached sections 83V and section 83Z(2) of the CCCFA. Section 83V relates to the service of post-repossession notices on debtors and section 83Z(2) relates to the notice creditors must provide to debtors about the sale of repossessed goods.
3. We acknowledge that UDC self-reported its conduct and subsequently refunded affected debtors. We also acknowledge UDC's advice that its collection and repossession processes have now been automated and that similar problems are unlikely to recur.

#### **The investigation**

4. The Commission's investigation into UDC arose from a complaint from a budget adviser whose client had his motor vehicle repossessed and sold even though he was making debt repayments.
5. The Commission reviewed all of the information received in relation to the debtor's particular case and concluded that it did not raise any matters of concern with regard to UDC's interactions with the debtor.
6. In September 2017 UDC reported to the Commission that our investigation had prompted it to conduct an internal review. The review covered all of its repossession events and voluntary surrenders for the period 6 June 2015- 30 June 2017. It disclosed that:
  - 6.1 during the period 6 June 2015 to October 2016, 72 post-repossession notices issued to debtors had been issued in the form required by the Credit

Repossession Act 1997 and therefore did not contain all the key information set out in Schedule 3B of the CCCFA;

- 6.2 two customers had been served with the correct post-repossession notice but more than 14 days after the repossession; and
  - 6.3 UDC did not issue a Notice of Sale in respect of seven accounts.
7. UDC undertook the following remedial action to address these issues:
- 7.1 In respect of customers who had received the incorrect post repossession notice, it applied the following remedies.
    - 7.1.1 Refunded repossession costs totalling \$3,456.33 to 7 customers.
    - 7.1.2 Removed agent repossession costs totalling \$18,652.02 from the balances owed by 30 customers.
    - 7.1.3 Deducted repossession costs totalling \$2,202.32 from the balances owed by 6 customers.
    - 7.1.4 Deducted transport costs totalling \$2,267.42 from the balances owed by 12 customers.<sup>1</sup>
  - 7.2 Three customers were deemed fraudulent and UDC wrote off their outstanding debts. These debts were in excess of the repossession costs charged and no further action was required.
  - 7.3 18 customers voluntarily surrendered the assets and no transport fees were incurred. No further action was required.
  - 7.4 In respect of the two customers who had received post-repossession notices late, UDC removed repossession costs totalling \$802 from their loan balances.
  - 7.5 In respect of its failure to issue a Notice of Sale to 7 customers, UDC issued a follow up notice to 5 customers, and a post possession notice to one customer. The remaining case involved an issue of identity fraud so there was no individual to notify.
8. UDC explained that the three issues of non-compliance occurred at a time when it was using a manual process for sending out notices pending the implementation of its automated process in October 2016.

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<sup>1</sup> UDC confirmed that of the 72 customers for whom remedial action was taken, four had two separate remedies applied, meaning that there were 76 remedies applied in total. (email 9 April 2018)

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

9. The Commission considers that UDC is likely to have breached sections 83V(2), 83V(3) and 83Z(2) of the CCCFA. Section 83V(2) requires post repossession notices to include applicable information from Schedule 3B of the CCCFA. Section 83V(3) prohibits a creditor from recovering repossession costs from the debtor if a post repossession notice is not served as required and section 83Z(2) requires a creditor to give a debtor reasonable notice of a proposed sale of repossessed consumer goods.

### **Available enforcement responses**

10. The Commission has a range of enforcement responses available to it for responding to likely breaches of the legislation it enforces. They range from relatively low level responses such as compliance advice, or a warning, through to taking legal proceedings.<sup>2</sup>

### **Warning**

11. The Commission has given careful consideration to the appropriate enforcement response in this case. It has determined that while the conduct identified could warrant taking proceedings, in the particular circumstances of this case, a warning is the appropriate enforcement response.
12. In coming to this decision, the Commission has taken the following factors into account:
  - 12.1 UDC's pro-active conduct in self-reporting the issues;
  - 12.2 the remedial action UDC has undertaken; and
  - 12.3 the circumstances in which the likely breaches occurred. In this regard we note that UDC's collection and repossession procedures are now automated meaning that such non-compliant conduct is unlikely to recur.
13. We will not be taking any further action against UDC at this time in relation to this issue but we will take this warning into account if UDC engages in similar conduct in the future.
14. We may also draw this warning to the attention of a court in any subsequent proceedings brought by the Commission against UDC.

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<sup>2</sup> Information about the Commission's approach to the enforcement of the legislation it is charged with enforcing is contained in our Enforcement Response Guidelines at <http://www.comcom.govt.nz/the-commission/commission-policies/enforcement-response-guidelines/>

15. This warning letter is public information and will be published on our website. We may also make public comment about our investigations and conclusions, including issuing a media release or making comment to media.
16. We encourage you to regularly review your compliance procedures and policies and we recommend that you seek legal advice if you have any queries about your compliance with the CCCF Act and/or other applicable legislation.

### **The Commission's role**

17. The Commission is responsible for enforcing and promoting compliance with a number of laws that promote competition in New Zealand, including the CCCF Act. The Act is designed to protect consumers when they are borrowing money and enable them to make informed choices about using credit.

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

18. Only the courts can decide if there has actually been a breach of the CCCF Act.
19. You should be aware that our decision to issue this warning letter does not prevent any other person or entity from taking private action through the courts.

### **Further information**

20. We have published a series of fact sheets and other resources to help businesses comply with the CCCF Act and the other legislation we enforce. These are available on our website at [www.comcom.govt.nz](http://www.comcom.govt.nz). We encourage you to visit our website to better understand your obligations and the Commission's role in enforcing the CCCF Act.
21. Thank you for your assistance with this investigation. Please contact [REDACTED] on [REDACTED] or by email to [REDACTED] any questions in relation to this letter.

Yours sincerely

[REDACTED]  
Manager  
Competition and Consumer Branch  
Auckland