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Wednesday 7 April 2021

## 21-065MR CBA to pay \$7 million court penalty for overcharged interest – Royal Commission case study

The Federal Court of Australia has ordered the Commonwealth Bank of Australia (CBA) to pay a \$7 million penalty after the Court had previously declared that CBA made false or misleading representations and engaged in misleading and deceptive conduct ([21-025MR](#)).

These declarations related to 12,119 occasions when CBA charged a rate of interest on business overdraft accounts substantially higher than what its customers had been advised.

ASIC alleged, and CBA admitted, that from 1 December 2014 to 31 March 2018, CBA:

1. provided customers with terms and conditions for certain credit facilities that stated an interest rate to be charged or that had been charged (in most cases, 16% per annum)
2. sent periodic account statements to customers referencing the rate at which interest rate was being charged (in most cases, 16% per annum), and
3. due to a systems error, charged more than 1,510 customers a different, higher interest rate on their overdraft accounts (in most cases approximately 34% per annum).

In reaching the penalty decision, Justice Lee took into account comprehensive written penalty submissions in addition to oral submissions made by ASIC and CBA. CBA submitted that an appropriate penalty was \$4 million to \$5 million and ASIC submitted that an appropriate penalty was \$7 million.

His Honour found that CBA's conduct was serious, that the number of false and misleading representations were significant and that conduct of this type and nature must be prevented.

His Honour rejected the submission that CBA had acted expeditiously to remedy the error and found that CBA's delay was particularly troubling given the relationship between a bank and its customers.

ASIC Commissioner Sean Hughes said, 'Financial services institutions need to have appropriate systems, governance and controls in place to ensure they deliver on promises made to their customers. When CBA failed to resolve this error after it was identified, customers were overcharged more than \$2 million in interest.

'CBA's delay in remediating customers following this error was an aggravating factor in the Court's determination of the penalty. When financial institutions discover overcharging, they must take immediate action to remediate impacted consumers.

'As recognised by Justice Lee, CBA made important admissions as to its many contraventions of the law. CBA is now making investments in its systems as a matter of priority. All financial services institutions should make similar commitments to rebuild trust in our financial system and to avoid further failures.'

The matter will return to Court on 30 April 2021 to determine the form and content of the publication order and an order regarding ASIC's costs.

## Background

On 30 November 2020, ASIC commenced proceedings against CBA for overcharging interest on small business loans. The total

overcharged interest exceeded \$2.2 million. ASIC considered CBA's conduct in this matter resulted from inadequate systems and processes ([20-305MR](#)).

CBA's conduct was the subject of a case study by the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry – see [Volume 2 of the Interim Report](#) (page 304-308).

CBA has remediated \$3.74 million to the customers impacted in this case.

In an unrelated matter, ASIC previously obtained a \$5 million penalty against CBA for failures of their AgriAdvantage Plus Package. These failures included, amongst other things, overcharged interest on loans and fees ([20-129MR](#)).

**Editor's note:**

Download the [reasons for judgment](#) and a sealed copy of the [orders made on 6 April 2021](#).

**Editor's note 2:**

The next case management hearing is listed for 22 June 2021.

**Editor's note 3:**

The hearing on 22 June 2021 was vacated. A final hearing will commence on 29 July 2021.

**Editor's note 4:**

On 29 July 2021, the hearing concluded and judgment was reserved.

**Editor's note 5:**

On 16 August 2021, the Federal Court made orders requiring CBA to publish notices on its website and its newsroom acknowledging the bank's false or misleading conduct when it overcharged interest on business overdraft accounts ([21-217MR](#)).

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