

16 October 2014

The Directors
Broadlands Finance Limited
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Fair Trading Act 1986: Warning

The Commerce Commission has been investigating the conduct of Broadlands Finance Limited (**BFL**) under the Fair Trading Act. We have now completed our investigation and are writing to you to alert you to our concerns.

In summary, the Commission considers that BFL's conduct in representing that it was entitled to add interest and fees to customers' loans after it has repossessed and sold consumer goods pursuant to a security agreement (**repossession and sale action**) is likely to breach sections 9 and 13(i) of the Fair Trading Act.

The investigation

During our investigation, the Commission considered allegations that BFL had represented it was entitled to charge interest and fees on loans following repossession and sale action.

Under section 35 of the Credit (Repossession) Act 1997 (CRA) a creditor is not entitled to recover more than the balance left owing after the proceeds of the sale of the repossessed asset have been deducted.

Our investigation established that BFL had added charges and fees to debtors' accounts after repossession and sale action.

As a result of the Commission investigation, BFL undertook an analysis of its loan ledger to determine how many of its loans involved the repossession and sale of a secured asset and whether interest and fees had been charged after the secured asset had been sold. In total, BFL interrogated 20,000 loans covering the period from 2000 to July 2013.

The analysis identified that BFL had charged \$3.3 million in fees and interest after repossession and sale action, mostly between 2005 and 2008. 807 loans were affected and approximately 50% of the interest and fees had been charged on closed loan accounts. Further, in some cases where debtors had been repaying the loans (after judgment was entered or by attachment order), BFL had continued to collect payments after the recoverable balance had been repaid.

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BFL has now made changes to its charging policy and processes and it no longer charges interest and/or fees on loans where the secured asset has been repossessed and sold. Pursuant to a settlement agreement entered into with the Commission, BFL has agreed to credit customers' loan accounts with fees and interest charged after repossession and sale action and to pay compensation to customers who have overpaid their loans.

Settlement

On 22 September BFL entered into a settlement agreement with the Commission and provided enforceable undertakings in relation to its conduct. Under the terms of the settlement agreement BFL has agreed to:

- credit affected loan accounts with the amount of interest and fees charged after repossession and sale action;
- pay compensation to customers who have overpaid their loans as a result of BFL's conduct;
- cease charging interest and fees after repossession and sale action in the future;
- advise affected customers and credit reference agencies of the adjustments to the loan balances.

The Commission's view

Section 35 of the CRA provides that a creditor is not entitled to recover more than the balance of a loan left after the net proceeds of the sale of a secured asset have been deducted:

35 Limit on creditor's right to recover from debtor

If the net proceeds of sale are less than the amount required to settle the agreement under section 31 as at the date of the sale, the creditor is not entitled to recover more than the balance left after deducting those proceeds from that amount (whether under a judgment or otherwise).

In the Commission's view, a creditor who, in breach of section 35 of the CRA, represents that it has a right to charge additional fees and interest is also likely to be in breach of the Fair Trading Act.

In our view, BFL's conduct in representing that it was entitled to continue to charge interest and/or fees on loans after repossession and sale action is likely to mislead or deceive debtors about the amounts owing under their loan agreements and about BFL's entitlement to charge interest and fees in these circumstances. We consider it likely that BFL's conduct breached sections 9 and 13(i) of the Fair Trading Act.¹

As noted above, BFL has now ceased the conduct that led to our investigation and has entered into a settlement agreement under which it has agreed to compensate affected

¹ Section 13(i) prohibits traders from making false or misleading representations concerning the existence, exclusion, or effect of any condition, warranty, guarantee, right, or remedy.

customers and give enforceable undertakings. Accordingly, we will not be taking any further action against BFL at this time.

We will, however, take this warning into account if BFL engages 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 BFL. This may include any proceedings brought in respect of the enforceable undertakings provided by BFL pursuant to the Settlement Agreement.

This warning letter is public information and will be published on our website.

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 Fair Trading Act. The Act prohibits false and misleading behaviour by businesses in the promotion and sale of goods and services.

Penalties for breaching the Fair Trading Act

Only the courts can decide if there has actually been a breach of the Fair Trading Act. The court can impose penalties where it finds the law has been broken. A company that breaches the Fair Trading Act can be fined up to \$600,000 and an individual up to \$200,000 per offence.

You should be aware that our decision to issue this warning letter does not prevent any other person or entity from taking private action through the courts.

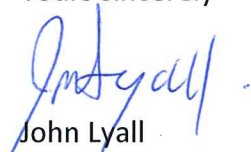
Further information

We have published a series of fact sheets and other resources to help businesses comply with the Fair Trading Act and the other legislation we enforce. These are available on our website at www.comcom.govt.nz.

You can also view the Fair Trading Act and other legislation at www.legislation.co.nz.

Thank you for your assistance with this investigation. Please contact Nicola Schaab on 09 920 3491 or by email at nicola.schaab@comcom.govt.nz if you have any questions about this letter.

Yours sincerely



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