

Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry

AMP Group Submission

Case Study 3: Inappropriate financial advice

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Overview..... 1

AMP’s systems and processes failed to prevent inappropriate advice..... 2

Robust operation of the system..... 3

Potential breaches by the Advisers 4

Monitoring and supervision..... 4

Alleged potential breaches by AMP Licensees..... 6

Alleged potential breach by AMP Financial Planning in respect of the conduct of Mr E..... 8

Alleged potential breach by Charter in respect of the conduct of Ms Coleman 11

Alleged potential breach by Genesys in respect of the conduct of Mr Palmer..... 13

2017 PwC Report 16

AMP’s enhancements to systems and processes 17

The effect of increased professionalisation across the industry 19

Remediation 19

Overview

- 1. AMP Limited, together with its relevant Advice Licensees, as appropriate, (**AMP**) acknowledges that the relevant advisers (**Advisers**) in its network the subject of this case study gave advice to customers that was inappropriate. AMP deeply regrets that this occurred and apologises unreservedly to all customers affected. AMP strives to ensure the best possible service is provided to its customers, however acknowledges that with an adviser network of around 2,800,¹ at times this has not been achieved. Where AMP identifies inappropriate advice that adversely affects a customer, it is committed to remediating the customer.

¹ Witness statement of Anthony George Regan in response to Rubric 2-20 dated 11 April 2018 (**Regan 2-20**) (Exhibit 2.171) at [26].

2. This case study demonstrates that:
 - (a) AMP's processes brought the inappropriate advice to light;
 - (b) as a result of the identification of the conduct of the three Advisers the subject of this Case Study, their authorisations were terminated so they could no longer give advice;
 - (c) AMP reported the conduct to the Australian Securities and Investments Commission (**ASIC**). However, AMP acknowledges that, in one case, this reporting was made at the behest of ASIC;
 - (d) the circumstances of the clients affected will be investigated, and they will be remediated for loss suffered. While the process of investigating each advice file takes time, AMP acknowledges that to date it has taken too long and this delay is unacceptable. Consequently, AMP has significantly increased resources to complete this task;
 - (e) AMP's monitoring and supervision processes and systems which are designed to prevent and detect inappropriate advice are always undergoing review and improvement. This has intensified in recent times. Following the 2017 PwC Report, AMP is now implementing a leading-edge quality review system called Advice 2.0; and
 - (f) AMP subscribed to the Australian Banking Association "Reference Checking and Information Sharing" protocol (**ABA Protocol**) from September 2016, and shares relevant information with prospective Licensees, whether or not those Licensees have subscribed to the ABA Protocol, to make it more difficult for serious compliance concern (**SCC**) Advisers to stay employed in the industry.²

AMP's systems and processes failed to prevent inappropriate advice

3. The case studies in respect of the advice given by the Advisers demonstrate that the controls AMP has had in place over time did not prevent those advisers from providing inappropriate advice to the clients the subject of the case studies.

² T1648.39-43; T1649.26-32.

4. AMP accepts that this Adviser misconduct took place and is disappointed that it was not detected earlier. However, no system will ever be able to detect or prevent all cases of inappropriate advice.
5. In all three case studies, the Advisers' clients have been referred for remediation, but have not yet been remediated.³ AMP acknowledges that its remediation has been too slow.
6. AMP acknowledges that in the case studies identified, its systems and processes have not prevented inappropriate advice being provided to clients. However, that does not mean that AMP's Advice Licensees engaged in misconduct as submitted by Counsel Assisting. Furthermore, prior to the announcement of the Royal Commission, AMP had already taken significant steps to improve and enhance its monitoring and supervision systems to better guard against instances of inappropriate advice. AMP has also restructured its remediation program to increase its effectiveness. These enhancements are part of a continuing programme of improvement.

Robust operation of the system

7. AMP is required, as part of its licence conditions, to have processes and systems to monitor and supervise Advisers. While these are designed to support the provision of high quality financial advice, AMP submits that no system can ever be 100% effective in ensuring that all advice given is appropriate. The financial services sector is not unique in being reliant on a human element which may involve mistakes and/or intentional misconduct. The case studies demonstrate that:
 - (a) the inadequate performance of each of the Advisers was identified by AMP's audit system;⁴
 - (b) each Adviser's authority was subsequently terminated as a result of the identification of the inappropriate advice;⁵

³ T1606.37-43; T1617.34-42; T1645.29-30.

⁴ Witness statement of Sarah Caroline Britt in response to Rubric 2-27 (**Britt Statement 2-27**) (Exhibit 2.161), Exhibit SCB-2 (**Exhibit SCB-2**), tabs 2, 4 and 6.

⁵ The decision to terminate Mr Palmer and Ms Coleman occurred at the first Issues Panel meeting each was referred to (Exhibit SCB-2, tab 22, p 3; tab 26); Mr Palmer resigned before his termination could be effected (see Exhibit SCB-2, tab 27); Ms Coleman purported to resign in July 2016, but only

- (c) the conduct of each of the Advisers was reported to ASIC as a Serious Compliance Concern (**SCC**);⁶ and
 - (d) the whole customer book of each of the Advisers was referred to AMP's Review and Remediation Program at the time the conduct was identified, and the customers will be reviewed for remediation in accordance with the AMP Advice Remediation Compensation Policy.⁷
8. Although AMP's systems and processes have not prevented all instances of inappropriate advice being provided, it has been thorough in the identification of the provision of inappropriate advice, and the appropriate escalation of issues identified.⁸

Potential breaches by the Advisers

9. Counsel Assisting has submitted that on the evidence, it is open for the Commissioner to find that each of the relevant Advisers has breached their statutory obligations.⁹ AMP agrees that it is open for the Commissioner to find that each of the three Advisers, the subject of the Case Study, breached their statutory obligations. This is why AMP took steps to ensure that these Advisers are no longer in its network and why the customers of these Advisers have been referred to AMP's Review and Remediation program.

Monitoring and supervision

10. The principal means employed by AMP to monitor the quality of advice given by Advisers and ensure compliance with legislation and standards include the conduct of audits of its Advisers, supporting the Advisers through paraplanning, the vetting of advice, monitoring of complaints and AMP's whistleblowing policy,

after Charter had already sent her a letter of termination on 23 June 2016 (see Exhibit SCB-2, tabs 23 and 24). In respect of the Adviser referred to in the hearing, and hereafter in these submissions, as "**Mr E**", the decision to terminate his authorisations was not immediate, however he was not permitted to provide any further advice until further investigations had been undertaken (Exhibit SCB-2, tab 13, p 5), and Mr E's Practice then terminated his employment before the Issues Panel had a further opportunity to review his situation (Exhibit SCB-2, tab 16, p 13).

⁶ In respect of Ms Coleman and Mr E, this was done voluntarily and shortly after AMP became aware of their conduct. Mr Palmer was reported as an SCC following receipt of a notice from ASIC issued under s 912C of the *Corporations Act 2001 (Cth)* (**Corporations Act**). The unchallenged evidence is that if that decision were to come to the Issues Panel as it operates today, Mr Palmer would be voluntarily reported to ASIC as an SCC; Britt Statement 2-27, [39(g)]; T1642.41-T1643.36.

⁷ Britt Statement 2-27, [76]-[82]; Exhibit SCB-2, tab 41.

⁸ Britt Statement 2-27, [39(g)].

⁹ As to Mr E: T1972.30-36; Ms Coleman: T1972.38-T1973.2; Mr Palmer: T1973.4-22.

the administration of a consequence management framework and the advice services desk through which Advisers request guidance and self-report.¹⁰

There are also Quality Advice Fundamentals (**QAFs**), which provide the tools to enable Advisers to understand their obligations and provide compliant advice.¹¹

11. The primary purpose of these monitoring systems and the consequence management framework is protective: to ensure that clients receive quality advice and also that Advisers understand how to comply with legal obligations when providing advice. However, these systems also serve a remedial purpose: to ensure continuous improvement of standards and to provide an opportunity for Advisers to learn and improve.¹² In order to achieve these goals, monitoring systems and the consequences which flow from the identification of concerns need to be proportionate and balanced. The revocation of an Adviser's authority should be a final alternative. Remedial action and coaching will therefore be appropriate consequence management tools in some circumstances, and there should be no criticism of AMP for using them in this way.
12. However, where multiple high-risk issues of a serious nature are identified, or where there is dishonest conduct, AMP does not shy away from terminating an Adviser's authorities, as is demonstrated by these case studies. High risk issues are those which severely impact the quality of the advice provided. These include not acting in the client's best interests, failing to demonstrate that the Adviser has satisfied the BID, and when an Adviser acts outside their authority.¹³ The adviser audit standards reflected in the case studies show that:¹⁴
 - (a) the identification of one high risk issue will result in an Adviser receiving a fail in the form of a D rating, which will result in enhanced monitoring.¹⁵ A further audit will be scheduled in 3 months. Mandatory vetting and coaching may also be required; and

¹⁰ Regan Statement 2-20, [65] and [104(f)].

¹¹ Regan Statement 2-20, [114(b)].

¹² The audit standards are at Exhibit AGR-2, tab 14.

¹³ Exhibit AGR-2 to Regan Statement 2-20 (Exhibit 2.171) (**Exhibit AGR-2**), tab 14, p 11.

¹⁴ Exhibit AGR-2, tab 14, pp 15 and 17-19.

¹⁵ See also discussion of the effect of a D rating at T1615.10-15 and T1622.3-5.

- (b) the identification of more than 5 high risk issues results in an E rating, which is escalated on the basis that, unless there are countervailing circumstances, the Adviser's authorities are revoked.
13. While every attempt is made to ensure that standards are complied with, a system reliant on human review is not infallible and cannot detect every Adviser who is at risk of providing inappropriate advice. Entirely eliminating the risk of inappropriate advice is an unrealistic goal, and to attempt to do so would be so costly as to make financial advice prohibitively expensive for the average Australian citizen.

Alleged potential breaches by AMP Licensees

14. Counsel Assisting has submitted that, on the evidence, it is open for the Commissioner to find that the conduct of AMP Licensees might amount to misconduct in various respects. No such finding is available on the evidence for the reasons discussed below.
15. It has been submitted that the conduct of three AMP Licensees, being AMP Financial Planning Pty Ltd (**AMPFP**), Charter Financial Planning Ltd (**Charter**) and Genesys Wealth Advisers Ltd (**Genesys**), may respectively have contravened the following statutory provisions:¹⁶
- (a) the obligation under section 912A(1)(a) of the Corporations Act to ensure that financial services covered by its license were provided efficiently, honestly and fairly (**s 912A(1)(a)**);
 - (b) the obligation under section 912A(1)(c)(a) of the Corporations Act to take reasonable steps to ensure that representatives complied with financial services laws (**s 912A(1)(c)(a)**);
 - (c) the obligation under section 912A(1)(f) to ensure that its representatives were adequately trained and competent to provide services (**s 912A(1)(f)**) (this allegation is only made against Genesys);
 - (d) the obligation under section 912A(1)(h) of the Corporations Act to have adequate risk management systems (**s 912A(1)(h)**); and

¹⁶ T1973.24-T1974.28.

- (e) the obligation under section 961L of the Corporations Act to take reasonable steps to ensure that Advisers complied with ss 961B, 961G, 961H and 961J of the Corporations Act (**s 961L**).¹⁷
16. These statutory obligations are not absolute. A Licensee's obligations pursuant to these provisions must, as a matter of practicality, be a question of whether it has adequate processes and systems in place to achieve the desired outcome. Judicial consideration of licensees' alleged contravention of sections 912A(1) and 961L of the Corporations Act has looked to the evidence as to the licensee's processes and systems, rather than relying on the existence of an example of bad advice being provided to prove a breach.¹⁸ The existence of any one instance (or even several instances) of inappropriate advice is insufficient to base a finding that the processes and systems in place were inadequate. To find a breach of these provisions, there would need to be evidence of repeated and systemic failures that are attributable to inadequate processes and systems.
17. The evidence in the case study shows, in relation to each of the three Licensees, an example of one Adviser providing inappropriate advice, and potentially breaching his or her statutory obligations. Each specific factual circumstance is discussed below. While these are serious matters which should be (and were) identified, investigated and escalated, they do not constitute grounds to find that AMPFP, Charter or Genesys contravened their statutory obligations.
18. AMP is committed to continuous improvement of its systems and processes. The systems and processes discussed in this section have all been (or are currently) the subject of the improvements and enhancements discussed at paragraphs 42 to 49 below.¹⁹

¹⁷ The alleged failure to ensure that Advisers complied with sections 961G and 961J of the Corporations Act are made in respect of Charter and Genesys only (T1974.9 and .29); the alleged failure to ensure that Advisers complied with section 961H is made against AMPFP only (T1973.38).

¹⁸ *ASIC v Wealth & Risk Management Pty Limited (No 2)* [2018] FCA 59; (2018) 124 ACSR 351, [100]-[113]; *ASIC v Financial Circle Pty Ltd* [2018] FCA 2, [91]-[94].

¹⁹ Except in relation to Genesys, which no longer has any Advisers operating under it: T1644.39.

Alleged potential breach by AMP Financial Planning in respect of the conduct of Mr E

19. Counsel Assisting submitted that the conduct of AMPFP in around November 2016 might amount to misconduct in that it may have been in breach of sections 912A(1)(a), 912A(1)(c)(a), 912A(1)(h) and or 961L of the Corporations Act.²⁰ In particular, Counsel Assisting submitted that at the relevant time, AMPFP failed to ensure that its audit standards were such that Mr E's conduct could be detected and remediated at the earliest opportunity.²¹
20. The relevant evidence is that:
 - (a) Mr E became an Adviser on 22 December 2015 and was first audited within 9 months of his commencement on 21 September 2016,²² and that audit identified one "high" rated issue in relation to a failure by Mr E to satisfy the BID in that Mr E failed to include discussion of whether two features of the recommended superannuation product were included in the client's existing superannuation fund;²³
 - (b) it appears that the auditor considered this "high" rated issue was not material. As a result, the issue was not given a scoring impact, and the audit resulted in a "C" rating, which meant that Mr E had met all of the major quality advice principles but that specific areas for improvement were identified. The auditor had the benefit of considering the client file in its entirety including the fact find and relevant file notes. It is a discretion he or she is entitled to exercise based on all of the evidence;²⁴
 - (c) the issue was brought to Mr E's attention in the audit report, and Mr E was required to undertake remedial action in relation to that issue, including to look at the BID and related Obligations Policy, to conduct a further discussion with the client, to provide the client with an updated advice and to provide a copy of the client's acknowledgement to AMP. Mr E's next audit was scheduled to occur in 6 months' time;²⁵

²⁰ T1973.24-41.

²¹ T1973.39-41.

²² Britt Statement 2-27, [52].

²³ Exhibit 2.162: AMP.6000.0043.2829.

²⁴ T1599.7-8.

²⁵ Exhibit 2.162: AMP.6000.0043.2829 at p 6.

- (d) if the “high” rated issue had been considered material, the difference would have been that on receiving a “D” rating, Mr E’s next audit would have been scheduled for 3 months’ time (i.e. around late December 2016);²⁶
 - (e) the advice given by Mr E which is the subject of the case study was provided to his clients in November 2016,²⁷ and therefore the decision to schedule Mr E’s next audit after 6 months rather than after 3 months was not causal in allowing the inappropriate advice to be given; and
 - (f) in accordance with the audit standard, Mr E was audited in March 2017, and received an E rating. The matter was escalated, and Mr E was not permitted to service any clients until the results of further sampling of his client files were confirmed. Mr E was terminated by his practice before the matter returned to the Issues Panel, and it was decided that Mr E’s conduct should be recorded on his file for the purposes of ensuring the information was passed on to any prospective licensees, and that he would be reported to the ASIC as an SCC.²⁸
21. AMP’s adviser audit standards as in effect in September 2016, provided that a material issue included any issue which “*could have impacted the client’s decision to proceed with the advice*”, that an issue would be considered immaterial where the issue had “*little or no impact on the client or the advice provided*”.²⁹ The standard contained a series of examples as to how the discretion is to be applied to specific circumstances.
22. The auditor who conducted the September 2016 audit of Mr E would have been working to this standard. It can therefore be inferred that the auditor formed the view on the information before him that the “high” weighted issue would not have affected the client’s decision whether to approve the recommended course. On the available evidence, it cannot be determined that this decision

²⁶ T1622.2-5.

²⁷ Exhibit SCB-2, tab 3.

²⁸ Exhibit SCB-2, tab 16, p 13; Britt Statement 2-27, [27].

²⁹ The audit standards in effect in September 2016 were relevantly in substantially similar terms to the audit standards at Exhibit AGR-2, tab 14, pp 12-14.

was necessarily incorrect. However, even if the auditor's decision was not correct:

- (a) it has not been suggested that the manner in which the standard addressed the issue of materiality was inadequate; and
 - (b) the decision of a single auditor does not provide a sufficient basis to make a finding that AMPFP may have been in breach of its statutory obligations and does not demonstrate any systemic failing.
23. The evidence further shows that in 2014, AMP requested PwC to undertake a review of the control framework of the AMP Advice business, and PwC provided a report of this review to AMP in March 2015 (**2015 PwC Report**).³⁰ Following this, AMP developed an Advice Controls Improvement Program (**ACIP**) to implement recommendations arising out of the 2015 PwC report, and in May 2017 PwC was requested to undertake a further investigation as to the effectiveness of controls implemented as part of the ACI (**2017 PwC Report**).³¹ These two reports discuss the issue of allowing an auditor discretion to decide whether an issue is material or immaterial.³² The 2015 report recommended that AMP should “*Review High Risk questions and determine whether a question can be answered “No – Immaterial”*”, and if so provide detailed guidance where this is appropriate.³³ As discussed above, the adviser audit standard did provide guidance on how to apply the discretion, as proposed by the 2015 PwC report. The 2017 PwC report did not specifically recommend any changes to the audit policy in respect of the question of auditors determining whether an issue is material or not.³⁴
24. AMP acknowledges that in this instance AMPFP's processes did not prevent Mr E from providing inappropriate advice between September 2016 and March 2017. The remedial action required of Mr E following the September audit does not appear, with the benefit of hindsight, to have been adequate. However, the evidence does not provide a basis for a finding that that this resulted from a

³⁰ Exhibit AGR-2, tab 18.

³¹ Exhibit AGR-2, tab 19.

³² Exhibit AGR-2, tab 18 at p 29; tab 19 at p 26.

³³ Exhibit AGR-2, tab 18 at p 29.

³⁴ Exhibit AGR-2, tab 19 at p 26.

systemic inadequacy of AMPFP's systems or processes which could amount to a breach of sections 912A(1)(a), 912A(1)(c)(a), 912A(1)(h) and or 961L of the Corporations Act. Mr E was an inexperienced Adviser who ultimately was not capable of meeting the required standard. AMPFP has taken responsibility for his actions and will remediate those of his clients who have suffered loss as a result of his advice.

25. To the extent that it is sought to criticise AMPFP for failing immediately to terminate Mr E,³⁵ the evidence is clear that Mr E was not permitted to provide further advice to clients following his audit in March 2017 which resulted in an "E" rating.³⁶ There is no reason why AMPFP should not have undertaken the further investigations it did, in circumstances where measures were in place to prevent Mr E from providing further advice pending the outcome of those investigations. The evidence is that following those investigations, AMP acted appropriately in:
- (a) determining that Mr E's conduct was consistent with the definition of SCC and should be recorded on his file; and
 - (b) voluntarily reporting the conduct to ASIC as an SCC adviser.³⁷

Alleged potential breach by Charter in respect of the conduct of Ms Coleman

26. Counsel Assisting submitted that the conduct of Charter in around February 2016 might amount to misconduct in that it may have been in breach of sections 912A(1)(a), 912A(1)(c)(a), 912A(1)(h) and or 961L of the Corporations Act.³⁸ In particular, Counsel Assisting asserted that at the relevant time, Charter failed to ensure that its adviser audit standards were such that Ms Coleman's conduct could be detected and remediated at the earliest opportunity.³⁹
27. The relevant evidence is as follows:
- (a) Ms Coleman had been the subject of regular audits since at least 2010, all of which had resulted in a B or C rating, with no "high" issues identified.⁴⁰

³⁵ T1970.31-32.

³⁶ Exhibit SCB-2, tab 13, p 5.

³⁷ Britt Statement 2-27, [27(i)].

³⁸ T1973.43–T1974.10.

³⁹ T1974.10-13.

⁴⁰ Exhibit SCB-2, tab 21, p 9.

There is no evidence that these audits were flawed in any way or that Ms Coleman provided inappropriate advice prior to October 2015.⁴¹

- (b) On 28 October 2015, and then on 9 February 2016, Ms Coleman was subject to two consecutive audits which resulted in D ratings, each identifying two “high” rated issues.⁴²
- (c) The “D” ratings resulted in serious consequences for Ms Coleman:
 - (i) first, her next audits were now scheduled at 3 monthly intervals;
 - (ii) secondly, Charter engaged in discussions with Ms Coleman concerning the deficiencies in her advice and she was to be provided with targeted coaching;
 - (iii) thirdly, she was required to undertake further specified remedial actions; and
 - (iv) fourthly, she was required to submit all her advices for mandatory vetting.⁴³
- (d) On 25 February 2016 Ms Coleman was provided with targeted coaching by a specialist AMP team. That coaching included the importance of maintaining fact find and file note information, and several specific matters related to compliance with the BID.⁴⁴
- (e) On 4 May 2016 Ms Coleman was audited again, and received a third consecutive D rating.⁴⁵ A third D rating led to escalation of the matter for the purpose of revoking Ms Coleman’s authorities.
- (f) Ms Coleman appealed the third ‘D’ audit rating. That appeal was unsuccessful,⁴⁶ and on 17 June 2016 the decision was made to terminate Ms Coleman’s authorisations.

⁴¹ Each of these former audits were produced to the Commission pursuant to Notice to Produce NP-161 dated 3 April 2018 and have not been tendered.

⁴² Exhibit SCB-2, tab 21, p 9.

⁴³ Exhibit SCB-2, tab 21, p 8; T1617.7-12.

⁴⁴ Britt Statement 2-27, [54(c)].

⁴⁵ Exhibit SCB-2, tab 4.

⁴⁶ Exhibit SCB-2, tab 21, p 8.

- (g) With the benefit of hindsight, and looking at the audits in totality, AMP acknowledges that the audits demonstrate a pattern of concerning conduct. While at the time it was felt the controls put in place would mitigate the risk of Ms Coleman providing inappropriate advice, ultimately it was apparent that AMP could no longer be satisfied that she was capable of providing good quality advice.⁴⁷
 - (h) Despite the various steps referred to above, the evidence is that Ms Coleman was not taking the problems identified with her conduct seriously⁴⁸ and that she had placed a heavy reliance on support staff without taking accountability for ensuring that the work had been completed as required.⁴⁹
28. There is no evidence that Charter's auditing procedures or policies were inadequate in respect of identifying Ms Coleman's concerning conduct. The audit system operated effectively in identifying: first that Ms Coleman's performance had deteriorated; and then subsequently that, despite the steps and controls put in place, her performance had failed to improve.
29. Charter provided additional and targeted coaching to Ms Coleman, and there is no evidence that this coaching was not appropriate in the circumstances.

Alleged potential breach by Genesys in respect of the conduct of Mr Palmer

30. Counsel Assisting submitted that the conduct of Genesys in around August 2013 might amount to misconduct in that it may have been in breach of sections 912A(1)(a), 912A(1)(c)(a), 912A(1)(f), 912A(1)(h) and/or 961L of the Corporations Act.⁵⁰ In particular, Counsel Assisting submitted that at the relevant time Genesys failed to:⁵¹
- (a) ensure that the process of assessment of its Authorised Representatives prior to them commencing with Genesys were such that Mr Palmer's conduct could be detected and remediated at the earliest opportunity;

⁴⁷ T1617.12-24.

⁴⁸ Britt Statement 2-27, [54(d)].

⁴⁹ Exhibit SCB-2, tab 21, p 8.

⁵⁰ T1974.15-29.

⁵¹ T1974.10-13.

- (b) ensure that its audit processes were such that Mr Palmer's conduct could be detected and remediated at the earliest opportunity; or
- (c) take any steps to ensure that Mr Palmer had the necessary qualification or to prevent him providing advice for which he was not qualified to give until after the audit.

31. AMP accepts that the evidence shows that:

- (a) there were errors in the way in which Mr Palmer was accepted as an Authorised Representative of Genesys, including failures to follow the processes that existed at that time;⁵²
- (b) as a result of these errors:
 - (i) Genesys was unaware that Mr Palmer may have provided inappropriate advice prior to becoming an Adviser of Genesys;⁵³ and
 - (ii) although Genesys knew that Mr Palmer intended to provide self managed superannuation fund (**SMSF**) advice, it was unaware that he was not accredited to do so;⁵⁴
- (c) following Mr Palmer's acceptance as an Adviser, Mr Palmer's status was incorrectly entered in Genesys' computer system as a prospective adviser, with the effect that Mr Palmer was erroneously not required to undertake mandatory BID training;⁵⁵ and
- (d) when Mr Palmer failed to submit information requested for vetting, this was not followed up as it should have been.⁵⁶

32. While Counsel Assisting submitted that no steps were taken in July 2014 to prevent Mr Palmer from providing SMSF advice,⁵⁷ in fact the evidence shows that by no later than 30 July 2014 Mr Palmer was instructed not to provide advice in relation to SMSFs and other areas where his accreditation was not

⁵² T1622.17-T1632.13; T1624.2-T1628.9; T1629.6-T1631.40.

⁵³ T1638.20-42.

⁵⁴ Exhibit SCB-2, tab 26, p 3.

⁵⁵ Exhibit SCB-2, tab 29, p 3.

⁵⁶ Exhibit SCB-2, tab 26, p 4.

⁵⁷ T1975.15-.17.

complete.⁵⁸ This instruction may have been communicated to Mr Palmer at an earlier time.⁵⁹

33. AMP does not seek to excuse the failings referred to at 31 above, which are serious and should not have occurred.
34. There is, however, no evidence that the failings that occurred in respect of Mr Palmer were systemic or representative of the normal operation of Genesys' systems and processes at that time. The assessment and application forms for the recruitment of Mr Palmer were adequate and suitable for their purpose.⁶⁰ They were not validated or properly checked by the officer responsible for that task,⁶¹ who by 2014 no longer worked at Genesys.⁶² The evidence shows that a breach assessment was conducted in relation to Mr Palmer's conduct in October 2014.⁶³ It found that there were no systemic issues, and that the issues concerning Mr Palmer did not constitute a licensee breach of Genesys' obligations under section 912A of the Corporations Act. In particular, it concluded that there was no systemic issue concerning the provision of unauthorised advice during the period from January to September 2014. What appears to have occurred is serious but inadvertent failures to follow the processes in effect at that time. For this reason, there is no basis for a finding that the failings identified in respect of Mr Palmer demonstrate that Genesys might have breached its statutory obligations.
35. It has been submitted that it is open to the Commission to find that the conduct of Genesys in connection with the advice of Mr Palmer can be attributed, at least in part, to a culture of emphasising the growth of the business over ensuring that advisers were appropriately qualified, and that the evidence supports a finding that in order to obtain Mr Palmer's client base Genesys *"failed to take adequate steps to ensure that Mr Palmer was appropriately qualified to provide all of the kinds of advice that he intended to provide"*.⁶⁴ This

⁵⁸ Exhibit SCB-2, tab 6, p 17.

⁵⁹ Two earlier email communications refer respectively to an intention to contact Mr Palmer on around 16 July 2014, and actual communications with Mr Palmer on or before 22 July 2014: Exhibit 2.168: AMP.6000.0053.0047 at .0048 and Exhibit 2.169: AMP.6000.0053.0099.

⁶⁰ Exhibit 2.165: AMP.6000.0053.0051 and Exhibit 2.166: AMP.6000.0053.0101.

⁶¹ Exhibit 2.167: AMP.6000.0053.0013.

⁶² Exhibit SCB-2, tab 26, p 3.

⁶³ Exhibit SCB-2, tab 30.

⁶⁴ T1975.6-13.

amounts to an allegation that Genesys chose to ignore its own processes and systems in order to secure Mr Palmer's client book. There is no proper foundation for such a finding. There is no suggestion that Genesys courted Mr Palmer's client base or that his client base was especially valuable or significant to Genesys. Further, the contemporaneous documents produced around the time Mr Palmer's conduct was identified and was being escalated do not demonstrate any reluctance to terminate Mr Palmer's authorisation.⁶⁵

36. Genesys is no longer in operation, and no advice is being provided under its AFSL.⁶⁶ However, as referred to below, there have been significant enhancements to AMP's processes and systems, including in relation to the background and reference checking of prospective Advisers.

2017 PwC Report

37. Counsel Assisting has sought to make a further point in relation to the 2017 PwC Report, which stated that the audit scoring approach was very sensitive, and the difference between an A, B or C result could be quite subjective, and that "*a small discrepancy in interpretation can lead to a vastly different audit outcome*".⁶⁷
38. The fact that opportunities for improvement were identified by PwC does not demonstrate systemic failings in the adviser audit process.
39. The recommendation that was made in the 2017 PwC Report in relation to the sensitivity of the audit scoring approach was to "*Re-consider if the differentiation between A, B and C is sufficient and whether the scoring is too sensitive, or if this number of categories are required*".⁶⁸ By focussing on A, B and C results, this recommendation was not principally concerned with the identification of high risk issues which would result in a D or E rating.
40. Significantly, it has not been demonstrated that the audits the subject of the case study were materially deficient, or if they were, in what respect (save possibly for the 2016 audit of Mr E which has been addressed above).

⁶⁵ Exhibit SCB-2, tabs 26, 27, 28 and 29.

⁶⁶ T1594.5 and T.1644.39.

⁶⁷ T1976.4-10.

⁶⁸ Exhibit AGR-2, tab 19 at p 26.

41. Further, no expert evidence or evidence of general industry practice has been adduced to demonstrate that the audit standards or the consequence management systems in place were inadequate or so deficient as to cause systemic failure capable of resulting in breach of the licensee's statutory obligations. AMP acknowledges that the PwC reports did identify opportunities for improvement in relation to its audit processes, and as discussed further below, since the receipt of the 2017 PwC report, further enhancements of AMP's audit systems are being developed.

AMP's enhancements to systems and processes

42. AMP is committed to ensuring that SCCs are reported to ASIC. The approach taken by AMP's Issues Panel is that whenever an Adviser is terminated for inappropriate advice, the default assumption is that the conduct will be voluntarily reported to ASIC as an SCC.⁶⁹
43. AMP and its Advice Licensees have also recently improved their recruitment and reference checking processes. AMP was the first organisation to adopt the ABA Protocol in September 2016.⁷⁰ AMP has also formulated and implemented a new "Advice Recruitment Background & Reference Checking Policy".⁷¹
44. For many years AMP has been implementing various improvements and enhancements to its systems and processes to better detect instances of inappropriate advice, and take remedial action as necessary.⁷²
45. AMP has also implemented (or will shortly implement) a range of initiatives and programs across governance, monitoring systems, culture, processes and controls, including:⁷³
- (a) a new quality review system called "Audit 2.0";

⁶⁹ Britt Statement 2-27, [39(g)].

⁷⁰ T1648.39-43.

⁷¹ T1648.45-T1649.13; Exhibit 2.170: AMP.6000.0041.1849.

⁷² These enhancements are also part of AMP's response to ASIC *Report 515: Financial advice: Review of how large institutions oversee their advisers* and ASIC *Report 562: Financial advice: Vertically integrated institutions and conflicts of interest*, as well as to the 2015 PwC Report and the 2017 PwC Report: see discussion at T1647.42-T1648.4.

⁷³ See also more generally Regan Statement 2-20, including discussion of: minimum education requirements at [39]-[45]; CPD requirements at [46]-[50]; and measures to prevent and detect inappropriate advice at [100]-[116].

- (b) the Business Improvement Project (**BIP**); and
 - (c) an enhanced reference checking processes.
46. Audit 2.0 covers all aspects of AMP's quality review system.⁷⁴ In relation to the audit process in particular, the Audit 2.0 project will include the following enhancements:⁷⁵
- (a) the audit questionnaire will be more closely aligned to the BID and related obligations;
 - (b) auditors will receive improved training, coaching and mentoring; and
 - (c) guiding principles will focus on providing independent and objective evaluation.
47. Audit 2.0 will also improve the vetting process,⁷⁶ enhance the use of attestation,⁷⁷ expand AMP's Key Risk Indicators to focus monitoring on the highest risk Advisers,⁷⁸ and align AMP's consequences management framework with the new enhancements⁷⁹. AMP's Audit 2.0 project will begin to be implemented in July 2018.
48. AMP is in the process of entering into an agreement with ASIC, under which it will engage an ASIC approved independent expert to supervise and test its processes for the identification of inappropriate advice.⁸⁰ This reviewer will assist in identifying the most appropriate methods to mitigate against inappropriate advice.
49. The BIP is designed to improve AMP policies, tools, and templates, to make them easier to use and more effective in assisting Advisers in understanding and complying with their obligations, and to identify where further education is required.⁸¹

⁷⁴ Regan Statement 2-20, [108].

⁷⁵ Regan Statement 2-20, [109]; T1621.46-T1622.10; T1647.44-T1648.17.

⁷⁶ Regan Statement 2-20, [110].

⁷⁷ Regan Statement 2-20, [111(a)].

⁷⁸ Regan Statement 2-20, [111(b)].

⁷⁹ Regan Statement 2-20, [111(c)].

⁸⁰ Regan Statement 2-20, [125].

⁸¹ Regan Statement 2-20, [114].

The effect of increased professionalisation across the industry

50. The Government introduced new, and significantly increased, minimum education requirements in February 2017.⁸² AMP is in the process of having Advisers meet these new education standards, in line with the standards set by the Financial Adviser Standards and Ethics Authority Limited, across all the Advice Licensees (which superseded previous requirements).⁸³ As a result of these increased minimum education requirements, AMP expects that financial advisers throughout the industry will be better equipped and trained to provide appropriate advice, and appreciate the consequences of inappropriate advice for their clients.

Remediation

51. AMP and its Advice Licensees are committed to remediating clients who have suffered financial loss as a result of inappropriate advice. To date, AMP has reviewed approximately 2,750 cases as part of its remediation program (within the inappropriate advice review stream).⁸⁴

52. Nonetheless, AMP acknowledges that there has been unacceptable delay in identifying and remediating such clients, both in the case studies identified and more broadly.⁸⁵ AMP accepts that it has underestimated the scale and complexity of the issue and therefore underestimated what is required to address it.⁸⁶ Counsel Assisting has asserted that it is open to the Commissioner to make findings that the conduct of AMPFP, Charter and Genesys in failing to contact or remediate the customers of these three Advisers, has fallen below community standards and expectations.⁸⁷ AMP accepts these findings are open.

53. The basis upon which clients have been, and will be, remediated is set out in AMP's Advice Remediation Compensation Policy (in accordance with ASIC

⁸² New advisers will be required to meet these requirements by 2019, while existing Advisers may meet them progressively by 2024; *Corporations Amendment (Professional Standards of Financial Advisers) Act 2017*.

⁸³ Regan Statement 2-20, [42].

⁸⁴ Regan Statement 2-20, [120].

⁸⁵ T1607.34-39; T1609.36-T1610.10; T1620.6-12.

⁸⁶ T1607.11-39; T1609.35-T1610.10; T1620.6-21.

⁸⁷ T1974.40-T1975.4.

Regulatory Guide 256, “*Client review and remediation conducted by advice licensees*”), which provides that each client who has received inappropriate advice will be put in the position they would have been in if they had received appropriate advice.⁸⁸ This involves a detailed review of the customer’s file, contacting each customer, obtaining relevant information from the customer, considering that information against the advice given to assess whether the advice was inappropriate for that customer, and if so, constructing an appropriate counterfactual to determine how best to remediate any loss suffered by the customer.⁸⁹

54. AMP has recently restructured and augmented its Review and Remediation Program and increased staffing so as to expedite the investigation and remediation of clients of Advisers who may have provided inappropriate advice.⁹⁰ AMP has also retained a third party to assist, with the flexibility to expand in accordance with the needs of the program.⁹¹

55. AMP considers that its revised Review and Remediation Program will be well placed to efficiently and effectively identify clients who have suffered financial loss as a result of inappropriate advice, and remediate where appropriate.

4 May 2018

⁸⁸ Exhibit SCB-2, tab 41, p 5.

⁸⁹ T1609.21-25, T1609.43-47.

⁹⁰ Regan Statement 2-20, [118]-[120]; Britt Statement 2-27, [79]-[81].

⁹¹ T1620.14-17.