

31 August 2023

Canterbury Regional Council (trading as Environment Canterbury)
Christchurch Office
200 Tuam Street
Christchurch 8011

Attention: []

By email only: []

Dear []

Credit Contracts and Consumer Finance Act 2003: Warning for non-compliance in relation to the Healthier Homes Canterbury loan scheme

1. The Commerce Commission (Commission) has been investigating Canterbury Regional Council (trading as Environment Canterbury) (ECan) after receiving a self-report from ECan about multiple potential breaches of the Credit Contracts and Consumer Finance Act 2003 (CCCF Act). The breaches relate to ECan's Healthier Homes Canterbury loan scheme (Healthier Homes Scheme).
2. The Commission has now completed its investigation into the matters disclosed. The purpose of this letter is to inform you of our views and to advise that, having considered the factors set out in our Enforcement Response Guidelines, we have decided to issue ECan with a warning.¹
3. We note that a warning is not a final finding of non-compliance. Only a Court can decide whether a breach of the law has occurred.

¹ The Commerce Commission Enforcement Response Guidelines are available at:
https://comcom.govt.nz/_data/assets/pdf_file/0030/62589/Enforcement-Response-GuidelinesOctober-2013.pdf

Healthier Homes Scheme

Nature of the scheme

4. The Commission understands that the Healthier Homes Scheme operated by ECan enabled eligible Canterbury ratepayers to add the cost of home heating, insulation and/or ventilation products and installation to their rates bill, up to the value of \$6,000.
5. The full amount of the cost, plus 5.9% interest, was payable by the ratepayer via their rates bills over a period of nine years from the next 1 July rating year. The interest rate was intended to reflect ECan's cost of funds and make the scheme cost neutral for other ratepayers. The only fee associated with the scheme was a processing fee of \$100 for early repayment.
6. The relevant goods and services were supplied to applicants by third parties and ECan paid the suppliers' invoices. The amounts paid constituted the amount of the loans.
7. The applicants' rates, which included the loan amount under the Healthier Homes Scheme, were collected by nine territorial authorities in the Canterbury region. They then accounted to ECan for payments they received as part of their rating agreements.
8. Applications for the Healthier Homes Scheme were accepted from August 2018 to March 2021. In that time, 1,326 loans were entered into with an approximate value of \$7.17 million, comprising principal of approximately \$5.516 million and interest of \$1.654 million.

Overview of self-report

9. In February 2021, the Commission issued a warning to Auckland Council for likely breaches of the CCCF Act in relation to its Retrofit Your Home Programme.² This caused ECan to seek advice about the compliance of its own Healthier Homes Scheme and, on 2 March 2021, ECan paused the scheme by suspending acceptance of any new applications.
10. On 15 March 2021, ECan received a general letter which the Commission sent to regional councils regarding the application of the CCCF Act to similar schemes to the Auckland Council's Retrofit Your Home Programme. ECan advised the Commission that it had paused its own Healthier Homes Scheme and that a review of the scheme was underway.

² See the warning letter issued to Auckland Council on the Commission's case register at <https://comcom.govt.nz/case-register/case-register-entries/auckland-council>.

11. ECan’s review identified multiple potential breaches of the CCCF Act and, on 2 June 2021, ECan self-reported those issues to the Commission. It also commissioned an independent party to conduct a complete review of the Healthier Homes Scheme to enable ECan to identify the impact of any CCCF Act breaches. That independent report was provided to the Commission on 16 November 2022.
12. Representatives of the Commission and ECan met and corresponded on several occasions in relation to the potential breaches identified. The Commission has reviewed all information provided by ECan. It acknowledges that ECan has co-operated with and assisted the Commission throughout its investigation, including by voluntarily providing its own detailed reports, and by responding to voluntary information requests made by the Commission.

The Commission’s view

13. ECan accepts that loans made through the Healthier Homes Scheme are consumer credit contracts pursuant to section 11 of the CCCF Act. The Commission agrees with this assessment based on its understanding of the Healthier Homes Scheme.
14. The primary purpose of the Act is to protect the interests of consumers in connection with credit contracts. To achieve this, lenders entering into consumer credit contracts have certain obligations, including those designed to ensure that consumers can make informed choices, to understand what they are agreeing to, and to keep track of their debts.
15. The Commission is responsible for promoting compliance with and enforcing the CCCF Act. Having reviewed all the information supplied by ECan, the Commission considers that ECan has likely breached its:
 - 15.1 obligations under the responsible lending provisions, being sections 9C(3)(a)(ii); 9C(3)(b)(ii) and 9K(3)(a); and
 - 15.2 disclosure obligations under sections 17 and 18,
 as summarised in the table below.

Sections of the Act likely breached	Obligation	Why a breach has likely occurred
Section 9C(3)(a)(ii)	A lender must make reasonable enquiries to be satisfied that it is likely the borrower will make the payments under the agreement without suffering	ECan relied on checks by the territorial authorities that the borrower was a homeowner and that their rates payments were up to date.

	substantial hardship.	In our view, ECan needed to make reasonable inquiries into the borrower's income and expenses to satisfy itself that the borrower could make the loan repayment over and above the rates payments themselves.
Section 9C(3)(b)(ii)	A lender must assist the borrower to reach an informed decision as to whether or not to enter into the agreement, and to be reasonably aware of the full implications of doing so.	ECan did not sufficiently assist borrowers to make an informed decision in that borrowers were not informed of the total amount of interest payable under the loan before entering into the agreement separately from the principal, and some loan terms were sent out after the borrower's application was accepted.
Section 9K(3)(a)	If the lender has an internet site, the lender must display prominently and clearly on that site the creditor's fees, default fees, and annual rates of interest (and default interest charge rates).	ECan did not publish the default interest rate prominently and clearly on its website.
Section 17	A lender under a consumer credit contract must ensure that disclosure of as much of the key information set out in Schedule 1 as is applicable to the contract is made to every borrower under the contract before the contract is entered into.	ECan did not provide all of the key information set out in Schedule 1 before the contract was entered into with borrowers. In particular, the initial disclosure statement did not provide the amount and description of each advance, charge or payment accounted for in the unpaid balance, the total amount of interest charges payable and details regarding the payments required. In some cases there may have been a complete failure to provide a copy of the initial disclosure to a borrower.
Section 18	A lender under a consumer credit contract must ensure that	Prior to 2019, ECan did not include all required information in its

	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.	continuing disclosure statements in that it did not disclose the amount of the payment and the timing of the next payment. From 2019, ECan did not provide continuing disclosure as it was not able to reflect the correct outstanding balances owing.
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16. We acknowledge that ECan does not agree with the Commission's view that it likely breached section 9C3(a)(ii).
17. We also acknowledge that ECan identified in its self-report to the Commission that it may:
- 17.1 have charged interest early or received overpayment of interest because it assumed all borrowers paid rates quarterly and did not account for those who paid rates monthly or prepaid rates, in potential breach of section 38 of the CCCF Act; and
- 17.2 not have credited loan and interest payments against borrowers' accounts in a timely way, in potential breach of section 46 of the CCCF Act.
18. The potential breaches identified at paragraph 17 do not form part of the Commission's warning.

Warning

19. After weighing up the particular circumstances of this matter, the likely breaches of sections 9C(3)(a)(ii), 9C(3)(b)(ii), 9K(3)(a), 17 and 18 of the CCCF Act and the factors set out in our Enforcement Response Guidelines, the Commission has decided to issue ECan with a warning.
20. In reaching this conclusion, the Commission has taken the following key factors into account:
- 20.1 The nature and intent of the Healthier Homes Scheme, which was initiated to provide a means for ratepayers to borrow funds at affordable interest rates to enable them to make their houses warmer, healthier and to reduce ongoing electricity costs.
- 20.2 ECan proactively self-reported the matter to the Commission and subsequently co-operated fully with its investigation.

- 20.3 ECan proactively sought legal advice regarding its compliance with the CCCF Act once notified of the Commission's action in relation to Auckland Council's Retrofit Your Home Programme. It also engaged an independent party to help assist with the identification of potentially impacted borrowers under its own scheme, and for the purposes of facilitating a remediation process.
- 20.4 ECan has advised the Commission that it has, or will:
- 20.4.1 Close the Healthier Homes Scheme to new applicants.
 - 20.4.2 Repay all interest charged on affected loans, totalling approximately \$1.654 million.
 - 20.4.3 Not charge interest to borrowers who continue to have a loan from 1 July 2023.
 - 20.4.4 Pay \$100, the amount of the early repayment fee, to all former borrowers who repaid their loans early, meaning that a further amount of \$23,100 will be paid to 231 affected borrowers.
 - 20.4.5 Take active steps to ensure compliance with its obligations under the CCCF Act going forward by developing and sending revised documentation to existing borrowers to ensure they have complete and up-to-date continuing disclosure, and by implementing a compliance programme for managing existing loans with assistance from its legal advisers.

Consequences of the warning

21. This warning records our view that the conduct that ECan engaged in is likely to have breached the CCCF Act. While we will not be taking further action against ECan in relation to its conduct at this time, this does not prevent third parties from doing so, and legal action remains available to the Commission in future if the conduct continues or is repeated. We may draw this warning letter to the attention of the Courts in any subsequent proceedings brought by the Commission against ECan.
22. 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 ECan and the conclusions we have reached, including issuing a media statement which will also be available on our website.

Further information

23. 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.
24. The CCCF Act and other legislation can be viewed at www.legislation.govt.nz.

25. Thank you for your assistance with this investigation. Please contact [], Principal Investigator on [] if you have any questions in relation to this letter.

Yours sincerely

[]
Credit Investigations and Compliance Manager

Copied sent by email only to: []