Federal Court of Australia
District Registry: Victoria
Division: General No: VID387/2020

**KRISTY FORDHAM**
Applicant

**COMMONWEALTH BANK OF AUSTRALIA ACN 123 123 124** and another named in the schedule
Respondents

**ORDER**

**JUDGE:** JUSTICE O'BRYAN

**DATE OF ORDER:** 13 November 2020

**WHERE MADE:** Melbourne

**THE COURT ORDERS BY CONSENT THAT:**

**Opt Out Deadline**

1. Pursuant to s 33J and s 33ZF of the *Federal Court of Australia Act 1976* (Cth) (**Act**), 4.00 pm AEDT on 26 March 2021 be fixed as the date by which a group member may opt out of this proceeding (**Opt Out Deadline**).

**Notices and Opt Out**

2. Pursuant to ss 33X and 33Y of the Act, the terms of the opt out notice set out in Annexure A to these Orders (**Notice**) are approved.
3. Pursuant to s 33J of the Act, any group member who wishes to opt out of this proceeding must, before the Opt Out Deadline, deliver a Notice of Opting Out in the form of Schedule A to the Notice to these orders to the Victorian District Registry of the Court.
4. The Notice may be amended by the solicitors for the applicant before they are published in order to correct any typographical error, or the postal, website or email address or telephone number of the solicitors of the applicant.
5. If, on or before the Opt Out Deadline, the solicitors for any party receive a notice purporting to be an opt out notice referable to this proceeding, the solicitors are to file

such notice in the Victorian District Registry of the Court within 14 days of receipt with a notation specifying the date it was received and the notice shall be treated as an opt out notice received by the Court at the time when it was received by the solicitors.

6. The solicitors for the parties have leave to inspect the Court File and to copy any opt out notices filed by group members.

**Opt Out Procedure**

7. Pursuant to s 33Y and s33ZF of the Act:
   (a) on or before 29 January 2021, the first respondent shall provide to a third-party mailing house to be agreed between the parties the name, email address (where available), postal address, name of the policy purchased, date of policy commencement, and date of the cancellation of the policy (if applicable), of any persons known to it who:
      (i) purchased a CreditCard Plus or Personal Loan Protection policy in the Relevant Period; and
      (ii) have paid a premium for that policy (**Premium Paid**); and
      (iii) have not been refunded in full for the Premium Paid, or, have not successfully claimed more than the Premium Paid amount,

      (**Potential Group Members**);
   (b) on or before 12 February 2021, the third-party mailing house shall provide the Notice to Potential Group Members:
      (i) by email from a 'no-reply' Commonwealth Bank of Australia sender email address where an email address available to the first respondent has been provided to the third-party mailing house; or
      (ii) where no email address has been provided by the first respondent, by prepaid ordinary post at the address recorded by the first respondent for that person; and
      (iii) should the third-party mailing house receive notice of a delivery failure in relation to any email sent, by prepaid ordinary post to that person at the address recorded by the first respondent for that person, within two business days of receiving that delivery failure notice;
   (c) the applicant shall cause the Notice to be displayed on the website of the applicant's solicitors until the Opt Out Deadline.

**Discovery**

8. The respondents provide the applicant with their proposed orders in relation to discovery on or before 20 November 2020.
9. The parties file any proposed consent orders in relation to discovery or, in the absence of agreement, each party file and serve any supporting outlines of submissions and affidavits that they wish to rely upon in relation to discovery on or before 7 December 2020.
10. Any dispute in relation to discovery will be determined on the papers unless any party indicates in their written submissions that they seek an opportunity to make further oral submissions.

**Pleadings**

11. Pursuant to rules 8.21 and 16.53 of the *Federal Court Rules 2011* (Cth), the applicant has leave to file and serve an amended statement of claim in the form provided by the applicant to the respondents on 6 November 2020.
12. The applicant file and serve the amended statement of claim referred to in order 11 above on or before 16 November 2020.
13. The respondents file and serve any amended defences on or before 9 December 2020.
14. The applicant file and serve any amended Reply on or before 23 December 2020.

**Other Matters**

15. The hearing in this proceeding listed for 16 November 2020 be vacated.
16. The applicant pay the respondents' costs thrown away by reason of the amendment to her statement of claim.
17. The cost of any third-party mailing house engaged to undertake the distribution of the Notice under order 7(b) above is to be paid in the first instance by the applicant, on the basis that those costs will be costs in the proceeding.
18. Costs otherwise be reserved.
19. Liberty to apply on 3 days' notice.

Date that entry is stamped: 13 November 2020

Registrar

ANNEXURE A

# FEDERAL COURT OF AUSTRALIA NOTICE

## CBA CONSUMER CREDIT INSURANCE CLASS ACTION (VID387/2020)

**THIS NOTICE IS IMPORTANT. IT IS NOT A SCAM**

**PLEASE READ IT CAREFULLY, AS IT MAY AFFECT YOUR LEGAL RIGHTS**

## WHAT IS THIS NOTICE?

The purpose of this notice is to inform you of a class action that has been commenced in the Federal Court of Australia against the Commonwealth Bank of Australia and the Colonial Mutual Life Assurance Society Limited (collectively referred to as **the Respondents**).

The action relates to the sale of two types of 'consumer credit insurance' policies, called CreditCard Plus and Personal Loan Protection (referred to as **the Policies**). The class action seeks compensation for persons who were sold the Policies and who have paid premiums for the Policies (referred to as **Group Members**).

This Notice has been sent in accordance with orders made by the Federal Court of Australia on [X].

## WHY AM I GETTING THIS NOTICE?

**CBA's records show that you purchased and paid premiums for an insurance policy relevant to this class action, as follows:**

| Name of policy | Date of policy commencement | Date policy cancelled (if applicable) |
|---|---|---|
| [To insert whether CreditCard Plus / Personal Loan Protection] | [date] | [date] |

**Therefore you may be a Group Member in the CBA CCI Class Action**

If you are a Group Member, you have two options (set out in more detail in **Section** 4 below):

a. **Remain a Group Member**, in which case you do not need to do anything in relation to this Notice. You will be eligible to get any compensation or benefit, and will also be bound by the outcome in the class action.

   You can also register your interest and receive regular updates on the progress of the class action by visiting www.slatergordon.com.au/cba-cci. If you register your interest, you will also be directly notified of any settlement or judgment using the contact details you provide.

b. **Opt out** of the class action before the deadline of **4.00pm AEDT on 26 March 2021** in which case you will remove yourself as a Group Member and lose the right to get compensation or benefit through the class action (but will retain your right to pursue compensation on your own).

**You should read this Notice carefully, including the further information regarding your options at Section 4 below.**

SEAL OF THE FEDERAL COURT OF AUSTRALIA

AUSTRALIA

## INFORMATION ABOUT THE CLASS ACTION

### 1. WHAT IS A CLASS ACTION?

A class action is a type of legal proceeding in which the claims of a group of persons (referred to as Group Members) are brought in a single proceeding.

A class action is commenced by one or more persons (the Applicant/s) on behalf of the Group Members. Unless a Group Member opts out (as explained in section 4 below), they are automatically covered by the class action even if they did not take any active steps to join it before it was commenced.

### 2. WHAT IS THE CBA CCI CLASS ACTION?

The CBA CCI Class Action was commenced by the Applicant on 10 June 2020 against the Respondents and is being conducted by Slater and Gordon Lawyers.

The class action relates to the sale of two insurance products, being:

a. CreditCard Plus; and

b. Personal Loan Protection.

In broad terms, the Applicant alleges that the Respondents:

a. engaged in misleading or deceptive conduct (for example, by failing to inform some Group Members that the Policies were optional);

b. caused some Group Members to acquire the Polices and pay premiums under a mistaken belief that the Policies were not optional or provided value;

c. engaged in unconscionable conduct by, among other things, using 'unfair tactics' in arranging the issue of the Policies and not giving Group Members whose Policy was issued (or who first paid a premium under their Policy) after 10 June 2014 an adequate opportunity to consider whether the Policies were suitable for them; and

d. unlawfully provided personal advice to some Group Members who purchased the Policies in a bank branch or over the telephone after 10 June 2014.

The claims advanced on behalf of an individual Group Member may vary depending, among other things, on what insurance product the Group Member acquired and the particular circumstances in which they acquired it.

The Respondents deny the allegations and are defending the claims.

### 3. AM I A GROUP MEMBER?

You are a Group Member if:

a. at any time since 1 January 2010, you were issued with a CreditCard Plus or Personal Loan Protection policy; and

b. you have suffered loss or damage because of the alleged conduct of the Respondents

(for example, if you have paid more in premiums and interest than any amount you have received back from the Respondents either by way of a claim you made under your policy, a payment made to you because of a complaint or if you received a remediation compensation payment from the Respondents with respect to your policy).

If you are a Group Member and you acquired your Policy or first paid a premium before 10 June 2014, the Respondents' position is that it is too late for you to bring your claims in this proceeding. The Applicant disagrees with this position. If the court agrees with the Respondents' position, any such claims in the proceedings will fail.

## YOUR OPTIONS

### 4. WHAT ARE MY OPTIONS?

If you are a Group Member, you have two options, which are set out in detail below.

**Option 1 – Remain a Group Member**

If you qualify as a Group Member and choose this option, you do not need to do anything in relation to this Notice. Your claims will be collectively resolved through the CBA CCI Class Action. You will remain entitled to participate in any court-ordered damages award in favour of Group Members or any settlement that might be agreed.

If you remain a Group Member, you will be bound by the outcome of the CBA CCI Class Action. If the action is successful, you will be entitled to share in the benefit of any order, judgment or settlement in favour of the Applicant and Group Members.

If the CBA CCI Class Action is unsuccessful or is not as successful as you might have wished, you will continue to be bound by the outcome in the CBA CCI Class Action and will not be able to bring another action against the Respondents for the same claim.

**Registration**

You may wish to register your interest in the class action on Slater and Gordon's website.

You will then receive regular, timely updates on the progress of the CBA CCI Class Action from Slater and Gordon Lawyers, the lawyers for the Applicant.

You will also be sent any court notices, such as this one, directly using the contact details you provide and be directly notified in the event of a judgment or settlement.

You can register your interest in the class action at www.slatergordon.com.au/cba-cci.

**Option 2 – Opt out**

If you qualify as a Group Member and choose this option, you will cease to be a Group Member of the CBA CCI Class Action. You will not be entitled to participate in any court-ordered damages award in favour of Group Members or any settlement that might be agreed.

If you opt out, you will preserve the right to bring your own claims in relation to the allegations covered by the class action (summarised at section 2 above and set out in the statement of claim available for viewing at Slater and Gordon's website). In the event you wish to bring your own claim against any of the Respondents, you should seek your own legal advice about your claim and any applicable time limits on your claims before choosing to opt out.

Group Members (and potential Group Members) should seek independent legal advice before opting out. To opt out is to take a serious step – you should not do so unless you understand what it means.

**If you wish to opt out, you must complete the "Opt Out Notice" form annexed to this Notice at Schedule A and return it directly to the Victorian District Registry of the Federal Court before the Opt Out Deadline on 4:00pm AEDT on 26 March 2021.**

SEAL OF THE FEDERAL COURT OF AUSTRALIA

## COSTS AND RELIEF SOUGHT

### 5. WILL I BE LIABLE TO PAY LEGAL COSTS IF I REMAIN A GROUP MEMBER?

Group Members in the CBA CCI Class Action are not, and will not be, liable for any "out of pocket" legal costs by remaining in the class action. The costs of running the CBA CCI Class Action are being covered by Slater and Gordon on a "No Win, No Fee" basis.

If the CBA CCI Class Action is successful, the Court will be asked to approve the Applicant's reasonable legal costs and those approved costs may be deducted on a pro rata basis from any settlement or judgment obtained.

If the CBA CCI Class Action is unsuccessful, you will not be liable for any legal costs.

**No Group Member will ever be "out-of-pocket" simply by remaining a Group Member or registering for the class action**

### 6. WHAT IS THE RELIEF SOUGHT IN THE CLASS ACTION?

The Applicant seeks a number of types of relief on behalf of Group Members, including damages to compensate each Group Member and/or the return to each Group Member of the premiums they each paid under the Policies.

If the class action succeeds, the Court may be asked to make declarations that some Policies are void, in addition to monetary relief. Your consent will be requested before any declaration that your Policy is void is made.

## IMPORTANT MATTERS TO NOTE

### 7. YOU SHOULD NOTE THAT:

**Firstly, this is not a scam.** You can check (and obtain copies of) any relevant documents by visiting Slater and Gordon's website www.slatergordon.com.au/cba-cci or inspecting them at one of the offices of Slater and Gordon.

**Secondly, if you wish to remain a Group Member**, you do not need to do anything in relation to this Notice. Alternatively, you can actively register your interest in the CBA CCI Class Action on Slater and Gordon's website at www.slatergordon.com.au/cba-cci.

**Thirdly, if you wish to opt out,** you must complete the 'Opt Out Notice' form annexed to this Notice at Schedule A and return it directly to the Victorian Registry of the Federal Court of Australia before the Opt Out Deadline, i.e. by no later than **4.00pm AEDT on 26 March 2021**.

SEAL OF THE FEDERAL COURT OF AUSTRALIA

AUSTRALIA

## SCHEDULE A

Form 21 Rule 9.34

**OPT OUT NOTICE**

| | |
|---|---|
| IMPORTANT: | **You should only complete this form if you do NOT want to participate in the CBA CCI Class Action** |

VID 387 of 2020

Federal Court of Australia
District Registry: Victoria
Division: Commercial and Corporations NPA
Regulator and Consumer Protection Sub-area

**KRISTY FORDHAM**
Applicant

**COMMONWEALTH BANK OF AUSTRALIA ABN 48 123 123 124 and anor named in the Schedule**
Respondents

To: The Registrar
Federal Court of Australia
Victoria District Registry
Owen Dixon Commonwealth Law Courts Building
305 William Street
Melbourne VIC 3000

…………………..…………………….*(print name of Group Member)*, a Group Member in this class action, gives notice under section 33J of the *Federal Court of Australia Act 1976*, that I am opting out of the class action.

Date: …………………………..
Signed by: ……………………………………
Group Member/Lawyer for the Group Member (*circle as applicable)*

*Please complete the information on the following page*

SEAL OF THE FEDERAL COURT OF AUSTRALIA

**Group Member details**

Telephone:

…………………………………………………………………

Email:

……………………………………………………………..

Address:

……………………………………………………………..

*If you are signing as the solicitor or representative of the Group Member:*

Name: ……………………………………………………………..

Capacity:

……………………………………………………………..

Telephone:

……………………………………………………………..

Email: ……………………………………………………………..

Address:

……………………………………………………………..

**Schedule**

No: VID387/2020

Federal Court of Australia

District Registry: Victoria

Division: General

| | |
|---|---|
| Second Respondent | THE COLONIAL MUTUAL LIFE ASSURANCE SOCIETY LIMITED |