

**COMMERCE COMMISSION**

**AND**

**LINSA FINANCE LIMITED**

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**SETTLEMENT AGREEMENT**

**DATED** *22 August* **2019**

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This Agreement is made on the 22nd day of August 2019

## Parties

1. The Commerce Commission is a statutory body established under section 8 of the Commerce Act 1986 (**Commission**).
2. Linsa Finance Limited (**Linsa**) is a registered limited liability company having its registered office at 78 Maxwell Road, Tauranga.

## Interpretation

3. **Affected Loan** means a consumer credit contract entered into in the Relevant Period where Linsa:
  - 3.1 is the creditor; and
  - 3.2 provided disclosure to Current Borrowers and Former Borrowers using the Disclosure Statement.
4. **Agreed Amount** means \$350,000 being the amount which Linsa has agreed to refund to Current Borrowers and Former Borrowers in accordance with this Agreement.
5. **Agreement** means this Settlement Agreement.
6. **Best Endeavours** includes using information currently known to Linsa, as well as searches of Google, Facebook, White Pages and/or the electoral roll, and taking any steps that Linsa would usually make to locate a non-paying debtor.
7. **CCCFA** means the Credit Contracts and Consumer Finance Act 2003.
8. **Costs of Borrowing** means any or all of the following costs charged by Linsa on Affected Loans during the Relevant Period:
  - 8.1 credit fees;
  - 8.2 default fees; and
  - 8.3 interest charges.
9. **Current Borrower** means a borrower under an Affected Loan who took out a loan with Linsa during the Relevant Period and who, as at the date of this Agreement, has money owing to Linsa under any loan (including overdue amounts that have been written off).
10. **Disclosure Statement** means the document entitled 'Security Agreement' given to Current and Former Borrowers by Linsa during the Relevant Period.



11. **Former Borrower** means a borrower under an Affected Loan who took out a loan with Linsa during the Relevant Period but who does not have, as at the date of this Agreement, an open loan with Linsa.
12. **Refund Amount** means the amount calculated in accordance with the formula at clause 28.
13. **Relevant Period** means the period between 6 June 2015 and 29 March 2016 inclusive.

## **Background**

14. Linsa is a finance company offering personal loans, operating from physical branches in Tauranga and Manurewa.
15. Linsa is a creditor for the purposes of the CCCFA.
16. On 10 March 2016, as part of a review of the terms and conditions of creditors engaged in third tier lending in South Auckland, the Commission obtained a copy of Linsa's Disclosure Statement from Linsa's Manurewa branch.
17. The Commission decided to investigate Linsa after reviewing the Disclosure Statement because it appeared to not contain the information required by section 17 and Schedule 1 of the CCCFA.
18. Linsa co-cooperated with the Commission's investigation.
19. During its investigation, the Commission considered information provided by Linsa and reviewed sample copies of Linsa's consumer credit contracts.
20. The information gathered established to the Commission's satisfaction that:
  - 20.1 In the Relevant Period, Linsa entered into 1,721 secured and unsecured consumer credit contracts with 906 different borrowers.
  - 20.2 The disclosure provided to those borrowers, set out in the Disclosure Statement, did not include all of the key information applicable to the contracts as set out in Schedule 1 of the CCCFA.
  - 20.3 Linsa likely breached section 17 of the CCCFA by failing to correctly disclose to borrowers the following Schedule 1 information in its Disclosure Statement:
    - 20.3.1 An accurate statement of the borrower's cancellation rights under section 27 of the CCCFA (as required by Schedule 1(s)).
    - 20.3.2 Any statement of the borrower's right to apply for relief on grounds of unforeseen hardship and advice as to how an application under section 55 of the CCCFA could be made (as required by Schedule 1(sa)).

- 20.3.3 The frequency with which continuing disclosure statements would be provided (as required by Schedule 1(t)).
- 20.3.4 The name and contact details of the dispute resolution scheme of which Linsa was a member (as required by Schedule 1 (ua)).
- 20.3.5 Linsa's registration name and number on the Financial Service Providers Register (as required by Schedule 1(ub) and (uc)).
- 20.4 The total Costs of Borrowing charged by Linsa under the Affected Loans was \$684,970.35.
21. Under section 99(1A) of the CCCFA, a borrower is not liable for the Costs of Borrowing in relation to any period during which the creditor has failed to comply with section 17. The Commission's view is that affected borrowers are entitled as soon as practicable to have these Costs of Borrowing credited to their outstanding balances or refunded if their loans have been repaid (section 48(1)). Linsa disputes this.
22. Under sections 88 and 89 of the CCCFA, Linsa would be liable to pay statutory damages to affected borrowers. The Commission estimates that Linsa's liability for statutory damages calculated under section 89 is \$344,267.98.
23. Once it was made aware of the Commission's views, Linsa:
- 23.1 Accepted that during the Relevant Period it failed to properly disclose all of the information required by section 17 of the CCCFA.
- 23.2 Corrected its standard form disclosure statement. All consumer credit contracts entered into by Linsa from 30 March 2016 used the updated disclosure statement.
- 23.3 Provided corrective disclosure on 15 June 2016 to borrowers with outstanding loan balances as at that date.
24. Following its investigation, the Commission filed a civil proceeding against Linsa on 8 March 2019 seeking:
- 24.1 a declaration that Linsa breached its initial disclosure obligations under section 17 of the CCCFA in the Relevant Period;
- 24.2 an order under section 94(1)(a) of the CCCFA that Linsa repay or credit the full Costs of Borrowing to Affected Debtors; and
- 24.3 in the alternative, an order under section 90(1) of the CCCFA that Linsa pay statutory damages under sections 88(1), 89(1)(d) and 89(3) to Affected Debtors.
25. This Agreement sets out the terms on which the parties have agreed to resolve the Commission's civil proceeding.

## Acknowledgement of breach

26. Linsa acknowledges that during the Relevant Period it failed to properly disclose all of the information it was required to in likely breach of section 17 of the CCCFA.

## Action to be taken by Linsa

### Overview of action to be taken

27. To resolve the Commission's claim that Linsa has breached section 17 of the CCCFA, Linsa will in accordance with this agreement:
- 27.1 credit the Refund Amount to each Current Borrower;
  - 27.2 pay the Refund Amount to each Former Borrower;
  - 27.3 write to Current Borrowers and Former Borrowers advising them about the effect of this settlement on them;
  - 27.4 publish the fact of this settlement on its website in a form agreed with the Commission; and
  - 27.5 provide the Commission with an interim and a final report certifying that it has credited the Refund Amounts to each Current Borrower and paid the Refund Amounts to each Former Borrower.

### Calculating the Refund Amounts

28. Linsa will calculate the Refund Amount for each Current or Former Borrower by dividing the Agreed Amount by the number of Affected Loans, and then multiplying that amount by the number of Affected Loans entered into by the Current or Former Borrower. Set out as a formula, the Refund Amount is calculated as follows:

$$\left( \frac{\text{Refund Amount}^1}{\text{Number of Affected Loans}^2} \right) \times \text{Number of Affected Loans entered into by the Current or Former Borrower} = \text{Refund Amount for that Current or Former Borrower}$$

<sup>1</sup> The Refund Amount is \$350,000.

<sup>2</sup> The number of Affected Loans is 1,721.

### Crediting and paying the Refund Amounts

29. Linsa will:
- 29.1 credit each Current Borrower the Refund Amount to their current loan account within six months of the date of this Agreement as follows; and
  - 29.2 pay each Former Borrower the Refund Amount within nine months of the date of this Agreement as follows.

*Current Borrowers*

30. Linsa will credit the Refund Amount to each Current Borrower's loan balance(s).
31. If the Refund Amount owing to a Current Borrower is more than the total loan balance(s) owing by the Current Borrower to Linsa, Linsa will:
- 31.1 credit that part of the Refund Amount to the Current Borrower's loan balance(s) which will reduce the loan account(s) to a zero balance; and
  - 31.2 pay the remaining Refund Amount to the Current Borrower by direct credit to their nominated bank account, by cheque, or as directed by that Current Borrower.

*Former Borrowers*

32. Linsa will pay the Refund Amount to each Former Borrower by direct credit to their nominated bank account; by cheque, or as directed by that Former Borrower.
33. If Linsa does not hold current contact details for a Former Borrower, Linsa will:
- 33.1 use its Best Endeavours to contact the Former Borrower and provide them with the information set out in clause 34;
  - 33.2 pay the Refund Amount in accordance with any instructions received from the Former Borrower; or
  - 33.3 comply with clause 40 of this Agreement.

**Contacting Current Borrowers and Former Borrowers**

34. Linsa will use its Best Endeavours to send a posted letter and email to each Current Borrower and Former Borrower at their last known address and email address advising:
- 34.1 that Linsa failed to properly disclose all of the information it was required to during the Relevant Period to the Current Borrower or Former Borrower in likely breach of section 17 of the CCCFA;
  - 34.2 that Linsa has entered into this Agreement with the Commission;
  - 34.3 that the Agreement does not limit any liability Linsa has to the Current Borrower or Former Borrower for the conduct set out in clause 20;
  - 34.4 the amount of the Refund Amount owed to the Current Borrower or Former Borrower;



- 34.5 in relation to payment of the Refund Amount:
- 34.5.1 that the Current Borrower's loan balance(s) will be credited in accordance with clause 30 (if applicable) and the new loan balance;
  - 34.5.2 that the Current Borrower's loan balance(s) will be credited in accordance with clause 31 (if applicable), the new loan balance and seeking payment instructions for the balance of the Refund Amount;  
or
  - 34.5.3 seeking payment instructions from the Former Borrower where payment is required to be made under clause 32.

35. The letters will be sent to Current Borrowers on a staggered basis throughout the six month period referred to in clause 29.1, as the credit is calculated and processed for each Current Borrower.
36. The letters will be sent to Former Borrowers on a staggered basis throughout the nine month period referred to in clause 29.2, as the refund is calculated for each Former Borrower.
37. Within seven days from the date of this Agreement, Linsa will provide a copy of two template letters and emails to be sent to Current Borrowers and Former Borrowers to the Commission for review and approval. Linsa will amend the template letters and email on request by the Commission only if the Commission reasonably considers amendment is required to reflect the terms of this Agreement.

#### **Locating Former Borrowers**

38. Linsa will for nine months from the date of this Agreement publish information to the effect set out below on the home page of the main website currently operated by Linsa being [www.linsa.co.nz](http://www.linsa.co.nz) or its replacement:
- 38.1 that Linsa has entered into a settlement with the Commission;
  - 38.2 that Linsa failed to properly disclose all of the information it was required to during the Relevant Period in likely breach of section 17 of the CCCFA;
  - 38.3 that Linsa will:
    - 38.3.1 credit each Current Borrower the Refund Amount; and
    - 38.3.2 pay each Former Borrower the Refund Amount;
  - 38.4 that any Former Borrower that is not already in contact with Linsa regarding payment of the Refund Amount needs to contact Linsa to obtain their payment;
  - 38.5 Linsa's contact details; and

- 38.6 informing Former Borrowers what will happen to the Refund Amount in the event that the Former Borrower does not provide payment instructions to Linsa.
39. Linsa will update the details on its website within one week of any request by the Commission to do so only if the Commission reasonably considers an amendment is required to reflect the terms of this Agreement.
40. If, after using its Best Endeavours, Linsa is unable to locate a Former Borrower who is eligible for a payment pursuant to this Agreement within nine months from the date of this Agreement, Linsa undertakes:
- 40.1 to hold the payment on trust for the Former Borrower in an interest-bearing account for three years from that date; and
- 40.2 if at the end of the three year period, the Former Borrower has not contacted Linsa to arrange payment of the Refund Amount, Linsa will pay the Refund Amount owing to the Former Borrower within seven days to Tauranga Budget Advisory Services, (<https://tgabudget.org.nz>); and Papakura Budgeting Service Inc ([www.papakurabudgetingservice.com](http://www.papakurabudgetingservice.com)) (the final amount to be split equally between the two charities), or in the event that either or both entities no longer exist, to a similar entity to be agreed between Linsa and the Commission. Any agreement as to the recipient organisation can be varied in accordance with clause 53 below.

#### Interim report

41. Linsa undertakes, at its own expense, to provide to the Commission two months from the date of this Agreement an interim report recording the progress it has made with calculating the Refund Amounts, and locating, crediting, and refunding Current Borrowers and Former Borrowers.
42. The interim report must include the following information:
- 42.1 For each Current Borrower who is entitled to have their loan credited in accordance with this Agreement:
- 42.1.1 their name;
- 42.1.2 their Affected Loan number(s);
- 42.1.3 the Refund Amount they are entitled to receive;
- 42.1.4 where the Current Borrower has had their loan balance(s) credited:
- (a) the loan number(s) affected;
- (b) the date of the adjustment;



- (c) the outstanding loan balance(s) as at the date of the adjustment (if any); and
- (d) the amount of any additional payment provided to the customer in accordance with clause 31 (if any); and

42.1.5 where the Current Borrower has not yet had their loan balance(s) credited, the steps that Linsa proposes to take in order to provide those credits.

42.2 For each Former Borrower who is entitled to receive a payment in accordance with this Agreement:

42.2.1 their name;

42.2.2 the Refund Amount they are entitled to receive;

42.2.3 where the Former Borrower has received payment, the date and method of payment; and

42.2.4 where the Former Borrower has not yet received payment, the steps that Linsa has taken to locate the customer and obtain their instructions for payment of the Refund Amount.

42.3 The total value of credits and payments made, not yet made and the amount of money yet to be claimed by Former Borrowers.

43. If Linsa is unable to locate any Former Borrowers, at the time it provides the interim report to the Commission, Linsa will write to the Commission setting out any further steps it proposes to take in relation to contacting the then uncontacted Former Borrowers and the Commission will indicate its acceptance or otherwise to Linsa of those proposed further steps within 21 days.

44. The Commission requires that the interim report be provided in an Excel format.

**Final report**

45. Linsa undertakes, at its own expense, to provide a final report to the Commission 12 months from the date of this Agreement.

46. The final report must be prepared by an independent accountant approved by the Commission who has reviewed the steps taken by Linsa. The reviewer must confirm that Linsa has undertaken all steps it has agreed to take in this Agreement.

47. The final report must include:

47.1 The reviewer's opinion on whether Linsa has undertaken the steps it has agreed to take in this Agreement.

- 47.2 Details of any steps that have not yet been completed, including when they are likely to be completed by Linsa.
- 47.3 The author's opinion as to the adequacy of any further steps that Linsa ought reasonably to take to contact Former Borrowers who have been unable to be contacted at the time of the final report.
- 47.4 A summary of the credits and payments made.
- 47.5 For each Current Borrower who is entitled to have their loan credited in accordance with this Agreement, the following information:
- 47.5.1 their name;
  - 47.5.2 their Affected Loan number(s);
  - 47.5.3 the Refund Amount they were entitled to receive;
  - 47.5.4 where the Current Borrower has had their loan balance(s) credited:
    - (a) the loan number(s) affected;
    - (b) the date of the adjustment;
    - (c) the outstanding loan balance(s) as at the date of the adjustment (if any); and
    - (d) the amount of any additional payment provided to the customer in accordance with clause 31 (if any); and
  - 47.5.5 where the Current Borrower has not yet had their loan balance(s) credited, the steps that Linsa proposes to take in order to provide those credits.
- 47.6 For each Former Borrower who is entitled to receive a payment in accordance with this Agreement, the following information:
- 47.6.1 their name;
  - 47.6.2 the Refund Amount they are entitled to receive;
  - 47.6.3 where the Former Borrower has received payment, the date and method of payment; and
  - 47.6.4 where the Former Borrower has not yet received payment of the Refund Amount, the steps that Linsa has taken to locate the customer and what further work it intends to do to locate and contact the customer.



47.7 The total value of credits and payments made, not yet made and the amount of money yet to be claimed by Former Borrowers.

48. The Commission requires that the final report be provided in an Excel format.

### **Discontinuance of civil proceeding**

49. The Commission will file a notice of discontinuance of its civil proceeding against Linsa within five working days of the execution of this Agreement.

50. The Commission and Linsa agree that they will not seek costs against each other in relation to the proceedings.

51. Provided that Linsa completes all of its obligations set out in this Agreement, the Commission will not issue or encourage any civil or criminal proceeding against Linsa and/or its director(s) in relation to the conduct to which this Agreement applies other than any proceedings that may be brought as a consequence of Linsa's failure to comply with this Agreement.

### **Effect and implementation of this Agreement**

52. Linsa and the Commission will each take such steps as are necessary or desirable to give full effect to the terms of this Agreement.

53. If necessary to give effect to the Agreement, the terms of this Agreement may be amended by the written agreement of the parties.

54. If there is any breach of Linsa's obligations under this Agreement the Commission may, in its complete discretion, take any action it deems appropriate including cancelling or rescinding this Agreement, suing for breach and/or commencing civil or criminal proceedings under the CCCFA. For the avoidance of doubt, the Commission may bring proceedings against Linsa for the conduct referred to in this Agreement, as if this Agreement had not been entered into.

55. If the Commission commences any Court proceedings pursuant to clause 54 above, Linsa waives any limitation defence that may be available to it in respect of matters set out in the Commission's statement of claim dated 8 March 2019.

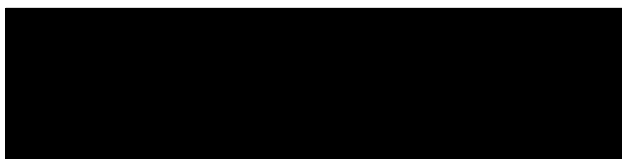
56. Nothing in this Agreement will limit or affect the ability of:

56.1 the Commission to issue proceedings against Linsa in respect of matters not related to this investigation, or in respect of conduct engaged in by Linsa after the date of this Agreement or for breach of this Agreement; and

56.2 any person who has not consented to be bound by the terms of this Agreement from pursuing any rights available to him, her or it under the CCCFA or under any other law.

**Miscellaneous**

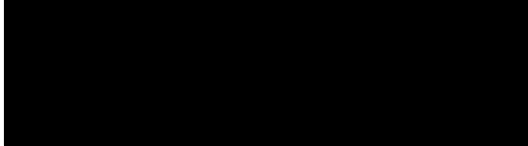
57. This Agreement will be governed and interpreted in accordance with the laws of New Zealand.
58. Linsa and the Commission agree that:
- 58.1 neither the Agreement nor the fact that Linsa has entered into the Agreement are confidential;
  - 58.2 the Agreement may be published on the Commission's website after it has been signed;
  - 58.3 the Commission may issue a media release about the Agreement;
  - 58.4 the Commission will provide Linsa (for Linsa's information only) with a copy of any media release one hour in advance of its release;
  - 58.5 either Linsa or the Commission may make public statements (either separately or jointly) in relation to the Agreement after it has been signed; and
  - 58.6 any public statement must be consistent with the matters set out in the Agreement.
59. Linsa agrees that it will not make any public comment in relation to the Agreement until after the Commission has issued any media release notifying the public of it. This media release will be published on the same day the Commission posts its notice of this Agreement on the Commission's website.
60. This Agreement is not intended to be enforceable by any registered charity or financial literacy organisation that may benefit from clause 40.2 and the parties to this Agreement may agree to vary the recipient of the Refund Amount in accordance with section 6(b) of the Contracts (Privity) Act 1982.
61. Any notice or communication that is given or served under or in connection with this Agreement must be given in writing in the following manner:
- 61.1 If addressed to the Commission, by hand delivery or email to the following address:  
  
Commerce Commission  
44 The Terrace, Wellington



A handwritten signature in black ink, appearing to be 'P.M.' or similar initials.

61.2 If addressed to Linsa, by hand delivery or email to the following address:

Linsa Finance Limited  
78 Maxwell Road, Tauranga



EXECUTED as an Agreement on the date first written above:

by the **Commerce Commission**

A blue ink signature, appearing to read 'Anna Rawlings', written over a horizontal line.

Signature of authorised representative

*Anna Rawlings*

Name of authorised representative

by **Linsa Finance Limited**

A blue ink signature, appearing to read 'James Lindsay Smylie', written over a horizontal line.

Signature of director

*James Lindsay Smylie*

Name of director

A blue ink signature, appearing to read 'Kaaren Ilse Smylie', written over a horizontal line.

*Kaaren Ilse Smylie*  
Director.