

8 March 2016

Cashinaflash.co.nz Limited
20 Northcroft Street
Takapuna
Auckland

Attention: Mr Matthew Bailey, Director

Dear Mr Bailey

Credit Contracts and Consumer Finance Act 2003: Warning

The Commerce Commission has been investigating the conduct of Cashinaflash.co.nz Limited (**Cash in a Flash**) 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 Cash in a Flash 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, namely:

- Cash in a Flash's registration number under the register of financial services providers (as required by Schedule 1(ub) of the Act)
- the name and contact details of the Dispute Resolution Scheme of which it is a member (as required by Schedule 1(ua) of the Act); and
- the borrower's right to apply for changes on the grounds of unforeseen hardship (as required by Schedule 1(sa) of the Act).

After carefully weighing up the factors set out in our Enforcement Response Guidelines,¹ we have decided to conclude this investigation by issuing this warning letter.

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

The investigation

We decided to investigate Cash in a Flash after learning that it did not publish its standard form contract terms on its website.² Following advice from the Commission, Cash in a Flash uploaded its standard form contract onto its website. This contract appeared not to comply with the CCCFA requirements and warranted further investigation.

During our investigation, the Commission considered information provided by Cash in a Flash and reviewed sample copies of contracts for its consumer loans (**consumer credit contracts**).

The information that we gathered established to our satisfaction that:

- Cash in a Flash only enters into consumer credit contracts and offers these exclusively through its website www.cashinaflash.co.nz. Between 6 June 2015 and 16 October 2015 Cash in a Flash entered into 842 consumer credit contracts with 277 different customers.
- The disclosure provided to customers when entering into these consumer credit 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 its non-compliance, Cash in a Flash:
 - Updated its standard form disclosure statement. All new loans made after 16 October 2015 are made with the updated disclosure statement.
 - Provided an updated disclosure statement to customers with outstanding loan balances. These customers were given seven working days to cancel their consumer credit contract or agree to continue with the loan on the updated terms.
 - All customers, including those who had already fully repaid their loans, cancelled their contracts or agreed to continue with their loans on the updated terms were refunded their costs of borrowing, including interest, establishment fees and credit fees.
 - Terminated any enforcement action or gave credits to offset overdue or defaulting loans by the amount of the costs of borrowing.
- The total amount refunded or credited by Cash in a Flash is \$122,365.04.

The Commission's view

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

² Section 9J of the Credit Contracts and Consumer Finance Act 2003.

Section 17 of the CCCFA requires lenders to provide borrowers with disclosure of key information applicable to the loan. A list of potentially applicable key information is set out in Schedule 1 to the CCCFA.

The consumer credit contracts we reviewed as part of our investigation did not comply with section 17 because they did not disclose the following:

- Cash in a Flash's Financial Service Providers Register registration number (as required by Schedule 1(ub));
- the name and contact details of the Dispute Resolution Scheme of which it is a member (as required by Schedule 1(ua)); and
- the borrower's right to apply for changes on the grounds of unforeseen hardship and advice as to how an application under that section may be made (as required by Schedule 1(sa)).

Under section 99(1A) of the CCCFA, the costs of borrowing charged during the period of non-compliant disclosure are not enforceable. We acknowledge that Cash in a Flash has taken the steps outlined above to refund affected customers and correct its disclosure. We have taken these remedial actions into account in reaching our decision to issue this warning letter.

While we will not be taking any further action against Cash in a Flash at this time, we will take this warning into account if such conduct were to continue or if you were to engage in similar conduct in the future. We may also draw this warning to the attention of a court in any subsequent proceedings brought by the Commission against Cash in a Flash.

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
- 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 Jack Bisset on 04 924 3634 or by email at jack.bisset@comcom.govt.nz if you have any questions about this letter.

Yours sincerely



John Lyall
Manager
Competition Branch – Auckland