

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

Submissions by Andrew Smith, person affected by the evidence of Westpac

1. This case study was used by the Royal Commission (RC) to demonstrate that employed financial advisers are not subject to adequate review by their employer (in this instance Westpac) and to demonstrate that when a financial adviser changes employer (to Dover in this instance) there is inadequate disclosure of past performance.
2. The RC did not question the veracity of the claims made against Andrew Smith (in particular by Michael Wright of BT). The RC was interested in what “systems and processes for preventing (and) detecting inappropriate advice by employed financial advisers” were in place and why Dover had not been fully informed of Andrew Smith’s past performance.
3. This RC, understandably, is not the forum to delve into the merits of claims made against Andrew Smith. For this reason, together with the fact that he was given inadequate time to properly prepare his case against claims made and did not have access to relevant documentation, Andrew Smith chose not to cross examine Michael Wright during the course of proceedings nor place a statement before the RC.
4. Consequently he has had to hear his name repeatedly vilified in the press. Andrew Smith submits that he is not the “villain” as portrayed but rather a reputable financial adviser who has been used as a “scapegoat” by Westpac.
5. It is important to note that the financial services regulator (ASIC) investigated the claims of inappropriate advice and conduct by Andrew Smith prior to hearings of the RC.
6. ASIC stated on the 20 November 2017:

“We do not regard the potential breaches as serious and as such it is recommended that no further action be taken in relation to Mr Smith.”
7. Andrew Smith does not suggest for a moment that he is without fault. Andrew Smith, however, categorically states that he did not act dishonestly and at all times acted in the best interests of his clients.

8. There is no question that the RC has demonstrated the need for more stringent processes for internal monitoring of financial advisers as well as the need for more open disclosure of performance to future employers.
9. These submissions are necessary to make clear that Andrew Smith does not accept many of the serious allegations made against him.
10. Andrew Smith has received accolades for his services as a financial planner. He received the St George Private Clients “Financial Planner of the Year” award three years in a row (2011, 2012 and 2013). He was in the final three nominations for “Australian Private Bank Financial Planner of the Year” award in 2014.
11. Some might say this exposes only too well the inadequacy of the checks and balances within the financial services sector.
12. Andrew Smith says (in the words of client testimonials) they were worthy awards due to “trust, competence, strong relationship of mutual trust and respect, best interests of (client) at heart...”
13. Whilst ASIC itself has come under scrutiny in the RC for its apparent failure to properly regulate the Financial Services Industry it did in fact investigate and place Andrew Smith under surveillance and found that:
 - (a) Andrew Smith has been acting in the best interests of his clients and providing appropriate advice.
 - (b) Since Joining Dover in April 2015 that there have been no complaints by any clients or Dover itself against Andrew Smith.
14. On 13 March 2017 ASIC requested information from Westpac in relation to complaints and remediation. At the time of reporting (20 November 2017) Westpac had paid approximately \$1.2 million in remediation to clients of Andrew Smith. A significant portion of that remediation was paid to 2 clients in circumstances where one client was a wholesale client and where the other client was found by Westpac to have shared fault. ASIC said it would appear that the remediation payments are not reliable indicators of bad advice.
15. ASIC also concentrated its surveillance of Andrew Smith on advice at Dover given the age of the reported misconduct by Westpac (2011 to 2015).

16. It is worth noting that Andrew Smith left Westpac in April 2015 (resigned March) after new management and new client file management systems had been introduced with the withdrawal of the previous support (towards the end of 2013 and in 2014).
17. Changes in management style and focus on upfront profit; changes in computer systems being deployed for financial planners to manage client files and changes in staffing levels all contributed to a deterioration of advice and capacity for financial planners to follow correct procedures. The system was also lacking proper structure and the CFM system introduced was not usable. This is supported by the report of Deloitte at WBC.104.002.1774.
18. Andrew Smith admits that files were then inadequately kept in part due to the poor systems in place. However, he believes he is being used by Westpac as a scapegoat for failings that should not solely be “sheeted home” to him.
19. An example is the use the Client File Management System (CFM) a tool Andrew Smith (as well as many other advisers at Westpac) found very difficult to operate. There was a lack of support and training at a time management was pushing upfront revenue. Consequently, client information was being stored on a shared drive and subsequent investigations suggest resultant inadequate record keeping.
20. As noted earlier, this is not considered the time or place to comprehensively defend all of the serious allegations made against Andrew Smith. However, it is worth highlighting a couple of instances of alleged inappropriate advice that are clearly the fault of others.
21. ██████████ said of Andrew Smith (as a testimonial attached to his nomination for outstanding Wealth/Investment Adviser at the Australian Private Banking Awards 2014):

“(I have) ... full confidence in Andrew Smith ... one of the most important aspects of my association with Andrew is its continuity”. (See annexure 1).
22. ██████████ made complaint and was compensated but not for advice of Andrew Smith but for advice given by ██████████ and ██████████ (after Andrew Smith had already left Westpac). (See annexure 2).
23. ██████████ similarly stated:

“(Andrew Smith) ... worked hard to establish a strong relationship of mutual trust and respect (and I have) every confidence that he has the best interests of me and my family at heart.” (See annexure 3)

24. ██████████ is referenced with regard to the issuing of the NAB notes. Andrew Smith says that the business was at fault in this process and that the blame lies entirely with ██████████ and ██████████ in not seeing the urgency in having the advice documentation addressed early in the allocation of the Notes and then not allowing Andrew Smith to action the allocation for the clients under advice documentation. ██████████ directed Andrew Smith that he was not allowed to implement the NAB notes via his usual advice process and that he “had to hand over (his) allocation to the bankers to implement on a no advice basis”. Andrew Smith complied and gave the allocation to the bankers.
25. This meant the bankers were implementing this offer and Andrew Smith did not act on any NAB notes (nor did he receive commission from them).
26. A client compensated \$28,881.45 (see WBC.500.002.7340) is a current client of Andrew Smith (transferred from BT to Dover in May 2015). It appears the client was reviewed on the 8 August 2016 and paid compensation on the 6 January 2017. The basis of the compensation was not poor or inaccurate advice but “under performance” of a fund (See annexure 4). It is difficult to understand how the “deep dive” team assessed this client’s position when they had not been a client of the bank for some time and no losses may have accrued at the time the payment was offered.
27. Andrew Smith reputation is naturally of paramount importance to him. His future career and well being depend upon it.
28. It should be born in mind that since leaving Westpac in 2015 there have been no complaints whatsoever about his conduct, ethics, professionalism or capacity as a financial adviser by either clients or Dover. In fact ASIC found through their surveillance of him whilst he has been at Dover that client files demonstrate that Andrew Smith is acting in the best interests of his clients and providing them with appropriate advice.
29. A comprehensive analysis of all the allegations brought against Andrew Smith would clearly demonstrate that he is no “villain” and that the awards and accolades he received were all truly deserved.

30. Andrew Smith has also found that the support systems in place in Dover and its structure of operation is an effective system that works well for him to be able to properly discharge his duties as an adviser and for the client to be protected in knowing that the internal workings of the organisation support their own needs.

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