Settlement Agreement

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

Settlement agreement dated 17 June 2026

Parties

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

ASB Bank Limited, a duly incorporated company having its registered office at Level 2, ASB North Wharf, 12 Jellicoe Street, Auckland (**ASB**).

(collectively, the **Parties**).

1 Introduction

1.1 In December 2022, ASB advised the Commission that it had identified customers that had permanent overdrafts established or varied who may not have been assessed for affordability or suitability purposes or provided with the required disclosure under the Credit Contracts and Consumer Finance Act 2003 (**Act**).

1.2 Further updates were provided to the Commission subsequently, in which ASB confirmed that the issue described in paragraph 1.1 above also affected temporary personal overdrafts provided under consumer credit contracts (with the matters affecting permanent and temporary overdrafts together being referred to as the **Personal Overdraft Issue**).

1.3 In November 2023, ASB advised the Commission that it had identified that when borrowers entered into repayment arrangements, and subsequently overpaid the amount owing under those arrangements, ASB did not always promptly detect and reimburse those overpayments (the **Debt Overpayment Issue**), (this issue, together with the Personal Overdraft Issue, are referred to in this Agreement as the **Self Reports**).

1.4 The Commission conducted an investigation into ASB for potential breaches of the Act in relation to the matters described in the Self Reports (**Investigation**).

1.5 As a result of the Investigation, the Commission intends to file a proceeding in the High Court alleging that ASB breached s 9C(1) of the Act by failing to comply with the lender responsibility principles outlined in ss 9C(2)(a)(ii)-(iii) and 9C(3)(a)(i)-(ii) (**Proceeding**). Those breaches arise principally from ASB's failure to have adequate systems and processes in place to prevent issues of the kind disclosed in the Self-Reports from occurring.

1.6 ASB has taken steps to address the issues identified by the Commission in the Investigation, and is undertaking a remediation exercise to compensate the affected borrowers.

1.7 The Parties have reached a settlement regarding the matters arising out of the Self Reports and Investigation, and to be determined in the Proceeding, on the terms set out in this Agreement.

1.8 After the release of the Penalty Judgment, this Agreement may be made public by the Commission (including on the Commission's website) as the Commission sees fit.

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 4.5(a);

(d) **Agreement** means this settlement agreement and the schedules attached to it;

(e) **ASB** means ASB Bank Limited;

(f) **Commission** means the Commerce Commission;

(g) **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;

(h) **Costs Contribution** means the voluntary payment by ASB to the Commission provided for in clause 4.6;

(i) **Defaulting Party** has the meaning as set out in clause 8.1;

(j) **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;

(k) Dollar amounts stated are in New Zealand dollars;

(l) **Entitled party** means the Commission, ASB, and (in the event that regulatory responsibility for enforcing the Act is transferred to it) the Financial Markets Authority;

(m) **Information** includes all information, documents, material and evidence of any kind whatsoever, including all oral, written and electronic material in relation to the Proceeding;

(n) **Investigation** means the investigation initiated by the Commission following the Self Reports and:

(i) in respect of the Personal Overdraft Issue, includes the matters raised in the Self Reports and in subsequent communications with the Commission, including for the avoidance of doubt all issues arising from both supported and unsupported loan

origination systems in use within ASB during the relevant period; and

(ii) in respect of the Debt Overpayment Issue, includes matters raised in the Self Reports and in subsequent communications with the Commission, but excludes any separate issues that ASB has identified as being outside the ambit of the Debt Overpayment Issue;

(o) **Notice of Admissions** means the notice of admissions attached as **Schedule 2** to this Agreement;

(p) **Notifying Party** has the meaning set out in clause 8.1;

(q) **Party** means any party to this Agreement;

(r) **Penalty Hearing** means the hearing or fixture in the Proceeding at which the Commission and ASB will ask the Court to approve the order set out in clause 4.5;

(s) **Penalty Judgment** means a judgment of the Court determining the pecuniary penalty payable by ASB in the Proceeding (whether such judgment is delivered orally or in writing; and includes a results judgment issued with reasons to follow). Where a Penalty Judgment of a particular Court is specified, it is the judgment of that Court;

(t) **Person** extends to non-natural persons and includes any association of persons whether incorporated or not;

(u) **Planned Remediation** means the remediation plans in respect of each of the Personal Overdraft Issue and the Debt Overpayment Issue, as advised to the Commission by ASB prior to the Parties entering this Agreement;

(v) **Proceeding** means the civil proceeding commenced by the Commission filing the Statement of Claim in the High Court of New Zealand, and includes any appeals;

(w) **Self Reports** means the self reports by ASB to the Commission as described in clauses 1.1-1.3;

(x) **Statement of Claim** means the statement of claim attached as **Schedule 1** to this Agreement; and

(y) **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 ASB made in the Statement of Claim and the Proceeding; and

(b) any claims that could have been made by the Commission against ASB, or any current or former officer, employee or director of ASB, in relation

to, or arising from, the Self Reports and/or the Investigation (as those terms are specifically defined in this Agreement).

3.2 The Parties agree to resolve the Investigation and 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, ASB filing the Notice of Admissions together with the joint memorandum provided for in clause 4.1;

(c) ASB will complete its Planned Remediation in respect of the affected borrowers by:

(i) 31 December 2026 for the Personal Overdraft Issue; and

(ii) 30 September 2026 for the Debt Overpayment Issue;

(as applicable, the **Remediation Dates**).

(d) ASB reporting to the Commission and to the Financial Markets Authority on its progress in remediating affected borrowers, separately in respect of each of the Personal Overdraft Issue and the Debt Overpayment Issue, on or before each of the following dates:

(i) 5 working days prior to the Penalty Hearing;

(ii) by 5pm on 7 September 2026 for the Debt Overpayment Issue, and by 5pm on 7 December 2026 for the Personal Overdraft Issue;

(iii) if the prior reports do not confirm that the Planned Remediation has been completed, 5 working days after the relevant Remediation Date.

(e) The matters to be reported by ASB in accordance with clause 3.2(d) are:

(i) The total number and value of payments made by ASB as at the end of the month preceding the reporting date, or such later date chosen by ASB;

(ii) The number and value of payments in clause 3.2(e)(i) expressed as a percentage of the total anticipated number and value of payments to be made by ASB to complete each remediation;

(iii) The progress ASB has made against its Planned Remediation; and

(iv) The expected or actual completion date of each remediation, as applicable;

(f) ASB paying any pecuniary penalty in accordance with clause 5; and

(g) otherwise on the basis set out in this Agreement.

3.3 In relation to the obligation at clause 3.2(c) above, ASB may request an extension to the date that remediation is due to be completed by in writing to the Commission (or alternatively, if the Commission advises ASB in writing to do so, the Financial Markets Authority). Such a request will include an explanation for why ASB considers the extension to be necessary. Any such extension may be granted in whole or in part, and may include such further reporting obligations as the Commission (or the Financial Markets Authority, if applicable) may decide following consultation with ASB as to the precise terms of those reporting obligations.

3.4 The admissions made by ASB 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.

3.5 The Commission will close its Investigation upon the execution of this Agreement and will not commence, or continue further proceedings against ASB or any current or former officer, employee or director of ASB, in connection with matters that are subject of the Proceeding, Investigation and Self Reports (as those terms are specifically defined in this Agreement).

3.6 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 ASB or any other person in respect of the matters described in clause 3.6(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, ASB will file a joint memorandum of the Parties requesting that a Penalty Hearing be fixed for the first available date which is at least 25 Working Days after the date of filing of the joint memorandum, subject to the availability of counsel.

4.2 The Parties will co-operate and use all reasonable endeavours to ensure that the Penalty Hearing proceeds on the first available date proposed by the Court.

Consultation on penalty submissions

4.3 The Commission and ASB will:

(a) circulate to the other a draft of any submissions or memorandum they propose to file in relation to the Penalty Hearing, to be circulated:

(i) in the Commission's case, 10 Working Days before the Commission is to file submissions or a memorandum with the Court;

(ii) in ASB's case, 10 Working Days before ASB is to file submissions or a memorandum with the Court;

(b) provide any comments on a submission or memorandum received in accordance with clause 4.3(a) not more than 5 Working Days after receiving those submissions or that memorandum; with those comments to be focussed on identifying matters considered not to be consistent with the Statement of Claim, the Notice of Admissions and/or this Agreement; and

(c) consider in good faith any such comments that the other Party may have in connection with the submission or memorandum.

4.4 Neither Party will make any submission, written or oral, that is inconsistent in content with the Statement of Claim, Notice of Admissions, or this Agreement.

Agreed Recommended Penalty and content of penalty submissions

4.5 The Commission and ASB agree and undertake that:

(a) the Agreed Recommended Penalty for the Admitted Causes of Action is a final penalty of $5.796 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 $8.05 million–$8.3 million; and

(ii) ASB will submit that an appropriate starting point is in the range of $7.8 million–$8.05 million;

(d) they will make written and oral submissions recommending to the Court that it adopt a starting point of $8.05 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 28% 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 advise the Court that there should be no order as to costs.

4.6 ASB will contribute $100,000 (including GST, if any) towards the Commission's costs arising in connection with the Investigations and the Proceeding.

4.7 The Parties agree that all material facts for the purposes of the Proceeding 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 are agreed and may properly be the subject of submissions by either Party:

(i) the fact that ASB has:

(A) introduced additional controls into the systems and processes that were the subject of the Self Reports;

(B) conducted remediation, to the extent recorded in the report provided for in clause 3.2(d)(i) above;

(C) For the Debt Overpayment Issue, in addition to the total remediation amount pleaded in the statement of claim, has remediated or will remediate overpayments which occurred prior to 2015.

(D) incurred substantial cost in carrying out remediation and rectification.

5 Payment of penalty and Costs Contribution

5.1 If the High Court imposes the Agreed Recommended Penalty in the Penalty Judgment, ASB 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 ASB 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, ASB or the Commission, as applicable, shall pay to the other any difference between the amount paid by ASB 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, ASB 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.

5.6 ASB will pay the amount of the Costs Contribution in cleared funds into the bank account nominated by the Commission within 15 Working Days of the Penalty Judgment, whether or not the High Court imposes the Agreed Recommended Penalty.

6 Appeals from the Penalty Judgment

6.1 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.

6.2 If, following submissions from the Parties consistent with clause 4.5, the Court imposes a penalty that differs from the Agreed Recommended Penalty, any Party may appeal the Penalty Judgment.

6.3 In the event that an appeal is brought under clause 6.2:

(a) the terms of this Agreement will remain binding on the Parties, including, for the avoidance of doubt, clause 4.5; 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.

7 Public statements

7.1 Subject to clauses 7.2, 7.3 and 7.4 below, any Party may issue a public statement at any time after the Statement of Claim is filed regarding the Investigation, the Proceeding, this Agreement, the Admissions and/or the Penalty Judgment. Any such statement will be made in good faith.

7.2 Prior to the release of the Penalty Judgment, no Party will make any public statement regarding the matters set out in clause 4.5.

7.3 ASB will not issue a public statement under clause 7.1 until after the Commission has issued the first public statement after the Statement of Claim has been filed. When the Penalty Judgment is issued ASB will not issue a public statement regarding the Penalty Judgment until the earlier of the Commission issuing a public statement regarding the Penalty Judgment, or 12 hours after the Penalty Judgment has been released.

7.4 No Party will issue any public statement that is inconsistent in content with this Agreement, the Statement of Claim, the Admissions or the Penalty Judgment.

7.5 The Commission will give ASB two hours of prior notice before issuing its first public statement in this matter as well as its first public statement following the Penalty Judgment. The prior notice will be effected by the Commission providing ASB with an advance copy of the public statement that it proposes at that time to issue, but the Commission will not be obligated to consider or accept any comments on the proposed statement made by ASB.

7.6 Other than as provided for in clause 7.5 above, nothing in clauses 7.1 to 7.4 above requires either Party to provide advance notice of any public statement to the other Party. For the avoidance of doubt, responses to enquiries from

customers (in ASB's case) or consumers (in the Commission's case) are not subject to clauses 7.3 and 7.5 above.

7.7 The Commission may, at any time, disclose the terms of this Agreement to:

(a) any Government Minister; and

(b) a public agency.

7.8 Either Party may, at any time, disclose the terms of this Agreement to:

(a) the Financial Markets Authority; and

(b) the Commonwealth Bank of Australia, on the basis that it will also comply with the restrictions on public statements in this clause 7 (and for the avoidance of doubt Commonwealth Bank of Australia may disclose the terms of this Agreement to its regulators, lawyers, auditors, or insurers).

(c) to the extent reasonably necessary to its lawyers, insurers or auditors; or

(d) as required by law.

8 Non-compliance with Agreement

Default Notice for breaches of the Agreement

8.1 If an Entitled Party (as applicable, the **Notifying Party**) suspects or believes that another Entitled 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, another Entitled Party (as applicable, 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 ASB's Information may be confidential and/or commercially sensitive and/or subject to privilege.

9.4 The Commission may use Information provided by ASB 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 in accordance with clause 9.5 below.

9.5 The Commission may disclose such Information provided by ASB in the following circumstances:

(a) with ASB'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.

9.6 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 ASB has provided to the Commission in relation to this Proceeding or Investigation, including voluntarily or under compulsion, it will notify ASB of that request and consult with ASB 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 ASB at least 5 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

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

Authorities

9.8 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

9.9 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

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

Further Assurances

9.11 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

9.12 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

9.13 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: Hillary Walker, Chief Legal Counsel – Credit
Email: Hillary.walker@comcom.govt.nz

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

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

ASB Bank Limited
Level 2, ASB North Wharf, 12 Jellicoe Street, Auckland
Attention: David Bricklebank
Email: [redacted]

Copy to:

Bell Gully
Level 14/1, Queen Street
Auckland CBD, Auckland 1010
Attention: Tim Fitzgerald and Blair Keown
Email: [redacted]

(c) If addressed to the FMA, by hand delivery or email to the following address:

Financial Markets Authority
Level 5, 2 Takutai Square
Britomart
Auckland
Attention: Margot Gatland
Email: [redacted]

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

Execution

Signed on behalf of the

Commerce Commission by: [redacted]

Authorised signatory

Anne Callinan

.....

Name

In the presence of:

Witness Name: Sarah Allen

Witness Address: [redacted]

Witness Occupation: Barrister & Solicitor

[redacted]

Signed on behalf of

ASB Bank Limited by: .....

Authorised signatory

.....

Name

In the presence of:

Witness Name:

Witness Address:

Witness Occupation:

Execution

Signed on behalf of the

Commerce Commission by: .....

Authorised signatory

.....

Name

In the presence of:

Witness Name:

Witness Address:

Witness Occupation:

Signed on behalf of

ASB Bank Limited by: [redacted]

Authorised signatory

[redacted]

Name

In the presence of:

Witness Name: Simone Arcand

Witness Address: [redacted]

Witness Occupation: Lawyer

In the High Court of New Zealand
Auckland Registry

I Te Kōti Matua o Aotearoa
Tāmaki Makaurau Rohe

CIV-2026-404-

Under	Credit Contracts and Consumer Finance Act 2003
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	**ASB Bank Limited** a duly incorporated company having its registered office at Level 2, ASB North Wharf, 12 Jellicoe Street, Auckland **Defendant**

Statement of claim

17 June 2026

MC.

A Luck | M Hornblow
PO Box 90750, Victoria Street West, Auckland 1142
DX CP24063
T: [redacted]
[redacted] | [redacted]

Statement of claim

The plaintiff by its solicitor says:

1 The parties

1.1 The plaintiff, the Commerce Commission (Commission), is a body corporate established under s 8 of the Commerce Act 1986 (Commerce Act). Its functions include enforcement of the Credit Contracts and Consumer Finance Act 2003 (CCCFA).

1.2 The defendant, ASB Bank Limited (**ASB**):

(a) is a duly incorporated company having its registered office at Level 2, ASB North Wharf, 12 Jellicoe Street, Auckland;

(b) was incorporated on 16 August 1988;

(c) is a wholly owned subsidiary of ASB Holdings Limited, which is itself a wholly-owned subsidiary of Commonwealth Bank of Australia, a publicly-listed company registered in Australia;

(d) is a registered bank under s 70 of the Banking (Prudential Supervision) Act 1989;

(e) is New Zealand's third-largest bank by total assets, having total assets of approximately $135,163,400,000 as at 30 June 2025; and

(f) for the 12 months ended 30 June 2025 reported a cash net profit after tax of $1,350,000,000.

1.3 Throughout the relevant period, ASB's business has included acting as a creditor under consumer credit contracts.

1.4 Since 6 June 2015, all creditors under consumer credit contracts have been required to comply with the lender responsibility principles set out in s 9C of the CCCFA, as they have applied from time to time.

2 The Personal Overdrafts issue

Background

ASB's provision of arranged overdrafts

2.1 Throughout the relevant period, ASB provided arranged overdrafts to personal banking customers under consumer credit contracts. Those included:

(a) 'permanent overdrafts', being arranged overdrafts repayable on demand, with no set expiry date; and

(b) 'temporary overdrafts', being arranged overdrafts repayable in a short, defined time period, typically with a maximum of 30 days which could be varied by ASB allowing for 30-day extensions, up to a maximum of either 90 days (prior to September 2021) or 60 days (from September 2021 onwards).

Particulars for paragraph 2.1

References in section two of the statement of claim to the relevant period are to the period 6 June 2015 to 29 September 2021 for 'permanent overdrafts' and 6 June 2015 to 21 February 2024 for 'temporary overdrafts'.

2.2 From time to time, ASB also provided additional advances to customers holding arranged overdrafts, with those advances being ones:

(a) which ASB had not previously taken into account at the point it established the initial arranged overdrafts; and

(b) which were effected by ASB increasing the overdraft limit on an existing consumer credit contract.

2.3 When establishing or varying arranged personal overdrafts under consumer credit contracts (the **Relevant Overdrafts**), ASB was required to comply with the CCCFA.

Particulars for paragraph 2.3

References in this statement of claim to instances where ASB "varied" Relevant Overdrafts comprise overdrafts varied in the circumstances pleaded at paragraph 2.2(b) above.

2.4 When establishing or varying Relevant Overdrafts, the CCCFA required ASB to exercise the care, diligence, and skill of a responsible lender, including by:

(a) providing disclosure to borrowers;

(b) making reasonable inquiries, before establishing the loan or (from 1 December 2021) making material changes to it, so as to be satisfied that it was likely that:

(i) the credit provided under the contracts would meet the borrowers' requirements and objectives (these being **Suitability Inquiries**);

(ii) the borrowers would be able to make payments under the contracts without suffering substantial hardship (these being **Affordability Inquiries**).

ASB's systems during the relevant period

2.5 Throughout the relevant period, ASB staff were able to establish or vary Relevant Overdrafts by using either:

(a) 'supported origination tools', which had prescribed automated or manual processes for conducting Suitability and Affordability

Inquiries, and providing the required disclosure; and which ASB approved for staff to use for those purposes; or

(b) an 'unsupported origination tool', called 'Teller', which:

(i) enabled transactional data to be directly entered into ASB's core banking system;

(ii) was intended to be used for the day-to-day administration of transactions, and for account management activities (such as for checking customer details; and attending to deposits, withdrawals and transfers);

(iii) was not approved to be used to establish or vary Relevant Overdrafts, except where it was used to give effect to lending which had been processed through a supported origination tool; but

(iv) had functionality that could be used by staff with the relevant system access level to establish and vary Relevant Overdrafts; and

(v) had no in-built means of ensuring that ASB conducted Suitability and Affordability Inquiries, or provided disclosure to the borrower, when used for that purpose.

2.6 As a system, Teller:

(a) had fields for staff to enter, or amend, the details of particular loans, including Relevant Overdrafts;

(b) required overdrafts more than $25,000 to be approved by a second staff member with relevant access but otherwise had no built-in restrictions on what could be entered into those fields; and

(c) was able to be used to bypass the supported origination tools.

2.7 ASB's formal documented processes directed staff to use the supported origination tools to establish and vary Relevant Overdrafts. Notwithstanding, Teller remained accessible to certain staff and could be used for those purposes.

2.8 In light of the matters pleaded above, where a Relevant Overdraft was established or varied using Teller only:

(a) ASB would not automatically:

(i) conduct the required Suitability and Affordability Inquiries; or

(ii) provide the required disclosure;

(b) in those circumstances, ASB would not conduct those inquiries, or provide that disclosure, unless the staff member using Teller

themselves identified the need to carry out those matters manually, and then did so; and

(c) in many such cases, ASB did not conduct the required Suitability and Affordability Inquiries, or provide the required disclosure, to consumer borrowers who were entitled to those protections (those being the **Affected Overdraft Borrowers**).

Staff access to Teller

2.9 Access to the Teller fields at paragraph 2.6(a) was only available to staff who had been granted a specified level of access to ASB's systems. That level of access:

(a) was only available to staff who had:

(i) completed a learning module about the use of Teller; and

(ii) obtained approval from their regional manager to use it; and

(b) was typically held by more experienced staff.

2.10 The learning module referred to at paragraph 2.9(a)(i) above:

(a) required staff to complete questions about Teller's purpose as a system override; and the processes which could be undertaken in that system;

(b) explained that a system override was an independent review of a transaction to ensure that it is correct and authentic and the correct policies and procedures had been followed; and

(c) required staff to acknowledge the need to comply with the bank's policies generally, and referred staff to where those policies could be found; but

(d) did not have any material:

(i) referring to the fact that Teller was not a supported origination tool for establishing or varying Relevant Overdrafts;

(ii) prohibiting the use of Teller for those purposes; or

(iii) requiring staff to acknowledge the need to establish or vary Relevant Overdrafts using supported origination tools; and

(e) did not have any material regarding:

(i) the need to comply with the CCCFA generally; or

(ii) the circumstances in which it would be necessary to conduct Suitability and Affordability Inquiries for, and to provide disclosure to, consumer borrowers.

2.11 Staff were not otherwise required to demonstrate knowledge of the CCCFA, or the matters specified in 2.10(d)(ii) above, in order to be given relevant access to Teller.

Monitoring processes

2.12 ASB had a monitoring process to detect deficiencies in overdraft origination, called the Branch Information Report (**BIR**). The deficiencies detected by the BIR included failures to use supported origination tools: which in turn would have signalled the risk that ASB had not conducted Suitability and Affordability Inquiries or provided the required disclosure.

2.13 The BIR included a check that Relevant Overdrafts with a credit limit of $3,000 or more had been approved through the supported origination tools. If the check identified that the Relevant Overdraft was not approved through those tools, the BIR operational team would generate a report containing an alert to that effect and refer errors back to the relevant business unit for correction.

2.14 The $3,000 BIR threshold:

(a) was set by ASB;

(b) meant that the BIR would not detect deficiencies in Relevant Overdrafts which had limits of less than $3,000; and

(c) could have been set at a lower amount, or no amount (i.e. $0).

Institutional awareness of the issues

2.15 The ability to use Teller to establish or vary Relevant Overdrafts was widely known within ASB. In the period from 6 June 2015 to 21 February 2024:

(a) 13,356 staff members had some form of access to Teller;

(b) approximately 3,500 staff members had the level of access referred to in paragraph 2.9 above; and of the staff with that higher level of access

(c) approximately 1,070 staff had used Teller for the purpose of establishing or varying permanent Relevant Overdrafts; and

(d) approximately 1,840 staff had used Teller for the purpose of establishing or varying temporary Relevant Overdrafts.

2.16 Within the respective relevant periods, Teller was used to establish or vary:

(a) permanent Relevant Overdrafts up to 7,695 times (comprised of up to 4,995 originations and 2,700 limit increases).

(b) temporary Relevant Overdrafts up to 20,700 times (comprised of up to 19,310 originations and up to 1,390 limit increases).

Particulars for paragraph 2.16

The figures pleaded in this paragraph are approximate and reflect ASB's assessment of the maximum number of times the relevant conduct may have occurred. ASB has not determined the exact figures, which may or may not be lower than those stated. Nonetheless, the parties are agreed that the pleaded figures, while approximate, are the relevant figures for the purposes of this proceeding only, including for the determination of the appropriate penalty.

2.17 ASB has identified:

(a) at least 755 instances, involving permanent Relevant Overdrafts with limits of $3,000 or more, which were established or varied through Teller, and which would have been checked as part of the BIR process; and

(b) at least five confirmed occasions where:

(i) an application to establish or vary a Relevant Overdraft was processed using a supported origination tool, and declined; but

(ii) was then processed through Teller, as if approved, with those borrowers then being provided with the overdrafts they had sought.

ASB's failures

2.18 ASB's failures to conduct Suitability and Affordability Inquiries, and to provide disclosure, to the Affected Overdraft Borrowers were the result of:

(a) the fact that there was a system in place that allowed for ASB's supported origination tools to be bypassed; and/or

(b) the fact that Teller was able to be used to establish or vary Relevant Overdrafts, given that it would not automatically conduct Suitability and Affordability Assessments, or provide the required disclosure; and/or

(c) the de facto position being one in which ASB relied on the staff member who established or varied the Relevant Overdraft to themselves recognise the need to conduct Suitability and Affordability Inquiries, and to provide the required disclosure; and/or

(d) the fact that ASB failed to direct staff:

(i) to only use Teller for its approved purposes; and/or

(ii) not to use Teller to establish or vary Relevant Overdrafts; and/or

(e) the fact that ASB made Teller available to certain staff:

(i) without informing them that Teller would not conduct Suitability and Affordability Inquiries, or provide the required disclosure, when establishing or varying Relevant Overdrafts;

(ii) without requiring those staff to demonstrate knowledge of:

(A) the CCCFA generally; and/or

(B) the circumstances where ASB needed to conduct Suitability and Affordability Inquiries, and to provide the required disclosure; and/or

(f) the fact that ASB had a process for detecting deficiencies in originated overdrafts, the BIR, which had been set up in a way that would not detect issues on Relevant Overdrafts which had credit limits below a certain monetary threshold; and/or

(g) the fact that there were:

(i) no other systems or processes within ASB for detecting deficiencies in originated overdrafts; and

(ii) no systems or processes within ASB for detecting deficiencies in varied overdrafts; and/or

(h) the fact that ASB's internal reporting and monitoring systems were insufficient to identify and escalate issues relating to the use of Teller to establish or vary Relevant Overdrafts; including having regard to:

(i) the widespread knowledge, amongst experienced bank staff, that the system could be used for those purposes;

(ii) the instances where deficiencies in the banks' processes were identified in the BIR; and/or

(i) the fact that there were no checks or controls in place within ASB to identify instances where Suitability or Affordability Inquiries may not have been conducted, or where disclosure may not have been provided; and/or

(j) the fact that ASB failed to identify the issue for a period of years.

2.19 In the specific circumstances of this claim, ASB could have and ought to have taken the steps pleaded at paragraph 2.18(a)-(j) above from at least 6 June 2015, but did not.

Formal identification and resolution

2.20 As to the identification of issues:

(a) ASB identified in July/August 2015 that a number of staff appeared to have issued Relevant Overdrafts using Teller, and that overdrafts

issued in that way raised questions about the bank's compliance with its obligations under the CCCFA and the options available to address the issues. One option identified - by a person with responsibility for a team of analysts accountable for performance and operational reporting, that not being a legal or compliance role - was to remove the ability for overdrafts to be originated in Teller, which that staff member described at the time as "the only way of ensuring total compliance with the legislation"; and

(b) ASB then identified two instances in August 2018 and December 2019 respectively, in which disclosure had not been provided on Relevant Overdrafts using Teller and which were responded to by way of discussions with the staff involved. The latter incident followed an update to ASB's standard operating procedures for processing temporary overdrafts, that update having been communicated to staff in September 2019;

(c) notwithstanding the matters pleaded at paragraphs 2.15 to 2.17, and 2.20(a)-(b) above, ASB only identified in:

(i) October 2020 that there were instances where ASB had not provided disclosure to a number of customers holding temporary Relevant Overdrafts; and

(ii) July 2021 that Relevant Overdrafts had been established manually via Teller, and that there was no evidence of Affordability and Suitability Assessments having been conducted, or disclosure having been provided, in those cases.

2.21 From July 2021, ASB prioritised identifying affected permanent Relevant Overdrafts, and did not give priority to identifying affected temporary Relevant Overdrafts, in light of its assessment of the relative potential for harm. ASB progressed investigations into permanent Relevant Overdrafts over the period from July 2021 to November 2022.

2.22 After identifying the issues:

(a) on or about 29 September 2021, ASB removed functionality for staff to establish or vary permanent Relevant Overdrafts in Teller and introduced a system control intended to demonstrate that a supported origination tool had been used prior to establishing or varying temporary Relevant Overdrafts in Teller;

(b) on or about 21 February 2024, ASB removed functionality for staff to establish or vary temporary Relevant Overdrafts in Teller; and

(c) between 29 September 2021 and 21 February 2024, approximately 550 temporary Relevant Overdrafts were approved via Teller.

2.23 ASB did not fully resolve the issues relating to temporary Relevant Overdrafts at or about the point it investigated and resolved, respectively, the issues relating to permanent Relevant Overdrafts.

Extent of the harm and remediation

2.24 The issues affected:

(a) From 6 June 2015 until 29 September 2021, up to 8,618 customers holding permanent Relevant Overdrafts:

(i) in respect of 4,995 originations and 2,700 limit increases;

(ii) on which ASB charged interest totalling $6,639,826.61;

(b) From 6 June 2015 until 21 February 2024, up to 20,853 customers holding temporary Relevant Overdrafts:

(i) in respect of 19,310 originations and 1,390 limit increases;

(ii) on which ASB charged interest totalling $7,822,772.57.

2.25 The issues affected:

(a) From 20 December 2019 until 29 September 2021, up to 566 customers holding permanent Relevant Overdrafts:

(i) in respect of 304 originations and 192 limit increases;

(ii) on which ASB charged interest totalling $227,887.51;

(b) From 20 December 2019 until 21 February 2024, up to 4,160 customers holding temporary Relevant Overdrafts:

(i) in respect of 3,250 originations and 183 limit increases (of which 9 limit increases occurred after 1 December 2021);

(ii) on which ASB charged interest totalling $1,320,597.30.

2.26 Of the Affected Overdraft Borrowers there were:

(a) approximately 1,243 in relation to permanent Relevant Overdrafts and approximately 237 in relation to temporary Relevant Overdrafts who were unable to make the required repayments, and who were subsequently managed through ASB's debt recovery processes; and

(b) 362 in relation to permanent Relevant Overdrafts and 142 in relation to temporary Relevant Overdrafts who subsequently had a hardship application granted in relation to an ASB product where the Relevant Overdraft was one of the products recorded in the hardship case in ASB's relevant case management system.

2.27 As of the time of filing, ASB has remediated some of the Affected Overdraft Borrowers and intends to remediate the remainder. Once complete, the total amount remediated is estimated to be $17.34 million, of which $1.08 million comprises use of money interest.

Self-report

2.28 ASB communicated with the Commission regarding the issues as follows:

(a) on 22 December 2022, ASB advised the Commission that it had identified customers that had permanent overdrafts established or varied in Teller and who may not have been assessed for affordability or suitability purposes or provided with the required disclosure;

(b) in June 2023, ASB provided the Commission with a high-level update on ASB's remediation approach for the issue insofar as it related to permanent overdrafts;

(c) in September 2023, ASB met with the Commission to discuss the issue insofar as it related to permanent overdrafts;

(d) in November 2023 and subsequently, ASB provided the Commission with information on a voluntary basis regarding the permanent overdrafts issue, including a further meeting with the Commission on 30 April 2024;

(e) in response to a statutory notice issued on 22 April 2025 under s 98 of the Commerce Act (via s 113 of the CCCFA), and reissued on a narrower basis (following a request that it do so) on 27 May 2025 (**Notice**), ASB advised the Commission:

(i) on 25 June 2025, two days before the deadline for compliance with the Notice, that it had "recently uncovered issues" that affected its ability to comply with the Notice, including issues relating to temporary overdrafts and the number of affected permanent overdraft customers;

(f) on 27 June 2025 that issues with temporary Relevant Overdrafts had been historically identified and it was undertaking an internal investigation regarding instances where Teller was used to establish or vary temporary Relevant Overdrafts; In consultation with the Commission, ASB subsequently:

(i) informed the Commission on 4 July 2025, of ASB's proposed timeline for responding to the Notice;

(ii) provided the information which it was required to provide under Notice in five tranches, between early July to late August 2025;

(iii) informed the Commission on 8 August 2025, that it had identified the issues relating to temporary Relevant Overdrafts in October 2020;

(iv) informed the Commission on 29 August 2025 that it had initially understated the number of customers holding permanent Relevant Overdrafts, due to errors in its methodology for identifying affected customers; and

(v) provided additional detail on the nature and extent of the temporary overdraft issues and ASB's remediation for the permanent and temporary overdraft issues in October 2025.

First cause of action: breach of s 9C(1) of the CCCFA: failure to conduct affordability and suitability assessments

2.29 The Commission repeats Part 1 and paragraphs 2.1 to 2.28 above.

2.30 In the period from 6 June 2015 to 21 February 2024, ASB failed to make reasonable inquiries when establishing or, from 1 December 2021, varying Relevant Overdrafts so as to be satisfied that:

(a) the credit or finance provided under the agreements would meet the Affected Overdraft Borrowers' requirements and objectives; and

(b) the Affected Overdraft Borrowers would be able to make payments under the agreements without suffering substantial hardship.

Wherefore the Commission seeks:

(A) A declaration that, in respect of the Affected Overdraft Borrowers, ASB breached s 9C(1) by failing to comply with the lender responsibility principles in ss 9C(3)(a)(i) and (ii) of the CCCFA in the period from 6 June 2015 to 21 February 2024;

(B) A pecuniary penalty under s 107A of the CCCFA in respect of the breaches of s 9C(1) in the period from 20 December 2019 to 19 June 2020;

(C) A pecuniary penalty under s 107A of the CCCFA in respect of the breaches of s 9C(1) in the period from 20 June 2020 to 19 December 2020;

(D) A pecuniary penalty under s 107A of the CCCFA in respect of the breaches of s 9C(1) in the period from 20 December 2020 to 19 June 2021;

(E) A pecuniary penalty under s 107A of the CCCFA in respect of the breaches of s 9C(1) in the period from 20 June 2021 to 19 December 2021;

(F) A pecuniary penalty under s 107A of the CCCFA in respect of the breaches of s 9C(1) in the period from 20 December 2021 to 19 June 2022;

(G) A pecuniary penalty under s 107A of the CCCFA in respect of the breaches of s 9C(1) in the period from 20 June 2022 to 19 December 2022;

(H) A pecuniary penalty under s 107A of the CCCFA in respect of the breaches of s 9C(1) in the period from 20 December 2022 to 19 June 2023; and

(I) A pecuniary penalty under s 107A of the CCCFA in respect of the breaches of s 9C(1) in the period from 20 June 2023 to 21 February 2024.

Second cause of action: breach of s 9C(1) of the CCCFA: failure to have processes for providing disclosure

2.31 The Commission repeats Part 1 and paragraphs 2.1 to 2.28 above.

2.32 In the period from 6 June 2015 to 21 February 2024, ASB did not have sufficient systems or processes in place for ensuring the required disclosure was provided to the Affected Overdraft Borrowers.

2.33 ASB's failure to have sufficient systems or processes in place for ensuring the required disclosure was provided to the Affected Overdraft Borrowers was the result of the failings pleaded at paragraphs 2.18, 2.20(c), 2.21 and 2.23 above.

2.34 In the specific circumstances of this claim, the failings pleaded at paragraphs 2.20, 2.21 and 2.25 above:

(a) each separately constitute a failure by ASB to exercise the care, diligence, and skill of a responsible lender before entering into an agreement and in all subsequent dealings with a borrower in relation to a consumer credit contract, in breach of s 9C(1) by failing to comply with the lender responsibility principles in ss 9C(2)(a)(ii) and (iii) of the CCCFA; and further, or alternatively

(b) in combination constitute a failure by ASB to exercise the care, diligence, and skill of a responsible lender before entering into an agreement and in all subsequent dealings with a borrower in relation to a consumer credit contract, in breach of s 9C(1) by failing to comply with the lender responsibility principles in ss 9C(2)(a)(ii) and (iii) of the CCCFA.

Wherefore the Commission seeks:

(A) A declaration that, in respect of the Affected Overdraft Borrowers, ASB breached s 9C(1) by failing to comply with the lender responsibility principles in ss 9C(2)(a)(ii) and (iii) of the CCCFA in the period from 6 June 2015 to 21 February 2024;

(B) A pecuniary penalty under s 107A of the CCCFA in respect of the breaches of s 9C(1) in the period from 20 December 2019 to 19 June 2020;

(C) A pecuniary penalty under s 107A of the CCCFA in respect of the breaches of s 9C(1) in the period from 20 June 2020 to 19 December 2020;

(D) A pecuniary penalty under s 107A of the CCCFA in respect of the breaches of s 9C(1) in the period from 20 December 2020 to 19 June 2021;

(E) A pecuniary penalty under s 107A of the CCCFA in respect of the breaches of s 9C(1) in the period from 20 June 2021 to 19 December 2021;

(F) A pecuniary penalty under s 107A of the CCCFA in respect of the breaches of s 9C(1) in the period from 20 December 2021 to 19 June 2022;

(G) A pecuniary penalty under s 107A of the CCCFA in respect of the breaches of s 9C(1) in the period from 20 June 2022 to 19 December 2022;

(H) A pecuniary penalty under s 107A of the CCCFA in respect of the breaches of s 9C(1) in the period from 20 December 2022 to 19 June 2023; and

(I) A pecuniary penalty under s 107A of the CCCFA in respect of the breaches of s 9C(1) in the period from 20 June 2023 to 21 February 2024.

3 The Debt Overpayment Issue

Background

3.1 Throughout the relevant period, there were borrowers who had:

(a) previously entered into consumer credit contracts with ASB;

(b) subsequently defaulted on those loans; and

(c) then entered into repayment arrangements with either ASB, or a debt collection agency acting on ASB's behalf, under which the borrower agreed to repay either:

(i) the total debt owing at that point; or

(ii) some lesser amount agreed between ASB and the borrower.

3.2 By the point the relevant repayment arrangement had been entered into, the borrower's debt to ASB had 'crystallised', meaning that ASB stopped charging interest or fees on the amount then owing.

3.3 The purpose of these arrangements was:

(a) to assist the borrowers to repay their debts, in circumstances where those borrowers had been in default; and

(b) to allow ASB to recover some or all of the sums owing from borrowers who had previously been in default.

The relevant systems

3.4 To facilitate these repayment arrangements:

(a) the borrowers were required to make regular repayments in amounts agreed with ASB or its agents; and

(b) ASB set up individual suspense accounts that those payments were received into, and which, until 2025, were not automatically closed by a formally documented and tested control once the balance of the account was zero.

3.5 The manual process referred to above was, until 2024, supplemented by a worklist generated by one of ASB's systems, called the Tallyman Collection System (**Tallyman**). The worklist was intended to detect instances where customers had paid more than what was needed in order to repay their crystallised debt (**Tallyman Overpaid Worklist**).

3.6 Where the Tallyman Overpaid Worklist identified an overpayment, the relevant staff member would need to contact the borrower, arrange for them to be reimbursed, and advise them to cancel any ongoing repayments.

The issue

3.7 The Tallyman Overpaid Worklist:

(a) did not detect overpayments on accounts not held in a Tallyman worklist, including those accounts with outstanding or repaid debt balances managed by ASB's external debt collection agency partners that had not been returned to ASB;

(b) did not detect overpayments that were not allocated to a suspense account; which might have occurred if the debt was being managed in a different way (for example, through the realisation of a secured asset);

(c) relied on ASB staff to access the worklist, contact the borrower, arrange for them to be promptly reimbursed, and advise them to cancel any ongoing repayments, which:

(i) did not always occur (despite ASB having standard operating procedures in place from June 2021); and

(ii) was not supplemented by any processes within the bank until late 2021 (when ASB introduced an exception report to identify whether staff had undertaken activity on identified overpayments) and subsequent (in 2022, when ASB implemented weekly reports to identify overpayments where the borrower had not been contacted within a fortnight).

3.8 ASB had also set up the Tallyman Overpaid Worklist in such a way that, from at least 2012, it would only detect instances of overpayment if the

repayment that cleared the crystallised debt resulted in the customer overpaying by more than $200. As such:

(a) if the repayment that cleared the crystallised debt resulted in the customer overpaying the debt by $200 or less, the overpayment would not be detected as an overpayment;

(b) the system would not detect a customer's further overpayments, regardless of their amount; and

(c) customers were therefore able to make multiple such overpayments indefinitely after those customers had repaid the crystallised debt.

Particulars of paragraph 3.8

For example:

(a) if the balance of the customer's crystallised debt was $99, and the customer made repayments of $300 each, the repayment that cleared the debt would result in an overpayment of $201, which would be identified by the Tallyman Overpaid Worklist; whereas

(b) if the balance of the customer's crystallised debt was instead $110, the repayment that cleared the debt would only overpay it by $190; and so that repayment, and any subsequent payments, would not be picked up by the Tallyman Overpaid Worklist.

3.9 The $200 Tallyman Overpaid Worklist threshold:

(a) was set by ASB;

(b) was approved by a person with responsibility for an operational team specialising in financial help and recoveries; and

(c) could have been set at a lower amount, including an amount that would have detected any overpayments (ie. $0.01).

3.10 In or about March 2023, ASB introduced a weekly report which was intended to identify outstanding overpayments outside of the Tallyman Overpaid Worklist, so that staff could contact those customers and arrange for them to cease making payments (the Tallyman Overpaid Report). In July 2023 ASB introduced additional measures to the Tallyman Overpaid Report to identify overpayments.

3.11 The Tallyman Overpaid Report:

(a) did not detect overpayments on accounts not held in a Tallyman worklist, including those accounts with outstanding or repaid debt balances managed by ASB's external debt collection agency partners that had not been returned to ASB;

(b) did not detect overpayments that were not allocated to a suspense account;

(c) relied on ASB staff to contact the borrower, arrange for them to be promptly reimbursed, and advise them to cancel any ongoing repayments, which did not always occur.

3.12 By April 2024, ASB had implemented a new collections management system, Powercurve Collections, and an exception report to identify and reimburse overpayments (the **Powercurve Overpaid Report**).

3.13 In or around October 2024, ASB developed a solution for identifying overpayments so that they could be promptly reimbursed (the **Powercurve Automated Solution**). That solution automatically closed a suspense account if its balance equalled zero, but would not close an account if a payment caused the account to go into credit (the latter issue having arisen in 323 cases in the period from September 2024 to September 2025).

3.14 The Powercurve Overpaid Report and the Powercurve Automated Solution:

(a) did not identify overpayments that had not been linked to underlying cases or accounts in the Powercurve system; including because ASB did not migrate cases or accounts from Tallyman to the Powercurve system where it did not expect to receive further payments from the borrower, or for technical/operational reasons; and

(b) relied on ASB staff or its external debt collection agency partners to access the report and/or contact the borrower, arrange for them to be promptly reimbursed, and advise them to cancel any ongoing repayments which, until July 2025, did not always occur.

3.15 In the circumstances pleaded at paragraphs 3.7 to 3.14 above, ASB did not always:

(a) close the suspense accounts that the borrowers' payments were being received into;

(b) contact those borrowers to advise them that they could stop making repayments or instruct ASB's debt collection agency partners to do the same; or

(c) promptly reimburse any overpayments received or instruct ASB's debt collection agency partners to do the same.

3.16 As a result of the matters pleaded in paragraph 3.15 above, ASB continued to accept overpayments from a number of such borrowers and/or did not reimburse overpayments promptly (those being the **Affected Overpaying Borrowers**).

3.17 During the relevant period, ASB did not:

(a) have any other checks in place that would have identified overpayments made by the Affected Overpaying Borrowers; or

(b) conduct any reviews or audits of cases where borrowers might have overpaid in such circumstances.

3.18 ASB has since identified borrowers who made overpayments processed by the Tallyman system from as early as July 2009.

Institutional awareness of the issues

3.19 During the relevant period, there were at least three instances in which Affected Overpaying Borrowers had made overpayments which had not been included or actioned within the Tallyman Overpaid Worklist.

3.20 The instances referred to above:

(a) were each resolved on an ad hoc basis, without being escalated to determine whether they raised wider issues with the bank's systems; and

(b) in two of the three cases, related to customer complaints.

ASB's failures

3.21 ASB's failure to detect customer overpayments in respect of the affected borrowers was the result of:

(a) the fact that ASB had set up its systems in a way that:

(i) relied, at various times, on a manual process for closing suspense accounts, rather than those accounts automatically closing once they were brought to a zero balance;

(ii) relied on a manual process for contacting overpaying customers, rather than automating those communications at the point the crystallised debt had been repaid;

(iii) did not detect overpayments that were not allocated to a suspense account or that were not linked to underlying cases or accounts in the relevant systems; and/or

(iv) in respect of the Tallyman Overpaid Worklist and Tallyman Overpaid Report, did not detect overpayments on accounts not held in a Tallyman worklist, including those accounts with outstanding or repaid debt balances managed by ASB's external debt collection agency partners that had not been returned to ASB;

(b) the fact that the Tallyman system could have been, but was not, set up so as detect any overpayments, regardless of their amount; and/or

(c) the fact that there were no systems within ASB to detect instances where the customer's repayment that cleared the crystallised debt resulted in the customer overpaying by $200 or less; and/or

(d) the fact that ASB did not have any other checks in place to identify overpayments made by the Affected Overpaying Borrowers; and/or

(e) the fact that ASB did not conduct any reviews or audits of cases where borrowers might have overpaid; and/or

(f) the fact that there were no systems in place within ASB to notify borrowers when they were close to repaying, or had just repaid, their crystallised debt; and/or

(g) the fact that ASB failed to identify the issue for a period of years.

3.22 In the specific circumstances of this claim, ASB could have and ought to have taken the steps pleaded at paragraph 3.21(a)-(f) above from at least 6 June 2015, but did not.

Formal identification and resolution

3.23 ASB first identified the issue by chance in November 2022, while undertaking an unrelated project.

3.24 On or about 27 June 2025, in the course of complying with a statutory notice issued by the Commission, ASB identified that there were other Affected Overpaying Borrowers who had not been identified by the introduction of the Tallyman Overpaid Worklist in March 2023 or the additional matters added to that report in July 2023.

3.25 ASB formally implemented additional overpayment controls, as follows:

(a) By no later than 29 July 2025, ASB implemented:

(i) A standardised weekly report to identify unprocessed payments that would not otherwise be captured by existing controls;

(ii) A daily automated worklist to identify overpayments that can be actioned within standard specified timeframes;

(iii) A weekly senior management review of open overpayment cases against timing and review standards; and

(iv) An automated system closure of suspense accounts as soon as the balance is zero with any attempted overpayments being rejected; and

(b) From September 2025, ASB introduced further automation to the Powercurve Automated Solution, such that a suspense account would be automatically closed five days after an overpayment had been manually reimbursed.

Extent of the harm and remediation

3.26 In the period from 6 June 2015 to 29 July 2025, the issue affected up to 3,980 accounts belonging to consumer borrowers.

3.27 In the relevant period, the Affected Overpaying Borrowers included customers who made overpayments on crystalised debts that were in

respect of loans involving consumer credit contracts which were entered into:

(a) on or after June 2015; or

(b) prior to 6 June 2015, but which were varied on or after 6 June 2015,

(each being **Relevant Contracts**).

3.28 In the period from 6 June 2015 to 29 July 2025, there were 4,240 Affected Overpaying Borrowers in respect of Relevant Contracts, who overpaid by a total of $971,423.

3.29 In the period from 20 December 2019 to 29 July 2025, there were 2,042 Affected Overpaying Borrowers in respect of Relevant Contracts, who overpaid by a total of $574,508.

Particulars for paragraphs 3.28 and 3.29

The figures pleaded in these paragraphs are approximate and reflect ASB's assessment of the maximum number and value of overpayments made in respect of Relevant Contracts in the time periods alleged by the Commission and either not reimbursed or not reimbursed within 30 days. ASB has not determined the exact figures, which may or may not be lower than those stated. Nonetheless, the parties are agreed that the pleaded figures, while approximate, are the relevant figures for the purposes of this proceeding only, including for the determination of the appropriate penalty.

3.30 The average time between an Affected Overpaying Borrower's first overpayment, and the date they were reimbursed by ASB, was 1,726 days in respect of overpayments for the period 6 June 2015 and 31 December 2022. That average does not account for attempts ASB may have made to contact the borrowers in the period between that overpayment and the reimbursement.

3.31 A number of the Affected Overpaying Borrowers were borrowers who were reimbursed by ASB in the ordinary course of its business, but in circumstances where ASB took more than 30 days to reimburse the overpayment. The remaining borrowers are those who had not been reimbursed in the ordinary course of business. As of the time of filing, ASB has remediated some of the Affected Overpaying Borrowers and intends to remediate the remainder. Once complete, the total amount remediated is estimated to be $570,000, comprised of $342,000 in overpayment reimbursements to the latter group of borrowers; and to both groups of borrowers $187,000 in use of money interest and $41,000 in goodwill payments.

Particulars for paragraph 3.31

The figures in this paragraph reflect an estimate of remediation payments in respect of loans involving consumer credit contracts where an overpayment was made between 6 June 2015 and 29 July 2025.

Self-report

3.32 ASB communicated with the Commission regarding the issues as follows:

(a) on 14 November 2023, ASB advised the Commission that it had identified an issue with how its systems dealt with overpayments;

(b) in June 2024 and subsequently, in response to voluntary requests for information, ASB provided more detail on the nature of the issue and its causes; and

(c) in the course of responding to a statutory notice issued in April 2025 under s 98 of the Commerce Act (via s 113 of the CCCFA) (and subsequently reissued in a revised form in May 2025, at the bank's request), ASB:

(i) identified on or about 27 June 2025 and subsequently that there were instances where customers who had overpaid their crystallised debts, and customers who were continuing to do so, in the circumstances pleaded above; and

(ii) notified the Commission of that fact shortly thereafter; and subsequently provided further detail regarding how those customers and additional identified customers had been excluded from its initial self-report.

Third cause of action: breach of s 9C(1) of the CCCFA: failure to detect and reimburse customer overpayments

3.33 The Commission repeats Part 1 and paragraphs 3.1 to 3.32 above.

3.34 In the period from 6 June 2015 to 29 July 2025, ASB failed to ensure that:

(a) Affected Overpaying Borrowers under Relevant Contracts who made overpayments in respect of their crystallised debts were reimbursed promptly and advised to stop making further payments.

3.35 ASB's failure to take the steps pleaded at paragraph 3.34 above was the result of the failings pleaded at paragraphs 3.21 and 3.22 above.

3.36 In the specific circumstances pleaded in this claim, the failings pleaded at paragraph 3.21 and 3.22 above:

(a) each separately constitute a failure by ASB to exercise the care, diligence, and skill of a responsible lender in all subsequent dealings with a borrower in relation to a consumer credit contract, in breach of s 9C(1) by failing to comply with the lender responsibility principle in s 9C(2)(a)(iii) of the CCCFA; and further, or alternatively

(b) in combination constitute a failure by ASB to exercise the care, diligence, and skill of a responsible lender in all subsequent dealings with a borrower in relation to a consumer credit contract, in breach of s 9C(1) by failing to comply with the lender responsibility principle in s 9C(2)(a)(iii) of the CCCFA.

Wherefore the Commission seeks:

(A) A declaration that, in respect of the Affected Overpaying Borrowers under Relevant Contracts, ASB breached s 9C(1) by failing to comply with the lender responsibility principles in ss 9C(2)(a)(iii) of the CCCFA in the period from 6 June 2015 to 29 July 2025;

(B) A pecuniary penalty under s 107A of the CCCFA in respect of the breaches of s 9C(1) in the period from 20 December 2019 to 19 June 2020;

(C) A pecuniary penalty under s 107A of the CCCFA in respect of the breaches of s 9C(1) in the period from 20 June 2020 to 19 December 2020;

(D) A pecuniary penalty under s 107A of the CCCFA in respect of the breaches of s 9C(1) in the period from 20 December 2020 to 19 June 2021;

(E) A pecuniary penalty under s 107A of the CCCFA in respect of the breaches of s 9C(1) in the period from 20 June 2021 to 19 December 2021;

(F) A pecuniary penalty under s 107A of the CCCFA in respect of the breaches of s 9C(1) in the period from 20 December 2021 to 19 June 2022;

(G) A pecuniary penalty under s 107A of the CCCFA in respect of the breaches of s 9C(1) in the period from 20 June 2022 to 19 December 2022;

(H) A pecuniary penalty under s 107A of the CCCFA in respect of the breaches of s 9C(1) in the period from 20 December 2022 to 19 June 2023;

(I) A pecuniary penalty under s 107A of the CCCFA in respect of the breaches of s 9C(1) in the period from 20 June 2023 to 19 December 2023;

(J) A pecuniary penalty under s 107A of the CCCFA in respect of the breaches of s 9C(1) in the period from 20 December 2023 to 19 June 2024;

(K) A pecuniary penalty under s 107A of the CCCFA in respect of the breaches of s 9C(1) in the period from 20 June 2024 to 19 December 2024; and

(L) A pecuniary penalty under s 107A of the CCCFA in respect of the breaches of s 9C(1) in the period from 20 December 2024 to 29 June 2025.

This statement of claim is filed on behalf of the Plaintiff by its solicitor **Andrew David Luck** of the firm Meredith Connell, whose address for service is at the offices of MC, Level 7, 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 PO Box 90750, Victoria Street West, Auckland 1142 (attn. Andy Luck); or

(ii) sent to the address for service (attn. Andy Luck).

Schedule 2: Notice of Admissions

In the High Court of New Zealand | I Te Kōti Matua o Aotearoa
Auckland Registry | Tāmaki Makaurau Rohe
CIV -2026-404-

Under the Credit Contracts and Consumer Finance Act 2003

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 **ASB Bank Limited**, an incorporated company having its registered office at Level 2, ASB North Wharf, 12 Jellicoe Stret, Auckland

Defendant

Notice of admissions

Dated 17 June 2026

Bell Gully

T B Fitzgerald / M C Staines
Counsel for the defendant
[redacted]

1 Queen Street
PO Box 4199
Auckland 1140
[redacted]

The Defendant, by its solicitors, says—

For the purposes of rules 15.15 and 15.16 of the High Court Rules 2016, and only for the purposes of this proceeding and not for any purpose outside of this proceeding, the Defendant admits the facts pleaded and causes of action in the plaintiff's statement of claim dated 17 June 2026.

T B Fitzgerald / M C Staines
Counsel for the defendant
17 June 2026

This document is filed by Tim Fitzgerald, of Bell Gully, solicitor for the defendant. The address for service of the defendant is Level 14, Deloitte Centre, 1 Queen Street, Auckland 1140.

Documents for service on the defendant may be left at that address or may be:

(a) posted to the solicitor at PO Box 4199, Auckland 1140; or

(b) emailed to the solicitor under HCR 6.6(2)(b)(ii) provided that the email is less than 25MB and sent to [redacted]

Documents served on the defendant should be marked for the attention of T B Fitzgerald, B A Keown and M C Staines.