

22 December 2016

Latitude Financial Services Limited  
PO Box 4058  
Auckland 1140

Attention: Neil Simons, Governance Leader

Dear Mr Simons

### **Credit Contracts and Consumer Finance Act 2003: Warning**

1. The Commerce Commission has been investigating Latitude Financial Services Limited (LFSL) under the Credit Contracts and Consumer Finance Act (CCCF Act). We have completed our investigation and write now to you to alert you to our concerns.
2. In summary, the Commission considers that LFSL is likely to have breached section 26A of the CCCF Act by failing to provide timely disclosure to debtors of the assignment of their debts.
3. We acknowledge that LFSL self-reported its conduct and subsequently issued the required notice to affected debtors. We further acknowledge LFSL's advice that it subsequently amended its processes and procedures to prevent a similar problem occurring in the future.

#### **The investigation**

4. During our investigation, the Commission considered LFSL's self-reported conduct.
5. On 26 March 2016, LFSL sold 1575 loans to Baycorp PDL (NZ) Limited (Baycorp). LFSL's rights in relation to those loans were assigned to Baycorp that day.
6. LFSL did not disclose to the debtors:
  - 6.1 its sale of the loans and its assignment to Baycorp of LFSL's rights under those loans; or
  - 6.2 any information in relation to Baycorp.
7. In May 2016, a debtor was contacted by Baycorp in relation to the debtor's loan and that debtor contacted LFSL to ask why.

8. As a result being contacted by the debtor, LFSL identified that it had not provided the disclosure required by s26A of the CCCF Act following its sale of the loans and assignment of its rights to Baycorp in relation to those loans. .
9. LFSL then self-reported its conduct to the Commission. It advised that the non-disclosure was inadvertent and had occurred as the result of a breakdown in communication between the teams responsible for carrying out the debt sale process.
10. In June 2016, LFSL issued a Notice of Assignment of Debt to each affected debtor and sent a covering letter containing an apology for the lateness of the Notice.
11. LFSL subsequently amended its processes and procedures to ensure that such a problem will not recur in the future.
12. Section 26A(1) of the CCCF Act requires every creditor who transfers their rights under a consumer credit contract to another creditor to ensure that the following matters are disclosed to every debtor and guarantor under the contract:
  - 12.1 the name, address, and other contact details of the new creditor;
  - 12.2 the new creditor's registration number on the register of financial service providers and the name under which the new creditor is registered on that register;
  - 12.3 the name and contact details of the dispute resolution scheme of which the new creditor is a member (unless the Financial Service Providers (Registration and Dispute Resolution) Act 2008 does not require the new creditor to be a member of such a scheme);
  - 12.4 the date on which the rights were, or are to be, transferred to the new creditor;
  - 12.5 the impact (if any) of the transfer on the debtor; and
  - 12.6 that the transfer does not affect the terms of the contract that the debtor entered into (other than terms relating to the identity of the creditor).
13. Section 26A(2) of the CCCF Act requires that the s26A(1) disclosure be made within 10 working days of the day on which the transfer takes effect.

#### **The Commission's view**

14. Section 26A of the CCCF Act requires creditors to notify debtors of the transfer of their loan to a new creditor, and the information set out in paragraph 12, above, within 10 working days of the day on which the transfer takes place.

15. As LFSL failed to notify debtors within 10 working days of assigning their loans to Baycorp in March 2016, the Commission is of the view that LFSL is likely to have breached section 26A. It is the Commission's view that any breach of section 26A has the potential to cause serious detriment to debtors and may put a creditor at risk of prosecution.

#### **Available enforcement responses**

16. The Commission has a range of enforcement responses available to it for responding to likely breaches of the legislation it enforces. They range from relatively low level responses such as compliance advice, or a warning, through to taking legal proceedings.
17. Information about the Commission's approach to enforcing the legislation it is charged with enforcing is contained in our Enforcement Response Guidelines at <http://www.comcom.govt.nz/the-commission/commission-policies/enforcement-response-guidelines/>
18. The Commission has identified a number of special focus areas for the 2016-2017 year. One of those areas is the practices associated with consumer debt collection, including the information that is provided to debtors, the fees that are charged and the repossession of loan securities. We are looking to increase the level of compliance amongst creditors with regard to these and other related issues.

#### **Warning**

19. The Commission has given careful consideration to the appropriate enforcement response in LFSL's case, taking into account LFSL's pro-active conduct in self-reporting the issue to us, amending its processes and procedures, and subsequently issuing the required notice. We also acknowledge LFSL's view that any breach of the CCCF Act was inadvertent.
20. The Commission considers it crucial that borrowers know who they are dealing with, particularly when matters are referred for debt collection.
21. Given the conduct identified in this case, the Commission considers that a prosecution would have been warranted had the matter not been self-reported.
22. Having weighed up all the relevant factors, however, including the corrective steps taken, the Commission has determined that, in the particular circumstances of this case, a warning is the appropriate enforcement response.
23. We will not be taking any further action against LFSL at this time in relation to this issue but we will take this warning into account if this conduct continues, or if LFSL engages in similar conduct in the future.
24. We may also draw this warning to the attention of a court in any subsequent proceedings brought by the Commission against LFSL.

25. This warning letter is public information and will be published on our website. We may also make public comment about our investigations and conclusions, including issuing a media release or making comment to media.
26. We encourage you to regularly review your compliance procedures and policies and we recommend that you seek legal advice if you have any queries about your compliance with the CCCF Act and/or other applicable legislation.

### **The Commission's role**

27. The Commission is responsible for enforcing and promoting compliance with a number of laws that promote competition in New Zealand, including the CCCF Act. The Act is designed to protect consumers when they are borrowing money and enable them to make informed choices about using credit.

### **Penalties for breaching the CCCF Act**

28. Only the courts can decide if there has actually been a breach of the CCCF Act. The court can impose penalties where it finds the law has been broken. Credit providers who breach the CCCF Act may:
  - 28.1 be unable to enforce the contract or any right to recover property or any security interest;
  - 28.2 have to refund money or pay compensation;
  - 28.3 have to pay statutory damages;
  - 28.4 be convicted of a criminal offence and fined up to \$30,000 per offence;
  - 28.5 have contracts changed by the court if the contracts are oppressive;
  - 28.6 be banned from operating within the finance industry.
29. You should be aware that our decision to issue this warning letter does not prevent any other person or entity from taking private action through the courts.

### **Further information**

30. We have published a series of fact sheets and other resources to help businesses comply with the CCCF Act and the other legislation we enforce. These are available on our website at [www.comcom.govt.nz](http://www.comcom.govt.nz). We encourage you to visit our website to better understand your obligations and the Commission's role in enforcing the CCCF Act.
31. You can also view the CCCF Act and other legislation at [www.legislation.co.nz](http://www.legislation.co.nz).

32. Thank you for your assistance with this investigation. Please contact Nicola Schaab on 09 920 3491 or by email at [nicola.schaab@comcom.govt.nz](mailto:nicola.schaab@comcom.govt.nz) if you have any questions in relation to this letter.

Yours sincerely



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Brett Carter  
Chief Adviser  
Competition Branch  
Auckland