

2 July 2024

Attn: [REDACTED]
Rent4Keeps Company Operations (NZ) Limited
c/o Franchise Accountants
2d Amera Place
Huntington Park
Auckland – 2013

By post and by email to: [REDACTED]
Cc by email to: [REDACTED]

Dear [REDACTED]

Credit Contracts and Consumer Finance Act 2003: Warning for likely breaches of sections 9C and 32

1. The Commerce Commission (Commission) has been investigating Rent4Keeps Company Operations (NZ) Limited NZBN: 9429046355041 (R4K) in relation to its compliance with the Credit Contracts and Consumer Finance Act 2003 (CCCF Act). We have now completed our investigation and are writing to inform you about our views.
2. In summary, having considered the relevant information and documents provided, the Commission considers that R4K likely breached the CCCF Act in relation to the matters dealt with in this letter in that it did not:
 - 2.1 exercise the care, diligence and skill of a responsible lender in all subsequent dealings with a borrower in relation to an agreement, as required by section 9C(2)(a)(iii);
 - 2.2 assist the borrower to reach informed decisions in all subsequent dealings in relation to the agreement including by ensuring that any information provided by the lender to the borrower after the agreement has been entered into is not presented in a manner that is, or is likely to be, misleading, deceptive or confusing, as required by section 9C(3)(c)(ii); and

- 2.3 ensure that disclosure was not likely to deceive or mislead a reasonable person with regard to any particular that is material to the consumer credit contract, as required by section 32(1)(d).
3. The Commission has determined that in the circumstances of this case and applying the Commission's enforcement criteria, it is appropriate to issue R4K with a warning letter instead of bringing legal action.¹
 4. We note that a warning is not a finding of non-compliance. Only the courts can decide whether a breach of the law has occurred.

The investigation

5. The Commission opened an investigation into R4K to assess its compliance with its disclosure and responsible lending obligations under the CCCF Act. R4K cooperated with the Commission throughout the course of the investigation by voluntarily providing information and documents.
6. Our findings are based on the information and documents obtained during the investigation, including R4K's responses to various voluntary information requests and its reply to the Commission's preliminary views letter dated 22 March 2024.
7. The Commission's investigation found that, over a 17-month period between 26 October 2021 and 30 March 2023, R4K overcharged 2,317 customers \$55,886.04 in interest payments. This overcharging was due to a rounding error in R4K's system calculator for loan pricing which caused consumers to be charged interest at a higher rate than provided for in their contracts (interest pricing error).
8. The interest pricing error was identified by R4K during the course of the Commission's investigation and self-reported. R4K has advised that all affected customers were credited with any overcharge incurred and that it has updated its system to ensure that this issue cannot happen again.
9. The investigation also found that between 21 July 2021 and 9 January 2023, a total of 2,744 R4K customers received continuing disclosure statements that incorrectly contained Australian Dollar (AUD) amounts instead of New Zealand Dollar (NZD) amounts (disclosure currency error). The disclosure currency error was due to a system error in statement production whereby the system would incorrectly insert an AUD amount instead of an NZD amount in the "Rental Interest/Charge" column on continuing disclosure statements.
10. The investigation found a further issue relating to R4K continuing disclosure statements whereby certain statements contained incorrect annual interest rates (disclosure interest rate error). This issue occurred following an update of R4K's terms and conditions for new customers which provided for an interest rate of 47%, as opposed to the interest rate that applied for existing customers. This impacted a total of 1,080 R4K customers between 10 October 2021 and 10 May 2023.

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

11. The disclosure statement issues whereby continuing disclosure statements that were issued to customers included incorrect interest rates and/or amounts in AUD instead of NZD were caused by system errors which have now been corrected. R4K has advised that no customers were incorrectly charged because of these disclosure errors.

The Commission's view

12. Every lender must comply with the lender responsibility principles in section 9C of the CCCF Act.² The lender responsibility principles outline that every lender must:
- 12.1 at all times, exercise the care, diligence, and skill of a responsible lender in all subsequent dealings with a borrower in relation to an agreement;³ and
 - 12.2 comply with all the lender responsibilities in subsections (3), (4) and (5) of section 9C.
13. The lender responsibilities include that a lender must, in relation to an agreement with a borrower, assist the borrower to reach an informed decision in all subsequent dealings in relation to the agreement, including by ensuring that any information provided by the lender to the borrower after the agreement has been entered into is not presented in a manner that is, or is likely to be, misleading, deceptive or confusing.⁴
14. We are issuing you with this warning letter because, in our view, R4K's conduct is likely to have breached the lender responsibility principles in that a responsible lender exercising care, diligence and skill would not have permitted customers to be:
- 14.1 overcharged interest due to a system calculation error; and
 - 14.2 provided with continuing disclosure statements that contained erroneous annual interest rates or with references to currency amounts that were not applicable (the disclosure currency and interest rate errors).
15. We also consider that the disclosure currency error and the disclosure interest rate error likely breached the disclosure standards in addition to the responsible lending provisions in the CCCF Act.
- 15.1 The disclosure standards include that disclosure must not be likely to mislead or deceive a reasonable person with regard to any particular that is material to the consumer credit contract.⁵
 - 15.2 The incorrect information in the continuing disclosure statements could have confused or misled consumers about material information in their consumer credit contracts, such as the interest rate payable and the currency in which

² Section 9C(1) CCCF Act.

³ Section 9C(2)(a)(iii).

⁴ Section 9C(3)(c)(ii).

⁵ Section 32(1)(d).

the loan account operated which impacts the amount and payments under the loan given differences in exchange rates.

- 15.3 The misleading continuing disclosure statements risked affecting the borrower's ability to reach informed decisions in all subsequent dealings in relation to the agreement.⁶
16. We also consider that a responsible lender would regularly review its systems and disclosure statements for compliance.
17. The relevant provisions of the CCCF Act are set out in full in Attachment A.

Warning

18. After weighing up the factors set out in our Enforcement Response Guidelines, including the seriousness of the conduct, extent of harm and public interest, the Commission has decided it is appropriate and sufficient to conclude our investigation into the matters the subject of this letter by issuing this warning letter.
19. The Commission has taken the following key factors into account:
 - 19.1 The range of compliance issues identified with R4K's systems resulting in overcharging and disclosure concerns.
 - 19.2 The number of customers impacted across the issues investigated.
 - 19.3 The significant length of time over which the conduct occurred.
 - 19.4 The harm caused by the conduct by overcharging customers and misleading customers regarding the currency and interest rate of the loans.
 - 19.5 The actions taken by R4K to address the issues including:
 - 19.5.1 paying remediation to affected borrowers;
 - 19.5.2 providing corrective disclosure to customers; and
 - 19.5.3 updating its policies and procedures.
 - 19.6 R4K's co-operation throughout the investigation, including self-reporting additional compliance concerns when identified during the investigation.
20. This warning records our view that the conduct in which R4K engaged is likely to have breached the CCCF Act and that legal action remains available to the Commission in future if the conduct is repeated.

⁶ Section 9C(3)(c)(ii).

Consequences of the warning

21. This warning letter is public information and will be published on the Commission's case register on our website. We may also make public comment about our investigations and conclusions, including issuing a media release or making comment to media.
22. We may draw this warning letter to the attention of the Courts in any subsequent proceedings brought by the Commission against R4K.
23. This warning letter will be available to the Commission's certification team for its consideration.
24. You should be aware 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

25. Where a lender fails to comply with sections 9C and/or 32 of the CCCF Act it may:
 - 25.1 be ordered to pay the amount of any loss or damage caused by the conduct, and other related orders, under sections 93 and 94;
 - 25.2 be required to refund borrowers any money the lender was not entitled to receive under section 48; and/or
 - 25.6 be required to pay statutory damages to borrowers in accordance with section 88.
26. For breaches of section 9C, a lender may be ordered to pay pecuniary penalties up to a maximum of \$200,000 for an individual per breach or \$600,000 per breach for a company in accordance with section 107A.
27. For breaches of section 32, a lender may be fined up to \$200,000 per offence for an individual and a company up to \$600,000 per offence in accordance with section 103.

Further information

28. We encourage R4K to regularly review its policies and procedures and its website to ensure that it is complying with the CCCF Act. If you remain unsure about your legal obligations under the CCCF Act, we recommend that you seek legal advice.
29. We have published a series of fact sheets and other resources to help businesses comply with the CCCF Act as well as the other legislation we enforce. These are available on our website at: www.comcom.govt.nz.
30. You can also view the CCCF Act, Credit Contracts and Consumer Finance Regulations 2004 and other legislation at: <https://www.legislation.govt.nz/>.

31. Thank you for your assistance with this investigation. Please contact [REDACTED] on [REDACTED] or by email at: [REDACTED] if you have any questions about this letter.

Yours sincerely

[REDACTED]

[REDACTED]

Acting Investigations and Compliance Manager
Credit Branch

Attachment A

Relevant sections of the CCCF Act

Section 9C - Lender responsibility principles

- (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; and
 - (b) comply with all the lender responsibilities specified in subsections (3), (4), and (5).
- (3) The lender responsibilities are that a lender must, in relation to an agreement with a borrower,—
 - ...
 - (c) assist the borrower to reach informed decisions in all subsequent dealings in relation to the agreement, including by ensuring that—
 - ...
 - (ii) any information provided by the lender to the borrower after the agreement has been entered into is not presented in a manner that is, or is likely to be, misleading, deceptive, or confusing; and
 - ...

Section 32 - Disclosure standards

- (1) Disclosure must—
 - (a) be in writing in a disclosure statement; and
 - (b) contain the information required by this Act; and
 - (ba) if required by the regulations, be made in the form prescribed by regulations for the purposes of this paragraph; and
 - (c) express the required information clearly, concisely, and in a manner likely to bring the information to the attention of a reasonable person; and
 - (d) not be likely to deceive or mislead a reasonable person with regard to any particular that is material to the consumer credit contract, guarantee, consumer lease, or buy-back transaction (as the case may be).