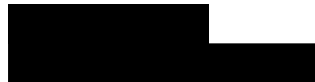


31 August 2022



Moola.co.nz Limited (t/a Moola)  
Level 3  
299 Durham Street  
Christchurch 8031

ref: 12.3/PRJ0045103

Attention: 

Via email only: 

Dear 

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

1. As you know, the Commerce Commission (Commission) has been investigating the conduct of Moola.co.nz Limited (Moola) under the Credit Contracts and Consumer Finance Act 2003 (CCCFA). We have now completed our investigation and are writing to you to inform you of the outcome.
2. In summary, the Commission considers that Moola is likely to have breached section 17 of the CCCFA by failing to:
  - 2.1 disclose to borrowers key information applicable to consumer credit contracts as set out in Schedule 1 of the CCCFA (section 17), and
  - 2.2 provide disclosure in writing in a disclosure statement (section 32(1)(a)).
3. After weighing up the factors set out in our Enforcement Response Guidelines,<sup>1</sup> we have decided to conclude this investigation by issuing this warning letter.

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

## The investigation

4. On 19 November 2020, the Commission obtained a copy of Moola's Loan Agreement and Disclosure Statement (Disclosure Statement) as part of Moola's response to the Commission's statutory notice dated 20 October 2020. Similar notices were issued to several lenders as part of a monitoring project to check compliance with the high-cost lending rules which took effect from 1 May 2020 and 1 June 2020.
5. We decided to investigate Moola after reviewing the Disclosure Statement because it appeared not to comply with the CCCFA requirements for high-cost consumer credit contracts.
6. During our investigation, the Commission considered information, and reviewed sample copies of high-cost consumer credit contracts, provided by Moola. The information and documents that we gathered established to our satisfaction that:
  - 6.1 Moola only operates online, via its website: <https://www.moola.co.nz/>.
  - 6.2 Moola offers high-cost loans, with annual interest rates of over 50% per annum.
  - 6.3 14 out of 26 of Moola's high-cost consumer credit contracts that we reviewed did not disclose that the loan was high-cost (Schedule 1 (na)), the cost of borrowing information (Schedule 1 (nb)) and the rate of charge information (Schedule 1 (nc)) between 2 May and 12 June 2020.
  - 6.4 Between:
    - 6.4.1 1 May 2020 and 23 June 2020 Moola entered into 2,212 high-cost consumer credit contracts which did not include a statement that the loan was high-cost (Schedule 1 (na)) and the cost of borrowing information (Schedule 1 (nb)).
    - 6.4.2 1 June 2020 and 30 June 2020 Moola entered into 1,516 high-cost consumer credit contracts which did not disclose rate of charge information (Schedule 1 (nc)).

(these are together referred to as the relevant periods).
  - 6.5 Given the matters noted at [6.4] above, the Disclosure Statement provided to customers during the relevant periods did not include all the key information applicable to the contracts as set out in Schedule 1 of the CCCFA.
  - 6.6 The missing key information, excluding the rate of charge information, was otherwise available, during the relevant periods, in the application process and/or on Moola's website.

- 6.7 Moola revised its Disclosure Statement, to include the missing key information:
- 6.7.1 from 23 June 2020 (statement that the loan was high cost and cost of borrowing information); and
  - 6.7.2 30 June 2020 (rate of charge information).

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

7. In this case, having fully considered the relevant information received, the Commission's view is that Moola was likely to be in breach of sections 17 and 32(1)(a) of the CCCFA during the relevant periods.
8. Section 17 of the CCCFA requires lenders to provide borrowers with disclosure of the Schedule 1 key information applicable to the loan before the loan is entered into.
9. 14 of Moola's 26 high-cost consumer credit contracts between 2 May and 12 June 2020 did not comply with section 17 because they did not disclose the following:
  - 9.1 a statement that the contract is a high-cost consumer credit contract (na);
  - 9.2 a statement of the effect of section 45E, which must include the maximum cost of borrowing, how the costs are calculated, and the total amount that is recoverable (nb) (required from 1 May 2020); and
  - 9.3 a statement of the rate of charge (nc) (required from 1 June 2020).
10. Some of the missing key information was otherwise available on Moola's website or during the application process (namely, the statement that the loan is high-cost and the cost of borrowing information)). However, section 32(1)(a) provides that the information that must be disclosed must be in writing in a *disclosure statement*. As the missing key information was not in writing in Moola's Disclosure Statement, the Commission considers that Moola breached section 17 during the relevant periods.

### **Warning**

11. After weighing up the factors set out in our Enforcement Response Guidelines, the Commission has decided it is appropriate to conclude our investigation into Moola by issuing this warning letter.
12. The Commission has taken the following factors into account:
  - 12.1 the initial disclosure issue was identified and rectified by Moola, without intervention from the Commission, via updates made to its disclosure statement on 23 June 2020 and 30 June 2020;
  - 12.2 the time period during which Moola failed to provide full disclosure was limited;

- 12.3 that some of the key information was otherwise available on Moola’s website or through the application process; and
- 12.4 the potential harm to borrowers was low.
13. This warning represents our opinion that the conduct which Moola has engaged in is likely to have breached the CCCFA and that legal action remains available to the Commission in future if the conduct continues or is repeated.
14. We may draw this warning letter to the attention of the courts in any subsequent proceedings brought by the Commission against Moola.
15. This warning letter is public information and will be published on the Commission’s case register on our website.<sup>2</sup>
16. Finally, we note that this warning will be available to the Commission’s certification team for their consideration.

### **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 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**

18. 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.
19. Where a lender fails to comply with the disclosure requirements, it may:
- 19.1 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);
- 19.2 be required to pay statutory damages to each affected borrower of the lesser of \$6,000 or 5% of the total of all advances made and agreed to be made under the contract (section 89(1)(d)(iii)); and/or
- 19.3 be required to pay a fine of up to \$30,000 for each disclosure statement that did not meet the disclosure standards (section 102A).
20. 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.

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<sup>2</sup> Available at <https://comcom.govt.nz/case-register>.

**Further information**

21. 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](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 CCCFA.
22. You can also view the CCCFA and other legislation at [www.legislation.co.nz](http://www.legislation.co.nz).
23. 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]

Kylie Higgs  
**Acting Credit Investigations and Compliance Manager**