

Volume 1, Issue 1

Research Article

Date of Submission: 01 July, 2025

Date of Acceptance: 20 August, 2025

Date of Publication: 26 August, 2025

Banking Transparency and Accountability: Examining Over-Charging Practices and Legal Responses in New Zealand and Sri Lanka

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Citation: Saliya, C. A. (2025). Banking Transparency and Accountability: Examining Overcharging Practices and Legal Responses in New Zealand and Sri Lanka. *J Interdiscip Hist Hum Soc*, 1(1), 01-07.

Abstract

This essay examines the recent legal issues faced by Kiwibank Limited, where the Commerce Commission filed criminal charges for breaches of the Fair-Trading Act, resulting in overcharging more than 36,000 customers a total of \$7 million in fees and interest on home loans, credit cards, and overdrafts. Kiwibank's systemic failures, which persisted for years, highlight the critical importance of robust financial systems and transparent practices in the banking industry. Similar concerns have arisen in Sri Lanka, where customers have reported unfair interest calculations on credit card balances, drawing attention to global challenges in ensuring fair treatment of banking customers.

The essay explores the regulatory frameworks in place, such as New Zealand's Fair-Trading Act and the Financial Markets Conduct Act, as well as the broader implications of financial institutions' accountability for consumer protection. By analyzing the Kiwibank case alongside comparable international examples, this study underscores the need for stronger regulatory oversight, accurate financial systems, and enhanced transparency to maintain consumer trust and uphold the integrity of the financial sector.

Keywords: Kiwibank, Fair Trading Act, Financial Systems, Overcharging, Consumer Protection, Banking Transparency, Regulatory Oversight

Introduction

The recent legal actions against Kiwibank Limited for breaching the Fair-Trading Act highlight critical issues within the banking industry concerning transparency and fairness in financial transactions. The Commerce Commission has filed 21 criminal charges against Kiwibank, alleging that the bank incorrectly charged over 36,000 customers a total of \$7 million due to errors in fee and interest rate calculations on home loans, credit cards, and overdrafts over several years [1]. These breaches have significant implications for customer trust and the integrity of financial systems.

Kiwibank's case is not an isolated incident, as similar issues have been reported globally. Financial institutions are increasingly under scrutiny for systemic failures that lead to customer overcharging or misrepresentation of products and services. For instance, in Sri Lanka, customers have raised concerns about how some banks, such as Seylan Bank and Hatton National Bank, calculate interest on credit cards, claiming that they charge interest for an entire month if payment is delayed by just one day [2].

These practices reflect a broader global challenge of ensuring fair and transparent treatment of banking customers.

The legal and regulatory frameworks in place, such as New Zealand's Fair-Trading Act and the Financial Markets Conduct Act, are designed to protect consumers from such unfair practices [3]. However, as the Kiwibank case demonstrates, even these protections are not always enough to prevent breaches, necessitating stronger oversight and more robust financial systems. Kiwibank's CEO, Steve Jurkovich, acknowledged the long-standing nature of these issues, which have persisted since the bank's inception, further emphasizing the need for proactive remediation and system improvements [4].

This essay explores the implications of Kiwibank's breaches within the broader context of financial system failures, consumer protection, and the role of regulatory bodies in ensuring fairness. By examining the Kiwibank case alongside similar issues in other regions, such as Sri Lanka, this analysis will highlight the importance of transparency, robust financial systems, and effective regulatory frameworks in maintaining customer trust and market integrity.

Methodology

This essay adopts a Flexible-Integrated Methodology (Saliya, 2023), underpinned by the 10Ps Model (Saliya, 2022), to investigate the systemic and regulatory lapses in the financial services sector, with a focus on the criminal charges filed against Kiwibank Limited for breaches of the Fair-Trading Act and their implications for consumer protection [5]. The approach is grounded in a critical-realist paradigm, enabling the analysis of institutional frameworks not just as regulatory instruments but as reflections of deeper market behaviors, accountability gaps, and ethical contradictions in the banking industry.

The study is guided by two primary objectives

- (1) to examine the legal and operational dimensions of Kiwibank's misconduct and its consequences for over 36,000 affected customers; and
- (2) to explore parallels with similar malpractices in Sri Lanka especially in relation to credit card interest calculations thereby offering comparative insights into systemic issues and regulatory efficacy.

Integrated Methodological Layers

A documentary analysis is conducted on New Zealand's Fair-Trading Act (FTA), the Financial Markets Conduct Act (FMCA), and associated enforcement actions by the Commerce Commission. The focus is on

- Breach categories involving misleading conduct and system errors
- Accountability mechanisms within the FTA framework
- Legal remedies and consumer redress structures

Comparable statutes and consumer protection provisions in Sri Lanka's Banking Act and Financial Consumer Protection Guidelines issued by the Central Bank of Sri Lanka (CBSL) are also examined to assess alignment and divergence in regulatory philosophy and enforcement rigor.

Critical Discourse Analysis (CDA)

The language employed in institutional communications (e.g., public apologies, legal responses, advertising materials) is analyzed to uncover implicit power dynamics, obfuscation strategies, and rhetorical devices used to minimize culpability. Discourse from regulatory bodies is also assessed to understand framing of consumer protection and systemic accountability.

Case-Based Reflection and Testimonial Narratives

The Kiwibank case functions as the central empirical anchor, enriched by public testimonies, legal findings, and media investigations. This is complemented by anecdotal and testimonial evidence from Sri Lankan banking customers who have experienced similar overcharging or interest miscalculations, thereby localizing the global challenge.

Comparative Financial Governance

The study draws on regulatory models from other jurisdictions (e.g., Australia's ASIC, UK's FCA) to benchmark the adequacy of enforcement practices. Additionally, systemic risk frameworks and Basel principles (e.g., operational risk, reputational risk, and compliance monitoring) are applied to critique institutional control failures.

The 10Ps framework (Saliya, 2022) is used to interrogate deeper ethical and policy failures embedded in the Kiwibank case and its regional counterparts: By employing the Flexible-Integrated Methodology and the 10Ps Model, this essay situates the Kiwibank incident within a broader international discourse on financial consumer protection, banking ethics, and regulatory reform [5]. The cross-jurisdictional lens facilitates a deeper understanding of how institutional mismanagement—whether in New Zealand or Sri Lanka—can erode public trust, necessitate systemic overhauls, and call for more robust, adaptive legal frameworks that prioritize transparency, justice, and market fairness.

The Case

The case of Kiwibank Limited's breaches of the Fair-Trading Act raises significant concerns about banking practices, particularly regarding transparency and the accurate application of financial charges. The literature surrounding financial institutions' obligations to maintain fair trading standards and consumer protection offers a framework for analyzing

such incidents.

Systemic Failures in Financial Institutions

Kiwibank's breaches, which led to more than 36,000 customers being overcharged, underline a common challenge in financial institutions: systemic failures in manual and electronic systems. Jurkovich (2023) acknowledged that Kiwibank's systems have been flawed since its inception, leading to inaccurate calculations of fees and interest [4]. These failures align with global concerns about how financial systems handle customer accounts and charges. Researchers such as Crockett et al. (2015) emphasize the importance of technological robustness in banking systems, as even minor glitches can result in widespread financial inaccuracies and consumer mistrust [6].

Legal and Regulatory Frameworks

The Fair-Trading Act, under which Kiwibank was charged, plays a vital role in safeguarding consumer interests. According to the Commerce Commission (2023), the charges reflect the seriousness of Kiwibank's breaches, which demonstrate the need for stringent legal frameworks in the banking sector [1]. A related study by Howells and Weatherill (2017) discusses how such regulatory frameworks are crucial in holding financial institutions accountable for misleading practices [7]. Furthermore, the Financial Markets Conduct Act of 2013, which Kiwibank also breached, highlights the importance of accurate financial dealings in maintaining the integrity of the financial system [3,8].

Global Comparisons: Banking Practices in Other Regions

Similar issues can be found in banking systems globally. In Sri Lanka, customers have reported unfair practices by local banks regarding interest calculations on credit cards, echoing the concerns seen with Kiwibank. These practices include charging interest from the transaction date, effectively negating the interest-free period if payments are delayed by even a single day. These practices, as reported by Sri Lankan customers, mirror global concerns about the transparency of bank operations and their marketing claims [2]. The situation in Sri Lanka illustrates a broader need for regulatory oversight in banking practices worldwide.

Trust and Fairness in Banking

Maintaining customer trust through transparent and fair banking practices is crucial for financial institutions. The Kiwibank case shows how negligence, even if unintentional, can erode this trust. Researchers such as Mitchell and Williams (2016) argue that financial institutions must prioritize accuracy in their dealings to avoid reputational damage [9]. Kiwibank's proactive remediation efforts, including issuing refunds and compensating customers with interest, illustrate the steps banks must take to restore trust when breaches occur [8]. Nonetheless, as Kiwibank's case demonstrates, the damage to customer trust can be long-lasting, even when institutions take corrective actions.

Misleading Marketing and Discounts

Beyond the issue of overcharging, misleading marketing and the failure to deliver on promised discounts are additional challenges faced by banks. The example of the Bank of Ceylon's misleading discount practices with Daraz exemplifies this concern. Scholars such as Grewal et al. (2018) highlight that misleading promotional offers can damage customer loyalty and lead to legal consequences [5]. The manipulation of discount offers by requiring extra steps to claim the discount reflects an unethical practice that can further erode customer trust [10].

Discussion: Regulatory and Institutional Recommendations

To address these challenges, regulatory oversight must be strengthened. Both Kiwibank and Sri Lankan banks serve as examples of how robust internal systems and transparent communication can prevent such breaches. Cooke (2023) suggests that banks should regularly audit their systems and marketing materials to ensure compliance with fair trading laws [3]. Furthermore, regulatory bodies like the Commerce Commission and the Financial Markets Authority should impose penalties on institutions that fail to meet these standards, ensuring that consumer protection remains a top priority.

The Commerce Commission has filed criminal charges against Kiwibank Limited (Kiwibank), alleging "longstanding, systematic" breaches of the Fair-Trading Act.

In a statement, the Commission said the breaches relate to issues that resulted in more than \$7 million being incorrectly charged to over 36,000 customers for fees and interest rates in relation to home loans, credit cards and overdrafts, over a period of several years.

Kiwibank has admitted to breaching the Fair-Trading Act, leading to significant legal consequences. Last month, the Commerce Commission filed 21 criminal charges against the bank for errors that resulted in over 36,000 customers being overcharged a total of \$7 million. Kiwibank self-reported the breaches, issued apologies to its customers, and has begun refunding the affected individuals.

The charges involve overcharging on fees and interest rates for home loans, credit cards, and overdrafts since 2019. According to the Commerce Commission, these issues have been present since Kiwibank's inception in 2002. Kiwibank's CEO, Steve Jurkovich, stated that the bank proactively identified the problems and fully cooperated with the investigation.

Jurkovich expressed disappointment over past mistakes but commended the team's efforts to rectify the issues and ensure fairness for customers.

The Auckland District Court will determine the appropriate penalty, which the bank and the Commerce Commission both agree on. Commerce Commission deputy chair Anne Callinan emphasized that these are serious charges resulting from multiple errors in Kiwibank's manual and electronic systems. The Commission expects banks to invest in robust systems to prevent such breaches and ensure fair treatment for consumers.

In a statement to 1News, Kiwibank confirmed its proactive approach in identifying and resolving the errors. The bank has been conducting a remediation program for affected customers and aims to complete it by the end of the year. A spokesperson reiterated the bank's commitment to rectifying the situation and expressed regret for letting down some customers.

Furthermore, Kiwibank has been fined \$812,500 by the High Court in Wellington for making false or misleading representations to customers. The Financial Markets Authority (FMA) revealed that from 2005 to 2020, 35,000 home loan customers were overcharged transaction fees totaling \$1,172,639.94. The FMA's proceedings, limited to conduct from April 1, 2014, covered 19,000 affected customers and overcharges amounting to \$576,809.66. Kiwibank admitted to breaching the Fair Dealing provisions of the Financial Markets Conduct Act 2013 earlier this year, and the penalty reflects the seriousness of these breaches.

Justice Francis Cooke, delivering the verdict, highlighted the importance of accurate financial systems in maintaining customer trust and market integrity. She noted that while the overcharges were not intentional, Kiwibank's negligence had significant implications. Kiwibank has since taken steps to address the systemic failures and remedy the overcharges, including compensating customers with interest.

The FMA noted that Kiwibank began efforts to remediate all affected customers in May 2021, ensuring refunds included the overcharged amounts plus use-of-money interest.

I reported such incident on a private commercial bank listed in the Colombo Stock Exchange to as follows but never replied to my mail, instead I got the following automatic reply (Figure 1)

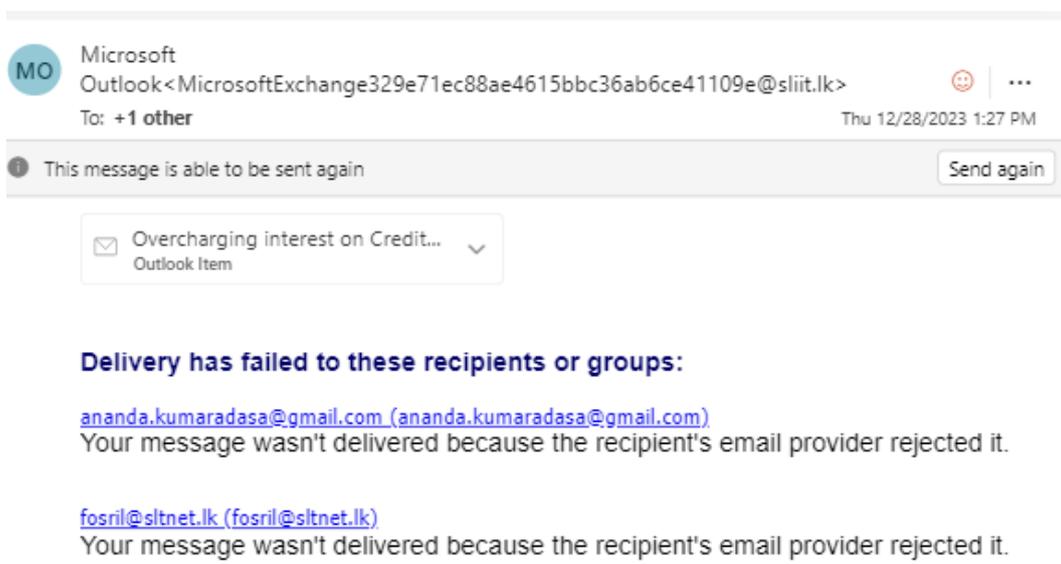


Figure 1: Automatic Reply

One secretary called me on my landline and said my complaint will be taken up but it might take 3-4 months, however until today no response. I requested to confirm it by replying to my email which never happens.

The recent legal issues faced by Kiwibank in New Zealand resonate strongly with similar banking challenges in Sri Lanka, particularly concerning transparency and fair treatment of customers. The case of Kiwibank, where systemic errors led to overcharging customers, highlights the importance of robust financial systems and transparent communication with customers. This is particularly relevant to the issues reported regarding credit card interest calculations by private commercial banks listed on the Colombo Stock Exchange.

In Sri Lanka, there have been complaints about how certain banks calculate interest on credit card balances. For example, one concerned individual wrote to the Ombudsman highlighting several issues

- **Misleading Marketing:** Banks offer 51 days of interest-free credit. However, if a transaction occurs on November

7, the settlement date is December 26.

- **Interest Calculation from Transaction Date:** If the settlement does not occur by the due date (December 26), interest is applied from the transaction date (November 7) until the actual settlement date. This practice is misleading because it effectively negates the interest-free period if the payment is late by even one day.
- **Unfair Penalization:** If the settlement is delayed by just one day (e.g., December 27), the entire “credit” entitlement is withdrawn, penalizing the customer excessively. A fairer approach would be to apply interest only for the days the payment is overdue.
- **Comparative Practices:** While some banks, like the Bank of Ceylon, charge interest only for the actual days overdue, others, such as Seylan Bank and Hatton National Bank (HNB), charge for the entire month if the payment is delayed by even one day, as confirmed by their statements.

This situation mirrors the Kiwibank scenario in terms of the need for better transparency and fairness in banking practices. Just as Kiwibank has taken steps to rectify its systemic issues and compensate affected customers, Sri Lankan banks should also consider revising their practices to ensure they are fair and transparent. Customers should be clearly informed about how interest is calculated and under what conditions, ensuring they are not misled by marketing claims.

The Kiwibank case underscores the importance of financial institutions maintaining rigorous standards and accurate systems to uphold consumer trust. It also highlights the role of regulatory bodies in ensuring compliance and protecting consumer interests. In Sri Lanka, banks and regulatory authorities should take similar steps to review and improve their practices, ensuring that customers are treated fairly and transparently.

In conclusion, the issues reported in Sri Lanka about unfair interest calculations on credit card balances reflect a broader global challenge of ensuring fair treatment of banking customers. Learning from cases like Kiwibank, Sri Lankan banks and regulatory bodies must work towards enhancing transparency, fairness, and customer trust in the banking system.

Misleading Discounts by Banks: The Case of Unclaimed Vouchers

The issue of misleading customers through deceptive practices is not limited to overcharging and unfair interest calculations but extends to the way discounts are offered and applied. This problem is exemplified by a recent situation involving the Bank of Ceylon (BOC) credit card and a partnership with Daraz, an online shopping platform.

The Situation

When credit cards offer discounts, it is generally expected that these discounts are automatically applied at the point of purchase. However, in this case, the process was far from straightforward

- **Misleading Discount Offers:** Customers using the BOC credit card were promised discounts on purchases made through Daraz. However, instead of automatically applying the discount at the time of purchase, customers were required to claim a discount voucher separately.
- **Lack of Guidance:** No clear link or guidelines were provided to customers on how to claim the discount voucher. This left many customers unaware of the additional steps needed to receive their discount, which can be seen as a manipulative tactic to minimize the actual usage of the discount.
- **Misplaced Trust:** As a reputed bank, BOC garnered trust from its customers. Customers naturally assumed that by using their BOC credit card, the discount would be automatically applied to their transaction. This assumption was reasonable given the standard practices of discount application in the industry.
- **Failure to Deliver Promised Discounts:** Customers completed transactions believing they would receive the discount, only to find the full amount charged to their accounts. This discrepancy between expectation and reality is a clear example of a misleading marketing gimmick.
- **Passing the Blame:** When customers raised concerns, both BOC and Daraz failed to provide satisfactory solutions. Instead of resolving the issue, the responsibility was shifted back to the customers, creating frustration and distrust.

The Core Issue

The core issue here is the unethical practice of offering discounts that are not straightforward to claim, thereby misleading customers. This not only damages the bank's reputation but also erodes customer trust (Figure 2).

Key Points of Concern

- **Lack of Transparency:** The absence of clear instructions on how to claim the discount voucher is a significant oversight, likely intentional, to reduce the number of customers who successfully claim the discount.
- **Unfair Burden on Customers:** By making the discount application process complicated and unclear, the burden unfairly shifts to the customers, who are led to believe that the discount will be applied automatically.
- **Breach of Trust:** Customers trust banks and reputable businesses to honor their promotional offers transparently. When this trust is broken, it results in significant customer dissatisfaction and potential loss of business.

Recommendations for Improvement

- **Clear Communication:** Banks should provide explicit instructions on how to claim discounts. This information should be easily accessible and prominently displayed in all marketing materials.
- **Automatic Application:** Whenever possible, discounts should be applied automatically at the point of sale to avoid confusion and ensure customers receive the benefits they are promised.

- **Customer Support:** In cases where manual claiming is unavoidable, robust customer support should be available to assist customers in navigating the process.
- **Regular Audits:** Financial institutions should conduct regular audits of their promotional campaigns to ensure that all offers are transparent and that customers are not being misled.
- **Regulatory Oversight:** Regulatory bodies should oversee such promotional practices and impose penalties on institutions that fail to meet fair trading standards.



Figure 2: The Core Issue and Recommendation

Conclusion

The legal issues faced by Kiwibank serve as a crucial reminder of the significant responsibilities financial institutions bear in maintaining transparency, fairness, and accuracy in their dealings with customers. The breaches of the Fair-Trading Act, which resulted in more than 36,000 customers being overcharged a total of \$7 million, reflect the systemic challenges within Kiwibank’s financial systems. Despite Kiwibank’s proactive steps in self-reporting the errors and compensating affected customers, the breaches highlight the consequences of long-standing institutional failures. These incidents emphasize the need for robust financial systems capable of preventing such errors and ensuring that customers are not unfairly penalized due to system or process inadequacies.

The case of Kiwibank is not unique to New Zealand, as similar challenges have been reported in other regions, such as Sri Lanka, where customers have expressed concerns over unfair interest calculations on credit card balances. These global parallels demonstrate the widespread nature of issues related to transparency and customer protection in banking practices. Customers should be fully informed of the terms and conditions governing financial products, with banks ensuring that all charges are clearly explained and applied fairly. Misleading marketing tactics, complex interest calculations, and inadequate communication can erode consumer trust, as seen in both Kiwibank and Sri Lankan banking systems.

Regulatory frameworks, such as New Zealand’s Fair-Trading Act and the Financial Markets Conduct Act, play a critical role in ensuring that banks adhere to fair trading practices.

However, as the Kiwibank case shows, even with such regulations in place, breaches can still occur, underscoring the need for continuous regulatory oversight and the imposition of penalties when necessary. Stronger audits, regular monitoring of financial systems, and enhanced internal controls are essential to prevent systemic errors and protect consumers.

Ultimately, the Kiwibank case reinforces the need for financial institutions to prioritize customer trust through transparency, fairness, and ethical practices. By learning from past mistakes and ensuring that systems are both reliable and fair, banks can uphold the integrity of the financial sector. Regulatory bodies must continue to hold institutions accountable, and banks must strive for operational excellence to avoid similar issues in the future. The global banking industry can draw valuable lessons from Kiwibank's situation to enhance consumer protection and improve financial practices worldwide [11-22].

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