

IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

I TE KŌTI MATUA O AOTEAROA
TĀMAKI MAKĀURAU ROHE

CIV-2021-404-119

ASB CCCFA REPRESENTATIVE PROCEEDING

NOTICE OF OPT OUT RIGHTS

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**.

What you need to do to respond to this notice

As explained below, you can do one of two things in response to this notice:

- 1. You can opt out** of being a potential class member of the proceeding by **26 September 2025**. If you opt out:
 - you will not retain any potential future entitlement to share in the benefit of any judgment or settlement; **but**
 - you will retain any entitlement you currently have to pursue your own claim against ASB.**Section 6** of this notice tells you how to opt out.
- 2. You can do nothing**, and remain a potential class member. If you remain a potential class member:
 - if the proceeding is successful, you may get to share in the benefits, including any money that ASB is required to pay, subject to you taking certain steps and satisfying certain conditions; **but**
 - if the proceeding is not successful, you may not be able to take the same claim to court again.

The opt out deadline is 5.00pm, 26 September 2025

A. ABOUT THIS NOTICE

1. Why is this notice important?

A representative proceeding has been commenced in the High Court of New Zealand against ASB Bank Limited (**ASB**).

The High Court has ordered that this notice be made available to anyone who might be a “class member” on whose behalf the proceeding is brought. At the moment, it is not possible to say whether you are a class member or not. You may be a class member if you meet the criteria set out in Section 4 below.

This notice contains important information about potential class members’ rights and, in particular, their right to opt out of the proceeding. Please read it carefully. **Any questions you have concerning the matters contained in this notice should NOT be directed to the Court.** If there is anything in the notice that you do not understand, you should seek legal advice. You can also contact the plaintiffs’ lawyers, Russell van Hout, for further information, by emailing them at bankingclassaction@rvh.co.nz.

2. What is a representative proceeding?

A representative proceeding is a lawsuit brought by one or more people (**plaintiffs**) on behalf of themselves and other people (**class members**) who have similar claims against someone who is alleged to have affected their legal rights (**defendant**).

Class members who have not opted out of the representative proceeding are “bound” by the outcome. A binding outcome can happen in two ways: either a judgment issued by the Court or an agreed settlement. A judgment or settlement will limit and may prevent class members from being able to bring their own proceedings against the defendant.

In particular:

- (a) In a judgment, the Court will decide various factual and legal issues in respect of the claims made by the plaintiffs and class members. Those decisions bind the plaintiffs, class members and the defendant. Importantly, if a class member brings proceedings

against the defendant, it is likely that neither of them will be permitted to raise arguments in that proceeding which are inconsistent with factual or legal decisions made in the representative proceeding.

- (b) Any settlement that provides for payment to class members is likely to extinguish all rights to relief which a class member might have against the defendant that arise in any way out of the events or transactions which are the subject-matter of the representative proceeding.

Class members may be required to take steps prior to or following any judgment or settlement in order to be able to claim any money under that judgment or settlement. If any such steps are required in this case, that would be communicated separately in a future notice to class members.

If you consider that you have claims against ASB which are based on your individual circumstances or otherwise additional to the claims described in the representative proceeding, then it is important that you seek independent legal advice about the potential binding effects of the representative proceeding before the deadline for opting out (see Section 6 below).

B. INFORMATION ABOUT THIS REPRESENTATIVE PROCEEDING

3. What is this representative proceeding about?

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

The plaintiffs allege that ASB breached s 22 by failing to provide them and other class members with compliant Variation Disclosure when they made agreed changes to their loans during the Relevant Period. They are seeking:

- (a) orders under the CCCFA directing ASB to refund or credit them and other class members all of the costs of borrowing (interest and fees) they have paid since the breaches of s 22 occurred; or
- (b) orders under the CCCFA requiring ASB to pay them and other class members statutory damages.

They are also seeking declarations, interest and costs.

ASB denies the plaintiffs' claims against it and is defending the proceeding. ASB has raised a number of defences, including that it did not breach s 22 of the CCCFA, that it was entitled to receive costs of borrowing, and that any relief should be refused or reduced on discretionary or equitable grounds, in particular as the plaintiffs have not suffered any loss or damage. ASB also says that some of the claims have been made too late.

On 31 March 2025, the Credit Contract and Consumer Finance Amendment Bill 137-1 was introduced into Parliament. If the Bill becomes law in the form introduced, it will amend the CCCFA retrospectively. The plaintiffs' position is that the amendment could impact the quantum of relief available in the representative proceeding and therefore the economics of the case. ASB's position is that the Bill simply confirms that the Court has the discretion, which already exists under the CCCFA, to ensure a just and equitable outcome in the proceeding.

The ASB CCCFA representative proceeding is being run together with a representative proceeding against ANZ Bank New Zealand Limited which also relates to Variation Disclosure.

4. Are you a class member?

You will be a class member if:

- (a) you had one or more home or personal loans with ASB that was a consumer credit contract between 6 June 2015 and 18 June 2019 (the Relevant Period) (**ASB Loan**);

- (b) you requested and ASB made one or more agreed changes to one or more of your ASB Loans during the Relevant Period (**Agreed Changes**); and
- (c) ASB did not provide you with compliant Variation Disclosure in relation to the Agreed Changes within the prescribed timeframes.

At the moment, it is not possible to know whether you are a class member or not. This is because (c) above cannot be applied until the Court has determined what ASB was required to do in order to provide compliant Variation Disclosure. If you meet the criteria in (a) and (b) you may be a class member.

You will not meet criteria (a) if your loan was not a consumer credit contract, for example because you borrowed as a trustee or through a company, or because the loan was for investment or business purposes.

If you would like to understand more about whether you are potentially in the class, you can seek your own legal advice.

5. Who are the plaintiffs and who are their lawyers?

The plaintiffs bringing the representative proceeding are Anthony Simons, Philip and Sheryn Dunbar, Bruno Bickerdike and Emma Punter, and Glen Marvin and Anna Cuthbert.

The plaintiffs' key responsibilities are to make decisions about the conduct of the representative proceeding, including settlement, and instruct the lawyers. In carrying out these responsibilities, they must consider the interests of the other class members and avoid or manage any conflicts of interest that may affect their role.

The representative proceeding is being run by Russell van Hout, who are the solicitors for the plaintiffs. More information about the legal team can be found at www.bankingclassaction.com/team.

6. What is an “opt out” representative proceeding and what are your options?

The plaintiffs did not need to seek the consent of class members to commence the representative proceeding on their behalf. However, class

members may choose not to be part of the proceeding if they want. This is called “opting out”. Explanations of how you can opt out and what will happen if you opt out and if you don’t are set out below.

What will happen if you opt out?

If you opt out, you will not be bound by or entitled to share in any benefit that you would otherwise have had in any judgment or settlement in the representative proceeding. This means you will not receive any money from the representative proceeding if it is successful.

If you opt out, you will be entitled to bring any separate claim that may be available to you in relation to these matters against ASB, provided that you file your legal proceedings within any time limit (known as a “limitation period”) that may apply to your claim. If you wish to bring your own claim against ASB, you should seek legal advice about your claim and the applicable limitation period before opting out as it may be too late to bring a separate claim.

How can you opt out?

If you do not wish to remain a potential class member, you must opt out of the representative proceeding. To opt out, you must complete the “Opt Out Form” attached to this notice, then send it to Russell van Hout by email or post. Alternatively, you can fill in an Opt Out Form and submit it to Russell van Hout online at www.bankingclassaction.com.

IMPORTANT: Your completed Opt Out Form must reach Russell van Hout no later than 5pm on 26 September 2025, otherwise it will not be effective.

If you are a joint borrower under an ASB Loan, you can complete the Opt Out Form individually (with each borrower completing and signing a separate form) or together with the other borrowers (with each borrower completing and signing the same form).

If you are sure that you do not want to be part of the representative proceeding, you should opt out even though you may not be a potential class member.

What will happen if you do not opt out

If you are found to be a class member in due course, you will be bound by any judgment in or settlement of the representative proceeding. If the representative proceeding is successful, you may be entitled to share in the benefit of any order, judgment or settlement in favour of the plaintiffs and class members. However, you may have to take certain steps or satisfy certain conditions before your individual entitlement arises.

If the proceeding is unsuccessful, or not as successful as you would have wished, you may not be able to pursue the same claims against ASB in other legal proceedings.

What do you need to do to remain a potential class member?

If you wish to remain a potential class member, there is nothing you need to do at the present time.

However, you are invited to visit www.bankingclassaction.com and register with your most up to date contact details to receive updates on the progress of the proceeding from Russell Legal.

7. How is the representative proceeding being funded?

Class members in a representative proceeding are not individually responsible for the legal costs associated with bringing the proceeding. Only the plaintiffs are responsible for those costs.

The plaintiffs' legal and other costs are being funded by New Zealand litigation funder LPF Litigation Funder No. 33 Limited (**LPF**). Australian litigation funder CASL Management Pty Ltd is also funding the proceeding indirectly pursuant to a co-funding agreement with LPF. More information about the funders can be found at www.bankingclassaction.com/team.

If the representative proceeding is unsuccessful, class members will not be liable to contribute to the plaintiffs' costs. They also will not, in any circumstances, be liable for any adverse costs orders made against the plaintiffs (that is, orders requiring the plaintiffs to pay ASB's costs if they lose).

Pursuant to a "common fund order" (**CFO**) made by the Court of Appeal, if the representative proceeding is **successful**, all class members who

are entitled to share in the benefit of the judgment or settlement will be required to contribute towards reimbursing LPF for the costs it has funded and to LPF's commission (calculated on a percentage basis). The costs and LPF's commission will be deducted from the overall sum recovered from ASB before any payments are made to the plaintiffs and class members.

Under the CFO, LPF's commission will depend on a number of factors, including how much it incurs in costs and how much is payable by ASB. The commission rates that apply in different circumstances are set out in the CFO. For example:

- (a) If LPF incurs costs of \$1 million or more and ASB is required to pay \$100 million, LPF's commission will be 22.5% of the amount paid by ASB.
- (b) If LPF incurs costs of \$1 million or more and ASB is required to pay less than \$10 million, LPF's commission will be 26% of the amount paid by ASB.

It is not possible to say what percentage of the total amount payable will be paid to LPF as commission at this time.

No amounts will be paid from any judgment or settlement to LPF unless the Court approves those amounts. The Court may, for example, decide to lower the applicable commission under the CFO if it considers that it is not fair and reasonable.

Copies of the funding agreement between the plaintiffs, certain class members and LPF and the CFO are available at www.bankingclassaction.com/claims-materials.

It is highly recommended that you view and consider the CFO before deciding whether or not to opt out. If you do not understand the effect of the CFO, seek independent legal advice.

C. WHERE TO FIND RELEVANT DOCUMENTS

Copies of relevant documents, including the relevant pleadings (as amended from time to time) and court judgments issued in the case so far can be obtained by:

- (c) downloading them from the representative proceeding website, www.bankingclassaction.com/claims-materials; or
- (d) contacting the Auckland High Court Registry on 09 916 9600 or by email at aucklandhc@justice.govt.nz.

If you think you are or may be a potential class member, it is recommended that you read these documents as they will assist you to understand the representative proceeding and the orders that have been sought and made by the Courts to date.

Please consider these matters carefully. If you are unsure about anything, you should contact Russell van Hout by email at bankingclassaction@rvh.co.nz or seek your own separate legal advice. You should not delay in making your decision.