IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

I TE KŌTI MATUA O AOTEAROA
TĀMAKI MAKAURAU ROHE

CIV-2026-404-1767
[2026] NZHC 3163

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

Hearing: 2 September 2026

Appearances: D S Houghton and E J J McCarthy for Plaintiff
I Rosic and J F Hall for Defendant

Judgment: 14 October 2026

JUDGMENT OF O'GORMAN J

This judgment was delivered by me on 14 October 2026 at 4 pm
pursuant to r 11.5 of the High Court Rules 2016.

Registrar/Deputy Registrar

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Introduction

[1] This was a hearing for the imposition of a civil pecuniary penalty on TSB Bank Ltd (TSB) 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).

[2] The breaches occurred between 6 June 2015 and 1 December 2023 across five key areas (these are pleaded as five separate causes of action):

(a) overdraft products;

(b) visa documentation;

(c) joint borrowers;

(d) visa credit card accounts held by former staff members; and

(e) premier cheque account offers.

[3] TSB has admitted the breaches pleaded in the statement of claim. The parties have reached an agreed position and jointly propose that this Court should impose a pecuniary penalty between $877,500 and $910,000, along with making declarations of breach.

[4] I must determine the appropriate penalty (including whether the proposed range is appropriate) in light of the statutory criteria, relevant case law and the particular circumstances of TSB's conduct.

Legal principles

Lender Responsibility Principles

[5] 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.

[6] 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. 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;[1] and

[1] Credit Contracts and Consumer Finance Act 2003, 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;[2]

(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;[3] and

(ii) the borrower will make the payments under the agreement without suffering substantial hardship.[4]

[7] The Responsible Lending Code is issued by the Minister of Commerce and Consumer Affairs pursuant to s 9G of the CCCFA. The purpose of the Code is to:[5]

(a) elaborate on the Lender Responsibility Principles; and

(b) offer guidance on how those principles may be implemented by lenders.

[8] The Code is not binding on lenders,[6] but evidence of a lender's compliance with the provisions of the Code is treated as evidence of compliance with the Lender Responsibility Principles.[7]

Approach to penalties

[9] 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).

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2 Section 9C(2)(a)(iii).
3 Section 9C(3)(a)(i).
4 Section 9C(3)(a)(ii).
5 Section 9E(1).
6 Section 9E(2)
7 Section 9E(3).

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

[11] A penalty is set using a three-stage framework:[8]

(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" as outlined in s 107A(2) of the CCCFA and the applicable maximum penalty.

(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, cooperation, admissions and remediation.

[12] The Court's role when asked to approve a pecuniary penalty agreed between the parties is well settled:[9]

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

(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.

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

9 *Commerce Commission v Nelson Building Society*, above n 8, at [32] and [34]; *Commerce Commission v The Co-Operative Bank Ltd*, above n 8, at [22] and [24]; *Commerce Commission v Westpac New Zealand Ltd,* above n 8, 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].

(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.

Background facts

TSB's business

[13] TSB is New Zealand's seventh-largest bank by assets. It is headquartered in Taranaki and owned by Toi Foundation, a philanthropic community trust established in 1988. It makes annual grants to the Taranaki community, primarily in the areas of youth, environment and Māori aspiration. TSB's distributed profits are returned to the Taranaki community through Toi Foundation. Since its establishment, Toi Foundation has contributed more than $200 million to Taranaki people and projects.

[14] In the financial years covered by this claim, TSB has reported total assets of between $6.299 billion and $9.149 billion, and its annual net profits in the period ranged from $19.95 million to $61.56 million.

[15] TSB's primary business is the provision of retail banking services. Its services include the provision of credit to consumer borrowers under consumer credit contracts, such as home loans, personal loans (prior to 2021), arranged overdrafts and credit cards.

2021 review, self-report and co-operation

[16] In February 2021, TSB commenced a review to assess its compliance with the CCCFA, and to prepare for legislative changes that were due to come into effect in December 2021.

[17] During this review, TSB identified that it did not have sufficient and robust processes and controls in place:

(a) to ensure that all its lending products complied with the Lender Responsibility Principles; or

(b) to have suitable governance arrangements in place to ensure that certain lending products were consistently assessed for compliance with the applicable Lender Responsibility Principles.

[18] The 2021 review also identified compliance issues with respect to certain credit and default fees charged by TSB (the fee issues). TSB prioritised its investigation into the fee issues and self-reported those to the Commerce Commission (the Commission) on 30 March 2022. Following the Commission's investigation, TSB agreed to pay a pecuniary penalty in respect of the fee issues. On 27 August 2024, the Court ordered that TSB pay an agreed penalty of $2.47 million.[10]

[19] When TSB self-reported the fee issues on 30 March 2022, it also notified the Commission of other potential historic issues identified during its CCCFA review. TSB subsequently investigated those matters and identified the responsible lending issues now addressed in this proceeding, arising in respect of five key areas of its lending business as referred to at [2] above.

[20] On 27 August 2024, TSB made a further self-report to the Commission identifying these responsible lending issues and advising the Commission that it intended to remediate borrowers where there was actual or potential harm to those borrowers.

[21] In October 2024, the Commission opened an investigation into those issues. TSB co-operated throughout the investigation, provided information as requested, acknowledged its contraventions, agreed to settle this proceeding at the first opportunity and admitted the allegations in the Commission's statement of claim.

[22] TSB has implemented systems, processes and controls to resolve these issues and has put in place an extensive remediation programme to compensate borrowers. Once completed, the total amount estimated to be remediated will be $1.727 million.

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

Admitted breaches

[23] TSB has admitted the pleaded facts and contraventions alleged in the Commission's statement of claim. A summary of the five categories of contravention is set out below.

Overdraft products

[24] Between 6 June 2015 and 1 December 2023, TSB failed to exercise the care, diligence and skill of a responsible lender before entering into an agreement to provide credit and/or in all subsequent dealings with a borrower in relation to an agreement to provide credit. There are three issues in relation to overdraft products.

Issue one: Issuing and varying overdraft products

[25] Between 6 June 2015 and 30 November 2021, TSB did not have in place robust processes and controls relating to overdraft products, which meant that:

(a) TSB was not able to confirm that it always considered and discussed suitability and affordability with the borrower or otherwise assisted the borrower with informed decision-making.

(b) Several different versions of TSB's overdraft contract existed, and TSB did not have in place controls to ensure that the correct version was used for the relevant borrower scenario, with various contracts including omissions or unclear wording.

(c) There were also insufficient controls to ensure that documents were provided when required, were populated with complete information and that overdraft terms were correctly loaded into the relevant lending systems.

[26] The above issues have now been addressed:

(a) On or about 1 December 2021, TSB introduced new procedures relating to the origination and variation of overdraft products. These new

processes detailed the requirements for staff to follow for borrower conversations, affordability assessments and documentation for issuing overdrafts.

(b) TSB also introduced centralised processes operated through a centralised support team to ensure that all overdrafts followed a consistent and compliant process when varied.

(c) Overdraft documentation was also simplified. TSB now has a single form of overdraft contract that became effective on 30 November 2021, comprising an overdraft summary and the overdraft terms and conditions. All existing borrowers were given notice of the new terms, and all new borrowers from this date have entered into the new terms.

Issue two: Overdraft statements

[27] Between 6 June 2015 and 1 December 2023, TSB failed to send overdraft statements to a number of borrowers due to erroneous system settings, and the overdraft statements that were sent by TSB were unclear as to the rates of interest charged where an account incurred default interest during the statement period.

[28] This issue arose in part because of an automated setting within TSB's core banking system, Unibanks, which was in certain circumstances allowing accounts with overdrafts to have statement cycles set for more than 45 working days, or to be turned off completely. Additionally, TSB's overdraft statement included only the arranged overdraft interest rate and did not include the default interest rate when a borrower had incurred default interest during the period in which they had exceeded the agreed limit.

[29] This issue was resolved from 1 December 2023 by the following:

(a) TSB changed its system settings to ensure that borrowers would receive an overdraft statement at least every 45 days (and accounts set up or changed to have no statement, or a statement period of more than 45 days would be flagged for correction).

(b) TSB also added text to its statements notifying borrowers that, where overdrafts were cancelled or expired with a balance owing, borrowers would incur default interest at 22 per cent per annum. However, this fix was required for a short period only because, two weeks later, from 14 December 2023, TSB stopped charging default interest on arranged overdrafts altogether.

Issue three: Overdraft fees

[30] Between 6 June 2015 and 28 February 2022, TSB charged unauthorised overdraft fees in circumstances where they were not chargeable, and since 6 June 2015, it calculated and debited interest in a manner inconsistent with the terms of its overdraft contracts.

[31] These issues were the result of TSB's system settings. Where an overdraft had expired, or the overdraft limit had been removed, Unibanks treated any outstanding balance as an unarranged overdraft (rather than as an arranged overdraft in default). Impacted borrowers were incorrectly charged a $10 overdraft fee for each month the balance remained outstanding.

[32] TSB's system also calculated interest based on an account's unpaid balance at the end of each working day, rather than at the end of each day. This issue would be in the borrower's favour when withdrawals were made on non-working days but would be to the borrower's detriment when deposits were made into an account on non-working days. TSB's system would also debit interest on the last working day of the month (or sometimes earlier), rather than on the last calendar day of the month as provided for in the contract.

[33] Finally, in respect of TSB's Student First Overdraft product, certain borrowers were charged interest in circumstances where it was not clear when interest would start to be incurred.

[34] These issues have been resolved:

(a) On 28 February 2022, TSB introduced a process that identifies overdrafts with balances owing at the time the overdraft expires, and will, if necessary, manually turn off the charging of the unauthorised overdraft fee for those accounts.

(b) On 22 June 2026, a system fix was introduced to ensure that interest was calculated using daily balances and debited on the last day of the calendar month. At the same time, overdraft contracts were amended to ensure alignment.

(c) Prior to the introduction of the system fix, TSB partially resolved the issues by amending its overdraft contracts on 30 November 2021 to make clear that interest would be debited on the last working day of the month and manually addressing the remaining issues for new overdrafts taken out from 30 November 2021.

Remediation

[35] TSB did not have sufficient data to determine the number of accounts impacted and therefore took a "whole of book" approach to the remediation of its overdraft customers.

[36] The first two issues did not have a known or quantifiable financial impact on particular borrowers. The harm is described as follows:

(a) The first overdraft issue meant that TSB was unable to confirm that it always considered and discussed suitability and affordability with borrowers; that the correct version of overdraft contracts was used for the relevant borrower scenario; or that documents were provided when required and populated with complete information; and that terms were correctly loaded into the relevant lending systems.

(b) The second overdraft issue meant that borrowers were not provided with information that TSB was required to provide, and they therefore may not have been able to make properly informed decisions.

[37] TSB has made remediation payments by way of apology for potential and informational harm that an impacted borrower may have suffered, rather than as compensation for any direct financial harm. TSB has provided these remediation payments to all borrowers who had an overdraft at any point during the period from 6 June 2015 to 30 November 2021, where that overdraft was opened after 1 April 2005. This has resulted in total remediation payments of $504,123 to 3,420 borrowers in respect of 2,695 impacted accounts.

[38] For the third issue TSB has also provided or will provide compensation for direct financial harm to customers arising out of erroneously charged interest or overdraft fees:

(a) TSB has paid remediation of $12,036 to refund unauthorised overdraft fees and interest on potentially impacted accounts (including a use-of-money payment).

(b) TSB will refund the overcharged interest, along with a use of money payment, to accounts impacted by the daily interest rate calculation and debiting date issues.

(c) It is currently estimated that 1,972 accounts were overcharged $2,718 (excluding interest and use of money). TSB anticipated that customer remediation payments would commence in October 2026.

Visa documentation

[39] TSB has admitted, in relation to certain documentation connected with Visa credit card contracts, that it failed to exercise the care, diligence and skill of a responsible lender before entering into an agreement to provide credit and in all subsequent dealings with a borrower in relation to an agreement to provide credit. There are two issues in relation to Visa documentation.

Issue one: Disclosure of credit limit in application documentation

[40] From 6 June 2015 to 19 February 2021, where a borrower had applied for a TSB credit card other than through the TSB website (for example, through TSB's call centre or in person at a branch), TSB's origination documentation did not specify the agreed credit limit.

[41] This issue was partially resolved on 5 December 2019, when TSB put in place an automated process to send borrowers an email which attached the conditions of use, and which confirmed the borrower's agreed credit limit. However, where an email address was not available for a borrower, a manual process required staff to get the borrower to sign a Visa limit disclosure document. TSB did not have robust controls to ensure that this manual process was operating effectively.

[42] The issue was fully resolved from 19 February 2021 as TSB stopped offering Visa credit cards from this date.

Issue two: Separate notification when credit limit changed

[43] From 6 June 2015 to 29 November 2021, TSB did not have in place robust policies, processes and systems for sending notifications to borrowers regarding an agreed limit change that they had requested for their credit card, and borrowers were not sent separate notifications specifying the agreed change to their limit until they received their next continuing disclosure statement.

[44] This issue was resolved in November 2021.

(a) First, from 16 November 2021, TSB stopped accepting and processing any new credit limit increase requests.

(b) Second, from 29 November 2021, a borrower was required to sign a confirmation of change letter before a decrease to the agreed credit limit could be processed. This meant that a credit limit could not be changed without all relevant information having been provided.

Remediation

[45] These above Visa documentation issues potentially impacted approximately 11,306 borrowers in respect of 9,354 accounts. In the Pecuniary Penalty Period, the issue potentially impacted 1,130 borrowers across 920 accounts.

(a) TSB is in the process of remediating the 6,718 potentially impacted borrowers (across 5,680 accounts) in respect of the first issue regarding Visa credit card application documentation. Remediation payments are being made by way of an apology for any informational harm that the borrower may have suffered. The total remediation payments in respect of this issue are $426,000, with a small proportion still to be completed by March 2027.

(b) In respect of the second issue regarding changes to Visa credit card limits, remediation has been completed. TSB has made payments by way of an apology for any informational harm totalling $368,300 to 4,588 borrowers impacted by this issue.

Joint borrowers

[46] TSB has admitted, in relation to certain loans, credit cards and overdrafts provided to joint borrowers, that it failed to exercise the care, diligence and skill of a responsible lender in all subsequent dealings with a borrower in relation to an agreement to provide credit. There are two issues under this joint borrower category.

Issue one: Disclosure statements not sent to certain joint borrowers

[47] Between 6 June 2015 and, at the latest, 31 March 2022, TSB's systems and processes focused on communications with the "primary borrower". TSB's systems assumed that disclosure statements could be delivered to all borrowers by posting them to a single address, and that the delivery channels elected by the primary borrower applied to all borrowers under the contract. This meant that joint borrowers under a credit contract were not sent a copy of a disclosure statement if they lived at an address

that was different to that of the primary borrower, or where, if statements were to be delivered electronically, the joint borrower did not have online banking.

[48] This issue was resolved on or about 8 November 2021, when TSB required that statements be sent by post to all non-primary borrowers with home loans, personal loans and overdrafts. Further, from this date, all borrowers have been able to set individual preferences for statement delivery. In relation to Visa credit cards, a system fix was implemented on 30 November 2021, such that where joint borrowers are at different addresses, statements are sent to all borrowers at their respective addresses.

Issue two: Variation letters not sent to certain joint borrowers

[49] Between 6 June 2015 and 26 November 2021, where variation letters following agreed changes to home or personal loans were emailed manually by TSB staff to borrowers and not all borrowers had loaded email addresses, staff only sent the letter to the one email address, meaning that joint borrowers who did not share an email address with the primary borrower may not have been sent a separate copy of the letter.

[50] This issue was resolved on or about 26 November 2021. From that date, all agreed loan variations have been automated in Atlas, TSB's loan origination system. Through Atlas, TSB emails letters to all email addresses loaded for borrowers. If a borrower does not have an email address loaded, then the letter will be printed and posted, or handed to the borrower.

Remediation

[51] These above joint borrower issues potentially impacted approximately 26,516 borrowers in respect of 18,994 accounts. In the Pecuniary Penalty Period, the issue potentially impacted 6,213 borrowers across 4,852 accounts.

[52] Borrowers may not have been sent information they were entitled to, and this was liable to result in confusion, rather than direct financial harm. TSB has remediated all borrowers that have potentially suffered such informational harm:

(a) In relation to the first issue, TSB has paid a total of $205,900 by way of an apology in compensation to borrowers with home loans, personal loans or credit cards, who may have suffered informational harm due to having not been sent statements as a joint borrower.

(b) In relation to the second issue, TSB paid a total of $127,250 by way of an apology in compensation to borrowers with home or personal loans who may have suffered informational harm due to not having been sent a variation letter as a joint borrower.

Former staff Visa credit cards

[53] TSB has admitted that, in respect of discounted interest rates offered to TSB staff for the duration of their employment, it failed to exercise the care, diligence and skill of a responsible lender in all subsequent dealings with a borrower in relation to an agreement to provide credit.

[54] TSB staff were entitled, on application, to discounted interest rates on their Visa credit card for the duration of their employment with TSB. From at least 6 June 2015 to 18 January 2022, TSB did not have in place robust procedures to provide all former staff members with details in writing of a change to the interest rate back to the standard rate following the end of their employment. As a result, former staff were not advised of the removal of the discounted rate prior to it taking effect until they were sent their next staff Visa credit card statement which set out the change to the interest rate.

[55] This issue potentially impacted 185 borrowers across 157 staff accounts, with five borrowers and four staff accounts potentially impacted during the Pecuniary Penalty Period.

[56] TSB has made remediation payments totalling $15,700 by way of apology to the former staff members who suffered potential informational harm as a result of this issue.

[57] On 18 January 2022, the staff Visa credit card issue was resolved. From that date, a new TSB policy came into effect whereby discounted interest rates would continue to apply after staff members ended their employment with TSB.

Premier Cheque account offers

[58] Prior to April 2006, TSB offered Premier Cheque account holders an option of applying for a Visa credit card which included a waiver of the six-monthly fee where the minimum calendar month balance of the Premier Cheque account stayed above $5,000. However, from at least 6 June 2015 to 30 November 2023, TSB's systems were not appropriately set up to ensure that the fee was waived where borrowers maintained an account balance above that level.

[59] TSB has admitted that it failed to exercise the care, diligence and skill of a responsible lender in respect of this issue.

[60] TSB removed the Premier Cheque offer in April 2006 and, from 19 February 2021, stopped offering Visa credit cards. The last impacted Visa credit card accounts were closed by 30 November 2023.

[61] Of the 5,826 customers who opened both a Premier Cheque account and a Visa credit card account during the period that the offer was available (and who still had those products as of 6 June 2015), TSB identified 312 Visa credit card accounts that had been charged a six-monthly Visa credit fee incorrectly since June 2015, with 313 borrowers across 237 accounts potentially impacted during the Pecuniary Penalty Period. TSB has provided full remediation to those borrowers of $65,439 (which includes interest and a use-of-money payment).

Maximum amount

[62] Section 107A(3) of the CCCFA provides that the maximum penalty for each "act or omission" of a non-individual is $600,000. The Commission has consolidated TSB's breaches into five causes of action and seeks one pecuniary penalty for each cause of action. Accordingly, TSB and the Commission agree that the maximum penalty in this case is $3 million.

[63] Although the maximum penalty is a relevant consideration, it is important not to give it an undue "framing effect".[11] 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".[12]

Factors affecting the starting point

[64] Section 107A(2) provides that, in setting an appropriate pecuniary penalty against a person (A), the court must have regard to all relevant matters, in particular,—

(a) the purposes set out in s 3 and any other purpose set out in the Act that applies to the provision to which the proceeding relates; and

(b) any exemplary damages awarded under s 94(1)(c); and

(c) the nature and extent of A's conduct; and

(d) the nature and extent of any loss or damage suffered by any person because of A's conduct; and

(e) any gains made or losses avoided by A; and

(f) the circumstances in which A's conduct took place (including whether any contravention was intentional, inadvertent or caused by negligence); and

(g) whether A has previously been found by the court in proceedings under this Act, or any other legislation, to have engaged in any similar conduct; and

(h) the relationship of the parties to the transaction constituting the contravention.

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11 *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].

12 *Commerce Commission v TSB Bank Ltd*, above n 10, at [28].

[65] In the context of pecuniary penalties, deterrence is always a relevant consideration.[13]

> 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.

Exemplary damages

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

Nature and extent of the conduct

[67] The parties agree that TSB's contraventions were unintentional; stemmed from inadequate systems, processes, controls and governance; persisted for a substantial period; and the overdraft-related failures are the most serious. Potentially affected borrowers numbered 29,099 overall, with 8,740 borrowers and 7,020 accounts falling within the Pecuniary Penalty Period.

[68] The Commission describes the failures as fundamental, systemic and a marked departure from expected consumer-protection standards, particularly in relation to overdraft suitability and affordability.

[69] TSB accepts the deficiencies but submits that most affected borrowers experienced disclosure and notification failures, rather than deficient lending assessments or financial detriment. TSB also says the five pleaded areas share a common historical cause in legacy systems and should not be treated as five separate, independent compliance failures.

Nature and extent of loss or damage

[70] The parties agree that a significant number of borrowers were potentially affected, and that TSB has agreed to remediation totalling $1,727,466. The

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[13] *Financial Markets Authority v ANZ Bank New Zealand Ltd* [2021] NZHC 399 at [45]. See also *Commerce Commission v Westpac New Zealand Ltd,* above n 8, at [52].

remediation includes both direct financial loss and non-financial informational or broader consumer harm. The amount of remediation attributable to direct financial loss arising from the overcharges totals approximately $80,193, of which about $55,488 relates to the Pecuniary Penalty Period.

[71] The Commission submits that the non-quantifiable harm is substantial. Inadequate overdraft controls exposed borrowers to potentially unsuitable or unaffordable credit, while missing information deprived borrowers and guarantors of the opportunity to make informed decisions or be informed of changes in a timely way.

[72] TSB acknowledges the informational harm but contends that the remediation approach they have adopted is deliberately conservative and does not indicate corresponding loss to that degree. TSB characterises the direct financial detriment as modest and fully remediated.

Gains made or losses avoided

[73] TSB received gains through incorrectly charged fees and interest. Those amounts have been, or are being, remediated with use-of-money payments. The parties also agree that earlier compliance would have required investment in systems, processes and governance.

[74] The Commission says TSB avoided material operational and compliance expenditure and benefited from associated revenue and cashflow. TSB does not regard such costs as gains retained from the contraventions, although it accepts that they are relevant to the penalty.

Circumstances of the contraventions

[75] TSB did not deliberately or consciously set out to breach the CCCFA. The problems arose in historical systems and processes. After commencing its review in 2021, TSB identified and self-reported the issues, co-operated with the Commission, undertook remediation and improved its compliance arrangements.

[76] The Commission nevertheless submits that TSB's failures were extensive, foreseeable and serious given its size, resources and access to the CCCFA and Responsible Lending Code from 2015.

[77] TSB submits that the case concerns inadvertent historical compliance gaps and inadequate proactive monitoring, rather than a conscious disregard of the law or a wholesale absence of compliance culture.

Previous similar conduct

[78] In recent years, TSB has been subject to enforcement action in respect of its obligations under the Anti-Money Laundering and Countering Financing of Terrorism Act 2009[14] and the fee issue contraventions of the CCCFA.[15]

[79] However, it is acknowledged that the conduct underlying the fee issues occurred concurrently with the conduct in question in this proceeding, and in the review that uncovered those issues, the present issues were also identified and self-reported to the Commission. The fact that the fee issues were dealt with first in penalty proceedings is not an aggravating factor because this is not a situation of further breaches after enforcement action.

Deterrence

[80] The Commission says both specific and general deterrence are important.

[81] TSB submits that its proactive self-reporting and corrective response means specific deterrence is not required, and that general deterrence objectives are adequately met by the proposed penalty, combined with TSB's remediation and compliance expenditure.

Determination of starting point

[82] By way of comparison, counsel referred to four cases in which a pecuniary penalty has been imposed under the CCCFA:

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14 *Reserve Bank of New Zealand v TSB Bank Ltd* [2021] NZHC 2241.
15 *Commerce Commission v TSB Bank Ltd,* above n 10.

(a) *Commerce Commission v TSB Bank Ltd* was the first pecuniary penalty case under the CCCFA, about credit card and default fees.[16] The bank set its fees by reference to a range of considerations, some of which were plainly impermissible under the fee provisions applicable to consumer credit under the Act. As a result, the bank overcharged customers by just under $1 million in the pecuniary penalty period, and by $3.6 million overall.[17] The Court set a starting point in the range of $3.9 million to $4.2 million for contraventions he considered reckless and serious, involving system failures.[18]

(b) *Commerce Commission v Eagle M.A.N Group Ltd* concerned a small lender offering high-cost consumer credit contracts, predominantly to temporary workers and recent immigrants.[19] The conduct involved breaches of two distinct provisions of the high-cost lending rules, affecting just over 100 borrowers.[20] The Court adopted a starting point of $300,000.[21] The result is under appeal by both parties.

(c) *Commerce Commission v Westpac New Zealand* involved eight causes of action concerning failures to provide disclosure to borrowers, and a free-standing issue relating to Westpac inadvertently removing certain customers' right to a discount.[22] 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.[23] Overall, 7,523 customers were affected within the pecuniary penalty period.[24] 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.[25] The Court adopted a starting

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16 *Commerce Commission v TSB Bank Ltd*, above n 10.
17 At [9].
18 At [20]–[21] and [28].
19 *Commerce Commission v Eagle M.A.N Group Ltd*, above n 11, at [3]–[8].
20 At [63].
21 At [85].
22 *Commission v Westpac New Zealand Ltd,* above n 8, at [2] and [38]–[39].
23 At [40]–[41].
24 At [38].
25 At [42]–[43].

point of $5.2 million, factoring in the duration of the conduct, the number of systems affected and the extent of the harm.[26]

(d) *Commerce Commission v Co-operative Bank Ltd* concerned breaches of the responsible lending provisions, and the provisions regarding unreasonable credit or default fees.[27] The contravening conduct affected approximately 28,261 customers, who were overcharged a total of between $1.3 million to $2 million.[28] The Court adopted a starting point of $3.65 million.[29]

[83] Other cases in which pecuniary penalties were imposed under the Financial Markets Conduct Act 2013 were also referred to as a cross-check,[30] but ultimately these were of less assistance because of the different statutory contexts (higher maximum penalties), level of financial harm, and size and scale of the entities.

[84] The Commission considers *Westpac* to be the most useful comparator, given the serious nature of system and control failures and general lack of compliance systems. In *Westpac*, a starting point of $5.2 million was set against total loss/harm during the pecuniary penalty period of approximately $1.55 million. The Commission submits that TSB's failures are similar to Westpac's, in that they resulted from broader failures to maintain adequate control and compliance systems persisting over a substantial period of time. The Commission acknowledges TSB is smaller than Westpac, and that the number of affected loans and harm caused is on a substantially smaller scale. It therefore considers a starting point in the range of $1.35 million to $1.4 million to be appropriate.

[85] TSB agrees that *Westpac* is the most relevant comparator case, but submits that a starting point of $1.35 million is justified in this case for the following reasons:

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26 At [55]–[56].
27 *Commerce Commission v The Co-Operative Bank Ltd*, above n 8, at [5]–[6] and [12].
28 At [33].
29 At [43].
30 *Financial Markets Authority v Medical Assurance Society New Zealand Ltd* [2023] NZHC 3312; *Financial Markets Authority v Cigna Life Insurance New Zealand Ltd*, above n 9; and *Financial Markets Authority v Kiwibank Ltd,* above n 9.

(a) TSB is significantly smaller than Westpac,[31] less profitable and owned by a philanthropic trust. A lower level of general deterrence is required.

(b) Westpac's failure to provide relevant information meant that its customers were not informed, among other things, that certain discounts had been removed from their loans. In contrast, in many cases the information that TSB failed to send to its customers was information of which they were already aware (such as an agreed change to their own credit limit).

(c) The (notional) maximum penalty in this case is substantially lower than the maximum penalty in Westpac ($3 million compared with $12.6 million). Even so, a starting point of $1.35 million reflects a similar percentage of the maximum penalty in this case (45 per cent) to that adopted in *Westpac* (approximately 41 per cent).

[86] Since the hearing, in *Commerce Commission v Nelson Building Society*, the Court adopted a starting point of $1.27 million where the quantified harm was overcharging of $215,981.32 affecting at least 2,613 borrowers, and Nelson Building Society had made remediation payments of approximately $3,115,230.[32]

[87] I agree with the Commission's submission that this is a serious case of systematic failure within TSB's lending systems and processes, which carried on for a number of years. Even though the failures might have arisen because of the nature of the legacy systems already in place when the new legislation was introduced, it is incumbent on banks to ensure compliance with legal obligations as they evolve, including through ongoing investment in adequate compliance systems and processes. TSB is a large, well-established and well-resourced entity that should have done better.

[88] However, I also acknowledge that TSB has been proactive since the review undertaken in 2021. Of its own initiative, it identified the compliance issues, self-reported those to the Commission, and it has taken comprehensive steps to

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31 Westpac's total assets are more than 13 times those of TSB's.

32 *Commerce Commission v Nelson Building Society*, above n 8, at [43]–[45] and [54].

remediate harm and rectify the issues of non-compliance. TSB has also co-operated positively with the Commission during the investigation process and in this proceeding. Through that conduct, I accept that TSB has demonstrated a commitment to compliance moving forward, so the penalty is not required for specific deterrence purposes. The amount is nevertheless important for general deterrence, so that all creditors are aware that they will face meaningful consequences if they fail to carry out their legal obligations owed to customers.

[89] TSB has responsibly undertaken a conservative approach to ensure that it has provided remediation to any customers that might have been impacted by these admitted contraventions. As a result, the total remediation sum of $1.727 million is likely to overrepresent the degree of actual customer harm. As for direct overcharges, a sum of $55,488 during the Pecuniary Penalty Period is low compared to analogous cases.

[90] I recognise that informational harm can mask serious unquantified financial harm. One of the primary purposes of the Lender Responsibility Principles is to ensure that consumers of credit contracts are properly informed when they enter into credit agreements, and for the duration those contracts are in place, because credit contracts have serious financial consequences for consumers. Without proper information, consumers may be vulnerable to making imprudent commitments and suffering financial hardship. Accordingly, the penalty in this case must also reflect the informational harm that was caused or might have been caused by the contravening conduct. On the other hand, I accept TSB's submission that the nature of the failures in this case centre on disclosure and notification breaches (in many instances, of information the customers already knew), rather than deficient lending assessments. My assessment is that the likely informational harm is therefore lower than comparator cases, including *Westpac*.

[91] For these reasons and those advanced by TSB, I agree with the joint submission that $1.35 million is an appropriate starting point, and it is the one I adopt for this case.

Reduction for mitigating factors

[92] I accept the joint submission that a 35 per cent reduction is consistent with analogous cases,[33] reflecting the following mitigating factors:

(a) TSB's self-report following completion of TSB's own internal investigation;

(b) TSB's full cooperation with the Commission's investigation;

(c) TSB's early admissions, which the Commission accepts were made at the first opportunity; and

(d) TSB's extensive remediation of customers, including by providing compensation for both financial and informational harm, including use-of-money payments for direct loss.

Conclusion

[93] Standing back and looking at the matter overall, I find that a pecuniary penalty of $877,500 (adopting a starting point of $1.35 million and applying a 35 per cent reduction for mitigating factors) properly reflects the circumstances of this case and satisfies the objectives of the CCCFA.

Result

[94] Accordingly, the Court imposes a pecuniary penalty on TSB of $877,500.

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[33] *Commerce Commission v TSB Bank Ltd,* above n 10, at [32]–[33] (40 per cent); and 35 per cent in the following: *Commerce Commission v Nelson Building Society*, above n 8, at [58]–[60]; *Financial Markets Authority v IAG New Zealand Ltd* [2025] NZHC 2908, [2025] NZCCLR 997 at [134]–[135]; *Financial Markets Authority v Westpac New Zealand Ltd* [2025] NZHC 1027 at [39]–[40]; *Financial Markets Authority v AA Insurance Ltd* [2024] NZHC 2869, [2024] NZCCLR 335 at [37]–[39]; *Financial Markets Authority v Vero Insurance New Zealand Ltd* [2023] NZHC 2837 at [38]–[39]; and *Financial Markets Authority v Kiwibank Limited*, above n 9, at [36]–[37].

[95] The Court makes the following declarations:

(a) From 6 June 2015 to 1 December 2023, TSB 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 following respects:

(i) between 6 June 2015 and 30 November 2021, TSB did not have in place robust processes and controls relating to overdraft products, resulting in a failure to properly control and monitor the issue and variation of overdraft products, as well as omissions of, or unclear wording in, overdraft contracts;

(ii) between 6 June 2015 and 1 December 2023, TSB failed to send overdraft statements to a number of borrowers due to erroneous system settings, and the overdraft statements that were sent by TSB were unclear as to the rate of interest charged where an account incurred default interest during the statement period; and

(iii) TSB erroneously charged fees and interest on certain overdraft products between 6 June 2015 and 28 February 2022 and has, since 6 June 2015, calculated and debited interest in a manner inconsistent with the terms of overdraft contracts.

(b) From 6 June 2015 to 29 November 2021, TSB breached s 9C(1) by failing to comply with the responsible lending principles in ss 9C(2)(a)(ii)–(iii) of the CCCFA in the following respects:

(i) between 6 June 2015 to 19 February 2021, TSB did not have in place robust processes and controls to ensure all relevant information was always included in Visa credit card origination documentation; and

(ii) between 6 June 2015 to 29 November 2021, TSB did not have in place robust processes and controls to provide separate notification of a requested change, for borrowers who requested and obtained changes to their Visa credit card limit.

(c) From 6 June 2015 to at the latest 31 March 2022, TSB breached s 9C(1) by failing to comply with the responsible lending principle in s 9C(2)(a)(iii) of the CCCFA in the following respects:

(i) between 6 June 2015 and at the latest 31 March 2022, TSB failed to have in place robust processes and controls to ensure that all joint borrowers were sent a copy of a disclosure statement if they lived at an address that was different to the primary borrower or, if statements were delivered electronically, they did not have online banking; and

(ii) between 6 June 2015 and 26 November 2021, TSB failed to have in place robust processes and controls to ensure that all joint borrowers were sent variation letters following agreed changes to their home or personal loans, where one, but not all, borrowers had email addresses in TSB systems.

(d) From 6 June 2015 to 18 January 2022, TSB breached s 9C(1) by failing to comply with the responsible lending principle in s 9C(2)(a)(iii) of the CCCFA, by failing to provide all former staff members with details in writing of a change to the interest rate applicable to their Visa credit card following the end of their employment at TSB.

(e) From 6 June 2015 to 30 November 2023, TSB breached s 9C(1) by failing to comply with the responsible lending principle in s 9C(2)(a)(iii) of the CCCFA, by erroneously charging a six-monthly fee on Visa credit cards held by certain borrowers with a Premier Cheque account.

[96] By agreement, there is no order as to costs.

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O'Gorman J