IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

I TE KŌTI MATUA O AOTEAROA
TĀMAKI MAKAURAU ROHE

CIV-2021-404-119

ASB CCCFA REPRESENTATIVE PROCEEDING

NOTICE OF PROPOSED SETTLEMENT

This is an important notice issued by the High Court. You should read it if you had a home or personal loan with ASB between 6 June 2015 and 18 June 2019, as you may be a class member of the ASB CCCFA representative proceeding. The notice concerns a proposed settlement of the ASB CCCFA representative proceeding.

This notice may affect your legal rights. Please read it carefully.

What you need to do

You have three options, as this notice explains:

1. **Option 1: do nothing.** There is nothing you need to do to receive a payment if you are eligible to receive one under the terms of the proposed settlement. If the court approves the proposed settlement, ASB will calculate and make payments to eligible class members.

2. **Option 2: support the proposed settlement.** If you had one or more ASB home or personal loans between 6 June 2015 and 18 June 2019, and you wish to support the court approving the proposed settlement, you may submit a Support Notice. You have until 5pm on **5 December 2025** to do so.

2. **Option 3: object to the proposed settlement.** If you had one or more ASB home or personal loans between 6 June 2015 and 18 June 2019, and you object to the court approving the proposed settlement, you may submit an Objection Notice. You have until 5pm on **5 December 2025** to do so.

Information about how to submit a Support Notice or an Objection Notice is provided in Part **H** below.

The deadline for submitting Support Notices and Objection Notices is 5pm on 5 December 2025.

Why is this notice important?

1. This notice contains important information about the proposed settlement of the representative legal proceeding brought by Anthony Simons, Philip and Sheryn Dunbar, Bruno Bickerdike and Emma Punter, and Glenn Marvin and Anna Cuthbert (the **representative plaintiffs**) against ASB Bank Limited (**ASB**).

2. The High Court has ordered that notice of the proposed settlement be made available to anyone who might be a "class member" on whose behalf the ASB CCCFA representative proceeding has been brought.

3. If you are a potential class member, your legal rights may be affected by the proposed settlement, so please read this notice carefully.

4. This notice explains:

   (a) what the ASB CCCFA representative proceeding is about (Part A);

   (b) who the class members are (Part B);

   (c) the key terms of the proposed settlement (Part C);

   (d) what costs may be taken out of the settlement sum before settlement funds are distributed to eligible class members (Part D);

   (e) who is eligible to receive a payment (Part E) and how payments will be calculated (Part F), if the proposed settlement is approved;

   (f) how the settlement approval process works, and what to do if you want to support or object to the proposed settlement (Part H); and

   (g) how you can get more information (Part I).

5. The ASB CCCFA representative proceeding is being run together with a representative proceeding against ANZ Bank New Zealand Limited (**ANZ**). The proposed settlement **only concerns the claims against ASB**. It would not settle any claims involving ANZ.

6. **Please note that the Auckland High Court is not able to answer any questions you may have about this notice, or about the Support Notice or Objection Notice attached to it.**

A. WHAT IS THE ASB CCCFA REPRESENTATIVE PROCEEDING?

7. A representative proceeding is a legal proceeding brought by one or more people (plaintiffs) on behalf of a group of people (referred to as class members) who have similar claims against someone who is said to have affected their legal rights.

8. Class members who have not opted out of a representative proceeding are "bound" by the outcome of it. A binding outcome can happen when the parties reach an agreed settlement, or when the court issues a judgment. Any settlement that provides for payment to class members will usually mean that class members cannot bring any

further claims against the person defending the claim about the same issues covered by the representative proceeding.

9. The ASB CCCFA representative proceeding is about the information that banks are required to provide to customers when they make agreed changes to their home or personal loans.

10. Between 6 June 2015 and 18 June 2019, when ASB made an agreed change to a home or personal loan that was or is a consumer credit contract, it was required by section 22 of the Credit Contracts and Consumer Finance Act 2003 (the **CCCFA**) to provide the relevant customer(s) with disclosure of the full particulars of the change within set timeframes (**variation disclosure**).

11. The representative plaintiffs say ASB breached section 22 by failing to provide them and other class members with compliant variation disclosure when they made agreed changes to their loans between 6 June 2015 and 18 June 2019. They have asked the Court to:

    (a) direct ASB to refund or credit them and other class members all costs of borrowing (interest and fees) they have paid since the alleged breaches of section 22 occurred; or

    (b) require ASB to pay them and other class members statutory damages.

12. ASB denies the claims and has been defending the proceeding. It has raised a number of defences, including that it did not breach section 22 of the CCCFA, that it was entitled to receive costs of borrowing, and that any amounts the Court might direct ASB to pay should be refused or reduced, because the representative plaintiffs and class members have not suffered any loss or damage. ASB also says that some of the claims were made too late.

13. The ASB CCCFA representative proceeding began in 2021. The Court has given the representative plaintiffs permission to represent class members on an opt out basis. This means that all people who fall within the description of the class (which is set out in Part B below) are bound by the Court's decision on issues that impact all class members, or on settlement, unless they filed an opt out notice by 26 September 2025 to exclude themselves from the ASB CCCFA representative proceeding.

14. On 31 March 2025, the Government introduced draft legislation called the Credit Contract and Consumer Finance Amendment Bill. As it was drafted, and at the time ASB and the representative plaintiffs agreed to settle the ASB CCCFA representative proceeding, the Bill would have impacted on this proceeding. It would have done this by changing the CCCFA as it applied to ASB during the period at issue in this proceeding (that is, 6 June 2015 and 18 June 2019). On 20 October 2025, the Select Committee considering the Bill recommended that the Bill be changed so that it does not impact on the CCCFA ASB representative proceeding. Further changes to the Bill are possible as it works its way through the legislation-making process.

B. ARE YOU A CLASS MEMBER?

15. You will be a **class member** in the ASB CCCFA representative proceeding if:

    (a) you had one or more home or personal loans with ASB that were consumer credit contracts between 6 June 2015 and 18 June 2019 (referred to as an **ASB Loan**);

(b) you requested and ASB made one or more agreed changes to one or more of your ASB Loans between 6 June 2015 and 18 June 2019;

(c) ASB did not provide you with compliant variation disclosure in relation to the agreed changes within the prescribed timeframes; and

(d) you did not opt out of the ASB CCCFA representative proceeding by 26 September 2025

16. At the moment, only *potential* class members can be identified. This is because:

(a) item (c) above cannot be applied unless and until the Court determines whether ASB has breached section 22; and

(b) ASB cannot readily confirm whether home or personal loans are consumer credit contracts without reviewing individual banking records and speaking with individual customers (which would very time consuming and expensive).

17. Because of this, the representative plaintiffs and ASB have taken a different approach to working out who should receive payments under the proposed settlement and how those payments should be calculated. Please read Parts E and F for more information.

C. WHAT IS THE PROPOSED SETTLEMENT?

18. The representative plaintiffs, their litigation **funders** (LPF Litigation Funding No. 33 Limited and CASL Management Pty Limited), and ASB have agreed to settle the ASB CCCFA representative proceeding.

19. The proposed settlement must first be approved by the court as fair and reasonable before it can bind the parties and the class members.

20. If the court approves the proposed settlement, ASB will pay **$135,625,000** (without admission of liability, fault, or wrongdoing) in full and final settlement of the claims brought against it. This sum is referred to as the **settlement sum**.

21. The terms of the proposed settlement are set out in a confidential settlement deed. This notice summarises the key terms.

D. WHAT COSTS MAY BE DEDUCTED FROM THE SETTLEMENT SUM?

22. The representative plaintiffs will ask the court to make payments from the settlement sum to three groups, before paying the remainder of the settlement sum to eligible class members.

(a) The first group is the funders. The funders have paid and are liable for all legal fees, and court and other costs associated with the ASB CCCFA representative proceeding incurred by the representative plaintiffs. These costs are referred to as **project costs**. In addition, the funders have taken the risk that, if the claim does not succeed, they will be required to pay some of ASB's legal costs. Under the terms of a common fund order (**CFO**) made by the Court of Appeal, and under a funding agreement between the plaintiffs and the funders, two amounts are to be deducted from the proposed settlement sum for the funders:

(i) The first amount is project costs. The total project costs that the funders have committed to up to 30 September 2025 for both the ASB CCCFA representative proceeding and the ANZ CCCFA representative proceeding (which are being run together) are approximately $4,533,000. (Running the ASB and ANZ CCCFA representative proceedings together reduces total project costs.) The starting point under the funding agreement is that these costs are to be split evenly between the ASB and ANZ CCCFA representative proceedings, except for significant readily identifiable costs relating to substantive tasks that are clearly connected with one or other of the proceedings. Because of the overlap between the claims against ASB and ANZ, it is not possible to separate out all project costs that relate only to the claims against ASB or only to the claims against ANZ. The representative plaintiffs will ask the court to allocate 65% of the project costs incurred to up to and including 30 September 2025, (approximately $2,946,450) to the ASB CCCFA representative proceeding because the ASB CCCFA representative proceeding:

(A) has significant, easily-identifiable costs that relate only to the claims against ASB;

(B) has significantly more potential class members;

(C) covers a wider range of factual and legal issues;

(D) has more representative plaintiffs; and

(E) the plaintiffs bringing the claims against ANZ agree that this is how the project costs should be split.

All Project Costs incurred after 1 October 2025 and prior to settlement approval will be readily identifiable and split between the ASB and the ANZ CCCFA representative proceedings. The Funders will fund any further Project Costs relating to the ASB proceedings prior to settlement approval, and these amounts will be deducted from the settlement sum as Project Costs.

(ii) The second amount is the CFO services fee set out in the ASB CFO orders made by the Court of Appeal, which is approximately 21.28% of the settlement sum ($28,856,250). Copies of the CFO and the funding agreement are available at www.bankingclassaction.com/claims-materials.

(b) The second group to be paid are the representative plaintiffs. The proposed payments recognise the time and cost to the representative plaintiffs in conducting the ASB CCCFA representative proceeding on behalf of all potential class members. The representative plaintiffs are seeking a total of $30,000, to be allocated between the seven individual representative plaintiffs.

(c) The third group to be paid are the representative plaintiffs' lawyers. The lawyers will continue to be involved in the ASB CCCFA representative proceeding after any settlement approval, including in relation to the distribution of funds to eligible class members. The representative plaintiffs estimate their fees for their continued involvement in the distribution process to be $130,000. These fees will become project costs, and the representative plaintiffs will ask the Court to allocate these costs only to the ASB CCCFA representative proceeding (not the ANZ CCCFA representative proceeding). If the court lets the parties end the ASB CCCFA representative proceeding, and more than three months passes and any of these funds are unspent, the representative plaintiffs will nominate a charity or charities that the unspent funds are to be paid to.

23. If the court approves the proposed deductions described above, there will be approximately $**103** million, representing approximately **76**% of the settlement sum, available to be paid out to eligible class members.

E. WHO MAY GET A PAYMENT UNDER THE PROPOSED SETTLEMENT?

24. Because it is not practicable to identify actual class members, the representative plaintiffs and ASB have agreed on a definition of "**eligible class members**", who will receive a payment if settlement is approved.

25. You will be an eligible class member if:

    (a) you are an individual (i.e., a natural person and not a body corporate, such as a company or an incorporated society); and

    (b) you had one or more home or personal loans with ASB between 6 June 2015 and 18 June 2019 (whether on your own or with someone else as a joint borrower); and

    (c) you requested and ASB made one or more agreed changes to one or more of your ASB loans between 6 June 2015 and 18 June 2019; and

    (d) either:

        (i) you entered into one or more of the ASB loans described above on or after 6 June 2015 (in which case you are a "**Group 1 Member**"); or

        (ii) you entered into one or more of the ASB loans described above before 6 June 2015, and made one or more of the agreed changes on or after 25 June 2018 or on or after 28 January 2019 (depending on the type of type of change) (in which case you are a "**Group 2 Member**"); and

    (e) you did not opt out of the ASB CCCFA representative proceeding by 26 September 2025.

26. ASB advises that there are approximately 191,000 eligible class members.

27. Eligible class members will include some people who are not "class members" (as defined in Part B of this notice). Specifically, eligible class members include people:

    (a) who had any kind of ASB home or personal loan, whether or not it was a consumer credit contract; and

    (b) who may or may not have received compliant variation disclosure from ASB about the agreed change(s) to their loan(s),

    (so long as the other eligible class member criteria are met).

28. However, some people who may be "class members" will **not** be eligible class members. These are people who meet the criteria at 25(a), 25(b), and 25(c) above but who made certain agreed changes to their ASB loans before 25 June 2018 or before 28 January 2019 (depending on the type of change). ASB has asked the court to strike these claims out on the basis that they are time-barred (i.e., were brought after the relevant limitation periods expired). The plaintiffs consider that the strike out is likely to be successful. ASB advises that excluding these claims will exclude approximately 85,000 borrowers from the settlement. The representative plaintiffs consider that it is fair and reasonable

to ensure that potential class members with stronger claims do not have their entitlements diluted by claims that would be unlikely to succeed at trial.

29. If the court approves the settlement, you won't need to work out if you are an eligible class member or whether you are in Group 1 or Group 2. ASB will contact eligible class members and make payments to them depending on which Group they are in.

F. HOW ARE INDIVIDUAL ELIGIBLE CLASS MEMBER PAYMENTS CALCULATED?

30. Subject to court approval, the amount of the settlement sum that is ultimately available to be paid to eligible class members (after deduction of the costs referred to above) will be paid in accordance with a **distribution scheme**. The proposed distribution scheme contains formulae for calculating how much each eligible class member will be paid. The distribution scheme is also subject to court approval. A copy of the proposed distribution scheme is available on www.bankingclassaction.com.

31. Under the proposed distribution scheme, all Group 1 members will receive the same amount and all Group 2 members will receive the same amount. Group 2 members will receive half of what Group 1 members receive because:

    (a) Group 1 members have stronger legal claims; and

    (b) the maximum amount of "statutory damages" that may be available to Group 1 members is double the amount of statutory damages that may be available to Group 2 members. (The representative plaintiffs have asked the court to direct ASB to pay them and class members statutory damages if it does not direct ASB to refund or credit costs of borrowing.)

32. ASB advises that there are approximately 169,617 eligible class members in Group 1 and approximately 21,174 in Group 2. This means that, subject to the court's approval of the amounts to be paid to the litigation funders and the representative plaintiffs, the payments to Group 1 members are estimated to be approximately $570 and the payments to Group 2 members are estimated to be approximately $280.

33. The potential value of eligible class members' claims for refunds or credits of costs of borrowing (which reflect the number and amount of each eligible class member's loans, the number and dates of their agreed changes, and applicable interest rates) will not be taken into account when assessing how much eligible class members will receive. This is because:

    (a) under the proposed settlement, ASB has not admitted liability, including any liability to refund or credit costs of borrowing;

    (b) it would take a long time and be very expensive to assess individual costs of borrowing for all 191,000 or so eligible class members. This would significantly reduce the amount of settlement funds available to be paid to eligible class members, and would delay payments; and

    (c) the proposed approach of dividing eligible class members into Group 1 and Group 2 members with Group 1 members to receive twice as much as Group 2 members is consistent with the basis on which ASB entered into a separate settlement with the Commerce Commission which also related to variation disclosure. (You can read more about that settlement at:

https://www.comcom.govt.nz/assets/pdf_file/0019/254080/Commerce-Commission-v-ASB-Bank-Limited-Settlement-agreement-23-February-2021.pdf.)

34. At the moment, it is not possible to estimate precisely how much eligible class members will receive if the settlement is approved. This is because the amount of these payments will depend on court approval of the settlement sum deductions described in Part D and confirmation of the number of eligible class members and Group 1 and 2 members.

G. WHO WILL MAKE PAYMENTS TO ELIGIBLE CLASS MEMBERS?

35. Under the proposed distribution scheme, ASB will make payments directly to eligible class members.

36. The distribution scheme would be supervised by a "Scheme Assurer". The Scheme Assurer's role is to make sure that ASB complies with its payment obligations, and to receive and investigate any complaints from potential class members about ASB's compliance with the proposed distribution scheme. If you are an eligible class member and the proposed settlement is approved, ASB will tell you who the scheme assurer is.

37. ASB will report to the representative plaintiffs about the distribution process every three months. ASB will also report to the Court and the representative plaintiffs on its compliance with the distribution scheme.

H. WHAT DO I NEED TO DO?

38. You have three options:

39. **Option 1: do nothing.** If ASB confirms that you are an eligible class member, you will receive a settlement payment from ASB in due course if the settlement is approved.

40. **Option 2: support the proposed settlement.** If you had one or more ASB home or personal loans between 6 June 2015 and 18 June 2019, and you support the proposed settlement, you may tell the court that and why you think it should approve the proposed settlement or any part of it.

41. To support the proposed settlement, you must complete the Support Notice attached to this notice and submit it to the representative plaintiffs' solicitors, Russell van Hout, by **5pm on 5 December 2025**.

42. **You can submit your Support Notice by:**

    (a) completing and submitting a Support Notice through the www.banking classaction.com website; or

    (b) completing the Support Notice attached to this notice and sending it to Russell van Hout:

        (i) by email to **bankingclassaction@rvh.co.nz** (with the words "Settlement Support" in the subject line); or

        (ii) by post to **PO Box 46, Shortland Street, Auckland 1144**.

43. Your Support Notice **must** be received by Russell van Hout **by 5pm on 5 December 2025**. This means that if you are submitting your Notice by post, you will need to send it in time for it to arrive by the cut-off date.

44. **Option 3: object to the proposed settlement.** If you had one or more ASB home or personal loans between 6 June 2015 and 18 June 2019, and you object to the proposed settlement, you may tell the court that and why you say it should not approve the proposed settlement or any aspect of it.

45. To object to the proposed settlement, you must complete the Objection Notice attached to this notice and submit it to the representative plaintiffs' solicitors, Russell van Hout, **by 5pm on 5 December 2025**.

46. **You can submit your Objection Notice by:**

    (a) completing and submitting an Objection Notice through the www.banking classaction.com website; or

    (b) completing the Objection Notice attached to this notice and sending it to Russell van Hout:

        (i) by email to **bankingclassaction@rvh.co.nz** (with the words "Settlement Objection" in the subject line); or

        (ii) by post to **PO Box 46, Shortland Street, Auckland 1144**.

47. Your Objection Notice **must** be received by Russell van Hout **by 5pm on 5 December 2025**. This means that if you are submitting your Notice by post, you will need to send it in time for it to arrive by the cut-off date.

48. The court is considering whether to approve the proposed settlement, including in light of any Support Notices or Objection Notices it may receive, without the need for a court hearing.

I. Where can I get more information?

49. You can find more information about the ASB CCCFA representative proceeding, including copies of this notice and the Support and Objection Notices, at www.bankingclassaction.com.

50. The www.bankingclassaction.com website also includes:

    (a) further details of the representative plaintiffs' claims, in the representative plaintiffs' second amended statement of claim dated 16 May 2025 (available at https://www.bankingclassaction.com/_files/ugd/bdfc67_a90c5225aa7443f39ff052e036b72919.pdf);

    (b) further details of ASB's defences to the representative plaintiffs' claims, in ASB's statement of defence to the plaintiffs' second amended statement of claim dated 13 June 2025 (available at https://www.bankingclassaction.com/_files/ugd/bdfc67_5052f519392e4dc4bc4d9746c13147df.pdf);

    (c) the common fund order, in the sealed orders of the Court of Appeal made on 27 July 2022 (available at https://www.bankingclassaction.com/_files/ugd/bdfc67_245dbac50f72453db4b176e9a8ffc9e1.pdf); and

    (d) the proposed distribution scheme (available at https://www.bankingclassaction.com/proposed-distribution-scheme).

51. If there is anything in this notice that you do not understand, or if you have any questions about this notice, you may contact the solicitors for the representative plaintiffs, Russell van Hout by email to bankingclassaction@rvh.co.nz or by post to PO Box 46, Shortland Street, Auckland 1144. Alternatively, you may seek your own legal advice.

Please note that the Auckland High Court is not able to answer any questions you may have about this notice, or about the Support Notice or Objection Notice attached to it.