IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

I TE KŌTI MATUA O AOTEAROA
TĀMAKI MAKAURAU ROHE

CIV-2026-404-1531
[2026] NZHC 3505

UNDER	Credit Contracts and Consumer Finance Act 2003
BETWEEN	COMMERCE COMMISSION Plaintiff
AND	ASB BANK LIMITED Defendant

Hearing: 15 October 2026

Appearances: A D Luck and M G Taula for Plaintiff
B A Keown and M C Staines for Defendant

Judgment: 12 November 2026

JUDGMENT OF O'GORMAN J

This judgment was delivered by me on 12 November 2026 at 10 am
pursuant to r 11.5 of the High Court Rules 2016.

Registrar/Deputy Registrar

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Solicitors:
Meredith Connell, Auckland
Bell Gully, Auckland

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Introduction

[1] This was a hearing for the imposition of a civil pecuniary penalty on ASB Bank Ltd (ASB) in respect of breaches of the lender responsibility principles (Lender Responsibility Principles) in s 9C of the Credit Contracts and Consumer Finance Act 2003 (CCCFA, the Act). Declarations of the breaches are also sought by the parties.

[2] ASB has admitted breaches arising from two distinct groupings of failures within its lending systems and processes. The effect of those breaches was that:

(a) **Personal Overdrafts Issue: D**uring the period from 6 June 2015 to 21 February 2024, ASB provided both permanent and temporary arranged personal overdrafts without undertaking the suitability and affordability inquiries required by the CCCFA,[1] and without sufficient systems or processes in place to ensure that disclosure was provided as required under the CCCFA.[2]

(b) **Debt Overpayment Issue:** During the period from 6 June 2015 to 29 July 2025, ASB failed to detect and reimburse overpayments by borrowers who were on repayment arrangements, such that those borrowers continued to make repayments even after their debts had been cleared, contrary to the requirements of the CCCFA.[3]

[3] ASB self-reported the above issues to the regulator, implemented systems and controls to address its failings, and remediated affected borrowers. In this proceeding it has admitted the breaches and has reached an agreed position with the Commerce Commission (Commission) about the proposed penalty of $5.796 million. That reflects a proposed starting point of $8.05 million, and a reduction of 28 per cent to reflect ASB's self-reporting and co-operation.

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1 Credit Contracts and Consumer Finance Act 2003, s 9C(3)(a)(i)–(ii).
2 Section 9C(2)(a)(ii)–(iii).
3 Section 9C(2)(a)(iii).

[4] I must determine whether that proposed penalty is within range in light of the statutory criteria, relevant case law and the particular circumstances of ASB's conduct.[4]

Admitted breaches

Overview

[5] The failings central to the Personal Overdraft Issue were that:

(a) ASB's administrative systems allowed overdrafts to be provided in a way that bypassed ordinary compliance processes.

(b) ASB's internal reporting tool intended to detect deficiencies in respect of overdraft origination was only applied to overdrafts with credit limits of $3,000 or more and, when engaged, proved ineffective in many instances.

[6] In the case of the Debt Overpayment Issue, the breach stemmed from the use of a worklist that did not detect overpayments in certain circumstances. For example, ASB's systems only detected instances where the repayment that first cleared the borrower's debt resulted in an overpayment of more than $200. Initial overpayments below that threshold, and subsequent payments made by those borrowers, went undetected. ASB's worklist also required staff to manually access it, contact borrowers to arrange for their reimbursement and advise them to cancel any ongoing repayments. This did not always occur and, before 2021, was not supported by processes within the bank ensuring that the borrowers were contacted.

[7] In the period since 20 December 2019 (when pecuniary penalties became available for breaches of the Act),[5] the Personal Overdraft Issue and Debt Overpayment Issue affected 4,726 and 2,042 borrowers respectively. Both issues also predated 20 December 2019 by approximately four and a half years, with the total affected borrowers being 29,471 and 4,240 respectively.

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4 *Commerce Commission v TSB Bank Ltd* [2026] NZHC 3163 at [4].
5 See [29] below.

Personal Overdraft Issue

[8] Throughout the relevant period, ASB staff were able to establish and vary arranged personal overdrafts using either "supported" origination tools (these had prescribed processes for conducting affordability and suitability assessments and providing disclosure) or an "unsupported" tool called Teller (which did not).

[9] Where Teller was used, compliance would depend on the staff member recognising that the bank's obligations were engaged and then conducting affordability and suitability assessments and providing disclosure manually. Through the relevant period, approximately 13,356 ASB staff had some form of access to Teller.

[10] Teller was intended to be used for the day-to-day administration of transactions, and for account management activities. The system was not intended or approved to be used to establish or vary personal overdrafts. Despite that, around 3,500 staff (typically more experienced staff) had the ability to enter or amend the details of particular loans, including overdrafts. Within that group:

(a) Approximately 1,070 staff (or 30.6 per cent of that group) used Teller to establish or vary permanent overdrafts.

(b) Approximately 1,840 staff (or 52.6 per cent of that group) used Teller to establish or vary temporary overdrafts.

[11] ASB has confirmed that there were at least five occasions where there is evidence of an application having first been declined through a supported origination tool before being approved using Teller.

[12] ASB had set up a monitoring process to detect deficiencies, referred to as the Branch Information Report (BIR). That monitoring process included a check for whether relevant overdrafts had been established or varied without using supported origination tools. However, ASB chose to limit the BIR to overdrafts with a credit limit of $3,000 or more. Furthermore, there were some 755 discrete instances where overdrafts were flagged by the report and would have been checked as part of the BIR

process, but no escalation occurred to determine if those were indicative of wider issues within the bank.

[13] In July/August 2015, ASB identified that a number of staff appeared to have issued overdrafts using Teller, and that this raised questions about the bank's compliance with the CCCFA. At the time, a staff member (who held responsibility for managing a team of analysts) observed that removing the functionality in Teller to establish and vary overdrafts was "the only way of ensuring total compliance with the legislation".

[14] Despite that and subsequent incidents in 2018, 2019 and 2020, ASB only began to investigate in July 2021. It identified that the issue affected both permanent and temporary overdrafts, but chose to prioritise its investigation of permanent overdrafts only, in light of its assessment of the relative potential for harm.

[15] On 29 September 2021, ASB removed the ability for permanent overdrafts to be established or varied through Teller. It retained that functionality for temporary overdrafts until 21 February 2024, although on 29 September 2021, ASB did also introduce a system control intended to demonstrate that a supported origination tool had been used prior to establishing or varying temporary overdrafts in Teller.

[16] In the period from 6 June 2015 onwards, the Personal Overdraft Issue affected up to 8,618 borrowers holding permanent overdrafts and up to 20,853 borrowers holding temporary overdrafts (the Affected Overdraft Borrowers). In the period from 20 December 2019 onwards, the Personal Overdraft Issue affected up to 566 borrowers holding permanent overdrafts and up to 4,160 borrowers holding temporary overdrafts (a total of 4,726 borrowers), of which:

(a) Approximately 1,480 were unable to make the required repayments and were subsequently managed through ASB's debt recovery processes.

(b) Approximately 504 subsequently applied for, and were granted, hardship relief.

Debt Overpayment Issue

[17] Throughout the relevant period, ASB or its debt collection agencies entered into repayment arrangements with borrowers who had defaulted on the terms of their consumer credit contracts. Those arrangements involved a "crystallised" final debt amount on which ASB agreed not to charge further fees or interest. As part of these arrangements, borrowers were required to make regular repayments into suspense accounts set up by ASB.

[18] The suspense accounts were not set up to close automatically once the balance owing reached zero. Instead, ASB used a system-generated "worklist" (the Tallyman Overpaid Worklist, generated by the Tallyman Collection System) to identify instances where borrowers had overpaid their crystallised debts. Those worklists had multiple deficiencies, including that they did not detect overpayments made in some circumstances, and they required staff to manually access the worklist and contact the borrower to arrange reimbursement and cancellation of any ongoing repayments. The latter did not always occur and, until 2021, there were no system processes within the bank to ensure that the borrowers were contacted.

[19] In addition, the worklist was set up in such a way that, from at least 2012, it would only detect instances of overpayment if the specific repayment that cleared the crystallised debt did so by more than $200. Repayments that cleared the debt by smaller amounts would not be detected, meaning that those borrowers were not prevented from making multiple such overpayments indefinitely.

[20] In November 2022, ASB identified by chance an issue with how its Tallyman system dealt with overpayments. On 14 November 2023, ASB voluntarily reported that issue to the Commission.

[21] From early 2023, ASB introduced additional processes intended to identify outstanding overpayments. Those processes were not effective in all cases, and ASB continued to rely on manual processes that were not always followed. As a result, ASB continued to accept overpayments from borrowers and did not reimburse overpayments promptly. ASB did not have any other checks in place to detect

overpayments and did not conduct reviews or audits that would have identified the issue.

[22] By July 2025, ASB implemented:

(a) a standardised weekly report to identify unprocessed payments that would not otherwise be captured by ASB's existing controls;

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

(c) a weekly senior management review of open overpayment cases against timing and review standards; and

(d) an automated system for the closure of suspense accounts as soon as the balance is zero with any attempted overpayments being rejected.

[23] ASB has completed its remediation of the Debt Overpayment Issue, including reimbursement of overpayments, payment of use of money interest and goodwill payments.

[24] Until the issues were remediated, ASB accepted overpayments from:

(a) in the period from 6 June 2015 to 29 July 2025: up to 4,240 affected borrowers, who overpaid by up to $971,423 (the Affected Overpaying Borrowers); and

(b) in the period from 20 December 2019 to 29 July 2025: up to 2,042 affected borrowers, who overpaid by up to $574,508.

Legal principles

Lender Responsibility Principles

[25] The CCCFA is consumer protection legislation. The Act has the following purposes set out in s 3:

3 Purposes

(1) The primary purpose of this Act is to protect the interests of consumers in connection with credit contracts, consumer leases, and buy-back transactions of land.

(2) It is also the purpose of this Act—

(a) to promote the confident and informed participation in markets for credit by consumers; and

(b) to promote and facilitate fair, efficient, and transparent markets for credit; and

(c) to protect the interests of consumers under credit contracts, consumer leases, and buy-back transactions of land, both when those agreements are entered into and for their duration; and

(d) to provide remedies for debtors, lessees, and occupiers (including consumers) in relation to—

(i) oppressive credit contracts, consumer leases, and buy-back transactions of land; and

(ii) oppressive conduct by creditors under credit contracts, lessors under consumer leases, and transferees under buy-back transactions of land.

[26] One of the ways the CCCFA protects consumer interests under credit contracts (both when they are entered into and for their duration) is through the Lender Responsibility Principles under s 9C of pt 1A of the Act, which was introduced on 6 June 2015. Section 9C(1) requires every lender to comply with the Lender Responsibility Principles. Among various other obligations:

(a) Section 9C(2)(a) requires every lender to "exercise the care, diligence, and skill of a responsible lender":

(i) before entering into an agreement to provide credit or finance or a relevant insurance contract and before taking a relevant guarantee;[6] and

6 Credit Contracts and Consumer Finance Act, s 9C(2)(a)(ii).

(ii) in all subsequent dealings with a borrower in relation to an agreement or a relevant insurance contract or a guarantor in relation to a relevant guarantee.[7]

(b) Section 9C(3)(a) requires every lender, in relation to an agreement with a borrower, to make reasonable inquiries before entering into the agreement and before making a material change, so as to be satisfied that it is likely that:

(i) the credit or finance provided under the agreement will meet the borrower's requirements and objectives (suitability assessment);[8] and

(ii) the borrower will make the payments under the agreement without suffering substantial hardship (affordability assessment).[9]

[27] The CCCFA also requires lenders to provide disclosure to borrowers and guarantors.[10] Those provisions likewise protect consumer interests under credit contracts, including by allowing those entitled to disclosure to be informed of any changes before they take effect, and so that they can monitor the performance of those contracts.[11]

Approach to penalties

[28] The Court has the power to impose a pecuniary penalty under s 107A(1) in respect of various contraventions of the CCCFA, including of s 9C(1).

[29] Although the Lender Responsibility Principles under s 9C were introduced on 6 June 2015, s 107A, providing for the Court to impose pecuniary penalties, took effect on 20 December 2019. Accordingly, the Court's focus in determining a pecuniary

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7 Section 9C(2)(a)(iii).
8 Section 9C(3)(a)(i).
9 Section 9C(3)(a)(ii).
10 Part 2, sub-part 2, ss 17–26B.
11 Section 3(3)(b).

penalty (as against the making of the declarations sought) is on conduct that took place on or after that date (the Pecuniary Penalty Period).

[30] A penalty is set using a three-stage framework:[12]

(a) First, the Court determines the maximum pecuniary penalty by reference to s 107A(3) of the CCCFA.

(b) Second, the Court sets a starting point, having regard to "all relevant matters" including those outlined in s 107A(2) of the CCCFA and the applicable maximum penalty.[13]

(c) Third, the Court adjusts the starting point by applying an uplift or reduction on the basis of circumstances personal to the individual defendant, such as self-reporting, co-operation, admissions and remediation.[14]

[31] The Court's role when asked to approve a pecuniary penalty agreed between the parties is well settled:[15]

(a) There is a significant public interest in such settlements bringing about the prompt and efficient resolution of penalty proceedings.

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12 *Commerce Commission v Nelson Building Society* [2026] NZHC 2675 at [33]; *Commerce Commission v The Co-operative Bank Ltd* [2026] NZHC 815, [2026] NZCCLR 85 at [23]; and *Commerce Commission v Westpac New Zealand Ltd* [2025] NZHC 3640, [2025] 3 NZLR 625 at [28].

13 Section 107A has been amended for agreements entered into on or after 1 July 2026: see Credit Contracts and Consumer Finance Act, sch 1AA, cl 14. In any event, the Court "must have regard to all relevant matters".

14 *Commerce Commission v Nelson Building Society*, above n 12, at [55]–[59]; *Commerce Commission v Co-operative Bank Ltd*, above n 12, at [47]–[51]; and *Commerce Commission v Westpac New Zealand Ltd*, above n 12, at [64].

15 *Commerce Commission v Nelson Building Society*, above n 12, at [32] and [34]; *Commerce Commission v The Co-Operative Bank Ltd*, above n 12, at [22] and [24]; *Commerce Commission v Westpac New Zealand Ltd,* above n 12, at [27] and [29]; *Financial Markets Authority v Cigna Life Insurance New Zealand Ltd* [2022] NZHC 3610 at [47]; and *Financial Markets Authority v Kiwibank Ltd* [2023] NZHC 2856 at [18].

(b) The Court must be satisfied that the proposed agreed pecuniary penalty satisfies the statutory objectives and reflects the particular circumstances of the case before it.

(c) When assessing what is proposed, the Court need not accept each step of the methodology — it is the final amount that matters. The ultimate question is whether or not the final penalty is within the proper range.

Maximum amount

[32] The maximum penalty that can be imposed on ASB is $600,000 in respect of each act or omission.[16]

[33] In its submissions, the Commission has sought two sets of penalties for the overdraft issue (one for the affordability/suitability-related issues and the other for the disclosure-related issues), and one set for the overpayments issue. Each set consolidates the breaches into sequential six-month periods commencing from 20 December 2019. That approach results in an application for 27 pecuniary penalties, producing an overall maximum of $16.2 million.

[34] Although the maximum penalty is a relevant consideration, it is important not to give it an undue "framing effect".[17] Also important is the totality principle, namely that the total penalty must not be "wholly out of proportion to the gravity of the overall offending".[18] I accept that the maximum penalty is well beyond the totality of the offending in this case, and other relevant factors considered below are more important for assessing the appropriate penalty response.

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16 Credit Contracts and Consumer Finance Act, s 107A(3)(b).

17 *Commerce Commission v One New Zealand Group Ltd* [2025] NZHC 3635, [2025] 3 NZLR 716 at [103]; and *Commerce Commission v Eagle M.A.N Group Ltd* [2024] NZHC 3070 at [56].

18 *Commerce Commission v TSB Bank Ltd* [2024] NZHC 2400, [2024] NZCCLR 115 at [28].

Factors affecting the starting point

Exemplary damages

[35] The parties agree that no exemplary damages have been awarded or sought. This factor is neutral.

Nature, extent and circumstances of the contraventions

[36] The Commission submits that the contraventions were widespread and long-standing, affecting thousands of customers over an extended period. They occurred in the absence of effective monitoring, controls and systems that ought to have identified instances where borrowers were overpaying or where they were being denied statutory protections available to them. The contraventions also persisted despite earlier events which ought to have put the bank on notice, including two customer complaints and several hundred BIR reports.

[37] The Commission further submits that the contraventions occurred, and persisted, because of specific choices ASB made that implicitly tolerated risks of non-compliance:

(a) ASB retained the ability for personal overdrafts to be originated and varied through Teller, notwithstanding the risks presented through the use of an unsupported system.

(b) ASB set a monetary threshold of $3,000 below which the BIR would not be triggered.

(c) ASB chose not to prioritise efforts to investigate the Personal Overdrafts Issue as it applied to temporary overdrafts, resulting in that issue persisting for around two and half years after ASB removed the functionality for permanent overdrafts to be established and varied through Teller.

(d) For debt overpayments, the $200 threshold and focus on the first overpayment only were arbitrary and foreseeably deficient system

settings, resulting in the Debt Overpayment Issue persisting for over a decade.

[38] ASB accepts that its contraventions arose out of failures to have effective systems and processes in place to ensure compliance with responsible lending obligations, and that these failures occurred over an extensive period. ASB readily acknowledges that more steps could have and ought to have been taken earlier to prevent the contraventions, including through changes to systems, better staff training, and reviews or audits of cases. However, ASB does not accept or agree that its failures involved it consciously running the risk of non-compliance (implicitly or otherwise). In support of that position, ASB relies on (among other things) its provision of documented policies to, and its training and express compliance expectations of, experienced staff who were permitted to use the Teller override; the fact that the Tallyman $200 threshold predated the lender responsibility provisions of the CCCFA; and the fact that the BIR $3,000 threshold was a general threshold considering various origination deficiencies, rather than one directed at whether supported origination tools were used.

[39] I agree that there are foreseeable risks of non-compliance with any discretionary ability to avoid or override system controls, and detection reports with thresholds inherently risk non-detection below those amounts. However, in a hearing of this nature, there is no basis for any finding that ASB consciously ran a risk of non-compliance. I do not accept that flawed attempts at prevention and detection implicitly establish recklessness about non-compliance. ASB has a much wider CCCFA compliance programme that is not criticised. These specific failings amount to inadequate attempts to comply with the required standards in the respects pleaded, with questions of the nature, extent and duration reflected in the proposed starting point.

Nature and extent of loss or damage

[40] In setting a starting point for a pecuniary penalty, the Court's focus is on the contraventions within the pecuniary penalty period only.[19]

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19 *Commerce Commission v The Co-operative Bank Limited*, above n 12, at [34].

[41] For the penalty period, ASB estimates that its contraventions involved up to 6,768 affected customers comprising:

(a) up to 4,726 customers for the Personal Overdrafts Issue; and

(b) up to 2,042 customers for the Debt Overpayment Issue.

[42] The disclosure failures meant that borrowers were denied timely information regarding their lending arrangements, to which they were entitled under the CCCFA. The affordability and suitability failures meant that borrowers were denied a statutory protection intended to ensure that they were not saddled with loans they could not afford. The figures referred to at [16] above indicate the extent to which serious harm could have been sustained from these failures.

[43] The Debt Overpayment Issue caused quantifiable harm. In the pecuniary penalty period alone, there were some 2,042 affected borrowers, who overpaid by a total of $574,508. ASB has remediated any quantifiable financial impact, including overpayments that occurred prior to 2015.

[44] Once completed, overall remediation provided by ASB is estimated to be in the order of $17.91 million, including use of money interest and goodwill payments.

Gains made or losses avoided

[45] Prior to remediation, ASB benefited from retaining the debt overpayments. ASB emphasises that any such temporary gains are comprehensively disgorged by the remediation payments, including the time value of money.

[46] The Commission submits that ASB also inferentially made unquantified gains of avoiding the costs of investing in the systems and processes required to comply with its obligations under the CCCFA, both automated prevention and detection, and manual follow up and correction. I consider those issues are best addressed as a matter of deterrence.

Deterrence

[47] Deterrence has been recognised as a relevant consideration in setting a pecuniary penalty. Such deterrence may be both specific to the defendant or more general, in the sense that it creates a strong incentive for financial institutions, and particularly large and well-resourced ones like trading banks, to maintain adequate processes and systems.[20]

[48] The Commission acknowledges that ASB self-reported the issues, took steps to address them, and has also taken steps to remediate the affected customers. On the other hand, the Commission submits that the conduct involved significant departures from the required standard of care. The response to that conduct, the Commission submits, must be one that achieves general deterrence by incentivising other creditors (both large and small) to invest properly in compliance and prevention of breach (however small the financial impact on each individual customer).

[49] In settling on this proposed starting point, the parties have recognised that general deterrent needs are greater where the defendant is a large and profitable entity and/or if it occupies a position of influence.[21]

[50] ASB is New Zealand's third-largest registered bank by total assets. It 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. ASB has been consistently profitable in the period covered by the claim, with annual net profits after tax ranging from $908 million to $1.35 billion.

Determination of starting point

[51] Counsel have referred to other cases in which a pecuniary penalty has been imposed under the CCCFA.[22]

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20 *Financial Markets Authority v ANZ Bank New Zealand Ltd* [2021] NZHC 399 at [45].

21 *Commerce Commission v One New Zealand Group Ltd*, above n 17, at [70].

22 *Commerce Commission v Eagle M.A.N Group Ltd*, above n 17; *Commerce Commission v The Co-operative Bank Ltd*, above n 12; *Commerce Commission v Nelson Building Society*, above n 12; *Commerce Commission v TSB Bank Ltd,* above n 18; and *Commerce Commission v TSB Bank Ltd*, above n 4.

[52] Both parties consider that the closest comparator is *Commerce Commission v Westpac New Zealand*.[23] That involved eight causes of action, seven concerning failures to provide disclosure to borrowers and one free-standing issue relating to Westpac inadvertently removing certain customers' right to a discount.[24] In each case, the issues related to deficiencies in Westpac's systems and processes, some of which only affected small numbers of customers in defined circumstances.[25] Overall, 7,523 customers were affected within the pecuniary penalty period: 2,535 by the disclosure issues and 4,988 by the discount issues.[26] There was $1.55 million of identified overcharging for the discount issue over the pecuniary penalty period, and other potential but unquantified non-disclosure harm.[27] The Court adopted a starting point of $5.2 million, factoring in the duration of the conduct, the number of systems affected and the extent of the harm.[28]

[53] The parties agree that the facts in this case warrant a starting point higher than in *Westpac*:

(a) ASB's contraventions involve system deficiencies that extended beyond disclosure to include failing to conduct suitability/affordability assessments and failing to reimburse overpayments.

(b) ASB's Personal Overdrafts Issue affected twice as many customers in the penalty period than the disclosure issues in *Westpac* did: 4,726 compared with 2,535 in *Westpac*.

(c) The duration of ASB's contraventions within the penalty period is longer. Westpac's issues covered a period of four years (from 20 December 2019 to 9 November 2023),[29] compared with more than five years for ASB's conduct in this case (from 20 December 2019 to 29 July 2025).

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23 *Commission v Westpac New Zealand Ltd,* above n 12.
24 At [2] and [38]–[39].
25 At [40]–[41].
26 At [38].
27 At [42]–[43].
28 At [55]–[56].
29 At [20] and [68].

[54] The Commission also contends that ASB's culpability is higher than in *Westpac* to the extent that ASB might have consciously run some risks of non-compliance, but I consider the nature of the inadequate but non-deliberate system failures to be similar (Anderson J commented that Westpac's conduct was "foreseeably deficient"[30]).

[55] I am satisfied that the starting point of $8.05 million that the parties have arrived at is within range. It has parity with other penalty cases under the CCCFA, comparing all relevant factors including the nature of the failures, the duration of the conduct, the number of systems affected, the extent of the harm, and the size/profitability of the defendant.

[56] As one of New Zealand's largest banks, a significant penalty is appropriate to provide a strong general deterrence signal that there is nothing to be gained by under-investment in compliance, and that the obligations of CCCFA must be satisfied regardless of any question of materiality of harm for any given customer. This conduct was a marked departure from the standards expected from a large, registered bank in ASB's position.

Uplift for aggravating factors

[57] The Commission does not seek any uplift for any aggravating factors specific to ASB. While ASB has previously admitted contraventions of the Act, and of the Financial Markets Conduct Act 2013, the underlying issues in those cases were distinct from the issues in this proceeding.

Reduction for mitigation factors

[58] The parties recommend a reduction of 28 per cent for ASB fully remediating the issues, and for its co-operation with the Commission, including by self-reporting the breaches and engaging constructively on the terms of its admissions.

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30 At [36].

[59] This is slightly lower than a 30 per cent reduction given in other cases,[31] reflecting that ASB's conduct fell somewhat below the standard to be expected of an entity in its position — it was dilatory in responding to the Personal Overdraft Issue as it applied to temporary overdrafts, and it was slow to report that to the Commission as well.

[60] I accept that a reduction of 28 per cent is appropriate on these facts.

Conclusion

[61] Standing back and looking at the matter overall, I find that a pecuniary penalty of $5,796,000 (adopting a starting point of $8.05 million and applying a 28 per cent reduction for mitigating factors) is within range and properly reflects the circumstances of this case and the objectives of the CCCFA.

Result

[62] Accordingly, the Court imposes a pecuniary penalty on ASB of $5,796,000.

[63] The Court makes the following declarations:

(a) 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) 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.

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[31] *Commerce Commission v Westpac New Zealand Ltd,* above n 12, at [63]; *Commerce Commission v The Co-operative Bank Ltd,* above n 12, at [49] and [51]; and *Commerce Commission v Nelson Building Society*, above n 12, at [58], indicating that 35 per cent is above the discount of 30 per cent for "ordinary" or "expected" levels of co-operation and engagement.

(c) In respect of the Affected Overpaying Borrowers, 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.

[64] By consent, there is no order as to costs.

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O'Gorman J