

18 March 2020

To: The Commerce Commission c/- fitandprobersubmissions@comcom.govt.nz

Submission on Criteria for Certification

Thank you for the opportunity to comment on the Criteria for Certification.

We support the Commerce Commission in their mandate to issue ‘fit and proper’ certification to consumer credit providers company directors and management. In light of the recent decision issued by the District Court in the case against Allan and Wayne Hawkins, where they were banned from company management for the maximum period of 10 years after such appalling behaviour, described by Judge Gibson as operations conducted with “ruthlessness” we make the following submission on the Criteria for Certification.

Our response to the District Court decision: <https://www.ngatangatamicrofinance.org.nz/wp-content/uploads/2020/02/PR-Feb-2020.pdf>

Q1. What do you think of the proposed ‘fit and proper’ criteria in Table 1 and Table 2?

Probity, reputation and financial integrity criteria

Ref #6 We call for a **lifetime exclusion** from directorship or senior management for egregious financial behaviour

Ref #7 We call for a **lifetime exclusion** from directorship or senior management for egregious financial behaviour

Comments:

- a) How regularly will declaration of convictions, offences, investigations, charges be expected to be provided – will there be an annual submission or just when/if there have been any changes? Will this be reliant on self-reporting?
- b) How will you ensure transparency on how they operate past & present and report accurately?
- c) Do they demonstrate customer focused motivations/attitude in their work?
- d) Character references would likely be an indicator of future conduct

Q2. What sorts of change in circumstances do you think could affect the Commission’s assessment of whether directors and senior managers of a lender or mobile trader are ‘fit and proper’?

Competency and capability

Ref #17 We call for **investigative practice** rather than relying on self-reporting

Ref #21 We call for a **system of monitoring** rather than self-reporting to ensure sustained capability and upskilling

Comments:

- a) Is the person of sound mind and not reckless past and/or present?
- b) Is there competency in running a business in respect to tech skills and do they demonstrate a nature of seeking continuous improvement of systems that assist the client, public and sector experience/interaction?
- c) Have they sufficient capital in the business for sustainability and protection of staff and consumers?
- d) Do they show competency at running a business within the law and demonstrate equality and fairness?
- e) Do they demonstrate a sufficient understanding of the legislation and regulations around consumer protection?

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