

15 October 2020

Superloans Napier Limited
81 Carlyle Street
Napier South
Napier 40110

via email only:

Attention: [REDACTED], Managing Director

Dear [REDACTED]

Credit Contracts and Consumer Finance Act 2003: Warning

1. The Commerce Commission (the Commission) has been investigating Superloans Napier Limited (Superloans Napier) under the Credit Contracts and Consumer Finance Act 2003 (CCCFA).
2. We have now completed our investigation and are sending this letter to warn Superloans Napier about matters that we consider raise concerns under the CCCFA.¹
3. The investigation has focused on Superloans Napier's compliance with the responsible lending provisions in the CCCFA.
4. In summary, the Commission considers that Superloans Napier is likely to have breached s 9C(1) of the CCCFA by providing high-cost credit agreement² to borrowers on a regular and ongoing basis because it failed to:
 - 4.1 exercise the care, diligence and skill of a responsible lender before entering into an agreement to provide credit (as required by s 9C(2)(a)); and

¹ The CCCFA can be viewed in full at <http://www.legislation.govt.nz>.

² The Responsible Lending Code (the Code) treats high-cost credit agreements as those agreements where the annual interest rate (expressed in terms of a percentage) is 50% or greater. The Code states that lenders under a high-cost credit agreement should follow Guidance identified as applying to those agreements.

- 4.2 make reasonable inquiries before entering into an agreement with a borrower so as to be satisfied that the agreement would meet a borrower's requirements and objectives (as required by 9C(3)(a)(i)).
5. After weighing up the factors set out in our Enforcement Response Guidelines,³ the Commission has decided that it is appropriate to conclude this investigation by issuing this warning to Superloans Napier.

The investigation

6. The investigation into Superloans Napier forms part of the Commission's wider investigation into the Superloans Group, made up of 5 different trading entities.⁴
7. The investigation was opened in August 2018 following a number of complaints, including complaints from financial mentors, which raised concerns about the Superloans Group's compliance with the responsible lending provisions of the CCCFA.
8. The period of conduct considered by the investigation is 1 November 2017 to 31 October 2018 (the relevant period).
9. The investigation has considered:
- 9.1 information and documents, including approximately 50 borrowers' loan files provided by Superloans Group both voluntarily and in response to statutory notices issued under the CCCFA and the Fair Trading Act 1986 (FTA);
 - 9.2 information provided by ██████████, managing director of all trading entities within the Superloans Group, at the three voluntary interviews he attended with the Commission; and
 - 9.3 further information provided by Superloans Group about the changes made to its practices and policies since the responsible lending provisions of the CCCFA came into effect on 6 June 2015, including changes made throughout the course of the Commission's investigation.

Information provided by Superloans Group

10. Superloans Napier is a trading entity of Superloans Group, which provides "Express loans" and pawn loans via five stores in the Wellington and Hawkes Bay regions. The investigation was primarily concerned with suitability assessments on Express loans.

³ The Enforcement Response Guidelines are available at <http://www.comcom.govt.nz/the-commission/commission-policies/enforcement-response-guidelines/>.

⁴ The Commission has issued separate warnings letters to other entities within the Superloans Group who have engaged in similar conduct of concern.

11. During the relevant period, Superloans Napier provided high-cost credit agreements under its Express loans.⁵ Customer files provided to the Commission show borrowers were charged interest rates of up to 364% per annum, compounded daily.⁶

Assessment of borrowers' requirements and objectives

12. The loan files reviewed during the investigation show little information about the extent of the inquiries that Superloans Group made when assessing loan suitability. The files commonly do not record a loan purpose and we did not find any information to confirm that staff had made an assessment of whether Express loans would meet borrowers' requirements. There is no evidence on the files that Superloans Napier took into account borrowers' previous borrowing in assessing the suitability of the loan.
13. ██████ said at interview that staff always ask borrowers about the purpose of a loan or a top-up (although that the purpose has not always been recorded in diary notes) but he did not give any indication that staff make enquiries so as to be satisfied that its Express loans are suitable for borrowers. In any event, we found no evidence that such inquiries were made.
14. We were advised that staff go through loan terms and conditions with borrowers and that its mobile app, counter monitors⁷, website, and in-store television displays contain the following message:

"Loan only suitable for short-term needs. Not suitable for long-term or regular borrowing"

15. However, we note that Superloans Group's unsolicited direct marketing in the form of SMS messages to borrowers, promoting the use of further high-cost credit, did not contain a high-cost risk warning. For example, Superloans Napier customer ██████ received the following SMS message on 22 May 2018:

"Hi ██████. You now qualify for a topup on your Express loan. You can get an extra \$750 in your hands today. Thanks"

16. An email from ██████ indicated that staff were required to discuss the reason for the loan with borrowers to ensure that a loan will be suitable for their objectives.⁹ However, the policy and procedure documents Superloans Group provided during the course of the investigation did not contain information about how staff should assess whether high-cost credit agreement will meet a borrower's requirements and objectives.

⁵ Superloans Group does offers interest and fee free Express loans for first time borrowers only. These loans may be subject to a "dishonoured payment fee" upon default.

⁶ Loan ██████ dated 30 March 2017 364% pa ██████

⁷ This refers to in-store computer monitors which borrowers can use to complete loan paperwork.

⁸ Customer number ██████

⁹ Provided by Superloans Group on 25 January 2019.

17. Our investigation has identified a number of Superloans Napier borrowers who have been provided with high-cost Express loans on a regular and ongoing basis. [REDACTED] [REDACTED] for example, had 19 loans in a 12-month period. The end result of this continued lending was, as the graphs at **Attachment A** show, that borrowers' indebtedness increased.¹⁰

Credit Contracts and Consumer Finance Act 2003

Application of the CCCFA

18. The CCCFA protects consumers when they borrow money or buy goods on credit. It sets out the rules that must be followed by lenders when they provide loans to consumers in New Zealand.
19. The Express Loan contracts that Superloans Napier enters into with its borrowers are consumer credit contracts under s 11 of the CCCFA.¹¹

Responsible lending principles

20. Lenders entering into consumer credit contracts on or after 6 June 2015 are required to comply with the Lender Responsibility Principles set out in section 9C of the CCCFA.¹²
21. Sections 9C(1), 9C(2)(a)(ii), 9C(2)(b) and 9C(3)(a)(i) of the CCCFA are relevant to this warning. They state:
- (1) Every lender must comply with the lender responsibility principles.
 - (2) 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 and before taking a relevant guarantee; ...
 - (b) comply with all the lender responsibilities specified in subsections (3), (4), and (5).
 - (3) The lender responsibilities are that a lender must in relation to an agreement with a borrower,-
 - (a) make reasonable inquiries, before entering into the agreement, so as to be satisfied that it is likely that ...
 - (i) the credit or finance provided under the agreement will meet the borrower's requirements and objectives; ...

¹⁰ [REDACTED] was ultimately declared bankrupt.

¹¹ Under s 11 of the CCCFA a credit contract will be a consumer credit contract if the loan is to a natural person, if the loan is primarily for domestic or household purposes, and if interest or fees are payable on the loan or a security is taken for the loan.

¹² Section 9C(1) states: "Every lender must comply with the lender responsibility principles."

22. The Responsible Lending Code (the Code)¹³ provides guidance on how lenders may comply with the Lender Responsibility Principles (and the associated lender responsibilities).

Responsible Lending Code

23. The Code provides that a lender should be satisfied that the scope and methods of inquiry are reasonable and will provide a sufficient basis for the lender to be satisfied that it is likely that the credit agreement will meet the borrower's requirements and objectives.¹⁴
24. The Code suggests a lender's inquiries into a borrower's requirements and objectives may include whether the credit is required on a one-off basis, or on an ongoing basis, among other things.¹⁵
25. With regard to the extent of inquiries, the Code notes the lender should always make more extensive inquiries where there is a greater risk that the agreement will not meet into the borrower's requirements and objectives, including where the agreement is a high-cost credit agreement.¹⁶

The Commission's view

26. The Commission considers that Superloans Napier is likely to have breached s 9C(1) because it did not exercise the care, diligence and skill of a responsible lender before entering into its loan agreements (s 9C(2)(a)(ii)) and it failed to make reasonable inquiries so as to be satisfied that loan agreements would meet borrowers' requirements and objectives 9C(3)(a)(i).
27. Superloans Napier is likely to have failed to exercise the care, diligence and skill of a responsible lender because there is no evidence that it had any process for using the borrowers stated purpose to assess whether the loan would be likely to meet the borrower's requirements and objectives. The Superloans Group Responsible Lending guidelines did not contain any guidance on how staff should comply with the responsibilities under 9C(3)(a)(i).
28. In our view, the evidence shows that where Superloans Napier entered into multiple high-cost agreements with borrowers it could not be satisfied that the loans met the borrowers requirements and objectives pursuant to 9C(3)(a)(i):
- 28.1 Superloans Napier promoted and allowed its loans to be used on a regular and long-term basis;

¹³ The Code can be viewed in full at: <https://www.consumerprotection.govt.nz/assets/uploads/responsible-lending-code-june-2017.pdf>.

¹⁴ Code [4.2]

¹⁵ Code [4.3(c)].

¹⁶ Code [4.6]

28.2 It encouraged longer term and regular borrowing through the use of text and email messaging to borrowers.

29. We note that the new High Cost lending rules prohibit lenders from lending to repeat borrowers.

Warning and next steps

30. The Commission has decided that it is appropriate to conclude this investigation by issuing this warning. The Commission will not be taking any further action against Superloans Napier at this time in relation to the conduct identified in this investigation.

31. We will however take this warning into account if Superloans Napier were to engage in similar conduct in the future. We may also draw this warning to the attention of a court in subsequent proceedings brought by the Commission against Superloans Napier.

32. The Commission recommends that Superloans Napier seeks legal advice and takes all steps necessary to ensure that it is complying with all relevant obligations, including its obligations as a responsible lender.

33. 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.

The Commission's role

34. The Commission is responsible for enforcing and promoting compliance with a number of laws in New Zealand, including the CCCFA. The CCCFA protects the interests of consumers in connection with credit contracts and other consumer finance.

Penalties for breaching the CCCFA

35. Only the courts can decide if there has actually been a breach of the CCCFA.

36. A lender who breaches s 9C of the CCCFA may:

36.1 have a declaration concerning that breach made against it by a court;

36.2 be subject to injunctive relief requiring the lender to comply with the lender responsibility provisions;

36.3 be ordered to pay the losses or damages of a borrower; and/or

36.4 be ordered to pay exemplary damages to a borrower.

- 36.5 for breaches of section 9C of the CCCFA after 20 December 2019, lenders can be liable for pecuniary penalties of up to \$600,000 for a company and \$200,000 for an individual.
37. Where a lender fails more than once to comply with any of the provisions of the CCCFA the court may make an order prohibiting or restricting any person (including a director or principal officer of a lender) from:
- 37.1 providing credit under a consumer credit contract;
 - 37.2 acting as a director or taking part directly or indirectly in the management or control of any company or business that provides credit under a consumer credit contract; or
 - 37.3 being in the employ or acting as an agent of a credit in any capacity that allows the person to take any part in the negotiation of a consumer credit contract involving the provision of credit by the creditor.
38. You should be aware that the decision outlined in this letter does not prevent any other person or entity from taking private action through the courts.

Further information

39. We have published a series of fact sheets and other resources including a responsible lenders' guide to help businesses comply with the CCCFA 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 your obligations and the Commission's role in enforcing the CCCFA.
40. You can view the CCCFA and other legislation at www.legislation.co.nz.
41. Thank you for your assistance with this investigation. Please contact [REDACTED] on [REDACTED] or by email at [REDACTED] if you have any questions about this letter.

Yours sincerely

[REDACTED]

Manager
Competition and Consumer Branch
Auckland

Attachment A

