



Federal Court of Australia

District Registry: New South Wales

Division: General

No: NSD1275/2020

AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION

Plaintiff

COMMONWEALTH BANK OF AUSTRALIA ACN 123 123 124

Defendant

ORDER

JUDGE: JUSTICE LEE

DATE OF ORDER: 12 February 2021

WHERE MADE: Sydney

THE COURT NOTES THAT:

The defendant (**CBA**) admits the facts and allegations stated in the plaintiff's (**ASIC**) concise statement dated 30 November 2020 as amended by the deletion of the words "and/or would be" on the fifth line of paragraph 1 (**Concise Statement**).

In the below declarations, terms which are defined in the Concise Statement have the same meaning as they do in that document.

THE COURT DECLARES THAT:

1. By provision of a periodic account statement with an Interest Summary Error, and in all the circumstances, on 12,119 occasions during the period 1 December 2014 to 31 March 2018 inclusive, CBA represented to a customer in trade or commerce that the interest rate that had been applied upon overdraft facility borrowings over the date range referred to in the statement was the interest rate shown in a notation to the statement (**Representations**), which representations were each:
 - (a) a false or misleading representation with respect to the price of services, in contravention of s 12DB(1)(g) of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**); and
 - (b) misleading or deceptive conduct, or conduct that was likely to mislead or deceive, in relation to financial services, in contravention of s 12DA(1) of the ASIC Act,

in that the interest rate actually charged was greater than that referred to in the applicable Representation.



2. On each occasion that CBA contravened ss 12DA(1) and 12DB(1)(g) as referred to above, CBA breached its general obligation as a financial service licensee to comply with financial services laws in contravention of s 912A(1)(c) of the *Corporations Act 2001* (Cth).

THE COURT ORDERS THAT:

3. The parties are to agree and file a statement of agreed facts and admissions (**Agreed Statement**) by 4pm on 12 March 2021.
4. ASIC file and serve any evidence supplementing the Agreed Statement, including as to penalty, by 4pm on 16 March 2021.
5. CBA file and serve any evidence supplementing the Agreed Statement, including as to penalty, by 4pm on 18 March 2021.
6. ASIC file and serve any submissions as to penalty and other relief by 4pm on 22 March 2021.
7. CBA file and serve any submissions as to penalty and other relief by 4pm on 30 March 2021.
8. ASIC file and serve any submissions in reply as to penalty and other relief by 4pm on 1 April 2021.
9. The final hearing as to the relief sought by paragraphs 3 to 6 of the originating process is adjourned to 9.30am on 6 April 2021.
10. The parties have liberty to apply.
11. Costs be reserved.

Date that entry is stamped: 15 February 2021


Registrar