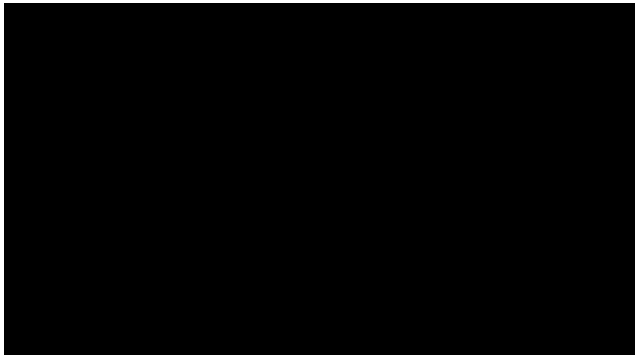


2 February 2022



Official Information Act #21.105 – MTA Motor Vehicle complaints snapshot

1. We refer to your Official Information Act 1982 (OIA) request received on 21 December 2021 for further details on motor vehicles complaint themes published in the 2021 Complaints Snapshot for the 1 July 2020 – 30 June 2021 (**period**); including:
 - 1.1 A list outlining how many motor vehicle complaints the Commission received, with the outcomes (including no further action (NFA), information passed to traders (IPTTs), compliance advice letters (CALs), warning letters, litigation and any open demands);
 - 1.2 Information relating to any motor vehicle relevant open Demands; and
 - 1.3 Examples of analysis of some of the more complex assessments.
2. On 13 January 2022, the Commission clarified that motor vehicle complaints included motor vehicle lending and retail complaints.

Our response

3. We have decided to grant your request.

The Commission's complaint screening process

4. To provide context to the information released to you, we have outlined the Commission's complaint screening process below.
5. When a consumer contacts the Commission with a complaint about a trader, this is logged in the Commission's complaint database.

6. The Commission receives thousands of complaints every year. Each complaint is initially assessed by the Screening and Enquiries Team on the basis of the information available at the time. When conducting this initial assessment, the Screening and Enquiries Team considers:
 - 6.1 the likelihood of a breach of the relevant legislation (the Fair Trading Act 1986, Credit Contracts and Consumer Finance 2003, and the Commerce Act 1986);
 - 6.2 the Commission's Enforcement Response Guidelines,¹ and;
 - 6.3 the Commission's strategic priorities and resourcing constraints.
7. The Commission has the power to act on complaints but is not required to take action in relation to all possible breaches of the legislation that we enforce.
8. If a complaint is appropriate for further consideration, it is reviewed by a panel of managers and subject matter experts from within the Competition, Fair Trading and Credit Branches. The panel decides which complaints are to be prioritised for further assessment by the Branch with reference to our Enforcement Response Model.²
9. This process enables us to identify complaints that best reflect our current enforcement priorities.³ The outcomes of the process are not final and we may revisit any complaint at a later stage, should we wish to reconsider the issues it presents.

Response to your request at [1.1]

10. We have provided two separate lists of complaints with outcomes at **Attachment A** and **Attachment B**.
 - 10.1 Retail complaints at **Attachment A** (584 complaints); and
 - 10.2 Lending complaints at **Attachment B** (48 complaints).
11. We note that some complaints are attached to more than one demand, and that there are more Motor Vehicle Retail complaints in **Attachment A** than in the snapshot. This is because the snapshot was exclusive to Fair Trading, and **Attachment A** includes Retail complaints without a Fair Trading element.

¹ Available at: <http://www.comcom.govt.nz/the-commission/commission-policies/enforcement-response-guidelines/>

² Our Enforcement Response Model is discussed in more detail from page 3 of the Commission's Enforcement Response Guidelines, available here: https://comcom.govt.nz/_data/assets/pdf_file/0030/62589/Enforcement-Response-Guidelines-October-2013.pdf.

³ For further information, see: <http://www.comcom.govt.nz/the-commission/commission-policies/enforcement-criteria/>

Response to your request at [1.2]

12. 78 complaints were added to 51 Demands.⁴ Of these Demands, 32 were closed with no further action, 11 resulted in IPTTs, three are being tracked for compliance and five are currently being investigated.
13. Most demands relate to individual Motor Vehicle retail trader businesses, or individual Motor Vehicle lender businesses.
14. Reference to these demands is made in the lists provided at **Attachment A** and **Attachment B**.

Response to your request at [1.3]

Retail Complaints Example

15. An example of analysis of a more complex assessment is PRJ0045250. This project (investigation) resulted in an IPTT letter being sent to the trader.
 - 15.1 The Commission received two complaints (14 September 2020 and 1 February 2021) about the same vehicle retailer (trader). The complaints related to representations the trader had made to each customer about the state of the vehicles sold.
 - 15.2 The complaints were assessed by the Commission's enquiries team, who concluded that the trader appeared to be failing to meet its obligations under the Consumer Guarantees Act (CGA) and may be misleading customers as to their rights under the CGA.
 - 15.3 As a result of the 14 September complaint, a demand was created. The 1 February complaint was added to the demand after it was assessed, and a preliminary investigation was carried out by the Commission's Fair Trading Investigators.
 - 15.4 The investigators contacted the trader directly to discuss the complainants' allegations. The trader appeared to take the matter seriously and indicated changes they were making as a result. The investigators concluded that an IPTT letter would be the appropriate course of action in this instance.
 - 15.5 The IPTT letter explained that the trader was at risk of breaching ss 13(a) and 13(i) of the Fair Trading Act 1986 (FTA) and that they needed to take steps to ensure they are complying with the FTA.
 - 15.6 The project was then closed.

⁴ Some of the Demands were created before 1 July 2020, and others were created as a result of complaints received during 1 July 2020 – 30 June 2021.

Lending Complaints Example

16. An example of analysis of a more complex assessment is PRJ0045239. This project (investigation) resulted in an IPTT letter being sent to the trader.
 - 16.1 The Commission received a complaint about a Motor Vehicle Lending service (lender) on 16 November 2020. The complaint stated that the trader failed to adequately assess for affordability of the vehicle purchased by the complainant.
 - 16.2 The complaint was assessed by the Commission's enquiries team, who recommended a group discussion, which led to a demand and investigation being opened by the Commission's Credit Investigators.
 - 16.3 The investigation sought to establish whether the lender had met its obligations under section 9C of the Credit Contracts and Consumer Finance Act 2003 (CCCFA).
 - 16.4 The investigation concluded that the application form did not accurately record the complainant's current income and expenses, and instead re-used outdated information that had been provided by the complainant a few years prior when applying for a previous loan; and expenses in the application form were understated by half based on the assumption that the complainant's partner pays for half of the household expenses, when in reality this is not the case.
 - 16.5 The investigators concluded that an IPTT letter would be the appropriate course of action in this instance. The letter outlined that lender regulations are about to become more prescriptive (due to the law around completing affordability assessments changing), and that the trader will need to ensure that their systems and processes are updated to ensure that they are complying with these regulations.
 - 16.6 The project was then closed.

Motor Vehicle Financing and Add-ons Review

17. As a result of a complaint received in 2019 about attempted coercion through the use of 'add-ons' by a Motor Vehicle Finance lender (lender), the Commission opened a project into the Motor Vehicle Financing industry. Further complaints were added to the project,⁵ which resulted in a publicly available report.⁶
18. Fifteen lenders voluntarily participated in the Commission's review. At the conclusion of the project, 10 of these 15 lenders, as well as two further lenders

⁵ This includes ENQ554718, which is contained in **Attachment B**.

⁶ https://comcom.govt.nz/_data/assets/pdf_file/0037/269947/Motor-vehicle-financing-and-add-ons-review-10-November-2021.pdf

identified as part of the project, were sent an IPTT. The IPTTs primarily related to the lenders' responsible lending obligations under the CCCFA in respect of add-ons.

Further Information

19. Please note the Commission will be publishing this response to your request on its website. Your personal details will be redacted from the published response.
20. Please do not hesitate to contact us at ويا@comcom.govt.nz if you have any questions about this request.

Yours sincerely



Alexandra Murray
OIA and Information Coordinator