

26 October 2023

Zak Finance Limited
141 Grace Street, Strathern
Invercargill 9812

Attn: [REDACTED]

By email only: [REDACTED]

Dear [REDACTED]

Outcome of Commerce Commission's investigation into Zak Finance Limited and its compliance with the Credit Contracts and Consumer Finance Act 2003: Warning

1. The Commerce Commission (Commission) has been investigating the conduct of Zak Finance Limited (Zak Finance) 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. In summary, having fully considered the relevant information and documents received, the Commission considers that Zak Finance is likely to have breached its continuing disclosure obligations and/or responsible lending obligations under sections 18(1) and 9C(2)(a)(iii) of the CCCF Act.
3. The Commission has determined that in the circumstances of this case it is appropriate to issue Zak Finance with a warning letter.¹ We will not be bringing legal action against Zak Finance at this time.
4. We note that a warning is not a final finding of non-compliance. Only the Courts can decide whether a breach of the law has occurred.

¹ Please refer to the Commission's published *Enforcement Response Guidelines*, available [here](#).

The law

Application of the CCCF Act

5. 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.
6. The following provisions of the CCCF Act are relevant to the Commission's investigation into Zak Finance, as covered in this letter.

Continuing disclosure to borrowers

7. Sections 18(1) and (2) state that:

(1) Every creditor under a consumer credit contract must ensure that disclosure of as much of the information set out in section 19 as is applicable to the contract is made periodically to every debtor under the contract in continuing disclosure statements.

(2) The maximum period for a continuing disclosure statement is, —

- (a) in the case of a revolving credit contract, 45 working days; or
- (b) in any other case, 6 months.

Responsible lending

8. Sections 9C(1) and (2)(a)(iii) 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 -

...

(iii) in all subsequent dealings with a borrower in relation to an agreement or a relevant insurance contract or a guarantor in relation to a relevant guarantee.

The investigation

9. On 26 January 2022, the Commission opened an investigation into Zak Finance to assess its compliance with its obligations under the CCCF Act. Zak Finance cooperated with the Commission throughout the course of the investigation by providing information and attending a voluntary interview.
10. Our review of a customer file for a loan commencing 8 April 2014 showed that Zak Finance did not provide any continuing disclosure statements for the duration of the loan. This was confirmed by [REDACTED] for Zak Finance, who stated at interview that he did not know what continuing disclosure was, and that it was not Zak Finance's practice to issue continuing disclosure statements.

11. As the 8 April 2014 loan was not a revolving credit contract, Zak Finance was required to provide continuing disclosure to the borrower at least once every six months. Between the commencement of the loan and the date the borrower was adjudged bankrupt, the Commission identified 10 instances where Zak Finance failed to provide continuing disclosure.
12. On 24 September 2023, Zak Finance told the Commission that it had recently issued continuing disclosure statements to its borrowers with existing accounts and will continue to do so twice a year. It apologised unreservedly for its mistakes.

The Commission's view

13. In this case, having fully considered the relevant information and documents received, the Commission's view is that Zak Finance has likely breached the continuing disclosure obligations under section 18(1) of the CCCF Act by failing to provide continuing disclosure to its borrowers since at least June 2015 to September 2023.
14. We consider that Zak Finance also breached its responsible lending obligations under section 9C(2)(a)(iii). This is because exercising the care, diligence and skill of a responsible lender in subsequent dealings with borrowers includes a requirement to comply with legal obligations to those borrowers. The Commission notes that Zak Finance's failure to provide continuing disclosure persisted for many years, contrary to its obligations as a responsible lender under section 9C(2)(a)(ii) of the CCCF Act.

Warning

15. After weighing up the factors set out in our *Enforcement Response Guidelines*, the Commission has decided it is appropriate to conclude our investigation into Zak Finance's likely breaches of sections 18(1) and/or 9C(2)(a)(iii) of the CCCF Act by issuing this warning letter.
16. The Commission has taken the following key factors into account:
 - 16.1 Zak Finance cooperated with the Commission's investigation.
 - 16.2 We consider the potential financial harm to customers to be low given the small company and the size of Zak Finance's loans (maximum of \$500).
 - 16.3 Zak Finance is now aware of its continuing disclosure obligations and has provided its current customers with corrective continuing disclosure.
17. This warning letter records our view that the conduct which Zak Finance has engaged in is likely to have breached the CCCF Act and that legal action remains available to the Commission in the future if the conduct continues or is repeated.

Consequences of the warning

18. This warning letter is public information and will be published on the Commission's case register on our website. We may make public comment about our investigation into Zak Finance and the conclusions we have reached, including issuing a media statement which will also be available on our website.
19. We may draw this warning letter to the attention of the Courts in any subsequent proceedings brought by the Commission against Zak Finance.
20. This warning letter will be available to the Commission's certification team for their consideration.² It will also form part of the information that the Commission's certification team considers should Zak Finance make another application in the future for fit and proper person certification under section 131F of the CCCF Act. We note that Zak Finance is certified until 23 September 2027.
21. Finally, we note that our decision to issue this warning letter does not preclude any other person or entity from taking private action through the Courts.

Penalties for breaching the CCCF Act

22. Only the Courts can decide if there has been a breach of the CCCF Act. The potential penalties of each of the likely breaches of the CCCF Act are set out below.
23. Where a lender fails to comply with section 18 by not providing continuing disclosure, it may:
 - 23.1 Be required to pay statutory damages to affected borrowers in accordance with sections 88 to 92.
 - 23.2 Be convicted of a criminal offence and fined up to of up to \$200,000 in the case of an individual and \$600,000 in the case of a company, in accordance with section 103.³
24. Where a lender fails to comply with section 9C by failing to exercise the care, diligence, and skill of a responsible lender, it may:
 - 24.1 Be subject to injunction orders.
 - 24.2 Be ordered to pay the losses or damages of a borrower, including exemplary damages or have a credit contract re-opened.

² More information on the role of our certification team is available [here](#).

³ It is an infringement offence to fail to provide any of the information outlined in section 19 of the CCCF Act that is required to be provided as continuing disclosure (s 102A(1)(a)). However, a complete failure to give or send a disclosure statement in accordance with section 18 is an offence under section 103 (per section 102A(2)).

24.3 Where the breach occurred after 19 December 2019, the lender may also be required to pay a pecuniary penalty of up to \$200,000 in the case of an individual and \$600,000 in any other case, in accordance with section 107A.

Further information

- 25. We have published a series of fact sheets and other resources to help businesses comply with the CCCF Act and other legislation we enforce. These are available on our website at www.comcom.govt.nz. We encourage Zak Finance to visit our website to better understand its obligations and the Commission's role in enforcing the CCCF Act.
- 26. The CCCF Act and other legislation can be viewed at www.legislation.govt.nz.
- 27. Thank you for your assistance with this investigation. Please contact [REDACTED] on [REDACTED] or [REDACTED] if you have any questions in relation to this letter.

Yours sincerely

[REDACTED]

[REDACTED]

Credit Investigations and Compliance Manager