

16 June 2022

NZ Shop at Home Limited
232 Puhinui Road,
Papatoetoe,
Auckland
2025

By email only:

[REDACTED]

Attention: [REDACTED]

Dear [REDACTED]

Credit Contracts and Consumer Finance Act 2003: Warning

1. The Commerce Commission (Commission) has been investigating NZ Shop at Home Limited (NZ Shop at Home) in relation to its compliance with the responsible lending and disclosure obligations under the Credit Contracts and Consumer Finance Act 2003 (CCCF Act). We have now completed our investigation and are writing to inform you of the outcome.
2. The Commission has found NZ Shop at Home's conduct is likely to have breached several provisions of the CCCF Act including:
 - 2.1 section 9C for failing to comply with some of its responsible lending obligations; and
 - 2.2 sections 17 and 18 for providing incomplete initial disclosure and for failing to provide any continuing disclosure to borrowers.
3. After weighing up the factors set out in our Enforcement Response Guidelines¹, we have decided to conclude this investigation by issuing this warning to NZ Shop at Home. A warning is not a final finding of non-compliance, only the courts can decide whether a breach of the law has occurred. However, the Commission has

¹ See the Commerce Commission Enforcement Response Guidelines at https://comcom.govt.nz/_data/assets/pdf_file/0030/62589/Enforcement-Response-Guidelines-October-2013.pdf

determined that at this time we will not be bringing legal action against NZ Shop at Home.

Credit Contract and Consumer Finance Act 2003

Application of the CCCF Act

4. The CCCF Act protects consumers when they borrow money or buy goods on credit. It sets out the rules that must be followed by creditors when they provide loans to consumers in New Zealand.
5. NZ Shop at Home meets the definition of a mobile trader under the CCCF Act in that it supplies goods to customers in person and outside of fixed business premises under a credit sale agreement. NZ Shop at Home's contracts also fall within the definition of a consumer credit contract. As such, NZ Shop at Home is a creditor and is subject to the CCCF Act. For the purpose of this warning we will refer to NZ Shop at Home as a lender.
6. The following provisions of the CCCF Act are relevant to the Commission's investigation into NZ Shop at Home.

Responsible lending

7. Every lender is required to comply with the lender responsibility principles.² The lender responsibility principles that are relevant to our investigation into NZ Shop at Home are:
 - 7.1 section 9C(2)(a)(ii) of the CCCF Act which requires that every lender at all times must exercise the care, diligence and skill of a responsible lender before entering into an agreement to provide credit or finance;
 - 7.2 section 9C(3)(a)(ii) of the CCCF Act 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 payments under the agreement without suffering substantial hardship;
 - 7.3 sections 9C(3)(b)(ii) and (iii) of the CCCF Act require that the lender must assist the borrower to reach an informed decision of whether or not to enter into the agreement and to be reasonably aware of the full implications of entering into the agreement, including by ensuring that:
 - 7.3.1 the terms of the agreement are expressed in plain language in a clear, concise and intelligible manner; and

² See s 9C(1) of the CCCF Act.

- 7.3.2 any information provided by the lender to the borrower is not presented in a manner that is, or is likely to be, misleading, deceptive or confusing.

Initial and continuing disclosure

8. Section 17 of the CCCF Act requires the lender to disclose to the borrower all the information listed in Schedule 1 of the CCCF Act that is applicable to the contract before the contract is entered into.
9. Section 18 of the CCCF Act requires lenders to provide continuing disclosure to borrowers. Continuing disclosure requires the lender to regularly give the borrower key information about their loan during its lifetime.

The investigation

10. In October 2020 the Commission opened a monitoring project under section 111 of the CCCF Act to better understand the business model of mobile traders, and to assess their compliance with the CCCF Act.³
11. NZ Shop at Home was identified as a mobile trader to be monitored under the project given that it was already known to the Commission as a result of a previous investigation.⁴ Following receipt of information received from NZ Shop at Home during the monitoring project, on 15 April 2021 the Commission advised NZ Shop at Home that a formal investigation had been opened.
12. NZ Shop at Home has fully cooperated with the Commission throughout the investigation including:
- 12.1 attending a voluntary interview;
 - 12.2 providing documentation including copies of its contracts and terms and conditions (Disclosure Documents) under statutory notice; and
 - 12.3 providing subsequent information on a voluntary basis when requested by the Commission.
13. NZ Shop at Home subsequently informed the Commission that on 1 October 2021 it ceased trading and would not be collecting any outstanding debts. NZ Shop at Home advised that the amount written off totalled \$19,412.32. To confirm its closure, NZ Shop at Home has provided the Commission with:
- 13.1 copies of its bank statements; and

³ The mobile trader monitoring project was opened following the amendments to the CCCF Act on 1 June 2020. Section 16A of the CCCF Act provides that mobile trader credit sales are to be treated as consumer credit contracts.

⁴ The Commission issued a Compliance Advice Letter to NZ Shop at Home in 2015.

- 13.2 copies of the letters it sent to its remaining customers advising that the balance owing on their loans would be written off.

Responsible lending - affordability assessments

14. NZ Shop at Home advised the Commission that it did not undertake any affordability assessments for new or existing borrowers.
15. For existing borrowers NZ Shop at Home noted that their payment history would be indicative of whether a borrower could afford the payments of the loan, but no further assessments were made.

Responsible lending - terms of agreement are expressed in plain language in a clear, concise and intelligible manner

16. The Commission considers that NZ Shop at Home's contract terms and conditions were complex and detailed.
17. NZ Shop at Home accepted that its contract terms and conditions were complex and not explained to the borrower, except for the default fees which were contained in a separate document.

Responsible lending - requirement for information not to be presented in a manner that is, or likely to be, misleading, deceptive or confusing

18. NZ Shop at Home used a "tick box" on its Disclosure Documents where a borrower could select "ongoing payments" under the payment section. The ongoing payments were explained in the terms and conditions as:

where the customer agrees that the Agent shall continuously debit the customer's account until such time as the agent receives notification from the customer to stop the ongoing payments.

19. The agreement to complete ongoing payments by borrowers to NZ Shop at Home is likely to be misleading, or at the very least confusing, as the contract does not expressly indicate that the payments will continue even when the product purchased has been paid for.
20. In addition, the terms and conditions of NZ Shop at Home's Disclosure Document stated:
- 5.1 At the Agent's sole discretion the Price shall be either:
- a) as indicated on any invoice provided by the Agent to the Customer; or
- b) the Price as at the date of delivery of the Goods according to the Agent's current price list.
21. NZ Shop at Home advised the Commission that borrowers were expected to pay a large portion of the price of the goods before delivery took place. If the delivery was delayed for an extended period, it could drastically change the purchase price of the goods. It does not appear that this was brought to the attention of the borrower,

particularly that the price could be either what is on the invoice or the current price list at the time of delivery. The information contained in clause 5.1 of the terms and conditions in conjunction with the information contained in the remainder of the Disclosure Documents regarding the price of the goods was likely to be confusing to borrowers.

Incomplete initial disclosure

22. After reviewing NZ Shop at Home's Disclosure Documents, the Commission had the following concerns:

Key information in Schedule 1	Requirement	Concerns
Schedule 1(a)	Full name and address of creditor.	NZ Shop at Home's full address was not contained in the Disclosure Documents.
Schedule 1(c)	Initial unpaid balance The amount and a description of each advance, charge, or payment accounted for in the unpaid balance.	The terms and conditions at clause 5.5 of the Disclosure Documents provided that unless otherwise stated the price does not include GST. If the customer was required to pay GST in addition to the price disclosed in the contract, this was not disclosed in the unpaid balance.
Schedule 1(o)	Payments required If more than one payment is to be made: <ul style="list-style-type: none"> • the amount of payments or the method of calculating the amount; and • if ascertainable, the number of payments; and • if ascertainable, the total amount of 	The contracts provided to the Commission by NZ Shop at Home make provision for the following: <ul style="list-style-type: none"> • Debit start date. • Amount per debit. • Day of debit. • Frequency of Debit. • Weekly or fortnightly payments. • Whether it is an automatic payment or debit order.

	<p>payments (but only if the contract would, on the assumptions prescribed by regulations, be paid out within 7 years of the date on which credit is first provided under contract); and</p> <ul style="list-style-type: none"> • when the first payment is due, if ascertainable, and the frequency of payments. 	<p>However, in the sample customer files that the Commission reviewed, in many instances this information was not completed and was left blank on the contract.</p>
Schedule 1(q)	<p>Security interest</p> <p>A description of any security interest that is or may be taken in connection with the contract, including a clear explanation of:</p> <ul style="list-style-type: none"> • the nature of the security interest; and • the property that is, or is proposed to be, subject to the security interest; and • the extent to which the debtor's obligations to the creditor are secured by the security interest, including whether, if the creditor's rights under the security were to be exercised, the debtor would, or may, remain indebted to the creditor (if there is a shortfall in the 	<p>The terms and conditions at clause 10.1(b) and 11.1 of the Disclosure Documents took a security interest over all present and after acquired property (ALPAAP) including "land, realty or assets". However, should NZ Shop at Home have sought to repossess any of the goods subject to the security interest, section 83F of the CCCF Act required that the goods subject to the security interests be specifically identified. The ALPAAP clause was therefore likely to be confusing.</p> <p>There was no statement regarding the extent to which the borrower's obligations to NZ Shop at Home were secured by the security interest.</p> <p>There was no statement about the consequences for granting a security interest over the property that NZ Shop at Home had taken a security interest over.</p>

	<p>proceeds of the sale of the property that is subject to the security interest); and</p> <ul style="list-style-type: none"> • what the consequences would be if the debtor were to give a security interest over the property referred to in the bullet point above (Schedule 1(q)(ii)) to a person other than the creditor and, as a result, the debtor were to be in breach of the contract, including whether the property that would be subject to the security interest would be liable to repossession. 	
Schedule 1(saa)	<p>Debtor's right to cancel</p> <p>If the consumer credit contract is also a layby sale agreement:</p> <ul style="list-style-type: none"> • a statement of the debtor's cancellation rights under s 36F(1) of the Fair Trading Act 1986 (FT Act); • whether or not a cancellation charge under s 36F(3) of the FT Act will be imposed; and • if a cancellation charge will be imposed, the 	<p>NZ Shop at Home's contract is a consumer credit contract however it also meets the definition of a layby sale agreement under the FT Act. NZ Shop at Home failed to provide the customer with the cancellation rights detailed in section 36F(1) of the FT Act.</p> <p>In all contracts entered into before 1 October 2020, NZ Shop at Home also failed to correctly disclose the borrower's cancellation rights under section 27 of the CCCF Act.</p>

	amount of the charge (if a fixed charge will be imposed) or a clear description of how the charge will be calculated.	
Schedule 1 (t)	Continuing disclosure The frequency with which continuing disclosure statements will be provided (assuming that s 21 does not apply).	No provision was made in the Disclosure Documents to advise the customer of how often continuing disclosure would be provided.
Schedule 1(ua)	Dispute resolution The name and contact details of the dispute resolution scheme of which the creditor is a member (unless the Financial Service Providers (Registration and Dispute Resolution) Act 2008) does not require the creditor to be a member of such scheme.	Reference was made to dispute resolution under clause 21 of the terms and conditions in the Disclosure Documents, however no information was provided about the dispute resolution scheme that NZ Shop at Home belonged to.

Failure to provide continuing disclosure

23. NZ Shop at Home advised the Commission that no continuing disclosure statements were ever provided to borrowers. The only statements borrowers received were when the borrower contacted NZ Shop at Home and requested a statement.
24. NZ Shop at Home was required to provide continuing disclosure to borrowers every six months. The continuing disclosure statement was required to disclose as much of the information set out in section 19 of the CCCF Act as was applicable.

The Commission's view

25. Having fully considered the relevant information and documents received during the investigation, the Commission's view is that NZ Shop at Home's conduct likely breached sections 9C (responsible lending), 17 (initial disclosure) and 18 (continuing disclosure) of the CCCF Act.

26. We have reached this view because NZ Shop at Home failed:
- 26.1 to conduct proper affordability assessments (if any) to be satisfied that its borrowers would be able to make payments under the agreements without suffering substantial hardship. As a result, NZ Shop at Home failed to exercise the care, diligence and skill of a responsible lender before entering into agreements to provide credit in likely breach of sections 9C(2)(a)(ii) and 9C(3)(a)(ii) of the CCCF Act;
 - 26.2 to ensure that the terms and conditions of the Disclosure Documents were presented in a clear, concise and intelligible manner and information was not presented in a manner that is likely to be misleading, deceptive or confusing. This is because its contract terms and conditions were complex, detailed and not explained to the borrowers in likely breach of sections 9C(3)(b)(ii) and (iii) of the CCCF Act;
 - 26.3 to ensure all key information in Schedule 1 of the CCCF Act that was applicable was included in the Disclosure Documents in likely breach of section 17 of the CCCF Act; and
 - 26.4 to provide continuing disclosure to borrowers in likely breach of section 18 of the CCCF Act.

Warning

27. After weighing up the factors set out in our Enforcement Response Guidelines, the Commission has decided it is appropriate to conclude our investigation into NZ Shop at Home by issuing this warning letter.
28. The Commission has taken the following factors into account:
- 28.1 NZ Shop at Home's cooperation with the Commission's investigation;
 - 28.2 the lack of further harm as NZ Shop at Home ceased all business activities from 1 October 2021;
 - 28.3 NZ Shop at Home took steps to remediate a number of borrowers by writing off the balance owed on any loans as at 1 October 2021 to the value of \$19,412.32; and
 - 28.4 NZ Shop at Home took steps to notify any remaining existing customers that it ceased trading and the customers would not be required to repay the balance owing on their accounts.
29. This warning represents our opinion that the conduct which NZ Shop at Home has 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.

30. We may draw this warning letter to the attention of the courts in any subsequent proceedings brought by the Commission against NZ Shop at Home.
31. This warning letter is public information and will be published on the Commission's case register on our website.⁵ We will be making public comment about our investigation into NZ Shop at Home and the conclusions we have reached, including issuing a media statement.
32. Finally, we note that this warning will be available to the Commission's certification team for their consideration should NZ Shop at Home and/or its directors and senior managers make an application for certification under section 131F of the CCCF Act.⁶

Penalties for breaching the CCCF Act

33. As indicated above, only the courts can decide if there has been a breach of the CCCF Act. The potential penalties for each of the likely breaches is set out below.
34. Where a lender fails to comply with the responsible lending provisions in sections 9C(3)(a) to (e), it may:
 - 34.1 Be ordered by the court to pay statutory damages to borrowers for the period in which the lender failed to comply with sections 9C(3)(a) to (e) in accordance with section 88(1)(a).
 - 34.2 Be required to refund to borrowers an amount equal to the interest charges, credit fees and default fees that have become payable under the agreement for breaches of section 9C(3)(a) (failure to make reasonable enquiries before entering into an agreement).
 - 34.3 Be ordered to pay a pecuniary penalty in respect of each breach for an amount for an individual up to \$200,000 and for a company up to \$600,000.
 - 34.4 The court may, on application by the Commission or any other person, also grant an injunction restraining a person from engaging in conduct that constitutes, or would constitute, a breach of any of the provisions of section 9C (lender responsibility principles).
35. Where a lender fails to comply with the disclosure requirements, it may:
 - 35.1 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).

⁵ Available at <https://comcom.govt.nz/case-register>.

⁶ Since 1 October 2021, all providers of consumer credit (including mobile traders) must be certified under Part 5A of the CCCF Act. To be certified, the lender's directors and senior managers must be certified as fit and proper persons to hold their positions. More information is available [here](#).

- 35.2 Be required to pay statutory damages to borrowers in accordance with sections 88 to 92 of the CCCF Act.
 - 35.3 Be issued with an infringement notice and required to pay an infringement fee or charged with an infringement offence and fined in accordance with sections 102A to 105F (up to \$10,000 in the case of an individual and \$30,000 in the case of a company).
36. 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

- 37. We recommend that in the event that NZ Shop at Home considers reconvening its business activities, that it seeks legal advice to ensure that it complies with the CCCF Act.
- 38. 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. We encourage you to visit our website to better understand NZ Shop at Home's obligations and the Commission's role in enforcing the CCCF Act.
- 39. You can also view the CCCF Act and other legislation at www.legislation.co.nz.
- 40. Please contact the lead investigator, Jeanne-Marie Grobler on _____ or _____ if you have any questions.

Yours sincerely

Kylie Higgs
Acting Credit Investigations and Compliance Manager