IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

I TE KŌTI MATUA O AOTEAROA
TĀMAKI MAKAURAU ROHE

CIV-2024-404-3289
[2026] NZHC 1208

BETWEEN	COMMERCE COMMISSION Plaintiff
AND	TRADING PLACE LIMITED (IN LIQUIDATION) Defendant

Hearing: 5 February 2026

Appearances: J Carlyon and G Lund for the Plaintiff
No appearance for the Defendant

Judgment: 6 May 2026

JUDGMENT OF ROBINSON J

This judgment was delivered by me on 6 May 2026 at 4:30 pm
pursuant to Rule 11.5 of the High Court Rules

……………………………………………………………………
Registrar/Deputy Registrar

Solicitors:
MC, Auckland

Copy to:
The Defendant

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Introduction

[1] Trading Place Limited (in liquidation) (TPL) operated a mobile trading business in South Auckland, selling high-priced consumer goods door-to-door, at prices significantly higher than those available in mainstream stores. TPL sold goods on deferred payment terms. Customers would not receive the goods until they had made a certain number of payments.

[2] The Commerce Commission (Commission) alleges that between 19 July 2020 and 2 June 2024 (relevant period), TPL, as lender, entered into consumer credit contracts with borrowers, but breached its obligations under the Credit Contract and Consumer Finance Act 2003 (CCCFA). More particularly, the Commission alleges that TPL:

(a) between 19 July 2020 and 2 June 2024, in respect of 50 sample borrowers, breached the lender responsibility principles in s 9C(2)(a)(ii) and s 9C(2)(b) of the CCCFA by failing to assist them to reach an informed decision as to whether to enter into the credit contract, and to be reasonably aware of the full implication of doing so (first cause of action); and

(b) between 1 December 2021 and 2 June 2024 (9CA Breach Period), in respect of 35 sample borrowers and across its loan book generally, breached its record keeping obligations under s 9CA(1) and (2) of the CCCFA by failing to keep records about: the inquiries it made as to the borrowers' ability to make repayments without suffering substantial hardship; and how it satisfied itself of those matters (second cause of action.

[3] In respect of each cause of action, the Commissioner seeks declarations that TPL has breached the relevant provisions of the CCCFA, and pecuniary penalties under s 107A.

[4] Five days after TPL was served with this proceeding, its shareholders placed it into voluntary liquidation. The liquidators have consented to the proceeding

continuing,[1] but elected not to take any part in it. TPL has not filed a statement of defence. The Commissioner's claim proceeded by way of formal proof.

Background

[5] The Commissioner filed affidavits from Graham Shand, a Principal Investigator, and Nicola Hikaka, a Senior Investigator. Mr Shand was the lead investigator from the commencement of the Commissioner's investigation on 14 February 2022 until 27 June 2023. Ms Hikaka has been the lead investigator since 28 June 2023. A summary of their collective evidence is set out below.

TPL's business model

[6] During the relevant period, TPL sold domestic and electronic goods to customers at significantly inflated prices. By way of example, on 12 December 2023, TPL sold a JVC 65-inch Smart TV to a sample borrower for $5,499. Advertising material exhibited to Ms Hikaka's affidavit shows that, in late November 2023, the same TV was on sale at the Warehouse for $899 (reduced from $1,399).

[7] TPL advertised its products on its website and on Facebook, but did not offer online purchasing or display prices. Instead, consumers had to contact TPL by phone, email or an enquiry form, following which a TPL sales agent would visit potential customers at their homes. TPL's sales agents would also pursue door-to-door sales to consumers who had not previously contacted TPL.

[8] On 11 May 2022 Mr Shand conducted a voluntary interview with TPL's sales manager, Ankit Bhandari. Mr Shand has produced a transcript of that interview.

[9] Mr Bhandari described the business model as evenly split between contacting leads and soliciting referrals from existing customers. He also said that TPL did not retain information or records about how customers were obtained.

[10] Mr Bhandari outlined the sales process followed during home visits. A sales agent would first ascertain the customer's needs and then present them with options.

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[1] Companies Act 1993, s 248(1)(c).

If the customer expressed interest, the agent would obtain identification from the customer and check their bank statements. A budget sheet would then be completed in order to determine whether the customer could afford the minimum repayments.

[11] Mr Bhandari said that agents sometimes reviewed up to three months of bank statements, but not always. In any event, only the first page of the statements was photographed. Otherwise, TPL did not usually keep records of the bank statements. None were provided in response to the Commission's requests.

[12] Mr Bhandari confirmed that only a sales agent was responsible for conducting these affordability assessments. He says they took place at the customer's home and took about 30 minutes. The agent would use a calculator on his phone to do a "rough estimate" of a customer's expenses. If the customer had no surplus after paying their expenses, the sales process ceased. If there was a surplus of around $30 or more, the agent asked what level of repayments the customer could manage. Again, TPL kept no records of these affordability calculations, or their discussions with customers.

[13] Mr Bhandari explained that the sales agent would then complete a form with the dates and amounts of payment, and explain "all those disclosures, their cancellation rights, complaint procedures, hardship" to the borrower.

[14] Mr Bhandari outlined TPL's fees: a $75 establishment fee, a $10 default fee, delivery fees ranging from $10 to $50, a $50 field visit fee, a $20 direct debit cancellation fee, a $250 repossession fee, and a $50 cancellation fee.

[15] Mr Bhandari explained that a carbon copy of the contract would be left with the borrower after it was signed. He said there was no automated system in sending them information, and no online portal showing account information such as payments made to date. Instead, TPL posted account statements to customers, every six months. Those statements showed payments made and the remaining balance, but did not state when the next payment was due.

The Commissioner's investigation

[16] In late 2021, the Commission received separate complaints from three different customers regarding TPL's conduct. The Commission commenced a formal investigation, during which it spoke with two of three complainants; conducted the voluntary interview with Mr Bhandari; and obtained information and documents from TPL via statutory notices and other requests for information.

[17] The first complainant, Mr N, said he signed the contract during a home visit by a TPL sales agent in February 2021, but no copy was left with him. He believed he purchased a weed eater for 11 payments of $25, with delivery after nine payments. The contract later obtained by the Commission recorded a total amount payable of $999. The description of the purchased goods is illegible, but at the time TPL was advertising a Ryobi Line Trimmer. In January 2026, the same product was available from Bunnings for $229.

[18] TPL continued to take weekly payments beyond 11 weeks, ultimately charging Mr N a total of $1,099 over 44 weeks. Payments ceased only after Mr N's partner made two enquiries. The Statement of Account also recorded a $10 monthly membership charge that applied for 10 months, totalling $100. Mr N said he was unaware of that monthly fee. He said the sales agent explained only the five-day cancellation period and did not explain any other contract terms.

[19] The second complainant the commission spoke to, Ms W, entered into a contract with TPL for the purchase of a tablet and watch "combo deal". The Initial Disclosure Statement (IDS) signed by Ms W:

(a) Describes the products being purchased as "tablet combo" and "smart watch delivered", without specifying the brand or model of the tablet or the watch.

(b) States that the total amount of all advances to be made as $0. This is despite the purchase price being listed twice, once recorded as being $1,799, but then separately being listed as $1,874, together with a $75 establishment fee and a $50 delivery fee.

(c) Did not list any “member monthly charge”. However, the Statement of Account reveals that Ms W was charged a $10 “member monthly charge”.

[20] Ms W said the tablet was delivered only after six payments, contrary to the agreement that delivery would occur after three. She also said she agreed to purchase a Samsung tablet, but this is not what TPL delivered. When she complained, she was told that TPL did not sell Samsung tablets. However, Ms W provided the Commission with a screenshot of TPL’s website advertising Samsung tablets for sale.

[21] Ms W complained to TPL. TPL did not respond to Ms W’s complaints until after she also complained to Financial Services Complaints Limited (FSCL). TPL initially offered to refund $150 on the basis that the tablet had been used, but eventually agreed to refund $250.

The Operating Manual

[22] In response to the Commissioner’s statutory notices and requests for information, TPL provided an internal policy document titled “Trading Place Business operating model” (Operating Manuel).

[23] The Operating Manuel describes its purpose as follows:

> This manual has been developed to ensure that all Trading Place Limited employees are made aware of the raft of legal and ethical requirements that govern our particular business model.

[24] Under the “Code of Conduct”, the Operating Manual states that:

> From time to time situations present themselves which can cause some real road blocks to the Company for fulfilling its legal responsibilities in selling direct to the Public whether it be by direct sales from members of a Sales Team, the Telesales Team In [sic] particular but by no means limited to the following examples:
>
> - **Beneficiaries:**
>
>   There is no problem associated with selling to a person who is in receipt of a benefit for any reason {SOLE PARENT, Invalids, National Super, Unemployment} but the major task is to sight [sic] evidence that they have the residual income to afford the purchase

> {uncommitted cash reserve as 60% of any benefit id [sic] are protected by law to allow for the payment of necessities such as power, water, rent, food etc. Any failure to confirm the affordability could lead to a prosecution under the terms of the Fair-Trading Act 1986 as an unfair practise.
>
> …
>
> - **Financial hardship:**
>
>   It is a fact of life that you are going to come across households where there are signs of financial hardship – uncut lawns, rubbish piled up at the door, few if any items of furniture and electrical appliances, children in unkempt state, they may indeed appear to be happy or cheerful and a general aura of misfortune. It is morally and indeed legally unfair to add further to the financial despair of this household and better to opt out of any further discussion on a sale.
>
> - **A sale conducted with due regard to the above will go a long way to ensuring that the future growth of the "Trading Place Limited" brand and expansion of the customer base will ensue.**

[25] However, the Operating Manual makes no reference to the CCCFA, the Credit Contracts and Consumer Finance Regulations 2004 or the Responsible Lending Code (Code). It provides little guidance on the assessment of affordability. Under the heading "Verification Process for customer details and direct/banking information", the Operating Manual provides that:

> To complete the sale the rep must check current bank statement. The sales rep should ensure that the name and the bank statement must match the person who is signing up; if it is a Joint bank account both parties must sign all forms.
>
> To analyse customer's affordability, our sales rep must ensure that the budget sheet is filled. Hence, this will verify customer's income and expenses and the surplus amount after deducting their expenses from their income. Please refer to budget sheet sample below:

The Financial Warrant of Fitness

[26] The only document recording TPL's affordability assessment for each borrower was a form called the Financial Warrant of Fitness (FWoF). As Mr Bhandari explained, this was completed by the borrower with the TPL sales agent's help.

[27] The FWoF is a one-page form that records the borrower's income and expenditure as follows:

Income Details:

Income Source	Amount	Frequency	
Wages/Benefit	$	Weekly	
Family Asset	$	Weekly	
Other Income	$	Weekly	
TOTAL (A)	$	Weekly	
Rent	$	Weekly	
Living Cost	$	Weekly	
Loans etc	$	Weekly	
TOTAL (B)	$	Weekly	
A minus B	$	Weekly	Surplus

[28] The customer is then required to sign a disclaimer confirming that the purchase will not cause them hardship and that the value of the purchase and payments to be made have been fully explained in English. The FWoF is discussed further at [58] below.

The Initial Disclosure Statement

[29] TPL used the same version of an IDS throughout the relevant period, which set out the terms of its contract with its customers.

[30] The IDS provided that the contract was a consumer credit contract for the purposes of the CCCFA, a lay-buy sale agreement for the purposes of the Fair Trading Act 1986 (FTA), and, depending on the circumstances, might also be an uninvited direct sale agreement under the FTA.

[31] The IDS provides for a description of the goods. It records the initial unpaid balance as $0, and sets out the amounts advanced immediately on signing, being the purchase price, an establishment fee (usually $75), and a delivery fee (usually $50). It recorded the total advances as $0. Although that is plainly incorrect, it was

consistent with the specimen IDS in the Operating Manual. Finally, it set out the purchaser's payment and bank details, including payment amounts, payment dates, the total number and amount of payments, and the required deposit.

[32] Amongst other things, the terms and conditions set out in the IDS provided that: (a) the purchaser must check the goods on delivery and promptly report any discrepancy (cl 4.1); (b) TPL would aim to deliver the goods within 10 working days of receiving the deposit; (c) the purchaser could cancel the contract before taking possession, subject to a $50 cancellation fee; (d) ownership of the goods remained with TPL until full payment (cl 5.1); and (e) TPL could repossess the goods for non-payment or breach of obligations under the agreement, subject to applicable law and, without limitation, the CCCFA (cl 3.8.1).

The Law

Legislative framework

[33] Section 9C of the CCCFA relevantly provides:

> …
>
> (3) The lender responsibilities are that a lender must, in relation to an agreement with a borrower,—
>
> (a) make reasonable inquiries, before entering into the agreement, and before making a material change referred to in subsection (8), 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; and
>
> (ii) the borrower will make the payments under the agreement without suffering substantial hardship; and
>
> (b) assist the borrower to reach an informed decision as to whether or not to enter into the agreement and to be reasonably aware of the full implications of entering into the agreement, including by ensuring that—
>
> …

[34] Section 9CA came into force on 1 December 2021 and provides:

9CA Records about inquiries made

(1) The lender must keep records about the inquiries made by the lender under section 9C (including the results of those inquiries).

(2) Those records must demonstrate how the lender has satisfied itself as to the matters in section 9C(3)(a), (4)(a), and (5)(a).

(3) The lender must make those records available to the Commission, on request by the Commission.

(4) The lender must make available to a person responsible for an approved dispute resolution scheme, on request by that person, the records that relate to an agreement or a relevant insurance contract that is the subject of a dispute under that scheme.

(5) The lender must make available to a borrower, on request by that borrower and free of charge, the records about the inquiries made by the lender under section 9C(3)(a) and (5)(a) that relate to an agreement or a relevant insurance contract to which the borrower is a party.

(6) The lender must make available to a guarantor, on request by that guarantor and free of charge, the records about the inquiries made by the lender under section 9C(4)(a) that relate to a relevant guarantee to which the guarantor is a party.

(7) The lender must provide the records within 20 working days of the date on which the request is received by the lender or, in the case of records being provided to the Commission, within any longer period of time specified by the Commission.

(8) The Commission does not need to use its powers under section 98 of the Commerce Act 1986 to make a request under subsection (3).

(9) The lender must keep the records for a period of at least 7 years after the date on which the inquiry was made.

(10) To avoid doubt, the lender is not required to keep records about inquiries when an application is declined or withdrawn.

[35] In terms of penalties, s 107A provides that:

(1) The court may, on the application of the Commission, order a person to pay to the Crown the pecuniary penalty that the court determines to be appropriate if the court is satisfied that the person—

(a) has contravened any of the following provisions:

(i) section 9C(1) (lender responsibility principles), except to the extent that that provision relates to section 9C(3)(f):

(ii) section 9CA (failure to keep records about reasonable inquiries and provide records on request):

…

(2) In determining an appropriate penalty under this section, the court must have regard to all relevant matters, in particular,—

(a) any exemplary damages awarded under section 94(1)(c); and

(b) the nature and extent of the contravention; and

(c) the nature and extent of any loss or damage suffered by any person because of the contravention; and

(d) any gains made or losses avoided by the person in contravention; and

(e) the circumstances in which the contravention took place (including whether the contravention was intentional, inadvertent, or caused by negligence).

…

Responsible lending code

[36] The Code provides guidance on how lenders may implement the lender responsibility principles.[2] As the Code is neither exhaustive nor binding,[3] Non-compliance with the Code does not, of itself, amount to a breach of those principles.

[37] Relevantly, cls 7.28 and 7.29 of the Code provides that, to ensure that information provided to the borrower is not misleading, deceptive or confusing, a lender should:

(a) make sure important information is legible;

(b) take care to disclose information in a level of detail that is commensurate with the importance of it; and

(c) use technical language only where it is relevant and in a way that can be readily understood by customers without specialist knowledge.

2 CCCFA, s 9E(1)(b).
3 Section 9E(2); see also Part 1 of the Code.

Declaratory relief

[38] Although the CCCFA enforcement regime does not include an express power to make a declaration of breach of the Lender Responsibility Principles, this Court has previously confirmed it has jurisdiction to do so.[4] The Court can and will make declarations of breach where there is a practical utility in doing so.[5]

The Regulations

[39] On 1 December 2021 the Credit Contracts and Consumer Finance (Lender Inquiries into Suitability and Affordability) Amendment Regulations 2020 came into force (the Lender Inquiries Regulations). These were a set of prescriptive rules requiring lenders to collect specific information about a borrower's requirements, objectives, and ability to repay loans. The regulations were repealed with effect from 31 July 2024, but the statutory obligations remain. These include that the lender is to make reasonable inquiries and be satisfied that credit is suitable and affordable;[6] and to ensure the terms are plainly and clearly expressed.

Preliminary Issues

Lenders – Borrowers – Consumer Credit Contracts

[40] Although TPL did not advance funds directly to its customers, nor charge them interest, it was nevertheless a lender for the purposes of the CCCFA. Its customers were borrowers; and the contract between them was a consumer credit contract. That is because:[7]

(a) for the purposes of Part 1A of the Act concerning lender responsibilities, a lender includes a creditor under a consumer credit contract;[8]

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4 *Commerce Commission v Ferratum New Zealand Ltd* [2020] NZHC 1607 at [16]; and *Commerce Commission v Ace Marketing Ltd* [2022] NZHC 1785, [2022] NZCCLR 6 at [87].

5 *Commerce Commission v Ferratum New Zealand Ltd*, above n 4, at [19]; citing *Commerce Commission v ANZ Bank New Zealand Ltd* [2015] NZHC 1168, (2015) 14 TCLR 71 at [18].

6 CCCFA, s 9C(3)(a).

7 *Commerce Commission v Ace Marketing Ltd*, above n 4.

8 CCCFA, s 9B.

(b) a creditor means a person who provides credit under a credit contract;[9]

(c) credit is provided where a person grants another the right to purchase property and defer payment;[10] and

(d) a credit contract is a contract under which credit is provided.[11]

[41] TPL's business involved selling products on terms that granted customers a right to purchase property and defer payment, thereby providing credit. Each contract entered into during the relevant period was therefore a credit contract under s 7(1). The presumption in s 13 applies and has not been rebutted.

[42] In any proceedings in which a party claims that a credit contract is a consumer credit contract, that is presumed to be so unless the contract is established.[12] The presumption applies here and has not been rebutted. In any event, I accept Ms Carlyon's submission for the Commission that the credit contracts here meet the definition of consumer contracts set out in s 11 of the CCCFA. In each case: the debtor is a natural person; the credit is used for predominantly personal, domestic or household purposes; credit fees are payable and/or a security interest is taken; and selling goods on deferred payment terms was an essential part of TPL's business.[13]

First cause of action: each of s 9C(1)-(3) – failing to assist the borrower to make an informed decision

[43] In its first cause of action, the Commission alleges that TPL breached the lender responsibility principles in s 9C(1) of the CCCFA by:

(a) failing to exercise the care, diligence and skill of a responsible lender before entering into an agreement to provide credit;[14]

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9 Section 5.
10 Section 6(c).
11 Section 7.
12 Section 13.
13 As noted, TPL's IDS records that its contracts are consumer credit contracts.
14 CCCFA, s 9C(2)(a)(ii).

(b) failing to make reasonable inquires in accordance with s 9C(3);[15] and

(c) failing to assist the borrower to reach an informed decision as to whether or not to enter into the agreement, and to be reasonably aware of the full implications of doing so by ensuring that the terms of the agreement are expressed in plain language in a clear, concise and intelligible manner; and that any information provided by the lender is not presented in a manner that is, or is likely to be, misleading, deceptive or confusing.[16]

[44] This cause of action relates to the 50 sample borrowers. The Commissioner's amended statement of claim attaches a schedule setting out the alleged breaches in respect of each borrower. Having reviewed the IDSs exhibited to Ms Hikaka's affidavit, and the material provided by TPL in response to the Commission's notices and requests, I accept Ms Carlyon's submission that, in each case, the description of the goods purchased was vague and fell well short of being "expressed in plain language in a clear, concise and intelligible manner".

[45] By way of example, Mr N purchased a weed eater. The description of the goods is barely legible, but does not describe a weed eater.[17] It is entirely unclear from the description what Mr N is said to have brought.

[46] Similarly, Ms W believed she had purchased a Samsung tablet. However, the contract describes, again in barely legible writing, an "E ablet combo", and what appears to be "Smrt watch Delivered". Details of the brand and model of the tablet are not provided nor details of what the "combo" comprises. There are no details of the smart watch.

[47] Where descriptions are legible, they are vague and unspecified; referring variously to items such as to "(sansy) 6.3", "65 inch tv", "tablet combo", "laptop combo deal", "party speaker", "Bed and Mattress Queen Size", "iphone combo". This

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15 Section 9C(2)(b).

16 Section 9C(3)(b)(ii) and (iii).

17 I agree with Ms Carlyon that it appears to refer to "V Reach", although it is unclear whether the second word is "Reach".

was of little use when disputes arose as to whether TPL's purchasers/borrowers received what they believed they had purchased.

[48] In any context, it is plainly important that vendors accurately describe the goods they sell. I accept Ms Carlyon's submission that this is particularly important where customers, as borrowers under a consumer credit contract, have a right to cancel within five working days after disclosure.[18] This right is significantly undermined if the contract does not properly describe the goods purchased. Moreover, TPL typically did not deliver the goods until the borrower had made several weekly or fortnightly repayments. In those circumstances, it is inherently more difficult for customers to verify the goods delivered or raise concerns about any discrepancy, particularly given TPL's standard terms requiring customers to notify discrepancies "immediately". It is hardly surprising that disputes arose as to whether TPL had delivered what its customer thought it had brought.

[49] I also accept Ms Carlyon's submission that TPL incorrectly described the advances and repayment amounts.

[50] In 22 of the 50 sample contracts, the "TOTAL ADVANCES" field was blank or recorded as $0. That is patently wrong. It is also inconsistent with other sections of the IDS identifying the purchase price, establishment fee, and delivery fee as "SUBSEQUENT ADVANCES". The specimen IDS in TPL's Operating Manual also records the total advances as "$0", reflecting a systemic error (if not a deliberate policy decision) rather than a clerical mistake. I therefore accept Ms Carlyon's submission that in this way TPL has breached the lender responsibility principles by failing to exercise the care, diligence and skill of a responsible lender before entering into a contract to provide credit;[19] and by failing to ensure that information it provides to the borrower is not presented in a manner that is, or is likely to be, misleading, deceptive, or confusing.[20]

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18 CCCFA, s 27.
19 Section 9C(2)(ii).
20 Section 9C(3)(b)(iii).

[51] Finally, the repayment amounts in each of the sample contracts were inaccurately stated, albeit by small margins. In some cases, discrepancies arose where the "amount of each payment", when multiplied by the "number of payments", exceeded the stated total payment amount. For example, Mr X purchased a "sunny A12 combo deal" for $2024 to be paid in 58 weekly instalments of $35, totalling $2,030 rather than $2024.

[52] The Commission responsibly acknowledges that these errors are relatively minor, essentially rounding errors. However, I accept Ms Carlyon's submission that they are misleading and deceptive, and indicative of a generally lax approach to compliance. The legislation provides protection to borrowers by ensuring that they receive full and accurate information. The lender responsibility principles under the CCCFA are intended to ensure borrowers are fully informed and, particularly through s 9C(3)(b), to address the inherent power imbalance between lenders and borrowers in circumstances such as these.[21] As a result of that power imbalance, a creditor is expected to exercise care, even in what might be perceived to be relatively minor matters. The courts have previously observed that in assessing the conduct of mobile traders, with their tendency to target vulnerable borrowers, it is very important to ensure compliance with the consumer protection legislation.

[53] For these reasons, I am satisfied that TPL failed to comply with the lender responsibility principles in the manner alleged.

Second cause of action: failure to keep records

[54] The Commission's second cause of action relates to customers who entered into contracts after 1 December 2024 when s 9CA came into force. In respect of those borrowers, the Commission alleges that, between 1 December 2021 and 2 June 2024, TPL breached its record keeping obligations under ss 9CA(1) and (2). In particular, the Commission alleges TPL failed to keep records of: the reasonable inquiries it was required to make under s 9C(3)(a)(ii) (affordability); and which demonstrate how TPL satisfied itself of those matters.

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21 *Co-operative Bank v Opai* [2024] NZHC 2286 at [46].

[55] It is important to note that this cause of action focuses on TPL's obligation to keep records of its enquiries and its assessment of the borrower's ability to repay. It is not necessary for the Commission to establish that TPL failed to make those enquiries or carry out that assessment.

[56] I agree with Ms Carlyon that a lender's compliance with the record keeping obligation must be assessed by reference to the specific inquiries the lender was required to make. As noted, although the more prescriptive lender inquiries regulations were repealed on 31 July 2024, they were in force when 38 of the sample contracts were entered into after 1 December 2021. In any event, s 9CA requires lenders to keep records of its inquiries under s 9C, including as to affordability, and which demonstrates how the lender satisfied itself of relevant matters.

[57] Ms Hikaka explains that, for most of the 38 sample borrowers, TPL's record keeping consisted solely of the FWoF. Bank statements were only retained for three borrowers, and screenshots showing bank account information for another three.

[58] The information recorded on the FWoF is limited to basic income and expenses. It is unverified. It did not record the sources of income or any inquiry into likely income changes.[22] It did not go beyond generic "living costs", a broad term lacking specificity. There was no assessment of whether expenses met a reasonable minimum cost of living,[23] or any breakdown of particular expenses such as utilities, insurance, food, or child-related costs.[24] I also note that, on many of the completed FWoFs, income figures, and those rent, living costs, or loans, had been rounded or combined.

[59] Beyond this generic, single line, "A minus B" calculation, there is no record of TPL carrying out any affordability assessment. The disclaimer does not relieve TPL of its obligation to satisfy itself the customer could make payments without hardship. That is particularly so in circumstances involving a mobile trader and vulnerable customers.

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22 Credit Contract and Consumer Finance Regulations 2004, reg 4 AJ.
23 Reg 4AM.
24 Reg 4AE.

[60] I agree with Ms Carlyon that this lack of record appears to be systemic. It is consistent with the absence of any reference in TPL's Operating Manual to the CCCFA, or the suitability and affordability assessments it requires. The Operating Manual merely instructs sales representatives to ensure the budget sheet is completed to "verify" income, expenses, and any surplus. It provides no guidance on the nature or extent of the inquiries to be undertaken, or on the information to be obtained and assessed beyond what is recorded in the FWoF.

[61] Significantly, on the rare occasions that TPL did retain bank statements, they served only to raise questions about the accuracy of the information recorded in the FWoF, and the reasonable reliability of any resulting affordability assessment. For example, one borrower's FWoF recorded total weekly living expenses of $500, but EFTPOS transactions over six weeks strongly indicated much higher spending on living expenses.

[62] This is not necessarily to conclude that the borrower/purchaser did not require the credit and/or was unable to pay without hardship. However, I accept Ms Carlyon's submission that TPL failed to keep records of its inquiries (including the results of those inquiries) to demonstrate how it satisfied itself as to those matters. In this regard I note Mr Bhandrai's confirmation that TPL's sales agents did not record any calculations used in their affordability assessments.

[63] For these reasons, I accept Ms Carlyon's submission that TPL's failure to keep record beyond its FWoF amounted to a breach of its obligations under s 9CA(1) and (2). Without proper records, the Commission is unable to assess whether TPL complied with its obligations under s 9C(3)(a) to make reasonable inquiries and to undertake the mandatory suitability and affordability assessments. I am also satisfied that TPL's record keeping breaches were systemic and are representative across its entire loan book. Whilst not determinative, I note that, in a letter dated 5 July 2024 in response to the Commission's letter dated 23 April 2024 setting out its preliminary views following its investigation, TPL's former solicitors wrote that it:

> Accepts that the documentation of its affordability assessment does not meet the requirements of section 9CA of the Act, and that this has made it difficult for the Commission to assess whether it has complied with its obligations under s 9C of the Act.

> …
>
> TPL accepts that its expense verification process is not well documented and is therefore difficult for the Commission to retrospectively assess based on the customer file.
>
> …
>
> Therefore while TPL has clearly fallen short of its obligations to keep proper records of its affordability assessment process, there is evidence in the Interview that verification of its expenses was conducted.

Relief

Declarations

[64] Having found that TPL has breached s 9C and s 9CA of the CCCFA, I am satisfied that there is practical utility in granting the declaratory relief sought, notwithstanding TPL's liquidation. That is because:

(a) There is a significant public interest in the Commission pursuing mobile traders who sell goods at inflated prices to potentially vulnerable consumers, sometimes through uninvited and unexpected sales.

(b) The public nature of the declarations will act as a deterrent to deter other mobile traders, helping to ensure compliance with lender responsibility principles. It will usefully illustrate how lenders can fall short.

(c) Declarations will confirm that the Commission will bring proceedings to enforce consumer protection legislation where appropriate.

[65] I therefore exercise my discretion to declare that:

(a) For each of the loans entered into with the 50 sample borrowers, TPL has breached s 9C of the CCCFA; and

(b) For each of the loans entered into between 1 December 2021 and 2 June 2024, TPL has breached its obligations under s 9CA(1) and (2) of the CCCFA.

Penalties

[66] The Commission seeks a pecuniary penalty in respect of these breaches.

[67] The approach to setting a pecuniary penalty is well settled. A three-stage approach applies.[25] The Court is required to:

(a) determine the maximum penalty;

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

(c) adjust the starting point to take into account any aggravating and mitigating factors personal to the defendant.

[68] Regardless of the methodology, the ultimate question for the Court is whether or not the final penalty is within the proper range.[26]

Maximum penalty

[69] The maximum penalty under s 107A(3) of the Act is $600,000 in respect of each act or omission.

[70] In *Commerce Commission v Westpac New Zealand Limited*, there was disagreement as to how the maximum penalty should be determined. However, the Court observed that there is a degree of artificiality in setting the maximum penalty, as this can turn on how the Commission frames its case, such as in identifying periods of disclosure failures which will determine the number of contraventions.[27] I also

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25 *Commerce Commission v Westpac New Zealand Limited* [2025] NZHC 3640, [2025] 3 NZLR 625 at [28]; and *Commerce Commission v Eagle M.A.N. Group Limited* [2024] NZHC 3070 at [35].

26 *Commerce Commission v Westpac New Zealand Limited*, above n 255, at [29], citing *Commerce Commission v TSB Bank Limited* [2024] NZHC 2400 at [16].

27 *Commerce Commission v Westpac New Zealand Limited*, above n 255, at [34].

agree with the Court's previous observations that the most important step is assessing the starting point.[28]

[71] In the present case, the Commission has established breaches of s 9C of the CCCFA in respect of the 50 sample contracts, and breach of s 9CA in respect of at least 38 contracts entered into between 1 December 2021 and 2 June 2024. However, to set maximum penalties of $30 million and $22.8 million respectively would be artificial, to say the least. The breaches arose from significant but simple systemic errors within TPL's relatively unsophisticated business.

[72] TPL's misconduct can be divided into two categories of breaches: s 9C breaches for failing to assist borrowers to make informed decisions and s 9CA breaches for failing to keep records. I agree with Ms Carlyon that the overall final penalty should be below the $600,000 maximum. In those circumstances, I also accept counsel's submission that an aggregate maximum penalty of $1.2 million for both categories of breach is appropriate.

Starting point

[73] This Court has taken different approaches to setting the starting point. In *Commerce Commission v Westpac*[29] and *Commerce Commission v Eagle M.A.N. Group Limited* [30] the Court set a global starting point based on the assessment of the breaches as a whole, taking into account the relevant factors set out in s 107A(2) as well as comparator cases. A different approach was taken in *Commission v TSB Bank Limited*,[31] where the Court assessed each breach separately and categorised breaches by seriousness into three bands within the $600,000 pecuniary range: low (six to 35 per cent), moderate (36 to 65 per cent), or high (66 to 95 per cent). However, given the nature and timing of the s 9C and s9CA breaches in this case, I agree with Ms Carlyon that the global approach is more appropriate.

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28 *Financial Markets Authority v Kiwibank Limited* [2023] NZHC 2856 at [23]; and *Financial Markets Authority v Westpac New Zealand Limited* [2025] NZHC 1027 at [34].
29 *Commerce Commission v Westpac New Zealand Limited*, above n 28.
30 *Commerce Commission v Eagle M.A.N. Group Limited*, above n 25.
31 *Commission v TSB Bank Limited*, above n 266.

Nature and extent of contravention[32]

[74] I accept Ms Carlyon's submission that the s 9C breaches are moderately serious. TPL was careless in the way it provided information to customers and set out the terms of the consumer credit contract. The descriptions of the goods being sold on finance were vague, and, in some cases, illegible. There were also errors reflecting a lack of understanding of basic lending concepts, such as recording the initial unpaid balance and total advances as $0.

[75] As noted, in each case, TPL's calculation of the total repayments differed from the total amount to be repaid. Although the discrepancies are marginal, they affected all 50 sample borrowers. In this regard, I agree with Judge Sharp in *Commerce Commission v Betterlife Life Corporation Limited*[33] that, while many individuals dealing with mobile traders might otherwise be unable to obtain credit, ensuring that such debtors are not completely exploited requires documentation and disclosure to be completely consistent with the legal requirements.

[76] TPL's s 9CA breaches are more serious. It failed to comply with regulations in force at the time, but in any event it failed to comply with its statutory obligation to keep adequate records, as a result of which the Commission is unable to review its compliance with s 9C or its affordability assessments (if any). The FWoFs were insufficient to enable a proper assessment of the borrower's circumstances. These failures were systemic.

Nature and extent of loss or damage/gains or losses avoided[34]

[77] The nature of TPL's breaches, including its failure in record keeping, makes it difficult to quantify any losses suffered by borrowers or gains made by TPL due to its breaches. It cannot be known whether some borrowers would have chosen not to enter into the loan had they been fully informed. However, the evidence shows that at least one sample borrower received a product different from that expected.

32 CCCFA, s 107A(2)(b).
33 *Commerce Commission v Betterlife Life Corporation Limited* [2016] NZDC 10579 at [55].
34 CCCFA, s 107A(2)(c) and (d).

[78] Importantly, although TPL's failure in record keeping means the Commission and the Court are unable to assess the affordability of the loans, the evidence shows that 50 per cent of the sample borrowers either dishonoured payments or had their loan balance written off. This occurred even though weekly repayments were typically around $20, and no more than $45.

Circumstances in which the contravention took place[35]

[79] Although TPL's contraventions appear to have been unintentional, I accept the Commission's submission that they were reckless rather than merely inadvertent or negligent. TPL failed to provide a legible and/or accurate description of the goods and failed to correctly identify the total advances payable, and the exemplar in its Operating Manual allowed for that.

[80] TPL's failure to keep adequate records suggests it paid little real attention to its substantive obligation to carry out suitability and affordability assessments. The Operating Manual did not even refer to the CCCFA, let alone record or implement its requirements.

[81] That is so notwithstanding on 24 July 2020 the Commission wrote to TPL explicitly setting out its obligation, as a mobile trader, to comply with the CCCFA, and providing it with a copy of relevant guidelines. Despite that, TPL failed to implement processes or policies to ensure compliance over the following four years.

[82] As noted, there was also a relevant degree of borrower vulnerability. TPL's sales agents attended customer's homes and engaged in upselling strategies. The products were typically sold at prices substantially higher than those available to in store customers.

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35 Section 107A(2)(e).

Deterrence

[83] The need for general and specific deterrence is a primary consideration when setting pecuniary penalties.[36] Penalties must address the financial gains that were, or could reasonably have been, obtained from the breaches. Pecuniary penalties must "deter the unscrupulous from taking a calculated business risk" and be of such significance that, "having regard to particular gains which might be involved, it is in effect commercial suicide to seek those gains via contraventions".[37]

[84] Specific deterrence carries less weight in this case given TPL's liquidation.[38] In any event, general deterrence remains important: other mobile trader businesses dealing with low-income borrowers must be deterred from similar conduct including failures to carry out proper affordability assessments and to keep adequate records demonstrating compliance.

Comparator cases

[85] There are few comparable cases. This is one of the first cases concerning s 9C and appears to be the first case concerning s 9CA.

[86] *Commerce Commission v Westpac*[39] involved a breach of the lender responsibility principles but concerned disclosure breaches affecting a relatively small proportion of its customers. The breaches gave rise to eight causes of action, all of which were admitted. The Court accepted the parties' joint recommendation and imposed a final penalty of $3.64 million. In *Commerce Commission v TSB*,[40] TSB admitted multiple breaches of s 9C(1) and s 41 arising from the inadvertently overcharging of 42,000 credit contract customers by approximately $3.6 million. The Court adopted a starting point in the range of $3.9 million – $4.2 million. Cases

36 *Commerce Commission v Westpac New Zealand Limited*, above n 25, at [32], citing *Financial Markets Authority v ANZ Bank New Zealand Limited* [2021] NZHC 399, (2021) 16 TCLR 28 at [45]; and *Department of Internal Affairs v Ping An Finance (Group) New Zealand Co Limited* [2017] NZHC 2363, (2018) 2 NZLR 552 at [92].

37 *Department of Internal Affairs v Ping An Finance (Group) New Zealand Company Ltd* [2017] NZHC 2363, [2018] 2 NZLR 552 at [92]; citing *Australian Communications and Media Authority v Mobilegate Ltd a Company Incorporated in Hong Kong (No 4)* [2009] FCA 1225, (2009) 180 FCR at [32].

38 Although, as noted, the Commission understands TPL may have assigned the debts for collection.

39 Above n 25.

40 Above n 26.

involving registered banks do not compare easily to a case involving a small mobile trader.

[87] Ms Carlyon also refers me to a number of mobile trader cases involving the imposition of fines for criminal offences rather than civil pecuniary penalties.[41] However, as noted by the Law Commission and applied by this Court in *Eagle M.A.N.*, civil pecuniary penalties and fines for criminal offences serve different purposes,[42] and pecuniary penalties are not as severe as criminal penalties as they do not carry the stigma of criminal convictions.[43] The Law Commission also observed that criminal sanctions place greater emphasis on denunciation[44] and tend to carry lower maximum financial penalties due to their additional punitive effects, including stigmatisation and, in some cases, imprisonment.[45]

[88] With that distinction noted, counsel refer me to:

(a) *Commerce Commission v Ace Marketing Limited*:[46] starting point of $290,000 in respect of 28 charges relating to disclosure (CCCFA, ss 17 and 32), the charging of unreasonable fees (CCCFA, s 41) and misleading representation (FTA, s 13);[47]

(b) *Commerce Commission v Macful International Limited*:[48] starting points of $120,000, $40,000 and $20,000 respectively for 16 charges relating to disclosure (CCCFA, ss 32 and 17) and Financial Service Providers (Registration and Dispute Resolution) Act 2008, s 11); and

(c) *Commerce Commission v Appenture Marketing Limited*:[49] starting point of $150,000 in respect of 24 charges relating to disclosure

41 The civil pecuniary penalty regime under the CCCFA only came into force on 20 December 2019, after the criminal cases to which Ms Carlyon refers had been commenced.
42 *Commerce Commission v Eagle M.A.N. Group Ltd*, above n 255 at [83].
43 Law Commission *Pecuniary penalties: Guidance for Legislative Design* (NZLCR133, 2014) at [4.7].
44 At [4.17].
45 At [4.21] and [16.28].
46 Above n 4.
47 At [55].
48 *Commerce Commission v Macful International Limited* [2017] NZDC 18615.
49 *Commerce Commission v Appenture Marketing Limited* [2018] NZDC 3266.

(CCCFA, s 17) and misleading misrepresentations about debtors' right to cancel (FTA, s 13).

[89] Back to the present case, the Commission submits that an appropriate starting point is in the vicinity of $350,000 to $450,000 approximately 30 per cent to 37.5 per cent of the maximum penalty.

[90] Taking into account the nature and extent of the contraventions, the circumstances in which they occur and the importance of deterrence, I consider a starting point of $400,000 is appropriate in this case. TPL targeted borrowers who were financially and situationally vulnerable selling them everybody products at highly inflated prices. Its breaches were systemic. Like the Commission, I acknowledge that some of the misstatements were essentially rounding areas. If these were the only breaches, the starting point would not be so high. But when operating in this context, it is essential that lenders comply with their obligations to get things right.

[91] As for its record keeping, TPL was clearly in breach of the Lender Inquiry Regulations. With those repealed, the particular requirements of s 9CA(1) and (2) will depend on the facts and circumstances of each case. When those involve a mobile trader targeting vulnerable borrowers, the FWoF was a wholly inadequate record of its inquiries, and how it satisfied itself that its customers could pay without substantial hardship.

Adjustments to starting point

[92] TPL was first investigated in 2020. It did not self-report its subsequent breaches. There is no evidence to suggest it has taken steps to remediate affected customers. It went into voluntary liquidation shortly after proceedings were issued.

[93] The only mitigating factor is that TPL generally cooperated with the Commission's investigation. TPL is entitled to a five per cent discount to reflect that cooperation.

[94] For these reasons I impose a pecuniary penalty of $380,000.

Result

[95] I make the following declarations:

(a) For each of the loans entered into with the 50 sample borrowers, TPL has breached s 9C of the CCCFA; and

(b) For each of the loans entered into between 1 December 2021 and 2 June 2024, TPL has breached its obligations under s 9CA(1) and (2) of the CCCFA.

[96] I order that TPL is to pay a pecuniary penalty of $380,000.

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Robinson J