

Undertakings to the Commerce Commission under s 113(aa) of the Credit Contracts and Consumer Finance Act 2003

1 Persons giving Undertakings

- 1.1 These Undertakings are given to the Commerce Commission (**Commission**) pursuant to s 113(aa) of the Credit Contracts and Consumer Finance Act 2003 (**CCCFA**)¹ by Westpac New Zealand Limited (**Westpac**), a company having its registered office at Westpac On Takutai Square, 16 Takutai Square, Auckland, 1010, New Zealand.

2 Background

- 2.1 From March 2020, due to the Covid-19 crisis, Westpac offered home and personal loan customers the option of varying their loan agreements so as to defer loan repayments for a period of six months (the **Repayment Deferral**). Westpac established a dedicated Covid-19 hardship channel through which customers could apply for the Repayment Deferral. This dedicated channel became operational on 27 March 2020.
- 2.2 While Westpac developed and implemented processes for appropriately dealing with customers that applied for relief through its dedicated Covid-19 hardship channel, in late March and early April 2020, a number of customers enquired about, or applied for, relief through Westpac's pre-existing hardship channels (the **Affected Customers**).
- 2.3 Facing significant resourcing and time constraints due to high call volumes and the effect of Alert Level 4 restrictions, Westpac applied the Repayment Deferral (or reduced customer payments to interest-only where the customer specifically asked for it) for Affected Customers without having a further conversation with those customers. Consequently, the Repayment Deferral was applied to customer accounts without Westpac first explaining the implications of the Repayment Deferral to the customer and without confirming that the customer in fact wanted to defer their loan repayments. In particular, Westpac did not explain to the Affected Customers receiving the Repayment Deferral that interest would continue to accrue on their loans during the six-month Repayment Deferral period, and that as a result they would likely pay more over the term of the loan than if they continued to make their scheduled loan repayments.

Remedial action

- 2.4 In the months following the implementation of the Repayment Deferral, Westpac proactively took steps to contact the Affected Customers through an outbound remedial calling program. Westpac was able to speak to the majority of those Affected Customers on the Repayment Deferral and explain the implications of the Repayment Deferral, as well as give those customers the opportunity to pay the deferred repayments and have any additional accrued interest waived. Westpac also sent each Affected Customer a variation disclosure letter containing the relevant information by email and by post.
- 2.5 Westpac reported to the Commission in June 2020 that it had faced challenges in implementing the Repayment Deferral following the outbreak of Covid-19 in New Zealand.

¹ And, via s 113(aa) of the CCCFA, sections 74A to 74C of the Commerce Act 1986 (power to accept undertakings).

The parties' positions

- 2.6 Westpac's position is that, although applying the Repayment Deferral in these circumstances meant it could not explain the implications of the Repayment Deferral to each Affected Customer receiving it before it was implemented, in the circumstances (in particular the resourcing constraints to be able to contact all Affected Customers), taking this approach was in the best interests of customers. This was because by taking swift action, the likelihood of customers defaulting on their loan repayments or meeting their repayment obligations, and suffering hardship as a result, was avoided.
- 2.7 The Commission considers that by not explaining the impact of the Repayment Deferral on the customers' overall obligations, Westpac risked breaching its responsible lending obligations under ss 9C(2)(a)(iii) and 9C(3)(c) of the CCCFA which requires lenders to act with the care, diligence and skill of a responsible lender and to assist the borrower to reach an informed decision in all subsequent dealings with that borrower.

Undertakings

- 2.8 Despite Westpac's attempts to call all Affected Customers as part of its remedial outbound calling program, there were approximately 800 Affected Customers that Westpac was unable to speak to. In respect of these Affected Customers, Westpac undertakes that it will:
- (a) identify all Affected Customers for which the Repayment Deferral was applied that Westpac was unable to contact as part of its remedial outbound calling program (the **Eligible Customers**); and
 - (b) pay to each of the Eligible Customers the difference between the interest the customer was charged during the six-month deferral period and the interest the customer would have been charged had the Repayment Deferral not been applied (the **Additional Interest**).
- 2.9 Westpac considers that its interactions with Affected Customers who are not Eligible Customers subsequent to implementing the Repayment Deferral have been appropriate in all the circumstances and no further action will be taken in relation to those customers pursuant to this Undertaking.

3 Purpose of the Undertakings

- 3.1 These Undertakings are given by Westpac to record its commitment to make payments of the Additional Interest to all Eligible Customers.
- 3.2 At the time that these Undertakings are given by Westpac, Westpac has identified approximately 800 Eligible Customers and expects to make payments totalling approximately \$76,000 to Eligible Customers in performance of the undertaking provided in paragraph 4.1 below.
- 3.3 If Westpac identifies any additional Eligible Customers, it will make payments to those additional Eligible Customers in accordance with these Undertakings.

4 Undertakings

- 4.1 Westpac undertakes to the Commission that it will credit the account of (or otherwise, in accordance with the terms of these Undertakings, make payment to) each Eligible Customer

the Additional Interest. For the avoidance of doubt, the Additional Interest is an amount calculated by Westpac as comprising the difference between:

- (a) the amount of interest that would have been charged to the Eligible Customer had the Repayment Deferral not been applied to the Eligible Customer's account and had instead made their originally scheduled loan repayments during the six-month deferral period; and
- (b) the amount of interest that Westpac actually charged to the Eligible Customer during the six-month deferral period.

4.2 Westpac further undertakes to the Commission that it waives any and all claims in relation to the Additional Interest charged to Eligible Customers.

4.3 Westpac undertakes to the Commission to take the following steps in order to locate and contact Eligible Customers and make payments:

Eligible Customers with active Westpac Bank Accounts

- (a) For any Eligible Customers who have an active bank account with Westpac (**Westpac Account**), Westpac will make payments by direct crediting that borrower's Westpac Account. For the avoidance of doubt, this may include crediting an Eligible Customer's payment against any outstanding balance the borrower may have on a credit contract with Westpac.
- (b) Westpac will write to each borrower to whom a payment referred to above will be, or has been, made, to inform them of the payment and the reason Westpac has made it, no later than five (5) business days after the payment has been made.

Eligible Customers without active Westpac Bank Accounts

- (c) For any Eligible Customers who do not presently have a Westpac account (**Eligible Customers without active Westpac Accounts**), Westpac will take all reasonable steps using the information that it holds to make contact and obtain instructions as to a nominated bank account into which the payment can be made. For example, this may include attempting to contact Eligible Customers without active Westpac Accounts by SMS message, email, post or telephone, or any combination where multiple contact details are held.
- (d) If Westpac successfully obtains instructions from any Eligible Customers without active Westpac Accounts to make the payment into a nominated bank account, Westpac shall make the payment by direct crediting the nominated bank account within 10 working days.
- (e) If, after three months of writing to Eligible Customers without active Westpac Accounts, Westpac has not been successful in obtaining instructions from any of those customers, Westpac will engage the assistance of a credit reporter to assist in attempting to contact and obtain instructions from those borrowers (acting in accordance with the Credit Reporting Privacy Code 2004).
- (f) In contacting Eligible Customers without active Westpac Accounts and obtaining payment instructions from them, Westpac will inform those Eligible Customers of the reason Westpac is making the payment.

4.4 Westpac undertakes to the Commission to report on its progress and to treat any outstanding payments, as follows:

- (a) Following completion of its efforts to contact all Eligible Customers and make payments, and in any event within seven months of the date of these Undertakings, Westpac will provide a report to the Commission confirming the progress it has made in making payments, including a summary of the payments made to Eligible Customers pursuant to these Undertakings (the **Payment Update Report**).
- (b) If, at the time it provides the Payment Update Report, Westpac has been unable to make payments to all Eligible Customers to whom it is required to make payments, it will provide sufficient detail for the Commission to understand the number of Eligible Customers still owed payments and the amounts owed (**Outstanding Payments**), and will seek direction from the Commission whether to:
 - (i) treat the Outstanding Payments as unclaimed money under the Unclaimed Money Act 1971 (**UMA**) and will deal with that unclaimed money in accordance with the UMA to the extent it is possible or practical to do so;
 - (ii) pay the Outstanding Payments to a consumer or credit focussed charity that is a not-for-profit organisation and not associated with Westpac; or
 - (iii) a combination of (i) and (ii) above.
- (c) If any Eligible Customer is deceased or bankrupt, Westpac will seek direction from the Commission as to payments to those customers.
- (d) For the purpose of seeking direction from the Commission in respect of any Outstanding Payments, Westpac may propose for the Commission's consideration a consumer or credit focussed charity or charities that Westpac considers may be a suitable recipient for any or all of the Outstanding Payments.
- (e) Westpac will pay the Outstanding Payments as directed by the Commission in accordance with paragraph 4.4(b) within a period to be agreed with the Commission.
- (f) For the avoidance of doubt, neither Westpac's commitment to distribute any Outstanding Payments in terms of this paragraph 4.4, nor doing so at the Commission's direction in accordance with paragraph 4.4(e) above, will relieve Westpac of the obligation to pay an Eligible Customer who later identifies themselves to Westpac and claims an Outstanding Payment.

5 Effect of the Undertakings

5.1 These Undertakings are Court enforceable undertakings in terms of s 113(aa) of the CCCFA and s 74A of the Commerce Act 1986.

6 Commencement of the Undertakings

6.1 These Undertakings come into effect when:

- (a) executed by Westpac; and

- (b) the Commission confirms its acceptance of these Undertakings.

7 Compliance with the Undertakings

- 7.1 If Westpac becomes aware of a breach of these Undertakings, whether advertent or inadvertent, it will notify the Commission within seven days of becoming aware, giving full particulars of the breach.
- 7.2 For the avoidance of doubt, nothing in paragraph 7.1 above prevents the Commission from directly seeking any information from Westpac at any time for the purpose of checking compliance with these Undertakings.

8 Miscellaneous

- 8.1 No amendment to these Undertakings will be effective unless it is in writing, executed by Westpac, and signed as accepted by the Commission.
- 8.2 These Undertakings are properly executed if Westpac and the Commission sign the same copy, or separate identical copies of the execution page. Where separate copies are signed by Westpac or by the Commission, the signed copy can be the original document, or a faxed or emailed copy.
- 8.3 Westpac acknowledges that:
- (a) The Commission will make these Undertakings publicly available including by publishing them on the Commission's enforcement response register on its website.
 - (b) The Commission may, from time to time, make public reference to these Undertakings including in news media statements and in the Commission's publications.
 - (c) In accepting the Undertakings, the Commission is not prevented from exercising its rights and powers under the CCCFA to any contravention of the Undertakings or in relation to any other matter not the subject of these Undertakings.
 - (d) The Undertakings in no way limit the rights and remedies available to any other person or entity, including any Affected Customer, arising from any conduct described in the Undertakings or arising from future conduct.

Execution

<p>SIGNED for and on behalf of WESTPAC NEW ZEALAND LIMITED by its attorneys:</p> <p>[Redacted]</p> <p>.....</p> <p>Attorney</p> <p>[Redacted]</p> <p>.....</p> <p>Print name</p> <p>[Redacted]</p> <p>.....</p> <p>Position</p> <p>10 November 2021</p> <p>.....</p> <p>Date</p>	
	<p>In the presence of:</p> <p>[Redacted]</p> <p>Signature</p> <p>[Redacted]</p> <p>.....</p> <p>Print name</p> <p>[Redacted]</p> <p>.....</p> <p>Position</p> <p>10 November 2021</p> <p>.....</p> <p>Date</p>
<p>[Redacted]</p> <p>.....</p> <p>Attorney</p> <p>[Redacted]</p> <p>.....</p> <p>Print name</p> <p>[Redacted]</p> <p>.....</p> <p>Position</p> <p>10 November 2021</p> <p>.....</p> <p>Date</p>	<p>In the presence of:</p> <p>[Redacted]</p> <p>Signature</p> <p>[Redacted]</p> <p>.....</p> <p>Print name</p> <p>[Redacted]</p> <p>.....</p> <p>Position</p> <p>10 November 2021</p> <p>.....</p> <p>Date</p>

Acceptance

Signed by and on behalf of the **Commerce Commission** by:



Anna Rawlings, Chair

20 December 2021

Date

CERTIFICATE OF NON-REVOCATION OF POWER OF ATTORNEY

WE, [REDACTED] of Auckland in New Zealand, Bank Officer

AND [REDACTED] Auckland in New Zealand, Bank Officer

HEREBY CERTIFY -

1. **THAT** by Deed dated 6 September 2006 and there numbered PA 7032934.1 **WESTPAC NEW ZEALAND LIMITED** (Company Number 1763882), incorporated in New Zealand under the Companies Act 1993 and having its principal place of business in New Zealand at Westpac on Takutai Square, 16 Takutai Square, Auckland ("**Westpac**") appointed us its attorneys on the terms and subject to the conditions set out in that Deed and the attached document is executed by us under the powers conferred by that Deed.

2. **THAT**, at the date of this certificate, we are both Tier One Attorneys respectively for Westpac.

3. **THAT**, at the date of this certificate, we have not received any notice or information of the revocation of that appointment by the winding up or dissolution of Westpac or otherwise.

SIGNED at Auckland

on 10 November 2021

[REDACTED]

[REDACTED]