

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

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

COMMERCIAL PANEL

CIV 2021-404-

**UNDER THE CREDIT CONTRACTS AND CONSUMER FINANCE
ACT 2003 AND HIGH COURT RULE 4.24**

BETWEEN

[REDACTED] [REDACTED]
Howick, Auckland 2014, suing as a representative under
High Court Rule 4.24

FIRST PLAINTIFF

AND

[REDACTED]
[REDACTED] West Harbour,
Auckland 0618, suing as representatives under High Court
Rule 4.24

SECOND PLAINTIFFS

STATEMENT OF CLAIM

Dated: 25 June 2021

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[REDACTED]
[REDACTED] Mangere Bridge.
Auckland 2022, suing as representatives under High Court
Rule 4.24

THIRD PLAINTIFFS

[REDACTED]
[REDACTED] Red Beach,
Auckland 0932, suing as representatives under High Court
Rule 4.24

FOURTH PLAINTIFFS

[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
[REDACTED]
[REDACTED] Auckland 1050, suing as representatives under
High Court Rule 4.24

FIFTH PLAINTIFFS

AND **ANZ Bank New Zealand Limited**, an incorporated company
having its registered address at Ground Floor, ANZ Centre,
23-29 Albert Street, Auckland, 1010

FIRST DEFENDANT

AND **ASB Bank Limited**, an incorporated company having its
registered address at Level 2, ASB North Wharf, 12 Jellicoe
Street, Auckland 1010

SECOND DEFENDANT

STATEMENT OF CLAIM

The plaintiffs say:

1. PARTIES

Plaintiffs

- 1.1. The first plaintiff is [REDACTED]
- 1.2. The second plaintiffs are [REDACTED]
- 1.3. The third plaintiffs are [REDACTED]
- 1.4. The fourth plaintiffs are [REDACTED]
- 1.5. The fifth plaintiffs are [REDACTED]
- 1.6. At all material times the second plaintiffs (**ANZ representative plaintiffs**) were customers of the first defendant.
- 1.7. The ANZ representative plaintiffs sue the first defendant as representatives of a class of persons with the same interests in issues in this proceeding as set out in paragraph 2.42 below.
- 1.8. At all material times the first and third to fifth plaintiffs (**ASB representative plaintiffs**) were customers of the second defendant.
- 1.9. The ASB representative plaintiffs sue the second defendant as representatives of a class of persons with the same interests in issues in this proceeding as set out in paragraph 3.52 below.

Defendants

- 1.10. The first defendant is ANZ Bank New Zealand Limited (**ANZ**). ANZ:
 - (a) is an incorporated company having its registered address at Ground Floor, ANZ Centre, 23-29 Albert Street, Auckland, 1010;
 - (b) was incorporated on 23 October 1979;
 - (c) is a registered bank under the Reserve of New Zealand Bank Act 1989.

- 1.11. The second defendant is ASB Bank Limited (**ASB**). ASB:
- (a) is an incorporated company having its registered address at Level 2, ASB North Wharf, 12 Jellicoe Street, Auckland 1010;
 - (b) was incorporated on 16 August 1988;
 - (c) is a registered bank under the Reserve of New Zealand Bank Act 1989.

2. **BACKGROUND IN RELATION TO THE CLAIM AGAINST ANZ**

ANZ's conduct

- 2.1. ANZ's conduct at issue in this claim occurred between 30 May 2015 and 28 May 2016 (**ANZ Relevant Period**).
- 2.2. During the ANZ Relevant Period, ANZ provided, in trade, home loans and personal loans to individual debtors in New Zealand (**ANZ Borrowers**).
- 2.3. Some of the loans provided to ANZ Borrowers were consumer credit contracts to which the Credit Contracts and Consumer Finance Act 2003 (**CCCFA**) applies (**ANZ Loans**), because:
- (a) the ANZ Borrowers were natural persons;
 - (b) the credit was used, or intended to be used, wholly or predominantly for personal, domestic or household purposes;
 - (c) either:
 - (i) interest charges were or could be payable under the contracts;
 - (ii) credit fees were or could be payable under the contracts; and/or
 - (iii) a security interest was or could be taken under the contract entered into;
 - (d) ANZ was a creditor under the contract entered into; and
 - (e) ANZ carried on a business providing credit.

- 2.4. The terms of the ANZ Loans were recorded in consumer credit contracts and included:
- (a) the applicable interest rates;
 - (b) the terms of the contract; and
 - (c) the amount, number and frequency of repayments.
- 2.5. On various dates during the ANZ Relevant Period, ANZ made agreed changes to various ANZ Borrowers' ANZ Loans.
- 2.6. For some ANZ Borrowers, ANZ made agreed changes to the terms of their ANZ Loans on more than one occasion.
- 2.7. Pursuant to s 22 of the CCCFA, whenever ANZ made an agreed change to the terms of an ANZ Borrower's ANZ Loan, it was required to ensure that it provided that ANZ Borrower with disclosure of the full particulars of the change within the prescribed timeframe (**Variation Disclosure**).
- 2.8. During the ANZ Relevant Period, ANZ purported to provide ANZ Borrowers with Variation Disclosure by sending them Loan Variation Letters.
- 2.9. Some ANZ Borrowers received more than one Loan Variation Letter during the ANZ Relevant Period.
- 2.10. The Loan Variation Letters were generated by one of ANZ's computer systems called Frontline Tools.
- 2.11. Frontline Tools contained a calculator which automatically calculated the figures to be included in the Loan Variation Letters (**Calculator**).
- 2.12. Due to a coding error, in calculating the figures to be included in each Loan Variation Letter, the Calculator did not take into account any interest that had accrued on the relevant ANZ Loan, but had not yet been charged (the **Coding Error**).

2.13. As a result of the Coding Error, the Loan Variation Letters that ANZ sent to certain ANZ Borrowers during the ANZ Relevant Period contained incorrect information in respect of one or more of the following:

- (a) the total amount payable under the Loan;
- (b) the total amount of interest payable under the Loan;
- (c) the amount of the new regular payment;
- (d) the total number of payments to be made;
- (e) the date of final payment.

(Incorrect Information)

2.14. ANZ provided Loan Variation Letters containing Incorrect Information to all ANZ Borrowers whose ANZ Loans were subject to agreed changes during the ANZ Relevant Period, except for those ANZ Borrowers whose agreed changes took effect on the same day that the accrued interest was charged to their ANZ Loan balance (ANZ Borrowers who received Loan Variation Letters containing Incorrect Information regarding their ANZ Loans during the ANZ Relevant Period are referred to hereafter as **Affected ANZ Borrowers**).

The Coding Error is identified

2.15. In May 2016, as a result of customer complaints, ANZ identified the Coding Error.

2.16. ANZ has previously asserted that after identifying the Coding Error it promptly steps to fix it.

Particulars

- (i) The settlement agreement between ANZ and the Commerce Commission dated 2 March 2020 (the **ANZ Settlement Agreement**) records that after identifying the Coding Error, ANZ promptly took steps to fix it.

- (ii) On its website <https://www.anz.co.nz/comms/loan-calculator-issue/> ANZ states: “We fixed the loan calculator in May 2016”.
- (iii) Whether ANZ in fact took steps to fix the Coding Error, what steps it took and the effect of those steps on Affected ANZ Borrowers’ ANZ Loan balances are within the knowledge of ANZ.
- (iv) Further particulars will be provided following discovery.

Commerce Commission investigation and settlement

- 2.17. The Commerce Commission (**Commission**) is a body corporate established under s 8 of the Commerce Act 1986. Its functions include enforcement of the CCCFA.
- 2.18. On 19 June 2017, ANZ reported to the Commission that it had provided Affected ANZ Borrowers with Loan Variation Letters containing Incorrect Information during the ANZ Relevant Period.
- 2.19. In 2018 and 2019, ANZ sent letters to certain Affected ANZ Borrowers:
 - (a) informing them that ANZ had a problem with the loan calculator that set the repayments and term of their ANZ Loan which resulted in ANZ not including some interest that it was due to charge;
 - (b) informing them that payments had been made to their accounts in the amounts underpaid by them while their Loans were affected by the calculator problem;
 - (c) as applicable, attaching current loan details as at the date of the letters reflecting application of the payments referred to above;
 - (d) in some instances, attaching “historical information” being the information ANZ provided to the Affected ANZ Borrowers in the Loan Variation Letters, but including the interest that was left out as a result of the Coding Error (**Historical Information**).

(Calculator Problem Letters)

Particulars

- (i) The ANZ Settlement Agreement records that by no later than April 2019, ANZ had advised certain Affected ANZ Borrowers of the Incorrect Information.
- (ii) The affidavit of [REDACTED] referred to in paragraph 2.26(b) states that ANZ advised the “Affected Borrowers” of the Loan Variation Letters between 28 June 2018 and April 2019.
- (iii) The identities, number and proportion of Affected ANZ Borrowers who received Calculator Problem Letters, how those Borrowers were selected to receive the Calculator Problem Letters, when they received them, and the content of the individual Calculator Problem Letters is within the knowledge of ANZ and will be further particularised following discovery.

2.20. Also in 2018 and 2019, ANZ made payments to certain Affected ANZ Borrowers’ ANZ Loans totalling \$5,591,000 (**First Remediation Payment**).

Particulars

- (i) The ANZ Settlement Agreement records that ANZ provided some remediation to “Affected Borrowers” in the amount of \$5,591,000.
- (ii) On its website <https://www.anz.co.nz/comms/loan-calculator-issue/> ANZ says that, over 2018 to 2019 it “paid \$5.6m to customers who had consumer credit contracts”.
- (iii) The number and proportion of Affected ANZ Borrowers who received payments, when they received payments, the amounts of the payments they received, and how those amounts were calculated is within the knowledge of ANZ and will be further particularised following discovery.

2.21. Following review and analysis of ANZ’s information, the Commission decided to bring civil proceedings in the High Court against ANZ alleging that it had breached s 9C(2)(a)(iii) of the CCCFA by failing to exercise the care, diligence

and skill of a responsible lender in its subsequent dealings with Affected ANZ Borrowers in relation to the variation of their ANZ Loans by failing to take sufficient steps to ensure the Loan Variation Letters were correct.

2.22. On 2 March 2020, ANZ and the Commission agreed to resolve the Commission's anticipated High Court civil proceedings against ANZ and entered into the ANZ Settlement Agreement, pursuant to which:

- (a) ANZ admitted to the breach of s 9C(2)(a)(iii) alleged by the Commission;
- (b) the Commission accepted that the breach was inadvertent;
- (c) the parties agreed a court procedure by which to obtain a declaratory order confirming ANZ's breach of s 9C(2)(a)(iii) by consent;
- (d) ANZ agreed to make a payment towards the Commission's costs in relation to the investigation and litigation; and
- (e) ANZ agreed to pay "Affected Borrowers" a total of \$35,032,000, including the First Remediation Payment, in the manner provided for in the ANZ Settlement Agreement.

2.23. The rights of Affected ANZ Borrowers against ANZ in relation to the Loan Variation Letters containing Incorrect Information were not compromised by the ANZ Settlement Agreement.

2.24. Also on 2 March 2020, the Commission filed a statement of claim (**SOC**) in the High Court containing factual allegations materially identical to those set out in paragraphs 2.1 to 2.15 above and alleging that ANZ breached s 9C(2)(a)(iii).

2.25. On 6 March 2020, ANZ filed a statement of defence to the Commission's SOC in which it admitted the factual allegations materially identical to those set out in paragraphs 2.1 to 2.15 above and that it had breached s 9C(2)(a)(iii).

2.26. On 31 March 2020, the Commission filed:

- (a) an interlocutory application for a declaratory order on admission of facts pursuant to rule 15.15 of the High Court Rules (**Application**);

- (b) an affidavit of [REDACTED] in support of the Application;
- (c) a joint memorandum of counsel for the Commission and ANZ confirming that the Application was not opposed by ANZ.

2.27. On 2 April 2020, the High Court granted the Application and made a declaration that ANZ breached its obligations under s 9C(2)(a)(iii) of the CCCFA when Affected ANZ Borrowers varied their loans between 5 June 2015 and 28 May 2016.

2.28. Beginning in May 2020, ANZ sent certain Affected ANZ Borrowers letters informing them that after recent discussions with the Commission, ANZ agreed to make further payments in relation to the loan calculator problem and that their accounts had been credited (**2020 Calculator Problem Letters**).

Particulars

- (i) The identities, number and proportion of Affected ANZ Borrowers who received 2020 Calculator Problem Letters, how those Borrowers were selected to receive the 2020 Calculator Problem Letters, when they received them, and the content of the individual 2020 Calculator Problem Letters are within the knowledge of ANZ and will be further particularised following discovery.

2.29. Also beginning in May 2020, ANZ made payments to certain Affected ANZ Borrowers in accordance with the ANZ Settlement Agreement.

Particulars

- (i) The identities, number and proportion of Affected ANZ Borrowers who received payments in 2020, when they received payments, the amounts of the payments they received, and how those amounts were calculated are within the knowledge of ANZ and will be further particularised following discovery.

2.30. To date, ANZ has not made Variation Disclosure to any of the Affected ANZ Borrowers in relation to agreed changes made to their ANZ Loans during the ANZ Relevant Period.

Particulars

- (i) The Loan Variation Letters sent to Affected ANZ Borrowers did not comply with s 22 of the CCCFA.
- (ii) The Historic Information provided to certain Affected ANZ Borrowers with their Loan Problem Letters did not comply with s 22 and therefore did not constitute Variation Disclosure.
- (iii) ANZ has not subsequently provided or purported to provide the ANZ Affected Borrowers with Variation Disclosure in relation to agreed changes made to their ANZ Loans during the ANZ Relevant Period are within ANZ's knowledge and will be particularised following discovery.

The ANZ representative plaintiffs are Affected ANZ Borrowers

2.31. During the ANZ Relevant Period, the second plaintiffs had an ANZ Loan with ANZ.

Particulars

- (i) Before November 2015, the second plaintiffs obtained an ANZ Loan (account number is [REDACTED]) to fund their purchase of [REDACTED] West Harbour, Auckland 0618.
- (ii) The second plaintiffs fully repaid their ANZ Loan in 2019.
- (iii) The details of the second plaintiffs' ANZ Loan are within the knowledge of ANZ and will be further particularised following ANZ's response to a request by the second plaintiffs for that information.

2.32. During the ANZ Relevant Period, ANZ made agreed changes to the terms of the second plaintiffs' ANZ Loan.

Particulars

(i) On 23 November 2015, the second plaintiffs varied their ANZ Loan to fix their interest rate at 4.49% for a three-year period (the **Variation**).

(ii) The details of the all agreed changes made to the second plaintiffs' ANZ Loan during the ANZ Relevant Period are within the knowledge of ANZ and will be further particularised following ANZ's response to a request by the second plaintiffs for that information.

2.33. Each time that ANZ made agreed changes to the second plaintiffs' ANZ Loan, ANZ was required pursuant to s 22 of the CCCFA to provide the second plaintiffs with Variation Disclosure.

2.34. In relation to the Variation, ANZ purported to provide Variation Disclosure by sending the second plaintiffs a Loan Variation Letter dated 23 November 2015.

2.35. The Loan Variation Letter contained Incorrect Information.

Particulars

(i) The details as to which information in the Loan Variation Letter sent to the second plaintiffs is incorrect are within the knowledge of ANZ and will be further particularised following ANZ's response to a request by the second plaintiffs for that information.

2.36. On 30 January 2019, the second plaintiffs received a payment of \$917.32 from ANZ to their ANZ Loan.

2.37. On 1 February 2019, the second plaintiffs received a Calculator Problem Letter from ANZ.

Particulars

- (i) On 1 February 2019 the second plaintiffs received a Calculator Problem Letter from ANZ headed “Your ANZ Home Loan has been affected by a calculator problem – here’s how we’re putting it right’.
- (ii) The Loan Calculator Problem Letter:
 - (A) Stated that, when changing the second plaintiffs’ ANZ Loan back in 2015, ANZ had a problem with a loan calculator that set repayments and loan terms. As a result, ANZ did not include some interest it was due to charge on the ANZ Loan.
 - (B) Stated that ANZ had credited the second plaintiffs’ ANZ Loan with \$917.32 and there was nothing the second plaintiffs needed to do.
 - (C) Attached a current loan statement showing the application of the \$917.32 to the ANZ Loan.
 - (D) Attached Historical Information.

2.38. On 12 May 2020, the second plaintiffs received a payment of \$10.26 as part of the Total Remediation Payment.

2.39. On 13 May 2020, the second plaintiffs received a 2020 Calculator Problem Letter from ANZ.

Particulars

- (i) On 13 May 2020, the second plaintiffs received a 2020 Calculator Problem Letter from ANZ with the heading “We’ve paid you more for a loan calculator problem that affected your closed ANZ Home Loan”.
- (ii) The Letter informed the second plaintiffs that:
 - (A) after recent discussions with the Commission, ANZ had agreed to make a further payment of \$10.26 to the

second plaintiffs in relation to the loan calculator problem;

- (B) the payment had been credited to their account and would appear on their statement as “ANZ LOAN CALCULATOR CREDIT”; and
- (C) there was nothing they needed to do.

2.40. To date, ANZ has not provided the second plaintiffs with Variation Disclosure in relation to the Variation.

Particulars

- (i) The Loan Variation Letter dated 23 November 2015 did not comply with s 22 of the CCCFA, because it contained Incorrect Information. It therefore did not constitute Variation Disclosure.
- (ii) The Historical Information attached to the Calculator Problem Letter received by the second plaintiffs in February 2019 did not comply with s 22(1) of the CCCFA.
- (iii) ANZ has not provided or purported to provide the second plaintiffs with Variation Disclosure in relation to the Variation on any other occasion.

2.41. The second plaintiffs paid all interest and fees relating to their ANZ Loan charged by ANZ.

Particulars

- (i) The quantum and timing of fees and interest paid by the second plaintiffs is within the knowledge of ANZ and will be further particularised following ANZ’s response to a request by the second plaintiffs for that information.

The Affected ANZ Borrowers form a class of persons having the same interest in this proceeding

- 2.42. The Affected ANZ Borrowers form a class of persons having the same interest in this proceeding because they each received one or more Loan Variation Letters containing Incorrect Information after ANZ made agreed changes to the terms of their ANZ Loan(s) during the ANZ Relevant Period.
- 2.43. There are between approximately 86,000 and 101,000 Affected ANZ Borrowers.

Particulars

- (i) The ANZ Settlement Agreement records that a total of approximately 101,535 ANZ Borrowers received a Loan Variation Letter from ANZ during the ANZ Relevant Period that contained Incorrect Information.
- (ii) In public statements made in March 2020 ANZ said that around 86,000 customers would receive further payments as a result of the ANZ Settlement Agreement.
- (iii) On its website <https://www.anz.co.nz/comms/loan-calculator-issue/> ANZ says that payments pursuant to the ANZ Settlement Agreement would be made to customers with consumer credit contracts.
- (iv) The identities and number of Affected ANZ Borrowers is within the knowledge of ANZ and will be further particularised following discovery.

3. BACKGROUND IN RELATION TO CLAIM AGAINST ASB

ASB's conduct

- 3.1. ASB's conduct at issue in this claim occurred between 6 June 2015 and 18 June 2019 (**ASB Relevant Period**).
- 3.2. During the ASB Relevant Period, ASB provided, in trade, home loans and personal loans to individual debtors in New Zealand (**ASB Borrowers**).
- 3.3. Some of the loans provided to ASB Borrowers were consumer credit contracts to which the CCCFA applies (**ASB Loans**), because:
 - (a) the ASB Borrowers were natural persons;
 - (b) the credit was used, or intended to be used, wholly or predominantly for personal, domestic or household purposes;
 - (c) either:
 - (i) interest charges were or could be payable under the contracts;
 - (ii) credit fees were or could be payable under the contracts; and/or
 - (iii) a security interest was or could be taken under the contract entered into;
 - (d) ASB was a creditor under the contract entered into; and
 - (e) ASB carried on a business providing credit.
- 3.4. The terms of the ASB Loans were recorded in consumer credit contracts and included:
 - (a) the applicable interest rates;
 - (b) the terms of the contract; and
 - (c) the amount, number and frequency of repayments.

3.5. On 6 June 2015, ASB implemented a new standard operating procedure (**SOP**) which allowed staff in ASB branches and in the ASB call centre to make changes to the following terms of ASB Loans when requested to do so by ASB Borrowers:

- (a) repayment dates;
- (b) repayment amounts; and
- (c) repayment frequency.

(Relevant Variations)

3.6. To ensure compliance with s 22 of the CCCFA, the SOP provided for ASB staff actioning requests from ASB Borrowers for Relevant Variations to immediately prepare and issue Variation Disclosure.

3.7. On review, ASB identified that it could not confirm that the SOP was consistently followed and that a number of ASB Borrowers were not provided with Variation Disclosure when they requested Relevant Variations to their ASB Loans during the ASB Relevant Period (**Affected ASB Borrowers**).

3.8. Some Affected ASB Borrowers requested Relevant Variations to their ASB Loans more than once during the ASB Relevant Period.

3.9. ASB has previously asserted that by 18 June 2019 it had updated its policies, processes and procedures to ensure that all ASB Borrowers who request Relevant Variations receive Variation Disclosure.

Particulars

- (i) The settlement agreement between ASB and the Commerce Commission dated 23 February 2021 (**ASB Settlement Agreement**) records that ASB advised the Commission that it has updated its policies, processes and procedures to ensure that all customers who request a change to their repayment date, amount or frequency receive Variation Disclosure.

- (ii) The ASB Relevant Period, defined as the “Relevant Period” in the ASB Settlement Agreement, ends on 18 June 2019.
- (iii) Whether and if so when and how ASB in fact updated its policies and procedures as asserted and the efficacy of ASB’s current policies and procedures in this regard are within the knowledge of ASB and will be further particularised following discovery.

Commission investigation and settlement

- 3.10. In September 2019, ASB reported its failure to provide Affected ASB Borrowers with Variation Disclosure during the ASB Relevant Period to the Commission.
- 3.11. On 23 February 2021, the Commission and ASB agreed to resolve the matter by entering into the ASB Settlement Agreement, pursuant to which:
 - (a) ASB admitted that it breached s 9C(2)(a)(iii) of the CCCFA by failing to ensure that its systems, processes and procedures were sufficient to ensure that Variation Disclosure was consistently provided as required during the ASB Relevant Period. It also admitted that during some of the ASB Relevant Period it failed to have appropriate controls in place to promptly identify this failure and rectify it within a reasonable period.
 - (b) ASB agreed to pay \$8,123,394 to Affected ASB Borrowers with:
 - (i) \$68 to be paid to each Affected ASB Borrower identified by ASB and notified to the Commission as having entered into an ASB Loan before 6 June 2015 and requested and obtained at least one Relevant Variation after 6 June 2015 (**Cohort A**);
 - (ii) \$135 to be paid to each Affected ASB Borrower identified by ASB and notified to the Commission as having entered into an ASB Loan after 5 June 2015 and requested and obtained at least one Relevant Variation (**Cohort B**).
- 3.12. The rights of Affected ASB Borrowers against ASB in relation ASB’s failure to provide them with Variation Disclosure in relation to Relevant Variations made

to their ASB Loans during the ASB Relevant Period were not compromised by the Settlement Agreement.

3.13. Beginning in or around May 2021, ASB sent emails and/or letters to certain Affected ASB Borrowers:

- (a) recording that they previously requested changes to one or more of their ASB Loans;
- (b) informing them that when ASB actioned their requests, it may not have given them written confirmation of the changes to their ASB Loans as required under the CCCFA;
- (c) stating that ASB has updated its systems and processes to ensure each time an ASB Borrower asks to make a change to their ASB Loan they will receive written confirmation of the details of the change;
- (d) informing them that, in recognition that written confirmation may not have been provided when required, ASB has made a payment to their account.

(ASB Emails)

Particulars

- (i) The identities, number and proportion of Affected ASB Borrowers who received ASB Emails, how those Borrowers were selected to receive the ASB Emails, when they received them, and the content of the individual ASB Emails are within the knowledge of ASB and will be further particularised following discovery.

3.14. Also beginning in or around May 2021, ASB made payments to certain Affected ASB Borrowers in accordance with the ASB Settlement Agreement.

Particulars

- (i) The identities, number and proportion of Affected ASB Borrowers who received payments, how those Borrowers were selected to receive the payments, when the payments were received, the

amount of the payments received by each Borrower, and the basis on which the amounts paid to Cohort A and B respectively were calculated are within the knowledge of ASB and will be further particularised following discovery.

- 3.15. To date, ASB has not made Variation Disclosure to any Affected ASB Borrowers in relation to Relevant Variations made to their ASB Loans during the ASB Relevant Period.

The ASB representative plaintiffs are Affected ASB Borrowers

First plaintiff

- 3.16. The first plaintiff has been a customer of ASB since approximately 1993.
- 3.17. During the ASB Relevant Period, the first plaintiff had an ASB Loan.

Particulars

- (i) In or around November 2014, the first plaintiff obtained an ASB Loan (account number [REDACTED]) in the amount of \$555,509.86 to fund his purchase of [REDACTED] Howick, Auckland 2014.
- (ii) The first plaintiff fully repaid his ASB Loan on or around 8 June 2018 when he sold [REDACTED]
- (iii) The details of the first plaintiff's ASB Loan are within the knowledge of ASB and will be further particularised following ASB's response to a request by the first plaintiff for that information.
- 3.18. During the ASB Relevant Period, the first plaintiff requested and ASB made Relevant Variations to the first plaintiff's ASB Loan.

Particulars

- (i) By 8 June 2018, the first plaintiff had split his ASB Loan into 5 sub-loans, with the account suffixes 006, 007, 008, 011 and 013.

- (ii) The details of the Relevant Variations made to the first plaintiff's ASB Loan during the ASB Relevant Period are within the knowledge of ASB and will be further particularised following ASB's response to a request by the first plaintiff for that information.
- 3.19. Each time that ASB made Relevant Variations to the first plaintiff's ASB Loan, ASB was required pursuant to s 22 of the CCCFA to provide the first plaintiff with Variation Disclosure.
- 3.20. ASB did not provide the first plaintiff with Variation Disclosure in relation to Relevant Variations made to the his ASB Loan during the ASB Relevant Period.
- 3.21. On 27 April 2021, the first plaintiff received a credit of \$135.00 to his account marked "ASB Credit".
- 3.22. On 28 April 2021, the first plaintiff received an ASB Email from ASB.

Particulars

- (i) On 28 April 2021, the second plaintiff received an email from ASB with the subject line and heading "An important message about your account" to his email address and [REDACTED]
- (ii) The ASB Email stated that:
 - (A) The first plaintiff previously varied one or more of his loans linked to his ASB Loan.
 - (B) ASB actioned his requests for changes, but at the time may not have given him written confirmation of the changes as required under the CCCFA.
 - (C) ASB has updated its systems and processes to ensure that each time he makes a change to his loan he will receive written confirmation of the details of the change.

(D) ASB made a payment to his account of \$135.00 on 27 April 2021 which would appear on his statement as ASB Credit.

(E) There was nothing the first plaintiff needed to do.

3.23. To date, ASB has not provided the first plaintiff with Variation Disclosure in relation to the Relevant Variations agreed and made to the his ASB Loan during the ASB Relevant Period.

Particulars

(i) ASB did not provide the first plaintiff with Variation Disclosure within the timeframe prescribed by s 22.

(ii) The ASB Email received by the first plaintiff on 28 April 2021 did not contain Variation Disclosure.

(iii) ASB has not subsequently provided or purported to provide the first plaintiff with Variation Disclosure in relation to the Relevant Variations made to the his ASB Loan during the ASB Relevant Period.

3.24. The first plaintiff paid all interest and fees in relation to his ASB Loan charged by ASB.

Particulars

(i) The quantum and timing of fees and interest paid by the first plaintiff is within the knowledge of ASB and will be further particularised following ASB's response to a request by the first plaintiff for that information.

Third plaintiffs

3.25. The third plaintiffs have been customers of ASB since approximately 2001.

3.26. During the ASB Relevant Period, the third plaintiffs had an ASB Loan.

Particulars

- (i) In or around 2001, the third plaintiffs obtained an ASB Loan (account number [REDACTED]) to fund the purchase of [REDACTED] Mangere Bridge, Auckland 2022.
- (ii) The details of the third plaintiffs' ASB Loan are within the knowledge of ASB and will be further particularised following ASB's response to a request by the third plaintiffs for that information.

3.27. During the ASB Relevant Period, the third plaintiffs requested and ASB made Relevant Variations to the third plaintiffs' ASB Loan.

Particulars

- (i) The third plaintiffs' ASB Loan is currently split into four sub-loans with the account suffixes 15, 18, 21 and 00.
- (ii) The details of the Relevant Variations made to the third plaintiffs' ASB Loan during the ASB Relevant Period are within the knowledge of ASB and will be further particularised following ASB's response to a request by the third plaintiffs for that information.

3.28. Each time that ASB made Relevant Variations to the third plaintiffs' ASB Loan, ASB was required pursuant to s 22 of the CCCF to provide the third plaintiffs with Variation Disclosure.

3.29. ASB did not make Variation Disclosure to the third plaintiffs in relation to Relevant Variations made to the third plaintiffs' ASB Loan during the ASB Relevant Period.

3.30. On 6 May 2021, the third plaintiffs received a credit of \$68.00 to their account marked "ASB Credit".

3.31. On 6 May 2021, the third plaintiffs each received an ASB Email from ASB.

Particulars

(i) On 6 May 2021, the third plaintiffs each received an email from ASB with the subject line and heading “An important message about your account” to their email addresses

(ii) The ASB Emails stated that:

(A) The third plaintiffs previously varied one or more of their loans linked to their ASB Loan.

(B) ASB actioned their requests for changes, but at the time may not have given them written confirmation of the changes as required under the CCCFA.

(C) ASB has updated its systems and processes to ensure that each time they make a change to their loan they will receive written confirmation of the details of the change.

(D) ASB made a payment to their account of \$68.00 on 27 April 2021 which would appear on their statement as ASB Credit.

(E) There was nothing the third plaintiffs needed to do.

3.32. To date, ASB has not provided the third plaintiffs with Variation Disclosure in relation to the Relevant Variations agreed and made to the their ASB Loan during the ASB Relevant Period.

Particulars

(i) ASB did not provide the third plaintiffs with Variation Disclosure within the timeframe prescribed by s 22.

(ii) The ASB Emails received by the third plaintiffs on 6 May 2021 did not contain Variation Disclosure.

- (iii) ASB has not subsequently provided or purported to provide the third plaintiffs with Variation Disclosure in relation to the Relevant Variations made to the his ASB Loan during the ASB Relevant Period.

3.33. The third plaintiffs have paid and are paying all interest and fees on their ASB Loan charged by ASB.

Particulars

- (i) The quantum and timing of fees and interest paid by the third plaintiffs is within the knowledge of ASB and will be further particularised following ASB's response to a request by the third plaintiffs for that information.

Fourth plaintiffs

3.34. The fourth plaintiffs have been customers of ASB since a least 2012.

3.35. During the ASB Relevant Period, the fourth plaintiffs had an ASB Loan.

Particulars

- (i) In February 2012, the fourth plaintiffs obtained an ASB Loan (account number [REDACTED]) to fund the purchase of [REDACTED] Kingsland, Auckland 1021.
- (ii) The details of the fourth plaintiffs' ASB Loan are set out in the Loan Agreement signed by them dated 7 February 2012.

3.36. During the ASB Relevant Period, the fourth plaintiffs requested and ASB made Relevant Variations to the fourth plaintiffs' ASB Loan.

Particulars

- (i) At an unknown point in time, the account number for the fourth plaintiffs' ASB Loan changed from [REDACTED]

- (ii) The details of the Relevant Variations made to the fourth plaintiffs' ASB Loan during the ASB Relevant Period are within the knowledge of ASB and will be further particularised following ASB's response to a request by the fourth plaintiffs for that information.
- 3.37. Each time that ASB made Relevant Variations to the fourth plaintiffs' ASB Loan, ASB was required pursuant to s 22 of the CCCFA to provide the fourth plaintiffs with Variation Disclosure.
- 3.38. ASB did not make Variation Disclosure to the fourth plaintiffs in relation to Relevant Variations made to the fourth plaintiffs' ASB Loan during the ASB Relevant Period.
- 3.39. On 27 April 2021, the fourth plaintiffs received a credit of \$135.00 to their account marked "ASB Credit".
- 3.40. On 28 April 2021, one of the fourth plaintiffs, Mr Bickerdike, received an ASB Email from ASB.

Particulars

- (i) On 28 April 2021, [REDACTED] received an email from ASB with the subject line and heading "An important message about your account" to his email address [REDACTED]
- (ii) The ASB Email stated that:
 - (A) The fourth plaintiffs previously varied one or more of their loans linked to their ASB Loan.
 - (B) ASB actioned their requests for changes, but at the time may not have given them written confirmation of the changes as required under the CCCFA.
 - (C) ASB has updated its systems and processes to ensure that each time they make change to their loan they will receive written confirmation of the details of the change.

(D) ASB made a payment to their account of \$135.00 on 27 April 2021 which would appear on their statement as ASB Credit.

(E) There was nothing the fourth plaintiffs needed to do.

3.41. To date, ASB has not provided the fourth plaintiffs with Variation Disclosure in relation to the Relevant Variations agreed and made to the their ASB Loan during the ASB Relevant Period.

Particulars

(i) ASB did not provide the fourth plaintiffs with Variation Disclosure within the timeframe prescribed by s 22.

(ii) The ASB Email received by [REDACTED] on 28 April 2021 did not contain Variation Disclosure.

(iii) ASB has not subsequently provided or purported to provide the fourth plaintiffs with Variation Disclosure in relation to the Relevant Variations made to the their ASB Loan during the ASB Relevant Period.

3.42. The fourth plaintiffs paid all interest and fees on their ASB Loan charged by ASB.

Particulars

(i) The quantum and timing of fees and interest paid by the fourth plaintiffs is within the knowledge of ASB and will be further particularised following ASB's response to a request by the fourth plaintiffs for that information.

Fifth plaintiffs

3.43. The fifth plaintiffs have been customers of ASB since at least 2017.

3.44. During the ASB Relevant Period, the fifth plaintiffs had an ASB Loan.

Particulars

- (i) In October 2017, the fifth plaintiffs obtained an ASB Loan (account number [REDACTED]) to fund the purchase of [REDACTED] Remuera, Auckland 1050.
- (ii) The details of the fifth plaintiffs' ASB Loan are within the knowledge of ASB and will be further particularised following ASB's response to a request by the fifth plaintiffs for that information

3.45. During the ASB Relevant Period, the fifth plaintiffs requested and ASB made Relevant Variations to the fifth plaintiffs' ASB Loan.

Particulars

- (i) The details of the Relevant Variations made to the fifth plaintiffs' ASB Loan during the ASB Relevant Period are within the knowledge of ASB and will be further particularised following ASB's response to a request by the fifth plaintiffs for that information.

3.46. Each time that ASB made Relevant Variations to the fifth plaintiffs' ASB Loan, ASB was required pursuant to s 22 of the CCCFA to provide the fourth plaintiffs with Variation Disclosure.

3.47. ASB did not make Variation Disclosure to the fifth plaintiffs in relation to Relevant Variations made to the fifth plaintiffs' ASB Loan during the ASB Relevant Period.

3.48. On 6 May 2021, the fifth plaintiffs received a credit of \$135.00 to their account marked "ASB Credit".

3.49. Also on 6 May 2021, one of the fourth plaintiffs, [REDACTED] received an ASB Email from ASB.

Particulars

- (i) On 6 May 2021, [REDACTED] received an email from ASB with the subject line and heading "An important message about your account" to his email address [REDACTED]

- (ii) The ASB Email stated that:
 - (F) The fifth plaintiffs previously varied one or more of their loans linked to their ASB Loan.
 - (G) ASB actioned their requests for changes, but at the time may not have given them written confirmation of the changes as required under the CCCFA.
 - (H) ASB has updated its systems and processes to ensure that each time they make changes to their loan they will receive written confirmation of the details of the change.
 - (I) ASB made a payment to their account of \$135.00 on 6 May 2021 which would appear on their statement as ASB Credit.
 - (J) There was nothing the fifth plaintiffs needed to do.

3.50. To date, ASB has not provided the fifth plaintiffs with Variation Disclosure in relation to the Relevant Variations agreed and made to the their ASB Loan during the ASB Relevant Period.

Particulars

- (i) ASB did not provide the fifth plaintiffs with Variation Disclosure within the timeframe prescribed by s 22.
- (ii) The ASB Email received by [REDACTED] on 6 May 2021 did not contain Variation Disclosure.
- (iii) ASB has not subsequently provided or purported to provide the fifth plaintiffs with Variation Disclosure in relation to the Relevant Variations made to the their ASB Loan during the ASB Relevant Period.

3.51. The fifth plaintiffs have paid and are paying all interest and fees on their ASB Loan charged by ASB.

Particulars

- (i) The quantum and timing of fees and interest paid by the fifth plaintiffs is within the knowledge of ASB and will be further particularised following ASB's response to a request by the fifth plaintiffs for that information.

The Affected ASB Borrowers form a class of persons having the same interest in this proceeding

- 3.52. The Affected ASB Borrowers form a class of persons having the same interest in this proceeding because they each have not received Variation Disclosure in relation to Relevant Variations agreed and made to their ASB Loans during the ASB Relevant Period.
- 3.53. There are approximately 73,120 Affected ASB Borrowers, including:
 - (a) 26,088 in Cohort A; and
 - (b) 47,032 in Cohort B.

Particulars

- (i) The ASB Settlement Agreement records that there are 26,088 Affected ASB Borrowers in Cohort A and 47,032 Affected ASB Borrowers in Cohort B.
- (ii) The identities and number of Affected ASB Borrowers is within the knowledge of ASB and will be further particularised following discovery.

4. FIRST CAUSE OF ACTION - BY ANZ PLAINTIFFS AGAINST ANZ – BREACH OF SECTION 22 OF THE CCCFA

The ANZ representative plaintiffs repeat sections 1 and 2 above and say:

- 4.1. On each occasion that ANZ agreed to change one or more terms of the ANZ representative plaintiffs' and the other Affected ANZ Borrowers' ANZ Loans, ANZ was required to provide the ANZ representative plaintiffs and the other

Affected ANZ Borrowers with Variation Disclosure in accordance with s 22 of the CCCFA.

- 4.2. During the ANZ Relevant Period, ANZ purported to provide the ANZ representative plaintiffs and the other Affected ANZ Borrowers with Variation Disclosure by providing them with Loan Variation Letters.
- 4.3. The Loan Variation Letters received by ANZ representative plaintiffs and by the other Affected ANZ Borrowers contained Incorrect Information.
- 4.4. Because of the Incorrect Information, the Loan Variation Letters received by the ANZ representative plaintiffs and the other Affected ANZ Borrowers did not comply with s 22 and therefore did not constitute Variation Disclosure.
- 4.5. To date, ANZ has not provided the ANZ representative plaintiffs or the other Affected ANZ Borrowers with Variation Disclosure in relation to the agreed changes to their ANZ Loans made during the ANZ Relevant Period.
- 4.6. Pursuant to s 99(1A) of the CCCFA, the ANZ representative plaintiffs and the other Affected ANZ Borrowers were and are not liable for credit fees, default fees or interest charges (**costs of borrowing**) in relation to the period during which ANZ failed and is failing to comply with s 22 (**ANZ Breach Period**).
- 4.7. To the extent that the ANZ representative plaintiffs and the other Affected ANZ Borrowers paid costs of borrowing in relation to the ANZ Breach Period (**ANZ Breach Period Payments**), ANZ was not and is not entitled to receive or retain those amounts.
- 4.8. Pursuant to s 48 of the CCCFA, ANZ was and is required to refund the ANZ Breach Period Payments to the ANZ representative plaintiffs and the other Affected ANZ Borrowers, or to credit them against amounts otherwise owing by them, as soon as practicable.
- 4.9. In breach of s 48, ANZ has not fully refunded or credited the ANZ Breach Period Payments made by the ANZ representative plaintiffs or the other Affected ANZ Borrowers and continues to receive them.

- 4.10. The ANZ representative plaintiffs and the other Affected ANZ Borrowers have suffered loss or damage by ANZ's conduct in failing to fully refund or credit the ANZ Breach Period Payments in breach of s 48.

Claim for relief

The ANZ representative plaintiffs seek against ANZ:

- (a) a declaration that the Loan Variation Letters received by them and by the other Affected ANZ Borrowers did not comply with s 22 of the CCCFA;
- (b) a declaration that ANZ breached s 48 by failing to fully refund or credit the ANZ Breach Period Payments to the ANZ representative plaintiffs and to the other Affected ANZ Borrowers;
- (c) a declaration that where a breach of s 22 is established, triggering ss 99(1A) and 48, and a defendant has not complied in full with s 48, a plaintiff is entitled to orders under s 94(1)(a) requiring the defendant to refund or credit all extant costs of borrowing received by it during the period it was in breach of s 22 (except to the extent that such costs of borrowing have already been refunded or credited) without any adjustment or discretion being applied;
- (d) orders pursuant to ss 93(a) and 94(1)(a) directing ANZ to fully refund or credit the ANZ Breach Period Payments to the ANZ representative plaintiffs and to other Affected ANZ Borrowers;
- (e) costs;
- (f) such other relief the Court sees fit.

5. SECOND CAUSE OF ACTION - BY THE ASB REPRESENTATIVE PLAINTIFFS AGAINST ASB – BREACH OF SECTION 22 OF THE CCCFA

The ASB representative plaintiffs repeat sections 1 and 3 above and say:

- 5.1. On each occasion that ASB made Relevant Variations to the ASB representative plaintiffs' and the other Affected ASB Borrowers' ASB Loans,

ASB was required to provide the ASB representative plaintiffs and the other Affected ASB Borrowers with Variation Disclosure in accordance with s 22 of the CCCFA.

- 5.2. In breach of s 22, ASB did not provide the ASB representative plaintiffs or other Affected ASB Borrowers with Variation Disclosure in relation to Relevant Variations made to their ASB Loans during the ASB Relevant Period.
- 5.3. To date, ASB has not provided the ASB representative plaintiffs or the other Affected ASB Borrowers with Variation Disclosure in relation to the Relevant Variations made to their ASB Loans during the ASB Relevant Period.
- 5.4. Pursuant to s 99(1A) of the CCCFA, the ASB representative plaintiffs and the other Affected ASB Borrowers were and are not liable for costs of borrowing in relation to the period during which ASB failed and is failing to comply with s 22 (**ASB Breach Period**).
- 5.5. To the extent that the ASB representative plaintiffs and the other Affected ASB Borrowers paid costs of borrowing in relation to the ASB Breach Period (**ASB Breach Period Payments**), ASB was and is not entitled to receive or retain those amounts.
- 5.6. Pursuant to s 48 of the CCCFA, ASB was and is required to refund the ASB Breach Period Payments to the ASB representative plaintiffs and the other Affected ASB Borrowers, or to credit them against amounts otherwise owing by them.
- 5.7. In breach of s 48, ASB has not fully refunded or credited the ASB Breach Period Payments made by the ASB representative plaintiffs or the other Affected ASB Borrowers.
- 5.8. The ASB representative plaintiffs and the other Affected ASB Borrowers have suffered loss or damage by ASB's conduct in failing to fully refund or credit the ASB Breach Period Payments in breach of s 48.

Claim for relief

- 5.9. The ASB representative plaintiffs seeks against ASB:
- (a) a declaration that ASB breached s 22 of the CCCFA by failing to provide the ASB representative plaintiffs and the other Affected ASB Borrowers with Variation Disclosure in relation to Relevant Variations made to their ASB Loans during the ASB Relevant Period;
 - (b) a declaration that ASB breached s 48 by failing to fully refund or credit the ASB Breach Period Payments to the ASB representative plaintiffs and the other Affected ASB Borrowers;
 - (c) a declaration that where a breach of s 22 is established, triggering ss 99(1A) and 48, and a defendant has not complied in full with s 48, a plaintiff is entitled to orders under s 94(1)(a) requiring the defendant to refund or credit all extant costs of borrowing received by it during the period it was in breach of s 22 (except to the extent that such costs of borrowing have already been refunded or credited) without any adjustment or discretion being applied;
 - (d) orders pursuant to ss 93(a) and 94(1)(a) directing ASB to fully refund or credit the ASB Breach Period Payments to the ASB representative plaintiffs and other Affected ASB Borrowers;
 - (e) costs;
 - (f) such other relief the Court sees fit.

This statement of claim is filed by **SCOTT EDWARD RUSSELL**, solicitor for the plaintiffs, of the firm Russell Legal. The address for service of the plaintiffs is at the offices of Russell Legal, Level 1, 40 Eden Crescent, Auckland 1010.

Documents for service on the plaintiffs may be emailed to the solicitor for the plaintiffs at scott.russell@russelllegal.co.nz.