IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

I TE KŌTI MATUA O AOTEAROA
TĀMAKI MAKAURAU ROHE

CIV-2024-404-1259
[2024] NZHC 2400

BETWEEN	COMMERCE COMMISSION Plaintiff
AND	TSB BANK LIMITED Defendant

Hearing: 22 August 2024

Appearances: A D Luck and C L Euden for plaintiff
S M Hunter KC and Z A Brentnall for defendant

Date of judgment: 27 August 2024

JUDGMENT OF JAGOSE J

This judgment was delivered by me on 27August 2024 at 11.00am.
Pursuant to Rule 11.5 of the High Court Rules.

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Registrar/Deputy Registrar

Counsel/Solicitors:
S M Hunter KC, Auckland
Meredith Connell, Auckland
Gilbert Walker, Auckland

[1] The Commerce Commission (the Commission) seeks declarations of and pecuniary penalties on TSB Bank Limited's (the bank) admission of multiple breaches of the Credit Contracts and Consumer Finance Act 2003 (the Act), arising from the bank overcharging some 42,000 credit contract customers by about $3.6 million since at least mid-2015, when the 2003 Act's responsible lending provisions took effect.

Statutory context

[2] The 2003 Act's primary purpose relevantly is "to protect the interests of consumers in connection with credit contracts",[1] by — among other things — requiring creditors under credit contracts "to be responsible lenders",[2] and providing "rules about interest charges, credit fees, default fees, and payments in relation to consumer credit contracts".[3]

[3] Section 9C(1) requires lenders to comply with lender responsibility principles, including "at all times … [to] exercise the care, diligence, and skill of a responsible lender" in dealing with borrowers.[4] Section 41 requires "[a] consumer credit contract must not provide for a credit fee or a default fee that is unreasonable". If unreasonable is to be determined with regard to whether the fee reasonably compensates the creditor for costs incurred by it, according to reasonable standards of commercial practice.[5] Such indicates "a transaction-specific approach to the setting of fees",[6] focusing on "the costs incurred by the creditor in relation to the steps to which the fee relates (or the losses relating to a default)".[7]

[4] In *Sportzone Motorcycles Ltd (in liquidation) v Commerce Commission*, the Supreme Court allowed:[8]

> [A] helpful formulation in determining the reasonableness of a fee is to ask whether the cost is sufficiently close and relevant to the steps in the lending process to which the fee relates that it can reasonably be said it was incurred

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1 Credit Contracts and Consumer Finance Act 2003, s 3(1).
2 Section 3(3)(a).
3 Section 3(3)(c).
4 Section 9C(2)(a).
5 Sections 44 and 44A.
6 *Sportzone Motorcycles Ltd (in liquidation) v Commerce Commission* [2016] NZSC 53, [2016] 1 NZLR 1024 at [111].
7 At [112].
8 At [113].

> in relation to those steps. A similar approach should be adopted for default fees.

while acknowledging:[9]

> The "reasonableness" standard is imprecise and difficult to apply to particular situations. Fees have to be set in circumstances where the creditor may not have precise information on its costs and will not know how many transactions it will enter into during the period that the fee level is applied. Allowance has to be made for the situation where circumstances transpire that do not reflect those that the creditor predicted would apply. In applying the "reasonableness" standard lines have to be drawn. Reasonable minds may differ on where those lines should be drawn.

[5] A pecuniary penalty of up to $600,000 may be ordered payable to the Crown on each contravention of ss 9C(1) and 41 (among others).[10]

Factual background

[6] The bank offers retail banking services across New Zealand from its Taranaki headquarters. In that market, it leads a third tier of competitors, below major and larger banks, ranking seventh overall by total assets. Its net profit after tax for the last financial year was $34 million. The bank is wholly owned by a charitable trust, Toi Foundation, to which it pays annual dividends benefiting the Taranaki community.

[7] The bank offered standard form consumer credit contracts, incorporating separately published fees. The fees were set without reference to s 41, with reference instead to other commercial considerations (including comparator fees charged by other financial institutions, and the amounts of those fees; customer satisfaction and the value customers placed on fees; whether fees carried a direct cost or involved staff or were automated; the bank's proposition as a low to no fee bank; and the bank's ability to generate income, and potentially profit, from those fees).

[8] Over much of 2021, the bank conducted a review of its fees' compliance with the Act. Unsurprisingly, given only coincidence would achieve compliance, the review concluded 14 of its 35 fees were non-compliant. The bank ceased charging such fees

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9 At [116].
10 Credit Contracts and Consumer Finance Act, s 107A.

in the course of 2021, subsequent fees being established in comprehended compliance with the Act and subject to the bank's ongoing oversight.

[9] On 30 March 2022, the bank reported the outcome of its review to the Commission. With the bank's comprehensive cooperation, the Commission's subsequent investigation established two categories of contractually unchargeable fees in breach of s 9C(1), and 12 categories of 'unreasonable' fees in breach of s 41. In the period from 6 June 2015 to 2 November 2021, more than 42,000 of the bank's credit contract customers thereby were overcharged approximately $3.6 million, nearly $1 million since 20 December 2019.[11] The bank since has refunded the overcharges — together with any additional interest they incurred, or a use-of-money component — totalling some $6 million.

[10] For my determination now is the amount of the pecuniary penalty sought by the Commission. From a perspective its causes of action together afford maximum pecuniary penalties of $7.8 million, the Commission proposes a pecuniary penalty of $2.47 million, derived from a starting point of $3.8 million, discounted by 35 per cent to reflect the bank's constructive response to its contraventions. The bank would accept such a penalty.

Approach to pecuniary penalties

[11] The Act relevantly provides:

> **107A Pecuniary penalties**
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> (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—
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> (a) has contravened any of the following provisions:
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> (i) section 9C(1) (lender responsibility principles) … :
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> …
>
> (iii) section 41 (unreasonable credit fee or default fee):
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> …

[11] These three dates respectively are of: the Act's introduction of responsible lending principles; the bank's last charged impugned fee; and the Act's introduction of a pecuniary penalty regime.

(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).

(3) The amount of any pecuniary penalty must not, in respect of each act or omission, exceed,—

(a) in the case of an individual, $200,000; or

(b) in any other case, $600,000.

(4) Proceedings under this section may be commenced within 3 years after the matter giving rise to the contravention was discovered or ought reasonably to have been discovered.

(5) Where conduct by any person constitutes a contravention of 2 or more provisions referred to in subsection (1)(a), proceedings may be instituted under this Act against that person in relation to the contravention of any 1 or more of the provisions; but no person is liable to more than 1 pecuniary penalty under this section in respect of the same conduct.

[12] Given the bank's admissions, I am satisfied the bank has contravened s 9C(1) (x 3, including its overarching non-compliance) and s 41 (x 12). Sentencing then usually engages two steps, so that — with 'non-mechanical' reference to analogous cases,[12] and aggravating and mitigating features of the offending — I should first decide a starting point for the breach, then adjust that up or down to take into account individual circumstances, for determination of the applicable pecuniary penalty.[13]

[13] As an exercise in sentencing for regulatory offending:[14]

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12 *Telecom Corporation of New Zealand Ltd v Commerce Commission* [2012] NZCA 344 at [62], citing *Australian Competition and Consumer Commission v Telstra Corp Ltd* [2010] FCA 790 at [211].

13 *Moses v R* [2020] NZCA 296, [2020] 3 NZLR 583 at [46]; *R v Taueki* [2005] 3 NZLR 372 (CA) at [8].

14 *Telecom Corporation of New Zealand Ltd v Commerce Commission*, above n 12, at [28] and [55], the latter citing *Carter Holt Harvey Building Products Group Ltd v Commerce Commission* (2001) 10 TCLR 247 (CA) at [94]; *Commerce Commission v Qantas Airways Ltd* HC Auckland CIV-2008-404-8366, 11 May 2011 at [28]; and *Commerce Commission v New Zealand Diagnostic Group Ltd* HC Auckland CIV-2008-404-4321, 19 July 2010 at [17].

> The primary consideration is deterrence and penalties must be set at a level that achieves both specific and general deterrence[;]… the size and resources of a firm, and its position of influence in the industry, are relevant to deterrence.

[14] Reservations against drawing too close analogy with criminal sentencing principle — particularly given the Act's regulatory rather than penal nature, and the need to have regard for the contravention in its context — are notorious.[15] Nonetheless, some have resonance: the gravity of the contravention and the culpability of the contravener; the seriousness of the contravention in the spectrum of proscribed conduct; and "the general desirability of consistency" of outcome with similar contraveners committing similar contraventions in similar circumstances.[16]

Discussion

[15] Counsel advise this is the first determination of pecuniary penalties under the Act. Because I differ from the pecuniary penalty calculation methodology urged on me by the parties,[17] I abandon any expected judicial modesty.[18]

[16] Nonetheless, I accept — in circumstances in which penalty is agreed, to promote such negotiated resolution as being of public benefit — I need only ensure the penalty falls within a proper range.[19] My assessment of relevant factors to arrive at that range "will depend on the features of the specific legislative regime and what it is seeking to achieve".[20] In that respect, the Act's subsidiary purposes — to promote the confident and informed participation in markets for credit by consumers; and to promote and facilitate fair, efficient and transparent markets for credit[21] — also are material.

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15 *Commerce Commission v Telecom Corporation of New Zealand Ltd* [2011] NZCCLR 19 (HC) at [6].

16 Sentencing Act 2002, s 8.

17 I appreciated counsel's indulgence of, and constructive response to, my unheralded alternative.

18 Compare *Financial Markets Authority v ANZ Bank New Zealand Ltd* [2021] NZHC 399 at [36].

19 *Commerce Commission v Alstom Holdings SA* [2009] NZCCLR 22 (HC) at [18], referring to *NW Frozen Foods v ACCC* (1996) 71 FCR 285 and *Commerce Commission v Koppers Arch Wood Protection (NZ) Ltd* (2006) 11 TCLR 581.

20 Law Commission *Pecuniary Penalties: Guidance for Legislative Design* (NZLC R133, 2014) at [16.50].

21 Credit Contracts and Consumer Finance Act, s 3(2)(a) and (b).

[17] The relevant matters for my consideration expressly include the nature and extent of the bank's contraventions.[22] As I have said,[23] the extent to which any of the bank's credit or default fees were not "unreasonable" was wholly coincidence. None of the bank's 35 such fees was established by reference to reasonable compensation to the bank for the costs (including losses) incurred by it in provision of the service for which the fee relates, according to reasonable standards of commercial practice. As a matter of fact, 12 fees recovered more than such reasonable compensation.[24] As such, each of those 12 fees is the bank's persistent contravention for many years. Only the bank's inadvertence saves it from the most serious end of the penalty spectrum.

[18] The bank's contraventions caused loss and damage to be suffered by more than 42,000 customers,[25] ultimately quantified by the bank's $6 million refund, being an average loss of over $140 to each consumer borrower (including some in default). The information available to me does not permit substantially better overall description. But I set out at the schedule to this judgment an extract from the Commission's submissions, illustrating the impact of the bank's overcharging on a more granular level. On the other hand, the bank's refund is accepted wholly to have disgorged any gain from its contraventions,[26] including neutralising the impact of customers' losses.

[19] The bank's inadvertence also provides the circumstances in which the contravention took place.[27] Yet it is inadvertence which the Act intended to avoid, by requiring compliance with its provisions. And those were provisions of which the bank actually was aware, by reason of the bank's 11 December 2017 settlement with the Commission of errors in its calculation of fees charged for early termination of fixed term lending agreements over a period of some 11 years, which the Commission contended exceeded a reasonable estimate of the bank's relevant loss and were inappropriately calculated. The bank acknowledged those credit fees likely breached

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22 Section 107A(2)(b).

23 At [8] above.

24 For example, the bank overcharged some $980,000 by a $10 credit fee for provision of a service for which reasonable compensation only was 60 cents. Nearly $580,000 was charged by a $12 default fee for provision of a service for which no compensation was payable. And nearly $420,000 was overcharged by a $2.50 credit fee for provision of a service for which de minimis compensation was payable.

25 Credit Contracts and Consumer Finance Act, s 107A(2)(c).

26 Section 107A(2)(d).

27 Section 107A(2)(e).

s 41 as being "unreasonable", and committed to their compliant recalculation and refund. On its face, such should have been an unambiguous prompt to the bank as a responsible lender to review the calculation of all its credit and default fees.[28]

[20] The bank's contraventions, while not the overtly intentional consequence of the bank's conduct, thus are open to characterisation as being reckless: by its acknowledgment, the bank recognised there was a real possibility at least its early termination fees contravened s 41, and — having regard to that risk, in light of its responsible lender obligations — fee-setting without regard for s 41 was unreasonable.[29] For the bank, Stephen Hunter KC resisted any suggestion the bank was reckless. I agree. Only its contraventions are open to that characterisation: as admitted, "set[ting] the amounts of its credit and default fees … without due regard to what was needed to comply" with the Act. None of s 107A(2)(e)'s references to contraventions as "intentional, inadvertent, or caused by negligence" quite captures the bank's conduct here. Negligence connotes breaches of a legal duty of care to the person harmed. Its application in a regulatory context is not straightforward.[30] Despite s 9C(2)(a)'s requirement for "care", I do not think the bank's contraventions can be said 'careless'. To the contrary, the bank established its impugned fees on a careful basis,[31] albeit without regard for its obligations under the Act. 'Reckless' is the better characterisation of the bank's contraventions.

[21] In the spectrum of conduct to which s 107A applies, having regard for the Act's purposes, s 41 breaches may be thought particularly serious. They strike directly at the Act's objective of establishing efficient, fair and transparent credit and default fees under consumer credit contracts between creditors and responsible lenders.[32] (So too may breaches of pt 2's sub-pt 6A (relating to debtors under high-cost consumer credit contracts), or of a court's ss 98A or 98B orders.) Section 9C(1) breaches going to the bank's governance, to the extent distinct from the s 41 breaches,[33] may be thought at

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28 The Commission emphasises in its submissions the wealth of information available to the bank to guide its compliance with the Act. While that is true, I have reservations if such availability is a material factor in determining the bank's liability: if the Act applies, the bank necessarily is to be taken to know of it.

29 *Cameron v R* [2017] NZSC 89, [2018] 1 NZLR 161 at [73]–[77].

30 *Drive NZ Classic Ltd v Low Volume Vehicle Technical Association Inc* [2022] NZSC 146 at [6].

31 See [7] above.

32 Credit Contracts and Consumer Finance Act, s 3(2)(b)–(c) and 3(3)(a) and (c).

33 See s 107A(5).

a lower (but still significant) level of seriousness. (Similarly, s 107A's other governance-type conduct.) Such division likely reflects general deterrence as weighted by the Act's purposes, where any lesser gravity may be supplemented by the contravener's greater culpability.

—the maximum penalty?

[22] I am reluctant to draw too close a comparison with pecuniary penalty ranges under the Financial Markets Conduct Act 2013, as the parties urge. That principally is because I am not aware of any penalty for corporate contravention imposed under its s 490(3), which engages a comparable maximum pecuniary penalty of $600,000. The cases to which the parties refer instead rely either on case-specific derivative maxima, or a default $5 million maximum pecuniary penalty for corporate contravention.[34] As the 2013 Act makes clear, those pecuniary penalties are intended deliberately to be located within a range defined by the contravener's financial size or gain.[35] Conversely, here, penalties are to be located within the $600,000 range specified in the 2003 Act. A contravener's financial size or gain only may be informative of where in that range a pecuniary penalty sits.

[23] Sentencing orthodoxy also is to "take into account the seriousness of the type of offence in comparison with other types of offences, as indicated by the maximum penalties prescribed for the offences",[36] which would suggest contraventions attracting s 107A penalties were materially less serious than those under the 2013 Act's s 490(1)(c). The gap cannot logically be made up by the parties' methodology of taking an aggregate maximum pecuniary penalty here of $7.8 million, calculated across 13 contraventions. Alignment of pecuniary penalties across the respective regimes by their comparative financial value is not in itself informative of any sentencing purpose.

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34 *Financial Markets Authority v ANZ Bank New Zealand Ltd*, above n 18, at [41] ($5 million); *Financial Markets Authority v AIA New Zealand Ltd* [2022] NZHC 2444 at [56] ($5 million); *Financial Markets Authority v Cigna Life Insurance New Zealand Ltd* [2022] NZHC 3610 at [54] (at least $100 million); *Financial Markets Authority v Vero Insurance New Zealand Ltd* [2023] NZHC 2837 at [16] ($88.1 million); *Financial Markets Authority v Kiwibank Ltd* [2023] NZHC 2856 at [27] ($15 million); *Financial Markets Authority v Medical Assurance Society New Zealand Ltd* [2023] NZHC 3312, [2023] NZCCLR 14 at [31] (more than $209 million).

35 *Commerce Commission v Telecom Corporation of New Zealand Ltd* [2011] NZCCLR 19 (above n 15) at [57].

36 Sentencing Act, s 8(b).

[24] Accordingly, the first step in the parties' proposed methodology — of establishing the maximum penalty, as derived from other pecuniary penalty regimes commencing with s 80 of the Commerce Act 1986 — has no application under the 2003 Act. The maximum pecuniary penalty here is prescribed at $600,000.[37] The usual sentencing two-step then applies,[38] to which I now turn.

—*starting point*

[25] Within the Act's $600,000 pecuniary penalty range, leaving five per cent margins at either end for outlying conduct, progressive 30 per cent bands would accommodate contraventions of low (six–35 per cent), moderate (36–65 per cent) and high (66–95 per cent) seriousness. In hindsight, such banding also may accommodate results (and starting points) observed in other pecuniary penalty regimes.[39]

[26] For the reasons I have explained at [20]–[21] above, I consider the bank's long-term charging of unreasonable credit and default fees to be of high gravity, for which the bank is moderately culpable. I locate the bank's s 41 offending overall toward the higher end of the moderate band, in a range of 55–60 per cent of the $600,000 maximum: say, $330,000–$360,000. As required to be a responsible lender, the bank bears higher culpability for its slightly less grave conduct otherwise in breach of s 9C(1): say, on balance, in the same range. I consider the bank's conduct in those respects to be comparable to the "'serious, systemic deficiencies in complying with a multiplicity of obligations under the Act' in circumstances showing a disregard of the Act's requirements" elsewhere obtaining pecuniary penalties in a 50–70 per cent range of the available maximum.[40]

[27] No particular distinction is drawn between the 12 s 41 contraventions. Straight multiplication (and addition of the s 9C(1) range) derives a total pecuniary penalty range of $4.3 million–$4.7 million. Such arithmetic accommodates cumulative and concurrent penalties. As may be seen from s 41's articulation, on one view, the bank breached s 41 every time a consumer credit contract provided an unreasonable credit

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37 Credit Contracts and Consumer Finance Act, s 107A.
38 See [12] above.
39 *Financial Markets Authority v ANZ Bank New Zealand Ltd*, above n 18, at [80].
40 At [80(a)(i)], referring to *Department of Internal Affairs v Ping An Finance (Group) New Zealand Co Ltd* [2017] NZHC 2363, [2018] 2 NZLR 552 at [6].

or default fee. The schedule to this judgment illustrates there were over 2.2 million such occasions. The Commission advised over 450,000 of them occurred during the period for which pecuniary penalties are available. Given the fees separately were determined by published incorporation, calculation of concurrent penalties for each contravening fee "of a similar kind and … a connected series of [contraventions]", those cumulatively calculated as being "different in kind", meets sentencing guidance.[41]

[28] Some deduction then is required to avoid a total penalty "wholly out of proportion to the gravity of the overall offending".[42] Such proportionality also recognises the bank's comparative resource as a smaller and predominantly regional service provider. And specific deterrence has a role to play here, the bank's belated but self-motivated regularisation of its credit and default fees indicating the need for its own deterrence is diminished. I will apply an approximate 10 per cent discount for totality, to arrive at a starting point range of $3.9 million–$4.2 million. I acknowledge that is marginally higher than the $3.8 million–$4.1 million range recommended by the Commission, and materially higher than the $3.5 million–$3.8 million range proposed by the bank. I prefer my regime-specific calculation.

—adjustment for individual circumstances

[29] I turn to the bank's particular circumstances.

[30] By a slender margin of benevolence, I accept there are no aggravating factors. I otherwise may have considered the bank's involvement of the Commission only in 2022 — after its review was completed, and the review's recommendations performed, in 2021 — to be aggravating. But no point is taken in this respect by the Commission, which presumably is attuned to any such insult, and I disregard it.

[31] The bank's admission of the Commission's alleged contraventions alone justifies a substantial discount, analogous to that 25 per cent allowed on an early

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41 Sentencing Act, s 84.

42 Section 85(2). While that relates to duration of cumulative terms of imprisonment, likely influenced by the backstop of mortality, the bank's capital also is not an infinite resource.

guilty plea.[43] For the Commission, Andrew Luck observed this Court has adopted a more nuanced acceptance of lesser deductions on account of admissions in a wider context of overall cooperation. Again, with some exceptions,[44] I agree. But that largely is so because the Court 'modestly' has been accepting the parties' agreed position,[45] even while noting greater deduction was available.[46] For myself, the counterfactual is fully-contested trial, including evidence from victims as s 107A(2)(c) anticipates. All the factors justifying the full 25 per cent discount:[47]

> [A]mong other things, the scale and complexity of the trial, the proximity of the plea to first appearance or to trial, the justification for any delay, the inevitability or otherwise of conviction, the benefits of not giving evidence for victims and witnesses, and the victim's experience of atonement following the offender's acceptance of responsibility…

then are as engaged under the Act as they may be under the Sentencing Act 2002.

[32] The bank's earlier confession to the Commission and comprehensive making of amends,[48] including by refunds to customers and establishment of appropriate internal processes, gives concrete reality to its accountability, rehabilitation and (to the extent a corporate entity can so be depicted) remorse.[49] As these arose on its own recognisance, rather than under regulatory scrutiny (when a lesser discount might be justified), I will allow a 10 per cent discount under this head (open to being offset if delayed reporting is aggravating).[50] And the bank's significant cooperation in the Commission's subsequent investigation also justifies a further five per cent discount.[51]

[33] I acknowledge that total 40 per cent discount is larger than the 30–35 per cent regularly approved by this Court in such circumstances,[52] although characterised only

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43 *Hessell v R* [2010] NZSC 135, [2011] 1 NZLR 607 at [45]; and *Moses v R* [2020] NZCA 296, [2020] 3 NZLR 583 at [23].

44 For example, *Financial Markets Authority v Kiwibank Ltd*, above n 34, at [36(c)].

45 For example, *Financial Markets Authority v Medical Assurance Society New Zealand Ltd*, above n 34, at [42]; *Financial Markets Authority v Vero Insurance New Zealand Ltd*, above n 34, at [39].

46 For example, *Financial Markets Authority v AIA New Zealand Ltd*, above n 34, at [112]; *Financial Markets Authority v Cigna Life Insurance New Zealand Ltd*, above n 34, at [69].

47 *Moses v R*, above n 43, at [23].

48 Sentencing Act, s 10.

49 *Kohu v R* [2023] NZCA 343 at [40].

50 See [30] above.

51 *N v R* [2024] NZCA 251 at [24]–[28].

52 For example, *Financial Markets Authority v Vero Insurance New Zealand Limited*, above n 34, at [38]–[39]; *Financial Markets Authority v Kiwibank Limited*, above n 34, at [36]–[37]; *Financial Markets Authority v Medical Assurance Society New Zealand Limited*, above n 34, at [37]–[42].

as "the maximum possible discount for steps taken *following* … self-report",[53] and draw further comfort from judicial recognition both those parties' quantifications may be thought parsimonious,[54] and a discount range up to 40 per cent is available.[55]

[34] The pecuniary penalty range here thus is reduced to $2.34 million–$2.52 million, which comfortably accommodates the parties' proposed $2.47 million pecuniary penalty. I will order it.

Result

[35] I:

(a) **declare** the bank breached ss 9C(1) and 41 of the Credit Contracts and Consumer Finance Act 2003 in the terms sought by the Commission's 29 May 2024 statement of claim; and

(b) under s 107A, **order** the bank pay to the Crown a pecuniary penalty in the amount of $2.47 million.

[36] By agreement between the parties, costs lie where they fell or fall.

—Jagose J

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53 *Financial Markets Authority v ANZ Bank New Zealand Limited*, above n 18, at [87] (emphasis added), referring to *Commerce Commission v Barfoot & Thompson Ltd* [2016] NZHC 3111 at [39], *Commerce Commission v Property Brokers Ltd* [2016] NZHC 2851 at [15] and *Commerce Commission v Unique Realty Ltd* [2016] NZHC 1064 at [46].

54 *Financial Markets Authority v AIA New Zealand Ltd*, above n 34, at [112], referring to *Reserve Bank of New Zealand v TSB Bank Ltd* [2021] NZHC 2241.

55 *Financial Markets Authority v Cigna Life Insurance New Zealand Limited*, above n 34, at [68]–[69].

Schedule: Extract from Commission's submissions

	Fee	Ended	Overcharge	Impact
1.	Transactional revolving credit (credit)	30 Sep 2018	$417,558	167,023 fees charged on 5,280 loan accounts
2.	Inactivity (credit)	26 Mar 2021	$72,110	7,211 fees charged
3.	Monthly revolving credit (credit)	31 Jul 2021	$980,259	104,284 fees charged on 3,701 loan accounts
4.	Ownership transfer and rearranged security (credit)	7 Sep 2021	$6,465	61 fees charged on 59 loan accounts
5.	Interest rate fixing (credit)	7 Sep 2021	$220,742	4,418 fees charged on 3,388 loan accounts
6.	First security discharge (credit)	7 Sept 2021	$347,248	10,486 fees charged on 10,453 loan accounts
7.	Monthly service (credit)	30 Oct 2021	$165,160	92,789 fees charged on 2,742 loan accounts
8.	Cash advance (credit)	2 Nov 2021	$157,460	141,856 fees charged on 9,639 credit card accounts
9.	Card replacement (credit)	2 Nov 2021	$93,344	13,127 fees charged on 8,847 credit card accounts
10.	Foreign currency conversion (credit)	2 Nov 2021	$259,958	1,623,111 fees charged on 25,016 credit card accounts
11.	Insurance arrears service (default)	7 Sep 2021	$33,360	997 fees charged on 528 loan accounts
12.	Late payment default (default)	2 Nov 2021	$579,786	48,313 fees charged