

14 June 2024

Attn: [REDACTED]
Southland Building Society
51 Don Street
Invercargill 9810

By email only to: [REDACTED]
Cc: [REDACTED]

Dear [REDACTED]

Outcome of Commerce Commission's Credit Contracts and Consumer Finance Act 2003 investigation into variation disclosure for interest only extensions on a term loan: Warning

1. The Commerce Commission (Commission) has concluded its investigation into Southland Building Society (SBS Bank) under the Credit Contracts and Consumer Finance Act 2003 (CCCF Act).
2. The Commission has determined that in relation to the self-reported issue of failing to provide variation disclosure of an agreed change to extend the interest only period of a term loan, it is appropriate to issue SBS Bank with a warning.¹
3. We note that a warning is not a final finding of non-compliance. Only the courts can decide whether a breach of the law has occurred.²

Summary of the investigation

4. In September 2022, SBS Bank self-reported that for the period from 31 March 2014 to 30 November 2021 (the relevant period), that where home loan customers requested an extension to their interest only period, variation disclosure was not provided before the variation took effect, nor was it provided at any point after the change took effect. During the relevant period, this issue affected borrowers across 790 home loans (affected borrowers).
5. SBS Bank advised that—

¹ The Commission's Enforcement Response Guidelines are available on the Commission's website [here](#).

² The potential penalties for each of the likely breaches are set out at **Attachment A**.

- 5.1 the new interest only period expiry date was discussed with affected borrowers at the time of their request;
 - 5.2 it was SBS Bank's view that an extension of an existing interest only period did not have any material effect on the other particulars of the loan;
 - 5.3 affected borrowers received continuing disclosure statements throughout the period of the interest only extension;
 - 5.4 internet banking was available to affected borrowers which would have shown that affected borrowers continued to make interest only repayments; and
 - 5.5 SBS Bank provided variation disclosure to affected borrowers when the loan reverted from interest only back to principal and interest, confirming the expiry date.
6. By March 2023, SBS Bank provided corrective disclosure to affected borrowers.
 7. SBS Bank remedied this issue from 1 December 2021 via a manual process, and the first phase of its automated solution was implemented in March 2022, ensuring that variation disclosure was thereafter provided before the change took effect. SBS Bank is now in the process of remediating affected borrowers at \$305 per loan, totalling \$240,950.
 8. The relevant law relating to this investigation can be viewed in full at **Attachment A**.

Findings

9. It is the Commission's view that SBS Bank has likely breached section 22 of the CCCF Act in that it failed to provide agreed variation disclosure to affected borrowers before the change took effect, where there was an agreed change to extend the interest only period on home loans during the period 31 March 2014 to 30 November 2021.
10. In our view, the content available to affected borrowers identified by SBS Bank at [5.1] to [5.5] in relation to the agreed change was insufficient to meet the disclosure requirements in section 22(1) of the CCCF Act in that full particulars of the change were not provided.
11. In addition, no information relating to the agreed change was provided to affected borrowers before the change took effect. Therefore, we consider SBS Bank was also likely in breach of section 22(2) of the CCCF Act.

Warning

12. Disclosure is one of the key obligations of lenders under the CCCF Act. Disclosure helps borrowers understand what the loan will cost them and what the lender's and borrower's obligations are under the loan. Variation disclosure is particularly important as it helps borrowers understand the effect of the change(s) they have requested, before the change(s) takes effect. We consider that SBS Bank's failure to provide variation disclosure to this subset of borrowers, between 31 March 2014 to 30 November 2021, is particularly serious.

13. After considering the factors set out in our *Enforcement Response Guidelines*, the Commission has decided it is appropriate to conclude our investigation into SBS Bank by issuing this warning letter. When making our decision, the Commission has taken the following key factors into account:
 - 13.1 SBS Bank proactively self-reported the potential CCCF Act breach to the Commission and has cooperated during the course of the investigation;
 - 13.2 SBS Bank provided corrective disclosure to affected borrowers;
 - 13.3 SBS Bank has since implemented the necessary changes to its processes and/or systems to ensure that variation disclosure is provided to borrowers who are approved an interest only extension of their home loans; and
 - 13.4 SBS Bank is in the process of remediating \$305 per affected loan, totalling \$240,950.
14. Therefore, the Commission warns SBS Bank for the likely breach of section 22 of the CCCF Act. We will not be bringing any further legal action in relation to this matter. With this said, legal action remains available to the Commission in the future if the conduct continues or is repeated.
15. This warning letter is public information and will be published on the Commission's case register on our website. It may be drawn to the attention of the Court in any subsequent proceedings brought by the Commission against SBS Bank. We may also make public comment about our investigation and conclusions, including issuing a media release or making comment to media.
16. Finally, our decision to issue this warning letter does not preclude any other person or entity from taking private action through the courts.

Further information

17. 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.
18. You can also view the CCCF Act and other legislation at: <https://www.legislation.govt.nz/>.
19. 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]

Credit Branch Investigations & Compliance Manager, Commerce Commission.

Attachment A: Applicable law and maximum penalties

Disclosure of agreed changes

1. Section 22(1) and (2) of the CCCF Act states that:
 - (1) Every creditor under a consumer credit contract must ensure that disclosure of the following information is made to every debtor under the contract if the parties to the contract agree to change the contract:
 - (a) full particulars of the change;
 - (b) any other information prescribed by regulations to be information that must be disclosed under this section.
 - (2) Disclosure under this section must be made before the change takes effect.

Maximum penalty

2. Where a lender fails to comply with section 22 of the CCCF Act, it may:
 - 2.1 be required to refund the costs of borrowing paid by borrowers during the period in which the lender failed to comply with section 22 in accordance with sections 48 and 99(1A);
 - 2.2 be required to pay statutory damages to borrowers in accordance with sections 88 to 92; and/or
 - 2.3 be liable on conviction under section 103 of the CCCF Act and be fined up to \$200,000 for an individual and \$600,000 for a body corporate, for committing an offence due to the failure of providing variation disclosure.