
Settlement Agreement

Between the **Commerce Commission** and **TSB Bank Limited**

Settlement agreement dated 28 May 2024

Parties

Commerce Commission, a body corporate established under section 8 of the Commerce Act 1986 (the **Commission**); and

TSB Bank Limited, a company having its registered office at Level 5, TSB Centre, 120 Devon Street East, New Plymouth (**TSB**),

(collectively, the **Parties**).

1 Introduction

- 1.1 On 30 March 2022, TSB self-reported to the Commerce Commission (**Commission**) that some of its credit and default fees risked not complying with s 41 of the Credit Contracts and Consumer Finance Act 2003 (**Act and Self Report**).
- 1.2 The Commission conducted an investigation into TSB for potential breaches of the Act in relation to the matters referred to in the Self Report (**Investigation**).
- 1.3 The Commission intends to file a Proceeding in the High Court against TSB alleging that TSB breached ss 9C(1), 9C(2)(a)(ii)–(iii), and 41 of the Act.
- 1.4 The breaches arise principally from TSB's failures to set the amounts of various credit and default fees in accordance with ss 44 and 44A of the Act. Those breaches resulted in TSB overcharging a significant number of customers in the period since June 2015, in excess of the cost-justified level of the fees determined as at March 2021. TSB also charged customers fees in circumstances where it was not contractually entitled to do so, in breach of ss 9C(1) and (2)(a)(iii) of the Act.
- 1.5 The particular fees at issue in the Proceeding are TSB's:
 - (a) Monthly Revolving Credit Fee;
 - (b) Transactional Revolving Credit Fee;
 - (c) Ownership Transfer Fee;
 - (d) Rearranged Security Fee;
 - (e) Interest Rate Fixing Fee;
 - (f) Security Discharge Fee (in respect of the first discharge if a mortgage on the release of a security interest);
 - (g) Rates Demand Fee;

- (h) Insurance Arrears Service Fee;
 - (i) Monthly Overdraft Service Fee;
 - (j) Inactivity Fee;
 - (k) Cash Advance Fee;
 - (l) Card Replacement Fee;
 - (m) Foreign Currency Conversion Fee; and
 - (n) Visa Late Payment Default Fee (in respect of the fees charged in the first month of a customer's arrears period).
- 1.6 The Parties have reached a settlement regarding the matters arising out of the Self Report and Investigation, and to be determined in the Proceeding, on the terms set out in this Agreement.
- 1.7 This Agreement may be made public by the Commission (including on the Commission's website) following the public release of the Penalty Judgment.

2 Interpretation

- 2.1 For the purposes of this Agreement:
- (a) **Act** means the Credit Contracts and Consumer Finance Act 2003;
 - (b) **Admitted Causes of Action** means the causes of action in the Statement of Claim;
 - (c) **Agreed Recommended Penalty** means the pecuniary penalty set out in clause 4.4(a);
 - (d) **Agreement** means this settlement agreement and the schedules attached to it;
 - (e) **Commission** means the Commerce Commission;
 - (f) **Court** means the High Court of New Zealand or, on appeal, the Court of Appeal of New Zealand or the Supreme Court of New Zealand;
 - (g) **Defaulting Party** has the meaning as set out in clause 8.1;
 - (h) **Default Notice** means a written notice issued under clause 8.3 by one Party giving notice that the other Party is in breach of the Agreement;
 - (i) Dollar amounts stated are in New Zealand dollars;
 - (j) **Information** includes all information, documents, material and evidence of any kind whatsoever, including all oral, written and electronic material in relation to the Proceeding;
 - (k) **Investigation** means the investigation initiated by the Commission following the Self Report;

- (l) **Notice of Admissions** means the notice of admissions annexed as **Schedule 2** to this Agreement;
- (m) **Notifying Party** has the meaning set out in clause 8.1;
- (n) **Party** means any party to this Agreement;
- (o) **Penalty Hearing** means the hearing or fixture in the Proceeding at which the Commission and TSB will ask the Court to approve the order set out in clause 4.4;
- (p) **Penalty Judgment** means a judgment of the Court determining the pecuniary penalty payable by TSB in the Proceeding. Where a Penalty Judgment of a particular Court is specified, it is the judgment of that Court;
- (q) **Person** extends to non-natural persons and includes any association of persons whether incorporated or not;
- (r) **Proceeding** means the civil proceeding commenced on filing the Statement of Claim by the Commission in the High Court of New Zealand against TSB, and includes any appeals from that proceeding;
- (s) **Relevant Period** means the period between 6 June 2015 to 2 November 2021;
- (t) **Self Report** means the self report by TSB to the Commission dated 30 March 2022 and updated on 6 May 2022;
- (u) **Statement of Claim** means the statement of claim attached as **Schedule 1**;
- (v) **TSB** means TSB Bank Limited; and
- (w) **Working Day** has the definition set out in r 1.3 of the High Court Rules.

3 Resolution

3.1 The Parties have reached a full and final settlement of:

- (a) the claims against TSB made in the Statement of Claim and the Proceeding; and
- (b) any claims that could have been made by the Commission against TSB, or any current or former officer, employee or director of TSB, under the Credit Contracts and Consumer Finance Act 2003 in relation to or arising from matters referred to in the Self Report and/or disclosed to the Commission during the Investigation.

3.2 The Parties agree to resolve the Proceeding by:

- (a) the Commission filing the Statement of Claim within one Working Day of the execution of this Agreement;
- (b) the next Working Day, TSB filing the Notice of Admissions;

- (c) TSB paying any Penalty Judgment in accordance with clause 4; and
 - (d) otherwise on the basis set out in this Agreement.
- 3.3 The admissions made by TSB are made only for the purposes, and in respect, of resolving the Proceeding, and are not made for the purposes, or in respect, of any other claims, actions, proceedings or investigations.
- 3.4 The Commission will not commence or continue further proceedings against TSB or any current or former officer, employee or director of TSB, in connection with matters that are subject of the Proceeding, Investigation and Self Report.
- 3.5 For the avoidance of doubt, nothing in this Agreement shall be construed as:
 - (a) resolving any past, continuing, or future contraventions of the Act of which the Commission does not have reasonable notice; or
 - (b) preventing the Commission from commencing or continuing any civil or criminal proceedings against TSB or any other person in respect of the matters described in clause 3.5(a).

4 Imposition of the Agreed Recommended Penalty

Progression to Penalty Hearing

- 4.1 At the same time as it files the Notice of Admissions, TSB will file a joint memorandum of the Parties requesting that a Penalty Hearing be fixed for the first available date within 30 Working Days from the date of this Agreement.
- 4.2 The Parties will cooperate and use all reasonable endeavours to ensure that the Penalty Hearing proceeds on the date fixed by the Court.

Consultation on penalty submissions

- 4.3 The Commission and TSB will:
 - (a) circulate to the other a draft of any submissions or memorandum they propose to file in relation to the Agreed Recommended Penalty at least 15 Working Days before that party is to file the submissions or memorandum with the Court;
 - (b) provide any comments on a submission or memorandum received in accordance with clause 4.3(a) not more than ten Working Days after receiving those submissions or that memorandum; and
 - (c) consider in good faith any comments that the other Party may have in connection with the submission or memorandum.

Agreed Recommended Penalty and content of penalty submissions

- 4.4 The Commission and TSB agree and undertake that:
 - (a) the Agreed Recommended Penalty for the Admitted Causes of Action is a final penalty of \$2.47 million;

- (b) the Agreed Recommended Penalty is an appropriate pecuniary penalty in view of the conduct and the circumstances;
- (c) in their written and oral submissions, the parties will indicate as follows regarding the range that is appropriate for a starting point:
 - (i) the Commission will submit that an appropriate starting point is in the range of \$3.8 million–\$4.1 million; and
 - (ii) TSB will submit that an appropriate starting point is in the range of \$3.5 million–\$3.8 million;
- (d) they will make written and oral submissions recommending to the Court that it adopt a starting point of \$3.8 million, being the point of agreement arising from their respective submissions on the starting point;
- (e) they will make written and oral submissions recommending to the Court that it apply a discount of 35 per cent to the starting point for all mitigating factors;
- (f) they will otherwise support the Agreed Recommended Penalty before the Court; and
- (g) they will ask the Court that there be no order as to costs.

4.5 The Parties agree that all material facts for the purposes of the Proceedings are:

- (a) the matters described in the Statement of Claim; and
- (b) the following matters, which are not included in the Statement of Claim but which may properly be the subject of submissions by either Party:
 - (i) details as to TSB’s size and profitability relative to other banks and financial institutions, its ownership structure, and the fact its profits are returned to the Taranaki community;
 - (ii) that the Commission acknowledges that TSB did not intend to breach the Act;
 - (iii) that the Commission acknowledges that TSB’s contraventions arose from TSB historically not having had adequate processes in place for regular assessment and review of credit and default fees against the requirements of the Act;
 - (iv) the work involved in TSB undertaking the 2021 Review (as defined in the Statement of Claim), including:
 - (A) interviewing its frontline staff and managers to determine the activities that occurred in providing the service(s) for which each fee was charged, and the time spent by staff on those activities;
 - (B) building models to determine the likely cost incurred by TSB in relation to each fee and obtaining external

assurance over the methodology and input costs for the models;

- (C) establishing a CCCFA Steering Committee to provide governance over the 2021 Review and report to the Board;
 - (D) establishing a Regulatory Engagement Group to advise the Board Risk Committee on historic matters arising out of the 2021 Review and to agree and execute remediation;
- (v) that the Commission acknowledges that TSB has invested in and implemented system, process and control improvements to ensure that its fees comply with the CCCFA, including:
- (A) a process for reviewing new and existing fees against in the requirements of the CCCFA; and
 - (B) systems that require fee reviews to be conducted: prior to the introduction of a new fee or change to existing fee; if any material change is likely to TSB's products, processes, business or cost structures; and annually in relation to all CCCFA fees.
- (vi) that TSB has co-operated with the Commission throughout the investigation, acknowledged and accepted at the earliest possible stage that it had contravened the Act, and TSB has agreed to settle the proceeding on terms acceptable to the Commission;
- (vii) that TSB has remediated affected customers including by, as applicable, refunding additional interest incurred and making use of money payments;
- (viii) the work involved in TSB's remediation, including:
- (A) communicating with customers, including former customers;
 - (B) conducting extensive internal assurance over the amounts to be paid to each customer and obtaining external assurance over TSB's remediation models and processes.

5 Payment of penalty

- 5.1 If the High Court imposes the Agreed Recommended Penalty in the Penalty Judgment, TSB will pay the amount of the Agreed Recommended Penalty in cleared funds into the bank account nominated by the Commission within 15 Working Days of the Penalty Judgment.
- 5.2 If the High Court does not impose the Agreed Recommended Penalty in the Penalty Judgment, then TSB will pay into the bank account nominated by the Commission any pecuniary penalty ordered by the High Court within 15 Working

Days of the date of the Penalty Judgment unless, prior to the expiration of that period, a stay of the Penalty Judgment pending determination of an appeal is granted.

- 5.3 If a Penalty Judgment is issued by an appellate Court, TSB or the Commission, as applicable, shall pay to the other any difference between the amount paid by TSB in accordance with clause 5.2 and the amount ordered by the appellate Court, together with any costs awarded by the appellate Court, into the other's nominated bank account. The payment will be made within the time period specified by the appellate judgment, or if no time is specified, within 15 Working Days of the date the appellate judgment is issued.
- 5.4 If a stay of the Penalty Judgment is granted pending determination of an appeal, TSB agrees to pay interest as prescribed by the Interest on Money Claims Act 2016 on any amount it has to pay to the Commission under clause 5.3. Interest will accrue from the date of the Penalty Judgment until payment is made in full.
- 5.5 For the avoidance of doubt, if the Commission is required to refund any amount under clause 5.3, the only interest to be paid is that actually earned, if any, on the amount to be refunded.

6 Confidentiality and comment

Comment prior to release of Penalty Judgment

- 6.1 Prior to the release of the Penalty Judgment, the Parties:
 - (a) may make public comments limited to the facts that:
 - (i) TSB has admitted breaches of ss 9C(1), 9C(2)(ii)–(iii), and 41 of the Act;
 - (ii) the parties have asked the Court to convene a hearing for the purpose of imposing pecuniary penalties on TSB under s 107A of the Act;
 - (iii) the High Court will determine any orders to be made in relation to TSB in due course; and
 - (iv) the breaches concern historic matters. TSB has addressed these and remediated affected customers including by, as applicable, refunding interest incurred and making use of money payments;
 - (b) may not otherwise make public comment in relation to this Agreement, the Proceeding and/or the Penalty Hearing; and
 - (c) will provide each other with the opportunity to comment in relation to any media release as provided for in clause 6.6 below.
- 6.2 TSB will not issue any media release or make any public comment permitted by clause 6.1 until after the Commission has made a media release or public comment as permitted by clause 6.1.

- 6.3 The Parties will not otherwise disclose the terms of this Agreement (including the Agreed Recommended Penalty) prior to the public release of the Penalty Judgment.

Comment after release of Penalty Judgment

- 6.4 Subject to clause 6.5, either Party may issue a press release or make a public comment in relation to this Agreement or the outcome of the Penalty Hearing after the public release of any Penalty Judgment. Any public statements relating to the Proceeding and this Agreement will be made in good faith and be consistent with the spirit and intent of this Agreement.
- 6.5 TSB will not issue any media release or make any public comment permitted by clause 6.4 until after the Commission has made a media release or public comment as permitted by clause 6.4.
- 6.6 In relation to any media release made by either Party under clauses 6.1 or 6.4, the Party issuing the media release will provide a copy of the media release to the other Party at least two hours in advance of the release being published to allow the other party the opportunity to comment. The Parties agree that the purpose of providing an advance copy of a media release is to allow the other Party to have the opportunity to comment and provide advanced notice so as to inform its own position (but not for approval). A party is not obligated to accept the comments of the other party.

Comments to be consistent with Admissions and Agreement

- 6.7 No Party will issue any media release or make any public comment that is inconsistent with the Penalty Judgment, Admissions, this Agreement or the Statement of Claim.

7 Appeals from the Penalty Judgment

- 7.1 If the Court imposes the Agreed Recommended Penalty, no party may appeal or apply to recall or set aside that Penalty Judgment on the basis that the Agreed Recommended Penalty should not have been imposed.
- 7.2 If, following submissions from the Parties consistent with clause 4.4, the Court imposes a penalty that differs from the Agreed Recommended Penalty, any Party may appeal the Penalty Judgment.
- 7.3 In the event that an appeal is brought under clause 7.2:
- (a) the terms of this Agreement will remain binding on the Parties, including, for the avoidance of doubt, clause 4.4; and
 - (b) the Parties will each bear their own costs on any appeal (subject to any order from the Court directing otherwise), and shall not apply for, or otherwise seek, costs to be ordered against the other.

8 Non-compliance with Agreement

Default Notice for breaches of the Agreement

- 8.1 If any Party (the **Notifying Party**) suspects or believes that the other party (the **Defaulting Party**) is in breach of the Agreement, or will in the future breach the Agreement, the Notifying Party must notify the Defaulting Party in writing:
- (a) of the grounds for the Notifying Party's view that a breach of the Agreement has occurred or will likely occur; and
 - (b) that the Notifying Party is contemplating issuing a Default Notice.
- 8.2 After notifying the Defaulting Party, the Notifying Party must:
- (a) give the Defaulting Party a reasonable opportunity to:
 - (i) respond to the grounds for the Notifying Party's view that a breach of the Agreement has occurred or will occur;
 - (ii) take steps to remedy any breach of the Agreement that has occurred or would otherwise occur; and
 - (b) have regard to the Defaulting Party's response, the nature of the suspected breach and the remedial action taken, if any.
- 8.3 If the Notifying Party has followed the process in clauses 8.1 and 8.2, and the Defaulting Party fails to comply with any term of this Agreement, the Notifying Party may give written notice that the Defaulting Party is in breach of the Agreement (a **Default Notice**).
- 8.4 Following service of a Default Notice, the Notifying Party may:
- (a) take any further steps in or relating to the Proceeding, including taking steps in accordance with clause 6 applying to set aside or appeal the Penalty Judgment;
 - (b) take any steps to enforce the obligations outlined in this Agreement;
 - (c) seek an award of costs in respect of the matter giving rise to the Default Notice; and/or
 - (d) terminate the Agreement.
- 8.5 The Parties agree that it shall not constitute a breach of this Agreement for either of them to make submissions in any Court, in any other proceedings, with respect to the relevance, weight or precedent value to be attributed to the Penalty Judgment.

Breach of obligation to pay pecuniary penalty

- 8.6 If a Party fails to make all or part of the payments referred to in clause 5 within the time specified, after first providing seven Working Days for the Party to rectify that breach, the other Party (the **Enforcing Party**) is:
- (a) entitled to enforce the Penalty Judgment;
 - (b) entitled to claim interest as prescribed by the Interest on Money Claims Act 2016 on the balance payable until the penalty, or difference owing or any costs awarded under clause 5 are paid in full; and

- (c) entitled to its costs, including its legal costs on a solicitor-client basis, arising from the failure to comply with clause 5.

8.7 Nothing in clause 8.6 limits the ability of the Enforcing Party to also issue a Default Notice.

9 General

Entire Agreement

9.1 This Agreement constitutes the entire understanding and agreement between the Parties in relation to the Self-Report, Investigation and the Proceeding, and fully supersedes any and all prior agreements, arrangements, representations or understandings (whether orally or in writing) between the Parties pertaining to the Self-Report, Investigation and the Proceeding.

9.2 The Parties represent and agree that:

- (a) no oral contracts, arrangements, understandings, agreements or promises contrary to the terms of this Agreement exist;
- (b) they have carefully read and fully understand all of the provisions of this Agreement, including the Schedules; and
- (c) they are each voluntarily entering into this Agreement after having received independent legal advice.

Use and disclosure of information

9.3 The Commission acknowledges that TSB's information may be confidential and/or commercially sensitive and/or subject to privilege.

9.4 The Commission may use Information provided by TSB for the purpose of carrying out the Commission's functions or obligations under any enactment, but may not disclose such Information to any third party other than:

- (a) with TSB's prior written consent; or
- (b) as required by law (including, for the avoidance of doubt, to comply with a request made under the Official Information Act 1982 or the Privacy Act 1993); or
- (c) pursuant to section 99AA of the Commerce Act 1986.

9.5 The Commission agrees that, if it receives a request pursuant to the Official Information Act 1982 that covers or might cover and/or record or reveal all or some of the information TSB has provided to the Commission in relation to this Proceeding, including voluntarily or under compulsion, it will notify TSB of that request and consult with TSB as to whether there are grounds for the requested material to be withheld under Part 1 of the Official Information Act 1982. The Commission will notify TSB at least five Working Days before responding to the request, if notwithstanding such consideration, it determines no grounds exist on which it may refuse to comply with the request.

Amendments in writing

- 9.6 No amendment to this Agreement will be effective unless it is in writing and signed by all Parties.

Authorities

- 9.7 Each person executing this Agreement warrants that they have the full authority to enter into this Agreement and bind the party for which they purport to enter into this Agreement.

Severance

- 9.8 Any provision in this Agreement that is unlawful will be severed and the remaining provisions remain enforceable, but only if the severed provision is not material to the purpose of this Agreement.

Governing law

- 9.9 This Agreement will be governed by, and construed in accordance with, the laws of New Zealand.

Further Assurances

- 9.10 The Parties agree to make all applications, execute all documents and do all acts and things as may be necessary to give effect to its obligations under this Agreement.

No waiver

- 9.11 Failure by a Party to enforce any provision of this Agreement at any time will not operate as a waiver of that provision in respect of that act or omission or any other act or omission.

Counterparts

- 9.12 The Parties may enter into this Agreement by signing any number of counterparts, each of which will be treated as an original. All of the counterparts taken together will constitute a single, binding and enforceable Agreement.

10 Communications

- 10.1 Any notice or communication pursuant to this Agreement will be delivered as follows:

- (a) if addressed to the Commission, by hand delivery or email to the following address:

Commerce Commission
Level 12, 55 Shortland Street,
PO Box 105-222,
Auckland

Attention: Crystal Euden, Chief Legal Counsel – Credit
Email: [REDACTED]

Copy to:
Meredith Connell
Level 7, MC Centre, 8 Hardinge Street,
Auckland
Attention: Nick Flanagan | Andy Luck
Email: [REDACTED]

(b) If addressed to TSB, by hand delivery or email to the following address:

TSB Bank Limited
TSB Centre
120 Devon Street East
PO Box 240
New Plymouth 4340
Attention: Larissa Vaughan, General Counsel
Email: [REDACTED]

Copy to:
Gilbert Walker
Level 35 Vero Centre
48 Shortland Street
Auckland 1010
Attention: Iva Rosic | Zoe Brentnall
Email: [REDACTED]

Execution

Signed by and on behalf of
Commerce Commission



Authorised signatory

Anne Mance Callinan

Name

In the presence of:

Witness Name:

SARTAJ BEDI

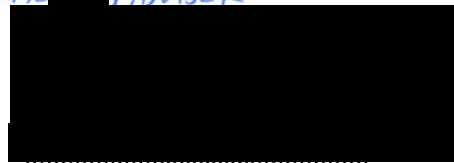
Witness Address:

FLATBUSH, AUCKLAND

Witness Occupation:

LEGAL ADVISER

Signed by and on behalf of
TSB Bank Limited



Authorised signatory

MAEVE BROWN

Name

In the presence of:

Witness Name:

Troy Kennedy

Witness Address:



Witness Occupation: CEO



Schedule 1: Statement of claim

In the High Court of New Zealand
Auckland Registry

I Te Kōti Matua O Aotearoa
Tāmaki Makaurau Rohe

CIV-2024-404-

Between **Commerce Commission** a body corporate established under section 8 of the Commerce Act 1986 having its offices at level 6, 44-52 The Terrace, Wellington

Plaintiff

And **TSB Bank Limited** a duly incorporated company having its registered office at Level 5, TSB Centre, 120 Devon Street East, New Plymouth

Defendant

Statement of Claim

DD May 2024

MC.

Nick Flanagan | Andy Luck
PO Box 90750, Victoria Street West, Auckland 1142
DX CP24063

T: [REDACTED]
[REDACTED]

Statement of Claim

The plaintiff by its solicitor says

1 Parties

- 1.1 The Plaintiff, the Commerce Commission (**Commission**), is a body corporate established under section 8 of the Commerce Act 1986. Its functions include the enforcement of the Credit Contracts and Consumer Finance Act 2003 (**CCCFA**).
- 1.2 The defendant, TSB Bank Limited (**TSB**):
- (a) is a company incorporated in New Zealand, having its registered office at Level 5, TSB Centre, 120 Devon Street East, New Plymouth;
 - (b) was incorporated on 30 August 1988 as Taranaki Savings Bank Limited;
 - (c) is a registered bank under the Reserve Bank of New Zealand Act 1989; and
 - (d) by total assets, is New Zealand's seventh largest bank.
- 1.3 In the financial years covered by this claim, TSB has reported net profit after tax but before dividends of between \$19.948 million and \$61.563 million.

2 Background: TSB's provision of credit

The Fees Provisions

- 2.1 Subpart 6 of Part 2 of the CCCFA (**Fees Provisions**) came into force on 1 April 2005.
- 2.2 The Fees Provisions require that:
- (a) a consumer credit contract must not provide for a credit fee that is unreasonable;
 - (b) in determining whether a credit fee, other than an establishment fee or a prepayment fee, is unreasonable, regard must be had to, in relation to the matter giving rise to the fee, whether the fee reasonably compensates the lender for the costs incurred by it in order to carry out the activity to which the fee relates; and
 - (c) in determining whether the fee reasonably compensates the creditor for any such cost referred to in subparagraph (b) above, regard must be had to reasonable standards of commercial practice;
(Credit Fee Provisions); and
 - (d) a consumer credit contract must not provide for a default fee that is unreasonable;

- (e) in determining whether a default fee is unreasonable, regard must be had to, in relation to the matter giving rise to the fee, whether the fee reasonably compensates the creditor for:
 - (i) any cost incurred by the creditor; and
 - (ii) a reasonable estimate of any loss incurred by the creditor as a result of the debtor's acts or omissions;

(Default Fee Provisions).

TSB's business as a creditor

- 2.3 TSB's primary business is the provision of retail banking services. Those services include the provision of credit to consumer borrowers under consumer credit contracts, such as through home loans, personal loans, arranged overdrafts and the provision of credit cards.
- 2.4 TSB provides credit under consumer credit contracts (**Contracts**). The Contracts comprise terms set out in:
 - (a) loan contracts and loan contract terms for home loans, personal loans and arranged overdrafts, and general information brochures for Visa credit cards (as applicable); and
 - (b) further terms set out in a schedule published on TSB's website, which provides for the credit and default fees payable for home loans, personal loans and arranged overdrafts, what those fees are payable for, and the amounts of each (**Fee Schedule**).
- 2.5 TSB was a creditor, as that term is defined in the CCCFA, under the Contracts for home loans, personal loans, arranged overdrafts and Visa credit cards.

Absence of compliance processes and TSB's knowledge and self-report

- 2.6 TSB has charged credit and default fees since the Fees Provisions came into force on 1 April 2005. The specific fees have changed since that date and many have been removed.
- 2.7 On 1 February 2021, TSB commenced a review of the credit and default fees it would be charging as at 31 March 2021, in order to ensure that those fees were set at amounts which complied with the Fees Provisions (**2021 Review**).
- 2.8 Prior to the 2021 Review, TSB set the amounts of its credit and default fees:
 - (a) without due regard to what was needed to comply with the Fee Provisions; and instead
 - (b) by reference to commercial and other considerations, including:
 - (i) by comparison to the fees charged by other financial institutions, and the amounts of those fees;
 - (ii) customer satisfaction and the value customers placed on fees;

- (iii) whether fees carried a direct cost, involved staff, or were automated;
- (iv) TSB's proposition as a low to no fee bank; and
- (v) TSB's ability to generate income, and potentially profit, from those fees.

2.9 TSB did not, at any time prior to the 2021 Review:

- (a) conduct any assessment of whether its credit fees complied with the Credit Fee Provisions;
- (b) conduct any assessment of whether its default fees complied with the Default Fee Provisions;
- (c) have any governance arrangements in place to ensure that any credit or default fees had been assessed for compliance with the applicable Fees Provisions, before those fees were imposed under the applicable consumer credit contracts.

2.10 As part of the 2021 Review TSB conducted an accounting exercise, referred to by TSB as "cost modelling", to determine what costs it incurred:

- (a) in carrying out the activities to which certain credit fees related; and
- (b) in relation to the matters giving rise to certain default fees.

2.11 TSB identified during the 2021 Review that some of the credit fees and default fees it was charging at 31 March 2021 did not comply with the Credit Fee Provisions and Default Fee Provisions respectively.

2.12 Following the 2021 Review, and in the course of a wider review of the fees it was charging customers generally, TSB:

- (a) removed most of its home loan fees, leaving only one early repayment fee;
- (b) removed all of its personal loan and overdraft fees; and
- (c) removed or reduced a number of its Visa credit card fees.

2.13 On 30 March 2022, TSB self-reported the outcome of the 2021 Review to the Commission and advised the Commission that it intended to remediate customers.

2.14 TSB has since remediated the affected customers including, as applicable, by refunding additional interest incurred and making use of money payments. TSB has made total payments of approximately \$6 million to customers.

First cause of action: breach of the lender responsibility principles by defective systems

2.15 The Commission repeats Part 1, and paragraphs 2.1 to 2.14 above.

- 2.16 By virtue of the circumstances pleaded in paragraphs 2.8 and 2.9 above, TSB failed to exercise the care, diligence and skill of a responsible lender:
- (a) before entering into Contracts with borrowers for home loans, personal loans, arranged overdrafts and Visa credit cards; and
 - (b) in all subsequent dealings with borrowers under those Contracts.
- 2.17 TSB thereby failed to comply with the lender responsibility principles.

Wherefore the Commission seeks:

- (A) a declaration that in the period from 6 June 2015 to 31 January 2021, TSB breached s 9C(1) and 9C(2)(a)(ii)–(iii) of the CCCFA.

3 The revolving credit home loan fees

TSB offered revolving credit home loans that provided for certain fees

- 3.1 TSB provided home loans, including revolving credit home loans, throughout the relevant period.
- 3.2 The Contracts for TSB's revolving credit home loans provided for a number of fees, including either of the following:
- (a) a \$10 monthly fee, relating to the customer's revolving credit home loan account (**Monthly Revolving Credit Fee**); or alternatively
 - (b) a \$2.50 fee in respect of each withdrawal from the customer's revolving credit home loan account, excluding automatic payments and direct debits (**Transactional Revolving Credit Fee**).

Particulars of paragraph 3.2

Prior to 1 October 2018, TSB allowed customers to elect whether to be charged either the Monthly Revolving Credit Fee, or the Transactional Revolving Credit Fee. From 1 October 2018 until 30 June 2021, TSB charged the Monthly Revolving Credit Fee on all new revolving credit home loans.

- 3.3 The Monthly Revolving Credit Fee and the Transactional Revolving Credit Fee were each credit fees, as that term is defined in the CCCFA.
- 3.4 By reason of paragraph 3.3 above, the CCCFA required the Monthly Revolving Credit Fee and the Transactional Revolving Credit Fee not to be unreasonable, in accordance with the Credit Fee Provisions.

TSB removes the fees

- 3.5 In or around May 2018, TSB decided to remove the Transactional Revolving Credit Fee for new customers who entered into a revolving credit home loan after 1 October 2018, but intended that existing customers could continue to be charged that fee.

- 3.6 TSB removed the Transactional Revolving Credit Fee from the Fee Schedule for all customers, effective from 1 October 2018. This was done in error in relation to existing customers. TSB continued to charge the Transactional Revolving Credit Fee to existing customers who had previously elected to be charged the fee, until 30 June 2021.
- 3.7 TSB ceased charging the Monthly Revolving Credit Fee on 31 July 2021.

Second cause of action: the Monthly Revolving Credit Fee was unreasonable

- 3.8 The Commission repeats Parts 1 and 2, and paragraphs 3.1 to 3.4 and 3.7 above.
- 3.9 TSB charged the Monthly Revolving Credit Fee from 6 June 2015 to 31 July 2021.
- 3.10 TSB accepts that there was no material change during this period in:
- (a) the activities conducted by TSB in order to process transactions on its customers' revolving credit home loan accounts; and
 - (b) the costs of carrying out those activities.
- 3.11 TSB's cost modelling showed that, as of March 2021, rather than \$10, a cost-justified fee for the activities to which the Monthly Revolving Credit Fee related would have been \$0.60.
- 3.12 By virtue of the matters pleaded at paragraphs 3.10 and 3.11 above, the cost-justified fee for the activities to which the Monthly Revolving Credit Fee related was therefore at or about \$0.60 throughout this period. Accordingly:
- (a) throughout the relevant period, the credit fee that TSB could have charged for the activities to which the Monthly Revolving Credit Fee related, in accordance with the Credit Fee Provisions, was at or about \$0.60;
 - (b) the Monthly Revolving Credit Fees TSB charged above that amount were unreasonable; and
 - (c) because its Contracts provided for a Monthly Revolving Credit Fee of \$10, TSB breached s 41 of the CCCFA.
- 3.13 In the period from 6 June 2015 to 31 July 2021, TSB:
- (a) charged 104,284 Monthly Revolving Credit Fees on 3,701 loan accounts, for fee revenue totalling \$1,042,830; and so
 - (b) recovered approximately \$980,259 more than it was entitled to charge in accordance with the Credit Fee Provisions, in light of the cost-justified level of the fee as at March 2021; and so
 - (c) overcharged those customers approximately \$980,259 in excess of the cost-justified level of the fee as at March 2021.
- 3.14 In the period from 20 December 2019 to 31 July 2021, TSB:

- (a) charged 40,418 Monthly Revolving Credit Fees on 2,741 loan accounts, for fee revenue totalling \$404,180; and so
- (b) recovered approximately \$379,932 more than it was entitled to charge in accordance with the Credit Fee Provisions, in light of the cost-justified level of the fee as at March 2021; and so
- (c) overcharged those customers approximately \$379,932 in excess of the cost-justified level of the fee as at March 2021.

Wherefore the Commission seeks:

- (A) a declaration that TSB breached s 41 of the CCCFA by providing for unreasonable Monthly Revolving Credit Fees in consumer credit contracts in the period from 6 June 2015 to 31 July 2021; and
- (B) a pecuniary penalty under s 107A of the CCCFA, in respect of the unreasonable Monthly Revolving Credit Fees TSB provided for in the period from 20 December 2019 to 31 July 2021.

Third cause of action: the Transactional Revolving Credit Fees were unreasonable

- 3.15 The Commission repeats Parts 1 and 2, and paragraphs 3.1 to 3.6 above.
- 3.16 TSB did not determine the level of a cost-justified Transactional Revolving Credit Fee as part of the 2021 Fees Review or otherwise.
- 3.17 In respect of the Transactional Revolving Credit Fees charged in the period from 6 June 2015 to 30 September 2018:
 - (a) the costs TSB incurred when a customer made a withdrawal from a revolving credit account were de minimis; and
 - (b) accordingly:
 - (i) the Transactional Revolving Credit Fees TSB charged above that de minimis amount were unreasonable; and
 - (ii) because its Contracts provided for a Transactional Revolving Credit Fee of \$2.50, TSB breached s 41 of the CCCFA.
- 3.18 In the period from 6 June 2015 to 30 September 2018:
 - (a) TSB charged 167,023 Transactional Revolving Credit Fees on 5,280 loan accounts, for fee revenue totalling \$417,558; and so
 - (b) recovered approximately \$417,558 more than it was entitled to charge in accordance with the Credit Fee Provisions, in light of the cost-justified level of the fee as at March 2021 (which TSB determined would have been negligible); and so
 - (c) overcharged those customers approximately \$417,558 in excess of the cost-justified level of the fee as at March 2021.

Wherefore the Commission seeks:

- (A) a declaration that TSB breached s 41 of the CCCFA by providing for unreasonable Transactional Revolving Credit Fees in consumer credit contracts in the period from 30 June 2015 to 30 September 2018.

Fourth cause of action: breach of the lender responsibility principles by continuing to charge Transactional Revolving Credit Fees

- 3.19 The Commission repeats Parts 1 and 2, and paragraphs 3.1 to 3.6 above.
- 3.20 From 1 October 2018, TSB's Contracts no longer provided for a Transactional Revolving Credit Fee.
- 3.21 By charging Transactional Revolving Credit Fees between 1 October 2018 and 30 June 2021 that were not provided for in its Contracts with borrowers, TSB failed to exercise the care, diligence, and skill of a responsible lender in its dealings with the affected borrowers after entering into Contracts with them. TSB thereby failed to comply with the lender responsibility principles.
- 3.22 In the period from 1 October 2018 to 30 June 2021, TSB charged 107,182 Transactional Revolving Credit Fees on 3,632 loan accounts, for fee revenue totalling \$267,955, all of which represents the overcharge to customers.
- 3.23 In the period from 20 December 2019 to 30 June 2021, TSB charged 53,454 Transactional Revolving Credit Fees on 2,600 loan accounts, for fee revenue totalling \$133,635, all of which represents the overcharge to customers.

Wherefore the Commission seeks:

- (A) a declaration that TSB breached s 9C(1) and 9C(2)(a)(iii) of the CCCFA by failing to exercise the care, diligence, and skill of a responsible lender in the period from 1 October 2018 to 30 June 2021, by continuing to charge Transactional Revolving Credit Fees when they were no longer provided for in Contracts; and
- (B) a pecuniary penalty under s 107A of the CCCFA, in respect of TSB's failure to comply with the lender responsibility principles in the period from 20 December 2019 to 30 June 2021, by continuing to charge Transactional Revolving Credit Fees when they were no longer provided for in Contracts.

4 TSB's other home loan credit fees

- 4.1 Throughout the relevant period, TSB's Contracts with home loan customers provided for a number of fees, including:
- (a) in respect of the security interests taken under the loan:
- (i) a \$250 fee relating to the activities undertaken by TSB to process an application by a customer to transfer the ownership of property in which TSB had a security interest (**Ownership Transfer Fee**); and

- (ii) a \$250 fee relating to the activities undertaken by TSB to process an application by a customer to change the details of property in which TSB had a security interest (**Rearranged Security Fee**);
 - (b) a \$100 fee relating to the activities undertaken by TSB whenever a customer came into one of TSB's branches to refix an existing home loan on a new interest rate (**Interest Rate Fixing Fee**);
 - (c) a \$100 fee relating to the activities undertaken by TSB in order to discharge, or partially discharge, a mortgage on release of a security under the Personal Property Securities Act 1999. Where there was more than one security, this fee related to the first security discharged (**First Security Discharge Fee**).
- 4.2 The Ownership Transfer, Rearranged Security, Interest Rate Fixing and First Security Discharge Fees:
- (a) were each credit fees, as that term is defined in the CCCFA; and
 - (b) accordingly, were required to be set in accordance with the Credit Fee Provisions.
- 4.3 TSB ceased charging the Ownership Transfer Fee, Rearranged Security Fee, Interest Rate Fixing Fee and First Security Discharge Fee on 7 September 2021.

Fifth cause of action: the Ownership Transfer Fees and Rearranged Security Fees were unreasonable

- 4.4 The Commission repeats Parts 1 and 2, and paragraphs 4.1 to 4.3 above.
- 4.5 TSB charged the Ownership Transfer Fee and Rearranged Security Fee from 6 June 2015 to 7 September 2021.
- 4.6 Throughout this period:
- (a) the only changes to the manner in which TSB conducted the activities to which the Ownership Transfer Fee and Rearranged Security Fee related were:
 - (i) the introduction of a new customer relationship management system, in November 2018; and
 - (ii) the introduction of a tool used to guide staff in conversations with customers, in September 2020; but
 - (b) notwithstanding the matters in subparagraph (a) above, TSB accepts that there were no material changes to TSB's costs of carrying out the activities to which each fee related.
- 4.7 TSB's cost modelling showed that, as of March 2021, rather than \$250, a cost-justified fee for the activities to which these fees related would have been:
- (a) \$132.55, in relation to the Ownership Transfer Fee; and
 - (b) \$133.54, in relation to the Rearranged Security Fee.

- 4.8 By virtue of the matters pleaded at paragraphs 4.6 and 4.7 above, the cost-justified fees for the activities to which the Ownership Transfer Fee and Rearranged Security Fee related were, respectively, \$132.55 and \$133.54. Accordingly:
- (a) throughout the relevant period, the credit fee that TSB could have charged in accordance with the Credit Fee Provisions was at or about:
 - (i) for the activities to which the Ownership Transfer Fee related, \$132.55; and
 - (ii) for the activities to which the Rearranged Security Fee related, \$133.54; and
 - (b) the Ownership Transfer Fees and Rearranged Security Fees TSB charged above those amounts were unreasonable; and
 - (c) because its Contracts provided for Ownership Transfer Fees and Rearranged Security Fees of \$250, TSB breached s 41 of the CCCFA.
- 4.9 In the period from 6 June 2015 to 7 September 2021, TSB:
- (a) charged a total of 61 Ownership Transfer Fees and Rearranged Security Fees to 59 loan accounts, for fee revenue totalling \$14,550; and so
 - (b) recovered approximately \$6,465 more than it was entitled to charge in accordance with the Credit Fee Provisions, in light of the cost-justified level of the fee as at March 2021; and so
 - (c) overcharged those customers approximately \$6,465 in excess of the cost-justified level of the fee as at March 2021.
- 4.10 In the period from 20 December 2019 to 7 September 2021, TSB:
- (a) charged 28 loan accounts an Ownership Transfer Fee or a Rearranged Security Fee, for fee revenue totalling \$6,600; and so
 - (b) recovered approximately \$2,889 more than it was entitled to charge in accordance with the Credit Fee Provisions, in light of the cost-justified level of the fee as at March 2021; and so
 - (c) overcharged those customers approximately \$2,889 in excess of the cost-justified level of the fee as at March 2021.

Wherefore the Commission seeks:

- (A) a declaration that TSB breached s 41 of the CCCFA by providing for unreasonable Ownership Transfer Fees and Rearranged Security Fees in consumer credit contracts in the period from 6 June 2015 to 7 September 2021; and
- (B) a pecuniary penalty under s 107A of the CCCFA, in respect of the unreasonable Ownership Transfer Fees and Rearranged Security Fees TSB provided for in the period from 20 December 2019 to 7 September 2021.

Sixth cause of action: the Interest Rate Fixing Fee was unreasonable

- 4.11 The Commission repeats Parts 1 and 2, and paragraphs 4.1 to 4.3 above.
- 4.12 TSB charged the Interest Rate Fixing Fee from 6 June 2015 to 7 September 2021.
- 4.13 Throughout this period:
- (a) the only change to the manner in which TSB conducted the activities to which the Interest Rate Fixing Fee related was the removal of the requirement for customers to sign and return a loan variation contract to refix their interest rates; but
 - (b) notwithstanding, TSB accepts that there were no material changes to TSB's costs of carrying out the activities to which the Interest Rate Fixing Fee related.
- 4.14 TSB's cost modelling showed that, as of March 2021, rather than \$100, a cost-justified fee for the activities to which the Interest Rate Fixing Fee related would have been \$49.63.
- 4.15 By virtue of the matters pleaded at paragraphs 4.13 and 4.14 above, the cost-justified fee for the activities to which the Interest Rate Fixing Fee related was \$49.63 throughout this period. Accordingly:
- (a) throughout the relevant period, the credit fee that TSB could have charged for the activities to which the Interest Rate Fixing Fee related, in accordance with the Credit Fee Provisions, was at or about \$49.63;
 - (b) the Interest Rate Fixing Fees TSB charged above that amount were unreasonable; and
 - (c) because its Contracts provided for an Interest Rate Fixing Fee of \$100, TSB breached s 41 of the CCCFA.
- 4.16 In the period from 6 June 2015 to 7 September 2021, TSB:
- (a) charged 4,418 Interest Rate Fixing Fees on 3,388 loan accounts, for fee revenue totalling \$439,992; and so
 - (b) recovered approximately \$220,742 more than it was entitled to charge in accordance with the Credit Fee Provisions, in light of the cost-justified level of the fee as at March 2021; and so
 - (c) overcharged those customers approximately \$220,742 in excess of the cost-justified level of the fee as at March 2021.

- 4.17 In the period from 20 December 2019 to 7 September 2021, TSB:
- (a) charged 968 Interest Rate Fixing Fees on 887 loan accounts, for fee revenue totalling \$96,668; and so
 - (b) recovered approximately \$48,630 more than it was entitled to charge in accordance with the Credit Fee Provisions, in light of the cost-justified level of the fee as at March 2021; and so
 - (c) overcharged those customers approximately \$48,630 in excess of the cost-justified level of the fee as at March 2021.

Wherefore the Commission seeks:

- (A) a declaration that TSB breached s 41 of the CCCFA by providing for unreasonable Interest Rate Fixing Fees in consumer credit contracts in the period from 6 June 2015 to 7 September 2021; and
- (B) a pecuniary penalty under s 107A of the CCCFA, in respect of the unreasonable Interest Rate Fixing Fees TSB provided for in the period from 20 December 2019 to 7 September 2021.

Seventh cause of action: the First Security Discharge Fee was unreasonable

- 4.18 The Commission repeats Parts 1 and 2, and paragraphs 4.1 to 4.3 above.
- 4.19 TSB charged the First Security Discharge Fee from 6 June 2015 to 7 September 2021.
- 4.20 TSB accepts that there was no material change during this period in:
- (a) the activities undertaken by TSB to discharge, or partially discharge, a mortgage on release of a security under the Personal Property Securities Act 1999 (or, where there was more than one security, the first security discharged); and
 - (b) the costs of carrying out those activities.
- 4.21 TSB's cost modelling showed that, as of March 2021, rather than \$100, a cost-justified fee for the activities to which the First Security Discharge Fee related would have been \$66.89.
- 4.22 By virtue of the matters pleaded at paragraphs 4.20 and 4.21 above, the cost-justified fee for the activities to which the First Security Discharge Fee related was therefore at or about \$66.89 throughout this period. Accordingly:
- (a) throughout the relevant period, the credit fee that TSB could have charged for the activities to which the First Security Discharge Fee related, in accordance with the Credit Fee Provisions, was at or about \$66.89;
 - (b) the First Security Discharge Fees TSB charged above that amount were unreasonable; and

- (c) because its Contracts provided for a First Security Discharge Fee of \$100, TSB breached s 41 of the CCCFA.

4.23 In the period from 6 June 2015 to 7 September 2021, TSB:

- (a) charged 10,486 First Security Discharge Fees on 10,453 loan accounts, for fee revenue totalling \$1,048,600; and so
- (b) recovered approximately \$347,248 more than it was entitled to charge in accordance with the Credit Fee Provisions, in light of the cost-justified level of the fee as at March 2021; and so
- (c) overcharged those customers approximately \$347,248 in excess of the cost-justified level of the fee as at March 2021.

4.24 In the period from 20 December 2019 to 7 September 2021, TSB:

- (a) charged 3,224 First Security Discharge Fees on 3,220 loan accounts, for fee revenue totalling \$322,400; and so
- (b) recovered approximately \$106,746 more than it was entitled to charge in accordance with the Credit Fee Provisions, in light of the cost-justified level of the fee as at March 2021; and so
- (c) overcharged those customers approximately \$106,746 in excess of the cost-justified level of the fee as at March 2021.

Wherefore the Commission seeks:

- (A) a declaration that TSB breached s 41 of the CCCFA by providing for unreasonable First Security Discharge Fees in consumer credit contracts in the period from 6 June 2015 to 7 September 2021; and
- (B) a pecuniary penalty under s 107A of the CCCFA, in respect of the unreasonable First Security Discharge Fees TSB provided for in the period from 20 December 2019 to 7 September 2021.

5 TSB's home loan default fees

5.1 Throughout the relevant period, TSB's Contracts with home loan customers provided for a number of fees charged in the event the customer was in default under their home loan, including:

- (a) a \$50 fee, ostensibly for activities always undertaken by TSB following a local authority issuing a rates demand letter (**Rates Demand Fee**); and
- (b) a \$50 fee relating to the activities undertaken by TSB when it received notice from a customer's insurer that the premium for insurance over a property or asset held by TSB as security was unpaid (**Insurance Arrears Service Fee**).

5.2 The Rates Demand Fee and Insurance Arrears Service Fee were both default fees, as that term is defined in the CCCFA.

- 5.3 By reason of paragraph 5.2 above, the CCCFA required the amounts of the Rates Demand Fee and Insurance Arrears Service Fee not to be unreasonable, in accordance with the Default Fee Provisions.
- 5.4 TSB ceased charging the Rates Demand Fee and the Insurance Arrears Service Fee on 7 September 2021.

Eighth cause of action: breach of the lender responsibility principles in charging the Rates Demand Fee

- 5.5 The Commission repeats Part 1 and 2, and paragraphs 5.1 to 5.4 above.
- 5.6 Between 1 October 2018 and 7 September 2021, 96 loan accounts were charged a Rates Demand Fee in circumstances where TSB had not carried out activities that gave rise to the entitlement to charge the fee. It did so in circumstances where:
- (a) a local authority notified TSB that the rates on a secured property were unpaid, and demanded payment from TSB as mortgagee; and
 - (b) the rates were then paid by the customer, prior to TSB having to pay the rates demand itself.
- 5.7 Under the Contracts, from 1 October 2018, TSB was only entitled to charge a Rates Demand Fee when it in fact paid a rates demand.
- 5.8 By charging Rates Demand Fees from 1 October 2018 that it had no contractual entitlement to charge, TSB failed to exercise the care, diligence, and skill of a responsible lender in its dealings with the affected borrowers after entering into Contracts with them. TSB thereby failed to comply with the lender responsibility principles.
- 5.9 In the period from 1 October 2018 to 7 September 2021, TSB charged Rates Demand Fees totalling \$5,500, all of which represents the overcharge to customers.
- 5.10 In the period from 20 December 2019 to 7 September 2021, TSB charged Rates Demand Fees totalling \$1,800, all of which represents the overcharge to customers.

Wherefore the Commission seeks:

- (A) a declaration that TSB breached s 9C(1) and 2(a)(iii) of the CCCFA by failing to exercise the care, diligence, and skill of a responsible lender in the period from 1 October 2018 to 7 September 2021, by charging Rates Demand Fees without carrying out the activities that gave rise to the entitlement to charge the fee; and
- (B) a pecuniary penalty under s 107A of the CCCFA, in respect of TSB's failure to comply with the lender responsibility principles in the period from 20 December 2019 to 7 September 2021, by charging Rates Demands Fees it was not entitled to charge.

Ninth cause of action: the Insurance Arrears Service Fee was unreasonable

- 5.11 The Commission repeats Part 1 and 2, and paragraphs 5.1 to 5.4 above.
- 5.12 TSB charged the Insurance Arrears Service Fee from 6 June 2015 to 7 September 2021.
- 5.13 TSB accepts that there was no material change during this period in:
- (a) the activities undertaken by TSB to carry out the attendances required where insurance was payable over property or assets held by TSB as security; and
 - (b) the costs of carrying out those activities.
- 5.14 TSB's cost modelling showed that, as of March 2021, rather than \$50, a cost-justified fee for the activities to which the Insurance Arrears Service Fee related would have been \$16.54.
- 5.15 By virtue of the matters pleaded at paragraphs 5.13 and 5.14 above, the cost-justified fee for the activities to which the Insurance Arrears Service Fee related was therefore at or about \$16.54 throughout this period. Accordingly:
- (a) throughout the relevant period, the default fee that TSB could have charged for the activities to which the Insurance Arrears Service Fee related, in accordance with the Default Fee Provisions, was at or about \$16.54;
 - (b) the Insurance Arrears Service Fees TSB charged above that amount were unreasonable; and
 - (c) because its Contracts provided for an Insurance Arrears Service Fee of \$50, TSB breached s 41 of the CCCFA.
- 5.16 In the period from 6 June 2015 to 7 September 2021, TSB:
- (a) charged 997 Insurance Arrears Service Fees on 528 loan accounts, for fee revenue totalling \$49,850; and so
 - (b) recovered approximately \$33,360 more than it was entitled to charge in accordance with the Default Fee Provisions, in light of the cost-justified level of the fee as at March 2021; and so
 - (c) overcharged those customers approximately \$33,360 in excess of the cost-justified level of the fee as at March 2021.
- 5.17 In the period from 20 December 2019 to 7 September 2021, TSB:
- (a) charged 284 Insurance Arrears Service Fees on 194 loan accounts, for fee revenue totalling \$14,200; and so
 - (b) recovered approximately \$9,503 more than it was entitled to charge in accordance with the Default Fee Provisions, in light of the cost-justified level of the fee as at March 2021; and so

- (c) overcharged those customers approximately \$9,503 in excess of the cost-justified level of the fee as at March 2021.

Wherefore the Commission seeks:

- (A) a declaration that TSB breached s 41 of the CCCFA by providing for unreasonable Insurance Arrears Service Fees in consumer credit contracts in the period from 6 June 2015 to 7 September 2021; and
- (B) a pecuniary penalty under s 107A of the CCCFA, in respect of the unreasonable Insurance Arrears Service Fees TSB provided for in the period from 20 December 2019 to 7 September 2021.

6 The overdraft service fee

- 6.1 TSB provided arranged personal overdrafts throughout the relevant period.
- 6.2 The Contracts for TSB's arranged overdrafts provided for various fees, including a monthly fee of \$3 charged to the overdraft account on the last day of the month, relating to the costs incurred and the activities undertaken by TSB to administer an overdraft account, including maintenance and reporting costs (**Monthly Service Fee**).
- 6.3 The Monthly Service Fee was a credit fee, as that term is defined in the CCCFA.
- 6.4 By reason of paragraph 6.3 above, the CCCFA required the amount of the Monthly Service Fee not to be unreasonable, in accordance with the Credit Fee Provisions.
- 6.5 TSB ceased charging the Monthly Service Fee on 30 October 2021.

Tenth cause of action: the Monthly Service Fee was unreasonable

- 6.6 The Commission repeats Parts 1 and 2 and paragraphs 6.1 to 6.5 above.
- 6.7 TSB charged the Monthly Service Fee from 6 June 2015 to 30 October 2021.
- 6.8 TSB accepts that there was no material change during this period in:
 - (a) the activities undertaken by TSB in order to administer an overdraft account; and
 - (b) the costs of carrying out those activities.
- 6.9 TSB's cost modelling showed that, as of March 2021, rather than \$3, a cost-justified fee for the activities to which the Monthly Service Fee related would have been \$1.22.
- 6.10 By virtue of the matters pleaded at paragraphs 6.8 to 6.9 above, the cost-justified fee for the activities to which the Monthly Service Fee related was therefore at or about \$1.22 throughout this period. Accordingly:

- (a) throughout the relevant period, the credit fee that TSB could have charged for the activities to which the Monthly Service Fee related, in accordance with the Credit Fee Provisions, was at or about \$1.22;
- (b) the Monthly Service Fees TSB charged above that amount were unreasonable; and
- (c) because its Contracts provided for a Monthly Service Fee of \$3, TSB breached s 41 of the CCCFA.

6.11 In the period from 6 June 2015 to 30 October 2021, TSB:

- (a) charged 92,789 Monthly Service Fees on 2,742 accounts, for fee revenue totalling \$278,367; and so
- (b) recovered approximately \$165,160 more than it was entitled to charge in accordance with the Credit Fee Provisions, in light of the cost-justified level of the fee as at March 2021; and so
- (c) overcharged those customers approximately \$165,160 in excess of the cost-justified level of the fee as at March 2021.

6.12 In the period from 20 December 2019 to 30 October 2021, TSB:

- (a) charged 25,366 Monthly Service Fees on 2,507 accounts, for fee revenue totalling \$76,098; and so
- (b) recovered approximately \$45,150 more than it was entitled to charge in accordance with the Credit Fee Provisions, in light of the cost-justified level of the fee as at March 2021; and so
- (c) overcharged those customers approximately \$45,150 in excess of the cost-justified level of the fee as at March 2021.

Wherefore the Commission seeks:

- (A) a declaration that TSB breached s 41 of the CCCFA by providing for unreasonable Monthly Service Fees in consumer credit contracts in the period from 6 June 2015 to 30 October 2021; and
- (B) a pecuniary penalty under s 107A of the CCCFA, in respect of the unreasonable Monthly Service Fees TSB provided for in the period from 20 December 2019 to 30 October 2021.

7 The credit fees payable on Visa credit cards

7.1 TSB provided Visa credit cards throughout the relevant period.

7.2 The Contracts for Visa credit cards provided by TSB provided for a number of fees, including the following:

- (a) a \$10 fee after there had been at least three months where there was no card activity on the customer's account (**Inactivity Fee**);

- (b) a \$2 fee for each cash advance made by a customer within New Zealand using a Visa credit card, relating to the activities undertaken by TSB when processing such advances (**Cash Advance Fee**);
- (c) a \$15 fee for each occasion where a customer requested a replacement Visa credit card, relating to the activities undertaken by TSB to provide that replacement (**Card Replacement Fee**); and
- (d) a fee of 2.5% of the amount of any transaction made in a foreign currency, relating to currency conversion charges and transaction costs incurred by TSB (**Foreign Currency Conversion Fee**).

Particulars of paragraph 7.2(a)

The Inactivity Fee was only charged to accounts that were not charged a separate 'card fee'.

- 7.3 The Inactivity Fee, Card Replacement Fee, Cash Advance Fee and Foreign Currency Conversion Fee were credit fees, as that term is defined in the CCCFA.
- 7.4 By reason of paragraph 7.3 above, the CCCFA required the amounts of the Inactivity Fee, Card Replacement Fee, Cash Advance Fee and Foreign Currency Conversion Fee not to be unreasonable, in accordance with the Credit Fee Provisions.

Current status of the fees

- 7.5 TSB removed the Inactivity Fee from its Fee Schedule on 26 March 2021. It did so after forming the view that it was out of step with market practice.
- 7.6 TSB ceased charging the Cash Advance Fee on 2 November 2021.
- 7.7 On 2 November 2021, TSB reduced the amounts of the Card Replacement Fee and the Foreign Currency Conversion Fee, in line with the cost modelling it had conducted in the course of the 2021 Review.

Eleventh cause of action: the Inactivity Fee was unreasonable

- 7.8 The Commission repeats Parts 1 and 2, and paragraphs 7.1 to 7.5 above.
- 7.9 TSB charged the Inactivity Fee from 6 June 2015 to 26 March 2021.
- 7.10 Throughout this period, TSB did not undertake any activities, and so did not incur any costs, as a response to there having been no transactions on a customer's Visa credit card account for a period of three months.
- 7.11 Accordingly:
 - (a) the Inactivity Fees TSB charged were unreasonable in their entirety; and
 - (b) because its Contracts provided for an Inactivity Fee of \$10, TSB breached s 41 of the CCCFA.

- 7.12 In the period from 6 June 2015 to 26 March 2021, TSB charged 7,211 Inactivity Fees for fee revenue totalling \$72,110, all of which represents the overcharge to customers.
- 7.13 In the period from 20 December 2019 to 26 March 2021, TSB charged 1,300 Inactivity Fees for fee revenue totalling \$13,000, all of which represents the overcharge to customers.

Wherefore the Commission seeks:

- (A) a declaration that TSB breached s 41 of the CCCFA by providing for unreasonable Inactivity Fees in consumer credit contracts in the period from 6 June 2015 to 26 March 2021; and
- (B) a pecuniary penalty under s 107A of the CCCFA, in respect of the unreasonable Inactivity Fees TSB provided for in the period from 20 December 2019 to 26 March 2021.

Twelfth cause of action: the Cash Advance Fee was unreasonable

- 7.14 The Commission repeats Parts 1 and 2, and paragraphs 7.1 to 7.4 and 7.6 above.
- 7.15 TSB charged the Cash Advance Fee from 6 June 2015 to 2 November 2021.
- 7.16 TSB accepts that there was no material change during this period in:
- (a) the activities undertaken by TSB when processing cash advances made within New Zealand; and
 - (b) the costs of carrying out those activities.
- 7.17 TSB's cost modelling showed that, as of March 2021, rather than \$2, a cost-justified fee for the activities to which the Cash Advance Fee related would have been \$0.89 per transaction.
- 7.18 By virtue of the matters pleaded at paragraphs 7.16 to 7.17 above, the cost-justified fee for the activities to which the Cash Advance Fee related was therefore at or about \$0.89 per transaction throughout this period. Accordingly:
- (a) throughout the relevant period, the credit fee that TSB could have charged for the activities to which the Cash Advance Fee related, in accordance with the Credit Fee Provisions, was at or about \$0.89 per transaction;
 - (b) the Cash Advance Fees TSB charged above that amount were unreasonable; and
 - (c) because its Contracts provided for a Cash Advance Fee of \$2 per transaction, TSB breached s 41 of the CCCFA.
- 7.19 In the period from 6 June 2015 to 2 November 2021, TSB:
- (a) charged 141,856 Cash Advance Fees on 9,639 credit card accounts, for fee revenue totalling \$283,712; and so

- (b) recovered approximately \$157,460 more than it was entitled to charge in accordance with the Credit Fee Provisions, in light of the cost-justified level of the fee as at March 2021; and so
- (c) overcharged those customers approximately \$157,460 in excess of the cost-justified level of the fee as at March 2021.

7.20 In the period from 20 December 2019 to 2 November 2021, TSB:

- (a) charged 24,718 Cash Advance Fees on 3,381 credit card accounts, for fee revenue totalling \$49,436; and so
- (b) recovered approximately \$27,436 more than it was entitled to charge in accordance with the Credit Fee Provisions, in light of the cost-justified level of the fee as at March 2021; and so
- (c) overcharged those customers approximately \$27,436 in excess of the cost-justified level of the fee as at March 2021.

Wherefore the Commission seeks:

- (A) a declaration that TSB breached s 41 of the CCCFA by providing for unreasonable Cash Advance Fees in consumer credit contracts in the period from 6 June 2015 to 2 November 2021; and
- (B) a pecuniary penalty under s 107A of the CCCFA, in respect of the unreasonable Cash Advance Fees TSB provided for in the period from 20 December 2019 to 2 November 2021.

Thirteenth cause of action: the Card Replacement Fee was unreasonable

7.21 The Commission repeats Parts 1 and 2, and paragraphs 7.1 to 7.4 and 7.7 above.

7.22 TSB charged Card Replacement Fees in the period from 6 June 2015 to 2 November 2021.

7.23 TSB accepts that there was no material change during this period in:

- (a) the activities undertaken by TSB to provide a customer with a replacement Visa credit card; and
- (b) the costs of carrying out those activities.

7.24 TSB's cost modelling showed that, as of March 2021, rather than \$15, a cost-justified fee for the activities to which the Card Replacement Fee related would have been \$7.89.

7.25 By virtue of the matters pleaded at paragraphs 7.23 to 7.24 above, the cost-justified fee for the activities to which the Card Replacement Fee related was therefore at or about \$7.89 throughout this period. Accordingly:

- (a) throughout the relevant period, the credit fee that TSB could have charged for the activities to which the Card Replacement Fee related, in accordance with the Credit Fee Provisions, was at or about \$7.89;

- (b) the Card Replacement Fees TSB charged above that amount were unreasonable; and
- (c) because its Contracts provided for a Card Replacement Fee of \$15, TSB breached s 41 of the CCCFA.

7.26 In the period from 6 June 2015 to 2 November 2021, TSB:

- (a) charged 13,127 Card Replacement Fees on 8,847 credit card accounts, for fee revenue totalling \$196,893; and so
- (b) recovered approximately \$93,344 more than it was entitled to charge in accordance with the Credit Fee Provisions, in light of the cost-justified level of the fee as at March 2021; and so
- (c) overcharged those customers approximately \$93,344 in excess of the cost-justified level of the fee as at March 2021.

7.27 In the period from 20 December 2019 to 2 November 2021, TSB:

- (a) charged 3,710 Card Replacement Fees on 3,319 credit card accounts, for fee revenue totalling \$55,650; and so
- (b) recovered approximately \$26,385 more than it was entitled to charge in accordance with the Credit Fee Provisions, in light of the cost-justified level of the fee as at March 2021; and so
- (c) overcharged those customers approximately \$26,385 in excess of the cost-justified level of the fee as at March 2021.

Wherefore the Commission seeks:

- (A) a declaration that TSB breached s 41 of the CCCFA by providing for unreasonable Card Replacement Fees in consumer credit contracts in the period from 6 June 2015 to 2 November 2021; and
- (B) a pecuniary penalty under s 107A of the CCCFA, in respect of the unreasonable Card Replacement Fees TSB provided for in the period from 20 December 2019 to 2 November 2021.

Fourteenth cause of action: the Foreign Currency Conversion Fee was unreasonable

7.28 The Commission repeats Parts 1 and 2, and paragraphs 7.1 to 7.4 and 7.7 above.

7.29 TSB charged Foreign Currency Conversion Fees in the period from 6 June 2015 to 2 November 2021.

7.30 TSB accepts that there was no material change during this period in:

- (a) the activities undertaken by TSB in relation to currency conversion, nor to currency conversion charges and transactions costs; and
- (b) the costs of carrying out those activities.

- 7.31 TSB's cost modelling showed that, as of March 2021, rather than 2.5% per transaction, a cost-justified fee for the activities to which the Foreign Currency Conversion Fee related would have been 2.3% per transaction.
- 7.32 By virtue of the matters pleaded at paragraphs 7.30 to 7.31 above, the cost-justified fee for the activities to which the Foreign Currency Conversion Fee related was therefore 2.3% per transaction throughout this period. Accordingly:
- (a) throughout the relevant period, the credit fee that TSB could have charged for the activities to which the Foreign Currency Conversion Fee related, in accordance with the Credit Fee Provisions, was 2.3% per transaction;
 - (b) the Foreign Currency Conversion Fees TSB charged above that amount were unreasonable; and
 - (c) because its Contracts provided for a Foreign Currency Conversion Fee of 2.5% per transaction, TSB breached s 41 of the CCCFA.
- 7.33 In the period from 6 June 2015 to 2 November 2021, TSB:
- (a) charged 1,623,111 Foreign Currency Conversion Fees on 25,016 credit card accounts, for fee revenue totalling \$3,247,587; and so
 - (b) recovered approximately \$259,958 more than it was entitled to charge in accordance with the Credit Fee Provisions, in light of the cost-justified level of the fee as at March 2021; and so
 - (c) overcharged those customers approximately \$259,958 in excess of the cost-justified level of the fee as at March 2021.
- 7.34 In the period from 20 December 2019 to 2 November 2021, TSB:
- (a) charged 288,810 Foreign Currency Conversion Fees on 14,731 credit card accounts, for fee revenue totalling \$492,071; and so
 - (b) recovered approximately \$39,456 more than it was entitled to charge in accordance with the Credit Fee Provisions, in light of the cost-justified level of the fee as at March 2021; and so
 - (c) overcharged those customers approximately \$39,456 in excess of the cost-justified level of the fee as at March 2021.

Wherefore the Commission seeks:

- (A) a declaration that TSB breached s 41 of the CCCFA by providing for unreasonable Foreign Currency Conversion Fees in consumer credit contracts in the period from 6 June 2015 to 2 November 2021, in breach of s 41 of the CCCFA; and
- (B) a pecuniary penalty under s 107A of the CCCFA, in respect of the unreasonable Foreign Currency Conversion Fees TSB provided for in the period from 20 December 2019 to 2 November 2021.

8 The default fees payable on Visa credit cards

- 8.1 The Contracts for Visa credit cards provided by TSB provided for a number of default fees. These included a monthly default fee of \$12, which was intended to relate to activities to be undertaken by TSB each month that an account remained in arrears (**Late Payment Default Fee**) (though TSB only undertook such activities for second and subsequent months).
- 8.2 TSB first charged a Late Payment Default Fee after a customer did not make a payment on their Visa credit card within five days of the date on which the payment was due (the **First Arrears Date**). It charged subsequent Late Payment Default Fees monthly thereafter.
- 8.3 The Late Payment Default Fee was a default fee, as that term is defined in the CCCFA.
- 8.4 By reason of paragraph 8.3 above, the CCCFA required the amount of the Late Payment Default Fee not to be unreasonable, in accordance with the Default Fee Provisions.
- 8.5 TSB ceased charging the Late Payment Default Fee on 2 November 2021.

Fifteenth cause of action: the Late Payment Default Fee was unreasonable

- 8.6 The Commission repeats Parts 1 and 2, and paragraphs 8.1 and 8.5 above.
- 8.7 TSB charged the Late Payment Default Fee from 6 June 2015 to 2 November 2021.
- 8.8 In the month following the First Arrears Date, TSB did not:
- (a) undertake any activities in respect of the customer's default; and so
 - (b) did not, in that period, incur any costs in respect of the customer's default.
- 8.9 Accordingly:
- (a) throughout the relevant period, TSB could not charge a Late Payment Default Fee at all in respect of the month following the First Arrears Date;
 - (b) any Late Payment Default Fees TSB charged in the month following the First Arrears Date were unreasonable in their entirety; and
 - (c) because its Contracts provided for a Late Payment Default Fee of \$12 in those circumstances, TSB breached s 41 of the CCCFA.
- 8.10 In the period from 6 June 2015 to 2 November 2021, TSB charged 48,313 Late Payment Default Fees in the first month after customers' First Arrears Dates, for fee revenue totalling \$579,786, all of which represents the overcharge to customers.

8.11 In the period from 20 December 2019 to 2 November 2021, TSB charged approximately 11,320 Late Payment Default Fees in the first month after customers' First Arrears Dates, for fee revenue totalling approximately \$135,864, all of which represents the overcharge to customers.

Wherefore the Commission seeks:

- (A) a declaration that TSB breached s 41 of the CCCFA by providing for unreasonable Late Payment Default Fees in consumer credit contracts in the period from 6 June 2015 to 2 November 2021; and
- (B) a pecuniary penalty under s 107A of the CCCFA, in respect of the unreasonable Late Payment Default Fees TSB provided for in the period from 20 December 2019 to 2 November 2021.

This document is filed by **Nicholas Fraser Flanagan**, solicitor for the plaintiff, of the firm Meredith Connell. The address for service of the plaintiff is Level 7, MC Centre, 8 Hardinge Street, Auckland 1010.

Documents for service on the plaintiff may be:

- (a) emailed to [REDACTED]; or
- (b) if email is not practical:
 - (i) posted to Meredith Connell (attn. Andy Luck) at PO Box 90750, Victoria Street West, Auckland 1142; or
 - (ii) left at the solicitor's address as noted above (attn. Andy Luck).

Schedule 2: Notice of admissions

In the High Court of New Zealand
Auckland Registry

CIV 2023-404-

I Te Kōti Matua O Aotearoa
Tāmaki Makaurau Rohe

Under **Credit Contracts and Consumer
Finance Act 2003**

Between **Commerce Commission**
Plaintiff

And **TSB Bank Limited**
Defendant

NOTICE OF ADMISSIONS

Dated 2024

**GILBERT
WALKER**

PO Box 1595
Shortland Street
Auckland 1140
New Zealand

P [REDACTED]
E [REDACTED]

Counsel acting:

S M Hunter KC

P [REDACTED]
E [REDACTED]
[REDACTED]

**Solicitor acting: I Rosic / Z A
Brentnall**

NOTICE OF ADMISSIONS**The defendant by its solicitor says:**

For the purpose of rr 15.15 and 15.16 of the High Court Rules 2016, the defendant admits the facts pleaded and causes of action in the amended statement of claim dated [DD MM YYYY].

Dated 2024

I Rosic / Z A Brentnall
Solicitors for the defendant

This document is filed by Iva Rosic, solicitor for the defendant, of the firm Gilbert Walker. The address for service of the defendant is at the offices of Gilbert Walker, Level 35, 48 Shortland Street, Auckland.

Documents for service on the defendant may be delivered to that address or may be:

- a. posted to the solicitor at PO Box 1595, Shortland Street, Auckland 1140; or
- b. emailed to the solicitor at [REDACTED],
[REDACTED]; [REDACTED] and
[REDACTED].