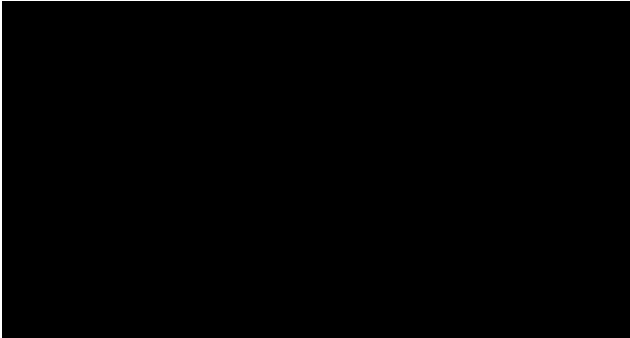


19 February 2024



Official Information Act #23.157 – Information about lending law enforcement

1. We refer to your request to the Commerce Commission (the Commission) received on 19 January 2024 for information about the Register of Cancelled and Refused Lenders. You asked:
 - 1.1 Which of those entities were refused certification?
 - 1.2 What were the reasons each of the entities that were refused certification were refused certification?
 - 1.3 The reasons for each certification refusal [as] recorded in file notes/records of some kind in the ComCom.
 - 1.4 Which of the entities on the list cancelled their certification themselves? Is the reason for that cancelling recorded by the ComCom? If it is, what was it?
2. We have treated this as a request for information under the Official Information Act 1982 (OIA).

Our response

Refused certification

3. The Commission has issued final decisions to refuse certification to four lenders of the entities listed. These are:
 - 3.1 Brent Alan JOHNSTON FSP1001633
 - 3.2 CHASE SECURITIES LIMITED FSP1002446

3.3 Yong Jiao LU FSP502067

3.4 Yong Jiao LU FSP1005874

Reasons for refusing certification

4. Section 131G of the Credit Contracts and Consumer Finance Act 2003 (CCCF Act) provides that the Commission must issue a certification if the Commission is satisfied that the applicant's directors, senior managers, and proposed directors and senior managers, are fit and proper persons to hold their respective positions.
5. Certification was refused where the Commission was not satisfied that the applicant's directors, senior managers, and proposed directors and senior managers, were fit and proper persons to hold their respective positions.
6. In determining whether an individual director or senior manager is fit and proper, the Commission considers the following criteria for each individual:
 - 6.1 Probity, reputation and financial integrity; and
 - 6.2 Competency and capability
7. More information about this can be found on the Commission's website in our [Fit and Proper Person Certification Guidance](#) on page 8. We have also provided some information about the fit and proper person test in **Appendix 1**.
8. The Commission refused certification to the lenders described above on the basis that it was not satisfied that each of the applicant's directors, senior managers, and proposed directors and senior managers met the required probity, reputation and financial integrity and/or competency and capability limbs.
9. To protect the privacy of natural persons, the Commission is withholding under section 9(2)(a) of the OIA the decision notes relevant to the four applications that were refused. We consider that good reasons exist for withholding information and this is not outweighed by other considerations which would make it desirable, in the public interest, to make the information available (section 9(1) of the OIA).
10. In summary, we can advise that in assessing these lenders and declining certification, the Commission has taken into account the following:
 - 10.1 Undisclosed liquidations;
 - 10.2 Undisclosed serious criminal convictions, especially those related to fraud and against crimes committed against vulnerable persons;
 - 10.3 Undisclosed bankruptcies;
 - 10.4 Undisclosed enforcement outcomes by the Commission and other regulators including Australian Securities and Investments Commission;

- 10.5 Competency and capability, especially where the lender is unable to demonstrate experience and knowledge of the CCCF Act or providing consumer credit;
- 10.6 Failure by the lender to engage with the Commission, provide an accurately completed Certification Application Form and/or failure to provide any other information that the Commission may have requested.

Cancellation of certification

- 11. The Commission may suspend or cancel certification under s 131P of the CCCF Act. Lenders may request that their certification be voluntarily cancelled under s 131P(a). For those lenders that have requested that their certification be cancelled, the reasons are because:
 - 11.1 they are no longer in the business of providing consumer credit and/or mobile trading service and have ceased trading;
 - 11.2 they have sold their loan book (as is the case for AA Finance Limited);
 - 11.3 they had selected the service in error and had never provided consumer credit.
- 12. Of the 21 lenders listed who had their certification cancelled as at January 2024:
 - 12.1 Three lenders (Moola.co.nz Limited FSP211325, Zooma Car Finance Limited FSP765652 and Secured Asset Solutions Limited FSP684391) became subject to an insolvency event and subsequently requested cancellation;
 - 12.2 One lender had certification cancelled where the Commission was no longer satisfied that the directors and senior managers were fit and proper persons;
 - 12.3 The remaining 17 lenders were requested by the lenders themselves.
- 13. Certification is not a “set and forget” regime. Lenders are obliged to notify the Commission of certain prescribed changes that occur after certification has been issued.¹ The certification status of a lender may be suspended or cancelled if the Commission is no longer satisfied that the directors and senior managers are fit and proper persons.
- 14. Just because the Commission has received a complaint or complaints about a lender, or because it has taken enforcement action against a lender, it doesn’t necessarily mean that the individuals are not fit and proper and cannot be certified.
- 15. The Commission has implemented a proactive monitoring program to assist lenders in meeting their certification compliance obligations, and to detect where possible, those lenders that might be providing consumer credit without being certified, or where prescribed changes have not been notified. The Commission continues to act

¹ [Regulation 25 of the CCCF Regulations 2004](#)

on complaints from the public and where appropriate, it can cancel or suspend lenders from certification.

Further information

16. If you are not satisfied with the Commission's response to your OIA request, section 28(3) of the OIA provides you with the right to ask an Ombudsman to investigate and review this response. However, we would welcome the opportunity to discuss any concerns with you first.
17. Please note the Commission will be publishing this response to your request on its website. Your personal details will be redacted from the published response.
18. Please do not hesitate to contact us at uia@comcom.govt.nz if you have any questions about this response.

Yours sincerely



Senior Counsel Official Information Act

Appendix 1: The fit and proper person test

1. Prior to the implementation of the certification regime, the Commission sought external legal advice around the appropriate ‘fit and proper person test’ and how it should be applied. The test adopted by the Commission is set out in the leading New Zealand case of *The New Zealand Law Society v Stanley*² [*Stanley*]. The principles in *Stanley* have since been applied twice by the High Court in the context of two other professional occupations with “fit and proper person” or “good character” entry requirements, namely insolvency practitioners (*Grant v Restructuring Insolvency and Turnaround Association NZ Inc*³) [*Grant*] and real estate salespersons (*The Registrar of the Real Estate Agents Authority v Cavanagh*⁴) [*Cavanagh*].
2. The Commission has adopted the principles from *Stanley* and *Grant* (summarised below) into Guiding Principles which it considers as part of its certification decision making. In considering how the test is applied, of particular note:
 - 2.1 The test is not designed to be punitive, but forward looking. Punishment for past conduct has no place.
 - 2.2 Perfection is not required - the Commission should not lightly deprive an applicant from the opportunity to provide services.
3. The purpose of the fit and proper person standard is to ensure that the directors, senior managers, and proposed directors and senior managers of an applicant to whom certification is issued are persons who can be entrusted to meet the duties and obligations imposed on entities providing services as a creditor under consumer credit contracts and/or as a mobile trader.
4. Reflecting the statutory scheme, the assessment focusses on the need to protect the public and to promote the confident and informed participation by consumers in markets for credit.
5. The evaluation of whether the directors, senior managers, and proposed directors and senior managers of an applicant meets the standard is a forward-looking exercise. The Commission must assess at the time of the application the risk of future misconduct, irresponsible lending, other predatory lending behaviour, or serious non-compliance. The evaluation is accordingly a protective one. Punishment for past conduct has no place.
6. The concept of a fit and proper person in section 131G involves consideration of whether the directors, senior managers, and proposed directors and senior managers of an applicant are honest, trustworthy and persons of integrity, who

² *The New Zealand Law Society v Stanley* [2020] NZSC 83

³ *Grant v Restructuring Insolvency & Turnaround Association NZ Inc*, High Court at Auckland [2020] NZHC 2876

⁴ *The Registrar of the Real Estate Agents Authority v Cavanagh*, High Court at Auckland, 31 March 2021, [2021] NZHC 680

understand and are concerned to meet the duties and obligations on lenders and/or mobile traders under the CCCF Act.

7. When assessing past convictions, the Commission must consider whether that past conduct remains relevant. The inquiry is a fact-specific one and the Commission must look at all of the evidence in the round and make a judgement as to the present ability of the applicant's directors and senior managers, or proposed directors or senior managers, to meet their duties and obligations as the directors or senior managers of a lender and/or mobile trader.
8. The fit and proper person standard is necessarily a high one, although the Commission should not lightly deprive an applicant from the opportunity to provide services.
9. The onus of showing that the standard is met is on the applicant. Applications are unlikely to turn on fine questions of onus.
10. Any information that has a "real risk" of influencing the Commission must be disclosed to the applicant when giving notice of an anticipated adverse decision under section 131H(5). Where specific concerns are held by the Commission, such concerns should be noted as opposed to the Commission simply providing material and inviting comment from the applicant without identifying the respect(s) in which comment is sought.
11. While applicants carry the onus of satisfying the Commission as to their entitlement to certification and to provide evidence accordingly, if the Commission considers evidence (that has not been provided by the applicant) as likely to be important, the Commission must, when giving notice under section 131H(5), identify any evidence which it considers that the applicant should provide, rather than remain "unhelpfully silent" and then take into account the absence of such evidence.
12. Situations may arise where the Commission is generally satisfied that the test in section 131G is met, but has specific concerns about an individual director, senior manager, or proposed director or senior manager. The Commission may propose that the applicant be certified conditional on changes being made to that individual's position. For example, the Commission might propose that the individual does not participate in certain kinds of decision-making until they complete specified training. Such conditions should be no more onerous than necessary for the Commission to be satisfied that the individual is fit and proper to hold their position within the applicant.
13. Before a final decision to refuse certification is issued, the Commission will first issue a preliminary decision, providing the lender with an opportunity to respond with submissions that the Commission will take into account before a final decision is made. Lenders may withdraw their applications at this stage and a final decision will not be issued. They will therefore not appear on the list of refused certifications that is published on our website. They are not certified and cannot provide consumer credit or mobile trader services.