

**ROYAL COMMISSION INTO MISCONDUCT  
IN THE BANKING, SUPERANNUATION AND FINANCIAL  
SERVICES INDUSTRY: SECOND ROUND OF PUBLIC HEARINGS**

**SUBMISSIONS OF DOVER FINANCIAL ADVISERS PTY LTD IN  
RELATION TO TOPIC 5: THE DISCIPLINARY REGIME FOR THE  
FINANCIAL ADVICE PROFESSION**

A.	Introduction .....	2
	Mr McMaster’s evidence and the grant of leave to appear to Dover.....	2
	Dover .....	2
	Dover’s compliance process involves reviewing all SOAs .....	4
	Dover’s process for reviewing advice before it is provided to clients.....	5
	Benefits of Dover’s compliance process.....	6
B.	The Dover Client Protection Policy (DCPP).....	7
	There is nothing improper in Dover seeking to protect its interests by limiting or excluding liability .....	8
	Breaches of the ASIC Act and/or the Corporations Act: misleading or deceptive conduct..	8
	Inclusion of unfair contract terms in the DCPP .....	8
C.	Dover’s process for authorising representatives .....	10
	Dover’s process in relation to prospective new advisers .....	10
	Poor, or absent, AFSL references are one of the factors considered by Dover in assessing prospective advisers.....	10
	Impossibility of, on all occasions, obtaining AFSL reference checks before an adviser commences with Dover.....	11
	Examples .....	12
	Any inadequacies in the reference checking process result principally from a failure by former licensees to provide comprehensive, accurate and timely information .....	16
D.	Dover’s handling of complaints.....	17
	The sending of a letter alluding to the risk of defamation proceedings .....	17
	No cultural issue in relation to complaints.....	17

## A. Introduction

### *Mr McMaster's evidence and the grant of leave to appear to Dover*

1. Terrence McMaster (**Mr McMaster**) gave evidence at the Royal Commission on 26 April 2018, having provided a witness statement dated 10 April 2018. Mr McMaster fell ill during the course of giving evidence.
2. On 27 April 2018 the Commissioner excused Mr McMaster from further attendance, noting that he would consider permitting Mr McMaster to give further evidence and that Dover Financial Advisers Pty Ltd (**Dover**) would have leave to make submissions in response to any matters the Counsel Assisting may raise.<sup>1</sup>
3. On 2 May 2018 Dover was granted leave to make written submissions as to:
  - a. the findings of fact which ought be made as to the conduct of Dover examined in the course of the hearings; and
  - b. issues which Dover can demonstrate to be issues in which it has a direct or substantial interest.

### *Dover*

4. Dover was founded in 2007 as an associated business of a medium-sized accounting practice. It is wholly-owned by interests associated with Mr McMaster.<sup>2</sup>
5. Dover conducts a financial advisory business through 408 authorised representatives (**ARs**).<sup>3</sup> It has experienced very substantial growth, particularly in recent years as large numbers of advisers have left the major financial institutions.
6. Dover conducts its business by reference to a business model which it regards as unique, or at least unique among substantial licensees. Its business model includes the following features:
  - a. It is genuinely independent. It earns no commission from product manufacturers. It does not accept payment in kind from third parties, nor 'sponsorship' of training events or similar. All commissions, and similar,

---

<sup>1</sup> Transcript of 27 April 2018 T1902.1-6

<sup>2</sup> McMaster witness statement at [6], [8]

<sup>3</sup> Exhibit 2.236, being the witness statement of Terrence McMaster dated 10 April 2018 (**McMaster witness statement**) at [7]

are passed on to advisers. Its income is unaffected by product volume.<sup>4</sup> It earns income only from adviser fees.

- b. Dover's principal 'offer' to advisers is its supervision of compliance.<sup>5</sup>
- c. Dover's compliance process involves the mandatory review of each statement of advice (**SOA**) before it is presented to the client for whom it has been prepared.

The review process includes both internal review (by Dover staff) and external review (by a firm of solicitors retained by Dover for this purpose). The aim of these reviews is to ensure the advice is in the client's best interests, appropriate to the client and otherwise appropriate.<sup>6</sup>

- d. Dover does not require ARs to achieve any particular level of revenue, or any product volume targets.
7. Dover charges ARs \$20,000 per annum plus GST, and \$12,000 per annum plus GST for the second and subsequent adviser from a single entity. This fee includes professional indemnity insurance.<sup>7</sup>
8. In the three years to December 2017, Dover had the following number of ARs (as at the end of each calendar year):

	<b>New ARs</b>	<b>Total ARs</b>
<b>2015</b>	124	250
<b>2016</b>	166	367
<b>2017</b>	106	408

9. In the three years to December 2017, Dover received the following volume of client complaints:

	<b>Complaints resolved through Internal Dispute Resolution</b>	<b>Complaints resolved through External Dispute Resolution</b>
<b>2015</b>	18	2
<b>2016</b>	9	3 <sup>8</sup>
<b>2017</b>	12	5

10. The number of complaints received by Dover is small, relative to the number of advisers.

<sup>4</sup> McMaster witness statement [9]

<sup>5</sup> McMaster witness statement at [10]

<sup>6</sup> McMaster witness statement at [11]

<sup>7</sup> Transcript of 26 April 2018 T1845.37-45

<sup>8</sup> One of these complaints was lodged in 2017, but is included in the 2016 figures as the complaint was lodged with Dover's internal dispute resolution process in 2016.

11. Further, most complaints received by Dover are resolved at the ‘internal dispute resolution process’ stage. This indicates that Dover is satisfactorily addressing client complaints notified to it, so that it is often unnecessary for the complaint to progress to an external dispute resolution body.

*Dover’s compliance process involves reviewing all SOAs*

12. Prior to October 2015, only SOAs categorised as complex were reviewed before being provided to clients, with simple SOAs subject to review once they had been presented to clients.

13. Since October 2015 Dover ARs were subject to an obligation to provide all SOAs to Dover for review before they were provided to the client. A limited number of ARs were permitted to send out simple SOAs 24 hours after submission under a “fast track system”, if Dover did not otherwise advise.<sup>9</sup>

14. Since September 2017 all Records of Advice (**ROAs**) are reviewed before provision to clients, unless Dover agrees otherwise.<sup>10</sup> Until that time, ROAs were submitted to Dover for review once they had been presented to clients.

15. Dover’s process for reviewing SOAs and ROAs continually evolves, as Dover becomes aware of potential improvements.<sup>11</sup>

16. In July 2013 ASIC released Report 362 – Review of financial advice industry practice: Phase 2.<sup>12</sup> In the section of this report dealing with the recruitment of new advisers, ASIC:

- a. recommends that where new advisers join from a previous licensee with a poor compliance culture, the new licensee should identify any particular risks arising and take effective steps to mitigate those risks.<sup>13</sup>
- b. identifies as ‘best practice’ the supervision or pre-vetting of the advice of new advisers, or those new to the licensee.<sup>14</sup>

17. Dover’s process for reviewing SOAs is superior to that identified by ASIC as ‘best practice’; that is, Dover pre-vets all SOAs and ROAs and not just those from new advisers.

---

<sup>9</sup> The Dover Checklist as at 20 October 2015 is Attachment 1 to this submission.

<sup>10</sup> The Dover Checklist as at 4 September 2017 is Attachment 2 to this submission

<sup>11</sup> The McMaster witness statement at [84]

<sup>12</sup> An extract of ASIC Report 362 is Attachment 3 to this submission

<sup>13</sup> At [85]

<sup>14</sup> At [86]

18. Dover's compliance process focuses on ensuring that advice provided is in the client's best interests and is appropriate. By doing so, it focuses on serious and substantial risks facing clients. Having regard to the low number of complaints received, the obvious conclusion is that this process has proved effective.

#### *Dover's process for reviewing advice before it is provided to clients*

19. Dover's process for reviewing SOAs consists, in summary, of the following:

- a. A first review in Dover's Vietnam office. This is a quantitative and qualitative review. It involves a detailed check of all supporting documents, together with administrative work. Where issues are identified in the advice, these issues are resolved by the Vietnam office directly with the AR.
- b. A second review in Dover's Melbourne office by Dover's compliance team, with the involvement of Dover's Responsible Managers. This is a technical review, with substantial liaison between compliance staff and ARs. A SOA will not proceed to final review until the compliance team is satisfied that it is satisfactory.
- c. A third, final review by MLA Lawyers. MLA Lawyers generally reviews only the SOA itself (and not the supporting documents). This review is focused on ensuring that the SOA complies with the 'best interests' test, and the fact that it does so is apparent on the face of the document.<sup>15</sup>

20. Further, Dover ARs:

- a. are subject to restrictions on the advice they may give;
- b. are subject to processes designed to minimise the risk of non-compliant advice;
- c. agree to undertake compliance-based training;
- d. agree to comply with certain required behaviours; and
- e. agree that Dover is entitled to obtain information from insurers and fund managers with which the ARs deal.<sup>16</sup>

#### Qualifications of those engaged to review SOAs

21. Most members of Dover's Melbourne compliance team are solicitors, some are accountants and some are financial planners. All of them are experienced in

---

<sup>15</sup> DOV.0005.0001.0721-4

<sup>16</sup> The McMaster witness statement at [81]

reviewing SOAs to ensure compliance. Dover's compliance manager is a solicitor, and holds a Masters degree in banking and finance law.

22. The review by MLA Lawyers<sup>17</sup> is conducted by solicitors experienced in reviewing SOAs to ensure compliance. The partner in charge of these reviews, Mr Andrawis, is a financial planner and a solicitor.

#### *Benefits of Dover's compliance process*

23. Dover's high-involvement compliance process delivers substantial benefits to Dover, its representatives and to clients. It:

- a. fosters a compliance-oriented culture;
- b. improves the quality of advice provided to clients;
- c. reduces the prospect that non-compliant SOAs are presented to clients;  
and
- d. means that if an AR prepares a SOA containing problematic advice, it is detected immediately (and prior to presentation to the client).

24. Dover attributes the low rate of complaints it receives to its compliance process.

---

<sup>17</sup> A law firm in which Dover and Mr McMaster have no ownership interest

## B. The Dover Client Protection Policy (DCPP)

25. Dover used the DCPP in the course of its business until March 2018. The DCPP formed part of the SOA used by Dover's authorised representatives (**ARs**).

26. ASIC identified concerns with the DCPP by a letter of 22 March 2018.<sup>18</sup>

27. Dover had not, until receiving this letter, recognised that the DCPP was inappropriate. On receiving ASIC's letter, Dover promptly recognised its error and acted to rectify it. Dover:

- a. withdrew the DCPP on 31 March 2018; and
- b. liaised closely with ASIC to obtain its approval for the wording of a letter to clients and a website notice.<sup>19</sup>

28. Dover has since written to approximately 13,000 clients as follows:

*Dear Client*

*I am writing to you regarding advice previously provided by Dover. This advice included materials incorporated into the advice by a hyper-text link known as the Dover Client Protection Policy (the "Protection Policy").*

*The Protection Policy has been withdrawn and replaced by the Dover Client Information Policy, with retrospective effect.*

*The Protection Policy was deceptive because it contained certain provisions the effect of which were to avoid liability to compensate clients for any loss resulting from the advice provided.*

*Dover does not and will not rely on these clauses in any dispute because they are unlawful and are voided by the financial services law and the general law.*

*If you consider the advice provided to you has resulted in a financial loss you should seek independent legal advice or lodge a complaint with the Credit Industry Ombudsman and you should disregard the Protection Policy.*

*Please do not hesitate to contact me should you require further information about this matter.*

*Terry McMaster<sup>20</sup>*

29. Further, Dover has included a notice on its website which incorporates the text of the letters sent to clients.<sup>21</sup>

30. Insofar as Dover is aware, no client has claimed that loss was suffered by reason of the DCPP.

---

<sup>18</sup> ASIC.0022.0001.1119-26

<sup>19</sup> ASIC.0022.0001.1147-9; ASIC.0022.0001.1141-4

<sup>20</sup> A sample letter to clients is Attachment 4 to this submission.

<sup>21</sup> A copy of the website notice is Attachment 5 to this submission.

*There is nothing improper in Dover seeking to protect its interests by limiting or excluding liability*

31. There is nothing improper in Dover looking to protect its interests by seeking to limit or exclude liability to the extent permitted by law. It is commonplace, and unobjectionable, for businesses and professionals providing advice for reward to do so.
32. The relevant regulatory regime expressly provides<sup>22</sup> that licensees are not responsible for the conduct of their ARs in certain circumstances. Dover cannot fairly be criticised merely because it sought to avail itself of section 917D.
33. However Dover accepts that the manner in which it sought to exclude or limit liability through the DCPD was inappropriate.

*Breaches of the ASIC Act and/or the Corporations Act: misleading or deceptive conduct*

34. Counsel assisting submitted that it is open to the Commissioner to find that Dover:
  - a. engaged in misconduct by engaging in misleading and deceptive conduct contrary to section 1041H of the *Corporations Act* or section 12DA of the *ASIC Act* in connection with the DCPD;
  - b. failed to comply with section 1041H of the *Corporations Act* and section 12DA of the *ASIC Act* by its incorporation of the DCPD into all contracts of the authorised representatives and their clients.
35. Dover accepts that the DCPD, as in place until March 2018, was inappropriate, and contravened section 1041H of the *Corporations Act* or section 12DA of the *ASIC Act* in that it was misleading or deceptive or likely to mislead or deceive. Dover accepts that it overreached in the manner by which it sought to limit or exclude its liability for the conduct of ARs.
36. Dover therefore acknowledges that any person who has suffered loss or damage by reason of the DCPD being misleading or deceptive may be entitled to recover such loss or damage from Dover.

*Inclusion of unfair contract terms in the DCPD*

37. Counsel Assisting submitted that it is open to the Commissioner to find that Dover breached a recognised and widely-adopted benchmark for conduct by

---

<sup>22</sup> By section 917D



including unfair contract terms in the DCPD contrary to section 12BF of the *ASIC Act*.

38. Counsel Assisting did not identify, in her submissions, the terms of the DCPD said to be unfair (although particular terms were referred to in the examination of Mr McMaster on 26 April 2018).
39. Section 12BF of the *ASIC Act* identifies that a term in a consumer contract or small business contract will be void where (i) it is unfair; (ii) is in a standard form contract; and (iii) it is in a contract for, inter alia, the supply or possibly supply of financial services.
40. Notwithstanding that there has been no finding by a court that any term of the DCPD was unfair, Dover concedes that the DCPD overreached in seeking to exclude Dover's liability for misconduct of its ARs.
41. The concerns regarding the DCPD were promptly addressed by Dover upon the matter being raised by ASIC (and prior to Mr McMaster's evidence on 26 April 2018).
42. While Dover does not resist a finding that the DCPD included unfair contract terms, such a finding would be of limited practical utility as:
  - a. the DCPD has been withdrawn and replaced;
  - b. Dover will not rely on the DCPD as entitling it to avoid liability to clients.

## C. Dover's process for authorising representatives

### *Dover's process in relation to prospective new advisers*

43. Dover's process<sup>23</sup> in relation to prospective new advisers is to:

- a. conduct:
  - i. A police check;
  - ii. A bankruptcy check;
  - iii. A personal reference check;
  - iv. An AFSL reference check;
  - v. A check of other references.
- b. check a SOA from the adviser's most recent audit.
- c. check the adviser's prior compliance reports.
- d. require that the adviser provide a statement for the purposes of the insurance application.
- e. obtain an insurance or fund manager reference (that is, to contact at least one insurer or fund manager whose products the adviser has previously recommended)<sup>24</sup>.
- f. conduct an induction test/questionnaire, checking to confirm that advisers have read and understood the Dover compliance manual<sup>25</sup>.
- g. conduct an induction interview between the prospective adviser and a compliance officer<sup>26</sup>.

44. This process is described in Dover's *Combined Compliance Manual and Adviser Handbook* (February 2018).<sup>27</sup>

45. The process involves substantial effort, both on the part of Dover and on the part of the prospective adviser.

### *Poor, or absent, AFSL references are one of the factors considered by Dover in assessing prospective advisers.*

46. ASIC noted in Report 362 (referred to in [16] above) that some licensees reported that previous licensees were reluctant to provide references on new advisers, or that there were restrictions on the references provided.<sup>28</sup>

---

<sup>23</sup> A printout of Dover's appointment checklist is at DOV.0005.0001.0319-23. See also Transcript of 26 April 2018 at T1868

<sup>24</sup> Mr McMaster's witness statement at [26]; DOV.0005.0001.0326; DOV.0005.0001.0327

<sup>25</sup> Mr McMaster's witness statement at [27] and DOV.0005.0001.0331

<sup>26</sup> Mr McMaster's witness statement at [28] and DOV.0005.0001.0333

<sup>27</sup> Exhibit 2.239

<sup>28</sup> ASIC Report 362 At [81]

47. Dover's experience in obtaining reference checks from an incoming AR's prior licensee accords with that identified in ASIC Report 362. As became clear in the course of the Round 2 Hearing, on occasion Australia's major financial institutions do not cooperate to provide timely, relevant information to licensees who are considering taking on, or have taken on, ARs who are leaving those institutions.
48. While the results of a reference check provided by a prior licensee are relevant, Dover regards information provided by product manufacturers and insurers as being more reliable.<sup>29</sup>
49. Where Dover becomes aware of errant conduct by an adviser with their former licensee, it considers whether the conduct is likely to recur having regard to Dover's compliance model and the complete absence, at Dover, of any product volume targets or KPIs.

*Impossibility of, on all occasions, obtaining AFSL reference checks before an adviser commences with Dover*

50. It would be preferable that all checks (including reference checks of the former licensee) be undertaken before an AR commences providing services through Dover. However this is impractical, because prior licensees do not always respond to a request for a reference check at all, or in a timely fashion, or comprehensively.
51. If Dover did not issue a proper authority until the reference checking process had been completed, then by withholding its response to a reference checking request a former licensee could cause all the AR's clients to be left without recourse to financial advice from their chosen adviser. This is plainly unsatisfactory.
52. It is therefore necessary – to ensure continuity of advice - that Dover appoint ARs before the AFSL reference checking process is complete, with the appointment being subject to the AFSL reference check proving satisfactory.
53. Further:
- a. even without an AFSL reference check there is substantial information available to Dover regarding the prior conduct of the prospective AR.

---

<sup>29</sup> Transcript of 26 April 2018 T1868.17-19

- b. the report of the former licensee, while relevant, is not determinative of the manner in which the AR will conduct himself or herself with Dover, having regard to the different compliance environment at Dover and to the lack of KPIs or product volume targets at Dover.

### *Examples*

#### Andrew Smith

54. Andrew Smith has been an AR of Dover since late April 2015. Before he joined Dover, Mr Smith was an adviser with the Westpac group.
55. Mr Wright's evidence<sup>30</sup> discloses that there were issues with Mr Smith's advice while he was with Westpac.
56. When Dover was considering taking Mr Smith on as an AR, it made enquiries and undertook reference checks.<sup>31</sup>
57. On 6 May 2015 Dover wrote to Westpac seeking relevant information and asking whether Mr Smith had been the subject of actions or investigations.<sup>32</sup> It was Mr Wright's evidence that by this date Westpac had suspended Mr Smith, had made serious allegations against him and had accepted his resignation in response to those allegations.<sup>33</sup>
58. On 13 May 2015, Mr Kovanis of Westpac telephoned Mr Thompson of Dover. He stated that "*we have concerns regarding his [Mr Smith's] conduct*" and said that there was an ongoing investigation but that it was Westpac's policy not to give written replies with respect to reference checking, nor to go into specifics.<sup>34</sup>
59. Mr Thompson then emailed Westpac on 14 May 2015:
- a. seeking open communication between dealer groups, noting the importance of protecting consumers from bad advice, and the importance of improving the overall quality of advice and advisers in the financial services industry.
  - b. seeking an immediate response once Westpac's investigation was concluded and asking to be informed as soon as practical if the

---

<sup>30</sup> Mr Wright gave evidence on 19-20 April 2018. See also Exhibit 2.101 at pages 73-100.

<sup>31</sup> McMaster witness statement at [68] and the documents referred to in that paragraph

<sup>32</sup> DOV.0001.0001.0098

<sup>33</sup> Transcript of 20 April 2018 at T1459.39-T1460.27. See also Transcript of 19 April 2018 at T1416-T1425 and Exhibit 2.101 at pages 75-76.

<sup>34</sup> DOV.0001.0001.0670. The same day, Westpac's investigations team delivered an Investigation Report into Mr Smith to BT Legal – WBC.900.001.0254-5

investigation concluded that Mr Smith had committed, or was likely to commit, a significant breach.<sup>35</sup>

60. Dover followed up Westpac in late May 2015 and again in June 2015.<sup>36</sup>

61. Mr Thompson spoke again to Mr Kovanis in late June 2015. Westpac still would not provide any written report in relation to Mr Smith, nor any timeframe by which its investigations would be completed. Dover again asked Westpac to notify Dover of any new information which comes to light.<sup>37</sup> By the time of this communication, Westpac had received an investigation report into Mr Smith.<sup>38</sup>

62. Westpac did not subsequently provide any further information to Dover, even once it notified ASIC of a serious breach by Mr Smith.<sup>39</sup>

63. Since he joined Dover no client has complained about Mr Smith.<sup>40</sup>

64. In 2017 ASIC undertook a review of advice provided by Mr Smith since he joined Dover. ASIC's review showed that while with Dover, Mr Smith has:

- a. identified the clients' needs and objectives, the subject matter of the advice and relevant information applicable to the subject matter of the advice;
- b. provided sound advice;
- c. the expertise and authority to provide the advice; and
- d. taken steps that would reasonably be regarded as being in the clients' best interests, given their circumstances.<sup>41</sup>

65. Whatever may have occurred while Mr Smith was with Westpac, Mr Smith has now provided advice with Dover for 3 years. He has done so without incident. His SOAs have been pre-vetted by Dover, which ASIC has indicated is best-practice for advisers new to a licensee.<sup>42</sup>

#### Adam Palmer

66. Mr Palmer joined Dover in October 2014 from Genesys (AMP).

---

<sup>35</sup> DOV.0001.0001.0670

<sup>36</sup> DOV.0005.0001.2404-8

<sup>37</sup> DOV.0001.0001.0288

<sup>38</sup> Transcript of 20 April 2018 T1462.31-T1463.9

<sup>39</sup> Transcript of 20 April 2018 T1463.11-16

<sup>40</sup> Mr McMaster's witness statement at [62]

<sup>41</sup> ASIC.0015.0001.4173. Note that this document is the subject of non-publication direction DIR-076.

<sup>42</sup> ASIC Report 362 at [85]-[86]

67. Dover produced a reference check letter dated 24 October 2014, seeking a reference for Mr Palmer from Genesys.<sup>43</sup>
68. In addition to the October 2014 letter, Dover sought a reference check from Genesys/AMP on 3 further occasions<sup>44</sup>. Despite these repeated requests, Genesys/AMP did not provide a reference for Mr Palmer.<sup>45</sup>
69. During the recruitment process, Mr Palmer informed Dover that he was in dispute with AMP, and that AMP was then reviewing his files.<sup>46</sup>
70. Dover learned that Mr Palmer was connected to a property advocacy company and made enquiries. Dover determined that Mr Palmer's involvement in a buyer advocacy business was permitted providing that (i) the potential conflict of interest was properly disclosed; (ii) the business did not recommend or involve itself in off-the-plan sales; and (iii) Mr Palmer was paid only by the client.<sup>47</sup>
71. Dover has not received any complaints regarding advice provided by Mr Palmer.<sup>48</sup> His SOAs have been pre-vetted by Dover, which ASIC has indicated is best-practice for advisers new to a licensee.<sup>49</sup>
72. In 2017 ASIC conducted a review of advice provided by Mr Palmer to retail clients while an AR of Dover. The outcome of the review was a recommendation that ASIC take no further action in respect of Mr Palmer at this time.<sup>50</sup>

#### Julie Hamilton

73. Ms Hamilton joined Dover from Financial Wisdom (CBA) in 2015.
74. Ms Hamilton informed Dover that her authority had been terminated by Financial Wisdom because of a significant breach which had been reported to ASIC.<sup>51</sup>
75. Dover sought information from Financial Wisdom, but only minimal details were provided.<sup>52</sup>
76. Dover made appropriate enquiries regarding Ms Hamilton, including by reviewing a Financial Wisdom 'Quality Advice Assurance Review Report' from May 2014.<sup>53</sup>

---

<sup>43</sup> Exhibit 2.240

<sup>44</sup> Exhibit 2.240 – on 26 December 2014, 10 February 2015 and 11 May 2015

<sup>45</sup> Transcript of 26 April 2018 T1876.40-41

<sup>46</sup> Exhibit 2.240; Transcript of 26 April 2018 T1870

<sup>47</sup> Transcript of 26 April 2018 T1872.10-1873.11

<sup>48</sup> Mr McMaster's witness statement at [62]

<sup>49</sup> ASIC Report 362 at [85]-[86]

<sup>50</sup> ASIC.0016.0001.1024

<sup>51</sup> Mr McMaster's witness statement at [40]

<sup>52</sup> Mr McMaster's witness statement at [42]-[43] and the documents referred to in those paragraphs

<sup>53</sup> Mr McMaster's witness statement at [41] and the documents referred to in that paragraph

77. Dover determined that its SOA review process would ensure the issues Ms Hamilton had encountered at Financial Wisdom would not recur with Dover.<sup>54</sup>
78. Ms Hamilton was ultimately banned by ASIC by reason of the transfer of clients from the Colonial First State platform to a Macquarie platform. This conduct occurred after Ms Hamilton had joined Dover, and was unrelated to the issues which had arisen while Ms Hamilton was with Financial Wisdom.
79. No client of Ms Hamilton has complained to Dover.<sup>55</sup> While an AR of Dover, her SOAs were pre-vetted by Dover, which ASIC has indicated is best-practice for advisers new to a licensee.<sup>56</sup>

#### Koresh Houghton

80. Mr Houghton joined Dover in late January 2015.<sup>57</sup> He advised Dover that he was in dispute with Financial Wisdom (CBA), his then-current licensee.<sup>58</sup>
81. Mr McMaster sought, in the course of his evidence, to explain what steps Dover took to investigate Mr Houghton at the time he joined Dover. However Counsel Assisting would not permit Mr McMaster to do so.<sup>59</sup> Dover sought to investigate Mr Houghton before he joined Dover, including by obtaining references from 3 referees.<sup>60</sup>
82. Dover requested a reference check from Financial Wisdom on 10 February 2015.<sup>61</sup> Financial Wisdom did not respond until 10 April 2015.<sup>62</sup>
83. On 14 October 2016, CBA informed Dover that it was concerned that the signatures of clients on 8 client transfer forms were not genuine signatures. Dover immediately suspended Mr Houghton. Mr Houghton was asked for an explanation, and admitted forging signatures. Dover promptly terminated Mr Houghton's proper authority and lodged a contravention report with ASIC.<sup>63</sup>

---

<sup>54</sup> Mr McMaster's witness statement at [41]

<sup>55</sup> Mr McMaster's witness statement at [45]

<sup>56</sup> ASIC Report 362 at [85]-[86]

<sup>57</sup> McMaster witness statement at [57]

<sup>58</sup> Transcript of 26 April 2018 T1884.31-33

<sup>59</sup> Transcript 26 April 2018 T1885.20-41

<sup>60</sup> DOV.0005.0001.1901-1922

<sup>61</sup> DOV.0005.0001.1923

<sup>62</sup> DOV.0005.0001.1924-6

<sup>63</sup> The breach report lodged by Dover in respect of Mr Houghton, which includes a bundle of relevant emails, is Attachment 6 to this submission.

84. No clients of Mr Houghton have complained to Dover.<sup>64</sup> While an AR of Dover, his SOAs were pre-vetted by Dover, which ASIC has indicated is best-practice for advisers new to a licensee.<sup>65</sup>

85. The conduct of Mr Houghton which resulted in his being banned from providing financial services could not have been identified by Dover; the forged documents were provided by Mr Houghton to CBA and were not sighted by Dover.

*Any inadequacies in the reference checking process result principally from a failure by former licensees to provide comprehensive, accurate and timely information*

86. The examples of Mr Smith (Westpac) and Mr Palmer (AMP) demonstrate that a principal issue adversely affecting Dover in conducting reference checks of prospective ARs is the failure by prior licensees to provide timely, accurate and comprehensive responses to requests by Dover.

87. Dover submits that AFSLs ought be made subject to an obligation to provide an accurate, comprehensive written response to a request from another AFSL for a reference check within 7 days of request.

---

<sup>64</sup> McMaster witness statement at [55]; Transcript of 26 April 2018 T1884.35-36

<sup>65</sup> ASIC Report 362 at [85]-[86]



## D. Dover's handling of complaints

### *The sending of a letter alluding to the risk of defamation proceedings*

89. In 2015, a client referred to FOS a complaint regarding advice provided by a Dover adviser (**the FOS complaint**).<sup>66</sup>
90. Dover was concerned that the circumstances surrounding the FOS complaint involved elder abuse and Centrelink fraud.<sup>67</sup> It regarded itself as obliged, by reason of section 912A, to report those concerns to the relevant authorities, and it did so. Dover did not breach privacy laws by reporting conduct it regarded as being (i) criminal; and (ii) elder abuse.
91. During the course of the FOS complaint Dover stated, in correspondence from Mr McMaster, that making false complaints about financial advisers could give rise to defamation actions.<sup>68</sup> Mr McMaster accepts that this was an error on his part.<sup>69</sup>
92. It is not the common practice of Dover, or Mr McMaster, to make threats of defamation proceedings against complainants.<sup>70</sup> This situation was “*a very exceptional case, a complete one-off, with very unusual circumstances.*”<sup>71</sup>

### *No cultural issue in relation to complaints*

93. Dover and FOS disagreed as to the proper handling of the FOS complaint. It was in this context that Dover lost confidence in the process followed by FOS.<sup>72</sup> The evidence before the Commission is insufficient for the Commissioner to make any finding as to whether Dover's concerns regarding the process followed by FOS in respect of the FOS complaint are justified.
94. Dover subsequently left FOS, and joined the Credit & Investments Ombudsman (**CIO**) as its dispute resolution body. Dover has maintained a positive and constructive relationship with the CIO.
95. Dover has appropriate policies in place in respect of the handling of client complaints.<sup>73</sup>

---

<sup>66</sup> T1887.35-38

<sup>67</sup> T1889.3-4

<sup>68</sup> T1887.38-40

<sup>69</sup> T1889.34-37

<sup>70</sup> T1888.12-17

<sup>71</sup> T1889.31-32

<sup>72</sup> T1889.41-42

<sup>73</sup> Dover's combined compliance manual and adviser's handbook is Exhibit 2.239. The policy in respect of complaints handling is Part 20. An extract from 'the Dover way' (a manual for fee-for-service financial planning published on Dover's website) regarding complaints is Attachment 7 to this submission.

96. An error by Mr McMaster in the handling of a single complaint – and one which Mr McMaster characterises as “*a very exceptional case, a complete one-off*” – does not provide any basis for a finding that there is a cultural issue within Dover in respect of the handling of client complaints.
97. As noted at [8] to [11] above, the number of complaints in respect of financial services provided by Dover is very low having regard to the fact that Dover has more than 400 ARs. The vast majority of Dover’s ARs have conducted their practice without incident.
98. The evidence does not establish that there is any cultural issue within Dover in respect of client complaints.

R E T WODAK  
Aickin Chambers