

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

**I TE KŌTI MATUA O AOTEAROA
TĀMAKI MAKĀURAU ROHE**

**CIV-2025-404-2495
[2025] NZHC 3640**

UNDER	the Credit Contracts and Consumer Finance Act 2003
BETWEEN	COMMERCE COMMISSION Plaintiff
AND	WESTPAC NEW ZEALAND LIMITED Defendant

Hearing: 5 November 2025

Appearances: N F Flanagan and A D Luck for Plaintiff
E J Rushbrook and F G Wilson for Defendant

Judgment: 27 November 2025

JUDGMENT OF ANDERSON J

*This judgment was delivered by me on 27 November 2025 at 3.00 pm
pursuant to r 11.5 of the High Court Rules 2016.*

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Registrar/Deputy Registrar

Solicitors:
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Introduction

[1] Westpac New Zealand Limited (Westpac) is a registered bank whose services include providing credit to consumer borrowers under consumer credit contracts, including through home and personal loans. As such, Westpac is required to comply with the Credit Contracts and Consumer Finance Act 2003 (CCCFA).

[2] Westpac has admitted a series of contraventions of the lender responsibility principles in s 9C of the CCCFA. The contraventions are set out in eight causes of action in the Commerce Commission’s (Commission) statement of claim and notice of admissions, both dated 22 August 2025. Schedule 1 to this judgment is a table summarising the claims.

[3] Westpac and the Commission jointly seek the imposition of a pecuniary penalty for Westpac’s contraventions of the CCCFA. They recommend that the Court impose a final penalty of \$3.64 million on Westpac. I consider this is an appropriate remedy for reasons outlined below. Westpac also agrees to declarations being made as sought in the statement of claim.

The CCCFA

[4] The purpose of the CCCFA is to protect the interests of consumers in connection with credit contracts, both when the contract is made and for its duration.¹

[5] One of the ways the CCCFA advances those purposes is through the lender responsibility principles set out in s 9C.² These include a requirement that every lender³ must “exercise the care, diligence, and skill of a reasonable lender”⁴ before entering into an agreement to provide credit or finance, or taking a relevant guarantee, and in all subsequent dealings with a borrower in relation to an agreement or with a guarantor in relation to a relevant guarantee.⁵

¹ Credit Contracts and Consumer Finance Act 2003 (CCCFA), s 3(1) and 3(2)(c).

² CCCFA, s 3(3)(a).

³ “Lender” includes creditors under consumer credit contracts: s 9B(1).

⁴ Section 9C(2).

⁵ Section 9C(2)(a)(ii)–(iii).

[6] The CCCFA prescribes the circumstances in which lenders are required to provide disclosure to borrowers and guarantors. The disclosures relevant to the Commission's causes of action are discussed below.

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

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

Contraventions

Loan Maintenance issues

[9] The first to fourth causes of action concern the Loan Maintenance issues. The contraventions were due to deficiencies in two systems that could be used by Westpac staff to process changes to home loans and personal loans: the New Zealand Loan Origination system (NZLO System) and a secondary workflow tool, the LM System.

[10] In accordance with its CCCFA obligations, Westpac was required to provide disclosure to borrowers when certain changes were made to their loans.⁶

[11] The NZLO System was set up to automatically produce disclosure to borrowers. The LM System was not. It was intended to be used primarily for administrative activities required to be carried out on loans, rather than the type of change that would require disclosure under the CCCFA (except in limited circumstances, where there was a process in place for disclosure to be provided manually).

[12] However, the LM System did have the *functionality* to make changes to loans that triggered Westpac's obligation to provide certain types of disclosure under the

⁶ Sections 22 and 23.

CCCFA. If changes that required disclosure were made through the LM System, the customer would not receive the required CCCFA disclosure unless the staff member making the change provided it of their own volition. This led to failures to provide the required disclosures to customers.

[13] This failing was possible because of shortcomings with Westpac's systems and processes. It could have set up its systems to avoid the issue altogether by setting up the LM System in a way that would automatically provide disclosure to customers when triggered. It could have prevented changes being made on the LM system that triggered disclosure or instructed staff not to use the LM system for that purpose. Instead, Westpac had in place a system that relied on staff manually recognising the need to provide disclosure, which carried an inherent risk of disclosure failures. Westpac also failed to tell frontline staff that the LM System did not automatically produce disclosure. These staff did not receive training or guidance on the need to provide the required information. Westpac had no other systems, processes or controls to detect these failures.

[14] Westpac accepts that it could and should have identified the issues much earlier. The issues occurred from at least 6 June 2015 but were only identified by Westpac in late 2021. For home loans, the disclosure failures involved interest rate changes,⁷ changes to repayment frequency and/or limit reductions,⁸ and changes where there was a temporary increase to a customer's lending limit⁹ (for example, for bridging finance). For personal loans, the issues affected variation of terms of the repayments, changes to the loan term and/or expiry date, changes to the loan limit, and changes to the interest rate.¹⁰

[15] After the Loan Maintenance issues were identified, Westpac took prompt action to prevent the issues from continuing. It directed staff to only process the changes through the NZLO System and provided related guidance. It also launched a

⁷ These changes saw customers' interest rates move from a fixed interest rate or capped rate to a floating interest rate, and/or from one floating interest rate to a different one. I define this as Issue 1. This and the following definitions become relevant for the declarations made at the end of the judgment.

⁸ Issue 2.

⁹ Issue 3.

¹⁰ Issue 4.

webform-based system for loan maintenance requests to be sent to its specialised lending services team.

[16] Westpac self-reported the issue to the Commission on 4 March 2022. It provided more detail to the Commission on the nature and causes of each of the above issues in September 2022.

Guarantor Disclosure issues

[17] The fifth to seventh causes of action relate to the deficiencies with Westpac's NZLO System that I referred to earlier (Guarantor Disclosure issues). This was Westpac's primary system for providing CCCFA disclosure. As noted above, where it was configured to recognise the need for disclosure, it did so automatically.

[18] However, the NZLO System had not been set up to provide disclosure to guarantors in three types of circumstances. These were:

- (a) when there was a change to the principal's interest rate on their home loan (GD1 Changes);
- (b) when frontline staff members sent loan documentation directly to guarantors¹¹ where an existing borrower obtained a new loan and the guarantee for that new lending made the guarantor liable on both loans (GD2 Changes); and
- (c) when a loan term was reduced and there was a change to the limit reduction cycle, or where the loan was restricted from requiring payments of interest and principal to payments of interest only (GD 3 Changes).

[19] For all three GD changes, guarantors would not be provided with automatic disclosure and not provided with it at all unless the staff member recognised the need to do so. The issues arose because the NZLO System was not configured either to

¹¹ As opposed to being sent by the lending services team.

automatically provide disclosure, or to automatically prompt manual disclosure of the changes in question. There were no other (or no other adequate) processes or systems in place to ensure that disclosure was provided.

[20] These issues also occurred from at least 6 June 2015. After identifying the issues, Westpac configured the NZLO System to automatically provide disclosure to guarantors in respect of the GD1 and GD3 Changes¹² and to automatically prompt manual disclosure for GD2 Changes.¹³

Floating Rate Discount issue

[21] The eighth cause of action, the Floating Rate Interest issue, concerns disclosure of changes to interest rates. Westpac customers who were applying for, or seeking to vary the terms of, a floating rate home loan were (and remain) able to negotiate and agree a discount on the interest rate payable (floating rate discount).

[22] At material times, where a discounted rate had been agreed, Westpac's home loan agreements provided that whenever the customer was not on a fixed or capped interest rate, the applicable floating interest rate would apply. The terms further provided that Westpac could vary the customer's floating rate discount from time to time, or in accordance with the applicable terms and conditions of the home loan. Unless Westpac exercised that right, however, the applicable floating interest rate and the previously negotiated discount would continue to apply.

[23] Prior to June 2016, Westpac used the NZLO System which would automatically apply the previously agreed floating rate discount whenever the customer's home loan was on a floating interest rate. Westpac introduced a new pricing system in June 2016 called Nomis Deal Manager (NDM). NDM was unable to record previously agreed floating rate discounts. As a result, when a customer who had negotiated a discount moved from a floating rate to a capped/fixed one, and then back to a floating rate, NDM applied a floating rate discount of zero. Westpac

¹² These configurations took place on 9 November 2023 for GD1 changes and on 31 March 2023 for GD3 changes.

¹³ This took place on 31 March 2023.

effectively brought the affected customers' floating rate discounts to an end without necessarily intending to do so.

[24] Westpac would send a fixed-rate expiry letter to affected customers notifying them that their current interest-rate period was expiring and, in most cases, referred to the subsequent floating interest rate that would apply. However, this correspondence did not communicate that Westpac had removed the customer's floating rate discount that had been applicable prior to the rate becoming fixed.

[25] This disclosure failure arose when NDM was implemented and integrated with the NZLO System. Westpac failed to check whether the system was capable of giving effect to previously agreed discounts. It also failed to have systems and controls in place to ensure that the affected customers were being charged the intended interest rates. As noted, the correspondence with customers failed to communicate or to adequately communicate that it was no longer providing them with floating rate discounts.

[26] When Westpac identified the issue, it implemented an automated process to identify customers whose loans were moving to a new fixed rate interest period and to reload the floating rate discounts on those loans. Subsequently, Westpac updated the terms of its loan agreements and customer communications to provide that after a customer moved to an annual fixed interest rate, the customer would no longer be entitled to any previous floating rate discounts in subsequent periods. These customers remain able to negotiate and agree a new floating rate discount.

Approach to recommended pecuniary penalties

[27] The role of the Court where parties jointly seek the imposition of a pecuniary penalty is well-settled,¹⁴ including recently for pecuniary penalties sought under the CCCFA.¹⁵ The Court acknowledges its role in ensuring the efficiency of negotiated

¹⁴ See *Financial Markets Authority v Cigna Life Insurance New Zealand Ltd* [2022] NZHC 3610 at [47].

¹⁵ *Commerce Commission v TSB Bank Ltd* [2024] NZHC 2400 at [16].

resolutions and the significant public interest in bringing about prompt resolution of penalty proceedings.¹⁶

[28] The following three-stage approach applies to setting pecuniary penalties:¹⁷

- (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 applicable maximum penalty; and
- (c) make any adjustments to the starting point whether uplifts or discounts on the basis of any considerations personal to the defendant.

[29] Where the parties jointly recommend a penalty, it is not necessary that the Court accepts each step of the parties' proposed methodology. Nor is it necessary to resolve differences between the parties on the methodology or factors by which they came to the agreed figure. The ultimate question for the Court is whether or not the final penalty is within the proper range.¹⁸

Approach to pecuniary penalties under the CCCFA

[30] The maximum penalty for pecuniary penalties in applications by the Commission under s 107A of the CCCFA is \$600,000 where, as here, the act or omission is not by an individual.¹⁹ Pecuniary penalties are available for contraventions engaged in or from 20 December 2019 onwards.

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

¹⁷ *Commerce Commission v Property Brokers Ltd* [2017] NZHC 681, [2017] NZCCLR 14 at [4]; and *Commerce Commission v Eagle M.A.N. Group Ltd* [2024] NZHC 3070 at [35].

¹⁸ *Commerce Commission v TSB Bank Ltd* TSB, above n 15, at [16]; *Commerce Commission v Geologistics International (Bermuda) Ltd* HC Auckland CIV-2010-404-5490, 22 December 2010 at [37]; and *Commerce Commission v Whirlpool SA* HC Auckland CIV-2011-404-6362, 19 December 2011 at [17]–[18].

¹⁹ CCCFA, s 107A(3).

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

[32] The requirement to consider “all relevant matters” requires the Court to consider general and specific deterrence.²⁰ This is a primary consideration in setting pecuniary penalties.²¹

Maximum penalty

[33] The Commission adopts a maximum penalty amount of \$12.6 million. It derives this by calculating how many approximate 12-month periods the causes of action took place over in total. The periods start from December 2019, when pecuniary penalties became available. There are 21 such periods. Taking 21 penalties at \$600,000 each produces an aggregated maximum of \$12.6 million. Westpac does not agree that this is an appropriate figure, although it does not suggest an alternative.

[34] Both parties acknowledge, and I accept, that there is a degree of artificiality in setting the maximum penalty in a case such as this.²² The setting of the maximum penalty turns on how the Commission frames its case, such as in identifying periods of disclosure failures. This drives how many contraventions there are.²³ Ultimately, it is unnecessary for me to come to a conclusion on the maximum penalty given the parties’ agreement as to starting point and because I have concluded that the ultimate pecuniary penalty proposed is appropriate.

Factors in fixing the starting point

[35] The agreed starting point recommended to the Court is \$5.2 million. This starting point has been reached with reference to the relevant factors in s 107A(2) of the CCCFA discussed below, and from a comparison with other cases.

²⁰ *Financial Markets Authority v ANZ Bank New Zealand Ltd* [2021] NZHC 399, (2021) 16 TCLR 28 at [45]; and *Department of Internal Affairs v Ping An Finance (Group) New Zealand Co Ltd* [2017] NZHC 2363, [2018] 2 NZLR 552 at [92].

²¹ *Telecom Corporation of New Zealand Ltd v Commerce Commission* [2012] NZCA 344 at [62].

²² As observed by Cooke J in *Financial Markets Authority v Kiwibank Ltd* [2023] NZHC 2856 at [23]. See also Venning J’s observations in *Financial Markets Authority v Westpac New Zealand Ltd* [2025] NZHC 1027 at [34].

²³ Indeed, technically a non-disclosure contravention occurs on each day that disclosure is not made.

*Nature and extent of the contraventions*²⁴

[36] The contraventions arose from Westpac's failures to have systems and processes in place to meet statutory disclosure requirements that have been in place in some form for more than 20 years. The failures relate to three different systems, each of which had been set up in a way that was foreseeably deficient.

[37] Multiple steps could have been taken to prevent the harm, including changes to the systems, adequate staff training, and mechanisms to identify and respond where disclosure was not provided, and discounts were not applied.

[38] The conduct occurred over extensive periods,²⁵ resulting in required disclosure not being made to up to 5,001 borrowers and up to 3,012 guarantors. Westpac also removed discounts from 6,397 customers without necessarily intending to do so. For the penalty period from December 2019, 1,600 borrowers and 935 guarantors were affected by the Loan Maintenance and Guarantee issues, and 4,988 customers were affected by the Floating Discount Rate issue.

[39] In the case of the Floating Rate Discount issue, removal of a discount was contemplated by Westpac's terms and conditions in that Westpac could vary the discount from time to time. However, because of the deficiencies in Westpac's systems, that occurred without Westpac necessarily intending to do so, and without customers being advised that the discount had been removed.

[40] On the other hand, the various issues were confined to particular situations within Westpac's wider compliance programme, rather than being a wholesale failure to meet CCCFA obligations. I also accept that there is some overlap in the conduct and time across the pleaded causes of action.²⁶

²⁴ CCCFA, s 107A(2)(b).

²⁵ The NDM issue occurred for just over six years. One of the guarantor disclosure issues occurred over approximately eight and a half years.

²⁶ For example, the first to fourth causes of action arise from the set-up of the same LM System, the same underlying CCCFA disclosure obligations to borrowers, and in the same time periods. Similarly, the fifth to seventh causes of action arise from the same type of issues in Westpac's NZLO system, the same underlying CCCFA disclosure obligations to guarantors, and in the same time periods.

[41] Additionally, although the number of customers affected is significant, the issues are relatively confined when viewed in the context of Westpac's large customer base. From 2019 onwards, Westpac had approximately 400,000 loan and personal loan accounts at any given time. Only a small number of customers were affected for some issues. For example, only nine customers who did not receive disclosure in respect of the issue relating to the second cause of action during the pecuniary penalty period. Similarly, only 55 were affected by the issue underlying the third cause of action. Schedule 1 sets out the effect of the issues at an aggregate and individual level.

*Extent of any loss, damage or gains*²⁷

[42] The Floating Rate Discount issue led to an overcharge to customers totalling \$1,553,542 for the pecuniary penalty period, or \$1,708,881 for the full period (1 June 2016 to 14 July 2022). Westpac confirms that it has not and will not seek to enforce guarantees given by customers affected by the GD2 Changes.

[43] Otherwise, the harm from the disclosure issues is unquantifiable. However, as Westpac accepts, the failure to provide the required disclosure may have meant that customers were not informed of changes in a timely manner and hence not placed in a position where they could exercise choice.

[44] Westpac fairly says that it has not carried out an individual file review for all customers and guarantors to confirm if some disclosure was provided in individual circumstances to customers. The number of customers affected is approximate for that reason. Nonetheless, Westpac accepts for penalty purposes that the number of affected customers is approximately as pleaded in the Commission's claim.²⁸

[45] Westpac has undertaken an extensive remediation programme, adopting a customer-centric approach to the assumptions made. For the Floating Rate Discount issue, it has paid compensation by refunding accounts overcharged plus use of money interest (\$1,864,008 for the full period and \$1,694,938 for the pecuniary penalty period). For the Loan Maintenance issues, Westpac has made payments to customers

²⁷ CCCFA, s 107A(2)(c).

²⁸ The approximate numbers are set out in sch 1.

identified as potentially impacted by an information deficit totalling \$810,162 for the full period and \$259,200 for the pecuniary penalty period.

*Any gains made or losses avoided*²⁹

[46] Although Westpac has returned overcharged interest to customers with use of money interest, it did accrue temporary gains as a result of the contravention.

[47] The Commission says that Westpac has also made gains from avoiding the costs of investing in systems and processes required to comply with its obligations under the CCCFA. I accept Westpac's submission that the failures resulted largely from poor implementation of processes, rather than under-investment. However, as the Commission notes, Westpac will have avoided some cost in staff training that should have been given.

[48] I also agree with the Commission that Westpac may have needed to invest more in retaining its customers had it been making the required disclosures. One of the objectives of disclosure is to enable customers to decide whether to move to a different lender, which encourages competition. It is impossible to assess what, if any, business Westpac might have lost if it made compliant disclosures. Nor is it possible to assess how much Westpac has saved on seeking to retain this business. Nevertheless, I accept in principle that Westpac has avoided some level of extra cost.

*Circumstances in which the contravention took place*³⁰

[49] Westpac's conduct was not intentional or aimed to mislead. However, Westpac accepts that its conduct fell below the standards the Commission and the public are entitled to expect from lenders offering consumer credit.

[50] The failures were not across all systems but across several systems. Because staff did not have required training, guidance or prompts, where disclosure required manual identification of the need to disclose, Westpac could only comply with those obligations by chance.

²⁹ Section 107A(2)(d).

³⁰ Section 107A(2)(e).

The need for deterrence

[51] Deterrence can be both specific (in relation to Westpac itself) and general (in relation to the market as a whole). The Commission does not consider specific deterrence to be of primary concern in this penalty assessment. Westpac has previously admitted to contravening the CCCFA and the Fair Trading Act 1986 (FTA). It has also received a warning from the Commission regarding a potential breach of the FTA. However, this is outweighed by its self-identification of the issues (albeit very delayed), its prompt self-reporting once it became aware of them, and the steps it has taken since.

[52] As for general deterrence, this requires the penalty imposed to be set at a level that incentivises other creditors to take their obligations seriously.³¹ Because Westpac is a large and profitable entity, the parties agree that a substantial deterrent penalty is necessary to send this message to the wider market. I accept that the pecuniary penalty should be set at a level that reflects the size and resources of Westpac and its position to influence in the industry.³²

[53] Westpac has been consistently profitable in the period of conduct covered by the claim, from at least June 2015 to November 2023. During this time, Westpac's annual net profits have ranged from \$812 million (for the financial year ended 30 September 2016) to \$1.055 billion (for the financial year ended 30 September 2024).

[54] As noted, the level of penalty should be set at a level where market participants will invest where necessary to ensure compliance. Here, the suggested penalty is a significant one for Westpac. It is sufficiently substantial to meet the object of a deterrence.

³¹ *NW Frozen Foods Pty Ltd v Australian Competition & Consumer Commission* (1996) 71 FCR 285 at [18].

³² In *Commerce Commission v Ronovation Ltd* [2019] NZHC 2303 at n 19, Katz J considered that the size and resources of the defendant was only relevant as defendant-specific factor. However, as I have observed in *Commerce Commission v One New Zealand Ltd* [2025] NZHC 3635 at [63]–[77], several cases have viewed the size and resources of a defendant and its influence in the industry as relevant to setting starting point. In the *One NZ* case, I concluded that the factor can be relevant to both general and specific deterrence, albeit acknowledging the need to avoid double counting or overemphasising the factor. Consistent with the way the parties presented submissions, I have considered this factor under the rubric of “deterrence” (discussing both specific and general deterrence), which is a valid approach.

Starting point

[55] Turning to the starting point in light of the above factors, the Commission submits that Westpac's conduct warrants a starting point between \$5.2 and \$5.5 million. I adopt \$5.2 million, which aligns with the starting point sought by Westpac.

[56] This starting point is just under half of the maximum penalty of \$12.6 million. It accounts for the duration of the conduct, the number of systems affected and extent of harm. It also reflects Westpac's scale and resources, and its organisational culpability in failing to have adequate systems and processes in place.

[57] There have been only two proceedings for pecuniary penalties under the CCCFA. One of these, *Commerce Commission v Eagle M.A.N. Group Ltd*, has very different facts and is of no assistance.³³ *Commerce Commission v TSB Bank Ltd* is also of limited assistance.³⁴ The present case involved varied failures across three systems but was not in the nature of a wholesale failure, as was the case in *TSB*. However, the contraventions here involved more harm and a bank with significantly greater resources than TSB. I agree with the Commerce Commission that this case warrants a starting point somewhat higher than *TSB*, which was between \$3.9 and \$4.2 million.

[58] The starting point is also broadly consistent with cases referred to me involving breaches of the Financial Markets Conduct Act 2013 involving somewhat comparable conduct, in particular *Financial Markets Authority v Cigna Life Insurance New Zealand Ltd* and *Financial Markets Authority v Westpac New Zealand Ltd*. These cases respectively involved underlying issues with the defendants' processes which lead to issues with charging for benefits and provision of pricing and benefits to eligible customers.³⁵

³³ *Commerce Commission v Eagle M.A.N. Group Ltd*, above n 17, involved a small lender offering high-cost consumer credit contracts to temporary workers and recent immigrants. Only 100 borrowers were affected. It is presently under appeal by both parties.

³⁴ *Commerce Commission v TSB Bank Ltd*, above n 15, involved a bank thirteen times smaller than Westpac, less profitable, owned by a charitable foundation, where the contraventions were described as reckless and were particularly serious.

³⁵ In *Financial Markets Authority v Cigna Life Insurance New Zealand Ltd*, above n 14, the defendant's management acted on legal advice in how it communicated and charged for inflation

[59] The Commission emphasises the delay in Westpac providing further information on the issues it had self-identified. The Commission views this as further evidence of Westpac's inadequate infrastructure and processes, and relevant to setting the starting point. I do not consider I have enough information to assess whether this is true, so I put this aspect to one side given the parties' overall consensus.

[60] Finally, I referred to Westpac having proactively self-reported the issues and remediated quantifiable harm. The potential harm has been addressed in this respect.

[61] The proposed starting point of \$5.2 million is at a level that sits comfortably with the various factors discussed above. Importantly, in all the circumstances it is likely to be viewed by the wider market as a general deterrent. It is set at a level that also fairly takes into account the principle of totality in light of an overlap and degree of repetition in the conduct at the core of Westpac's breaches.

Adjustments to the starting point

[62] The final step is to adjust the starting point to take into account defendant-specific factors.

[63] The Commission accepts that there are no aggravating factors. As to mitigating factors, the parties agree that a 30 per cent discount is appropriate.

[64] The discount is in line with other cases,³⁶ and recognises various factors I referred to earlier:

benefits. The issue affected 52,363 policies and resulted in overcharges of approximately \$13.5 million. Cigna's gain was a third of that sum. The Court accepted the parties' recommended starting point of \$5.5 million. In *Financial Markets Authority v Westpac New Zealand Ltd*, above n 22, Westpac admitted breaches of fair dealing provisions under the FMCA. It failed to provide pricing and other benefits to certain eligible customers. The issues stemmed from reliance on manual processes and, in one case, inadvertent use of an internal charge code. In the pecuniary penalty period, 24,621 customers did not receive benefits of up to \$6.35 million. Venning J accepted the proposed starting point of \$5 million. The Commission also referred me to *Financial Markets Authority v Medical Assurance Society New Zealand Ltd* [2023] NZHC 3312, [2023] NZCCLR 14. There, system failures led to 16,470 customers being overcharged by \$6.6 million on account of not receiving certain bonuses and discounts, and incorrect adjustment calculations. A starting point of \$3 million was adopted.

³⁶ A discount of 30 per cent was applied in *Financial Markets Authority v Medical Assurance Society New Zealand Ltd*, above n 35, at [42], and in *Commerce Commission v Air New Zealand Ltd* [2013] NZHC 1414 at [35].

- (a) Westpac's initial notification of potential issues in March 2022 after these came to its attention;
- (b) Westpac's cooperation, taking into account the difficulties it had providing information requested by the Commission;
- (c) the remedial steps taken by Westpac after it self-reported, including compensating impacted customers as well as corrective action for the future; and
- (d) Westpac's prompt admission of the breaches following cooperation on the form of the statement of claim.

Conclusion

[65] After applying a 30 per cent discount to \$5.2 million, the final penalty is \$3.64 million. I agree that this figure is appropriate, in all the circumstances outlined above.

[66] The Commission seeks declarations of contravention in terms of its statement of claim. Westpac agrees to declarations being made. The declarations sought have defined terms used in the claim that need some explanation:

- (a) Each declaration relates to a set of "Affected Customers" being customers in the time period for which penalties are available after December 2019.
- (b) The first four declarations relate to the Loan Maintenance issues in the first to fourth causes of action and define Affected Customers by reference to Issues 1 through to 4 respectively, which relate to the different types of required disclosure not made as set out at [14], n 7-10 above.
- (c) The next three declarations for the fifth to seventh causes of actions relate to the Guarantor Disclosure issues and are differentiated by the

references GD1, GD2 and GD3. These are the terms I adopted at [18] for each of the three circumstances in which required disclosure was not made.

- (d) The final declaration for the eight declaration is described by reference to Affected FRD Customers, which are customers affected by the Floating Rate Discount issue.

[67] For ease of reference, the table summary of the Commission's claim in sch 1 states the definition used for each issue at the start of the "General Description" of each cause of action.

Result

[68] Therefore, the Court:

- (a) imposes a pecuniary penalty on Westpac of \$3.64 million; and
- (b) makes the following declarations, with defined terms having the meanings set out in Commission's statement of claim dated 22 August 2025:
 - (i) that, in respect of the Affected Issue 1 Customers, Westpac breached ss 9C(1) and 9C(2)(a)(iii) of the CCCFA in the period from 20 December 2019 to 15 December 2021;
 - (ii) that, in respect of the Affected Issue 2 Customers, Westpac breached ss 9C(1) and 9C(2)(a)(iii) of the CCCFA in the period from 20 December 2019 to 15 December 2021;
 - (iii) that, in respect of the Affected Issue 3 Customers, Westpac breached ss 9C(1) and 9C(2)(a)(iii) of the CCCFA in the period from 20 December 2019 to 15 December 2021;

- (iv) that, in respect of the Affected Issue 4 Customers, Westpac breached ss 9C(1) and 9C(2)(a)(iii) of the CCCFA in the period from 20 December 2019 to 10 February 2022;
- (v) that, in respect of the Affected GD1 Customers, Westpac breached ss 9C(1) and 9C(2)(a)(iii) of the CCCFA in the period from 20 December 2019 to 9 November 2023;
- (vi) that, in respect of the Affected GD2 Customers, Westpac breached ss 9C(1) and 9C(2)(a)(ii) of the CCCFA in the period from 20 December 2019 to 31 March 2023;
- (vii) that, in respect of the Affected GD3 Customers, Westpac breached ss 9C(1) and 9C(2)(a)(iii) of the CCCFA in the period from 20 December 2019 to 31 March 2023;
- (viii) that, in respect of the Affected FRD Customers, Westpac breached ss 9C(1) and 9C(2)(a)(iii) of the CCCFA in the period from 20 December 2019 to 14 July 2022;

[69] The parties agree that costs are to lie where they fall.

Anderson J

SCHEDULE 1 – SUMMARY OF CAUSES OF ACTION

System at issue	Cause of action	General description	Section breached	Dates	Amount of overcharge	Approximate number of affected borrowers / guarantors and affected accounts across whole period	Amount of overcharge across penalty period	Approximate number of affected customers in penalty period
The “LM” system	First	Defective systems for providing disclosure: home loan interest rate changes	Sections 9C(1) and 9C(2)(a)(iii)	6 June 2015 to 15 December 2021	N/A	3,473 customers holding 4,336 loan accounts	N/A	1,281 customers holding 1,578 loan accounts
	Second	Defective systems for providing disclosure: repayment and limit reduction frequency changes	Sections 9C(1) and 9C(2)(a)(iii)	6 June 2015 to 15 December 2021	N/A	72 customers holding 88 loan accounts	N/A	9 customers holding 11 loan accounts
	Third	Defective systems for providing disclosure: temporary limit increases	Sections 9C(1) and 9C(2)(a)(iii)	6 June 2015 to 15 December 2021	N/A	350 customers holding 354 loan accounts	N/A	55 customers holding 55 loan accounts
	Fourth	Defective systems for providing disclosure: personal loan changes	Sections 9C(1) and 9C(2)(a)(iii)	6 June 2015 to 10 February 2022	N/A	1,106 customers holding 1,109 loan accounts	N/A	255 customers holding 256 loan accounts
The “NZLO” system	Fifth	Defective systems for providing guarantor disclosure: home loan interest rate changes	Sections 9C(1) and 9C(2)(a)(iii)	6 June 2015 to 9 November 2023	N/A	768 guarantors under who gave 734 guarantees	N/A	403 guarantors who gave 393 guarantees
	Sixth	Defective systems for providing guarantor disclosure: disclosure for “all obligations” guarantees	Sections 9C(1) and 9C(2)(a)(ii)	6 June 2015 to 31 March 2023	N/A	1,569 guarantors who gave 2,320 guarantees	N/A	431 guarantors who gave 669 guarantees
	Seventh	Defective systems for providing guarantor disclosure: changes to repayment terms	Sections 9C(1) and 9C(2)(a)(iii)	6 June 2015 to 31 March 2023	N/A	675 guarantors who gave 715 guarantees	N/A	101 guarantors who gave 111 guarantees
The “NDM” system	Eight	Defective systems for providing agreed floating rate discounts	Sections 9C(1) and 9C(2)(a)(iii)	1 June 2016 to 14 July 2022	\$1,708,881	6,397 customers holding 7,084 accounts	\$1,553,542	4,988 customers holding 5,505 accounts