

6 April 2017

www.comcom.govt.nz

Approved Finance Limited

By email only to [REDACTED]

ref: 12.3/15906

Attention: [REDACTED]

Dear [REDACTED]

Credit Contracts and Consumer Finance Act 2003: Warning

The Commerce Commission (Commission) has been investigating the conduct of Approved Finance Limited (Approved Finance) under the Credit Contracts and Consumer Finance Act 2003 (CCCFA). The investigation has now been completed and we write to alert you to our concerns.

The Commission considers that Approved Finance is likely to have breached section 17 of the CCCFA by failing to disclose to customers key information applicable to consumer credit contracts as set out in Schedule 1 of the CCCFA.

After weighing up the factors set out in our Enforcement Response Guidelines¹, we have decided to conclude this investigation by issuing this warning letter.

The investigation

On 10 March 2016, the Commission obtained a copy of Approved Finance's standing disclosure document being Approved Finance's Pay Day Loan Agreement and Disclosure of Terms (Disclosure Statement).

We decided to investigate Approved Finance after reviewing the Disclosure Statement because it appeared not to comply with the CCCFA disclosure requirements.

During our investigation, the Commission considered information, including copies of consumer loan contracts provided voluntarily by Approved Finance.

¹ The Enforcement Response Guidelines are available at <http://www.comcom.govt.nz/the-commission/commission-policies/enforcement-response-guidelines/>.

The information that we gathered established to our satisfaction that:

- Approved Finance only enters into consumer credit contracts and offered these exclusively at its physical premises in Auckland and Christchurch.
- Between 6 June 2015 and 30 June 2016 Approved Finance entered into 15,343 consumer credit contracts.
- The disclosure provided to customers when entering into these contracts did not include all of the key information applicable to the contracts as set out in Schedule 1 of the CCCFA.
- Once made aware of the Commission's views, Approved Finance:
 - Updated its standard form disclosure statement. All consumer credit contracts entered into from 1 July 2016 used the updated disclosure statement.
 - Provided an updated disclosure statement to affected customers with outstanding loan balances. These customers were given time (in accordance with section 27 of the CCCFA) to cancel their contract or agree to continue with the loan on the updated terms.
- Approved Finance ceased trading on 26 July 2016.
- Approved Finance has no assets to refund any costs of borrowing received under the relevant contracts.
- Approved Finance has not chased any amounts owing from debtors following ceasing trading.
- Approved Finance's sole director, [REDACTED], does not intend to:
 - act as a director or take part directly or indirectly in the management or control of any other company or business that provides credit under consumer credit contracts; and
 - be in the employ, or act as agent, of any other creditor in any capacity that allows him to take any part in the negotiation of consumer credit contracts involving the provision of credit by the creditor.
- The Registrar of Companies removed Approved Finance from the Companies Register on 11 March 2017.

The Commission's view

In this case, the Commission's view is that Approved Finance was likely to be in breach of section 17 of the CCCFA.

Section 17 of the CCCFA requires lenders to disclose to borrowers as the key information set out in Schedule 1 that is applicable to the loan.

The consumer credit contracts we reviewed did not comply with section 17 because they did not disclose the following:

- the borrower's right to apply for changes on the grounds of unforeseen hardship (as required by Schedule 1(sa) of the CCCFA);
- the name and contact details of the dispute resolution scheme of which Approved Finance was a member (as required by Schedule 1(ua) of the CCCFA); and
- Approved Finance's registration number under the register of financial services providers (as required by Schedule 1(ub) of the CCCFA).

Under section 99(1A) of the CCCFA, a debtor is not liable for the costs of borrowing in relation to any period during which the creditor has failed to comply with sections 17 or 22.

We acknowledge that Approved Finance is no longer trading and has no assets to refund any costs of borrowing received under the contracts. We have taken these matters into account in reaching our decision to issue this warning letter.

Warning

While we will not be taking any further action at this time, we will take this warning into account if such conduct were to continue or if [REDACTED] or any entity associated with [REDACTED] was to engage in similar conduct in the future.

This 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

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

Penalties for breaching the CCCFA

Only a Court can decide if there has actually been a breach of the CCCFA and a Court can impose penalties where it finds the law has been broken.

Lenders who breach the CCCFA may:

- be unable to enforce the contract or any right to recover property or any security interest;
- have to refund money or pay compensation;
- have to pay statutory damages;

- be convicted of a criminal offence and fined up to \$600,000 per offence for companies and \$200,000 for individuals;
- be issued with an infringement notices with a fine of \$1,000 for each infringement offence;
- have contracts changed by the court if the contracts are oppressive; and
- be banned from operating within the finance industry.

You should be aware that the decisions outlined in this letter do not prevent any other person or entity from taking private action through the courts.

Further information

We have published a series of fact sheets and other resources 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.

You can also view the CCCFA and other legislation at www.legislation.co.nz.

Thank you for your assistance with this investigation. Please contact Crystal Euden on 09 920 3495 or by email at crystal.euden@comcom.govt.nz if you have any questions about this letter.

Yours sincerely



James McIvor
Acting Team Leader – Credit