

CASE FILE NUMBERS: CONS/08/09/2021/00418/CC

**CONS/12/10/2021/00616/MSA/CM
CONS/30/08/2021/00351/LST/BM
CONS/20/10/2021/0662/CPT/HK
CONS/08/10/2021/00595/KTW/JBM
CONS/12/10/2021/00622/CHN/BTM
CON/19/11/2021/00854/SWZ/140/LC**

**IN THE MATTER BEFORE THE BOARD
OF THE COMPETITION AND CONSUMER
PROTECTION COMMISSION**

BETWEEN

**Ms. Namatama Mulelekwa and six
(6) others**

COMPLAINANT

AND

**African Banking Corporation
Zambia Limited T/A Atlas Mara**

RESPONDENT

BEFORE:

**Commissioner - Chenga Chisha
Commissioner Fredrick Imasiku
Commissioner Aubrey M. Chibumba
Commissioner Nsangwa Allen Ngwira**

**- Chairman
- Member
- Member
- Member**

DECISION

Below is a summary of the facts and findings presented by the Commission to the Board of the Commission following investigations carried out in the above case.

Introduction and Relevant Background

It was submitted that:

1. Between 30th August, 2020 and 19th November, 2021, the Competition and Consumer Protection Commission ("the Commission") received respective complaints from Ms. Namatama Mulelekwa, Mrs. Queen Melani Zulu, Ms.

Miriam Banda, Mr. Kennedy Tabo, Ms. Chola Mulenga, Ms. Noreen Chombolola, and Mr. Danny Katebe (“the Complainants”)¹ against African Banking Corporation Zambia Limited T/A Atlas Mara (“the Respondent”). Specifically, the Complainants alleged that they separately obtained loans from the Respondent which were paid off, but the Respondent effected deductions several months later. The Complainants alleged that they engaged the Respondent who informed them that they still owed the Respondent loan balances that emanated from loan restructuring, resulting from the adjustment of the Monetary Policy Rate in 2016, leading to the revision of the Bank’s annual effective interest rate in the loan book. The Complainants wanted the Respondent to stop the deductions and refund the money deducted after the deductions were effected in 2021.

Legal Contravention and Assessment Tests

Legal Contravention

It was submitted that:

2. Section 5(d) of the Competition and Consumer Protection Act, No. 24 of 2010 (“the Act”) states that “the functions of the Commission are to investigate unfair trading practices and unfair contract terms and impose such sanctions as may be necessary. The alleged conduct appeared to be in contravention of Section 49(5) of the Competition and Consumer Protection Act, No. 24 of 2010 (the Act).

3. Section 49(5) of the Act reads as follows:

“A person or an enterprise shall supply a service to a consumer with reasonable care and skill or within a reasonable time or, if a specific time was agreed, within a reasonable period around the agreed time.”

4. Section 49(6) of the Act reads as follows,

“A person who, or an enterprise which, contravenes subsection (5) is liable to pay the Commission a fine not exceeding ten percent of that person’s or enterprise’s annual turnover”.

5. Section 49(7) of the Act states that:

“In addition to the penalty stipulated under subsection (6), the person or the enterprise shall—

- (a) within seven days of the provision of the service concerned, refund to the consumer the price paid for the service; or*

¹ Annex 1

(b) *if practicable and if the consumer so chooses, perform the service again to a reasonable standard.*”

Assessment Tests

The following assessment tests are used to consider allegations under Section 49(5) of the Act;

It was submitted that:

6. Whether African Banking Corporation Zambia Limited T/A Atlas Mara is a “person” or an “enterprise”;
7. Whether Ms. Namatama Mulelekwa and 6 others (the Complainants) are consumers;
8. Whether African Banking Corporation Zambia Limited T/A Atlas Mara supplied a particular service to Ms. Namatama Mulelekwa and 6 others; and
9. Whether African Banking Corporation Zambia Limited T/A Atlas Mara supplied a particular service to Ms. Namatama Mulelekwa and 6 others with reasonable care and skill.

Investigations Conducted

It was submitted that:

10. Notices of Investigation and accompanying letters outlining particulars of the Complainants as per attached **Annex 1** were duly served on the Respondent between 2nd September, 2021, and 25th November, 2021. The Respondent made submissions to the Notices of Investigation. The Commission further reviewed the salary deduction authorization forms from the Respondent issued to their clients (the complainants). The Commission reviewed the Banking and Financial Services Act and the Banking and Financial Services Directive of 2020. The Commission also collected submissions from the Bankers Association of Zambia (BAZ).

The Parties

The Complainants

It was submitted that:

11. The Complainants are Ms. Namatama Mulelekwa of Lusaka Province, Mrs. Queen Melani Zulu of Luapula Province, Ms. Mirriam Banda of Eastern Province, Mr. Kennedy Tabo of Southern Province, Ms. Chola Mulenga of Muchinga

Province, Mr. Danny Katebe of Copperbelt Province, and Ms. Noreen Chombola of Copperbelt Province.² Section 2 of the Act defines a consumer as “*any person who purchases or offers to purchase goods or services otherwise than for the purpose of re-sale, but does not include a person who purchases goods or services for the purpose of using the goods or services in the production and manufacture of any other goods for sale, or the provision of another service for remuneration.*”³ Therefore, the Complainants are all consumers as they separately obtained loans from the Respondent for their respective personal benefits.

The Respondent

It was submitted that:

12. The Respondent is African Banking Corporation Zambia Limited T/A Atlas Mara whose core business is the supply of banking and financial services and is registered with the Patents and Companies Registration Agency (PACRA) under registration number 119990042541. The Respondent’s registered office is located at Atlas Mara House, corner of Church and Nasser Roads, Ridgeway, Lusaka. Section 2 of the Act defines an enterprise as, “*a firm, partnership, joint-venture, corporation, company, association and other juridical persons, which engage in commercial activities, and includes their branches, subsidiaries, affiliates of other entities, directly or indirectly, controlled by them.*”⁴ Therefore, the Respondent is an enterprise as envisaged under the Act because they are a company that engages in commercial activities.

Table 1: Submissions from the Respondent

It was submitted that:

Complainants	Submissions from the Respondent
Ms. Namatama Mulelekwa	On 19 th October, 2021, the Respondent submitted that they had received similar complaints where clients who got loans in 2014, had their tenure or loan increased following the adjustment of the Monetary Policy Rate (MPR) in 2016, resulting in the revision of the Bank’s annual effective interest rate in the loan book. The Respondent submitted that other clients facing similar adjustments may have suffered late remittance by their employers, such that during the month the remittance was not paid, interest was accruing. ⁵

² CCPC Form IV received between August, 2021 to November, 2021.

³ Competition and Consumer Protection Act No. 24 of 2010

⁴ Competition and Consumer Protection Act No. 24 of 2010

⁵ Tele-meeting with the Respondent held on 19th October, 2021

	<p>On 18th November, 2021, the Respondent submitted that on 5th September, 2014, the Complainant obtained a loan amounting to K37,000.00 whose total repayment was K91,275.11. The Respondent submitted that the loan was scheduled to run for a period of 60 months from 31st October, 2014, to 30th September, 2019, with a monthly instalment of K1,522.03. The Respondent submitted that following the adjustment of the Monetary policy Rate in 2016, the Respondent revised its annual effective interest in the loan book. In that case, the Complainant's loan was rescheduled to maintain affordability which resulted in an increased loan tenure from 60 months to 68 months. The Respondent submitted that this aspect of the loan was signed and covered in the Complainant's loan agreement. The Respondent submitted that the Complainant paid the initial instalments, though with delays, with the 60th instalment being received on 30th November, 2019, leaving a balance of K6,313.95 as a result of the rescheduling of the annual effective interest in the loan book. The Respondent submitted that in order to recover the balance, they made attempts to communicate with the Complainant with the latest being an email sent to the complainant on 6th August, 2021.⁶</p> <p>Further Observations by the Commission</p> <p>The Commission observed from Respondent's customer statement from 5th August, 2011 to 1st August, 2021, addressed to the Complainant that the Respondent conducted a reconciliation of their records and advised the Complainant that they were indebted to the Respondent in the sum of K9,054.64. The Respondent advised the Complainant to visit them to settle the debt, failure to which the Respondent would list the Complainant at the Credit Reference Bureau (CRB) and resume monthly deductions of K1,522.03 effective August, 2021.</p>
<p>Mrs. Queen Melani Zulu</p>	<p>In a letter dated 3rd November 2021, the Respondent submitted that on 17th June 2015, the Complainant was availed a K32, 000.00 loan. The Respondent submitted that the loan was scheduled to run for 48 months, commencing on 31st July, 2015 till 30th June 2019, and had a monthly instalment of K1,359.43.</p> <p>The Respondent submitted that contrary to the allegations that they (the Respondent) made a total of 49 deductions, there were only 48 deductions done as the Complainant was refunded a total of K944.00 on 18th December, 2015.</p> <p>The Respondent submitted that following the adjustment in the Monetary Policy Rate in the year 2016, they revised their annual effective interest rate in the loan book. The Respondent submitted</p>

⁶ Respondent's response letter dated 23rd September, 2021, received on 18th November, 2021.

that the Complainant's loan was rescheduled to maintain affordability which resulted in an increased loan tenure from 48 months to 56 months. The Respondent submitted that this aspect of the loan was signed for by the Complainant and covered in their loan agreement.

The Respondent submitted that the loan was not being serviced in accordance with the agreement as the Complainant was underpaying by K0.48 monthly, thus culminating into K23.04. The Respondent submitted that after receiving and applying the 48th instalment which was received on 28th August, 2019, the loan left a balance of K9,467.15 emanating from the above-mentioned rescheduling. The Respondent submitted that for them to collect and have the loan paid in full, they instituted deductions of K1,000.00 from the customer's (the Complainant's) account as effort to agree on a settlement plan proved futile.⁷

On 13th December 2021, the Commission sent an email to the Respondent to seek more information why it took the Respondent a long time i.e. about two (2) years to commence deductions after the Complainant's initial loan term had expired; for MPR adjustments that occurred in 2016. In a letter dated 16th December, 2021, the Respondent submitted that the first step they took was to try and establish contact with the borrower through short message service (SMS) to the last known contact numbers as held on their system. The Respondent submitted that this was followed by phone calls to the last known number. The Respondent submitted that through these steps several customers had been able to get clarity around their loan balances and had agreed with the Respondent on the mode of settling such balances. The Respondent submitted that they also used email addresses obtained from Smart Zambia to try and communicate prior to any deductions being implemented.

The Respondent submitted that in an event where the customer was not forthcoming despite the above attempts, they resubmitted the deductions requested to Payroll Management and Establishment Control (PMEC). The Respondent submitted that depending on the credit status of the customer and the customer's Debt Service Ratio (DSR) having capacity to meet the deduction, they would receive the entire amount requisitioned for or less as the deduction requested for (if in excess of the allowable DSR) could breach the Debt Service Ratio limit set by prevailing regulations and practice in the financial sector. The Respondent submitted that if the customer's borrowings had reached the debt service ratio limit, no instalment would be received and as such they would have to explore other means of recovering the outstanding balance.

⁷ Letter from the Respondent dated 8th November 2021

	<p>The Respondent further submitted that where the customer held an account with them and if any of the measures cited above had not yielded satisfactory or any results, they proceeded to make recoveries from the customer's salary account where such account existed.⁸</p>
Ms. Mirriam Banda	<p>In a letter dated 15th November 2021 submitted to the Commission, the Respondent submitted that on 16th April 2014, the Complainant obtained a K25, 000.00 loan from them. The Respondent submitted that the loan was to run for 60 months from 31st May 2014 to 30th April 2019 with a monthly instalment of K916.05.</p> <p>The Respondent submitted that the Complainant was paying K710.59 as monthly loan repayments instead of the agreed K916.05 which resulted in monthly underpayment of K205.46 per month for 46 months.</p> <p>The Respondent submitted that after the adjustment of the Monetary Policy Rate (MPR) in 2016, the Complainant's loan tenure was increased from 60 to 68 months and maintained the monthly loan repayment of K916.05.</p> <p>The Respondent further submitted that as of 29th January 2020, the Complainant had an outstanding loan balance of both arrears and interests of K12, 804.64 which was after 68 months.</p> <p>The Respondent submitted that in July 2021, they resubmitted deductions to the Complainant's employers with a monthly loan repayment of K838.48 for the Complainant to fully settle her loan.⁹</p> <p>In a letter dated 16th December 2021, the Respondent submitted that they communicate with their clients through text messages and emails whenever they were delays in loan deductions or any other loan discrepancies. They further submitted that if their clients failed to respond to their communications, they would resubmit deductions to their employers in line with the Debt Service Ratio (D.S.R) and where the DSR was not met, instructions were sent to salary bank accounts.¹⁰</p>
Mr. Kennedy Tabo	<p>In a letter dated 23rd September 2021, the Respondent submitted that on 8th October 2013, the Complainant was availed a loan of K39,500.00. The Respondent submitted that the loan was scheduled to run for 60 months, commencing on 30th November 2013 till 31st October 2018, and had a monthly instalment of K1,414.72.</p>

⁸ Response letter from Respondent dated 16th December 2021

⁹ Letter from the Respondent received on 16th November 2021.

¹⁰ Letter from the Respondent received on 16th December 2021.

	<p>The Respondent submitted that following the adjustment in the Monetary Policy Rate in the year 2016, they revised their annual effective interest rate in the loan book. The Respondent submitted that the Complainant's loan was rescheduled to maintain affordability which resulted in an increased loan tenure from 60 months to 68 months. The Respondent submitted that this aspect of the loan was signed for by the Complainant and covered in their loan agreement.</p> <p>The Respondent submitted that the loan was not being serviced in accordance with the agreement as the Complainant did not remit any loan instalments for the first 12 months. This resulted in accrued arrears amounting to K16, 970.76. The Respondent submitted that they received instalments of K1, 414.72 with the last one being on 30th November 2019, which was meant for October 2019. The Respondent submitted that the current balance of K35, 378.89 was a combination of the arrears, the amount emanating from the mentioned rescheduling and interest on outstanding balance.</p> <p>The Respondent submitted that they would engage the Complainant to determine whether deductions were effected on his pay slips during the first 12 months of the loan. The Respondent submitted that this would provide basis on how accrued arrears would be dealt with. The Respondent also submitted the Complainant's loan statement.¹¹</p>
<p>Ms. Chola Mulenga</p>	<p>In a letter dated 27th October, 2021, the Respondent submitted that the records showed that the Complainant was availed a loan of K34,000.00 on 10th July, 2015, whose total repayment was K79,724.25. The Respondent submitted that the loan was scheduled to run for sixty (60) months, commencing on 31st August, 2015 till 31st July, 2020, and had a monthly instalment of K1, 328.74.</p> <p>The Respondent submitted that following the adjustment in the Monetary Policy Rate in the year 2016, they revised their annual effective interest rate in the loan book. The Respondent submitted that the Complainant's loan was rescheduled to maintain affordability which resulted in an increased loan tenure from 60 months to 68 months. The Respondent submitted that this aspect of the loan was signed for by the Complainant and covered in their loan agreement.</p> <p>The Respondent submitted that the loan was not being serviced in accordance with the agreement as the loan instalments were being remitted with slight delays. The Respondent submitted that the delays coupled with the stated rescheduling resulted in a balance of K11,435.73 after they received the 60th instalment on 7th September,</p>

¹¹Letter from the Respondent dated 23rd September 2021.

	<p>2020. The Respondent submitted that in order for the loan to be fully settled, the Respondent instituted deductions of K1,500.00 on the Complainant's account from August, 2021. The Respondent also submitted the Complainant's loan statement.</p> <p>In an email dated 13th December, 2021, the Commission engaged the Respondent to clarify why in some cases the Respondent delayed to resume loan recoveries for loans that were affected by upward adjustments in the MPR and had balances at the end of the initial loan tenure.</p> <p>In a letter dated 16th December 2021, the Respondent submitted that the first step was to establish contact with the borrower through Short Message Service (SMS) to the last known contact number as held on their system. The Respondent submitted that this was followed by phone calls to the last known number. The Respondent submitted that through these steps several customers had been able to get clarity around their loan balances and had agreed with the Respondent the mode of settling such balances. The Respondent further submitted that they also used email addresses obtained from Smart Zambia to try and communicate prior to any deductions being implemented.</p> <p>The Respondent submitted that in the event where the customer was not forthcoming despite the above attempts, the Respondent resubmitted deductions requested to Payroll Management and Establishment Control (PMEC). The Respondent submitted that depending on the credit status of the customer and the customer's Debt Service Ratio (DSR) having capacity to meet the deduction, the Respondent would receive the entire amount requisitioned for or they would receive, as the deduction requested for would (if in excess of the allowable DSR) breach the DSR limit set by prevailing regulations and practice in the financial sector. The Respondent submitted that if the customer's borrowings had reached the debt service ratio limit, no instalment would be received, and as such they would have to explore other means of recovering the outstanding balance.</p> <p>The Respondent further submitted that where the customer held an account with them and if any of the measures cited above had not yielded satisfactory or any results, they proceeded to make recoveries from the customers salary account, where such an account existed.¹²</p>
<p>Ms. Noreen Chombolola</p>	<p>The Respondent responded to the Commission's NOI in a letter dated 16th November 2021. The Respondent submitted that the Complainant was availed a loan of K58, 000.00 on 8th December,</p>

¹² letter dated 27th October, 2021

	<p>2014. The Respondent submitted that the loan was scheduled to run for 60 months, commencing on 31st January, 2015 till 31st December, 2019, and had a monthly instalment of K2,249.74.</p> <p>The Respondent submitted that following the adjustment in the Monetary Policy Rate in the year 2016, they revised their annual effective interest rate in the loan book. The Respondent submitted that the Complainant's loan was rescheduled to maintain affordability which resulted in an increased loan tenure from 60 months to 68 months. The Respondent submitted that this aspect of the loan was signed for by the Complainant and covered in their loan agreement.</p> <p>The Respondent submitted that the loan was being serviced in accordance with the agreement as the Complainant paid the correct monthly instalment of K2,249.74 for the initial loan tenure of 60 months though with slight delays. The Respondent submitted that the delays in remittance coupled with the loan rescheduling accounted for the outstanding balance of K21,144.17 when the Respondent received the 59th and 60th initial instalments on 18th April, 2020.¹³</p>
<p>Mr. Danny Katebe</p>	<p>In an email correspondence dated 19th November, 2021, the Respondent submitted that they had conducted preliminary investigations and established that the Complainant obtained a loan amounting to K30,000.00 on 7th February, 2014, which was scheduled to run for sixty (60) months as the loan repayment was effective since 31st March, 2014, until February, 2018, with agreed monthly instalments of K1,072.54.</p> <p>The Respondent submitted that following the adjustment in the monetary policy rate in the year 2016, they revised the annual effective interest rate in the loan book and that as a result, the Complainant's loan was rescheduled to maintain affordability which resulted in an increased loan tenure from 60 months to 68 months. The Respondent submitted that this aspect of the loan was signed for and covered in Complainant's loan agreement.</p> <p>The Respondent submitted that the Complainant only started remitting funds with the correct instalment in April, 2014 until June, 2019 when the 60th instalment that was meant for March, 2019 was remitted. The Respondent further submitted that after applying the last instalment, the Complainant's loan left a balance of K8, 580.32 which was as result of the rescheduling in 2016. The Respondent submitted that the amount increased to K13, 000.00 due to the monthly interest on the outstanding balance.¹⁴</p>

¹³ Response letter dated 16th November 2021

¹⁴ Respondents' Email dated 19th November, 2021

Further Submissions from the Complainants

It was submitted that:

Complainants	Submissions from Complainants
Ms. Namatama Mulelekwa	There were no further submissions from the Complainant
Mrs. Queen Melani Zulu	<p>On 12th November, 2021 the Complainant submitted that the Respondent sent her an email on 6th August 2021, informing her that they had conducted a reconciliation of their records and that she had a loan balance of K14,793.64. The Complainant further submitted that the Respondent advised her that she visits them (the Respondent) to settle the debt or refinance the loan at a negotiable discount, failure to which the Respondent would commence the recovery of the outstanding loan balance through her salary account effective 23rd August 2021. The Complainant submitted that the Respondent informed her in the email that the debt would be listed on the Credit Reference Bureau (CRB) as a non-performing loan, if the payment was not done within 30 days of the email.¹⁵</p> <p>On 26th November 2021, the Complainant further submitted that no deduction was made in November 2021 by the Respondent on her salary.</p>
Ms. Mirriam Banda	On 17 th November 2021, the Complainant submitted that she was not satisfied with the Respondent's explanations. ¹⁶
Mr. Kennedy Tabo	There were no further submissions from the Complainant
Ms. Chola Mulenga	In an email dated 23 rd April, 2022, the Complainant submitted that the Respondent informed her that the loan was rescheduled from sixty (60) months to sixty-eight (68) months due to revised annual effective interest in the loan book. The Complainant submitted that when the Respondent was revising the rates in the loan book, why didn't they inform her about the changes at the time? The Complainant submitted that she would have revised the rate in the loan monthly instalment as well rather than imposing deductions after the loan was closed by PMEC. The Complainant submitted that the Respondent informed the Commission that the loan instalment was being remitted with slight delays, but the loan was serviced through PMEC. The Complainant submitted that the Respondent informed the Commission that they made contact through SMS and phone calls to the contact number held in their system which turned to be not true and honest. The Complainant submitted that according

¹⁵ Telephone conversation between CCPC case officer and Complainant on 12th November, 2021

¹⁶ Telephone conversation between CCPC case officer and Complainant on 17th November, 2021

	to her understanding, the reason provided in the report were not genuine and valid. ¹⁷
Ms. Noreen Chombolola	There were no further submissions from the Complainant
Mr. Danny Katebe	There were no further submissions from the Complainant

Review of Relevant Documents

It was submitted that:

Complainants	Review of Documents
Ms. Namatama Mulelekwa	<p>The Loan Agreement Form</p> <p>A review of the Loan Agreement Form submitted by the Complainant to the Commission showed that the Complainant got a loan of K37,000.00 which attracted a total interest of K32,185.67 (at 28% annual interest rate) and management fees of K22,200.00. Additionally, the loan insurance fee paid towards the loan was K1,216.32 and a processing fee of K925.00 was charged on the Complainant. The Complainant received a total of K34,858.68 as total cash disbursed less upfront payments. The total loan to be paid back was K91,385.65 to be paid in 60 instalments with a monthly payment of K1,522.03.¹⁸</p> <p>The Salary Deduction Authorisation Form</p> <p>A review of the Salary Deduction Authorisation Form submitted by the Complainant to the Commission showed that the Complainant's employer was the Ministry of Education. The Salary Deduction Authorisation Form revealed that the Complainant requested and authorised her employer to deduct K1,522.03 per month from her monthly salary the amounts due and payable at any time. The Complainant requested the employer to pay the Respondent amounts deducted on a loan facility issued by the Respondent. The Salary Deduction Authorisation Form revealed that if the employer did not deduct any amounts in terms of the request made, the amounts would be considered unpaid.¹⁹</p> <p>The Complainant's Pay Slip</p> <p>A review of the Complainant's pay slip availed to the Commission for the month of October, 2019 showed that there was no deduction by the Respondent.²⁰</p>

¹⁷ Email dated 23rd April, 2022

¹⁸ Ms. Namatama Mulelekwa's Loan Agreement Form dated 27th August, 2014.

¹⁹ Ms. Namatama Mulelekwa's Salary Deduction Authorisation Form submitted on 8th September, 2021

²⁰ Ms. Namatama Mulelekwa's Complainant's Pay slip for October, 2019

	<p>The Account Statement</p> <p>A review of the Account Statement showed that the Respondent debited the Complainant's account the following amounts as loan recoveries: K1,521.25 in October, 2014, December, 2014 to February, 2015, July, 2014 to November, 2018, January, 2019, March, 2019 and July, 2019. The Complainant's account was further debited K0.78 in November, 2014, K3,042.50 in March, 2015 to May, 2015, May, 2019 to June, 2019, August 2019 and November 2019. The Complainant's account was finally debited K1,015.53 in August, 2021. The Account Statement further showed that Complainant had a balance of K6,213.95 after paying K3,042.5 in November, 2019 which went up to K9,054.64 in July, 2021 due to accrued interest overtime. The Accounts Statement further showed that the Complainant had a balance of K8,174.90 in September, 2021 after paying K1,015.53 in August, 2021²¹</p> <p>The Customer Statement</p> <p>A review of the Customer Statement submitted by the Complainant to the Commission showed that the Complainant owed the Respondent a total of K9,054.64 as at 24th August, 2021.²²</p>																				
<p>Mrs. Queen Melani Zulu</p>	<p>A review of the loan agreement between the Respondent and the Complainant revealed that the Complainant obtained a loan from the Respondent with the following stipulations:</p> <p>Table 1: Loan Agreement Specification</p> <table border="1" data-bbox="459 1285 1374 1688"> <tr> <td>Loan Amount</td> <td>K 32, 000.00</td> </tr> <tr> <td>Total interest payable</td> <td>K 18, 908.41</td> </tr> <tr> <td>Management fees</td> <td>K 15, 680.00</td> </tr> <tr> <td>Loan amount plus interest & fees</td> <td>K 66, 588.41</td> </tr> <tr> <td>Loan insurance fee (upfront)</td> <td>K 896.36</td> </tr> <tr> <td>Processing Fees (upfront)</td> <td>8 800.00</td> </tr> <tr> <td>Total cash disbursed less upfront payments</td> <td>30,303.64</td> </tr> <tr> <td>Loan period/No. of instalments</td> <td>49</td> </tr> <tr> <td>Monthly repayment</td> <td>K 1, 359.43</td> </tr> <tr> <td>Annual interest</td> <td>K 24.50%</td> </tr> </table> <p>The Complainant's loan account statements</p>	Loan Amount	K 32, 000.00	Total interest payable	K 18, 908.41	Management fees	K 15, 680.00	Loan amount plus interest & fees	K 66, 588.41	Loan insurance fee (upfront)	K 896.36	Processing Fees (upfront)	8 800.00	Total cash disbursed less upfront payments	30,303.64	Loan period/No. of instalments	49	Monthly repayment	K 1, 359.43	Annual interest	K 24.50%
Loan Amount	K 32, 000.00																				
Total interest payable	K 18, 908.41																				
Management fees	K 15, 680.00																				
Loan amount plus interest & fees	K 66, 588.41																				
Loan insurance fee (upfront)	K 896.36																				
Processing Fees (upfront)	8 800.00																				
Total cash disbursed less upfront payments	30,303.64																				
Loan period/No. of instalments	49																				
Monthly repayment	K 1, 359.43																				
Annual interest	K 24.50%																				

²¹ Ms. Namatama Mulelekwa's Account Statement from 5th September, 2014, to 14th September, 2021

²² Ms. Namatama Mulelekwa's Customer Statement for the period 1st August, 2013 to 24th August, 2021

	<p>A review of the Complainant’s loan account statements revealed that the Complainant was availed a loan of K32, 000.00 on 17th June, 2015. The statement revealed that in July 2015, the Complainant only paid K0.25 towards her loan. The statement revealed that from July 2015 to November 2015, the Respondent deducted K1,358.95 from the Complainant’s bank account. The statement further showed that in December 2015, the Respondent only deducted K414.95 and from January 2016 to May 2019, the Respondent deducted K1,358.95 per month. The account statement revealed that in June 2019, the Respondent deducted K2,717.90 and in August 2019, a deduction of K1,358.95 was made. The account statement also showed that in August 2019, a deduction of K2,717.90 was made by the Respondent. The statement further showed that the Respondent deducted an amount of K1, 000.00 per month from her account in August and September 2021. ²³</p> <p>The Complainant’s bank statements</p> <p>A review of the Complainant’s bank statement revealed that the Respondent collected an amount of K1, 000.00 monthly from her bank account on 23rd August and 23rd September 2021. ²⁴</p> <p>The monetary policy rate during the tenure of the loan</p> <p>A review of the Bank of Zambia MPR revealed that the policy rate stood at 12.25% in November 2014. The MPR was still at 12.25% when the Complainant obtained the loan in June 2015.²⁵ The MPR was raised to 15.50% in November, 2015 and the same was maintained throughout 2016.²⁶ The MPR was in February, 2017, reduced by 150 basis points, to 14.00% from the previous 15.50%.²⁷ In May 2017, it was further lowered to 12.50% and later to 11.00% in August which prevailed until November, 2017 when it was further lowered to 10.25%. In February 2018, the Bank of Zambia further reduced the MPR to 9.8% and stalled it until April, 2019.²⁸ In May 2019, the MPR increased by 50 basis points raising it to 10.25% which was maintained through to August, 2019 when the Complainant finished her loan repayments.</p>
<p>Ms. Mirriam Banda</p>	<p>The Complainant’s Payslips</p> <p>A review of the Complainant’s payslip dated 31st January 2020, revealed that the Complainant had a net pay of K1,935. 47 out of</p>

²³ Mrs. Queen Melani Zulu’s loan statements

²⁴ Mrs. Queen Melani Zulu’s loan statement

²⁵ Bank of Zambia annual report, 2014

²⁶ Bank of Zambia annual report, 2016

²⁷ Bank of Zambia annual report, 2017

²⁸ Bank of Zambia annual report, 2018

	<p>a gross pay of K3,573.70.00 and that the Respondent had deducted K1,031.69 which amounted to 59% of the total deductions.²⁹</p> <p>A review of the Complainant's payslip dated 31st August 2021 revealed that the Complainant had a net pay of K2,026.96 out of a gross pay of K3,573.70.00 and that the Respondent had deducted K838.48 which amounted to 41% of the total deductions.</p> <p>The Complainant's Account Statement</p> <p>The Commission reviewed the Complainant's account statement received from the Respondent as an attachment to the letter dated 15th November 2021. A review of the Complainant's account statement numbered 2060000025832 showed that the Complainant's loan account had been underpaying varying loan repayment amounts since 31st July 2014. The account statement further showed that as of 29th January 2020, the Complainant had an outstanding loan balance of K12, 804.64 and that at no point did the Complainant's account statement show a zero-loan balance. The statement also revealed that the Complainant had not remitted loan repayments from February 2020 to July 2021 as deductions were stopped by the Respondent and that she was charged varying interests.³⁰</p>																
<p>Mr. Kennedy Tabo</p>	<p>Review of the loan agreement</p> <p>A review of the loan agreement between the Respondent and the Complainant revealed that the Complainant obtained a loan from the Respondent with the below specifications;³¹</p> <p>Table 1: Loan Agreement Specifications</p> <table border="1" data-bbox="459 1400 1377 1753"> <tr> <td>Loan amount</td> <td>K39, 500.00</td> </tr> <tr> <td>Total interest payable</td> <td>K21, 682.93</td> </tr> <tr> <td>Management fees</td> <td>K23, 700.00</td> </tr> <tr> <td>Loan amount plus interest & fees</td> <td>K84, 882.93</td> </tr> <tr> <td>Loan insurance fee (upfront)</td> <td>K1, 140.04</td> </tr> <tr> <td>Loan period/No. of instalments</td> <td>60</td> </tr> <tr> <td>Monthly repayment</td> <td>K1, 414.23</td> </tr> <tr> <td>Annual interest</td> <td>K18.75%</td> </tr> </table> <p>Review of the Complainant's bank statements</p>	Loan amount	K39, 500.00	Total interest payable	K21, 682.93	Management fees	K23, 700.00	Loan amount plus interest & fees	K84, 882.93	Loan insurance fee (upfront)	K1, 140.04	Loan period/No. of instalments	60	Monthly repayment	K1, 414.23	Annual interest	K18.75%
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²⁹ A review of the Ms. Mirriam Banda's payslips.

³⁰ A review of the Ms. Mirriam Banda's account statement dated 15th November 2021.

³¹ Loan agreement between the Ms. Mirriam Banda's and the Respondent

	<p>A review of the Complainant’s bank statements revealed that the Respondent collected an amount of K1, 000.00 from his account on 23rd August 2021 i.e., after the initial maturity date of the loan.³²</p> <p>The Complainant’s loan statements</p> <p>A review of the Complainant’s loan statement revealed that the Complainant was availed a loan of K39, 500.00 on 8th October 2013. The statements revealed that loan repayment instalments of K1, 414.72 only commenced in November 2014.³³</p> <p>The monetary policy rate during the tenure of the loan</p> <p>A review of the Bank of Zambia MPR revealed that the policy rate stood at 9.75% in October 2013 when the Complainant obtained the loan, and was later revised upwards to 12.25% in November 2014.³⁴ The MPR was later raised to 15.50% in November, 2015 and the same was maintained throughout 2016.³⁵ The MPR was in February, 2017, reduced by 150 basis points, to 14.00% from the previous 15.50%.³⁶ In May 2017, it was further lowered to 12.50% and later to 11.00% in August which prevailed until November, 2017 when it was further lowered to 10.25%. In February 2018, the Bank of Zambia further reduced the MPR to 9.8% and stalled it until April, 2019.³⁷</p>
<p>Ms. Chola Mulenga</p>	<p>The Complainant’s loan statements</p> <p>A review of the Complainant’s bank statement revealed that on 10th July, 2015, she obtained a loan facility of K34,000.00 from the Respondent. It was also revealed that the Respondent had been collecting an amount of K1,328.74 per month from the Complainant’s account from 13th October, 2015 to 7th September, 2020. It was further revealed that on 25th August 2021 the Respondent resumed loan recoveries of K1,500.00 per month from the Complainant’s account. i.e., eleven (11) months after the initial 60-month loan tenure elapsed.³⁸</p> <p>The Complainant’s bank statement</p>

³² Ms. Mirriam Banda’s loan statements

³³ Mr. Kennedy Tabo’s loan statement

³⁴ Bank of Zambia annual report, 2014

³⁵ Bank of Zambia annual report, 2016

³⁶ Bank of Zambia annual report, 2017

³⁷ Bank of Zambia annual report, 2018

³⁸ Ms. Chola Mulenga’s loan statements

	A review of the Complainant's bank statement revealed that the Respondent had made a deduction of K1,500.00 in August and September, 2021 from the Complainant's bank account. ³⁹
Ms. Noreen Chombolola	<p>Review of the Complainant's loan account statements</p> <p>A review of the Complainant's loan account statements revealed that the Complainant was availed a loan of K58,000.00 on 8th December, 2014. The statement revealed that the Complainant remitted 60 monthly instalments of K2,249.74 between January, 2015 to April, 2020.⁴⁰</p>
Mr. Danny Katebe	<p>The Complainant's loan statements</p> <p>A review of the Complainant's loan statement revealed that the Complainant was availed a K30,000.00 loan on 7th February 2014. The statements revealed that loan repayment instalments of K1,072.54 only commenced in May, 2014.⁴¹</p>

Review of the salary deduction authorization forms

It was submitted that:

13. A review of the salary deduction authorization form signed by the Complainants revealed that as part of the agreement, the form had a clause that read; *"I, the undersigned, request and authorise my employer to deduct from my monthly salary the amounts due and payable by me at any particular time, and pay the amounts so deducted to African Banking Corporation as repayment on a loan facility issued by African Banking Corporation to me. I further understand and undertake that this is an irrevocable instruction and cannot be cancelled by me until all amounts due have been paid to African Banking Corporation.*
14. *Should my employer for any reason, not deduct any of the amounts in terms of this request, I shall consider the amounts unpaid, and if due undertake to pay African Banking Corporation such sums. I further understand and undertake that African Banking Corporation will receive all payments in terms of this request without prejudice to its rights for recovery of amounts owed.*
15. *I acknowledge and agree that in the event of my loan(s) being rescheduled or my taking of an additional loan, the terms of the loan agreement and this salary deduction authorization form shall operate in favour of African Banking Corporation in respect of the rescheduled loan and additional loan, together with*

³⁹ Ms. Chola Mulenga's bank statement

⁴⁰ Ms. Noreen Chombolola's loan account statement

⁴¹ Mr. Danny Katebe's loan statement

any amendments, as if the salary deduction authorization form had been signed and executed by me in respect of the rescheduled or additional loan.”⁴²

Review of the Banking and Financial Services Act

It was submitted that:

16. A review of the Banking and Financial Services Act, revealed that Section 2 of the Act defined a non performing loan as-

“a loan in respect of which payment of principal or interest is in arrears for more than ninety days;”

Furthermore, Section 110(1) of the Banking and Financial Services Act stated that; *“A financial service provider shall recover the following amounts from a borrower on a non-performing credit facility:*

- (a) the principal amount owing when the credit facility becomes non-performing;*
- (b) any interest in arrears due in accordance with the credit facility agreement but not exceeding the principal amount owing when the loan becomes non-performing; and*
- (c) expenses incurred in the recovery of amounts owed by the borrower.*

Review of the Banking and Financial Services Directive⁴³

It was submitted that:

17. A review of the Banking and Financial Services (Classification and Provisioning of Loans) Directives, 2020 which was issued on 3rd April, 2020 disclosed in Section 13(1) that *“where a financial service provider restructures a credit facility, such restructured facility shall be supported by documentary evidence as to the collectability of future payments when b(ii) where interest has been capitalised, the principal and interest payments are made in accordance with the modified repayment terms for a period of at least one hundred and eighty days from the date of restructuring.*

⁴² Salary deduction authorization form signed by the Complainants

⁴³ The Banking and Financial Services (Classification and Provisioning of Loans) Directives, issued on 3rd April, 2020, 2020, Gazette Notice No. 287 of 2020

Restructured loans

13. (1) Where a financial service provider restructures a credit facility, such restructured facility shall be supported by documentary evidence as to the collectibility of future repayments.
- (2) A restructured loan, which was in non-accrual status, shall return to performing status:
- (a) when the rate of interest charged for the loan or advance is equivalent to the rate of interest that would be charged on a new loan or advance of similar merit; and
 - (b) when one of the following conditions is satisfied:
 - (i) all past due principal and interest payments are current; or
 - (ii) where interest has been capitalised, the principal and interest payments are made in accordance with the modified repayment terms for a period of at least one hundred and eighty days from the date of restructuring.
- (3) A non-accrual loan that has been restructured more than twice over its lifetime, shall remain in non-accrual status and shall be treated in accordance with the provisions of Directives 10 and 11.

Submissions from the Bankers Association of Zambia⁴⁴

It was submitted that:

18. On 29th November 2021, the Commission sent an email to Bankers Association of Zambia (BAZ) to seek more information on the loan adjustments due to changes in MPR. The Commission enquired if there was a stipulated period within which financial institutions should restructure their clients' loans resulting from changes in the MPR. The Commission also enquired if there were any industry guidelines or a stipulated timeframe within which financial institutions can claim outstanding balances brought about by a rise in the MPR after the initial loan tenure has elapsed. The Commission further enquired on the reasonable period in which a loan was to be restructured after changes in the MPR based on industry practice.
19. On 15th December 2021, BAZ submitted that responses from various banks showed that there was no stipulated period within which financial institutions were required to restructure their clients' loans. As such, each bank used their own change process flow once the Monetary Policy Committee (MPC) announcements were made. BAZ submitted that members reported that no restructures were done retrospectively and that clients were usually notified on the MPR change using different channels such as SMSs, print and social media notifications, bank branch notices and emails. BAZ further submitted that clients were advised to contact the bank to choose between adjusting the tenure or the repayment amount and the grace period was provided. BAZ submitted that other banks advised that they did not change the interest rates in line with

⁴⁴ BAZ document to the Commission dated 15th December, 2021

the changes in the MPR as they maintained the rate, as contractually agreed with the client at onset.

20. BAZ submitted that outside of the position of the law in Section 110 of the Banking and Financial Services Act (BFSA) and the fact at common law, no change in law/directive or guideline including MPR was applicable retrospectively, there was no industry guideline on the timeframe within which financial institutions could claim outstanding balances. However, the timeframe could vary from one client to the other. BAZ submitted that if the client opted for the adjustment of the repayment amount, the loan tenure remained unchanged and the customer paid off the loan within the original tenure. BAZ submitted that in the event that the client opted for the tenure adjustment the increase on the loan would depend on the balance, instalment remaining, number of the basis point increased etc. Some banks set parameters which were followed as such loans were not supposed to go beyond 72 months, Debt Service Ratio was maintained.

21. BAZ submitted that varied responses were received towards the reasonable period in which a loan could be restructured after changes in the MPR based on industry practice which included the following:
 - a. Two (2) to three (3) weeks
 - b. As soon as it was practicable for the financial institution
 - c. Within a year after the adjustment of the MPR by Bank of Zambia
 - d. MPR changes were implemented within 24hrs with value of Bank of Zambia Value date

Analysis of the Submissions from BAZ

It was submitted that:

22. From submissions made by the Bankers Association of Zambia, the Commission observed that most banking institutions generally worked with a time-period of 24 hours to utmost a year (from the date of change in MPR) to restructure loans and commence recovery of excess interest brought about as a result of an increase in the monetary policy rate. However, in the case of the Respondent, the Commission found that the entire loan tenures had elapsed before the Respondent could reconcile the loans. The Commission found that the Respondent took as long as 3 years to restructure the loans following a change

in the MPR. The relatively long period taken by the Respondent suggested a lack of precaution in the Respondent's after-sales service to the Complainants.

Respondent's Submissions to the Commission's inquiry

It was submitted that:

23. Regarding the reasons for the alleged delayed continuation of the loan deductions when customers' loan recoveries drop off, the respondent submitted in a letter dated 16th December, 2021, that the first step they take was to establish contact with the borrower - that is via Short Message Service (SMS) to the last known contact numbers as held on their system. The Respondent submitted that this was followed by phone calls to the last known number. The Respondent submitted that through these steps several customers have been able to get clarity around their loan balances and had agreed with them with the mode of setting such balances. The Respondent submitted that they also used email addresses obtained from the Smart Zambia to try and communicate prior to any deductions being implemented.
24. The Respondent submitted that in an event where the customer was not forthcoming despite the above attempts, they resubmitted the deductions requested to Payroll Management and Establishment Control (PMEC). The Respondent submitted that depending on the credit status of the customer and the customer's Debt Service Ratio (DSR) having capacity to meet the deduction, they would receive the entire amount requisitioned for or less as the deduction requested for (if in excess of the allowable DSR) could breach the Debt Service Ratio limit set by prevailing regulations and practice in the financial sector. The Respondent submitted that if the customer's borrowings had reached the debt service ratio limit, no instalment would be received and as such they would have to explore other means of recovering the outstanding balance. Further, the Respondent submitted that where a customer held an account with them and if any of the measures cited above had not yielded satisfactory or any results, they proceeded to make recoveries from the customer's salary account where such account existed.

Analysis of the Respondent's Response to the Commission's Inquiry

It was submitted that:

25. In view of the above response by the Respondent, the Commission observed that the Respondent was merely submitting their internal policy and not whether they had followed the same policy in the case of the Complainants as they did not provide the Commission with any proof to that effect. The Commission observed

that the Respondent still did not state what barred them from recommencing loan recoveries from the Complainant's salaries or bank accounts (in cases where the DSR could allow) with regards to the cases at hand.

Submissions to the Commission's preliminary Report

It was submitted that:

26. After approval of the 1st preliminary report, the Commission sent the report to the parties on 9th February, 2022 to make further submissions based on the Commission's findings. The Respondent did make further submission to the report on 16th February, 2022.

The Respondent's submission to the Commission's Report

It was submitted that:

27. In a letter dated 16th February, 2022, the Respondent submitted that they read through the Commission's preliminary report sent to them on 8th February, 2022 and they would like to clarify and provide additional responses as follows:
- The loans mentioned in paragraph 1 of the preliminary report were not paid off and the Complainants remain indebted to the Bank as evidenced by the individual loan statement provided.
 - With regards to resubmission of deductions from the Complainants' pay slip or direct deductions from accounts, the Bank reiterate its position as communicated to the Commission in its correspondence dated 16th December, 2021 wherein the Bank advised that it took the necessary commercial steps to engage all affected Complainants of the outstanding balances before effecting such deductions. In the case of Chola Mulenga, the initial loan deductions dropped off the Complainant's pay-slip in September, 2020 and in August, 2021. The Bank resumed deductions subject to the Complainant's Debt Service Ratio which allowed them to resume deductions. If at the time of reinstating deductions, the Complainant had breached the debt service ratio, the bank withheld deductions until such a time when there was room for deductions.
 - As mentioned in several prior engagements with the Commission, a number of affected customers whom upon being informed of their balances met with the Respondent's staff to fully appreciate their liabilities with the Bank. Following the engagements, agreements were made with the Bank ranging from agreeing to the usual deductions until full collections were made to refinancing their loans with the bank or indeed with other lending institutions in order to fully settle their obligations. In both scenarios the

Bank (in its discretion and without any admission of liability or breach) made additional considerations favourable to the Complainants in question by discounting the balances to be settled to show fairness.

- Where the Bank had not received any response despite the use of various channels to establish communication with the affected customers, the Bank would therefore proceed to make recoveries from either the pay slip (if the customer's debt service ratio allowed to do so) or from the bank account if the former was not applicable.

28. The Respondent submitted that in view of the foregoing facts, they re-submit that the Bank did not act in a manner as alleged in the preliminary report.

The Commissions Response to the Respondent's Submissions to the Preliminary Report.

It was submitted that:

29. The Commission observed and noted that the Complainants were still owing the Respondent as at the time their respective initial loan tenures elapsed, and that it was the Complainants' obligation to pay back the said loans. However, the Commission's concern was the failure by the Respondent to engage the Complainants in good time after their respective initial loan tenures elapsed, and the consequent excess interest accrued, that the Respondent was demanding from the Complainants. The Commission found it unfair for the Respondent to demand that the Complainant's pay the excess interest accrued during the period that they were not aware of the outstanding balances, especially considering the length of period it took for the Respondent to get in touch with the Complainants individually, which in some cases took as long as 22 months. The Commission also observed that the Respondent did not submit any evidence to show that any of the clients/complainants was financially overburdened, which resulted in the Respondent being unable to effect the repayment deductions earlier than they did on the complainants accounts.

Further Submissions to the Commission's Preliminary Report

It was submitted that:

30. After approval of the 2nd preliminary report, the Commission re-sent the preliminary report to the parties on 1st April, 2022 to make further submissions based on the Commission's findings. The Respondent did make further submission to the report on 20th April, 2022.

The Respondent's further submission to the Commission's Report

It was submitted that:

31. In a letter dated 20th April, 2022, the Respondent submitted that the Commission issued Notices of Investigation on various dates in 2021 in relation to the Complainants. The Respondent submitted that in the report, the Commission made the following key findings or observations at paragraph 41 and 42 thereof:
- a) The fluctuations in the MPR charges directly affected the Complainants respective loans both the monthly instalments payable and loan tenures thereby making the Complainants' loans rescheduled to maintain affordability.
 - b) The Bank had permissions through the signed "*salary deduction authorisation forms*" from the Complainants to maintain the terms of the loans in respect of the rescheduled loan, together with any amendment whatsoever, until all amounts due were paid.
 - c) Although the Complainants had a responsibility and obligation to ensure they fully repaid their loans to the Bank as and when due, the Bank ought not to have contributed to the financial burdens of the Complainants by also keeping silent on loan payables for more than twelve 12 months when the Bank knew that certain loans were still active with outstanding balances due.
 - d) Due to the Banks inaction regarding the loan balances outstanding for many months, with the maximum period being 24 months, past the date the loans were initially scheduled to end, the Complainants' loans consequently accrued excess interest as they were not being serviced due to non-communication between them and the Bank.
 - e) Had the Bank, being experts, taken reasonable steps to engage the Complainants', the Complainants would have prevented the accumulated interest on their respective loan balances and certainly would not have been subjected to the currently financial burdens placed on them by the Bank's silence for 24 months.
32. The Respondent submitted that arising from the above findings made by the Commission in the Report, the Commission determined that the Bank did not exercise reasonable care and skill in their provision of the service to the Complainants and was therefore in violation of Section 49(5) of the Competition and Consumer Protection Act No. 24 of 2010 ("the Act"). The Respondent submitted that the Commission further concluded that the alleged failure by the Bank to act with reasonable care and skill resulted in an unconscionable disadvantage on the Complainants.

Burden of proof and procedural fairness

It was submitted that:

33. The Respondent submitted that the burden of proof that the Bank breached Section 49(5) of the Act by failing to provide the services the Complainants contracted to obtain from it according to a reasonable standard of care and skill lied with the Commission.⁴⁵ The Respondent submitted that the Report was also based on conclusions that had largely been derived from assumptions. The Respondent submitted that in that regard, it would be unjust and unsafe to make a finding that an infringement of the Act had been committed and proceeding to impose sanctions on the Bank, which were financial in nature, based on assumptions or unsubstantiated assertions. The Respondent submitted that on contrary, the lack of sufficient, cogent and consistent evidence that the Bank had violated the Act should result in the dismissal of the allegations against the Bank due to the heightened standard of proof in a case of this nature.⁴⁶
34. The Respondent submitted that as shown in their response, the Commission had failed to discharge this burden through manifest errors of application of the law and customs applicable to the provision of financial services to the fact of the complaints and procedural infringement, such as the failure to issue a Notice of Investigation in relation to Mr. Danny Katebe, who was introduced, at the instance of the Commission, as a Complainant at page 8 of the Report. The Respondent submitted that the Bank wished to stress that a failure to issue a Notice of Investigation in relation to Danny Katebe was a procedural violation that deprived the Bank of its right to procedural fairness and the attendant right to be heard on the allegation against it. The Respondent submitted that in the case of ***North- Western Energy Company Limited v Energy Regulation Board***⁴⁷, the High Court held as follows in relation to procedural fairness by a public body:

11. "under "procedural impropriety," the goal of achieving or securing procedural fairness towards the person who will be affected by the administrative decision is understood.

12. In keeping with the goal of procedural fairness, the Courts ensure that administrative decisions or actions conform with the procedural rules that are expressly laid down in the statute, or instrument by which the jurisdiction of the administrative body or public official is conferred.

⁴⁵ In accordance with a plethora of Zambia case law which establishes that the burden of proof lies with he who alleges the leading case of which is *Mohamed v the Attorney General* (1982) Z.R 49.

⁴⁶ In the Australian case of *Morley v Australian Securities and Investment Commission* (2010) NSWCA 331 at 746

⁴⁷ (2011) Z.R 513

13. *An important concern of procedural justice is to provide the opportunity for individuals to participate in decisions by public authorities that affect them.*
14. *Another concern of procedural justice is to promote to the quality, accuracy and rationality of the decision-making process. Both concerns aim at enhancing the legitimacy of the process, whilst at the same time improving the quality of decisions made by public authorities.*

35. The Respondent submitted that Section 55(3) of the Act uses the word “*shall*” in relation to the issuance of a Notice of Investigation thereby making it a mandatory procedural requirement for the Commission to issue a Notice of Investigation on commencement or as soon as practicable after the commencement of an investigation. The Respondent submitted that in the **Attorney General v Million Juma**⁴⁸ the Court affirmed the following legal position on the distinction between a mandatory and a directory legal requirement:

“In discussing mandatory and directory provisions, Basu’s Commentary on the Constitution on India, 5th Edition, Volume One, says this at page 59 and 60:

The distinction between mandatory and directory provisions applies in the case of constitutions as in the case of ordinary statutes. The distinction is that while a mandatory enactment must be obeyed or fulfilled ‘exactly.’ It is sufficient if a directory enactment be obeyed or fulfilled substantially. Secondly, if a provision is merely directory, penalty may be incurred for its non-compliance, but the act or thing done is regarded as good notwithstanding such non-compliance; if, on the other hand, a requirement is mandatory, non-compliance with it renders the act in valid. The general rule about constitutional provision is that they should be regarded as mandatory where such construction is possible.” (Our emphasis)

36. The Respondent submitted that failure to issue a Notice of Investigation rendered the investigation in relation to Danny Katebe a nullity for lack of procedural fairness notwithstanding the submissions that the Bank made in relation to Danny Katebe as the exact nature of his complaint against the Bank was not notified to the Bank through a Notice of Investigation. The Respondent submitted that in the light of this breach of the Bank’s right to procedural fairness, the Bank would not address the allegations made in respect of Danny Katebe as he was not a Complainant.⁴⁹

⁴⁸ (1998) Z.R.1

⁴⁹ The Commission itself does not acknowledge Danny Kabete as a Complainant in paragraph 11 of the Report in which it introduces the Complainants.

The Banking Industry

It was submitted that:

37. The Respondent submitted that as the Commission would note, the banking sector was a heavily regulated sector with codes of conduct imposed on banks being stipulated in various pieces of legislation. The Respondent submitted that the key legislation was the Banking and Financial Services Act No. 7 of 2017 (“the **BFS Act**”).⁵⁰ In terms of the BFS Act, various activities had been identified which were considered anti-competitive and an infringement on the rights of the consumer. Section 104 of the BFS Act prohibited misconduct during debt collection which was expressed to be harassing, oppressive or abusive conduct in the collection of a debt⁵¹, or the use of false, deceptive or misleading representation means when collecting a debt.⁵²
38. The Respondent submitted that the BFS Act also stipulated the standard of skill and care to be discharged by a bank when lending money to its customers. The Respondent submitted that that standard was⁵³:
- a) *“A financial service provider shall, before advancing a credit facility to a customer, assess and determine the customer’s ability to pay the credit, based on the customer’s current and expected income, current obligations, employment status, other financial resources or assets to be given as security.*
 - b) *A financial service provider shall not advance a credit facility to a customer whose total monthly debts due on outstanding obligation including under credit facility, exceed a limited prescribed by the Bank.*
 - c) *A financial service provider that contravenes this section commits an offence.”*
39. The Respondent submitted that most significantly, the BFS Act prescribed what constituted “*unfair business practices*” in the provision of financial services as follows:
- a) *“a practice that is likely to mislead customers in making decisions;⁵⁴*
 - b) *a practice that compromises the standing of honesty and good faith which a financial service provider can reasonably be expected to meet; or*
 - c) *a practice which places pressure on customers and distorts their decisions, by use of harassment or coercion.”*

⁵⁰ Part IX of the BFS Act.

⁵¹ Section 104 (i) of the BFS Act

⁵² Section 104(2) of the BFS Aact.

⁵³ Section 108 *ibid*

⁵⁴ Section 116(2) *ibid*

40. The Respondent submitted that what amounted to reasonable care and skill necessary to make a finding that the Bank engaged in unfair trading practices needed to be considered in the context of the BFS Act which obligated the Bank to act honestly and in good faith, without harassing or using oppressive conduct in its debt collection efforts. The Respondent submitted that the standard of care and skill to be discharged was to assess and determine the customers; ability to repay a loan before advancing a credit facility and this duty of care continued throughout the life of the facility.⁵⁵
41. The Respondent submitted that the foregoing submission was supported by the decision in the case of **Karak Brothers Company Limited v Burden**⁵⁶, where the Court stated that:
- “a bank has duty under its contract with its customer to exercise reasonable care and skill in carrying out its part with regards to operations within its contract with its customers. The Standard of that reasonable care and skill was an objective standard applicable to bankers. Whether or not it had been attained in any particular case has to be decided in light of all relevant factors.”*
42. The Respondent submitted that the above position of the law was restated by the learned authors of **Chitty on Contracts**, Volume 1, Twenty-Nine edition at paragraph 13-032, who stated thus:
- “In the case of contract under which a person agrees to carry out a service.... Where the supplier was acting in the course of a business, there was an implied term that the supplier would carry out the service with reasonable skill and care...if the contract was one for the supply of professional services, the degree of care and skill required of a professional man was that which was to be expected of a member of his profession (in the appropriate speciality, if he be a specialist) of ordinary correspondence and experience.”*
43. The Respondent submitted that the approach of considering what constituted unfair trade practices in the context of the standards applicable to the industry in which the service provider operated was adopted by the English Courts in the case of **Plevin v Paragon Personal Finance Limited**⁵⁷, where the debtor alleged that an unfair relationship existed between it and its service provider. The Respondent submitted that the court began its consideration of the question before it by analysing the relevant service industry in paragraph 12 as follows:

⁵⁵ The Banking and Financial Services, Classification and Provision of Loans Directives 2020, directive 4 (1)(a) and (c) this duty was discharged by Bank when it rescheduled the loan tenure to ensure affordability.

⁵⁶ (1972) ALL ER 1210

⁵⁷ (2014) UKSC 61

“The regulatory framework

The sale and administration of general insurance and non-investment life business is now a heavily regulated field. The conduct of insurance intermediaries is governed by a statutory scheme which implements the Directive 2002/92/EC on insurance mediation. These rules created duties owed directly by the provider of the service to be insured, actionable under what was then section 150 of the Act”

44. The Respondent submitted that in justifying the approach taken in the **Plevin Case**, the Supreme Court of the United Kingdom made the following observation at paragraph 16:

“But he declined to find that the relationship was thereby rendered unfair because the lender had committed no breach of the ICOB rule either in charging the Commission or in failing to disclose it. At paragraph 58, he said:

“.. the touchstone must in my view be the standard imposed by the regulatory authorities pursuant to their statutory duties, not resort to visceral instinct that the relevant conduct is beyond the pale in that regard it is clear that the ICOB regime, after due consultation and consideration, does not require the disclosure of the receipt of Commission. It would be an anomalous result if a lender was obliged to disclose receipt of a commission in order to escape a finding of unfairness under section 140A of the Act but yet not obliged to disclose it pursuant to the statutory imposed regulatory framework under which it operates.”[the Respondent’s emphasis]

45. The Respondent submitted that it was clear from the above that the duties imposed by the statutory regulatory framework are a relevant, if not a paramount consideration, of whether or not a service provider exercised reasonable care and skill.

The service to be provided by the Bank

It was submitted that:

46. The Respondent submitted that having established the test of the standard of care and skill applicable to the assessment of the Bank’s dealing with the Complainant post the dates when the loan tenures were to elapse, it was paramount to define the nature of the service to be provided and the duties imposed by status on the Bank when providing those services. The Respondent submitted that in view of Section 49(5) of the Act which stipulated that:

“A person or enterprise shall supply a service to a consumer with reasonable care and skill.”

47. The Respondent submitted that in **Chitty on Contract**, Volume 2, Twenty-Ninth Edition, at paragraph 38-223, the learned authors defined a loan as follows:

“A contract of a loan of money is a contract whereby one person lends or agrees to lend a sum of money to another, in a consideration of a promise express or implied to pay that sum on demand or a fixed or determined time with or without interest.”

48. The Respondent submitted that in **Oliver Dean Morley T/A Morley Estates v The Royal Bank of Scotland Plc**⁵⁸ the court made the following finding as to when the service was provided at paragraph 60:

“Breach of a duty to provide banking service with reasonable care and skill

60. The service which the bank provided by the loan agreement was to make funds available for drawdown by Mr. Morley. That service had been provided when funds were initially drawn down in December, 2006 and from time to time thereafter.....after the loan term expired in December 2009 and Mr. Morley failed to repay the sums advanced, he was in default and the only question was whether the bank would forebear to enforce its security.[the Respondent’s emphasis]

49. The Respondent submitted that the Complainants entered into loan agreements with the Bank which disclosed the sums of money the Bank would advance to them including the various fees the Bank would charge the Complainants. The Respondent submitted that accordingly, the service to be provided by the Bank was that of giving the Complainants loans on agreed terms as to applicable charges and repayment period. The Respondent submitted that the Bank discharged this service with reasonable skill and care on the dates each Complainant was paid the loan amounts.
50. The Respondent submitted that the duties imposed on the Bank when advancing credit had been set out above. The Respondent submitted that those duties were found in Section 108 of the BFS Act which did not impose a duty on the Bank to inform the Complainant that they still owed the Bank money on their loans. The Respondent submitted that in accordance with the decision in the **Morley case**,

⁵⁸ (2021) EWCA Civ 338

after the loan was discharged and the debtor failed to pay, the only question that the lender had to consider was whether it would forebear to recover the debt.

51. The Respondent submitted that in **Chitty on Contract**, Volume 2, at paragraph 38-234, the position of the law as to repayment of debts was enunciated as follows:

“Once a debt is approved to have existed, its continuation is presumed; thus, the obligation to repay a loan is presumed to continue to exist unless the borrower proves that the loan had been repaid or otherwise discharged, or such payment can properly be inferred from all the circumstances. A receipt is not conclusive but only prima facie evidence that a loan has been repaid.”

52. The Respondent submitted that they opined that once the Bank discharged its duty when advancing credit to the Complainants⁵⁹ a corresponding duty to repay the loans was placed on the Complainants⁶⁰. The Respondent submitted that the duty would only terminate up on the Complainant repaying their loans with cogent evidence to substantiate their belief that the loans were repaid, in the event of a difference of opinion with the Bank. The Respondent submitted that each Complainant signed a “*Salary Deduction Authorisation Form*” (the “**forms**”) which authorised their employer to deduct the agreed monthly instalments from their salaries and to remit them to the Bank. The Respondent submitted that it stood to reason that the Complainants had knowledge at all material times as to what deductions, if any, were being made from their salaries by their employers and remitted to the Bank. The Respondent submitted that information was easily obtained from their salary pay slips and bank statements.
53. The Respondent submitted that failure to ensure that all instalments were paid in full as and when they fell due was clearly a breach on the part of the Complainants.⁶¹
54. The Respondent submitted that further, the agreement of the parties in the loan agreement was that although the loans were to be repaid within a fixed tenure, the tenure could be increased in the event of the loan being rescheduled. The Respondent submitted that the agreement was in the “Salary Deduction Authorisation Form” and couched in the following words:

⁵⁹ By disclosing the cost of borrowing in the loan agreements in compliance with Section 108 of the BFS Act and the Banking and Finance Service (cost of borrowing) regulates statutory instrument No. 179 of 1995 (the lending regulations)

⁶⁰ In line with the agreement on loan period No of instalments and repayment per month set in the loan agreements.

⁶¹ National Drug Company Limited and Privatisation Agency v Mary Katongo, Appeal No. 79/2001

“I acknowledge and agree that in the event my loan (s) being rescheduled or my taking of an additional loan, the terms of the Loan Agreement and a salary deduction authorization form shall appreciate in favour of the African Banking Corporation in respect of the rescheduled loan and additional loan, together with any amendments, as if the salary deduction authorization form had been signed and executed by me in respect of reschedule of additional loan.”

55. The Respondent submitted that the Report acknowledged in paragraph 30 that the loan tenures were revised upwards in 2016 following the increase in the MPR. The Respondent submitted that while the revisions made by the Bank of Zambia to the MPR were widely publicised, the Bank still proceeded to inform its customers, including the Complainants, that it had revised its interest rate to 19.5% with effect from 17th March, 2016. The Respondent submitted that this was done through a notice published in newspapers of daily circulation on 17th February, 2021.⁶²
56. The Respondent submitted that we must point out that there was no obligation to inform a customer on the changes in the interest rate set in the BFS Act or the Lending Regulations. The Respondent submitted that however, this was a practice that had emerged in the banking sector in Zambia.
57. The Respondent submitted that further, according to the Report⁶³, the Commission appeared to be labouring under the erroneous belief that the Bank waited to restructure the loan tenures of the Complainant arising from the increase in the MPR in 2016, until the lapse of the original loan tenure in the loan agreements. The Respondent submitted that this was not correct. The Respondent submitted that the loans were rescheduled with effect from 17th March, 2016 in accordance with the Notice⁶⁴. The Respondent submitted that as such, there was no lack of precaution on the part of the Bank in the discharge of its after-sale service, which service was not prescribed by the statutory framework.
58. The Respondent submitted that in order to ensure that it did not error on the wrong side of Section 104 of the BFS Act, the Bank sent short message services (SMS's) to the Complainants following the lapse of the initial loan tenures as per the table below which demonstrated the breach on the Complainants' part and the time between receipt of the final instalment and the Bank sending SMS's to the Complainants; to inform them about their outstanding balances or

⁶² A copy of the advert attached as annexure 1

⁶³ Paragraph 22

⁶⁴ This was in line with the industry practice confirmed by BAZ in paragraph 19 and 21 of the Report following the issuance of the Notice attached hereto as Annexure 1

developments relating to the same. The Respondent submitted that attached to this submission and marked “Annexure 2” was relevant evidence showing the SMS and email correspondence from the Bank to the various complaints based on their last available contact information as available to the Bank.

Complainant	Lapse of initial tenure	Date of final instalment on initial loan paid	Repayment history	SMS sent	Email sent
Namatama Mulelekwa	30 September, 2019	30 November 2019	Delayed payments	August 2021 and twice in September 2021	6 August 2021
Queen Melani Zulu	30 June 2019	28 August 2019	Under payments	June 2020 and September 2021	6 August 2021
Miriam Banda	30 th April, 2019	28 th June 2019	Under payments	May 2020; June 2020; August 2020; September 2020; February 2021	
Kennedy Tabo	31 October 2020	October 2019	Non-payments for 12 months	November 2020, August 2021	
Chola Mulenga	31 July 2020	7 September 2020	Slight payment delays	June 2020; August 2020	
Noreen Chombolola	31 December 2019	18 April 2020	Slight payment delays	April 2020; August 2020; February 2021; September 2021	28 July 2021

59. The Respondent submitted that following the finding by the Commission that the Bank ought not to have contributed to the financial burdens of the Complainants goes against the facts and established principles of law arising in this case⁶⁵. The Respondent submitted that in **Banking Litigation**, 2nd Edition by David Warne, at paragraph 2-021, the author had this to say about fiduciary duties of a bank:

“In most situations the relationship between a bank and its customers would be governed by the express or implied terms of a contract. In ordinary course of banking, no fiduciary duty arises.”

60. The Respondent further submitted that at paragraph 2-022 of **Banking Litigation**, it was observed that:

⁶⁵ A contract view would lead to clothing the Bank with fiduciary duties that do not arise in the provision of financial services.

“The courts are reluctant to impose fiduciary duties of the bank. Professor (now Judge) Finn as indicated that, given the general recognition that banks are commercial entities with an obvious self interest in the business they transact, he would not expect fiduciary duties to be owed by a bank to a customer.”

61. The Respondent submitted that the Commission could not impose a fiduciary duty on the Bank to ensure that the Complainants do not incur financial burdens when this was not a duty that existed under banking law.⁶⁶
62. The Respondent submitted that the Commission accordingly failed to assess the Banks justification that the loans were already in arrears by the date when the initial loans tenures were to elapse. The Respondent submitted that the Commission further made assumptions at paragraph 42 of the Report about actions the Complainants would have taken had the Bank communicated with them earlier concerning the outstanding balances on their loans. The Respondent submitted that these assumptions were not only speculative but lack support of cogent evidence. The Respondent submitted that the evidence before the Commission in the loan account statements and submissions tendered by the Bank established that the Complainants were either delaying payments or under paying their monthly instalments, if not both. The Respondent submitted that these lapses coupled with the increase in the MPR in 2016 automatically escalated the loan amount and loan tenure. The Respondent submitted that therefore, there was no basis for assuming that the Complainants would have discharged their obligations to the Bank in a manner that prevented the escalation of interest on their loans had the bank communicated with them earlier.
63. The Respondent submitted that the Complainants were accordingly not entitled to the equitable treatment the Commission desired to grant them having breached their contractual obligations.
64. The Respondent submitted that the Bank was regulated by the Banking and Finance Services Act No. 7 of 2017 (BFSA) and the subsidiary legislation and directives issued pursuant to the that Act. The Respondent submitted that accordingly, what amounted to reasonable care and skill in its duties to the complainants was prescribed by the provision of the BFSA.

⁶⁶ In the Morley Case, the Court of Appeal rejected the Appellant’s argument that the Respondent bank had breached its duty to provide banking service with reasonable care and skill and in breach of its duty of good faith. In so doing it upheld the lower courts finding that all the banks action were rationally connected to its commercial interest.

65. The Respondent submitted that in terms of Section 108 of the BFSA, the Bank's duty to act with reasonable care and skill when providing the service of advancing money to a borrower was to assess and determine the borrower's ability to pay. The Respondent submitted that this duty arose at the time when the funds were initially being advanced to the borrower. The Respondent submitted that it did not arise at the time a loan was restructured or a borrower was in default.
66. The Respondent submitted that after expiry of the loan duration, the Bank's duty was to engage in debt recovery actions that were not harassing, oppressive or abusive hence its numerous attempts to contact the Complainants by SMS and through email addresses (where such email addresses existed) and where it was possible or practicable to send, before it finally resubmitted remittance requests with PMEC. The Respondent submitted that this duty was akin to one to act in good faith and was unrelated to the duty to supply services to a consumer with reasonable care and skill.
67. The Respondent submitted that in the alternative, the Bank was entitled to place its commercial interest in recovery of the balances outstanding on the loans in a manner that it considered compliant with the BFSA, notwithstanding the perceived hardship to the Complainants arising from this.
68. The Respondent submitted that the Complainants' failed to honour their obligations to the Bank resulting in the accumulated interest on their loans. The Bank had no legal or other obligation to ensure the Complainants did not act in a manner that led to their being financially burdened.
69. The Respondent submitted that the Commission ought not to impose new duties on the Bank that were not statutorily imposed on it as this would result in the anomaly of the Bank being punished for actions in respect of which its regulatory framework did not alert it to be mindful of. The Respondent submitted that further, the interpretation of Section 49(5) that the Commission appeared to have generated, wherein Section 49(5)'s ambit had been extended to include the Bank's failure to inform or communicate with the Complainants herein, fell well outside the wording of the said section 49(5) of the Act. The Respondent submitted that no such requirement existed at law or at all.
70. The Respondent submitted that on the totality of the facts, evidence and the law, the Bank had not breached section 49(5) of the Act as alleged or at all. The Respondent submitted that therefore, request on behalf of the Bank that the Technical Committee of the Board of the Commission does not adopt any of the assumptions and findings of the Commission as there was no basis for a finding of infringement. The Respondent submitted that further, the Report failed to

disclose any recommendations on the sanctions to be imposed on the Bank for the alleged infringement of the Act thus depriving the Bank the opportunity to advance its representation on this issue in breach of the rule's natural justice.

The Commissions' Further Response to the Respondent's Submissions to the Preliminary Report.

It was submitted that:

71. The Respondent submitted that they did not receive the Notice of Investigation pertaining a complaint against them by Mr. Danny Katebe but, according to the Commission's record, the Notice of investigation was served on the Respondent on 25th November, 2021 as evident by the acknowledgement having the Respondent's date stamp.⁶⁷
72. The Commission did not dispute the arrears accrued due to under payments, late repayments by the complainants and changes in MPR. The Commission however, contended the interest accrued from the point the Respondent ceased the initial deductions to the point they resumed the deductions. The Respondent having known what was owed to them, they ought to have recovered their money as they had known since 2016 what would be due to them as it was not covered in the monthly instalment. But they ceased the deductions leading to accrued interest, which interest the Commission was disputing and did not have to be recovered. The Commission noted that the Respondent did communicate to the Complainants, however, it also observed with concern the time it took for the Respondent to effect the various deductions after the initial tenures elapsed. The Commission noted with concern that while the MPR changes occurred in 2016, the Respondent took unreasonably long to recommence loan repayment deductions after the initial loan tenures elapsed; in some instances, as long as 24 months.
73. *"The Respondent submitted that it stood to reason that the Complainants had knowledge at all material times as to what deductions, if any, were being made from their salaries by their employers and remitted to the Bank. The Respondent submitted that information was easily obtained from their salary pay slips and bank statements."* It was on this premise that the Complainants also stood to believe that they had fully settled their loans as recoveries were made as per the loan agreements. The Commission noted that this did not hold due to changes in MPR that resulted in loan tenure extensions.
74. The Respondent submitted that *"A financial service provider shall not advance a credit facility to a customer whose total monthly debts due on outstanding*

⁶⁷ Evidence on file with reference number CON/19/11/2021/00854/SWZ/140/LC

obligation including under credit facility, exceed a limited prescribed by the Bank” the Commission found that the loans were already advanced, in addition there was no proof that the aforementioned submission from the Respondent would have caused such delay on the Respondent’s obligation to resume recoveries. The Commission established by continuing on loan recoveries through deductions might have given the complainants an indication that the loans were still running, but they stopped for 24 months which gave an impression that the loan was fully paid.

75. The Commission established that the obligation to repay the loan was presumed to continue to exist unless the borrowers proved that they had repaid the loans in full. While that was the case, the Respondent had a duty to resume the deductions immediately after the initial loan tenures lapsed. However, the Commission found that the Respondent failed to give justifiable reasons for the delay in recommencing the loan repayment deductions and the collection of the interest accrued from the lapse of the initial loan tenures to the time they recommenced deductions. Further, the Respondent failed to show proof of efforts made to recover their funds after the initial loan tenures had lapsed, on account of the Complainant’s financial position.
76. While the Commission was aware that the banks were regulated by the Bank of Zambia which enforces the BFSA, the Commission was not bound by the BFSA as it drew its mandate to investigate consumer complaints from the CCPA which the Respondent’s conduct appeared to have breached. It was hence the Commission’s position that the Directives referred to only applied to those complaints that were escalated to the Bank of Zambia as the Sector Regulator.

Relevant findings

It was submitted that:

77. The Commission found that the Complainants obtained their loans from the Respondent before the 2016 MPR revision, and the loan tenures were revised upwards after the MPR was revised.
78. The Commission found that the MPR fluctuated from the time the Complainants obtained the loans, with the highest percentage of 15.5% in November 2015 and the lowest percentage of 9.8% in April 2019.⁶⁸
79. The Commission found that the Respondent only resumed the deduction on the Complainants’ loans several months later with a maximum period being 24 months (and not at the time the loans were initially scheduled to come to an end) at which point the loans had accrued excess interest and thus the loans balance

⁶⁸ Bank of Zambia annual reports

increased due to non-remittance of instalments.

80. The Commission found that only one (1) Complainant was informed of their balance loans before 2021, and that all Complainants' loan tenures were increased by eight (8) months. The table below shows a summary of the loans for all the Complainants.

Name	Loan Account Number	Initial Loan	Date when loan was obtained	Initial loan tenure - restructured tenure	Date when loan tenure was scheduled to elapse	Date when last loan was paid (in case of delays)	Date when loan recoveries resumed	Balance with accrued excess interest
Ms. Namatama Muleleka	20500000079123	K91,385.67	August, 2014	60 months - 68 months	30 th September, 2019	30 th November, 2019	August, 2021	K9,054.65
Mrs. Queen Melani Zulu	2060000021131	K32,000.00	June, 2015	48 months - 56 months	August, 2019	August, 2019	August 2021	K14,793.00
Ms. Mirriam Banda	2060000025832	K25,000.00	April 2014	60 months - 68 months	April 2019	January, 2020	August 2021	17,335.61
Mr. Kennedy Tabo	2050000066265	K39,500.00	October, 2013	60 months - 68 months	November 2019	-	January 2021	K32,598.14
Ms. Chola Mulenga	0260834990015	K34,000.00	July, 2015	60 months - 68 months	September, 2020	September, 2020	August, 2021	K14,502.26
Ms. Noreen Chombolola	2050000079330	K58,000.00	December, 2014	60 months - 68 months	December, 2019	December, 2019	September, 2020	K26,551.57
Mr. Danny Katebe	2050000072157	K30,000.00	January, 2014	60 months - 68 months	February, 2019	October, 2019	October, 2021	K12,946.67

81. The Commission found that regarding restructured loans, where interest had been capitalized, the principal and interest payments of loans should be made in accordance with the modified repayment terms for a period of at least one hundred and eighty days from the date of restructuring.⁶⁹
82. The Commission found that the Banks were regulated by the BFSA but, the Commission drew its mandate to investigate from the CCPA which mandate cuts across all economic sectors including the Banking Sector.

Previous cases involving the Respondent

It was submitted that:

83. A review of the Respondent's case file held with the Commission revealed that there were no prior cases in which the Respondent had been found to have breached Section 49(5) of the Act.

Analysis of Conduct

In analyzing the case for possible violation of Section 49(5) of the Act, the following assessment tests are used;

Whether the Respondent is a "person" or an "enterprise".

It was submitted that:

84. The Respondent is an enterprise pursuant to Section 2 the Act. Refer to paragraph 12 above.

Whether Ms. Namatama Mulelekwa and six (6) others are consumers;

It was submitted that:

85. The complainants are Consumers pursuant to Section 2 of the Act, Refer to paragraph 11 above.

Whether the Respondent supplied a service to Ms. Namatama Mulelekwa and six (6) others;

It was submitted that:

86. According to Section 2 (b) of the Act, the term 'supply' includes, "*in relation to services, the provision by way of sale, grant or conferment of the services.*" In

⁶⁹ The Banking and Financial Services (Classification and Provisioning of Loans) Directives, issued on 3rd April, 2020, 2020, Gazette Notice No. 287 of 2020

Section 2 of the Act, 'services' is defined as "*includes the carrying out and performance on a commercial basis of any engagement, whether professional or not, other than the supply of goods, but does not include the rendering of any services under a contract of employment.*" In the case at hand, the Commission established that between October, 2013, and July, 2015, the Complainants obtained loans from the Respondent at an agreed loan instalment and loan tenure, for their own personal benefit. Therefore, the Respondent supplied financial services in the form of bank loans to the Complainants.

Whether the Respondent supplied a particular service to the consumer with reasonable care and skill.

It was submitted that:

87. According to Black's Law Dictionary, Reasonable care means, "*having precaution or diligence as may fairly and properly be expected or required, having regard to the nature of action, or of the subject matter, and the circumstances surrounding the transactions.*" While reasonable skill is defined as "*such skill as ordinarily possessed and exercised by persons of common capacity, engaged in the same business or employment.*"⁷⁰ Common law has established that a duty of care is owed to persons one could reasonably have contemplated may be harmed by his action (or inaction in certain cases). However, even though a duty of care is owed, no liability attaches unless the harm suffered was of a foreseeable kind.⁷¹ Duty of care is a legal obligation which is imposed on an individual, requiring adherence to a standard of reasonable care while performing any acts that could foreseeably harm others. It is the first element that must be established to proceed with an action in negligence.⁷² The Commission therefore established that reasonable care and skill is such care and skill as an ordinarily prudent person or competent body would exercise under the conditions existing at the time an act is required to be performed.
88. Similar to the matter at hand, a bank's duty of care focuses on its customer's interest and treating them fairly. With whatever decision the bank makes, customers must be treated fairly by informing them at an appropriate time and within reasonable time, especially on decisions that more likely may directly affect them. The timely information given should enable customers to make informed decisions regarding the services provided by a bank. In an event of an increase in the cost of borrowing resulting from a rise in MPR, it is common practice for banks to extend the loan tenure to recover what is due to them while at the same time not to effect high monthly instalments on clients.

⁷⁰ Black's law Dictionary, 8th Edition, p504

⁷¹John Mbaluto (2021), Obligated: Examining the duty of care in banking.

⁷² <https://lawhandbook.sa.gov.au/ch01s05.php>

89. In the case at hand, the Commission established that the Complainants acquired loans from the Respondent between October, 2013, and July, 2015, mostly for a tenure of up to 60-months. The Commission established that during the said tenure, in 2016, the MPR was adjusted on several occasions by the Bank of Zambia (BoZ). The Commission established that the fluctuations in the MPR changes directly affected the Complainants' respective loans on both the monthly instalment amounts payable and loan tenures thereby making the Complainants' loans rescheduled to maintain affordability. The Commission further established that the Respondent had permission through the signed '*salary deduction authorization forms*' from the Complainants, to maintain the terms of the loan in respect of the rescheduled loan, together with any amendment whatsoever, until all amounts due are paid. **See paragraph 13 and 15 above.** However, the Commission observed that the Respondent ceased loan recoveries from the Complainants' salaries and or bank accounts at the end of the initial loan tenures, yet there were balances still owed to them. The Commission determined that even though the Complainants have a responsibility and obligation to ensure they fully repay off their loans to the Respondent as and when due, the Respondent ought not to have contributed to the financial burden of the Complainants by also keeping silent on loan payables for more than twelve (12) months when they (the Respondent) knew that certain loans on their bank were still active with outstanding balances from their customers (the Complainants).
90. The Commission further established that the Respondent only resumed recovery of instalments in August 2021, for four (4) of the Complainants and resumed for the other three (3) Complainants in September, 2020, January, 2021, and October, 2021, respectively. **See table in paragraph 33 above.** This related to 24months of the Respondent's inaction regarding the loan balances outstanding, with the maximum period being 24 months, past the date the loans were initially scheduled to end. The Commission found that the Complainants' loans had consequently accrued excess interest as they were not being serviced due to non-resumption of loan recoveries immediately after the initial loan tenure lapsed. The Commission therefore determined that had the Respondent, being experts as compared to the Complainants, taken reasonable steps to resume the deductions to recover the outstanding balances, the Complainants would have prevented the accumulated interests on their respective loan balances and certainly would not have been subjected to the current financial burden placed on them by the Respondent's lack of action for 24 months. The Commission thus determined that the Respondent did not exercise reasonable care and skill in their provision of the service to the Complainants and was therefore in violation of Section 49(5) of the Act.

Board Deliberation

91. Having considered the facts, submissions and evidence in this case, the Board resolves that the Respondent engaged in unfair trading practices as relates to failing to refund the Complainant within the agreed period hence violated Section 49(5) of the Act.

Board Determination

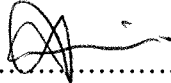
92. The facts and evidence of this case have shown that the Respondent engaged in unfair trading practices, hence was in violation of Section 49(5) of the Act.

Board Directive

93. The Board directs that:
- i. The Respondent is fined 0.5% of their annual turnover for breach of Section 49(5) of the Act in accordance with Section 49(6) of the Act and the applicable cap in line with the Commission's Guidelines for Administration of Fines, 2019 (Refer to Appendix 1);
 - ii. The Respondent restructures the Complainants' loans to the balances as at end of the initial loan tenures and only recover the loan balances outstanding as at the date when the initial loan tenures elapsed and exclude the interest accrued as at the date of resumption of loan recoveries. The Respondent submits the restructured loans within ten (10) days of receipt of the Board Decision in accordance with Section 5(d) of the Act;
 - iii. The Respondent submits their latest annual books of account to the Commission for calculation of the actual fine within thirty (30) days of receipt of the Board Decision according to Section 5(d) of the Act;
 - iv. The Research and Education Unit conducts a market survey regarding commercial banks' adjustments of customers' loan tenures based on MPR changes, as there is no indication of downward adjustments on customers' loan tenures when the MPR is adjusted downwards, yet there are notable upward adjustments when the MPR is adjusted upwards.

Note: Any party aggrieved with this order or directive may, within thirty (30) days of receiving the order or direction, appeal to the Competition and Consumer Protection Tribunal.

Dated this 9th August, 2022



.....

Chairman

Competition and Consumer Protection Commission

Appendix 1-Calculation of Fine

The Calculation of the recommended fine was determined as follows-

- (a) **The Competition and Consumer Protection Act No. 24 of 2010: Guidelines for Administration of Fines sets a base of 0.5% for offences relating to Part VII of the Act with the following caps;**

Offence	Starting Fine	Maximum Fine in Kwacha
Unfair trading practice	0.5% of turnover	<ul style="list-style-type: none"> • K1,000 for turnover up to K50,000
False or misleading representation		<ul style="list-style-type: none"> • K10,000 for turnover above K50,000 up to K250,000
Price Display		
Supply of defective and unsuitable goods and services		<ul style="list-style-type: none"> • K40,000 for turnover above 250,000 up to K500,000
Section 49 except for Section 49(1)		<ul style="list-style-type: none"> • K70,000 for turnover above K1,500,000 • K150,000 for turnover above K1,500,000 up to K3,000,000 • K200,000 for turnover above K3,000,000 up to K5,000,000 • K500,000 for turnover above K5,000,000
Display of Disclaimer	0.5% of turnover	K30,000

- (b) The Competition and Consumer Protection Act No. 24 of 2010: Guidelines for Administration of Fines – further provides for additions as follows-

- (i) The starting point of a financial fine will be a fine of not less than 0.5% of annual turnover for first time offenders.
- (ii) (The starting point of a financial fine for a repeat offender will be the previous fine charged by the Commission.
- (iii) Thereafter, the Commission will be adding a 10% of the fine determined in step one above for each aggravating factor

(c) *Whether the Respondent is a repeat offender under Section 49(5);*

The Commission's review of the case file for the Respondent showed that the Respondent was a first time-offender of this Provision of the Act. As such the fine was calculated as follows:

- (d) 0.5% of annual turnover

Annexures

Annex 1: Complainants Loan Details

No.	Name of Complainant	Date on which NOI was served on the Respondent	Action taken by Complainant to get in touch with the Respondent	Date of initial loan	Period when initial loan was last deducted	Date deductions resumed	Value at the end of initial deduction	Value indicated on resolution letter/ before 2021 deductions
1.	Ms. Namatama Mulelekwa	10/09/2021	Complainant followed up with the Respondent	August, 2014	30/11/2019	August, 2021 K1,015.53	K6,213.95	K9,054.65
2.	Mrs. Queen Melani Zulu	20/10/2021	Complainant followed up with the Respondent	June, 2015	August, 2019	August, 2021 K1,000.00	K9,467.15	K14,793.00
3.	Ms. Mirriam Banda	27/10/2021	Complainant followed up with the Respondent	2013	January, 2020	September, 2021 K838.48	K12, 804.64	-
4.	Mr. Kennedy Tabo	2/09/2021	Complainant followed up with the Respondent	October, 2013	November, 2019	August, 2021 K1,000.00	K25, 037.19	K32,598.14
5.	Ms. Chola Mulenga	22/10/21	Complainant followed up with the Respondent	July, 2015	7/09/2020	August, 2021 K1,500.00	K11,435.73	K14,502.26

Board Decision on Allegations of Unfair Trading Practices against African Banking Corporation Zambia Limited T/A Atlas Mara by Ms. Namatama Mulelekwa and six (6) others

6.	Ms. Noreen Chombolola	27/10/21	Complainant followed up with the Respondent	December, 2014	April, 2020	August, 2021 K11,490.00	K21,144.17	K28,663.10
7.	Mr. Danny Katebe	25/11/2021	Complainant followed up with the Respondent	January, 2014	February, 2019	September, 2021 K500.00	K9,983.73,	K12, 820.46

Annex 2: Case Files

Case File	Complainant	Province
CONS/08/09/2021/00418/CC	Ms. Namatama Mulelekwa	Lusaka
CONS/12/10/2021/00616/MSA/CM	Mrs. Queen Melani Zulu	Luapula
CONS/20/10/2021/0662/CPT/HK	Ms. Mirriam Banda	Eastern
CONS/30/08/2021/00351/LST/BM	Mr. Kennedy Tabo	Western
CONS/12/10/2021/00622/CHN/BTM	Ms. Chola Mulenga	Muchinga
CONS/08/10/2021/00595/KTW/464/JBM	Ms. Noreen Chombolola	Copperbelt
CON/19/11/2021/00854/SWZ/140/LC	Mr. Danny Katebe	North-Western