

TO:

The MBIE policy team leading the review at consumer@mbie.govt.nz.

Please refer to the copy document below, a complaint requesting write-off of a consumer loan. It was referred initially to the lender with a 'round and round' email dialogue which no ordinary person would have had the knowledge and persistence to see through, before the complaints authority stepped in to take back the complaint for a determination after 3 months. The Lender then acquiesced and approved the loan writ-off.

From that document I proved the Lender can bulldoze a loan through that is unaffordable, have no responsibilities if it was, can do what it likes to get payments and a naïve or desperate borrower has to standby and look on as they are stripped naked. The industry is full of money grabbing cowboys,

My submissions are based on a real life encounter with a naïve borrower who took an unaffordable loan to use for his sole trading business and a lovely lender who was only interested in pushing deals as fast as possible at extortionate interest rates which in a year equalled the loan and I expect would get to 5 times before bankruptcy. My solutions are tough but they may become self-policing after a prosecution or two.

1. This in itself is a risk to be provided for, i.e. the rules have to be very clear with an enforcement authority like Commerce Commission or FMA. There are lots of Guidelines which totally ignored in practice and there is no enforcement.
2. Interest rates should be limited to NZ Trading Bank credit card rates but without any interest-free period. Interest calculated at minimum monthly rests, i.e. interest calculated and compounded monthly.
3. All fees and expenses by the borrower must be in the Disclosure Statement and other Loan documentation and should not exceed \$500 from which the Lender will pay all expenses for all services provided by the lender or other providers prior to being able to pay the loan to the borrower.
4. The stand-down period is too short and also should be stated on a 2 page summary or Disclosure in conjunction with the Term of the Loan. In the case below the Loan was effective immediately and the borrower had 7 working days to cancel. This should be 21 days, i.e. 3 weeks after confirmation in writing by the Lender that the borrower can afford the loan, 7 days from loan repayment insurance provided by an acknowledged specialist insurer.
5. Affordability is a responsibility of the Lender before advancing the money and who should at minimum obtain and attach to documentation for the loan:
 - Statement of Assets & Liabilities
 - Current Statements for hire purchase or other personal loans and copies of any information referring to arrears.
 - Bank statements (3 months) showing income and expenses including regular hire purchase and credit card payments.
 - Copies of latest Credit Card statements.
 - Full report from a New Zealand credit checking authority
 - Any of the above could demonstrate unaffordability of a new loan, which should be declined, forcing the applicant to revert to whanau for assistance.

- If a loan payment is late twice within 6 months it was unaffordable. Interest is frozen and is to be credited from the date of the first payment arrears. The arrangement with the borrower is then to have the 50% of the principal sum plus interest on the 50% portion to the first late payment repaid by agreed instalments.
 - Likewise If a budget advisor, accountant or other recognised practitioner gives notice of a loan being advanced that was unaffordable with reference to documents the Lender should have accessed interest will be frozen from the date of such notice. The arrangement through the borrowers representative is then to have 50% of the principal sum plus interest on the 50% portion to the date of notice repaid by agreed instalments.
6. No legislation can be contracted out of as in the loan below (Consumer and Fair Trading) without invalidating the loan.
- Past revisions of the law have failed because no Commerce Commission or Financial Markets Authority or similar not being given adequate authority, not having the resources for enforcement or borrowers not coming forward. The above reduces the costs as at any time a Lender can be made to credit interest and or write off a loan or part thereof.
 - There has to be a law that all Lenders have to abide by, registered or not.
 - In the case of financial providers or intermediaries in the case of Peer-to-Peer facilitators, that are required to be registered to be called to account, to remedy and provide explanations to enable a penalty to be determined by the FMA or CC. From what I saw providers need to be aware that the highest penalty would be rescinding of a Licence.

There are other issues raised in the document below that you as more knowledgeable of the laws that are ineffective, and why, or even because they are only Guidelines that can be addressed.

Eric Short

Help Biz Grow Limited

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Below is a LETTER TO A FINANCIAL COMPLAINTS AUTHORITY
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The Lender was asked by the Complaints Authority to initially process through their Internal Disputes procedure. Their Legal Counsel and Help Biz Grow Limited entered a 'ping pong' dialogue by international email for several months with the Complaints Authority re-entering to direct traffic until the Lender acquiesced and signed off the loan write-off.

HELP BIZ GROW LIMITED

11 January 2018

Lender Loan Number: *-000***** to Borrower C***** (\$10,000 with Annual interest rate 38% per annum, Effective Date 30 / 05 / 2016**

It is claimed that this loan is invalid for several reasons evident in the detail of this document.

General

The financial sector is an environment that tends to attract sharks, especially with retail borrowers, the customer segment targeted by Lender. My assessment from the Lender website, copies of TV adverts and a recent loan application is that Lender, a Peer-to-Peer loan facilitator, is transparent in how its business operates but is by-passing the intent of the law that loans approved be affordable.

Regulations and Legal requirements for this sector are administered by the Financial Markets Authority and Commerce Commission including Peer-to-Peer loan facilitators, such as Lender.

The new Commerce and Consumer Affairs Minister astonishingly confirmed a class of lenders, that includes, Lender, a Peer-to Peer that markets as being the best, came up as one route to take for easy fast money. The Minister states that comes with excessive interest rates and is also reported as saying the law is being bypassed by loan sharks and will be changed to provide greater protection. Lender have reduced top rate since our first criticism.

What Lender Peer-to-Peer Loans can be used for?

Lender places no restriction on potential borrowers' use of loan money received from Lender Lenders and in its marketing suggests a host of possibilities including personal business needs.

https://www.*****.co.nz/personal-loans/business-loans

A Borrower is required to be a 'natural person' (Loan Application) and as such remains personally liable for all obligations however the loan money is used. Presumably that excludes other legal entities such as companies.

Although such a retail person would be protected by law administered by the Commerce Commission, Clause 34 of Borrower Agreement states the Credit Contracts and Consumer Finance Act and clause 9, 12A, 13 of the Fair Trading Act don't apply. The contracting out of this protection is a misrepresentation incompatible with advertising by Lender.

https://www.*****.co.nz/about-us/television-adverts

The Commerce Commission should consider and decide whether this exclusion clause is valid.

Unaffordable Lender Peer-to-Peer loans

Lender claims their Peer-to Peer loan platform is a better alternative than Credit Cards and Personal Loans (generally 12% - 19%) with an alluring lowest interest rate of % **but with a top end rate of 40%**. Is Lender now a so-called 'loan shark' facilitating Borrowers with limited options and ignorant of the implications of financial commitments into loans with impossible terms that are then offered to registered Lender.

They like Borrower are locked into an unaffordable peer-to-peer loan through a Lender approval as quickly as possible.

- Borrower responded to Lender advertising Sunday morning 29 / 05 / 2016 and had **NZD \$7,000 Loan** approved the same morning.
- Lender emailed Disclosure Statement (8pages minus details of the loan) & Privacy Policy 29 / 5 / 2016 10:36am
- Lender spoke with Borrower about increasing loan to \$10,000. There was no discussion of what factors the prospective borrower should consider in making a decision to borrow either amount.
- Lender emailed Loan **NZD \$10,000 Loan** approved 29 / 5 / 2016 11:56am
- The Borrower was advised that he would be able to review the loan offer and (*astronomical*) interest rate before committing but he says that this was not possible with the speed that Lender drove the process.
- Lender emails Borrower Agreement, Loan Contract, Disclosure Statement (2 pages showing details of loan), Direct Debit set up, and advice Loan is live 29 / 05 / 2016 4:11pm.
- Lender advised the loan was fully funded, confirmed in writing on Day 2, 30 / 5 / 2016 9:01am. *Earlier documentation stated the Loan Agreement was effective immediately and the Disclosure Statement was attached to the fully funded loan advice!*
- The Disclosure Statement shows Creditor as Lender Investor Trustee Limited and includes a Right to Cancel Clause within strict time limit of 7 working days. There is no recorded help given the Borrower or a referral to a budget adviser to confirm affordability. *No the Borrower [REDACTED] claims it happened so fast following the Sunday enquiry with no help given or avenues suggested on who to consult to confirm the Lender peer-to-Peer loan as beneficial the 7 days was over. He is trapped.*

(An independent application recorded 17 attempts by Lender to drive the process through all stages)

Extortionate Interest Rate on Borrower loan

Lender Management Team were emailed on 26 / 6 / 2017 advising the rate of 38% on this loan was unacceptable and in a telephone discussion advised that we expected a full credit for total interest charges.

To their credit Lender Customer Communications responded the same day of my 27 July 2017 'Extortionate Rate of Interest' and quote:

Based on this information, please do note that every borrower is given the option to review the loan offer, including the interest rate, before committing to the loan. Similarly, only the borrower has the final discretion of whether or not to proceed with the loan application as all our applications are processed on an obligation-free basis.

During a phone call from Lender we advised that there would be a formal dispute made through the appropriate authorities involved with Peer-to-Peer lending institutions. Lenders were advised that interest charged would need to be credited in full etc.

On 31 August another call from Lender was conveyed in an email to borrower [REDACTED] as:

June 28, 2018

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Lender acknowledged that they are aware there is a Dispute but that is separate and can proceed while payments still have to be made under the contract.

- Arrears currently are \$1,264 with last payment May 2017 and that additional fees apply.

Additional charges (if applied) are:

- Direct Debit dishonour fee \$15 (They stopped Direct Debits so this fee hasn't been charged recently).
- Non-payment fee \$20 applies if a payment is not made on 30th. They must be happy to accept a payment for the latest amount due as if payment had been made yesterday and the \$30 would not be charged.

Under the contract they are obliged to go to Default procedure after 150 days. He said it wasn't there yet but getting up there?

Lender website states that Credit Check does its credit checks. Credit Check website states it is a decision support service indicating all decisions are made by its clients' (Lender).

Lender clearly is not interested in 'bank standard' due diligence to afford greater protection to the Lender and protect their Borrowers from unaffordable borrowing. A loan is simply graded with extortionate rates of interest.

Commerce and Consumer Affairs Act and Fair Trading Act

I have not reviewed the compliance requirements of Commerce Commission legislation but note in relation to Lender Peer-to=Peer loans that:

- The Borrower is required to be a 'natural person' (Loan Application)
- Clause 34 of Lender Borrower Agreement states Credit Contracts and Consumer Finance Act and clause 9, 12A, 13 of Fair Trading Act don't apply.

https://www.*****.co.nz/personal-loans

Notes on attached copy around video (press Start arrow) are the reasons given by those spoken to as to what their loan was for. I have recorded one but several more were removed from the website as I was recording them on 15/1/2018 and a You Tube video flick past first two speakers as of yesterday. They are all natural people who have taken a 'natural person' loan for personal, family, refinancing, business, re-lending and investment purposes.

Only the Commerce Commission can clarify whether a loan to 'natural person's can have this contract out clause.

Lender advise Lenders that they will be introduced to creditworthy Borrowers and earn great returns. At face value the Lender to Borrower stood to earn an astronomical return from a high risk Borrower according to Lender's rating. The Minister denounced roll-overs and extensions with increasing unaffordability. The Borrower loan was rolled over to mature 30 May 2021 according to the Borrower without his prior knowledge or consultation on options. There was a benefit to the Borrower in that it wiped arrears but Interest \$9,704.19 would be payable on current Principal sum of \$9,463.82 to new maturity date.

The Borrower had a \$7,000 loan approved 29 / 4 / 2016 as initially requested but encouraged by Lender to increase borrowing 42.85% higher to \$10,000. This was also approved 29 / 4 / 2016.

This will be a subject of advocacy in respect of the law changes proposed by the Minister of Commerce and Consumer Affairs. Only the FMA and / or the Commerce Commission can decide whether this current practice was permissible under current law (CC) and / or fair (FMA).

After this report was lodged with Complaints Authority yesterday there were a number of changes made by Lender including raising the question, "whether the 'natural person' loan to Borrower was a commercial loan".

Financial Markets Conduct Act 'Fair Dealing' requirement?

Lender stand behind their FMA registration to convey that they must be a reputable Peer-to-Peer facilitator yet breach what a reasonably informed person would consider the requirement of 'Fair Dealing' under the Financial Markets conduct Act. They referred yesterday to their Fair Market policies on their website but this is not available until you are well down the track and have a Login, proven by a loan applied for as a test.

Lender marketing stated that loans listed on their marketplace are assessed as affordable to individual borrower's yet it seems there is limited due diligence, an unrealistic time is granted for a vulnerable borrower to review and withdraw from the loan and no named budget advisers from whom to seek help for this. The Minister considers this mandatory.

At that time advertised interest range was 6.99% - 39.99%. Loan L**-***** was rated 38.25% on an amount increased \$3,000 by Lender that was most likely an unaffordable loan, as it immediately turned out to be.

The Fair Dealing provisions of the Act specifically prohibit misleading conduct, misleading borrowers and misleading and unsubstantiated representations to lenders. The public perception is that Lender has to be a reputable finance intermediary to have the support of ?Bank, ?Bank and ?Bank and a stated policy of Lender Lenders being able to rely on Lender Borrowers 'affordability'.

Fitting up a borrower with a 42.85% higher loan of \$10,000, without solicitation when he applied for and had approved \$7,000, most likely also unaffordable on the terms ascribed, is not compatible with the Lender stated policy and misled the Borrower into a false sense of security. The Borrower suspects collusion between Lender representatives and the Lender as the borrower telephoned Lender on Sunday and was signed up for the increased sum before the interest rate was advised. *(I now think this may not be the case after studying You Tube and Lender videos yesterday and their stated policy therein of units of \$25. So no one could lose a large amount although with interest rates in the 30% plus there would have been inside /outside discussion with friendly parties to take more than \$25 as it is so far above the Lender advertised return for borrowers of 13%.*

The Lender may or may not have been deceived as they knew how Lender rated the loan and possibly also comfortable to be a 'Loan Shark' with a few big returns not falling over after many unaffordable rollovers they would be well ahead even with some loans failing. Lender and Lendit are possibly correct that trading Banks and especially New Zealand where there is little competition are creaming it.

There are warnings on You Tube of the outcome of insolvency of Peer-to-Peer but I am confident from my involvement with FMA on another silly scam I got involved in recently that that lenders to Peer-to-Peer will have been well protected although I cannot understand why the recognised Custodians and Trustees could not be used for greater comfort. Why do others need a Custodian as well as a Trustee?

On the 'eve of FMA, registration Lender "analyst guru" Lender was a speaker at a Lendit conference (You Tube video) who target the smallest of the small generally with an income from a business activity. Lender do the same but through the individual who the uses it for any purpose including this. I have doubts about the ethics of Lendit as they are getting a lot of their money for super institutions being provided with a package of unsecured loans (Freddy and Maggie-like all over again!) Lender are starting down this track from my extensive studies yesterday. A lot of videos have now been deleted or have some participants smile so a 2 minute video of 10 people takes 10 seconds.

Loan Documentation

There are a lot of documents but the Lender Loan Disclosure Personal Loan Agreed Terms could not be understood by the average borrower with limited financial literacy. To get this knowledge and confirmation by some person like a budget adviser within just 7 days would trap most Blaise Uninformed Borrowers. This borrower earns an income from photography / videos and water blasting but with financial knowledge limited to understanding receipts and payments into a bank account.

This borrower understood what the interest rate was but not how it would affect him.

Summary

It was our intention to submit this first to Financial Markets Authority and Commerce Commission but knowing the cost of legal action and not wanting to publicly expose Lender and how the consequences might hurt Lender in some way we have taken the dispute first to restrict any activity to this one loan. It would also give Lender time to make necessary procedural changes to its business. However any loan application talked up to an amount greater than the initial enquiry should receive special attention in the first instance.

N.B. Lender's comment on this in the email yesterday was that they had their 'natural person' client approve the increased amount. I am concerned about the encouraging committing to more even though they may be able to show me the onus has been shifted to the borrower. It is still 'cowboy stuff' as [REDACTED] affidavit stated when I defended and counter-claimed \$1 million against [REDACTED] who then declared liquidation the day after being told there was a case to be answered.

As outlined in this document Advocacy will be submitted to the Minister for inclusion in proposed changes to boost protection for vulnerable borrowers, but no organisations will be named.

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