

**IN THE HIGH COURT OF NEW ZEALAND  
WELLINGTON REGISTRY**

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

**CIV-2025-485-266  
[2026] NZHC 815**

BETWEEN

COMMERCE COMMISSION  
Plaintiff

AND

THE CO-OPERATIVE BANK LIMITED  
Defendant

Hearing: 13 March 2026

Appearances: A D Luck and N G Smith for Plaintiff  
E J Rushbrook and J B C Trezise for Defendant

Judgment: 31 March 2026

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**JUDGMENT OF HEINE J**

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**Introduction**

[1] The Co-operative Bank Limited (Co-operative) is a registered bank, whose primary business is the provision of retail banking services. These services include the provision of credit under consumer credit contracts through home loans, personal loans, arranged overdrafts and credit cards. As such, Co-operative is required to comply with the Credit Contracts and Consumer Finance Act 2003 (CCCFA).

[2] Co-operative has admitted a series of contraventions of the CCCFA. The Commerce Commission (the Commission) and Co-operative have agreed to recommend that this Court:

- (a) impose a pecuniary penalty of \$2.482 million on Co-operative, derived from a 32 per cent discount applied to an agreed starting point of \$3.65 million; and

(b) make the declarations sought in respect of the first to thirteenth causes of action.

[3] For reasons which follow, I am satisfied that the agreed orders are appropriate.

### **The CCCFA**

[4] The CCCFA is consumer protection legislation. Its purpose is to protect the interests of consumers in connection with credit contracts, both when the contract is made and for its duration.<sup>1</sup> Two aspects of the CCCFA regime are immediately relevant to this decision.

[5] The first is the responsible lending provisions. Section 9C requires every lender, such as Co-operative, to comply with certain lender responsibility principles. These require a lender to exercise the care, diligence and skill of a responsible lender and to comply with specified lender responsibilities.

[6] The second is the provisions governing fees payable under consumer credit contracts.<sup>2</sup> Section 41 prohibits the provision of credit fees or default fees that are “unreasonable.” That general prohibition is supplemented by more specific provisions. These include provisions relating to establishment fees (s 42), credit fees other than establishment fees and prepayment fees (s 44) and default fees (s 44A). I refer to these provisions collectively as the “fees provisions”.

[7] Section 107A of the CCCFA provides that the Court may, on the application of the Commission, order a person to pay a pecuniary penalty if it is satisfied that the person has contravened certain provisions, including those set out above.

[8] In this case, the maximum pecuniary penalty is \$600,000 in respect of each act or omission.<sup>3</sup> In determining an appropriate penalty, the court is required to have regard to all relevant matters, in particular those set out at s 107A(2)(a) to (e) being:

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<sup>1</sup> Credit Contracts and Consumer Finance Act 2003 [CCCFA], s 3.

<sup>2</sup> Part 2, subpart 6.

<sup>3</sup> Section 107A(3).

- (a) any exemplary damages awarded under s 94(1)(c);
- (b) the nature and extent of the contravention;
- (c) the nature and extent of any loss or damage suffered by any person because of the contravention;
- (d) any gains made or losses avoided by the person who contravened; and
- (e) the circumstances in which the contravention took place, including whether it was intentional, inadvertent, or caused by negligence.

[9] The requirement to consider “all relevant matters” also requires a consideration of the role of deterrence. The importance of deterrence has been recognised in other pecuniary penalty regimes. It may be both specific to a particular defendant, and also more general in nature.<sup>4</sup>

[10] In this case, the pecuniary penalties sought by the Commission are limited to the period 20 December 2019 to 30 November 2021, except for the seventh cause of action where the period is 20 December 2019 to 27 February 2022. This reflects the period from the date pecuniary penalties became available in 2019, following legislative amendment, to when the parties are agreed that each issue was resolved. I refer to it as the “pecuniary penalty period”.

### **Pleaded contraventions and admitted facts**

[11] The contraventions are set out in the amended statement of claim dated 21 November 2025 and admitted in Co-operative’s notice of admissions dated 24 November 2025.

#### *Overview*

[12] By way of overview, the Commission seeks:

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<sup>4</sup> *Financial Markets Authority v ANZ Bank New Zealand Ltd* [2021] NZHC 399 at [45].

- (a) a declaration that Co-operative breached s 9C of the CCCFA (first cause of action);
- (b) a pecuniary penalty under s 107A in relation to 12 fees (second to thirteenth causes of action);
- (c) declarations that Co-operative breached s 41 of the CCCFA in relation to the same 12 fees for which a pecuniary penalty is sought (also the second to thirteenth causes of action).

[13] The pleaded contraventions of s 41 fall into three categories:<sup>5</sup>

- (a) the first category are those cases in which Co-operative set its fees at amounts which exceeded a contemporaneous assessment of what its transaction specific costs were;
- (b) the second category are those cases in which Co-operative's contemporaneous assessment was inadequate in some way; and
- (c) the third category are those fees which were not reviewed for compliance with the CCCFA at all.

[14] Some fees fall into more than one category. The table in Schedule 1 sets out the fee to which each cause of action relates, the amount of overcharge and the number of affected customers, and indicates to which category or categories each fee relates.

#### *Admitted facts*

[15] The conduct pleaded in the amended statement of claim is admitted.

[16] Co-operative's compliance programme placed responsibility for compliance on its Product Team, who conducted various fee reviews from time to time. Responsibility for

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<sup>5</sup> Co-operative accepts the Commission's three categories, emphasising only that the conduct in the third category was inadvertent.

approving fees was held by the Assets and Liability Committee (ALCO), some of whose members were also members of the Product Team. The expectation was that issues regarding fees would be identified by the Product Team and escalated to ALCO. ALCO reported to Co-operative's Board.

[17] Despite these arrangements, it is accepted that there were a series of compliance and system failures. The Product Team identified some potential issues of compliance with the CCCFA but did not escalate those matters to ALCO. ALCO did not itself initiate inquiries. Concerns expressed in regular attestations were not acted upon.

[18] Co-operative's Product Team did conduct reviews of some of its fees on various dates between 2011 and 2021. It is accepted that prior to 2021 those reviews suffered from a number of difficulties. Specifically, Co-operative:

- (a) did not, or did not adequately, conduct cost modelling in setting the amounts of its fees;
- (b) did not have adequate processes in place to ensure that it set the amounts of its credit and default fees in accordance with the fees provisions;
- (c) in respect of the fee reviews prior to 2017, set its fees using methods which risked materially overstating the maximum amounts Co-operative could have charged in accordance with the fees provisions; and
- (d) in respect of some fees, identified that the fees had been or were set at amounts which exceeded Co-operative's own assessment of the transaction-specific costs it would incur, but continued to charge fees at these higher amounts.

[19] In 2021, Co-operative conducted a review of all of its credit and default fees for the purposes of setting its fees for 1 December 2021 onwards, using a new methodology and updated data on its costs. This resulted in the reduction or removal of some of its credit and default fees. This review also identified that 12 of Co-operative's 24 credit and default fees could not be cost-justified using its revised cost allocation methodology.

[20] Subsequently, Co-operative commenced an exercise to determine the maximum amounts that it considered it was entitled to charge in accordance with the fees provisions for those fees, for each of the years 2017, 2019 and 2021, based on its contemporaneous costs in those periods.

[21] This process ultimately resulted in Co-operative ceasing to charge some fees altogether and reducing the amounts of other fees it continued to charge. Co-operative also reported to the Commission and undertook an extensive remediation process.

### **Approach to recommended pecuniary penalties**

[22] The role of the Court where parties jointly seek the imposition of a pecuniary penalty is well-settled,<sup>6</sup> including recently for pecuniary penalties sought under the CCCFA. The Court acknowledges its role in ensuring the efficiency of negotiated resolutions and the significant public interest in bringing about prompt resolution of penalty proceedings.<sup>7</sup>

[23] The accepted three-stage approach to setting pecuniary penalties is to:<sup>8</sup>

- (a) determine the maximum penalty by reference to s 107A(3) of the CCCFA;
- (b) set an appropriate starting point for the conduct, with reference to “all relevant matters” as outlined in s 107A(2) of the CCCFA and having regard to the applicable maximum penalty; and
- (c) make any adjustments to the starting point whether by way of uplift or discount on the basis of any considerations specific to the defendant.

[24] 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

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<sup>6</sup> See *Financial Markets Authority v Cigna Life Insurance New Zealand Ltd* [2022] NZHC 3610 at [47].

<sup>7</sup> *Commerce Commission v TSB Bank Ltd* [2024] NZHC 2400 at [16].

<sup>8</sup> *Commerce Commission v Property Brokers Ltd* [2017] NZHC 681, [2017] NZCCLR 14 at [4]; and *Commerce Commission v Eagle MAN Group Ltd* [2024] NZHC 3070 at [35].

agreed figure. The ultimate question for the Court is whether or not the final penalty is within the proper range.<sup>9</sup>

### **Maximum penalty**

[25] While there are there are a number of affected borrowers, and breaches in respect of multiple fees, the Commission has taken the approach of consolidating the number of penalties sought so as to seek one penalty of \$600,000 for each of the 12 fees in issue. That produces an agreed maximum penalty of \$7.2 million.

### **The starting point**

[26] As noted at [8]–[9] 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))*

[27] While the parties are agreed that Co-operative did not set out to breach the CCCFA, I agree with the Commission that its contraventions were at the more serious end of the range of conduct for such breaches.

[28] The conventions arose in part due to deficient compliance processes and the decisions and omissions of staff within the bank. Those failings persisted over an extended period. I agree with the Commission that while the circumstances behind each breach varied from fee to fee, they suggest that there was a fundamental failure within Co-operative at that time to appreciate what was needed to comply with the fees provisions.

[29] I also agree that the most significant failings are those in which Co-operative calculated an amount for its transaction specific costs and then proceeded to charge a higher amount. Also relevant is that two fees were not costed at all despite the bank being aware of the need to carry out that calculation.

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<sup>9</sup> *TSB Bank*, above n 7, at [16]; *Commerce Commission v Geologists 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].

[30] Co-operative submitted that the nature and extent of the contravention needed to be seen in light of the material uncertainty in the application of the legislation before the decision of the Supreme Court in *Sportzone* in May 2016.<sup>10</sup>

[31] I accept that around this time there was a degree of uncertainty as to the application of the CCCFA. However, that uncertainty related principally to what was an appropriate form of cost allocation methodology, and what did or did not constitute charges for an optional service. The fundamentals of the CCCFA were clear from the legislation itself. More particularly, that a fee must be equal to or less than the creditors' reasonable costs.

[32] Accordingly, uncertainty as to the regime cannot be overstated, and as Co-operative accepts, does not exclude non-compliance.

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

[33] The conduct during the pecuniary penalty period affected approximately 28,261 customers, who were overcharged a total of between \$1.3 million to \$2 million. This equated to per-customer overcharges of between \$44.90 and \$69.12. However, as the Schedule indicates, the impact of the admitted breaches varies significantly in terms of both the number of customers affected and the amount of the overcharge. Importantly, all impacted customers have been included in the remediation programme.

[34] I agree with Co-operative that the Court's focus should be on the contravention within the pecuniary penalty period. Accordingly, I do not take into account the extent of harm in the period prior to 2019, or the level of overcharge during that period.

*Any gains or losses avoided by Co-operative (s 107A(2)(d))*

[35] Co-operative accepts that it derived a temporary gain from the contraventions. However, those have now been disgorged through the remediation process. It has not asserted any limitation arguments in relation to its remediation, or in response to this proceeding.

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<sup>10</sup> *Sportzone Motorcycles Ltd (in liq) v Commerce Commission* [2016] NZSC 53, [2016] 1 NZLR 1024.

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

[36] While Co-operative is relatively small compared to its banking peers, it is still a retail bank and as such is one of the largest providers of consumer credit in the country. There can also be no question that Co-operative had the resources to achieve compliance, it being a consistently profitable entity with substantial total assets.

*Other matters*

[37] The parties submit, and I agree, that specific deterrence is not a particular concern in this penalty assessment. Co-operative identified the issues in the context of its 2021 review and self-reported them in a timely manner. It has implemented new systems, processes and controls, including personnel changes. The remediation exercise was significant from a resourcing point of view.

[38] I accept that general deterrence remains a relevant consideration here. However, that needs to be seen as reflecting the size and resources of the defendant and its position of influence within the industry.

[39] The recommended penalty is a significant one for Co-operative amounting to seven per cent of its net profits in the pecuniary penalty period, not taking account of remediation costs. It is not an amount that would be seen as merely the costs of doing business. I am satisfied that the penalty proposed is sufficient to contribute to deterring others from running the risk of non-compliance.

[40] The Commission submitted that the purposes of the Act were relevant in so far as Co-operative's conduct undermined the core purpose of the CCCFA. It had also, it was submitted, breached the trust which Co-operative's customers were entitled to repose in it. I do not consider that these factors contribute anything to the analysis in this case above and beyond consideration of the express statutory criteria.

[41] Both parties referred me to what they described as comparable cases. These cases are of limited assistance as direct comparators. The authorities relating to pecuniary penalties for breach of the financial markets legislation arise under a different statutory regime with

different statutory maximums for individual contraventions.<sup>11</sup> The nature of the conduct is also different.

[42] As to the cases concerning contraventions of the fees provisions, they have unique factual indicia which differ in material respects to this case.<sup>12</sup> Treating them, however, as a high level sense check, I am satisfied that the starting point proposed in this case is appropriate.

#### *The starting point*

[43] Turning to the starting point, the Commission submits that Co-operative's conduct warrants a starting point in the range of \$3.65 million to \$4 million. Co-operative considered a lower starting point range of \$3.3 million to \$3.65 million as appropriate. I adopt a starting point of \$3.65 million, which is at the lower limit of the Commission's range and the upper limit of Co-operative's range.

[44] This starting point is at or slightly above the mid-point of the maximum penalty, derived from the way in which the Commission has pleaded its case. It is approximately two and a half times the estimated gain in the pecuniary penalty period. It reflects Co-operative's scale and resources and the organisational failings which led to the breaches in question.

[45] On the other hand, it is relevant that Co-operative self-identified and self-reported the issues in a timely fashion and was fully cooperative with the Commission's investigation. Further, it has improved its internal systems and processes and remediated customers.

[46] The proposed starting point of \$3.65 million is, in all of the circumstances, likely to be viewed as a general deterrent. It is also set at a level that takes into account a degree of overlap and repetition in the conduct which is at the core of Co-operative's breaches.

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<sup>11</sup> *Financial Markets Authority v Medical Assurance Society New Zealand Ltd* [2023] NZHC 3312, [2023] NZCCLR 14; and *Cigna Life Insurance*, above n 6.

<sup>12</sup> *TSB Bank*, above n 7; and *Commerce Commission v Westpac New Zealand Ltd* [2025] NZHC 3640, [2025] 3 NZLR 625.

## **Adjustments to the starting point**

[47] The final step is to make any adjustments to the starting point based on any aggravating or mitigating factors relevant to Co-operative.

[48] The parties did not identify any aggravating factors relevant to Co-operative which would point towards an uplift.

[49] As to mitigating factors, the Commission has taken the position in other cases under the CCCFA that a discount of 30 per cent is appropriate for what could be described as a standard level of co-operation, involving self-reporting, remediation, and a timely response to an investigation.<sup>13</sup>

[50] The Commission's position in this case is that Co-operative's conduct went above that baseline expectation and that a discount of 32 per cent is appropriate. Co-operative agrees. That discount figure recognises that following self-reporting of its breaches to the Commission, Co-operative took appropriate remediation steps including payment of substantial sums to affected customers. It also conducted further remediation, following the filing of this proceeding and further engagement with the Commission.

[51] A discount of 32 per cent produces a final penalty of \$2.482 million. I agree that this figure is appropriate in all of the circumstances outlined above.

## **Responsible lending (s 9C)**

[52] The parties' submissions did not address the first cause of action in any detail. I record that given the admitted inadequacy of Co-operative's compliance programme and the way in which fees were set, a declaration of breach of s 9C is appropriate as agreed.

## **Result**

[53] Accordingly, the Court imposes a pecuniary penalty on Co-operative of \$2.482 million.

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<sup>13</sup> A discount of 30 per cent was applied in *Medical Assurance Society*, above n 11, at [42].

[54] The Court makes the following declarations:<sup>14</sup>

- (a) a declaration that in the period from 6 June 2015 to 30 November 2021, Cooperative breached ss 9C(1) and 9C(2)(a)(ii)–(iii) of the CCCFA.
- (b) a declaration that Co-operative breached s 41 of the CCCFA by providing for unreasonable Home Loan Establishment Fees in consumer credit contracts in the period from 6 June 2015 to 30 November 2021; and
- (c) a declaration that Co-operative breached s 41 of the CCCFA by providing for unreasonable Relevant Restructure Fees in consumer credit contracts in the period from 6 June 2015 to 30 November 2021; and
- (d) a declaration that Co-operative breached s 41 of the CCCFA by providing for unreasonable Home Loan Variation Fees in consumer credit contracts in the period from 6 June 2015 to 30 November 2021; and
- (e) a declaration that Co-operative breached s 41 of the CCCFA by providing for unreasonable Revolving Credit Facility Fees in consumer credit contracts in the period from 6 June 2015 to 30 November 2021; and
- (f) a declaration that Co-operative breached s 41 of the CCCFA by providing for unreasonable Early Repayment Fees in consumer credit contracts in the period from 6 June 2015 to 30 November 2021; and
- (g) a declaration that Co-operative breached s 41 of the CCCFA by providing for unreasonable Security Discharge Fees in consumer credit contracts in the period from 1 April 2018 to 27 February 2022; and
- (h) a declaration that Co-operative breached s 41 of the CCCFA by providing for unreasonable Mortgage Discharge Fees in consumer credit contracts in the period from 1 April 2018 to 30 November 2021; and

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<sup>14</sup> Any defined terms are as pleaded in the amended statement of claim.

- (i) a declaration that Co-operative breached s 41 of the CCCFA by providing for unreasonable Rates Demand Fees in consumer credit contracts in the period from 1 April 2018 to 30 November 2021; and
- (j) a declaration that Co-operative breached s 41 of the CCCFA by providing for unreasonable Personal Loan Establishment Fees in consumer credit contracts in the period from 6 June 2015 to 30 November 2021; and
- (k) a declaration that Co-operative breached s 41 of the CCCFA by providing for unreasonable Vehicle Loan Establishment Fees in consumer credit contracts in the period from 6 June 2015 to 30 November 2021; and
- (l) a declaration that Co-operative breached s 41 of the CCCFA by providing for unreasonable Overdraft Facility Fees in consumer credit contracts in the period from 6 June 2015 to 30 November 2021; and
- (m) a declaration that Co-operative breached s 41 of the CCCFA by providing for unreasonable Cash Advance Fees, in respect of online banking transactions, in consumer credit contracts in the period from November 2016 to 30 November 2021;
- (n) a declaration that Co-operative breached s 45 of the CCCFA by providing for Cash Advance Fees, in respect of ATM transactions, which exceeded the amount payable by Co-operative to third parties in respect of the same.

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Heine J

Solicitors:  
Meredith Connell, Auckland for Plaintiff  
Russell McVeagh, Wellington for Defendant

## SCHEDULE: Overview of Section 41 Fees

Category	Category
Category 1	Fees where the fee amount exceeded Co-operative's contemporaneous assessment of its transaction-specific costs
Category 2	Fees where Co-operative's contemporaneous fee assessment was inadequate in some way
Category 3	Fees which were not reviewed for compliance with the CCCFA

Cause of action	Fee name	Fee charged	Amount of overcharge across penalty period	Number of affected customers in penalty period
<b>Fees in both categories 1 and 2</b>				
<b>Second</b>	Home Loan Establishment	\$350	\$76,370	867
<b>Fourth</b>	Home Loan Variation	\$100	\$43,960	1,285
<b>Sixth</b>	Early Repayment	\$100	\$69,084	2,034
<b>Seventh</b>	Security Discharge	\$75	\$44,662 - \$62,180	2,045
<b>Eighth</b>	Mortgage Discharge	\$50	\$6,600	237
<b>Tenth</b>	Personal Loan Establishment	\$200	\$318,315 - \$827,618	8,364
<b>Eleventh</b>	Vehicle Loan Establishment	\$200	\$2,041	41
<b>Twelfth</b>	Overdraft Facility Fee	\$3.50	\$321,045	8,522
<b>Fees in category 2 only</b>				
<b>Third</b>	Restructure	\$200	\$31,200	243
<b>Ninth</b>	Rates Demand	\$50	\$1,920 - \$3,586	148
<b>Fees in category 3</b>				
<b>Fifth</b>	Revolving Credit Facility	\$7.50	\$167,334	1,755
<b>Thirteenth</b>	Cash Advance Fee	\$2	\$220,171 - \$391,154	15,745