

WESTPAC CAR LOAN CLASS ACTION
Fox and anor v Westpac Banking Corporation & St George Finance Limited
Supreme Court of Victoria

CLASS ACTION SUMMARY STATEMENT

1. What is a class action?

Where seven or more people have claims that arise out of similar circumstances, a class action can be brought by one plaintiff on their own behalf and representing others.

2. Who is the Westpac Car Loan Class Action against, and what is the claim for?

The claim is against Westpac Banking Corporation (**Westpac**) and Westpac's wholly owned subsidiary St George Finance Ltd (**St George**) concerning "Flex Commission" arrangements with car dealers. These arrangements allowed car dealers at the point of sale to set the interest rates offered to consumers on Westpac car loans. The higher the interest rate, the higher the commission paid by the lender to the dealer.

The claim alleges that certain features of the Flex Commission arrangements were unfair to consumers who paid higher interest rates on their Westpac and St George car loans than would otherwise have been the case. It is claimed in the class action that Westpac and St George are responsible for the arrangements and that they should pay compensation to consumers (or "group members") for the loss they suffered as a result.

3. Who is a group member in the Westpac Car Loan Class Action?

You may be a group member if you are:

- (a) a natural person; who
- (b) entered into a finance agreement for the purchase of a car issued under Westpac or St George's credit licence facilitated by a Westpac accredited car dealer in which a Flex Commission was paid to the dealer;
- (c) in the period 1 March 2013 to 31 October 2018.

A complete definition of group members is available at Part A1 of the Statement of Claim.

4. Who is the law firm acting for the plaintiffs?

Maurice Blackburn.

5. What is the role and responsibility of the plaintiffs?

The plaintiffs, Alannah Fox, whose loan was with Westpac, and Bridget Nastasi, whose loan was with St George, are the representatives of the group members. They are providing and will continue to provide instructions to Maurice Blackburn regarding the conduct of the case. They may give evidence in a trial. In hearing the plaintiffs' case, the Court will be asked to

make findings in relation to questions of fact and/or law that are common to all group members.

6. How is the Westpac Car Loan Class Action funded?

All costs associated with the Westpac Car Loan Class Action will be borne by Maurice Blackburn, unless and until there is a successful outcome to the class action. A successful outcome is when a settlement is agreed and approved by the Court or the Court awards compensation in a judgment after a trial.

Maurice Blackburn's no win no fee retainer agreement sets out the terms on which it is acting. Members of the class (group members) can ask to see a confidential copy of the retainers signed by Ms Fox and Ms Natasi by contacting Maurice Blackburn.

The plaintiffs intend to make an application for a Group Costs Order in the Westpac Car Loan Class Action. If a Group Costs Order is made, then subject to the Court's orders, the retainer agreement will need to be revised.

A Group Costs Order is an order of the Court in which the legal costs payable to the law practice representing the plaintiffs and the group members are calculated as a percentage of the amount of any award or settlement. The percentage is determined by the Court.

The plaintiffs and group members will not be asked to pay anything upfront. Costs will only be payable in the event of a successful settlement or judgment and then only as approved by the Court.

7. How are legal fees and disbursements charged?

The plaintiffs' legal fees and disbursements are 'conditional', meaning that they are only recoverable by Maurice Blackburn if there is a successful outcome. Amounts recoverable by Maurice Blackburn for legal fees and disbursements must be approved by the Court as reasonable, before being deducted from the money to be paid to group members. Those deductions will never exceed a group member's recovery.

If there is a successful outcome, the plaintiffs' legal fees and disbursements will be charged in one of two ways:

- (a) calculated using time based billing for professional fees, with disbursements (for example, filing fees, fees for experts and barristers) charged at cost; OR
- (b) calculated as a percentage of the amount of any collective award or settlement in the event that the Court makes a Group Costs Order. The percentage is determined by the Court.

If there is not a successful outcome the plaintiffs and group members will not be asked to pay Maurice Blackburn's costs or disbursements. Also, the group members cannot be pursued

for costs by Westpac or St George as the *Supreme Court Act* prohibits orders for costs against group members unless and until a group member takes their own individual action.

8. Are there any other class actions that relate to Westpac’s car loan practices?

Maurice Blackburn is unaware of any other filed class action as at the date of filing this class action. On 13 July 2020 the ABC reported that Shine Lawyers had announced an intention to file a class action “open to car buyers who took out personal loans from Westpac, or its subsidiaries St George Bank, Bank of Melbourne and Capital Finance through a car dealer” in the period July 2014 to November 2018.

9. Who can group members contact for further information about the case?

For further information about the Westpac Car Loan Class Action, group members may contact Maurice Blackburn, at no out of pocket cost, via the following methods:

Email flexclassaction@mauriceblackburn

Phone 1800 318 063

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