IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY

I TE KŌTI MATUA O AOTEAROA
TE WHANGANUI-A-TARA ROHE

CIV-2026-485-337
[2026] NZHC 2675

UNDER	the Credit Contracts and Consumer Finance Act 2003
BETWEEN	COMMERCE COMMISION Plaintiff
AND	NELSON BUILDING SOCIETY Defendant

Hearing:	1 September 2026
Appearances:	A D Luck and G R T Lund for Plaintiff E J Rushbrook and J A Tucker for Defendant
Judgment:	3 September 2026

JUDGMENT OF ISAC J

Introduction

[1] Nelson Building Society (NBS) is a non-bank deposit taker that provides retail banking services across eight branches in the South Island.[1] It has admitted a series of breaches of the lender responsibility principles in s 9C of the Credit Contracts and Consumer Finance Act 2003 (CCCFA) and the continuing disclosure obligations in s 18.

[2] The breaches arose from systemic failures that affected NBS customers from 6 June 2015 and 1 July 2023. NBS identified the failures and reported the issues to the Commerce Commission following internal reviews in 2023. It has now addressed the

[1] Pursuant to the Non-bank Deposit Takers Act 2013, s 5.

underlying issues, paid compensation to affected customers and fully cooperated with the Commission's investigation.

[3] The parties jointly seek the imposition of an agreed pecuniary penalty on NBS. The parties recommend that the Court make declarations of breach sought by the Commission and the imposition of a penalty of $825,500.

The CCCFA

[4] The purpose of the CCCFA is to protect the interests of consumers in connection with credit contracts, both when the contract is made and for its duration.[2]

[5] One of the ways the CCCFA advances those purposes is through the lender responsibility principles set out in s 9C.[3] These include a requirement that every lender[4] must "exercise the care, diligence, and skill of a reasonable lender"[5] before entering into an agreement to provide credit or finance and in all subsequent dealings with a borrower.[6]

[6] Subpart 2 of pt 2 prescribes the circumstances in which lenders are required to provide disclosure to borrowers and guarantors.

[7] Section 107A provides that the Court may, on application of the Commission, order a person to pay a pecuniary penalty if satisfied that a person has contravened certain provisions, including the obligation to comply with lender responsibility principles in s 9C(1).[7]

[8] The pecuniary penalties sought by the Commission are limited to the period from 20 December 2019 until each issue was resolved (the penalty period), which is when pecuniary penalties became available for NBS' breaches of the CCCFA.

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2 Credit Contracts and Consumer Finance Act 2003 (CCCFA), s 3(1) and (2)(c).
3 CCCFA, s 3(3)(a).
4 "Lender" includes creditors under consumer credit contracts: s 9B(1).
5 Section 9C(2).
6 Section 9C(2)(a)(ii)–(iii).
7 Section 107A(1)(a). From 1 July 2026, references in the section to the Commission were substituted with references to the FMA.

The conduct in issue

[9] The conduct giving rise to the application for a pecuniary penalty is set out in a statement of claim which NBS accepts.[8] Broadly four areas of regulatory non-compliance were found:

(a) some NBS customers were overcharged interest;

(b) NBS failed to comply with the regulatory requirements for continuing disclosure to some customers;

(c) a separate disclosure issue arose in relation to borrowers who changed the terms of their loans; and

(d) finally, vehicle finance loans were made available to 37 migrant workers in circumstances where NBS failed to make an individualised assessment of each borrower's circumstances and ability to repay the loan.

[10] The following section outlines the nature of the contraventions in greater detail.

Interest overcharge issue

[11] NBS offered a short-term loan referred to as NBS' consumer loan product (CLP loan) predominantly used for vehicle finance. The CLP loans were generally for a term of approximately five years, with the interest rate usually fixed for the whole term.

[12] During the term of the CLP loans, NBS was required to calculate the interest owing on the contracts in accordance with the terms of the applicable loan agreement using one of three daily calculation rates, two of which required consideration of the unpaid daily balance. NBS was required to calculate interest in this way regardless of how frequently the borrower made repayments under that agreement.

8 By way of a notice of admission dated 16 June 2026.

[13] From April 2014, NBS used a lending system, which it configured, to determine the interest payable on CLP loans. It configured the system incorrectly, such that for the life of the loan, the system used a monthly calculation determined at the outset. That introduced two errors, in that:

(a) it failed to account for the daily rate contemplated by customers' contracts; and

(b) it failed to account for customers who made changes to their repayment terms — for instance, by increasing their repayment amounts, or making lump sum payments — which were not contemplated at the outset of the loan.

[14] As a result, customers who chose to make repayments on a weekly or fortnightly basis, or who made changes to their repayment terms, were overcharged.

[15] NBS did not undertake any testing of the system, either at the time it implemented the system or subsequently, to ensure that interest was being calculated correctly. NBS also lacked the requisite systems to check whether customers were being correctly charged, and did not invest adequately in its systems and processes so as to ensure compliance from the outset.

[16] This issue was not identified for a number of years. That was despite the fact that NBS received a customer complaint in 2020 after a customer made a lump sum payment. The complaint was resolved by frontline staff but was not escalated to determine whether it raised wider issues within NBS. The organisation formally identified the issue in mid-2023 and ceased offering new CLP loans in July 2023.

[17] In the period from 6 June 2015[9] to 1 July 2023, at least 8,393 borrowers were overcharged by a total of $854,183.19. At least 2,613 of those borrowers were overcharged by a total of $215,981.32 within the penalty period.[10]

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9 This being the date on which s 9C came into force.
10 This being the date on which s 107A came into force.

Continuing disclosure issue

[18] While pleaded as the "Continuing Disclosure issue" (in the singular), in substance this is three issues, all relating to NBS' obligation to provide continuing disclosure under s 18 of the CCCFA. The systems issues underpinning those breaches provide the basis for the s 9C breach.

[19] The first issue involved the frequency of disclosure statements. The CCCFA requires those to be provided every six months.[11] Initially, however, NBS set up its lending system to do so every 12 months, without regard to the requirements of the CCCFA.

[20] Subsequently, from December 2021 NBS reconfigured the lending system to ensure disclosure was provided at the correct frequency. However, for revolving credit loans, the provision of disclosure depended on a manual step being taken by NBS staff. NBS then failed to adequately direct staff to take that step and had no adequate systems or processes in place to check whether the step was being performed.

[21] In total, the frequency issue affected approximately 11,899 borrowers from 6 June 2015 to 25 September 2024, including 4,270 borrowers in the penalty period.[12]

[22] The second issue involved the content of that disclosure, which omitted key information.[13] In particular, NBS had template disclosure documents which failed to specify:

(a) the amount and time for the next payment, which was omitted in a total of 13,843 instances; and

(b) in some 5,374 instances:

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11 Section 18(2) of the CCCFA stipulates that the maximum period for a continuing disclosure statement is, in the case of a revolving credit contract, 45 working days; or in any other case, six months.

12 While approximate, the parties are agreed that these are the relevant figures for penalty purposes.

13 That being information which NBS was required to provide pursuant to s 19 of the CCCFA.

(i) the date, description and amount of each advance during the statement period;

(ii) the date and amount of each interest charge;

(iii) the date and amount of each amount paid by the debtor;

(iv) the amount of the next instalment; and

(v) the annual interest rate during the statement period.

[23] NBS also provided continuing disclosure via internet banking access where borrowers agreed to that disclosure method. In those cases, there were a further:

(a) 341 instances where borrowers holding relevant loans were set up with internet banking access, without also having been set up to receive template disclosure documents as intended; and

(b) 623 instances where borrowers did not receive a continuing disclosure statement at all, either through online banking or via a hard copy disclosure statement.

[24] Overall, the content issues affected 13,424 borrowers from 6 June 2015 to 25 September 2024, of whom 5,633 were affected within the penalty period.

[25] The third issue involved co-borrowers who provided different addresses for continuing disclosure statements to be sent to. NBS configured its system to send the continuing disclosure statements automatically to the primary borrower's address and not to the addresses nominated by the co-borrowers. NBS required staff to manually select an option to provide disclosure to the co-borrowers, which was not done in several hundred cases. This affected approximately 621 borrowers from 6 June 2015 onwards, 213 of which fell within the penalty period. That failure was the result of staff not being adequately directed to provide that disclosure, and of NBS having had no systems or processes in place to ensure such disclosure was provided.

[26] All three issues were resolved in September 2024 after NBS made various amendments to its systems to ensure the correct disclosure was provided.

The loan change issue

[27] NBS was also required to provide disclosure when loans were changed, for instance, to refix the interest rate or to change the loan term.[14]

[28] NBS did not have automated systems in place to provide the requisite disclosure when such changes were made to borrowers' loans. Instead, NBS required staff members to personally identify the need to provide that disclosure and to do so manually. It provided staff with a guide and template disclosure letters, but otherwise there were no processes in place to ensure that the disclosure was provided, or to check whether it had been. NBS also failed to have systems in place for recording, or otherwise determining, whether such borrowers had been provided with the required disclosure.

[29] As a result, NBS failed to provide the required disclosure to approximately 5,095 affected borrowers in the period since 6 June 2015, 2,502 of whom were affected within the penalty period.

The migrant workers issue

[30] NBS had an introducer relationship with various third party brokers who referred prospective CLP borrowers to NBS. In those cases:

(a) NBS required the brokers to gather certain financial information in order to estimate the borrower's likely net financial position and to refer borrowers deemed eligible to NBS; and

(b) NBS was then required to review the information provided to make an assessment of whether to provide the credit, and if so on what terms. That included the assessment in s 9C(3)(a)(ii) of the CCCFA, namely, to make reasonable inquiries so as to be satisfied it was likely the

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14 Pursuant to subpart 2 of pt 2 of the CCCFA.

borrower will make the payments without suffering substantial hardship.

[31] Between 12 September 2022 and 20 January 2023, a broker introduced 37 prospective borrowers to NBS, all of whom were migrants who entered New Zealand as part of an Accredited Employer immigration scheme. They were all employed by the same employer, a contracting company, and were all on a Recognised Seasonal Employer Limited Visa. The broker provided an identical set of financial information for all 37 borrowers, which NBS accepted without question. That failing meant that:

(a) NBS failed to make an assessment of the borrowers' individual circumstances, as required; and

(b) by so doing, NBS failed to account for differences in those circumstances: for instance, the fact that some borrowers would not have commenced employment by the time they were required to make repayments; and that some other borrowers' visas were due to expire prior to the end of their loan terms.

Approach to recommended pecuniary penalties

[32] The role of the Court where parties jointly seek the imposition of a pecuniary penalty is well-settled,[15] including recently for pecuniary penalties sought under the CCCFA.[16] The Court's approach acknowledges the efficiency of negotiated resolutions and the significant public interest in bringing about prompt resolution of penalty proceedings.[17]

[33] The following three-stage enquiry applies to setting pecuniary penalties:[18]

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15 See *Financial Markets Authority v Cigna Life Insurance New Zealand Ltd* [2022] NZHC 3610 at [47].

16 *Commerce Commission v TSB Bank Ltd* [2024] NZHC 2400, [2024] NZCCLR 115 at [16].

17 At [16]; *Commerce Commission v Alstom Holdings SA* [2009] NZCCLR 22 (HC) at [18]; and *Commerce Commission v Kuehne + Nagel International AG* [2012] NZCA 221, [2012] 3 NZLR 187 at [21].

18 *Commerce Commission v Property Brokers Ltd* [2017] NZHC 681, [2017] NZCCLR 14 at [4]; and *Commerce Commission v Eagle M.A.N. Group Ltd* [2024] NZHC 3070 at [35].

(a) first, the Court should determine the maximum penalty;

(b) second, it should set a starting point for the conduct, in light of factors bearing on the defendant's culpability and by reference to the applicable maximum penalty; and

(c) finally, the Court should make any adjustments to the starting point whether uplifts or discounts on the basis of any considerations personal to the defendant.

[34] Where the parties jointly recommend a penalty, it is not necessary that the Court accepts each step of the parties' proposed methodology. Nor is it necessary to resolve differences between the parties on the methodology or factors by which they came to the agreed figure. The ultimate question for the Court is whether or not the final penalty is within the proper range.[19]

Approach to pecuniary penalties under the CCCFA

[35] The maximum penalty in respect of each act or omission in applications by the Commission under s 107A of the CCCFA is $600,000 where, as here, the act or omission is not by an individual.[20] As noted, pecuniary penalties are available for contraventions engaged in or from 20 December 2019 onwards. As such, the Court's focus is on contraventions within the penalty period.[21]

[36] In setting a penalty within the available range, the Court must have regard to all relevant matters, in particular those set out at s 107A(2)(a)–(e).[22] I turn to these relevant specified criteria shortly.

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19 *Commerce Commission v TSB Bank Ltd*, above n 16, at [16]; *Commerce Commission v Geologistics International (Bermuda) Ltd* HC Auckland CIV-2010-404-5490, 22 December 2010 at [37]; and *Commerce Commission v Whirlpool SA* HC Auckland CIV-2011-404-6362, 19 December 2011 at [17]–[18].

20 CCCFA, s 107A(3).

21 *Commerce Commission v The Co-operative Bank Ltd* [2026] NZHC 815 at [34].

22 I note s 107A(2) was replaced on 1 July 2026 and now includes paras (f)–(h).

[37] The requirement to consider "all relevant matters" requires the Court to consider general and specific deterrence.[23] This is a primary consideration in setting pecuniary penalties.[24] The Court should also consider the wrongdoer's ability to pay the penalty.

Maximum penalty

[38] While there are a number of affected borrowers, the breaches in respect of the four issues identified above have been consolidated across 14 contraventions. Thirteen of those contraventions cover the first three heads wrongdoing identified above at [9(a)–(c)] relating to conduct that continued from 20 December 2019. The remaining contravention relates to the lending arrangements affecting the migrant workers. That produces an agreed maximum penalty of $8.4 million.

The starting point

[39] As noted above, I must have regard to all relevant matters, in particular those outlined in s 107A(2) of the CCCFA. It is accepted that s 107A(2)(a), which relates to exemplary damages, is not relevant.

The nature and extent of the contravention (s 107A(2)(b))

[40] While counsel differed in their characterisation of the contraventions, the parties agreed they arose from systemic failures rather than reckless or deliberate conduct. It is apparent there was an institutional failure to have sufficient regard to the requirements of the CCCFA and ensure existing systems were adequately modified and monitored to ensure ongoing compliance. The contraventions occurred over a number of years and affected thousands of borrowers.

[41] I also accept the Commission's submission that the interest overcharging and disclosure issues arose from NBS' failure to implement robust mechanisms to ensure

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23 *Financial Markets Authority v ANZ Bank New Zealand Ltd* [2021] NZHC 399, (2021) 16 TCLR 28 at [45]; and *Department of Internal Affairs v Ping An Finance (Group) New Zealand Co Ltd* [2017] NZHC 2363, [2018] 2 NZLR 552 at [92].

24 *Telecom Corporation of New Zealand Ltd v Commerce Commission* [2012] NZCA 344 at [62].

both correct interest and disclosure was provided in accordance with the terms of lending and the Act.

[42] The migrant workers issue is obviously concerning given it involved lending to a relatively vulnerable subset of borrowers for whom the CCCFA is intended to provide protection. The agreed facts indicate that two thirds of the affected group faced repayment difficulties of some kind, with one third having not made payments from the outset of the loans.

The nature and extent of any loss or damage suffered (s 107A(2)(c))

[43] All four issues resulted in consumer harm. The overcharging of interest involved quantifiable loss. In the penalty period 3,605 borrowers were affected, of whom at least 2,613 were overcharged $215,981.32. However, NBS has remediated these customers by refunding overpaid amounts together with use of money interest.

[44] The remaining three issues involved unquantifiable harm.

[45] As to the disclosure-related contraventions, NBS acknowledges that 13,657 customers did not receive information to which they were entitled within the penalty period. The lack of disclosure is not known to have caused direct financial harm. NBS has nevertheless made corrective disclosure and remediation payments of approximately $3,115,230 in recognition of the unquantifiable harm suffered.

[46] The migrant workers issue affected 37 borrowers who were vulnerable by virtue of their visa status and the limited period each was expected to be working in New Zealand. Affordability assessments ensure that all borrowers, especially vulnerable ones, are not saddled with loans that they cannot afford. Lenders who fail to provide that protection to borrowers create the potential for serious harm. At the time NBS self-reported this issue in mid-2023, seven of the borrowers were in arrears, 13 of them were in deferred arrears and four of them had surrendered their vehicle which had been sold with a balance still owing. NBS has paid remediation totalling $395,999.69 to those customers.

Any gains made or losses avoided by the person in contravention (s 107A(2)(d))

[47] In relation to the interest overcharge issue, NBS' 'gain' is reflected in the extent to which customers were overcharged interest. While any such gains have since been disgorged,[25] there was nonetheless a time when the conduct was to NBS' benefit, and such gains remain relevant in this context.

[48] NBS also made gains by its past failures to expend the time and resources needed to invest in adequate systems and processes, and to adequately test the processes that were in place. However, in light of NBS' discovery of its systemic issues, and subsequent steps to pay reparation and ensure future compliance, I am satisfied there is no ongoing benefit. At most, it seems a capital commitment was deferred.

The circumstances in which the contravention took place (s 107A(2)(e))

[49] This consideration has largely been addressed in the context of the previous statutory factors.

[50] NBS is a substantial non-bank depositor but is significantly smaller in its scale when compared to other financial institutions that have come before the Court in the context of pecuniary penalties under the CCCFA. As noted, the compliance issues involved systems failures aggravated by a lack of systems for auditing, detection and monitoring in the areas identified by the Commission. That said, as NBS submits, it should not be assumed that the identified issues were widespread or that it did not otherwise have adequately operating compliance systems in other areas of its business.

Other relevant considerations

[51] The parties submit, and I agree, that specific deterrence is not a relevant concern in this penalty assessment. NBS identified the issues in the context of its 2023

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[25] And will continue to be disgorged. Some CLP loans remain on foot and the mechanism for calculating interest cannot be changed in respect of those loans. In the circumstances, NBS has initially remediated those borrowers by paying an amount reflecting its forward forecast of the potential overcharges over the life of the loan. NBS will also keep those loans under review and make further remedial payments in the event there are later changes to loans which would result in further overcharges.

review and self-reported them in a timely manner. It has implemented new systems, processes and controls, including personnel changes. It has also made substantial payment by way of reparation to affected customers. The recommended penalty is a significant one for a cooperative financial institution, amounting to a substantial proportion of its projected short-term annual earnings. On the material before me I am satisfied it would not amount to what could be seen as merely a cost of doing business and has the necessary element of general deterrence.

[52] The means and ability of the defendant to pay the penalty, and the extent of its voluntary payments to affected customers are also clearly relevant. There is no suggestion the agreed penalty is beyond the defendant's means, although it is clear it is a significant imposition for a business of its scale.

Starting point

[53] In light of the above matters, the parties submit that NBS' conduct warrants a starting point in the range of $1.27 million to $1.4 million. A starting point at that level:

(a) appropriately accounts for NBS' significant culpability, in light of the matters identified above;

(b) appropriately reflects NBS' scale and resources, including its relative profitability both before and after the conduct came to light; the latter being significant here given the evidence before the Court as to NBS' expected future profitability;

(c) is sufficiently high to be regarded by the market as being an effective general deterrent;

(d) is aligned with the pecuniary penalty levels in other cases under the CCCFA (as discussed below); and

(e) accounts for totality — in the sense of an overall sanction that is proportionate overall to the conduct in issue and its gravity.

[54] The parties have referred me to a series of recent decisions involving the imposition of a penalty under the CCCFA on financial institutions.[26] Based on a comparative assessment from those cases of the seriousness and duration of the conduct, the affected parties, the potential gains or losses and other relevant factors, I am satisfied the proposed starting point penalty of $1.27 million in the present case is within range. It provides appropriate acknowledgement of the gravity and scale of the wrongdoing and the means of the wrongdoer, to pay the penalty.

Adjustment to the starting point

[55] The final step is to adjust the starting point to take into account defendant-specific factors. The Commission is not aware of any aggravating factors specific to NBS.

[56] As to the mitigating factors, NBS' cooperation with the Commission was significant. It provided information sought in a timely way. When some information could not be provided due to limitations in its record-keeping, it engaged constructively with the Commission. It provided what information it could in the course of its investigation, and then on the terms of its admissions. Its engagement on those matters was also constructive.

[57] NBS also self-reported the issues in a timely way, undertook steps to resolve the underlying system and process issues, and has remediated borrowers.

[58] The Commission's view is that those matters together warrant a discount of 35 per cent. A discount at that level is above the level adopted in *Commerce Commission v Westpac New Zealand Ltd*,[27] as well as in a number of comparable pecuniary penalty cases under the Financial Markets Conduct Act where defendants have offered "ordinary" or "expected" levels of cooperation and engagement.[28]

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[26] *Commerce Commission v TSB Bank Ltd,* above n 16; *Commerce Commission v Westpac New Zealand Ltd* [2025] NZHC 3640, [2025] 3 NZLR 625; *Commerce Commission v Eagle M.A.N Group Limited*, above n 18; and *Commerce Commission v The Co-operative Bank Ltd,* above n 21.

[27] Above n 26.

[28] A 30 per cent discount was applied in a number of those cases, including *Financial Markets Authority v Medical Assurance Society New Zealand Ltd* [2023] NZHC 3312 and *Financial Markets Authority v ANZ Bank New Zealand Ltd*, above n 23.

[59] NBS' conduct goes beyond this and justifies a greater discount than was appropriate in those decisions. It also recognises, as this Court has observed, that "absent special or unusual features, discounts should not be so large as to remove the deterrence objective of pecuniary penalties".[29]

[60] I accept these submissions, indicating a final penalty of $825,500.

Result

[61] For the foregoing reasons, the Court imposes a pecuniary penalty on NBS of $825,500.

[62] The Court makes the following declarations:[30]

(a) a declaration that, in respect of the Affected CLP Borrowers, NBS breached s 9C(1), by failing to comply with the responsible lending principles in ss 9C(2)(a)(ii) and (iii), of the CCCFA in the period from 6 June 2015 to 1 July 2023;

(b) a declaration that NBS breached s 18 of the CCCFA in the period from 6 June 2015 to 25 September 2024 to the extent described in paragraphs 3.1 to 3.21 of the statement of claim;

(c) a declaration that NBS breached s 9C(1) by failing to comply with the lender responsibility principle in s 9C(2)(a)(iii) of the CCCFA in the period from 6 June 2015 to 25 September 2024 to the extent described in paragraphs 3.1 to 3.21 of the statement of claim;

(d) a declaration that NBS breached s 9C(1) by failing to comply with the responsible lending principle in s 9C(2)(a)(iii) of the CCCFA in the period from 6 June 2015 to 1 July 2023 to the extent referred to in paragraphs 4.1 to 4.13 of the statement of claim; and

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[29] *Financial Markets Authority v Cigna Life Insurance New Zealand Ltd*, above n 15, at [71].

[30] The declarations are made in the form pleaded by the Commission in its statement of claim dated 12 June 2026.

(e) a declaration that, in respect of the 37 migrant workers, NBS breached s 9C(1) by failing to comply with the responsible lending principle in s 9C(3)(a)(ii) of the CCCFA in the period from 12 September 2022 to 20 January 2023.

[63] NBS also seeks that the interim non-publication orders protecting the confidential information at 1.3(d) of the statement of claim should be made final. However, as the information is not reproduced in this judgment, there is no need for a final order. I make a final order sealing the Court file. Any application by a third party for access to material on the Court file must be referred to a judge for consideration in light of this judgment.

Isac J

Solicitors:
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Russel McVeagh, Wellington for Defendant