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TRANSCRIPT OF PROCEEDINGS

O/N H-919881

THE HONOURABLE K. HAYNE AC QC, Commissioner

IN THE MATTER OF A ROYAL COMMISSION INTO MISCONDUCT IN THE BANKING, SUPERANNUATION AND FINANCIAL SERVICES INDUSTRY

MELBOURNE

9.45 AM, MONDAY, 10 SEPTEMBER 2018

Continued from 17.8.18

DAY 50

MS R. ORR QC appears with MR M. COSTELLO as Counsel Assisting with MR M. HOSKING and MS S. ZELEZNIKOW
MR A. CHESHIRE SC appears with MS R. PISSANO for ClearView Life Assurance Ltd

THE COMMISSIONER: As with previous rounds of hearing, persons who have been given leave to appear and entities that have been given leave to appear have been informed, and for the most part, those entities and persons have told the solicitors for the Commission of who will appear for them. That being so, there will be no occasion to announce appearances. Again, as in past rounds of hearing, there are some individuals who applied for leave to appear who have been refused leave. And, again, the solicitors for the Commission have written to them giving my reasons for refusing the leave that they sought. Ms Orr.

MS ORR: Commissioner, today we commence the sixth round of public hearings. These hearings will consider the conduct of financial services entities in the insurance industry. Insurance products are often divided into four types: life insurance, general insurance, health insurance and marine insurance. We will be examining the conduct in the life insurance industry and the general insurance industry. The first week of these hearings will focus on life insurance. We will examine how life insurance products are designed, how they are sold and promoted, how life insurance claims are handled, and the dispute resolution mechanisms that are available in relation to life insurance claims. We will also consider some issues that arise in relation to life insurance products provided through superannuation funds.

The second week of the hearings will focus on general insurance. We will examine the case studies that were deferred from the fourth round of hearings which concerned the experiences of people who had made claims under home insurance policies following natural disasters. We will also consider case studies in relation to add-on insurance sold through car dealerships and travel insurance.

At the end of the second week of hearings, we will draw together some of the themes explored in the life insurance and general insurance case studies, and consider the regulation of the industry as a whole. Some of the key questions that we will address in this round of hearings are is there an appropriate balance between self-regulation and external regulation in the insurance industry. In particular, is it appropriate that the handling of insurance claims is currently largely outside of ASICs jurisdiction. Should the unfair contract terms regime that applies to other consumer contracts be extended to insurance contracts.

Should the General Insurance Code of Practice and the Life Insurance Code of Practice be enforceable as contractual terms, like the Banking Code of Practice. Or should they be treated like industry codes under the Competition and Consumer Act, which makes a contravention of an applicable industry code a contravention of the Act. Are the changes that have been made to section 29, subsection (3) of the Insurance Contracts Act, a provision that deals with the consequences of non-disclosure by an insured person, operating as they intended. What changes to the existing regulatory framework are necessary to improve the experiences of people with mental illness in dealing with life insurance companies.

In this opening statement, we will begin by explaining some key features of the regulatory framework for both the life and general insurance industries. We will then outline what each of the financial services entities who have provided witness statements for this round of hearings have acknowledged to the Commission as their own misconduct and conduct falling below community standards and expectations in relation to both life and general insurance. In these hearings, we will tender more than 110 witness statements from financial services entities and other entities involved in the life and general insurance industries.

We will explain and analyse aspects of these statements at a number of points in the hearings, and we will cross-examine a number of the people who provided these statements. After dealing with acknowledgements of misconduct in this opening statement, we will then shift our focus to the life insurance industry which, as we've mentioned, will be the subject of this first week of hearings. We will provide an overview of the life insurance industry based, in part, on data that we have obtained from 10 life insurance companies. We will then summarise what consumers and consumer advocates have told the Commission about their experiences in the life insurance industry.

We will also touch on what regulators and other bodies working in the area, such as ASIC and the Financial Ombudsman Service, have told the Commission. Finally, we will briefly introduce the case studies to be explored in the first week of hearings. We start with an overview of the regulatory framework for the life insurance and general insurance industries. The life and general insurance industries are subject to several different types of regulation. First, they are subject to prudential regulation which is overseen by APRA. Among other things, APRA is responsible for granting or refusing applications to carry on a general insurance or life insurance business in Australia. Prudential regulation of the insurance industry will not be a focus of these hearings.

Second, because most contracts of insurance are financial products for the purposes of chapter 7 of the Corporations Act, life insurance and general insurance companies are subject to financial services regulation, which is overseen by ASIC under the Corporations Act and the ASIC Act. Third, the industries are also subject to a number of obligations imposed by the Insurance Contracts Act which is also administered by ASIC. And fourth, most life and general insurance companies are subject to an industry Code of Practice. For the life insurance industry, the relevant code is the Life Insurance Code of Practice which came into effect on 1 July last year.

For the general insurance industry, the relevant code is the General Insurance Code of Practice which came into effect on 1 July 1996 and has been revised a number of times since then. We will say something about the second, third and fourth of these forms of regulation, which among other things govern the conduct of insurers in their dealings with policyholders. We deal first with financial services regulation under the Corporations Act and the ASIC Act. Most insurance policies are financial products for the purposes of chapter 7 of the Corporations Act. Selling these insurance policies is a financial service. This means that insurance companies that issue insurance policies must hold an Australian financial services licence.

As we've mentioned in previous rounds of hearings, chapter 7 of the Corporations Act imposes a number of obligations on holders of Australian financial services licences, including obligations to do all things necessary to ensure that they provide financial services efficiently, honestly and fairly, to have adequate arrangements for managing conflicts of interest, to comply with the financial services laws, to take reasonable steps to ensure that their representatives comply with the financial services laws, and to have a dispute resolution system for services to retail clients.

Although most life and general insurance policies are financial products and the selling of those policies is a financial service, it is important to note that the handling and settling of insurance claims is specifically excluded from the definition of a financial service. This means that the obligations that we've just referred to, including the obligation for an insurance company to do all things necessary to ensure that it provides financial services efficiently, honestly and fairly, do not apply to the process leading to making a decision about a claim, including the investigation of the claim and the interpretation of policy provisions, to negotiations of settlement amounts, to estimates of loss or damage, value or repair costs, or recommendations on mitigation of loss.

This limits ASICs ability to take action against insurance companies where, for example, there are unnecessary or extensive delays in handling claims. Insurance companies are subject to the provisions of the Corporations Act and the ASIC Act concerning misleading and deceptive conduct, and unconscionable conduct. However, insurance contracts that are governed by the Insurance Contracts Act are not currently subject to the unfair contract terms provisions of the ASIC Act. And the Insurance Contracts Act limits the ability of policyholders to rely on the other consumer protection provisions in the ASIC Act. Because most insurance policies are financial products, chapter 7 of the Corporations Act also imposes extensive pre-contractual disclosure requirements in relation to those products.

In particular, an insurance company that issues a financial product must issue a product disclosure statement in relation to the product. The Insurance Contracts Act which we turn to next, imposes additional disclosure obligations for certain types of insurance. The Insurance Contracts Act was introduced in 1984. It altered a number of aspects of the common law in relation to insurance contracts, to bring about a fairer balance between the interests of the insurer and the insured. We will outline some key aspects of the Insurance Contracts Act. First, part 2 of the Insurance Contracts Act contains the duty of utmost good faith. It implies into insurance contracts, to which the Act applies, a provision requiring each party to the contract to act towards the other party in respect of any matter arising under or in relation to it with the utmost good faith.

If an insurer fails to comply with the duty of utmost good faith in relation to its handling or settlement of a claim, this will amount to a breach of a financial services law. However, there is currently no penalty imposed for breaching the duty of utmost good faith. This means that ASIC cannot bring proceedings against an insurer to recover a penalty where it believes the insurer has breached this duty. Second, part 4 of the Insurance Contracts Act deals with disclosures and misrepresentations, and sets out a statutory code dealing with the duties of the insurer and the insured in relation to these topics. We will briefly mention two aspects.

Division 1 of part 4 deals with the duty of an insured person to disclose certain matters to the insurer. If the insured does not comply with this duty, the insurer may be entitled to void the policy. In 2014, section 29 of the Insurance Contracts Act was amended, expanding the circumstances in which an insurer could void a life insurance policy for non-disclosure. Since 2014 an insurer has been able to void a policy if it can show that it would not have entered into the same contract of life insurance. Previously, it had to show that it would not have entered into any contract of life insurance.

Division 4 of part 4 was introduced following inquiries into the widespread flooding in parts of Australia in 2010 and 2011. We will refer to those inquiries in more detail in the second week of these hearings. Division 4 requires an insurer to provide a key facts sheet in relation to certain policies of insurance, including home insurance, in addition to the product disclosure statement. The third key aspect of the Insurance Contracts Act is contained in part 5. Division 1 of part 5 requires insurers to take steps to disclose non-standard or unusual terms in certain types of insurance policies before they can rely on them. And division 1A of part 5 provides for a uniform definition of "flood" in home insurance policies. We will return to the definition of "flood" in the second week of the hearings.

The fourth key aspect of the Insurance Contracts Act which we've already touched on, is that it excludes certain consumer protections under other Commonwealth, State or Territory legislation from applying to insurance contracts governed by the Act. For example, section 15 of the Act prevents an insured person from seeking relief under the ASIC Act on the basis that their insurance contract is unconscionable or unfair, or because of any misrepresentation in that contract. We turn next to self-regulation. As we mentioned earlier, most life and general insurance companies are subject to an industry Code of Practice. The General Insurance Code of Practice is a voluntary, self-regulatory code that binds all general insurers who are signatories to it.

Members of the Insurance Council of Australia offering products covered by the code are required to subscribe to it. Other industry participants may also subscribe. There are currently 174 subscribers to the code, comprising approximately 97 per cent of the general insurance industry. The code imposes obligations on general insurers when selling insurance, handling claims, dealing with third parties, managing catastrophes, and handling complaints. It also sets out timeframes for insurers to respond to claims, complaints, and requests for information. Nearly all types of general insurance are covered, including home insurance. Subscribers to the code must meet the timeframes and comply with the obligations set out in the code, including the obligation to conduct claims handling in an honest, fair, transparent and timely manner. Subscribers will be in breach of the code if their employees, authorised representatives, or service suppliers, fail to comply with the code when acting on their behalf.

Subscribers must apply corrective measures within set timeframes, as agreed by the Code Governance Committee in response to any code breach. Subscribers must report significant breaches of the code to the Code Governance Committee within 10 business days. We will consider the General Insurance Code of Practice in more detail in the second week of these hearings. The Life Insurance Code of Practice is binding on all members of the Financial Services Council that issue life insurance policies, and on any other industry participant that adopts it. There are currently 26 subscribers to this code, representing the majority of APRA-registered life insurers.

The code imposes obligations on life insurers during the policy design phase, when selling insurance, and during the claims process. It also has provisions for dealing with consumers who require additional support, including older persons, persons with a disability, or persons from non-English speaking backgrounds, and for those experiencing financial hardship. The code contains provisions dealing with a number of matters that are specific to the provision of life insurance products. For example, it commits insurers to review the medical definitions in its on-sale policies every three years/ to comply with particular obligations in relation to surveillance of claimants, including stopping surveillance where there is evidence from a medical examiner that it is negatively impacting the claimant's recovery.

It commits insurers to require medical assessors to comply with the Australian Medical Association's ethical guidelines on independent medical assessments, and to only rely on reports from treating doctors, allied health professionals, and independent service providers in relation to an application for insurance or a claim that the insurer is satisfied are impartial and objective. There are a number of differences between the standards imposed by the Life Insurance Code of Practice and the General Insurance Code of Practice. We will explore some of these at the end of the second week of the hearings.

Compliance with the Life Insurance Code of Practice is monitored by the Life Code Compliance Committee. Subscribers must report significant breaches of the code to the committee, and must implement corrective measures as agreed with the committee. Although many Australians hold life insurance policies through their superannuation, the Life Insurance Code of Practice does not apply to superannuation fund trustees unless they specifically adopt it. In late 2016, a number of insurance and superannuation industry bodies formed the Insurance and Superannuation Working Group to develop a Code of Practice for superannuation trustees.

The Insurance and Superannuation Voluntary Code of Practice was introduced on 1 July this year. It is voluntary and non-enforceable. It covers issues such as benefit design, cessation of cover, claims handling, premium adjustment mechanism, policies and disclosure, communications with members, and dispute resolution. Superannuation fund trustees who choose to adopt the code, are not required to comply with it until 1 July 2021. Before leaving the regulatory framework for general and life insurance, we make some brief observations about the dispute resolution mechanisms for the insurance industry.

Because insurance companies are required to hold an Australian financial services licence, they must have an internal dispute resolution procedure that complies with ASICs regulatory guide 165, and they must be members of an ASIC-approved external dispute resolution scheme, such as the Financial Ombudsman Service. Both the Life Insurance Code of Practice and the General Insurance Code of Practice impose obligations on insurers in relation to the handling of complaints through their internal dispute resolution procedures. These obligations include timelines for handling complaints, and for providing information about dispute resolution processes.

The Commission has heard in previous hearings that the Australian Financial Complaints Authority will replace the Financial Ombudsman Service and the Credit and Investments Ombudsman on 1 November this year. It will also replace the Superannuation Complaints Tribunal which could hear consumer complaints about life insurance policies held in superannuation funds. External dispute resolution schemes like FOS play an important role in ensuring that the requirements of the general insurance and life insurance codes of practice are enforced. When determining a dispute, both FOS and the SCT can consider whether an insurer has complied with the standards of the relevant code. FOS also has a procedure for identifying systemic issues in relation to insurers' compliance with financial services laws.

Commissioner, we turn now to the misconduct and conduct falling below community standards and expectations that has been acknowledged by insurance entities. This information has been provided in response to the letters from you, Commissioner, sent late last year and early this year asking entities to identify any misconduct they had engaged in, or any conduct that fell below community standards and expectations since 1 January 2008. We begin with AIA Australia Limited which has provided three submissions to the Commission. AIA is the country's largest group life insurer by market share. AIA acknowledged that it had engaged in misconduct and conduct that fell below community standards and expectations. We give some examples of the acknowledgements.

First, AIA acknowledged that it had engaged in misconduct since 2014 by failing to provide notices to up to 1000 customers which meant that they may have been unaware that their life insurance had been cancelled for the non-payment of premiums. Second, AIA acknowledged that it had engaged in misconduct by overcharging premiums. In November 2009, AIA identified that premium payments were being deducted twice from customer credit cards as a result of a system error. The total amount overcharged was $775,000. In 2016, AIA identified that approximately 500 further customers were charged double the premium due because of another systems error.

Third, AIA acknowledged that it had engaged in conduct that fell below community standards and expectations by incorrectly calculating the pre-disablement income of policyholders making a claim. AIA identified that the issue adversely affected 305 claims between 2012 and 2017, and led to an expected underpayment to policyholders of more than $3.9 million. Fourth, AIA acknowledged that it had engaged in conduct that fell below community standards and expectations in relation to consumer credit insurance. It acknowledged that during 2011 and 2012 it received approximately 300 complaints in respect of its consumer credit insurance policies sold directly through a call centre and through partner websites.

The complaints concerned mis-selling, poor service, incorrect charges, and unclear explanations of the products and their policy coverage. The complaints indicated that a number of customers were unaware that they had taken out consumer credit insurance, that they did not understand the policy terms, or were unaware of the amount of the insurance charges. Fifth, AIA acknowledged that it had engaged in conduct that fell below community standards and expectations in relation to funeral insurance products sold between 2011 and 2016, in circumstances where some features of those products were not consistent with the recommendations in ASIC report 454 on funeral insurance.

We turn next to Allianz and its related entities, including its registered life insurer Allianz Australia Life Insurance Limited. Allianz provided one submission to the Commission. Allianz told the Commission that it had identified 49 incidents of misconduct and two incidents of conduct that fell below community standards and expectations. One type of acknowledged misconduct related to overcharging policyholders. In September 2013, Allianz discovered that it had overcharged customers who had paid for their insurers in monthly instalments by incorrectly debiting their bank accounts after they had reduced their level of cover. The issue impacted approximately 2500 customers who were refunded a total of more than $650,000.

In 2014, Allianz discovered that approximately 11,700 customers who had taken out a consumer credit insurance policy through various motor vehicle dealers had been overcharged. Allianz refunded more than $1.8 million in relation to approximately 11,700 policies. In February 2017, AWP, an entity in the Allianz corporate group, identified an error in its product disclosure statement for its credit card travel insurance product. AWP identified 2700 customers who were erroneously charged a risk-based premium. Affected policyholders were reimbursed a total of over $385,000.

The second type of acknowledged misconduct related to Allianz's claims handling processes. Allianz acknowledged that from July to September 2011, AWP had failed to respond to approximately 6000 travel insurance claims within the general insurance code timeframe of 10 business days. In late 2013, Allianz became aware of discrepancies between refund amounts being paid by financiers to Allianz customers upon cancellation of their consumer credit insurance policy, and the amount payable under the National Credit Code. Allianz refunded the 1761 impacted customers approximately $186,000.

In 2015, Allianz identified breaches of the Insurance Contracts Act relating to the cancellation of policies. Approximately 11,000 policies were impacted annually. The conduct that Allianz acknowledged as having fallen below community expectations and standards included conduct in relation to add-on insurance products sold through car dealers. In light of ASICs reports on this topic Allianz acknowledged that there were groups of customers of car dealers who may have obtained Allianz insurance products through a general advice model which were not suited to their individual circumstances. This conduct was the subject of a lengthy investigation by ASIC. Allianz has agreed to remediate affected customers and expects the total remediation to be approximately $45.6 million.

We turn to AMP and its related entities, including AMP Life, one of the largest life insurers in Australia. AMP has provided four submissions to the Commission. AMP acknowledged that it engaged in possible misconduct or conduct falling below community standards and expectations. We provide the following examples: first, AMP acknowledged that it had engaged in possible misconduct during the period from March 2010 to September 2014 which it described as insurance rewriting conduct. We explained this conduct in our opening statement to the second round of hearings, which essentially involved an authorised representative recommending that a customer cancel one life insurance policy, one AMP life insurance policy, and replace it with another AMP life insurance policy so they could collect the maximum upfront commission payable.

Second, AMP acknowledged that delays in its assessment of insurance claims may constitute a failure to meet community expectations. AMP said that the majority of complaints which it receives from its life insurance customers relate to delays in the assessment of their insurance claims, particularly in relation to claims for total and permanent disability. We turn next to ClearView Wealth Limited and its related entities which provided one submission to the Commission. ClearView identified 225 instances related to the life insurance arm of the business, which it said might amount to misconduct or conduct falling below community standards and expectations.

16 of these related to the mis-selling of insurance cover by sales agents, including one instance of a customer being provided with false or misleading information in relation to the purchase, another instance of a customer being coerced into taking out a policy, and another of a customer being sold a policy that they did not understand. ClearView acknowledged that there were instances where its life insurance sales practices fell below community standards and expectations, and said that it has endeavoured to remediate affected customers. ClearView also acknowledged that it had reported to ASIC in May last year that it was unable to verify that the anti-hawking requirements for unsolicited sales in the Corporations Act had been met

with respect to 278,664 of its sales calls. This matter and other aspects of ClearView's sales practices will be the subject of the first case study in these hearings.

We turn next to CBA and its related entities, including its registered life insurer, Colonial Mutual Life Insurance Society Limited or CMLA. CBA has provided three submissions to the Commission. In its third submission, CBA identified in short form over 60 specific matters of misconduct over the last five years that related to insurance. Of these, more than 30 appeared to relate to life insurance. CBA also acknowledged that it has engaged in conduct falling below community standards and expectations in connection with the provision of insurance. We give two examples of CBAs acknowledgements. First, CBA acknowledged that it had engaged in conduct that fell below community standards and expectations in relation to CommInsure's life insurance products and claims-handling practices.

An ASIC investigation concluded that CommInsure's trauma policies had medical definitions that were out of date with prevailing medical practice. CommInsure updated its medical definitions, including for heart attack and rheumatoid arthritis, and wrote to approximately 600,000 customers informing them of the changed definition. CommInsure also searched for previously declined claims. As a result of that exercise, CommInsure paid more than 30 customers a total amount of more than $4 million. Following a related ASIC investigation into advertising and promotion which concluded in December last year, CommInsure agreed to pay $300,000 in relation to misleading and deceptive statements made on some of CommInsure's websites about the extent to which customers would be entitled to cover for trauma if they suffered a heart attack. These matters will be examined in a case study in this first week of the hearings.

Second, CBA acknowledged that it had engaged in conduct that fell below community standards and expectations in relation to its sale of consumer credit insurance. In 2015, CBA identified that some customers who purchased credit card plus insurance may not have met the employment eligibility criteria in the product terms, and, therefore, they may not have been able to claim certain benefits under the policy. The number of CreditCard Plus customers impacted was approximately 65,000. CBA had refunded $10 million as of 29 January this year. This conduct was the subject of a case study in the Commission's first round of hearings.

We turn next to Freedom Insurance Group and its related entities which provided one submission to the Commission. Freedom acknowledged that it had engaged in nine incidents of misconduct and 76 incidents of conduct that fell below community standards and expectations in connection with the marketing and distribution of life insurance products. We give three examples of these acknowledgements. First, Freedom acknowledged misconduct in relation to the direct sale of insurance products. Freedom told the Commission of six separate complaints received in the period since January 2013 in relation to attempts by its representatives to sell insurance products to vulnerable customers.

Four of these complaints related to customers with disabilities. Freedom also acknowledged that it may have breached the anti-hawking provisions in the Corporations Act in relation to telephone sales, processes and procedures for unsolicited calls. Second, Freedom acknowledged that it had engaged in conduct that fell below community standards and expectations in relation to its cancellation and customer retention practices. Freedom told the Commission of approximately 27 complaints received in the period since January 2013 in relation to customers who had attempted to cancel their insurance policies. 11 of these complaints related to delays in actioning requests to cancel or in getting into contact with customers who had requested to cancel their policies. Another 11 related to customers still being charged premiums after having requested the cancellation of their policy. And five were general complaints about Freedom's processes.

Third, freedom acknowledged that it had engaged in conduct that fell below community standards and expectations in respect of five customers who made complaints claiming that they either did not agree to buy a policy, did not agree to direct debits against their bank accounts in respect of a policy, did not recall agreeing to the policy in the first place, or considered that the policy that they had agreed to was materially different to the policy they received. The conduct of Freedom Insurance will be the subject of the second case study in these hearings.

We turn next to Insurance Australia Group Limited or IAG and its related entities which provided four submissions to the Commission. IAG is one of Australia's leading general insurance groups and sells insurance under a number of brands, including NRMA Insurance, CGU, SGIO, and SGIC. IAG told the Commission that it had identified 112 instances of misconduct and 40 instances of conduct that fell below community standards and expectations. We give three examples of those acknowledgements. I'm sorry, we will give four. The first is that IAG acknowledged that it engaged in misconduct reflected in a number of FOS determinations that there were systemic issues in relation to its sale processes and handling of claims.

These included a determination in relation to the process for selling add-on insurance in 2016, a determination in relation to complaints handling procedures, also in 2016, and a determination in relation to a failure to provide information in product disclosure statements to explain how a premium was calculated in 2011. Second, IAG acknowledged that it had engaged in conduct that fell below community standards and expectations by increasing its premiums on home building policies in 2013 to levels which the office of the Fire Services Levy Monitor in Victoria considered were unreasonably high. IAG entered into an enforceable undertaking by which it undertook to refund customers an amount equivalent to the 11 per cent increase in base premiums, plus statutory charges relating to that increase.

Third, IAG acknowledged that it had engaged in conduct that fell below community standards and expectations in relation to the sale of various insurance products, including add-on insurance through motor dealers. The conduct was engaged in by Swann Insurance, an IAG related entity, and was investigated by ASIC in 2016.

ASIC raised multiple issues of concern about the conduct, including concerns with poor product design and pricing, low claims payments relative to premiums, and unfair outcomes for customers as a result of sales processes. Swann provided partial and, in some cases, full refunds to approximately 68,000 affected customers. The amount refunded, including interest, is expected to total approximately $39 million.

Fourth, on 29 June 2018, IAG made a further disclosure to the Commission concerning payments made by Swann to 34 of its authorised representatives that may have exceeded the maximum allowable commission amount for consumer credit insurance products under section 145 of the National Consumer Credit Protection Act. IAG identified 153 payments totalling in excess of $6.79 million, at least 5.98 million of which related to consumer credit insurance that had been made between 2008 and 2016. In its disclosure letter, IAG did not specifically characterise this conduct as misconduct.

Before leaving IAG, we mention that late last week, on 7 September, IAG provided additional information to the Commission in relation to the sale of add-on insurance by motor dealers. In that further letter, IAG identified a general practice, the sale of gap insurance with adjustable pricing, and a further six specific instances where Swan may have engaged in conduct that fell below community standards and expectations. The conduct of Swan and IAG in connection with the sale of add-on insurance through motor dealers, will be the subject of a case study in these hearings.

We turn to MetLife Insurance Limited and its related entities which provided one submission to the Commission. MetLife is the third largest provider of group insurance in the Australian market. MetLife referred to seven reported judgments of a court where findings had been made against it which it said may constitute misconduct. MetLife also told the Commission that 20 determinations adverse to MetLife had been made by FOS and the SCT and that it has not been the subject of specific regulatory investigation or sanction. MetLife acknowledged that it had engaged in conduct that fell below community and standards and expectations in relation to claims handling processes for insured members who had claimed for mental health submissions including by the use of surveillance.

We turn to MLC Limited. MLC is the third largest life insurer in Australia on the basis of total premiums in force. Since 3 October 2016, MLC has been 80 per cent owned by Nippon Life Insurance Company who acquired this shareholding from NAB. NAB continues to hold the remaining 20 per cent of MLCs issued shares. MLC provided two submissions to the Commission. MLC acknowledged that it had engaged in misconduct and conduct that fell below community standards and expectations in relation to the provision of life insurance. We give three examples.

First, MLC told the Commission that in 2016 it undertook a claims assurance review in consultation with ASIC which examined its claims-handling system for life insurance products. As part of that review, an independent expert identified 26 instances where MLC did not apply and properly interpret the correct policy term or exclusion, some of which it said could be characterised as misconduct. The independent expert identified a further 55 claim files where the claims management process was not efficient, honest and fair, seven instances where MLC failed to assess claims within the time period specified under the Life Insurance Code of Practice or ASIC regulatory guide 165, and recommended that in 11 cases, ex gratia payments be made to customers with the aggregate amount paid to date being $431,000.

Second, MLC acknowledged that over the last 10 years there have been approximately 245 legal proceedings brought against it across Australia, half of which related to TPD claims. 16 of the legal proceedings resulted in the plaintiffs' claim for insurance benefits being admitted and paid. MLC also acknowledged that over that period, approximately 1890 complaints had been brought against it in FOS, and approximately 460 complaints in the Superannuation Complaints Tribunal. Most of these were resolved prior to determination, but there were 69 instances in which FOS upheld the customer's complaint and five instances where a customer's complaint was upheld by the SCT.

Over the last 10 years, MLC has also reported 40 breaches either to ASIC under the Corporations Act or to APRA under the Life Insurance Act. Finally, MLC acknowledged that in 2014 and '15, NAB conducted a review of the consumer credit insurance policies issued by MLC and identified instances where cancellation of cover was not actioned and where there appeared to be a limited customer value in the death cover components of the products. NABs submissions to the Commission also addressed conduct on the part of MLC prior to October 2016. NAB acknowledged that it had engaged in misconduct or conduct that fell below community standards and expectations in 37 incidents related to insurance over the last five years.

We give two examples of those acknowledgements. First, NAB acknowledged misconduct or conduct that fell below community standards and expectations in relation to incorrect death and TPD tests that applied to certain members of some superannuation accounts between May 2013 and October 2015. This resulted in some members having their claims incorrectly rejected or declined, receiving lower payments, or being told they were not eligible for cover when they were. Approximately $2.3 million has been paid to members or their beneficiaries affected by this conduct. Second, NAB acknowledged that in 2013, a systems error affected members who paid their premiums through their superannuation accounts. MLC paid over $360,000 in refunds to people affected by this conduct.

We turn next to ANZ and its related entities which provided two submissions to the Commission followed by three sets of corrections and amendments. ANZs associated entities include OnePath Life Limited and OnePath General Insurance Limited. ANZ acknowledged 17 instances of misconduct over the last five years that related to insurance. It also acknowledged conduct that fell below community standards and expectations in relation to the provision of life insurance products. We give three examples of these acknowledgements.

First, ANZ acknowledged that it engaged in misconduct between 2008 and 2013 when it delayed processing and allocating to members a total of $13.7 million being the proceeds of a class action of which OnePath Life was a member. This affected approximately 13,629 members. In addition to allocating the proceeds to members, ANZ ultimately paid compensatory interest of over $1.5 million. Second, ANZ acknowledged that it engaged in misconduct between 2009 and 2013 regarding an error in the price of units made available under a OnePath Master Investment life insurance policy due to a control gap in OnePath Life's annual tax reconciliation. This affected approximately 60,000 members and was reported to ASIC and APRA in May 2014. Compensation totalling approximately $600,000 was paid.

Third, ANZ acknowledged that OnePath General had engaged in misconduct between April 2011 and September 2013 when 1640 policyholders were not paid stamp duty and transfer costs when their claims for total loss pursuant to comprehensive car insurance policies were settled. The administration of the claims was carried out by QBE Insurance on behalf of both OnePath General and QBE who were in a coinsurance arrangement. The issue was discovered after FOS made a determination in a particular individual's case. The affected customers were ultimately paid approximately $450,000.

We turn to QBE Insurance Group Limited and its related entities which provided one submission to the Commission. QBE told the Commission that it is one of the world's top 20 general insurance and reinsurance companies. QBE did not make any acknowledgements of misconduct or conduct that fell below community standards or expectations. However, it identified a number of issues in relation to insurance. We give some examples of these issues. First, QBE acknowledged that since 2008, its gap protection and consumer credit insurance products have been sold through car dealerships in circumstances where there might not have been a gap between the insured value of the car and the loan balance, where the customer had paid a large deposit for the car, where the cover may have duplicated existing cover, or the cover may have provided more insurance than was necessary.

QBE estimated that 28,520 customers were affected by this conduct. It established a remediation program through which it estimates that customers will be paid $15.9 million. Second, QBE acknowledged that FOS has determined that there have been several systemic issues with QBEs practices. One of these concerned QBEs failure between May 2015 and September 2017 to implement FOS determinations in a timely manner, or within specified timeframes. Another concerned instances of QBEs customer relations team failing to communicate with customers within the timeframes set out in ASICs regulatory guide 165.

On 10 March last year, QBE identified 1520 open complaints of which 681 had responses overdue. QBE told the Commission that this delay issue was resolved in June last year to the satisfaction of FOS and that it had notified ASIC of the issue. Third, QBE acknowledged that in 2012 and 2013, it over-collected the fire and emergency services levy amount from customers in Victoria due to an administrative error in its calculation. QBE refunded approximately $1.1 million to approximately 11,000 customers.

Fourth, QBE acknowledged that in 2015, the Victorian Civil and Administrative Tribunal made findings that it had engaged in discrimination in contravention of the Equal Opportunity Act in the case of Ingram v QBE Insurance. Ms Ingram had purchased a travel insurance policy from QBE for an overseas school trip. Ms Ingram was subsequently diagnosed with depression and decided not to attend the school trip. QBE denied Ms Ingram's claim for reimbursement of the costs of the trip on the basis of a general mental health exclusion in the relevant policy. VCAT found that QBE had engaged in discrimination and ordered it to pay Ms Ingram more than $19,000.

We turn next to Retail Employees Superannuation Proprietary Limited or REST. REST provided one submission to the Commission. REST told the Commission that it is among the largest superannuation funds by membership and that around 1.4 million fund members, or approximately 70 per cent of the total fund membership, have insurance cover through the fund. REST identified one instance of potential misconduct relating to insurance. In 2015, REST members who were eligible for automatic reinstatement of the fund's basic insurance cover at age 25 did not have their basic insurance cover reinstated on meeting eligibility criteria. For the period from 1 June 2009 to 30 June 2013, 1634 current eligible members not linked to an employer or who otherwise met cover criteria also did not have basic cover automatically reinstated. Further, 1570 members aged 25 who subsequently did meet eligibility criteria for automatic reinstatement of basic cover did not receive prior notice of this fact.

We turn next to Suncorp and its related entities which provided two submissions to the Commission. Suncorp Life and Superannuation Limited conduct's Suncorp's life insurance business. AAI Limited conducts Suncorp's general insurance business and is one of Australia's largest general insurers by gross written premium. AAI sells insurance policies under a number of brands including AAMI, GIO, Apia and Bingle. Suncorp acknowledged that it had engaged in misconduct or conduct that fell below community standards and expectations in relation to the provision of insurance. We give some examples of its acknowledgements. First, Suncorp acknowledged that on five separate occasions in 2016 and '17, FOS determined that there was a systemic issue in relation to the provision and handling of insurance.

These systemic issues included the delayed resolution of internal dispute resolution processes, a failure to provide information about internal dispute resolution processes to customers, delays in the implementation of FOS-negotiated settlements with customers, delays in claims handling, and failing to adequately bring the duty of disclosure to the attention of policyholders via the online application process. Second, Suncorp acknowledged that following an internal review of medical conditions in 2016, it found that three medical conditions in its life insurance policies needed to be updated.

Third, Suncorp acknowledged that following a customer complaint in 2016, in which it was alleged that surveillance had caused a deterioration in the customer's mental health, it found broader inconsistencies in the way in which its surveillance policy had been applied, particularly in relation to its workers' compensation claims process. Fourth, Suncorp acknowledged that earlier this year it agreed with ASIC to conduct a remediation program in relation to the sale of add-on insurance through car dealers, specifically gap insurance and loan protection insurance. The remediation program involves payments of approximately $17.2 million to customers.

Fifth, Suncorp acknowledged that in 2014, infringement notices were issued to AAI in respect of televised and website advertising that was misleading in regards to the saving customers might make by switching to AAMI car insurance. AAI was required to pay $20,400 under the infringement notices. In 2016, ASIC issued further infringement notices for misleading online and radio advertising of AAIs home insurance policies. AAI was required to pay $43,200 under these notices. This conduct will be the subject of a case study in these hearings.

We turn to TAL and its related entities, including its registered life insurer TAL Life Limited which provided one submission to the Commission. TAL identified 31 incidents of misconduct and 19 incidents of conduct that fell below community standards and expectations in connection with the provision of life insurance. Again, we give examples of those acknowledgements. First, TAL acknowledged misconduct in respect of its sales practices. TAL acknowledged two incidents of misconduct relating to misleading television and online advertisements which led to ASIC issuing infringement notices. TAL paid a $30,000 infringement notice in 2014 and a $10,000 infringement notice in 2015.

Second, TAL acknowledged misconduct in relation to misleading and unsolicited sales calls. In December 2010 it identified approximately 10,381 instances where it did not meet the unsolicited call requirements of the Corporations Act. In July 2011, it identified approximately 17,000 leads that may have contained a breach of anti-hawking provisions for failing to obtain appropriate customer consent. In addition, from 2012 to 2017, TAL identified that approximately 3.5 per cent of its monitored calls were misleading sales calls according to its internal criteria. It identified that approximately .2 per cent of its monitored calls involved unconscionable conduct according to its internal criteria.

These included instances of selling to vulnerable or potentially vulnerable people, including customers who appeared disengaged during the call or who had limited literacy, comprehension or communication skills, and instances of an insurance representative selling a policy to a customer who indicated that they had a guardian or were under the guardianship of the Public Trustee. TAL acknowledged that for the life broker business which it acquired at the end of 2013, approximately 15 per cent of its monitored calls in the first year were misleading sales calls according to TALs internal criteria. In relation to another business acquired by TAL, Insuranceline, TAL also identified sales practices that were below community standards and expectations.

TAL attributed this to a more sales-oriented culture where insurance representatives received lower fixed remuneration and higher variable remuneration. Third, TAL acknowledged misconduct in respect of overcharging or underpaying policyholders between 2004 and 2009, again in 2012, again in 2014, and again in 2016. In August 2017, TAL determined that it had been underpaying and overpaying income protection claims for some of its legacy policies from as far back as 2006. TALs initial testing of a sample of 110 claims revealed approximately 65 per cent of claims were overpaid and 35 per cent were underpaid. As at early 2018, TAL was still working through what remediation was necessary. Fourth, TAL acknowledged that its practice of imposing blanket mental health exclusions on some of its direct income protection policies fell below community standards and expectations.

We turn to Westpac and its related entities, which include Westpac General Insurance Limited. Westpac has provided a number of submissions and supporting documents to the Commission. Westpac acknowledged that it had engaged in misconduct or conduct that fell below community standards and expectations. Accompanying the submissions it provided the Commission in February were 14 schedules compiling instances of misconduct over the last five years. Westpac's submissions identified over 250 incidents relating to insurance in these tables. We provide some examples.

First, Westpac acknowledged that Westpac General Insurance engaged in conduct that fell below community standards and expectations in 2016 and '17 by breaching obligations in the General Insurance Code of Practice in relation to the timeliness of providing updates to customers on the progress of home and contents claims. In addition, it identified a number of cancellations of home and contents insurance policies between April 2015 and March 2017 where refunds were not sent to customers within the 15 business days required by the General Insurance Code of Practice. Approximately 8600 customers were refunded a total of $829,000, including interest.

Second, Westpac acknowledged that Westpac General Insurance engaged in conduct that fell below community standards and expectations in relation to the non-payment of additional benefits to home and contents insurance clients, such as benefits relating to demolition and removal of debris. Westpac told the Commission that it is currently reviewing its historic claims payments since 2013 to ensure that all relevant additional payments have been made. Third, Westpac acknowledged that it engaged in conduct that fell below community standards and expectations during the period from 2006 to 2015 by incorrectly applying premium loadings to 216 customers with 273 life insurance policies. Westpac has refunded approximately $611,000 for these incorrect premium loadings.

We turn to Youi which provided one submission to the Commission. Youi told the Commission that it currently insures over 640,000 Australians with around one million policies in force. Youi acknowledged 12 incidents of misconduct and three incidents of conduct that fell below community standards and expectations. Again, we give some examples. First, Youi acknowledged misconduct in relation to its handling of catastrophe claims between May 2010 and February 2011. In 2011, the Code Governance Committee identified breaches by Youi of the General Insurance Code of Practice in that it had failed to notify customers whose property claims were finalised within one month of a catastrophe or a disaster of their entitlement to seek a review of their claim if they thought the assessment of their loss was not complete or accurate.

It also failed to provide those customers with information about the company's complaints handling procedures. Approximately 71 catastrophe claims were settled during that period. Second, Youi acknowledged that it had engaged in misconduct by failing to send renewal notices to customers within 14 days prior to the expiry of their policy. The customers were refunded $90,296 for premiums that Youi collected between the date the policy was renewed automatically and the date Youi renegotiated renewal terms. Third, Youi acknowledged that it had engaged in misconduct by charging some customers premiums without their consent. Youi refunded approximately $14,000 to 102 customers. Finally, Youi acknowledged that it had engaged in conduct that fell below community standards and expectations in relation to the Victorian Fire Services Levy between July 2011 and June 2012. Youi acknowledged that it over- collected $639,000 in total on approximately 22,000 policies.

Finally, we turn to Zurich Australia Group and its related entities which provided one submission to the Commission. Zurich operates its life insurance business through Zurich Australia Limited and its general insurance business through Zurich Australia Insurance Limited. Zurich acknowledged misconduct and conduct that fell below community standards and expectations. Again, we give examples. First, Zurich acknowledged misconduct by making errors in various communications with customers, including renewal statements, claims resolution letters, and product disclosure statements.

Second, Zurich acknowledged that it had engaged in misconduct in relation to claims handling. On 14 occasions in 2016 and '17, it failed to manage some life insurance complaints in line with ASICs Regulatory Guide 165, including by failing to notify of claims decisions and to respond to complaints within prescribed timeframes. Zurich also acknowledged that it had engaged in misconduct in the way it applied the terms of its policies, which FOS determined to be a systemic issue on four separate occasions.

Commissioner, up to this point in this opening statement, we have considered both the life insurance industry and the general insurance industry. For the remainder of this opening statement we will turn specifically to the life insurance industry. That industry is a significant part of the Australian economy. In the year ending 31 March this year, life insurers in Australia earned $18.3 billion in direct premiums from customers. As at this same date, the value of total assets held by life insurance companies in Australia was $230.1 billion. There are two main types of life insurance products: risk policies and investment-linked policies.

In general terms, investment-linked policies pay a benefit when a person dies or on some other specified date, the value of which is determined by the value of a class of assets held by the insurer. As at 31 December last year, there were approximately two million investment-linked policies in Australia. By contrast, risk policies provide for a specified benefit to be paid on the death or disability of the insured or if the insured is found to have a specific disease or injury. As at 31 December last year, there were approximately 14.9 million risk policies in Australia. Commissioner, when we refer to life insurance policies in these hearings, we will be referring to risk policies and not investment-linked policies. Investment-linked policies will not be a point of focus in these hearings.

In preparation for this round of hearings, the Commission sought witness statements from the largest 10 of the 15 life insurers that were the subject of ASICs report into claims handling in the life insurance industry in 2016. They are TAL, AIA, MLC, Westpac, MetLife, Zurich, CommInsure, OnePath, Suncorp and AMP. The statements that we sought address the way that those insurers design life insurance products, sell and promote life insurance products, handle life insurance claims, and remunerate the personnel involved in selling life insurance products and handling life insurance claims. Over the course of this week, we will tender those statements and say something about the information that the life insurers provided about each of those topics.

For now, we will address three topics that arise from those statements. First, how Australians buy life insurance. Second, who they buy their life insurance from. And third, what types of life insurance products they buy. Before doing that, we note that the different insurers recorded or accounted for the information that the Commission asked about in different ways. This means that there were differences in the ways that the amount of premiums paid and numbers of policies sold were reported across the different statements. The relevant differences are explained in detail in the insurers' witness statements.

We deal first with how Australians buy life insurance. We asked the 10 life insurers about the way they sell and promote life insurance products. In Australia, life insurance is provided through three main channels: in the direct or non-advised distribution channel, an insurer sells a life insurance product directly to the consumer without any personal financial product advice. In the retail distribution channel, life insurance products are sold through financial advisers. In the group distribution channel, a group policy is purchased by a trustee of a superannuation fund or an employer with the fund members or employees having the benefit of the cover under the life insurance policy.

We asked the 10 life insurers to provide data in respect of their sales through these three channels for each year from 2013. Could we please show document RCD.0026.0001.0001. This chart shows sales of new policies through each channel by those 10 insurers for the calendar year 2017, with the exception of TAL which provided data for the year from 1 April 2017 to 31 March this year, and Westpac which provided data for the year from 1 October 2016 to 30 September 2017. As can be seen from this chart, the overwhelming majority of policies were sold through the retail channel which accounted for approximately 84 per cent of the policies sold that year. Policies through the direct channel accounted for approximately 15 per cent, and policies sold through the group channel were less than one per cent when considering the number of policies sold.

Of course, that figure for the group channel represents policies sold to superannuation trustees. If you instead count the number of policies held within superannuation funds, it is clear that the overwhelming majority of life insurance policies are held through superannuation funds. As at August last year, more than 70 per cent of Australian life insurance policies were held in this way. Commissioner, could I tender that document.

THE COMMISSIONER: Exhibit 6.1 will be chart how do Australians buy life insurance, RCD.0026.0001.0001.

EXHIBIT #6.1 HOW DO AUSTRALIANS BUY LIFE INSURANCE (RCD.0026.0001.0001)

MS ORR: Another way of considering the sales through the different sales channels is by looking at the premiums paid for the policies sold in each channel. Could we please show document RCD.0026.0001.0002. As we can see from this chart, when considering the premiums paid, group sales represent 40 per cent of premiums, retail sales represent 55 per cent and direct sales represent only five per cent. This is consistent with what a number of the 10 life insurers told the Commission about the types of policies sold through the direct channel. Often those policies had fewer features than policies sold through financial advisers and/or more exclusions. We will explore the direct sale of life insurance in the first two case studies this week.

As we can see from this chart, in 2017 more than half of the premiums paid in relation to new policies issued by these life insurers came from policies sold through the retail channel, that is, through financial advisers. As you will recall, Commissioner, the financial advice industry was the subject of the second round of the Commission's hearings which took place in April. Because issues relating to financial advice were considered in some detail in those hearings, the sale of life insurance through financial advisers will not be the subject of a specific case study in the coming week. However, in recognition of the significant role that financial advice plays in the sale of life insurance, we want to say something further about what the witness statements from the 10 life insurers say about the sale of life insurance through this channel. Perhaps if I could first tender that document before I move on, Commissioner.

THE COMMISSIONER: The chart of premiums from sales of new policies by channel RCD.0026.0001.0002, exhibit 6.2.

EXHIBIT #6.2 CHART OF PREMIUMS FROM SALES OF NEW POLICIES BY CHANNEL (RCD.0026.0001.0002)

MS ORR: We start with some observations about commissions. We asked the 10 life insurers to provide us with information about the monetary and non-monetary benefits that they as product issuers provide to financial advisers. You will recall, Commissioner, that one of the topics addressed in the second round of hearings was the way in which particular remuneration structures for financial advisers could lead to poor financial advice. Another topic addressed in that round of hearings was the ban on conflicted remuneration that was introduced in July 2013 as part of the Future of Financial Advice reforms, and the various exceptions to that ban.

Until 1 January this year, commissions paid in respect of life risk insurance products other than group life policies and life policies for members of default superannuation funds were exempt from the ban on conflicted remuneration. This meant that product issuers, life insurance companies, could continue to pay financial advisers high rates of upfront and trail commission to encourage the advisers to recommend their products. The witness statements that we received from the life insurers showed that each of them paid commissions to financial advisers or financial advice entities whose clients purchased their products.

In the five-year period that we asked about, Zurich paid more than $113 million in commissions in respect of its life insurance products. AMP paid more than $380 million. MetLife paid more than $390 million, CMLA paid more than $460 million, Suncorp paid more than $590 million, Westpac paid more than $640 million and a further 112 million in grandfathered commissions in relation to life insurance arrangements within superannuation accounts. AIA paid more than $690 million. OnePath paid more than $830 million. TAL paid more than $840 million. And MLC paid more than $1.16 billion in commissions. That amounts to a total of more than $6 billion in commissions to financial advisers in connection with the sale of life cover issued by these 10 insurers in about five years.

The second round of hearings also touched on the life insurance framework reforms which came into effect on 1 January this year. Under those reforms, caps have now been imposed on the amounts that life insurers can pay in upfront and trail commissions. This year, the relevant caps are 80 per cent for upfront and 20 per cent for trail commissions. The cap for upfront commissions will reduce to 70 per cent and then 60 per cent in the next two years. We observe that before 1 January this year, a number of the life insurers paid more than 80 per cent in upfront commissions but less than 20 per cent in trail commissions. From 1 January this year, life insurers have adjusted their commission rates to match the caps imposed by the life insurance framework reforms.

At least one life insurer offered financial advisers the option to dial down commissions. If the adviser chose a lower commission, the customer would pay a lower insurance premium. As the cap on upfront commissions continues to reduce over the next few years, it remains to be seen whether this will be reflected in the premiums paid by customers. We also want to make some observations about approved product lists. Several of the life insurers who we asked to provide witness statements had aligned financial advice entities. These included MLC, during the period when it was owned wholly by NAB, Westpac, CMLA, OnePath, Suncorp, and AMP.

We asked these insurers to provide information about the approved product lists maintained by their aligned financial advice entities, including the processes they have in place for selecting products for inclusion on their approved product lists, and for deciding whether to allow their financial advisers to recommend financial products that are not on their approved product lists. In some cases, we were told that the financial advice entities maintained approved product lists that only included the products of the aligned life insurer. For example, between 2013 and 2017, all of the life insurance products on the approved product list for Westpac employed financial advisers were in-house products. This was changed this year when two other life insurers were added to the approved product list.

Similarly, between 2013 and 2015, all of the life insurance products on the approved product list for financial advisers employed by Suncorp advice were in-house products. This was changed in 2016 when two other life insurers were added to the approved product list. In other cases, even where the financial advice entities maintained approved product lists that included the products of other life insurers, clients' funds were still directed to the products of the aligned life insurers. For example, between 2014 and 2018, 26 per cent of the life insurance products on the approved product list for ANZ Financial Planning were in-house products, that is, OnePath products.

However, in 2014, 88 per cent of the new insurance premiums were paid in respect of OnePath products. In the following years, that figure was 84 per cent, then 78 per cent, then 71 per cent. Between 2013 and 2017, a quarter of the life insurance products on the approved product list for AMP Financial Planning were in-house products. However, in 2014, 57 per cent of new insurance premiums were paid in respect of in-house products. In the following years, that figure reduced to 45 per cent, then 41 per cent, then 30 per cent. Between 2013 and 2018, Affinia, a financial advice entity associated with TAL has had an open approved product list policy with between 10 and 12 insurers on its approved product list. However, in each of those years between 30 and 47 per cent of the commission that Affinia advisers have received for sales of new life insurance policies has come from TAL.

We also want to make some observations about non-monetary benefits. As we've mentioned, the ban on conflicted remuneration introduced as part of the FOFA reforms applied to non-monetary benefits as well as monetary benefits. However, this was subject to certain exemptions including for benefits worthless than $300 and certain benefits provided for a genuine education or training purpose, or for the provision of information technology software or support. We asked the 10 life insurers about the non-monetary benefits that they provide to financial advisers and financial advice entities. A number of them told the Commission that they organise conferences or roadshows for financial advisers.

TAL told the Commission that since 2015, it has operated a risk academy which is a professional development program for financial advisers. TAL estimated that it had spent more than half a million dollars on the risk academy in each year that it has been in operation. Several of the life insurers also told the Commission that they make sponsorship payments to financial advice entities to pay for education and training for financial advisers. For example, in each of the last five financial years, AIA spent between 1.7 and 3.6 million dollars in sponsorship payments to financial advice entities. Similarly, in each of the last five TAL financial years, that is from 1 April to 30 March, TAL spent between 1 and 2.3 million dollars in sponsorship payments to financial advice entities.

AIA told the Commission that the benefit of these payments to AIA included enabling it to associate its brand with beneficial activities for financial advisers and giving it opportunities to interact directly with financial advisers. TAL told the Commission that the benefits of these payments to TAL included raising brand awareness and deepening and broadening its relationships with financial advisers. Having made these observations about how Australians buy life insurance, we turn to who they buy life insurance from. We asked the 10 life insurers to provide data about the premiums they receive for life insurance policies that are currently in force. Could we please show document RCD.0026.0001.0003.

As we can see from this chart, as at 2017, TAL and AIA were the largest of the 10 insurers by premiums paid for life insurance policies in force, receiving approximately 17.4 per cent and 16.7 per cent of those premiums respectively. We also asked the life insurers to provide data about the number of new life insurance policies sold by the insurers in each of the last five years, and the premiums paid in respect of those new policies. Before I move to that analysis, could I tender this document, Commissioner.

THE COMMISSIONER: Exhibit 6.3, chart of premium income from policies in force, RCD.0026.0001.0003.

EXHIBIT #6.3 CHART OF PREMIUM INCOME FROM POLICIES IN FORCE
(RCD.0026.0001.0003)

MS ORR: Now, if possible, could we please show side by side RCD.0026.0001.0004 and RCD.0026.0001.0005. Thank you. The data produced for 2017 shows TAL and AIA also had the highest number of new policies sold in 2017. TAL and AIA also had the highest amounts of premiums paid in 2017 for new life insurance policies sold at approximately 28 per cent and 18 per cent respectively. Could I tender those two documents, Commissioner.

THE COMMISSIONER: Exhibit 6.4 will be chart of market share of new policies sold by premium, RCD.0026.0001.0004.

EXHIBIT #6.4 CHART OF MARKET SHARE OF NEW POLICIES SOLD BY PREMIUM (RCD.0026.0001.0004)

THE COMMISSIONER: Exhibit 6.5 will be chart of market share of new policies sold, by number of policies, RCD.0026.0001.0005.

EXHIBIT #6.5 CHART OF MARKET SHARE OF NEW POLICIES SOLD, BY NUMBER OF POLICIES (RCD.0026.0001.0005)

MS ORR: There have been a number of significant movements in ownership in the life insurance industry since 2016, some of which involved the entities which will be the subject of case studies during this round of hearings. We will mention some of these movements now. In March 2016, Zurich Australia Limited announced that it had acquired Macquarie Life's life insurance business from the Macquarie Group. In October 2016, NAB announced completion of the sale of approximately 80 per cent of its life insurance business provided by MLC to Nippon Life Insurance Company. The sale price was $2.4 billion.

As part of the sale NAB entered a partnership with Nippon Life which included a 20 year distribution agreement to provide life insurance products through NABs owned and aligned distribution networks. In May this year, NAB announced that it would divest its ownership of MLC including the remaining 20 per cent stake in its life insurance business. That process is expected to be completed by the end of next year. In September 2017, CBA announced the sale of its life insurance businesses in Australia, CMLA, and New Zealand, Sovereign, to AIA Group. The sale price was $3.8 billion. The sale agreement includes a 20 year partnership with AIA for the provision of life insurance products to customers in Australia and New Zealand.

Under the terms of the partnership, CBA will continue to earn income on the distribution of life insurance products. This transaction is expected to be completed this year. In December last year, ANZ announced the sale of its life insurance business, OnePath Life, to Zurich Financial Services Australia. The sale is comprised of two transactions with total proceeds of $2.85 billion, comprising 1.85 billion for the life business, and 1 billion of upfront reinsurance commission from Zurich. Finally, in August this year, Suncorp announced that it has entered into a non-binding heads of agreement to sell its Australian life insurance business to TAL Dai-ichi Life Australia for approximately $725 million after writing down the value of the business by $880 million.

Approximately 600 million will be returned to shareholders from the sale which includes a 20 year agreement with TAL to distribute its product through Suncorp channels. Completion of this transaction is expected to occur by the end of the year subject to the satisfaction of conditions and approvals in Australia and Japan. Total proceeds from the sale of life companies to foreign companies by Australian financial institutions over the past two years has now reached about $10 billion. We turn, Commissioner, to the types of life insurance products that Australians buy.

In the first week of these hearings we will focus on the four main types of life insurance cover: life cover, which pays a set amount of money to beneficiaries on the death of the policy holder; total and permanent disability or TPD cover which pays a lump sum to assist with rehabilitation and living costs if the policy holder becomes totally and permanently disabled; income protection cover which replaces income lost by the policy holder through inability to work due to injury or sickness, and trauma cover which provides cover to the policyholder if they are diagnosed with a specified illness or injury. We will explain each of these types of life insurance in more detail later in the week.

We asked the 10 life insurers for data about the types of life insurance they sold for each year from 2013. Could we please show RCD.0026.0001.0006. As we can see from this chart, the most commonly sold type of life insurance cover in 2017 was life cover at 38 per cent, followed by income protection cover at 25 per cent, TPD cover at 21 per cent, and finally trauma cover at 16 per cent. Could I tender that document, Commissioner.

THE COMMISSIONER: Exhibit 6.6, chart of type of life insurance policy sold by number of policies, RCD.0026.0001.0006.

EXHIBIT #6.6 CHART OF TYPE OF LIFE INSURANCE POLICY SOLD BY NUMBER OF POLICIES (RCD.0026.0001.0006)

MS ORR: Commissioner, this may also be an appropriate time for me to tender the first set of witness statements that set out the information that I've referred to. Could I start with TAL, Commissioner.

THE COMMISSIONER: Yes.

MS ORR: I tender the witness statement of Timothy Thorne dated 22 August 2018.

THE COMMISSIONER: That will be exhibit 6.7.

EXHIBIT #6.7 WITNESS STATEMENT OF TIMOTHY THORNE DATED 22/08/2018

MS ORR: The supplementary witness statement of Timothy Thorne dated 7 September 2018.

THE COMMISSIONER: That will become exhibit 6.8.

EXHIBIT #6.8 SUPPLEMENTARY WITNESS STATEMENT OF TIMOTHY THORNE DATED 07/09/2018

MS ORR: The witness statement of Jennifer Oliver dated 23 August 2018.

THE COMMISSIONER: Becomes exhibit 6.9.

EXHIBIT #6.9 WITNESS STATEMENT OF JENNIFER OLIVER DATED 23 AUGUST 2018 DATED 23/08/2018

MS ORR: And a further witness statement of Timothy Thorne dated 7 September 2018.

THE COMMISSIONER: Exhibit 6.10.

EXHIBIT #6.10 FURTHER WITNESS STATEMENT OF TIMOTHY THORNE DATED 07/09/2018

MS ORR: In relation to AIA, I tender the witness statement of Michael Thornton dated 21 August 2018.

THE COMMISSIONER: Exhibit 6.11.

EXHIBIT #6.11 WITNESS STATEMENT OF MICHAEL THORNTON DATED 21/08/2018

MS ORR: And a supplementary witness statement of Mr Thornton dated 6 September 2018.

THE COMMISSIONER: Exhibit 6.12.

EXHIBIT #6.12 SUPPLEMENTARY WITNESS STATEMENT OF MR THORNTON DATED 06/09/2018

MS ORR: For MLC, I tender the witness statement of Sean McCormack dated 21 August 2018.

THE COMMISSIONER: Exhibit 6.13.

EXHIBIT #6.13 WITNESS STATEMENT OF SEAN MCCORMACK DATED 21/08/2018

MS ORR: The witness statement of Ross Barnwell dated 3 September 2018.

THE COMMISSIONER: Exhibit 6.14.

EXHIBIT #6.14 WITNESS STATEMENT OF ROSS BARNWELL DATED 03/09/2009

MS ORR: The witness statement of Geoffrey Rogers dated 3 September 2018.

THE COMMISSIONER: Exhibit 6.15.

EXHIBIT #6.15 GEOFFREY ROGERS DATED 03/09/2018

MS ORR: From Westpac I tender the witness statement of Susan Houghton, H-o-u-g-h-t-o-n, dated 7 September 2018.

THE COMMISSIONER: 6.16.

EXHIBIT #6.16 WITNESS STATEMENT OF SUSAN HOUGHTON DATED 07/09/2018

MS ORR: And the witness statement of Michael Wright dated 23 August 2018.

THE COMMISSIONER: Exhibit 6.17.

EXHIBIT #6.17 WITNESS STATEMENT OF MICHAEL WRIGHT DATED 23/08/2018

MS ORR: From Zurich I tender the witness statement of Tim Bailey dated 21 August 2018.

THE COMMISSIONER: Exhibit 6.18.

EXHIBIT #6.18 WITNESS STATEMENT OF TIM BAILEY DATED 21/08/2018

MS ORR: From MetLife, I tender the witness statement of Chesne Stafford dated 21 August 2018.

THE COMMISSIONER: Exhibit 6.19.

EXHIBIT #6.19 WITNESS STATEMENT OF CHESNE STAFFORD DATED 21/08/2018

MS ORR: From CMLA I tender the witness statement of Helen Troup dated 21 August 2018.

THE COMMISSIONER: Exhibit 6.20.

EXHIBIT #6.20 WITNESS STATEMENT OF HELEN TROUP DATED 21/08/2018

MS ORR: The witness statement of Maria Lykouras, L-y-k-o-u-r-a-s, dated 21 August 2018.

THE COMMISSIONER: Exhibit 6.21.

EXHIBIT #6.21 MARIA LYKOURAS DATED 21/08/2018

MS ORR: The witness statement of Mark Ballantyne, B-a-l-l-a-n-t-y-n-e, dated 21 August 2018.

THE COMMISSIONER: Exhibit 6.22.

EXHIBIT #6.22 WITNESS STATEMENT OF MARK BALLANTYNE DATED 21/08/2018

MS ORR: And the witness statement of Hugh Humphrey dated 21 August 2018.

THE COMMISSIONER: Exhibit 6.23.

EXHIBIT #6.23 WITNESS STATEMENT OF HUGH HUMPHREY DATED 21/08/2018

MS ORR: For OnePath, I tender the witness statement of Gavin Pearce, P-e-a-r-c-e, dated 21 August 2018.

THE COMMISSIONER: Exhibit 6.24.

EXHIBIT #6.24 WITNESS STATEMENT OF GAVIN PEARCE DATED 21/08/2018

MS ORR: From Suncorp, I tender the witness statement of Christopher McHugh, dated 27 August 2018.

THE COMMISSIONER: Exhibit 6.25.

EXHIBIT #6.25 WITNESS STATEMENT OF CHRISTOPHER McHUGH DATED 27/08/2018

MS ORR: And, finally, from AMP I tender the witness statement of Gregory Johnson, dated 10 September 2018.

THE COMMISSIONER: Exhibit 6.26.

EXHIBIT #6.26 WITNESS STATEMENT OF GREGORY JOHNSON DATED 10/09/2018

MS ORR: We turn now, Commissioner, to what the Commission has heard from consumers, consumer representatives, and the Financial Ombudsman Service about the experiences of consumers with life insurance companies. As at 7 September, the Commission had received a total of 8769 public submissions of which 681 have been identified as relating to life insurance constituting eight per cent of total submissions received by the Commission.

The issues raised most commonly in the public submissions relate to claims handling, particularly delay and difficulties experienced as part of this process, and the sale of life insurance, including sale of inappropriate products or issues experienced with premium costs. Two further issues raised in the public submissions should be highlighted due to the volume of submissions received on these topics.

The first is the treatment of mental health in life insurance. Common themes in the submissions addressing mental health are consumer experiences in being denied coverage or benefit on the basis of mental health exclusions, excessive premiums being charged where mental health issues are disclosed, claims of mental health conditions being exacerbated as a result of claims handling processes, and concerns over independent medical examinations as part of the claims process. On a related point, the Commission also heard from many consumers about the treatment of pre-existing medical conditions.

A number of public submissions related to claims being refused on the basis of an unrelated pre-existing injury or condition, consumers contesting the existence or extent of the pre-existing condition, inappropriate treatment of pre-existing conditions in the claims process leading to a denial of benefit, and consumers being locked into high premiums as a result of an inability to change policies because of the existence of a pre-existing condition. We turn to what the Commission has been told by consumer bodies about the experience of consumers with life insurance. The Commission received submissions from a number of consumer organisations and met with them in preparation for these hearings.

A number of consumer organisations reported providing advice and assistance to consumers in relation to insurance benefits held through superannuation. There were reports of a general lack of awareness on the part of consumers about the life insurance products they hold through superannuation. In addition, Legal Aid New South Wales, and the Financial Rights Legal Centre both reported that they observe a significant amount of over-insurance through superannuation amongst their clients which leads to an erosion of superannuation balances.

CHOICE told the Commission about their concerns relating to poor policy design for group life insurance, including policies that may not be adequately targeted to meet the needs of the members of a particular superannuation fund. Poor claims handling was another issue raised by many of the consumer organisations. Many organisations reported difficulties faced by consumers in participating in the claims process without the benefit of legal representation. For example, New South Wales Legal Aid told the Commission about barriers their clients face in obtaining claim forms in the first instance, or in proving their identity to the insurer or superannuation fund. This issue was particularly prevalent in relation to indigenous consumers.

Other organisations reported that insurers were not complying with the timeframes for complaints handling set out in the Life Insurance Code. A number of organisations identified claim fatigue as a significant issue which leads to a high number of claims being withdrawn before they are determined. A significant theme to emerge from consumer and other submissions was the difficulties faced in engaging in claims processes, including appeals, without appropriate legal representation. Exploitive practices with respect to the sale of life insurance were identified by a number of consumer organisations primarily in relation to direct sales of life insurance.

Particular concerns were raised in relation to the advertising, marketing and sales techniques used to sell life insurance products direct to consumers. For example, the Consumer Action Law Centre identified misleading advertising and cold calling as contributing to inappropriate sales, as customers are subjected to pressure selling and can be misled about pre-existing medical condition exclusions. The Financial Rights Legal Centre told the Commission that an over-emphasis on cooling-off periods as a time for a consumer to read a product disclosure statement, as well as the ease of obtaining direct debit payments from low income earning consumers lead to poor outcomes for consumers, including significant misunderstandings regarding the nature of the product being sold and the cost of that product.

A number of consumer organisations also expressed concerns with the state of consumer law in relation to insurance policies. Organisations such as the Consumer Action Law Centre identified that a lack of protection in relation to unfair policy terms can cause claim shock for policyholders at traumatic and vulnerable times in their lives. The Commission also received submissions from the Public Interest Advocacy Centre and beyondblue about the treatment of mental health issues in insurance. Both organisations highlighted the difficulties that can be faced by individuals who have, or have previously had, or are imputed to have, a mental health condition in securing coverage in relation to both life and general insurance products.

They raised issues with how insurers design, price, and offer policies and assess claims for people with mental health conditions, and the effect that this has on their access to the insurance market. These problems were raised in relation to travel, income protection, TPD, and life insurance products. We turn briefly to what FOS told the Commission about its role in handling disputes relating to life insurance. FOS reported receiving 1307 disputes relating to life insurance products in 2016 to ’17. Most life insurance disputes it received related to a decision to deny a claim. FOS told the Commission that life insurance disputes generally arise as a result of the application and interpretation of policy definitions where the definition is overly restrictive, ambiguous, or outdated.

In its view, certain definitions have not kept pace with current clinical, medical or diagnostic tools. Typically, these matters also involve instances where community expectations about what a policy covers differ from the highly technical definitions in policies and the narrow interpretation applied by the insurer in assessing the claim. We turn briefly to what ASIC has told the Commission about the enforcement action it has taken in respect of life insurance. ASIC told the Commission that it has taken enforcement action in relation to life insurance on 78 occasions since 1 January 2008. We provide some examples of this action.

First, ASIC has commenced civil penalty proceedings on three occasions, each relating to the provision of personal insurance advice. Second, ASIC has issued infringement notices in respect of life insurance to two entities. In 2015, TAL paid a penalty of $10,200 under an infringement notice issued for false or misleading television advertisements promoting its income protection product. In 2014, Virgin Money paid a total of $30,600 in penalties after ASIC issued three infringement notices for misleading online and television advertising relating to the promotion of its quick and easy life insurance product. Third, ASIC has facilitated customer remediation programs by life insurers on 16 occasions.

We give three examples. The first relates to ClearView. In February this year, ASIC found that ClearView had engaged in unfair and high pressure sales tactics for selling life insurance policies by telephone. ClearView agreed to implement a remediation program that involved a commitment to refund premiums, bank fees, and interest to certain customers, to refund half of premiums and interest to other customers, and to offer a sales call review to other eligible customers and remediate if there was evidence of poor conduct. As we've indicated, the conduct the subject of this remediation will be examined in our first case study.

Second, in 2013, a remediation program was developed following a review of Suncorp's compliance systems, which resulted in over 849,000 policyholders being refunded approximately $23 million. Third, in 2017, an ASIC review of product obligations for certain life insurance products within CMLAs Superannuation and Investments portfolio identified policies where an additional accidental death benefit was not paid. CMLA established a remediation program that involved refunds totalling $255,000 for 13 consumers.

The final topic that we will address in this open statement is the case studies which will be explored in the first week of these hearings. The first two case studies concern the direct sales of life insurance by two financial services licensees, ClearView and Freedom. The Commission will hear evidence about the methods these entities used and have used to sell their products to consumers and also about policies providing cover for accidental death. We will also provide an overview of the information the Commission has received from other entities about accidental death policies. The third case study will consider issues connected with policy design and the claims handling process. The Commission will hear evidence about claims involving the definitions of heart attack and cancer in policies issued by CommInsure.

The final case studies this week will examine the treatment of mental health and mental illness in life insurance claims handled by TAL and issues connected with the provision of group life insurance policies through superannuation by REST and AMP. The issues in connection with group life insurance policies include the design of the products and the role of superannuation trustees in the claims handling process. We will also provide a summary of the information that we have received relating to claims handling more generally, and in relation to the use of surveillance in the claims process.

In week 2, as we have said, we will turn to consider general insurance products. Commissioner, that concludes our opening address. The first witness that we will call will be Mr Martin of ClearView, but perhaps we could have a brief break before we do that.

THE COMMISSIONER: If I come back at, what, 10 to midday.

MS ORR: Thank you, Commissioner.

THE COMMISSIONER: Yes.

ADJOURNED [11.40 am]

RESUMED [11.50 am]

THE COMMISSIONER: Ms Orr.

MS ORR: Commissioner, our first witness is Mr Gregory Martin from ClearView.

<GREGORY CHARLES MARTIN, SWORN [11.50 am]

<EXAMINATION-IN-CHIEF BY MR CHESHIRE

THE COMMISSIONER: Thank you very much, Mr Martin. Do sit down. Yes, Mr Cheshire.

MR CHESHIRE: Thank you, Commissioner.

Sir, would you give the Commission your full name, please?---Gregory Charles Martin.

And you are the chief actuary and risk officer for the ClearView Group. Correct?---Correct.

What is your professional address?---Level 15, number 20, Bond Street, Sydney.

And you are attending here today pursuant to a summons served upon you by the Commission. Correct?---Correct.

Do you have the original of that summons?---Do you have that? I - - -

I beg your pardon, sorry. And I – that's, I think, the original of the summons that you received. Is that correct?---I believe so.

So that's the original of the summons, Mr Martin?---Yes.

I tender that, Commissioner.

THE COMMISSIONER: Exhibit 6.27, the summons to Mr Martin.

EXHIBIT #6.27 SUMMONS TO MR MARTIN

MR CHESHIRE: And Mr Martin, you have prepared statements in response to Rubric 6.21 and 6.70. Correct?---Correct.

I tender those statements and the exhibits, Commissioner.

THE COMMISSIONER: The first of those – the statement in response to Rubric 6.21, dated, Mr Cheshire?

MR CHESHIRE: 21 August 2018.

THE COMMISSIONER: Will be exhibit 6.28.

EXHIBIT #6.28 STATEMENT OF MR MARTIN IN RESPONSE TO RUBRIC 6.21 DATED 21/08/2018

THE COMMISSIONER: The second of those statements, dated - - -

MR CHESHIRE: 27 August 2018.

THE COMMISSIONER: - - - will be exhibit 6.29.

EXHIBIT #6.29 STATEMENT OF MR MARTIN IN RESPONSE TO RUBRIC 6.70 DATED 27/08/2018

MR CHESHIRE: Thank you, Commissioner.

THE COMMISSIONER: Now, I think the witness has not affirmed the content of them, has he? I think he has not.

MR CHESHIRE: I am not sure - - -

THE COMMISSIONER: It might be as well to begin with that.

MR CHESHIRE: I am happy to have him do so. Those statements, are the contents of them true to the best of your knowledge, information and belief?---Yes, they are.

Thank you. Thank you, Commissioner.

THE COMMISSIONER: Yes, thank you, Mr Martin. Yes, Ms Orr.

<CROSS-EXAMINATION BY MS ORR [11.52 am]

MS ORR: Mr Martin you've held the position of chief actuary and risk officer for the ClearView Group since 2011 when you joined ClearView?---That's correct.

And you worked in the life insurance and wealth management industry before that time with a total period of working in that industry of 36 years, you tell us?---Correct, yes.

And your work has predominantly been in actuarial roles. Is that right?---Correct.

You've been put forward by ClearView to answer questions in relation to ClearView's life insurance business?---That's correct, yes.

What is your role as chief actuary for the ClearView Group involve?---Well, chief actuary and risk officer my role is concerned, really, around financial management of the group, actuarial concerns and broad risk management across the group. So I am not quite sure how far you would like me to go on that statement.

I would like to understand the difference between your role as chief actuary and your role as chief risk officer?---There is an element of overlap. As actuary or chief actuary I am mostly concerned around the broad financial management of the group. So product pricing, profitability, capital management and – and reserving for the – for the group, although in terms of the life company itself there is an appointed actuary who has specific responsibilities for the actuarial role within the life company. For the risk management function it really goes to broader oversight of the risk management framework for the group which goes from the financial advice business across the life company and into the funds management business, everything from interest around reinsurance strategies through to operational risk, strategic risk and suchlike.

So what qualifies you with your actuarial background to be the chief risk officer for ClearView?---I have – well, there is – there is a significant overlap between those two roles. The role of an actuary is very much a risk management role in – in its essence, anyway. I also have a – qualifications as a certified enterprise risk actuary as well, reflecting my time managing risk. It is a largely financial type – you know, historically it was a more financial focused role but it does, you know, go into, as I said, operational risk and as an executive in – in the industry for many years or an actuary in the industry for many years, I do have a level of, you know, understanding of all the main risks and how they affect wealth management businesses.

Okay. So ClearView's life insurance business is carried out through ClearView Life Assurance Limited. Is that right?---Correct.

I will refer to that entity as ClearView. ClearView commenced its operations in the seventies. Is that right?---That's as I understand it, yes.

And at that time it was known as NRMA Life?---I believe that's correct.

And up until 2011, you describe ClearView in your witness statement as operating, essentially, as a captive insurer. Can you explain what you mean by that?---What I meant by that it was an insurance company, as you said, initially owned by NRMA. NRMA then sold it to MBF Life in about 2004, I think it was, and then MBF was taken over by Bupa and it was sort of owned within Bupa. In that – in those roles it was mainly marketing its products or – only marketing its products to – within those groups to the members. So within NRMA it would market to members of the NRMA Group or NRMA Insurance, which is IAG today. Within the MBF and Bupa groups it was largely marketing only to members of MBF or Bupa either over the counter or, you know, direct marketing pamphlets in their, you know, communications to their members or in terms of the investment products which are in the life company but aren't the subject of today, they also had financial planners that were in branches of MBF and so they would also do occasionally, I believe, some life insurance as well but it was mainly direct product.

So it was initially part of the NRMA Group?---Mmm.

Then it was sold to MBF, then it was sold to Bupa?---Bupa took over MBF.

Yes. My apologies. I understand. So MBF became Bupa. And then in June 2010, ClearView was acquired from Bupa by a company that's now known as ClearView Wealth. Is that right?---Correct.

And as part of that acquisition, ClearView entered into a 10 year distribution agreement, an exclusive distribution agreement with Bupa?---That's correct.

And by that agreement, ClearView would provide life insurance products to Bupa members?---Correct.

And Bupa would refer its members to the ClearView Group financial advisers if they needed financial advice?---That's correct.

And you tell us in your statement that ClearView's direct life business has undergone considerable change and evolution since that time when the business was acquired from Bupa. Is that right?---Yes, that's right.

So initially, your products were sold via direct mail to the group members so to Bupa members. Is that right?---When it was owned by Bupa or before that, yes.

And there was advertising in Bupa magazines?---I – I would have to – I am not an expert on the full details of it. My history – I was aware of this company before I joined ClearView.

Yes?---But my understanding was largely both, you know, brochures in branches.

Yes?---Over the counter, or it would be marketed through direct means including just straight-out mail.

Yes?---So, yes.

The reference to magazines comes from your witness statement?---Yes, yes.

From paragraph 12 of your witness statement. So that had been how ClearView had been operating, but then from late 2010, early 2011 ClearView began selling life insurance online and by outbound telephone calls?---Sorry, was that – did you say two thousand - - -

Late 2010 and early 2011 is when you tell us that happened in your witness statement?---Yes. It was – it was mainly – well, that's when it started the outbound – some outbound telemarketing by the end of 2010.

Yes?---It was still at that stage – I think the very end of 2010, might have been the last direct mail that went to Bupa members. There was also initially over-the-counter sales still being done in Bupa branches which went on for a little while but proved unsuccessful.

But the move into selling online and by outbound telephone calls resulted initially in quite modest sales. Is that right?---Yes, that's correct.

And so in mid-2013, ClearView made a decision to redevelop the model into what you describe in your statement as a more substantial and professional direct life insurance business, which included moving into non-Bupa customers?---Yes. That was the intention.

And in the course of 2013, as part of this redevelopment of the model, ClearView established a new sales centre and a new sales and marketing team in Parramatta?---That's correct.

And you tell us that by early 2014, this new sales centre had a material volume of sales. You were starting to have some success. Is that right?---Yes, that was correct.

And so ClearView made another decision which was to expand the direct life business further by investing in an outsourced sales centre based in Melbourne called Your Insure?---That's correct.

Okay. And sales through the Your Insure business were launched in mid-2014?---Around – I believe it started in August '14.

But the Your Insure business soon proved problematic, didn't it?---Very soon into its life, yes.

And what were the problems?---Largely economic problems, as we saw them at the time. They had – the model of remuneration from the life company was largely a commission-based model, and the – the business was experiencing very high cancel from inception rates. So that's where people take out a policy. And whether they pay a premium or not they cancel it within three periods or shortly after and they are refunded their money. So in essence it's a non-sale but obviously it takes time and effort. Or otherwise, the lapse rates on the policies were unreasonably high in the first few months of the policies.

I just want to ask you about a few of the things you mentioned there. You said there were very high cancelled from inception rates which you described as a non-sale?---Yes.

That's where the customers agreed to buy the policy in the phone call, but very shortly after that makes a decision to cancel the policy. Is that right?---Yes, I didn't – I didn't mean it necessarily legally that it was a non-sale but I meant, in essence, the customer has said yes, issue – given bank accounts, details, and either for some reason the premium can't be taken from the bank account, for one reason or another, including it – there was insufficient funds in the bank account, or my understanding in retrospect is more often than not the bank account details were just wrong, and/or we did – there was a premium taken but the customer would ring up and say, "I don't like the contract, I want to cancel it", and the money would be refunded to them and the policy essentially cancelled as if it never existed.

So that happened a lot in the early days of Your Insure as was – you mentioned high policy lapse rates. What's a lapse rate?---That's when the customer, having paid at least one premium or two either rings up and – or, sorry, contacts the insurer and says they no longer want the contract and they would like to discontinue premium rates, or they just don't pay their premiums from that point forward and the policy then goes into what's called lapse. So the life company tries to encourage the customer or tries to recover the money but if the policy doesn't go on, they issue a notice saying if you don't pay within 30 days your policy is cancelled and after 30 days the cover stops. 30 or 31 days, yes.

So why were those two things happening so much. Why were so many customers cancelling after inception of the policy, or the policies lapsing?---I – I can't tell you at this point – well, sorry, at that stage I – I wouldn't – we didn't know why it was happening. It was happening. Our guess at the time was they were marketing to customers that potentially weren't interested in the products, and they were cancelling them. And it could well have been they were potentially marketing to, you know, a demographic that was, you know, a little bit too low for those products. In any case, from a ClearView perspective, there – you know, there was no money being made on it, and I don't mean that – I just mean financially, it was, you know, not making money. It was not providing commission to Your Insure either because we clawed back the commission if the policy lapsed. And so they weren't covering their costs. ClearView itself was – was losing money on the business as well. And so it was a case of, well, fix – fix the cancel from inception rates or the lapse rates, or, you know, this is not going to be a viable business.

So why was Your Insure marketing to customers who you've just described as customers who weren't interested in the product?---I – I don't know whether – I don't believe they were necessarily or intending to do that at the time, but that seemed to be that they were – in retrospect where they were getting customers or leads were being generated for them from that market.

You also referred to the demographic of the customers being too low. What do you mean by that?---So maybe just a – a little bit of explanation. From what I understand of the Your Insure business, it was using third parties to generate interested leads for it. I – a number of those lead generations were things like online competitions, they are other – accessing leads through other means. I – my involvement back at those days wasn't detailed to tell you the full detail of it, but it was, you know, outbound – some of it was outbound lead generation as well. They would generate a lead that was – a warm lead that was meant to be of interest – or have interest in life insurance that would be passed to Your Insure who would then market to that customer. I'm surmising or we were surmising at the time that the – there was – there was – the fact that the policies were being written and then lapsed and a lot of them were not paying more than a few premiums, that they may have been marketing – some of those policies or customers were coming from a – a demographic within society that, perhaps, couldn't afford it, or having bought it didn't – you know, ceased to have interest in it very quickly thereafter.

Well, Your Insure was trying to sell insurance products to people from a lower socio-demographic bracket, wasn't it?---Lower than what ClearView's traditional business was, yes. Yes.

Yes. So it was poorer people who were being targeted by Your Insure?---I – I would emphasise lower, not lowest. It was meant to be customers who could afford the product and would keep the product. After all, there was no point in selling to customers who couldn't afford the product or were too poor. That was not the intention. It was not the intention of ClearView or Your Insure. You can't build a business on that. It was meant to, relative to ClearView's business – other business, its advice business, its main business, which was clearly middle Australia and higher socioeconomic groups, it was meant to go below that to a strata below that in the marketplace. It was not meant to go down to the lowest or particularly low. What I am saying is, though, we were concerned that that may be where it was finding itself.

Your cancellation from inception rates and your lapse rates showed that it was?---Yes.

It was being sold to people who couldn't afford the product?---Whereas we now know that is true, yes.

So ClearView decided to close that business in December 2015?---Yes.

Only 14 months after it had started?---That's correct.

And by late 2015 you were also having problems with the Parramatta sales centre?---That's correct.

And that business, like Your Insure was also struggling to make a profit?---Yes, that's correct.

So you say in your statement that in late 2015 and 2016, ClearView made changes to target, in your words:

> *A more preferred mix of customers.*

?---Yes, that's correct.

What did you mean by that? What was the preferred mix of customers that you wanted to target?---We were concerned, as with Your Insure, the ClearView business – the lead generation that they were using at the time, we were concerned was – was, again, attracting customers – potential customers that were a lower socioeconomic group than we wanted or we thought would be appropriate. So the – the history of those two businesses was, you know, it says in the statement from 2015 – '14 to '15, by the end of 2015, the non-Bupa business was cut back to I think less than 25 per cent to what it was before, and a number of lead generation sources were cut, either discontinued altogether or cut right back, and – and from what I understood of direct business, they were instructing the lead generation sources to try and focus on, you know, a higher demographic than what they were before.

Okay. So the more preferred mix of customers that you refer to in your statement is customers of a higher socioeconomic status?---That's correct. Both higher socioeconomic and had – had the wherewithal to afford and keep life insurance products.

Okay. Could I ask that you look at a document which is CVW.8000.0001.0002. In case it assists I will give the number again CVW.8000.0001.0002. There we have it, Mr Martin. So this is a document produced for the steering committee at ClearView that was responsible for the direct sales of life insurance. You've seen this document before?---Yes, I've seen that in the – before, yes.

And it's entitled State of Play and dated 16 February 2015. So we know from that date that it was created while the Your Insure business was still operating?---That would be correct.

Yes. Now, do you know who wrote this document?---I believe it was the head of ClearView Direct. I think that's who it would be.

And do you know why it was created?---I think we had a committee that was trying to oversee the performance of the Parramatta business at that time. I can't remember, without looking at this one, whether it also addressed Your Insure but - - -

Well, let's turn to the next page, 0003, and we see the headline Macro Environment. And the author, the head of ClearView Direct refers to the:

> *Direct life market is maturing and competitive landscape changing rapidly.*

Do you see that?---Yes, I do.

And there is then a reference to the:

> *Contestable market in low socioeconomic bands being highly saturated (leading to diminished returns).*

So you see that?---Yes. .

If we move to the following page 0004 - - -?---That wording of "low", it's possibly lazy wording. I think it probably should have said "lower" but anyway.

Why are you concerned to make that distinction between "low" and "lower", Mr Martin?---Just because I'm – I'm conscious of the fact that it was meant – I'm just saying it's not meant to be the bottom end of the socioeconomic band because, as I said to you before, that wouldn't have been a sensible place to be marketing. I just meant it should have said - - -

Where was it then? Towards the bottom?---No, below – below the mid-market. So lower, that's all. I'm sorry, I shouldn't have interrupted you.

That's all right. We will just go back to that page for a minute, 0002. So the line that you're referring to is:

Contestable market in low socioeconomic bands.

You want us to read that as contestable market in lower socioeconomic bands?---Sorry, Yes, that's all I was meaning, yes, that's all.

I see. All right. If we move to 0004, we see under this slide direct-lay of the land, that the strategy is to:

Quarantine the low cost operating model space for Your Insure.

And:

Move the ClearView brand into the mid-market space to take advantage of market trends.

?---Yes.

Okay. So the Your Insure business targeted sales to people in a lower socioeconomic bracket, and after it was shut down at the end of this year, ClearView moved to focusing on the mid-market. Is that right?---That was the intention, yes.

Yes. All right. Could I tender this document, Commissioner.

THE COMMISSIONER: ClearView Direct steering committee State of Play 16 February '15, CVW.8000.0001.0002 exhibit 6.30.

EXHIBIT #6.30 CLEARVIEW DIRECT STEERING COMMITTEE STATE OF PLAY DATED 16/02/2015 (CVW.8000.0001.0002)

MS ORR: You say, Mr Martin, that that was the intention. Changing the model to target the middle income market rather than the low or lower socioeconomic bracket, it wasn't quick or easy for ClearView to do that, was it?---No. No, it wasn't.

Can I take you to another document, which is CVW.5000.0005.0190. Now, this is a Direct Target Operating Model Strategy and Plan produced for a meeting of the board in the middle of 2016?---Yes. I – was that attached to a managing director's report or something, is that right?

Yes?---Yes.

This is – this appears to be, as you can see from the title, an annexure to a report - - -?---Yes.

- - - for the board meeting. You've seen this document before?---Yes, I have.

And if we turn to 0191, we see that this paper contained a proposed approach as at June 2016 to "layering up the business". Do you see that?---Yes.

And we learn more about that if we go to the next page, 0192, which is headed Pivoting to Mid-market. And we see:

> *The operating models that are proposed in the paper are designed to accommodate the needs of mass affluent customers.*

Do you see that?---Sorry, I'm just trying to find - - -

The first dot point?---Yes, sorry.

And so:

> *For the existing general advice business –*

Which was telephone sales:

> *...this is a fundamental shift from the heavily saturated low socioeconomic bands to middle income family segments.*

?---Yes.

And do you see below that, the last dot point:

> *We are proactively moving into this territory ahead of expected regulatory scrutiny of traditional direct products and sales practices.*

What was that expected regulatory scrutiny?---I think it was at the time, if I'm right, I think ASIC was already making comments – negative comments around things like funeral cover. Not that ClearView did a lot of that – that business. But it was things like that they were expressing concern around – I believe issues around pre-existing –sorry, pre-existing exclusion conditions and all sorts of things. It was just a feeling that the market was gathering more regulatory scrutiny. The experience of the business, as we said, you know, our – our experience at the time was we were experiencing quite high cancellation from inception rates, quite high lapse rates. You know, whether or not there's anything untoward in the way it was delivered, it was clearly not products that were – or what's the word I'm looking for.

Not products that were wanted by the people you were selling them to?---The nature of life insurance is meant to be a long-term, you know, contract where people hold it for a sustainable period to meet their – their risk management needs. The fact that these products oftentimes in the first year across the industry had lapse rates over 20 per cent in the first year says one way or another it's not really meeting its need. So it was a broad philosophical issue which said this industry doesn't feel like one we wanted to be in or we thought that there would be increasing scrutiny of.

The regulator is coming. That's what we see from this last dot point?---Yes.

Yes. Okay. If we turn then to 0193, the next page. We see at the second dot point that the shift in the model, in the ClearView model involved a refocusing of the existing general advice business from a high volume low value to a lower volume higher value business model?---Yes.

And there's a reference to appendix A called Quality Over Quantity. Can I take you to appendix A which is at 0212. This is a diagrammatic representation of the new general advice model, and we see that the top row is a description of the current model and the bottom row is a description of the new model that ClearView was going to attempt to develop. And the analysis is divided into four topics: customer and marketing, product, sales and distribution, and service and retention. And could I ask you to look at the comparison between the current model and the new model, firstly, for Customer & Marketing. We see there that the current model:

> *Low socioeconomic demographic/segments.*

And further down:

> *Low cost per prospect (low sales efficiency) emotional pitch.*

What did that mean? What was the emotional pitch?---My understanding of the industry as it – well, was, I suspect still is, the nature of – of a lot of these sales, whether they're from telephone – television advertising or outbound telemarketing, is fairly short period of time, as I meant the sale is a very short process, and the products tend to be bought more on emotional-type reaction rather than necessarily detailed thinking of what exactly the product might be over – over the life of the contract.

All right. So the current model involved attempting to sell your life insurance products to – I would say poor, you would say poorer people – and attempting to sell by making an emotional pitch to them about their need for life insurance?---There was definitely elements of that in there, that's correct.

Well, that's what this document records your current model as being. And the model that you were looking to create, the bottom row, the new model, a:

> *Higher socioeconomic demographic or segment, a higher cost to prospect, higher sales efficiency and emotional and rational pitch*

See that?---Yes.

You were going to move to a model where you were selling to more affluent people and not just playing on their emotions, also appealing to them about the logic of acquiring a life insurance product. Is that right?---Yes.

Why a different sales approach to poorer people to wealthier people?---I don't – well, I don't know that that was meant to be mutually exclusive. It was a – a – a – an overall proposition that we wanted to move away from – when it refers to low value here, low premium amounts, products that can't carry a lot of cost in terms of detailed sales processes or whatever with the customer, to a product where you could – a product that had higher premiums and allowed the company to invest more time and effort into the sales process to make sure customers thoroughly understood their product. I – what we were trying to do here – and these are the words of the head of direct, the way he has described it – ClearView's main business is in the advice space. Our – our principal customers are ones that have full personal advice who understand exactly what they're buying and why they keep – why they want it and they keep it for a long time, even if they don't necessarily keep it with ClearView, they might go to another life insurer over time but they understand what it is that they've got and they've had it thoroughly explained to them.

That's not what this document is about, though, is it, Mr Martin?---No, what I'm saying - - -

This is about your direct sales model?---But what I'm saying is the change in sales model was to try to move the direct model more into that type of approach.

I see?---Was to get customers, you know, properly explain to them what the – why they're doing it and not simple outbound telephone sales which are – I was trying to say before, very short, very brief, emotion as part of that - - -

So – so a move from brief sales calls made with an emotional pitch to poor or poorer people to a model that involved longer sales calls where, in your words, you wanted to ensure that the customers thoroughly understood the product to more affluent people?---Well, people, yes, who could afford a bigger premium who could cover the cost of doing that, yes.

I see. So if we turn to the product part of this document and compare the current model with the model you were trying to develop, we see that the current model was:

> *... a direct one to six product, non-competitive, limited value, above market pricing. No income protection, trauma, TPD sold. Low quality, regulator scrutinised GA products.*

GA is general acceptance. Is that right?---I think that would be guaranteed acceptance.

Guaranteed acceptance, thank you?---So that would be things like funeral products, yes.

So the existing model pitched to poor or poorer people products that were not competitive, had limited value, were being priced above market value, and were of low quality and about to be scrutinised by the regulator?---I would probably disagree personally with that – that top comment about them being uncompetitive and above market price. ClearView's – I – I - - -

This was written by the head of direct sales at ClearView?---I think that was meant to contrast with the proposed at the bottom which were meant to be higher value products.

Yes?---For customers. I don't think, in absolute terms in the direct market, our products were expensive at all and we had – I had seen market research from reputable firms to say that. So I think that was only meant to be relative to the value of the products.

You think that's what the language of non-competitive means?---I – I can't – I'm just saying to you that would be my assessment of the products at the time.

Right. Well, that was the existing product. And the product that you were proposing to sell to the higher socioeconomic demographic was a top-end professional product suite complete with income protection, trauma, TPD and highly sought benefits. And this time there was going to be market parity pricing and no guaranteed acceptance products. Guaranteed acceptance products are products that don't require the customer to go through a whole lot of underwriting questions to get approval to buy the product. They're guaranteed to be accepted by the customer because they're a simpler more generic product. Is that right?---Yes, they're designed to be able to be accepted over the phone very quickly, and they're priced accordingly, because that means that some customers will take the products who, you know, are in different health or something like that. Yes.

So seeing that this document records that the new product was going to have market parity pricing, do you maintain your view that the reference to non-competitive for the current model means something other than be non-competitive in the market when compared to other insurers' products?---I believe the market parity comment was meant to be market parity with advised products that were fully underwritten. So what – what the strategy was was to essentially take what was – or is ClearView's premier advice product which is very market competitive – it is – it is cheaper than a common or typical direct market products. They're heavily underwritten. And it was meant to say that these products would actually be competitive with – with the retail market.

Which product? The new product that you were going to sell to affluent people?---Yes, the new product. So, yes. Direct products are usually more expensive than the retail products in the marketplace, partly because they have things like guaranteed acceptance.

They're more expensive but they're of a lesser value, aren't they? They're inferior products. That's what this document tells us. They're of limited value compared to the top end professional product suite?---I – I would agree they were of lesser value because they charge more premium per unit of insurance value you actually got, or the loss ratio on direct products is usually lower than it was on retail products, yes.

So the poorer people that you were telephoning were paying more money for a product of lesser value than the more affluent people you were planning to target with superior products for a cheaper price?---In terms of loss ratios, that's true, but it's – I – if I could just qualify that, it is similar to most – most products in the market. If you buy a larger amount of something, you would usually get it at a better price simply because the supplier can cover their overheads and all the rest of it at a lower – lower unit price. I mean, if you had a term deposit and you have a half a million dollars you will oftentimes get a better rate than if you have $10,000. There is an element of these products for the – the professional retail products where the average premium is much, much larger and the ability of the insurer to offer or provide a lower price is – is – is better.

Do you think the community would expect that the life insurance products that you sell to them in outbound telephone sales will not be more expensive and of lower value than the products that you were selling to affluent people through other channels?---I would imagine most members of the public would – would not understand that terribly well, yes.

They be disappointed to learn that, wouldn't they?---I'm sure they would, yes.

We see from this document as well that in the comparison of your current model with the model that you were proposing to develop in the sales and distribution column, the current model is higher volume, lower value, higher lapse, and the new model lower volume, higher value, lower lapse. So that was the plan, to move towards this sort of model. Is that right?---That's correct.

Okay. I tender this document, Commissioner.

THE COMMISSIONER: Direct target operating model strategy/plan June '16, CVW.5000.0005.0190 exhibit 6.31.

EXHIBIT #6.31 DIRECT TARGET OPERATING MODEL STRATEGY/PLAN JUNE '16, (CVW.5000.0005.0190)

MS ORR: Despite that being the plan, you tell us in your statement that by late 2016 and early 2017 it became apparent to ClearView that the direct life business was unlikely to be able to achieve financial viability?---That's correct.

And you say that this, together with then identified past sales and compliance issues with the business, resulted in a decision to cease direct life outbound sales operations from 1 May last year?---That's correct.

So you emphasise in your statement that the two key concerns were financial viability and compliance concerns?---Yes, they went together, yes.

Okay. Can I show you another document which is CVW.8000.0003.1696. This is a document prepared prior to the close of the direct sales business. And it's a document that suggested that the direct sales business be closed down. Have you seen this document before?---I think I know this one. It's – if I see the first or second page I'm sure I will recognise it.

Yes. Well, perhaps if I could show you 1697, which is the first page. We can see that this document records under the heading The Situation that the direct business is:

> *Generally poor value for the customer. Do Not Call Register keeps expanding (reducing the available market). Real disposable incomes under pressure, particularly in the middle to lower socioeconomic demographic. Customers are reassessing and learning, encouraged to "shopping" cover leading to churn. Outbound telemarketing is passing its use by date (declining sales rates) heightened regulatory scrutiny and expectations – pressures on "sales" approach.*

So this was the assessment made by the author of this document as to the situation at this time, which led to a recommendation to cease direct sales of life insurance at ClearView?---Yes, we didn't want to be in the market any more.

Okay. And you accept that these were – this is an accurate assessment of the situation with the sale of direct life insurance by ClearView at this time?---Yes, I do.

All right. I tender that document, Commissioner.

THE COMMISSIONER: ClearView direct business The Situation, the options and recommendations CVW.8000.0003.1696, exhibit 6.32.

EXHIBIT #6.32 CLEARVIEW DIRECT BUSINESS THE SITUATION, THE OPTIONS AND RECOMMENDATIONS (CVW.8000.0003.1696)

MS ORR: Now, for the period that ClearView was selling through direct channels, it sold a range of life insurance products, didn't it?---Yes.

They included life cover?---Yes.

Trauma cover?---Very small volumes, yes.

Funeral cover?---Yes.

Accidental death cover?---Yes.

Can you explain what that is?---That's a policy that pays on the death of somebody when it's due to an accident and not causes that are non-accident related. So somebody who gets a cancer or a heart attack won't get paid out. If you have a car accident and die in a car accident, you would.

So a car accident is an example of a situation where you could claim on an accidental death policy. Can you think of any others?---Yes. Falling off the roof or a skiing accident or all sorts of things, yes.

Okay. Now, accidental death is a guaranteed acceptance product?---It – in the direct market it is typically issued as on that basis, yes, guaranteed acceptance. Generally speaking, across the market – well, it's – whether you'd call it guaranteed acceptance it's non-medically underwritten typically, sometimes typically in the retail space if somebody has got a very hazardous occupation or involved in dangerous activities, they – they may not be able to get it simply because that's a very high risk or it might come with a loading or something, yes.

But you were selling it in your direct channel. And it was a guaranteed acceptance product in the sense that the customer didn't have to answer a set of medical questions over the phone. They were guaranteed to be accepted if they wanted accidental death cover, weren't they?---Yes, that's correct.

Which is very different to life cover, a traditional life insurance product where you need to go through an underwriting process which involves answering a series of questions including medical and health questions?---That – yes, that's correct.

Right?---Funeral is an exception in that – that category, though.

In what way?---Well, funeral cover covers you for any cause of death, but is typically not underwritten. It's a guaranteed acceptance. It usually has an accident only period at the beginning to – I'm just saying it's not black and white.

Yes, I understand. I am talking about a term life cover?---Yes, yes.

As opposed to accidental death cover because both of them are designed to deal with or provide a benefit in the case of the death of a person. Is that right?---Yes, that's correct.

So you had an accidental death policy. You also had something called an injury cash product. Can you - - -?---Yes.

- - - explain what that was?---Again, that was an injury – injury-based or accident-based product like the accidental death. It was a guaranteed issue product or nonunderwritten product. From memory, the product provided for a lump sum payable on accidental death. I think the two versions of it was $100,000 or $200,000 payment. It provided payouts on accidental total and permanent disablement. I think typically half the sum insured. It provided benefits on various significant broken bones. I think it was $10,000 for things like broken legs and things like that. At stages I think it also covered severe burns and other accidents and it also provided benefits that if you were hospitalised or had been confined to bed and under the care of a registered nurse or – or such like, essentially hospital, it would provide a daily benefit while you were in that – in hospital if you had to be there for more than three days.

And it was accident-based again so that - - -?---Purely, yes.

- - - you only qualified for cover if the source of your injury or death was an accident?---That is correct.

Right. Now all of those products were sold over the phone on the basis of a general advice model?---That's correct.

Now, today, the ClearView Group operates an advised retail life insurance business as well as an advised wealth management business and a financial advice business?---Yes, it provides advice-based – products for the advice industry, life insurance and wealth, that's right and has an advice business.

The direct sales have stopped but you continue to offer the same sorts of products. You still have a species of each of those types of products that you sell. Is that right? Life cover, trauma cover, funeral cover, accidental death cover, and an injury cash or accidental injury product?---No, we don't offer injury cash or funeral. That all - - -

Okay?--- - - - ceased with the direct products.

So injury cash and funeral are no longer sold?---No.

But life cover is sold?---Yes.

Trauma cover is sold?---Yes.

Accidental death cover is sold?---Yes.

Okay. They're now sold now – branded as part of the life solutions product range. Is that right?---That's correct.

Okay. And accidental death cover has historically been a very profitable product for ClearView, hasn't it?---Define "profitable"? You mean as in low claims rates?

Yes, the claims ratio has been very low, hasn't it? Meaning that for each dollar you earn in premium income, the amount that's leaving ClearView as claims payout is very small?---In terms of claims ratio, I agree with you, there is a lower ratio, it's not as low as some that I'm aware of. It's – the premiums on those products, however, are typically much lower than equivalent full cover as well. So things like just the cost of administration does absorb more of the premium than – than a full cover product would. So that – I'm just saying it doesn't mean we – that ClearView itself makes more money out of it. It could be we incur more – we spend more of the premium just administering the contract - - -

You get to hold on to quite a lot of the money that you bring in for the accidental death policy, don't you? You don't lose much of it by paying out claims?---No, but we do have to – we do have to meet our administration costs and we do have to recover the acquisition costs upfront as well. What I'm saying is for accidental products they tend to be much smaller premiums and the acquisition costs and the costs of administering the contract tend to absorb more of the premium.

Well, there's - - -?---So what's left over for ClearView for profit is not necessarily different than for a full cover. That's all.

There's a lot left to absorb those administration costs, isn't there, Mr Martin? Do you know what the ratio of claims paid out to premiums collected over the last five years has been for your accidental death product?---I think from the statement it was 26 per cent. Is that correct?

Yes. So that means ClearView gets to retain roughly three-quarters of the money that it makes in premiums from selling the products with only a quarter of that money going out in payment of claims?---That has been the experience over the last five years, that's correct.

Well, in some of those years, the difference is even starker. You tell us in your statement that in 2014, the ratio of claims paid out to premiums collected was one per cent?---Yes. There was another year I think it was 87 or something. It's a very small portfolio.

And it's because no one makes claims under the product, isn't it, Mr Martin? The claims numbers are very, very small compared to the number of policies for accidental death that you sell?---The claims numbers are low, that's correct.

You tell us in your statement that since October last year, ClearView's practice in its adviser sales channel has been to always offer an accidental death policy to a customer who has a declined application for life cover, on the basis of medical reasons?---That's correct.

So the advisers are to attempt to sell someone who doesn't meet the medical underwriting cover for life insurance, they're to attempt to sell them an accidental death policy, aren't they?---We – we offer it just to remind advisers the option is there for them to consider. But we are talking about people who have been declined life insurance cover and, therefore, have no option to – to have any cover. So we – we offer accidental death as – as something they might be able to have.

Do you think you're doing a service to the customer by doing that?---That is the intention. It was – the intention is not to – to do other than – as the process, I think, in the – in the paper says, the underwriters do their best to try and offer terms to – to a client, and it's only when we get to a point of having to say, "We're sorry, we can't offer you terms as we – as part of the declined letter tell the client that there is an accident only option for them.

So you proceed to offer them a cheaper inferior product than the one that they applied for, because it is that, isn't it? It's a cheaper, more inferior product to term life cover?---No, I don't accept that.

Why is that?---Well, the loss ratio you quoted before was dominated by accident only business. It was written – I think more than half of that business was written under the pre-2010, you know, NRMA and Bupa days. I think a large chunk of the other part of the business is – was written as – through the direct channel and only a small part of it is actually accidental death that has been written under the life solutions.

What – I'm interested in why you - - -?---The 26 per cent – the 26 per cent was an average claims rate across those three.

Yes?---All I'm saying is I – I can't tell you sitting here in the witness box what the expected payout ratio is on the life solutions accidental death product.

Okay?---I would have to research that for you. I don't believe it is meant to be pathetic at all. It was meant to be a genuine insurance contract.

But you know from the terms of the products that the circumstances in which you can make a claim upon death under an accidental death policy are very different to, and much more confined than the circumstances in which you could make a claim under a life insurance policy?---Absolutely.

Yes?---And the premium is a fraction of the premium.

Yes. So why do you resist my characterisation of it as a cheaper, inferior product?---Well, if you – if you're saying that the premium is cheaper, I totally agree.

Yes?---Sorry, I thought you were meaning that the – the – the value of the product relative to the premium was inferior, and I'm saying - - -

No, I - - -?---Sorry, I misunderstood the question.

I mean when a – when a customer comes to one of your advisers asking for life insurance, and they don't get life insurance because of medical reasons, which mean that they fail the underwriting criteria, the advisers then attempt to sell them an inferior product to life cover for a cheaper premium?---Yes.

Yes. And that's a practice that is often referred to as a downgrading sales practice. Have you heard that term before?---That's a term I'm familiar with in the direct market space. I wouldn't characterise this as downgrading.

Why not?---I – my understanding of where I've heard that phrase in – in the direct space is if a sale becomes difficult, not – not impossible, a sales agent may offer a direct as an alternative to achieve a sale. Whereas I think what we're trying to do is for a customer who – who genuinely can't get cover, offer them something else, an option.

But you're still trying to achieve a sale, aren't you?---Yes. We are, yes.

Yes. I want to play you a short extract – an excerpt from a recorded ClearView sales call. This is one of six sales calls made in 2015 that the Commission identified for ClearView last week you've been provided with the recordings of each of those calls?---Yes.

You've been provided with the transcripts for each of those calls?---Yes.

Those six calls were part of a batch of 42 sales calls that ASIC obtained from ClearView in 2016?---That's correct.

Now, I want to play you an extract to demonstrate downgrading sales practices in the direct sales channel in action. Could I ask that we play audio recording ASIC.0069.0001.0167C. And could we display at the same time on the screen the part of the transcript which is ASIC.0069.0001.0439E at 0445 to 0447.

RECORDING PLAYED

MS ORR: All right. So, Mr Martin, that was a customer who wasn't able to take out life cover because of a pre-existing heart condition?---Yes.

Yes. And we heard the sales agent move on to trying to sell that customer an accidental death policy instead?---Accidental death and then injury cash, yes.

Yes. Now, Commissioner, could I tender the recording and the transcript.

THE COMMISSIONER: Exhibit 6.33 will be the recording of sales conversation ASIC.0069.0001.0167C.

EXHIBIT #6.33 RECORDING OF SALES CONVERSATION (ASIC.0069.0001.0167C)

THE COMMISSIONER: Exhibit 6.34 will be the transcript of the recording, exhibit 6.33, ASIC.0069.0001.0439E.

EXHIBIT #6.34 TRANSCRIPT OF THE RECORDING EXHIBIT 6.33 (ASIC.0069.0001.0439E)

MR CHESHIRE: Commissioner, can I just raise a question about that? I don't – the version I have doesn't have an E on the end, and I don't know if that's of any significance. And if – it may then be this may then be my next question which is, as I understand it, the E is intended to just be an extract that is being tendered.

MS ORR: I could clarify, I wish to tender the entire transcript. The E was to assist Law In Order with locating the relevant part of the transcript and the part that we played.

MR CHESHIRE: Thank you. I'm grateful. I'm content with that.

THE COMMISSIONER: Yes.

MS ORR: Now, Mr Martin, have you read the report recently released by ASIC dealing with the sale of direct life insurance?---I've read the executive summary. Unfortunately, I've been fairly busy in the last week preparing for today.

You knew that we were going to ask you questions about ClearView's direct sales of life insurance?---Yes.

So you've only read the executive summary of ASICs report on that topic?---That's correct.

Okay. Are you aware from that executive summary that ASIC expressed very strong concerns about downgrading conduct in connection with the sale of accidental death policies?---Yes, I am.

And ASIC said that there were limited circumstances where downgrading cover might be appropriate but they observe that downgrading could result in consumers buying cover that does not meet their needs and that they do not understand?---Yes, I – yes, I understand that, yes.

And ASIC also took the view that more generally accidental death policies offer a very limited benefit to consumers who are ineligible for other types of life insurance. Are you aware of that?---Yes, I'm aware of ASIC expressing that view.

Are you aware that ASIC said that unless firms can demonstrate that accidental death insurance can provide a benefit to consumers, ASIC expects them to stop selling the product?---Yes, I'm aware that's ASICs view.

So does ClearView intend to cease selling accidental death insurance?---Well, we have ceased the products that were sold through direct. So they are – that product, that version of the product is no longer on offer. We will have to think – or review exactly what ASIC has said about the direct – sorry, the accidental life for the advised products to see whether the same concerns apply.

Well, the concerns of ASIC were not just concerns about sales practices in the direct sales channel, they were concerns about the value of accidental death policies to consumers, and as I indicated to you, they formed the view that they provide very limited benefits to consumers, however they are sold, through an adviser channel or through a direct sales channel?---Well, again, I would have to understand – when ASIC says "value" do they mean return in the dollar because that is typically – my understanding of direct products they were very poor value for money in the sense of the amount of money that the consumers got back in terms of insurance cover was very poor for the dollar they paid for the products, and as we heard there, I – I don't – you know, I don't like that at all, that call recording. I just think the – what we're talking about, though, for the advice product is a different scenario, and it would come down, to my mind, whether the product is – is – is value in the sense of whether what people pay for it, whether the cover they get was reasonable for it. If in the end ASIC and the Parliament decide it's not suitable, I suppose we withdraw the product. But then that would mean for people who can't get cover because of medical conditions, are you saying they can't have any cover, I suppose - - -

It's not just a matter for Parliament, is it?---Well I'm not saying - - -

You've made changes within ClearView to your model for selling life insurance a number of times already, quite significant changes. I'm asking you whether, in light of ASICs report about the lack of value for consumers of accidental death products, you intend to continue selling those products?---ClearView hasn't made a decision on that at this stage. That's all I can say. We will have to review it, absolutely, and try and understand whether – you know, exactly what ASIC means by that.

Well, how do you propose to demonstrate, as ASIC requires, that accidental death cover is a product that can provide a benefit to customers?---How do we - - -

How do you propose to demonstrate that? Because ASIC said that unless firms can demonstrate that accidental death insurance can provide a benefit to customers, we expect them to stop selling?---Well, I would take – sorry, I would go back to whether the amount of claims you're paying relative to the premium being collected is – is reasonable or not. But I – ClearView is not trying to do something that society doesn't want. So if the answer is – the answer – that ASIC and society would like us to stop offering it, I – ClearView will stop offering it. It's – there's not a problem with that.

Well, that report has been out for a couple of weeks. I assume it's a report that has been the subject of some detailed consideration within your business?---I – I – sorry, I've been absorbed in the last week with just preparing for today, Ms Orr. So I haven't been able to talk to other people about it.

Well, the two are not mutually exclusive, are they, Mr Martin? You've been preparing to come and speak to us about these very topics?---I appreciate that, yes.

But you're unable to say anything further about the position that ClearView will take in relation to the sale of accidental death products going forwards?---At this stage, I – I don't know. As I said, our – our intention – as far as I know, the intention of ClearView is not to offer rubbish products to the market. So if that's what they're deemed to be, that will be stopped.

Perhaps that's a convenient time, Commissioner.

THE COMMISSIONER: 2 pm, Ms Orr?

MS ORR: Yes, thank you, Commissioner.

THE COMMISSIONER: Adjourn till 2 pm.

ADJOURNED **[1.00 pm]**

RESUMED **[2.00 pm]**

THE COMMISSIONER: Yes, Ms Orr.

MS ORR: Mr Martin, in your statement you deal with two sets of concerns that ASIC has raised with ClearView in recent years, both of which relate to the direct sales of life insurance. Concerns, firstly, about whether ClearView was complying with the requirements of the Corporations Act in relation to unsolicited sales, and secondly concerns about whether ClearView was engaging in unfair sales practices?---Correct.

And ASICs concerns on both of those fronts have led to ClearView developing a customer remediation program?---Correct.

And that program is not yet complete?---No, it's very close.

When will it be complete?---Probably by the end of November. Or most certainly by the end of the year.

And you tell us in your statement that you believe it will ultimately cover over 32,000 life insurance policies that were sold by ClearView between the start of 2014 and the middle of 2017?---Correct.

Now, before I turn to the matters giving rise to that remediation program, I want to ask you some broader questions about operating in the direct life insurance market, and the views that you express in your statement about why things went wrong for ClearView in its direct sales operations. You tell us in your statement that, in your view:

> *...the principal reason for these problems was the underlying character of the sale of life insurance via outbound telephone sales, interacting with the marked change in the operating environment of the direct business over the period from 2013 to '16.*

Do you recall that?---Yes.

Now, I want to deal first with what you describe as the underlying character of the sale of direct life insurance via outbound telephone sales. You tell us in your statement that life insurance is well known to be a grudge purchase?---Yes.

Yes. What do you mean by that, that life insurance is a grudge purchase?---It's a colloquial reference. It means – it means – it's like people doing their wills. It's like all sorts of things. People know they should do it but it's not something that they willingly and run off to do without usually a bit of motivation, oftentimes from family and friends or other people.

So purchasing life insurance is not something that people will generally do without a bit of motivation, did you say?---Yes.

You tell us in your statement that the life insurance sales process inevitably requires some level of customer disturbance to achieve engagement. Do you recall that?---Yes.

And what do you mean by "customer disturbance"?---I only mean that in terms of, you know, people being, you know, being encouraged to think about the consequences of them dying or become disabled and whether – what that would mean for their families, for themselves. That's all it meant by that.

How did ClearView achieve customer disturbance when it was selling its life insurance policies direct to customers?---Well, it was meant to – that was only meant to refer to – at the beginning of a phone call, you know, challenging the customer on the phone a little bit to think about those particular matters. You know, if you were to die, what would that mean for your family, you know, if you became disabled, what would that become – what would that mean for you. It was only meant to refer to that.

How did ClearView ensure that the customer disturbance that it was aiming for was fair and appropriate to the customer?---Well, it was through – it was meant to be through the scripts that were approved for the agents to – to read, that they would have some agreed points to raise on that area before they moved into talking about products, etcetera.

All right. I want to come back to those scripts in a little while, but that was the way in which ClearView ensured that the level of – level and manner of customer disturbance that it was aiming for was fair?---Yes, that was what was intended, that and agent training, of course, that would have gone with the script, yes.

You acknowledge in your statement that there can be a fine line between fair and reasonable customer disturbance to achieve engagement, and crossing the line into pressure selling?---Absolutely, yes.

And where that line lies, you concede is subjective, and subject to change with changing community views and expectations?---Yes, broadly, yes.

Where do you think the line lies currently?---I'm – I would struggle to explain it, but it would be a mild level of disturbance to engage a customer in a – in a discussion, and – but that's about it.

And what would constitute a mild level of disturbance?---That's a difficult question to articulate an answer to. I – I'd call it, you know, just general questioning around, as I said, what are the consequences for you or your family, have you thought about that. Getting people to turn their mind to that subject is about what I'm talking about, yes. Nothing past that.

Is that part of the emotional pitch that we saw referred to in documents before lunch?---Potentially. I suspect the reference to emotional pitch in those documents went a bit past that, yes.

And how did it go past that?---As you were referring to before, stepping over the line into going beyond an initial engagement through to pushing into pressure selling and all the rest of it, yes.

So fair and reasonable customer disturbance is something short of pressuring the customer to make the sale. Is that right?---Yes. Or – or as ASIC refers to in its report, aggressive objection handling and things like that. That's not what that means.

Okay. So in your view, a mild level of customer disturbance is necessary to get customers to make the grudge purchase of buying life insurance?---Or get them to turn their mind to that's something they – they should be thinking about, and engage in the conversation on it, yes.

Okay. Now, the other part of the principal reason that you gave in your statement for why these problems occurred for ClearView was the marked change in the operating environment of the direct business over the period from 2013 to 2016. You recall that?---Yes.

And in your statement, you referred to four principal changes in the operating environment in this period. And they were the expansion of the Do Not Call Register, the increased competition in the direct life segment, and the increased scrutiny of the life insurance industry and a change in community expectations?---Yes. I remember that.

Now, you tell us that the combined effect of all of those factors was not fully appreciated by ClearView at the time of the problems that I'm going to come to. Why was that?---I – I just don't think we – as I say, we – it was – those factors have – have emerged over the last three years. They – the fact that they were coming in 2014 or '13, we – we didn't appreciate the consequence of those. Had we appreciated those, I suspect we would never have even started the business.

Wouldn't have started the direct life selling business?---No.

But you say that not appreciating those factors and the combined effect of those factors meant that you didn't make sufficient changes to the sales rates that you expected from your call agents?---No, I think they were – the – the expectations for the business were cast with – from a view of seeing what was available – or what the level of sales had been achieved historically in that market by other companies who – who had entered it over the previous 10 years, and the expectation was we could do similar.

So the sales rates that you set for your sales agents were, as you say, cut with a view of making sales, of making large numbers of sales?---Yes.

And you didn't make changes to your compliance or quality assurance program to reflect the changing operating environment that you've identified?---No, the model wasn't changed.

And it should have been?---I think it should have been, yes.

Okay. Now, ClearView was one of the six insurers whose conduct was examined by ASIC in the direct life report, the one that you mentioned earlier you read the executive summary for?---Yes.

You know that, you know that ClearView was one of the - - -?---Yes.

- - - insurers examined. And you know that ASICs review involved reviewing hundreds of outbound calls conducted both before and after the Life Code of Practice came into effect last year?---Yes, I understand that.

And ASIC found that outbound sales are more commonly associated with poor sales conduct and increased the risk of poor consumer outcomes. Do you agree with that?---Yes.

And do you have any views about ASICs proposal articulated in the report to restrict outbound sales calls in the direct life insurance industry?---As I said before, I haven't had a chance to read all the report, but I would only agree with that anyway, as a sentiment.

Even though ClearView is one of the insurers whose conduct is examined in that report?---If we had our time again we wouldn't do that business.

Okay. All right. I want to turn to the first set of issues raised by ASIC. I mentioned that there were two - - -?---Yes.

- - - sets of issues that you dealt with in your statement. The first one was ClearView's compliance with the provisions with the Corporations Act in relation to unsolicited sales. These are referred to often as the anti-hawking provisions?---Yes.

Are you familiar with those provisions?---I have a good layman's understanding of them, I think.

Yes. So you know that section 992A(3) of the Corporations Act prohibits an insurer from selling a life insurance product to a person in the course of, or because of an unsolicited telephone call, unless the insurer complies with a number of specified requirements?---Yes, I understand that.

And those requirements include giving the customer an opportunity to be placed on the Do Not Call Register?---Yes.

And they include giving the customer a product disclosure statement before they become bound to buy the insurance?---Yes.

And they include offering the customer the opportunity to have the information in the product disclosure statement read to them?---Yes.

Are you familiar with ASIC Regulatory Guide 38?---A general familiarity.

You know that it contains guidance on the anti-hawking provisions?---Yes.

And ASIC makes clear in that regulatory guide that a telephone call will usually be considered to be unsolicited unless it takes place in response to a positive, clear and informed request from a customer?---Yes.

You're familiar with that standard?---Yes.

Did ClearView breach the anti-hawking provisions, Mr Martin?---Our breach notice, I believe, said that we think we did, yes.

And how many times?---Well, there's some conjecture as to where that line is drawn. I think we came to the conclusion that a lot of the Bupa business, in the end, probably wasn't in accordance with those provisions. I don't want to – this – there's a technical point, I suppose, as to when – when you breach those – those provisions when you just make a call to somebody, but there was something like a quarter of a million calls, I think, that we estimated that were made to Bupa customers. I think out of the 32,000 policies that were sold, I think it was 40 per cent of them or maybe a little bit more were Bupa customers, potentially all of those were in breach of those provisions because we didn't have sufficient – positive affirmation that they wanted to be called.

So roughly how many times do you say ClearView breached those provisions?---I haven't got the exact number but 10,000, 12,000 times, something of that order. I can't tell you the exact number off the top of my head.

All right. We will come back to that. Over what period did ClearView breach the anti-hawking provisions?---For at least the period of the outbound telemarketing – the ClearView direct business, so from – from late '13 through to the end of '16, when the scripting was all changed to make sure it met the unsolicited test that you referred to before.

And in what ways did ClearView breach the anti-hawking provisions?---The – as I understand it, it was that the customers didn't opt in sufficiently to meet the definition of solicited calls. And then ClearView failed to meet all of the tests under the unsolicited arm of the – of the law. We did meet – meet a number of the requirements. For example, not calling people on the Do Not Call Register. It was my belief that we – it was – was the process that everybody received a – a product disclosure statement before they were phone called, but there were some aspects, I think, as you referred to a minute ago, such as offering a customer to be put on the Do Not Call Register we failed to do. One or two others, I think. I can't remember exactly what they were but there was those.

The anti-hawking provisions apply to calls irrespective of whether a sale is made in that call, don't they?---I understand that, yes.

Yes. All right. And breach of the anti-hawking provisions is a criminal offence, isn't it, Mr Martin?---I understand that, yes.

Now, when ClearView was selling life insurance directly to customers, all products were sold via telephone sales, weren't they?---The – the direct products were, yes.

Yes. And how did ClearView identify the people that it was going to call to attempt to sell a life insurance product?---For – do you want me to run through Bupa and the whole lot? There's all of it - - -

Well, there are a number of different methods - - -?---Yes.

- - - that ClearView used, weren't there. Can you explain in terms what each of those methods are?---The two main – the two main sources of customers to call, one came from our – our alliance with Bupa where Bupa supplied us with databases of customers that – that were available to be called. My understanding is that would typically be a list each month or each quarter. Bupa controlled that list to try and, from their perspective, you know, with their other strategic partners make sure people – their own customers weren't being, you know, pestered, I suppose, if you like, by too many of the strategic partners at the one time. That list was then, as I understand it, either by Bupa or us, washed against or compared to the Do Not Call Register. Customers who were eligible to be called would then be loaded into a – what's called a dialler, or a telephone dialler and that machine would then dial people and assign it to a call agent, I think was the process. There may have been some ability for the agent themselves to pick somebody off a short list who they might like.

But all of those customers came from a list from Bupa?---Correct, yes.

So that was one method?---The other main method was the lead generation channels that ClearView direct used where they would have various means of accessing customers who expressed interest in life insurance, whether that might be an online competition or other outbound lead generation telephone means. Usually they were through some sort of list as well that they would have that would be customers who were – should be suitable. They would inquire of the customers whether they were interested in a – in a call from ClearView. And if they opted in, those customers would then be transferred – I mean the names – telephone numbers and details of those customers would be transferred to ClearView and loaded into a dialler. Sorry, for both Bupa and those ones there would be a step in the process where they were sent electronically the PDS and other material prior to the phone call coming from ClearView. That was - - -

Okay?--- - - - the broad – the broad approach, yes.

Okay. So there's the list of Bupa customers. That list is given to ClearView and they're then emailed a copy of the PDS. Is that right?---Correct.

And then they get a call from ClearView to promote the products?---That was the process.

Sometimes ClearView used a third party or a partner which contacted a potential customer and asked for their consent?---Yes.

Is that right? And an example of that was Community Mutual Limited. Is that right? Are they one of the partners that ClearView had who made those calls and got the customers' consent?---The Community Mutual relationship I – was a very small one that started in the early days. It didn't last very long. I thought that – my recollection or understanding of that arrangement was more that that was customers of Community Mutual who, I think, the intention was when they rang their call – their own call centre, their service centre they would be asked whether they had an interest in life insurance and then forwarded. I think that's right. That relationship I – my belief was very short lived back in 2014.

Okay. And then another method was that you got customer details as a result of someone registering their details to enter a competition on a website?---Yes, and in that process, opting in to being called about life insurance, yes.

So they would register their details on the website and then they would click on a ClearView ad. Is that how it worked?---I think there was a range of options. I think that possibly was one of them, yes.

And then you had the lead generation channel, which involved you buying customer information from third parties. Is that right?---Well, the lead – there was also – well, there was also data, a relatively small amount of data from other, as you said, list – list owners, people who had customers who – who had – who were marketing companies who had customers who opted in to things. The main one, though, was, as I said, outbound – what I understood to be a large amount of outbound telemarketing or other ways of accessing customers to – to generate interest in the – in the – in products and not necessarily just life insurance, it would be a range of products and it was - - -

But you - - -?---And we paid for those. ClearView paid for those.

You purchased - - -?---Yes.

You purchased customer information?---Yes.

And you purchased it from third parties like Value-Ad lead allocation?---Yes.

And Greater Data Proprietary Limited?---Yes.

And the Bradford Exchange Limited?---Yes.

So all of those were entities that you bought information about customers from who you then contacted?---As I understand it, yes.

Okay. Now, ASIC first raised concerns with ClearView about potential breaches of the anti-hawking provisions in April 2016, because they had had some complaints. Do you recall that?---Yes.

And ASIC asked ClearView to give it information about how it got details of the customers that it called?---Yes.

And there was a letter that ASIC sent to ClearView about those matters which you've annexed to your statement, and ClearView responded to that letter and provided that information. Do you recall that?---Yes, I do.

That response from ClearView was on 22 April 2016?---That sounds right, yes.

Now, you've annexed the letter from ASIC asking for that information. You didn't annex to your statement the response to that request. Was there a reason for that?---No, I – I can't – can't help you with that. No, I don't. There was no particular reason. I don't believe that we didn't provide that.

Well, you know that the Commission asked ClearView to exhibit all relevant correspondence with ASIC in relation to whether the sale of its life insurance policies via outbound calls may have contravened regulatory requirements?---I will say yes. Yes.

Okay. Well, can I take you to the letter that ClearView sent to ASIC, which we've obtained. That's ASIC.0052.0004.0300. This is the letter from ClearView to ASIC on 22 April 2016. You've seen this before, Mr Martin?---Yes, I've seen it before.

Yes. And it's a lengthy letter containing the information that we've just summarised about the ways that you identified your customers?---Yes.

I tender that letter, Commissioner.

THE COMMISSIONER: Letter ClearView to ASIC 22 April '16, ASIC.0052.0004.0300, exhibit 6.35.

EXHIBIT #6.35 LETTER CLEARVIEW TO ASIC DATED 22/04/2016 (ASIC.0052.0004.0300)

MS ORR: This is April 2016 and there's then some further correspondence between ASIC and ClearView. Then in December of that year there was a conference call between ASIC and ClearView that you participated in. Do you recall that?---Yes, I do.

Okay. And during that conference call, ASIC expressed multiple concerns about possible contraventions of the anti-hawking provisions by ClearView?---Yes, they did.

And ASIC said that it wasn't clear to them that customers were always being given a product disclosure statement before being bound to acquire the product. Do you recall that?---Yes.

They also said that it wasn't clear that customers were explicitly being offered an opportunity to be placed on the Do Not Call Register?---Yes.

And that consumers were not being offered the opportunity to have the information in the PDS read to them?---That's correct.

So those were the concerns expressed by ASIC at that time. But ClearView's position in that meeting or that conference call was that the phone calls that it made were solicited. Do you recall that?---I – I recall that that was the belief at the time, yes.

Yes. That was an incorrect belief?---That was an incorrect belief.

All right. ASIC then reviewed information and audio recordings that it got from ClearView and sent further correspondence in December 2016, indicating that it believed that ClearView might have been failing to comply with the anti-hawking provisions on a systemic basis for at least three years. Do you recall that?---Yes, I recall that.

And then 10 days after ClearView got that communication from ASIC, ClearView lodged a breach notification with ASIC?---That's correct.

Now, you didn't annex that breach notification to your statement. Was there any reason for that?---I – no, I have to apologise for that. That was - - -

All right. Again, we have that from ASIC. We have obtained it from ASIC. And it is ASIC.0052.0003.0527. I will just ask you to go to that. Now, it's a three-page letter but the bulk of it is on the first and second pages. And it would assist if we could have both of those pages on the screen. We see on the first page, which is now on the right-hand side of the screen, that ClearView said that it wished to notify ASIC that it had identified likely noncompliance with section 992A of the Corporations Act. Do you see that?---Yes, I do.

And we see from that page and over to the next page that the likely noncompliance was said to relate to some telephone calls – there was no indication of how many – that were made by ClearView over a two-year period from the start of 2015 to 9 December 2016. Do you see that?---Sorry, which part of the letter is that?

On the left-hand side, the heading Notification of Reportable Breach. Two paragraphs under that:

> *We wish to notify ASIC... likely noncompliance with respect to telephone calls made by ClearView.*

?---Yes, I see it.

Do you see that?---Yes.

And ClearView said that it was undertaking further inquiries. We see this over the page at 0528. Under the heading Reportable Breach, second paragraph down:

Undertaking further inquiries to determine whether there had been any noncompliance with respect to other periods and products.

?---Sorry, I'm trying to speed read. I - - -

It's the second and third paragraphs under the heading Reportable Breach?---Yes.

And under the heading Rectification, ClearView also said that it considered that:

Any failure to comply with the anti-hawking requirements had been rectified after ClearView had updated its call scripts, retrained its sales agents and amended its quality assurance checklist.

Do you see the references to those matters in that section?---Yes, I do.

So prior to this, ClearView's scripts didn't reflect the requirements that need to be met in an unsolicited call, did they?---No, they didn't.

They should have?---Yes.

I tender this letter, Commissioner.

THE COMMISSIONER: ClearView breach notice to ASIC, 23 December '16, ASIC.0052.0003.0527, exhibit 6.36.

EXHIBIT #6.36 CLEARVIEW BREACH NOTICE TO ASIC DATED 23/12/2016 (ASIC.0052.0003.0527)

MS ORR: So this is December 2016. And shortly after this, in early January 2017, ClearView again wrote to ASIC about the anti-hawking issues?---That's – yes, I recall that, yes.

It's another letter that's not annexed to your statement?---Apologies. Again, sorry.

Okay. We have it from ASIC. It's ASIC.0052.0001.1366. Now, this is a lengthy letter from ClearView signed by the head of legal and company secretariat. Have you seen this letter before, Mr Martin?---Yes, I have.

And you know that by this correspondence ClearView accepted that some of its campaigns involved unsolicited calls?---Yes, I – that's correct. Yes.

And if we go to 1368, we see that these were generally said to be – I will just wait till it comes up on the screen – under the heading Unsolicited Campaigns they were generally said to be situations in which ClearView had purchased customer information and then proceeded to contact the customers to offer them products without that customer having received a call from a third party?

THE COMMISSIONER: Where are you reading from, Ms Orr?

MS ORR: I'm reading from a couple of paragraphs on this page, on 1368, Commissioner. I'm reading from – I'm sorry, I might have given the wrong – it is 1368. And I'm reading from – under Unsolicited Campaigns, the section that starts with those dot points, and we will need to read through to the following page. Perhaps we can have 1368 and 1369 on the screen. I will just let you read through that section. I think that's the simplest way of doing this, Mr Martin, because I'm bringing together themes from a number of paragraphs. But I expect this is a letter you are familiar with?---Yes, I'm familiar with it, yes.

Yes?---Yes. Yes.

Yes. So the calls that ClearView was accepting were unsolicited calls, at this point in the letter, were calls that were made to customers whose information had been purchased by ClearView, but the customer had not been called by a third party to get their consent before ClearView contacted them?---Correct. They were customers who, one way or another, had not sufficiently opted in to - - -

So ClearView acknowledged that it hadn't complied with the anti-hawking provisions for every call made to customers whose details it had purchased from three different parties. They were the Bradford Exchange, Greater Data, and Value-Ad?---Yes.

And ClearView acknowledged that none of the customers, whose details were provided by the Bradford Exchange, had received a lead generation call?---That was my understanding, yes.

Yes. So but all of those calls were unsolicited calls?---Yes. That was our conclusion.

But there is no indication of this letter of how many calls they were?---We – I think in our original correspondence with ASIC earlier in 2016, we had given them information on all that.

Are you sure about that, Mr Martin?---I – sorry, you're saying the number of calls that we - - -

Yes. So you've acknowledged in this letter that the customer information that you bought from the Bradford Exchange had led to ClearView calling those customers without any lead generation call. That acknowledgement is in here?---Yes.

But there’s no indication yet of how many customers were affected by that conduct. Do you recall that?---I agree with you it’s not in this letter, yes.

But there was an indication about some other aspects of this, because ClearView acknowledged that some of the customers whose details it had bought from Greater Data and Value-Ad had not received a lead generation call, and ClearView told ASIC that that was about 5500 customers in that situation. Do you recall that?---The 5500 – I’m just trying to confirm in my mind whether the not getting a lead gen was the point. But, yes, I will agree, yes.

And it might help if you look at the second paragraph on the right-hand side:

> *None of the customers provided by the Bradford Exchange were subject to a lead generation call. A small number of customers, approximately 5500, provided by Value-Ad and Greater Data were also not subject to a lead generation call.*

?---Yes. Sorry, yes.

In addition on the next page, 1370, the letter dealt with your Bupa customers?---Yes.

I don’t think we have that on the screen just yet. I will wait till it comes up. Do you see the reference to the Bupa customers in the second half of this page under the dot points?---Yes.

What I want to put to you is that ClearView didn’t explicitly acknowledge a breach of the anti-hawking provisions in relation to its Bupa customers but instead acknowledged that its processes for getting consent from those customers who had received mail or email packs may potentially have fallen short of what ASIC expects in respect of receiving positive, clear and informed consent?---Yes, I agree that’s what the letter says.

And over the page at 1371, in the top paragraph:

> *Whilst the customers are advised that they may be contacted by Bupa’s business partners, we acknowledge that may not be enough to render these clients solicited based on ASICs guidance in RG38.*

?---Yes.

So by this letter, ClearView acknowledged that it had made unsolicited calls to customers as part of multiple campaigns, and that it had not complied with the anti-hawking provisions in respect of those calls?---Yes.

But apart from identifying the 5500 customers that I took you to earlier who were called because their details had been purchased from Greater Data and Value-Ad, ClearView didn't in this letter say anything about how many customers were affected?---No, they didn't in this letter. That's correct.

All right. I tender that letter, Commissioner.

THE COMMISSIONER: Letter ClearView to ASIC, 3 January '17, ASIC.0052.0001.1366, exhibit 6.37.

EXHIBIT #6.37 LETTER CLEARVIEW TO ASIC DATED 03/01/2017 (ASIC.0052.0001.1366)

MS ORR: Now, ASIC was troubled by that, weren't they, Mr Martin? They were troubled by the fact that they didn't know how many customers had been affected by this conduct?---I – I'm not sure that I was aware of that but - - -

Well, you've exhibited a letter to your statement from ASIC to ClearView on 8 March 2017, so shortly after this letter. It's exhibit 53 to your statement. CVW.6000.0001.0848. It will come up on the screen. And if we look at paragraph 5 on that first page ASIC noted that:

> *No details have been provided regarding the number of affected customers sourced from either Bupa or Bradford Exchange.*

Do you recall that?---Yes.

And then at paragraph 13 on page 0850, ASIC indicated that the campaigns that ClearView still insisted were solicited campaigns may not be because ASIC was concerned that how ClearView was satisfying itself of the requirements being met was not adequate. Do you see the references in paragraph 13? ASIC wanted an explanation from ClearView of how ClearView satisfied itself of the various requirements of the anti-hawking provisions?---Yes, I see that. Yes.

There was then a meeting between ASIC and ClearView in April 2017 which you attended. Do you recall that?---Yes, I do.

And in that meeting, ASIC maintained the concerns that it had that the calls that ClearView were regarding as solicited were, in fact, unsolicited calls in breach of the anti-hawking provisions. Do you recall that?---Yes, I do.

And ASIC again raised the issue that ClearView had only provided information about a small set of the unsolicited calls. Do you remember that? The 5500?---Yes, I – sorry, I know the 500. Sorry, I'm just struggling with to what extent ASIC raised concerns but I – I'm sure they did mention that, yes.

Well, do you remember ASIC saying to you in that meeting that they needed to know the extent of the possible contraventions so that they could form a view on what regulatory outcome they should pursue. Do you remember that?---I'm sure that's right, yes.

And do you remember that you said to ASIC in that meeting that your best guess was that there may have been around 105,000 breaches with the Bupa customers?---Yes.

But you thought it was probably more?---Yes.

All right. Then about a week later, ClearView gave ASIC some more information. Is that right?---Yes.

And I will take you to a letter that ClearView sent to ASIC on 18 April 2017, which is ASIC.0052.0001.1621. Excuse me for a moment. Have you seen this letter before, Mr Martin?---Yes, Ms Orr. Sorry, that was – this letter was the one I was thinking about when you were asking me before when we told them how much. I got confused as to the timeline, yes.

Yes. So this is when the information is finally given about how many customers have been affected by this conduct in April 2017. Is that right?---Correct.

So in this letter, ClearView gives an estimate of the number of customers to whom contravening calls were made over a period of just short of three years. Do you see that?---Yes.

From that paragraph under the italicised number 1 heading. And what we see is that ClearView said that:

> *Between July 2014 and 20 March 2017, the following prospective customers received telephone calls from ClearView and were spoken to by a ClearView sales agent in circumstances where we have been unable to verify that all of the requirements in section 992A(3) of the Corporations Act have been met.*

And we see that there were 244,000 Bupa customers, 6000 Bradford Exchange customers, 9000 Value-Ad customers, and nearly 2000 Greater Data customers. Do you see that?---Yes, I do.

So all up at this point, ClearView assessed that, on our maths, 261,602 customers had received ClearView phone calls in circumstances where ClearView couldn't verify that it had met the requirements of the anti-hawking provisions?---That's correct.

And there was still a six-month period that wasn't dealt with in this letter. Do you recall that?---Yes.

And in this letter, ClearView said that it was still going to give ASIC some more information about non-compliant calls in that six-month period which ran from January to June 2014?---Yes.

I tender that letter, Commissioner.

THE COMMISSIONER: Letter ClearView to ASIC, 18 April 2017, ASIC.0052.0001.1621, exhibit 6.38.

EXHIBIT #6.38 LETTER CLEARVIEW TO ASIC DATED 18/04/2017 (ASIC.0052.0001.1621)

MS ORR: Now, that information about the other six-month period was provided to ASIC on 4 May 2017?---That sounds correct, yes.

I have the letter and I will show it to you. It's another one that's not exhibited to your statement. It's ASIC.0052.0001.1497. And if we turn to the second page, 1498. Have you seen this letter before, Mr Martin?---Yes, I would have seen it before, yes.

Yes. So if we turn to the second page, and we see two tables there. And if we look at the second table we see that it addresses that six-month period, from January to June 2004 there had been an additional 44,000 calls to Bupa contacts where ClearView couldn't verify that it had complied with the anti-hawking provisions?---That's correct.

Okay. And ClearView said on this page under the table that it had been:

> *... unable to determine whether those prospective customers answered the call or were offered a financial product.*

I'm sorry, that's above – no, the first line under the table?---Yes.

But based on a typical contact rate of 50 to 55 per cent of calls, ClearView estimated that the number of calls that were answered would likely have been between 22 and 25,000?---Yes.

And so there were also some updates in this letter to the figures for the period that had already been provided. So some minor updates to that. We see that the number was revised upwards from 261,000 – I shouldn't say minor – 261,600 breaches to 278,664 breaches, plus the 44,000 breaches with the Bupa customers?---Or the – the 22 or whatever it is.

I'm sorry?---Yes.

The 22 to 25 thousand of those that resulted in the customer taking the call. So using that 22 to 25 thousand figure, we see that all up, by early May 2017, ClearView had estimated that it had breached the anti-hawking provisions, which as we've discussed was a criminal offence, somewhere between 300 and 303 thousand times over a period of just over three years, between January 2014 and March 2017?---Yes, that's correct.

That's a bit different to the figure you gave me when I asked about this earlier. And to be fair to you, you said you didn't know the figure, but you estimated that it was 10 to 12 thousand?---So that was – this is the number of phone calls. I was referring to the number of sales that came from these phone calls.

But why are you referring to the number of sales, Mr Martin? You understand, don't you, that the anti-hawking provisions have to be complied with whether or not the call results in a sale?---I understand that. I – we were discussing at the time, I thought, in respect of the - - -

I see?--- - - - 32,000 sales.

I see?---I said about 12,000 of those were Bupa customers that would have come out of this 300,000. That's all I meant.

So you accept that there were between 300 and 303 thousand breaches by ClearView of these criminal provisions in that three-year period?---That could be the total of it, yes.

That could be the total of it? Do you think there's more?---Sorry, 303 is the number of phone calls, yes.

And the number of breaches that you've notified ASIC of?---Yes.

But in your submission to the Royal Commission, in August this year, you gave a smaller number?---What number didn't we – sorry, I - - -

Well, you gave the number of 278,664 calls. Do you recall that?---So we gave the top table number, did we?

Yes?---Sorry, that was a mistake then. That was an error.

You should have - - -?---That wasn't meant – that was a mistake.

We should read that submission to the Commission as - - -?---Being 300,000.

Not 278,000 but between 300 and 303 thousand breaches?---Yes.

Okay. I will tender that letter, Commissioner.

THE COMMISSIONER: Letter ClearView to ASIC, 4 May 2017, ASIC.0052.0001.1497, exhibit 6.39.

EXHIBIT #6.39 LETTER CLEARVIEW TO ASIC DATED 04/05/2017 (ASIC.0052.0001.1497)

MS ORR: Mr Martin, why did ClearView breach the anti-hawking provisions between 300 and 303 thousand times in that three-year period?---Because at the time that we were doing that, we didn't understand that we were breaching the anti-hawking rules. It's a – it's nothing – that's – that's nothing more complex than that. We just got that wrong. We made a mistake.

You just got it wrong. Is that what you said?---We – it was wrong.

And you didn't understand the way these provisions worked?---ClearView direct obviously did not understand the way they worked, and they were – they got it wrong, yes.

This was a critical thing for a direct life insurance sales business to understand, wasn't it?---Yes.

The critical thing for ClearView to ensure that it did not commit criminal offences in the way it contacted customers and attempted to sell them life insurance policies?---Yes. I understand that.

But there was no understanding within ClearView of how those provisions worked or of the importance of complying with them?---No, we understood the importance of complying with them. The error for Bupa was believing that the – the way that the Bupa members were opting into the program was sufficient, and it wasn't, in retrospect. That – that is the critical point.

Were there also inadequate escalation procedures within ClearView in relation to breaches of anti-hawking provisions at that time?---At that time, if – the business believed it was meeting them. So it's – we – we didn't escalate because we didn't identify that it was in breach. If we had known it was in breach, we would have fixed it straightaway. And/or reported it to ASIC.

Well, towards the end of that period, the documents suggest that there was increasing awareness that what you were doing was breaching these provisions. Have you seen documents to support that proposition?---Towards the end of - - -

Towards the end of the three-year period over which the 300-odd thousand breaches occurred?---Before the December letter from ASIC?

The December 2016 letter from ASIC?---Yes.

No. How about I take you to a document, Mr Martin, which is CVW.8000.0002.1124. Have you seen this document before, Mr Martin?---Yes, I've seen that.

And have you seen, on the second page of this email chain, which is an email chain between the head of Group Risk and Compliance at ClearView, and Mr Simon Swanson who was the managing director of ClearView, copied to you in February 2017?---Yes.

If we look at the second page, we see under the heading Culture and Oversight:

> *The quality of risk and compliance awareness and oversight from direct is concerning. Examples include the January 2017 direct risk and compliance committee meeting pack did not present the full picture of what occurred with the sales agent who had four anti-hawking breaches in January. All the pack disclosed was "this agent was provided with additional coaching and when behaviour did not improve, she was dismissed." This was a more severe risk and compliance event than was portrayed.*

?---Yes, I see that.

So you accept that at this point there were concerns within the business, not just about breaches of the anti-hawking provisions, but about the way those breaches were being escalated and responded to within the organisation?---Yes, Ms Orr. This – this – this email was, as you said, in February '17. So ASIC had raised their concerns in December.

That's right?---We fixed or addressed whatever we could straightaway. We put stronger QA. The scripts were meant to be – or were changed, and then this is in January - - -

Yes?--- - - - following that process that we then discover in ClearView direct that a sales agent is essentially not following the new script, not doing what they're supposed to do, and at that point head office realised that the direct people just didn't seem to be getting it.

Well, and it's not just – when you say the direct people, are you talking about the sales agents or the people running the direct business?---The – the – the management of ClearView direct.

I see. Because they were not treating breaches of the anti-hawking provisions as material, as things that required escalation and consideration. Do you agree with that?---Yes, I do.

All right. I tender that document, Commissioner.

THE COMMISSIONER: Emails of 14 February '17 between Lee, Swanson, Martin, CVW.8000.0002.1124, exhibit 6.40.

EXHIBIT #6.40 EMAILS BETWEEN LEE, SWANSON, MARTIN DATED 14/02/2017 (CVW.8000.0002.1124)

MS ORR: Now, Mr Martin, I want to turn from the anti-hawking breaches to the second of the two sets of ASIC concerns that you deal with in your statement. The second relates to the sales practices of ClearView's sales agents. Now, in the letter that ASIC wrote to ClearView in March 2017, as well as dealing with anti-hawking breaches, ASIC also raised concerns about sales practices. Do you recall that?---Yes, I do.

Now, if we could go to that letter which you've exhibited to your statement as exhibit 53, CVW.6000.0001.0848. Now, if we look at 0851 within this letter, we see at paragraph 22 that ASIC told ClearView that it had reviewed the transcripts of 42 ClearView sales calls which took place in the second half of 2015?---Yes.

And most of those calls, if not all of them, related to the sale of ClearView's injury cash product. Is that right?---That's correct.

And ASIC said in this paragraph that it's review raised:

> *...Concerns that ClearView and/or its sales agents may be engaging in sales practices which are, in all the circumstances, unfair or manipulative and which may ultimately pressure consumers to acquiesce to a purchase of an insurance policy.*

?---Yes, I see that.

And over the page – I'm sorry, still on this page but if we could focus in on paragraph 23, we see that ASIC raised a concern that ClearView's conduct might be in breach of its obligation under section 912A of the Corporations Act to ensure that its financial services are provided efficiently, honestly and fairly?---Yes.

And ASIC also raised in this paragraph that the conduct might also amount to contraventions of several consumer protection provisions contained within the ASIC Act?---Yes, I see that.

Now, on the next page of this letter, 0852 – if we could have that brought up with 0853 – we can see that ASIC had 12 particular types of concern about the conduct that it had observed in the sales calls. Now, I'm not going to ask you questions about each of those, but do you agree that some of them related to sales agents misrepresenting or using unclear language around whether a customer was committing to purchase an insurance policy?---Yes.

And that included concerns about the use of language or explanations by sales agents to the effect that there are no contracts which caused confusion amongst consumers about whether what they were in fact committing to purchase was an insurance policy?---Yes. I am aware of that.

Now, can I play you an example of one of the 42 calls. And I want to ask you if you accept that this is a call where confusing or misleading language is used at the point of purchase by the consumer. This is a call that was made by a Your Insure agent. It's a call that was 15 minutes long in total but I'm just going to play you a portion of it. It's ASIC.0069.0001.014A. And the transcript is ASIC.0069.0001.0492E. And if we could bring up 0499.

RECORDING PLAYED

MS ORR: I'm sorry, I think we weren't focused on the part of the transcript that related to that. I will just ask that that be brought up again. What we can see in the bottom part of the page and what you heard, I'm sure, was the Your Insure agent saying to the customer:

> *Okay. To confirm your eligibility for the cover, can you please confirm if you would like to proceed with an application for this policy to see if you are eligible as well. Yes or no.*

?---Yes, I see that.

You heard that said at that sort of pace twice by the sales agent?---Yes.

And you heard the customer in between say "Sorry?"?---Yes.

He had to ask for the question to be repeated a second time because he didn't follow the question the first time around?---Yes, I heard that.

Now, the question asked by the agent didn't make clear that what the customer was doing at this point in the call was, in fact, committing to purchase an insurance policy?---That's correct. He was - - -

That's - - -?--- - - - giving a completely different impression. That's right.

Yes. So the answer to that question which ultimately came of "yes", by that answer this customer committed to purchasing an insurance policy?---Yes, they did.

Do you think the customer understood that that - - -?---No.

- - - was what they were doing?---No, I don't think they did at all.

So I assume you accept that that was an unacceptable way for the sales agent to conduct this call?---Completely unacceptable.

And, indeed, to conduct the critical part of the call where the customer is asked for their consent to purchase the policy?---Yes.

All right. I tender that recording and transcript, Commissioner.

THE COMMISSIONER: Recording of sales call, ASIC.0069.0001.014A, exhibit 6.41.

EXHIBIT #6.41 RECORDING OF SALES CALL (ASIC.0069.0001.014A)

THE COMMISSIONER: Transcript of sales call, exhibit 6.41, ASIC.0069.0001.0492E exhibit 6.42.

EXHIBIT #6.42 TRANSCRIPT OF SALES CALL, EXHIBIT 6.41 (ASIC.0069.0001.0492E)

MS ORR: Now, some of the other issues identified by ASIC in relation to sales practices in that March 2017 letter related to misrepresentations about payment arrangements. Do you recall that?---Yes.

And there were a few aspects to that. One of them was that there was a failure to clearly explain to customers before procuring their agreement to proceed with an application for the policy precisely when the first premium would be due, and instead making vague statements to the effect that no payments are due on the day the insurance policy is issued?---Yes, I've heard that.

You've heard that in the calls that were sent to ASIC?---Yes.

And ASIC was also concerned about quoting premium prices in weekly terms rather than on a monthly or annual basis consistent with the payment frequencies that were permitted under your direct debit arrangements, so as to under-emphasise the extent of the financial liability for the customer?---I – I'm aware of ASICs view on that, yes.

And that was also conduct that you've observed in listening to those phone calls?---Yes.

And another concern that ASIC had on this front was that ClearView was representing to consumers that the premiums owing under the policies never go up with the customer's age without a qualifying explanation that ClearView was entitled to change the premium rates at any time upon giving notice?---Yes. I'm familiar with that.

So you accept that all three of those misrepresentations in relation to payment arrangements are evident from the batch of 42 calls reviewed by ASIC?---Yes.

And another issue identified by ASIC related to ClearView putting pressure on customers to sign up immediately?---Yes.

ASIC saw ClearView sales agents persisting with their sales pitch rather than offering customers an opportunity to be contacted at a later time or date when they were told by the customer that the customer wanted to read and consider the PDS or consult with a family member or a friend, or otherwise consider their position before purchasing?---Yes.

So you observed within those 42 calls sales agents pressing through to a sale, despite those objections by the customer?---Yes.

And ASIC also observed instances of collection of a customer's personal information before they had confirmed their agreement to proceed with the purchase?---Yes.

Including bank details?---Yes.

You observed that in those calls as well. And there was also an issue relating to misrepresentations on the terms or application of the policies. Do you recall that?---Yes.

And ASIC saw instances of ClearView failing to tell customers that the policies didn't apply to pre-existing conditions before they secured their agreement to proceed with the policy?---Yes. ASIC raised that. I – we – we did have some discussions about that because most of our contracts didn't have pre-existing exclusions that apply to a lot of other direct products, but to the extent that they were relevant, they weren't – they weren't mentioned.

Okay. So you accept that each of those problematic – highly problematic sales practices were evident from the ClearView sales calls that were reviewed by ASIC?---Yes.

Thank you. Now, in mid-2016, just after ClearView provided copies of those 42 calls to ASIC, ClearView decided to do its own review of those 42 calls, didn't it?---Yes.

And in the course of that review, ClearView listened to many of those calls for the first time?---Yes.

And only 10 of the 42 calls had previously been monitored as part of ClearView's quality assurance processes?---That's correct.

And of those 10 calls that had been listened to previously, do you know how many of them failed ClearView's quality assurance processes?---I don't recall sitting here right now but I know it wasn't many. It was a small number.

And the 10 calls were reviewed again in the further review that ClearView did?---Yes.

And at that time, ClearView detected three breaches that hadn't been detected in the first review?---Correct, yes.

And ClearView's group compliance manager asked that an incident report be prepared once she worked that out?---Correct.

Do you recall that?---Yes.

Now, can I take you to the incident report which is CVW.8000.0002.1085. This is the incident report, Mr Martin?---Yes.

And we see there that in response to the question How Discovered and Root Cause the person who completed the incident notification form said:

> *All 42 calls were listened to and assessed against our current quality assurance process. 37 of these calls had file notes against them. These notes were simply referencing points within the call and did not necessarily indicate an indiscretion or a breach.*

?---Yes.

Do you consider that that statement about the notes being simply referencing points within the call minimised the problems that were evident in these calls?---I think it was an attempt to minimise and not address the issue.

Attempt to minimise in a breach notification form?---Yes.

I tender that document, Commissioner.

THE COMMISSIONER: ClearView incident report concerning incident between May '15 and December '15, CVW.8000.0002.1085, exhibit 6.43.

EXHIBIT #6.43 CLEARVIEW INCIDENT REPORT CONCERNING INCIDENT BETWEEN MAY '15 AND DECEMBER '15 (CVW.8000.0002.1085)

MS ORR: Could I ask, Mr Martin, that you look at CVW.8000.0002.9179. This is an email chain. Have you seen this email chain before, Mr Martin? It's an email from Thomas Flint, who we see from the final page in the chain, 9181, was the ClearView Operations Risk and Compliance Manager. And he sent an email to David Charlton, who's the general manager of direct?---Yes.

Which provided what he described, at page 9179 – if we could bring that back up again – at the top of the page as some clarification to the ASIC review. Do you see that?---Sorry, which – which – which part of the document?

Right up the top:

> *Hi Simon, just providing some clarification to the ASIC review.*

And Mr Flint said that upon ClearView's review of the total sample of calls, only 18 had an issue. Do you see that? A few lines down before the dot points?---Yes.

And:

> *Nine of the 18 the issues related to product coverage misrepresentations (ASIC would not detect as these are technical definition nuances).*

?---Yes.

And:

> *Six of the 18 could be determined as potentially being unaware of taking out the product –*

That's the customer:

> *...unaware of taking out the product and relate to "soft-sell" or "push payment" practices (in all cases client clearly expresses authority to proceed with purchase when asked).*

Do you see that?---Yes.

And then:

> *One of the 18 calls failed ClearView's strict quality assessment due to a privacy prohibition.*

?---Yes.

And in Mr Flint's words:

> *Two of the 18 calls fall into unconscionable conduct territory which will raise the ire of ASIC.*

And we see that he says that in respect of those two calls,:

> *One of the customers indicated financial difficulty and the other suggested they were on a disability pension and had trouble reading or writing.*

?---Yes, I see that.

So this was the commentary within ASIC as a – sorry, within ClearView as a result of ClearView's review of the 42 calls that ASIC had called for?---Yes, this was, as you said, the – between people in ClearView direct. I am not sure why it says "Hi Simon" at the top of that.

Yes?---But that was between – it almost looks like something drafted for the MD that never got there. But, yes, that's between internally within the direct team.

What do you think when you read this assessment of the calls that was made internally by ClearView. You've listened to them?---Yes.

What do you make of this?---The word "appalling" comes to mind.

Are you referring there to the response within ClearView?---I'm referring to the fact that those calls exist the way they are and the language being used there almost to minimise the consequence of it all.

So you agree that there was minimisation within - - -?---Within - - -

- - - ClearView?---Within the ClearView direct team.

- - - of the problems that were evident in these 42 calls that ASIC was also reviewing?---Correct.

I tender that document.

THE COMMISSIONER: Emails concerning ASIC review breakdown 28 June '16, CVW.8000.0002.9179, exhibit 6.44.

EXHIBIT #6.44 EMAILS CONCERNING ASIC REVIEW BREAKDOWN DATED 28/06/2016 (CVW.8000.0002.9179)

MS ORR: So this is June 2016 when the internal discussion within ClearView was at this stage. And then in late July 2016, you become involved in this because ClearView's group compliance manager reports to you on another review of the 42 calls that has been undertaken by ClearView's legal team. Do you recall that?---Yes. The ClearView head office, legal and compliance team basically reviewed this and did their own sample review as well, and came to some unattractive conclusions.

Well, the legal team's conclusions were strikingly different to the conclusions that we see in this email, weren't they?---Yes. Yes.

All right. Could I ask that you look at CVW.8000.0002.9176. Now, this email is in very small print and we might need to blow it up. If we could stay with 9176. And blow up the email that starts at the bottom of the page from Jacqueline Scully to you on 25 July. So the legal team – perhaps if we could also have the – the information that I'm going to ask you about is in this part of the first page and the second page. It's difficult to have both brought up on the screen because of the size of the font but do you recall this email that was sent to you, Mr Martin?---Yes, I do.

And do you recall that the legal team identified 32 issues with the calls?---Yes.

And they found that – this will – it will help if I bring up the second page at this point. 9177. They found that 40 per cent – if we could focus in on the top part of that second page. Do you see the dot point under the table:

> *Our analysis of the results of the table above, 40 per cent of the total sales calls included agent conduct that could be construed as misleading, deceptive or unconscionable which are potential breaches of the ASIC Act.*

?---Yes, I do.

And in addition:

> *31 per cent of calls breached other mandatory requirements that are considered essential features of call scripting to ensure ClearView avoids potential deceptive sales practices, so that customers are aware they are immediately purchasing an insurance product and do not have the features of that product misrepresented.*

Do you see that?---Yes.

Now, having received this email from the group compliance manager, you recognise that these issues might have a broader application, didn't you?---I was – recognised that there was – could be serious problems with this, yes.

So you sent this email on – if we go back to the first page, 9176. We can see that you sent this email on to Simon Swanson, the managing director. That's the email in the middle of the page?---Yes.

And you said that it was unclear how these results may or may not reflect a sample of calls to other – I will just wait till it's blown up – the second paragraph there. :

> *It's unclear how these results may or may not reflect a sample of calls to other, perhaps more affluent, postcodes.*

Now, that's because the 42 calls were identified by ASIC by reference to postcodes, weren't they?---Yes, they were specifically identified for indigenous postcodes.

Yes?---And it was for the injury cash product in particular.

Yes?---So it was a – a subset of - - -

You're concerned and you're expressing concerns in this email that:

> *The results could reflect a sample of calls for other postcodes as well. That said to the extent these reflect similar issues with sales to low socioeconomic customers in general, the results are concerning and would seem to amply vindicate the last year decision to pull back and eventually vacate this market segment.*

?---Yes.

And then you said:

> *Nonetheless, it is perhaps unclear why some of the issues discussed below would not arise to some extent in a sample of calls to any type of customer, affluent or otherwise.*

?---Correct.

So we see there your concerns that these were broader problems that were permeating sales made by ClearView sales agents across the board?---Yes.

All right. I tender that email chain, Commissioner.

THE COMMISSIONER: Emails concerning group compliance review, ASIC injury cash calls, CVW.8000.0002.9176, exhibit 6.45.

EXHIBIT #6.45 EMAILS CONCERNING GROUP COMPLIANCE REVIEW, ASIC INJURY CASH CALLS (CVW.8000.0002.9176)

MS ORR: Do you accept, Mr Martin, that the behaviour displayed by ClearView sales agents in the 42 calls was deeply problematic?---Yes.

And do you accept that in some of those calls, the ClearView sales agents were engaging in misleading and deceptive conduct?---I would describe it as that, yes.

And do you accept that in some of those calls, the ClearView sales agents were engaging in unconscionable conduct?---Yes.

Now, were the issues that were seen in those 42 calls in fact representative of broader compliance issues that ClearView was having at the time?---We know now that they were, yes.

And by the time that ClearView gave these calls to ASIC, ClearView had been aware of mis-selling issues within the direct sales business for many years, hadn't it?---Not – not to – well, when you say "ClearView", ClearView Group, I don't think, understood that this was happening at the time. We now know that it was happening but we didn't understand that at the time.

Well, ClearView set up a compliance – a direct compliance forum in February 2014, didn't it?---Yes.

And after that direct compliance forum was set up, it became clear very quickly that there were consistently high breach rates across the business, the direct business?---There – there was a level of breach. When you say "high" - - -

Well, higher than – you had a target breach rate, didn't you, an acceptable level of breaches?---Well, a – a level that we wanted to keep below, yes.

And do you recall what that was?---It was about four per cent, I think - - -

Yes?--- - - - was what they were working towards.

So your tolerance was four per cent noncompliance?---The four per cent was meant to recognise that – the – the nature of these calls are a human process, they're conversational. It is – it is difficult to stick to every element of a script. The four per cent was meant to be that the QA was set on a fairly harsh basis, or we thought it was, and that those – that there could be some – some level of noncompliance – well, a breach simply because it's a human process. There were – it was meant to allow for the fact that there would be new agents involved on calls. We would also have agents that potentially were agents that could be under – what do you call it – performance management as employees. So it was accepted that zero – zero is an aspirational thing but we accept there would have to be some level of – of – of breach incurred, but not – not to the level of this, no.

You didn't want it to be more than four per cent?---Correct.

But it was more than four per cent consistently after the time that forum was set up. Do you accept that?---I – my recollection it was early on, but I thought that my – my recollection was it was below that for most of the time, that the reported breach rate was below that for most of the time of the forum.

You recall it being higher early on, did you say?---Yes, in the first few months.

Yes. So the first quarter in which the forum operated, Your Insure, for example, was consistently recording compliance breach rates above the four per cent target, wasn't it?---Yes. Yes.

By - - -?---Sorry – I would say my reference to "below" was actually – I was thinking specifically about the ClearView direct business rather than the Your Insure business but yes, Your Insure was above that, yes.

Yes. Now, by 2017, a decision had been made that the sales process in the direct sales business was not fit for purpose. Do you recall that?---Sorry – sorry, what was that date again?

2017?---Yes.

And if we look at CVW.5000.0001.2893, we see the February 2017 results from the Direct Risk and Compliance Committee?---Yes.

Have you seen this document before?---Yes.

Now, if we turn to 2895. We see a distinction there between flagged agents and standard agents. Can you explain the difference between those people in the table?---Yes. Under the QA process that was designed, it – the objective of it was to put more energy and oversight on agents that were described as flagged. They would be typically new agents who were new to the call centre, during their early – early days while they were essentially on P-plates, and other agents who had had a series of breaches in the past that were being monitored to check on them.

Okay?---So we – we tilted their energy and the available sample size to those agents, and I think, typically, we would have something like 60 to 80 per cent of their calls would actually be monitored, their sales would be monitored, and then agents who were otherwise believed to be reasonable or, you know, doing well, we would put a lower amount of review on.

So the flagged sales agents were either new sales agents or sales agents for whom compliance concerns had already - - -?---They had been - - -

Already occurred?---Yes. We had a concern.

That put them in a flagged category. And the others were standard – described as standard in this document?---Yes.

And we see that the average quality assurance score for the standard agents was 69.72 per cent?---Yes.

And for the flagged agents, it was 69.22 per cent?---Yes.

And the breach rate for standard agents was 20 per cent?---Yes.

And for flagged agents it was 27.94 per cent?---Yes.

Which gave a total average breach rate of 25.81 per cent?---Yes.

So by this time, it was clear that a quarter of all calls that were being monitored of ClearView sales agents involved a breach?---Yes. Well, this was – if I could just offer one little piece of explanation, this was just after we changed all the scripts for the anti-hawking matter that ASIC had raised at the end of December. And one of the – one of the key drivers of – of breach here was agents who were still struggling with some of the elements of that.

Agents - - -?---That said - - -

Agents who were still committing breaches of the anti-hawking provisions?---They weren't ticking all the boxes for the new – the non-solicited requirements that we had put in, they were – they were tripping over them. I – that's part of why that was high. Having said that, it – it was also just high at this point, yes.

It was very high, wasn't it?---It was very high, yes.

You had a four per cent target, but we see here that the average breach rate across both the people you had identified as problematic and the people you hadn't identified as problematic was 25.8 per cent?---Yes.

All right?---It was unacceptable.

It was unacceptable?---It was completely unacceptable. And that - - -

And these - - -?---That triggered, really, the whole – that was one of the events that triggered the whole wind-up from that point.

Yes. Well, we see from this page that the breach rate for flagged agent exceeded the standard agent breach rate but not by much, did it? The problems were just as bad for your standard agents as for your flagged agents?---Yes, it was. That's right. They were both struggling at the time with the anti-hawking but it was not good anyway, yes.

I will tender that document, Commissioner.

THE COMMISSIONER: The risk and compliance committee February 2017 results CVW.5000.0001.2893, exhibit 6.46.

EXHIBIT #6.46 RISK AND COMPLIANCE COMMITTEE FEBRUARY 2017 RESULTS (CVW.5000.0001.2893)

MS ORR: I want to put to you, Mr Martin, that the compliance issues that were identified in the 42 calls that were requested by ASIC were representative of much broader compliance issues within ClearView?---We realised it about this time, yes.

And they were issues that ClearView had been dealing with for a number of years?---It would appear that they were almost endemic within the process for a number of years, yes.

And they were issues that ClearView continued to struggle with in 2016 and 2017, even after the engagement of ASIC?---Yes.

Now, I want to put to you that there were three different causes for these systemic compliance issues, and I want to ask you some questions about each of these. The first was the remuneration structure that you had for your sales agents. Do you accept that that was one of the causes?---That would be a driver, yes.

And the second was a culture within ClearView that tolerated aggressive sales tactics at the cost of compliance?---I would just qualify that to say culture within ClearView direct - - -

I see?--- - - - that – that would appear to have had that culture, yes.

And the third is large-scale deficiencies in ClearView's compliance program?---The – the quality assurance program in ClearView direct was inadequate, yes.

Okay. Could I ask you some questions firstly about remuneration then?---Yes.

ClearView sales agents who were selling life insurance via direct channels had a fixed and a variable component to their remuneration, didn't they?---Yes.

The variable component was commission?---Commission, yes. In essence it was a bonus but commission, yes. Effectively a percentage of sales, yes.

Yes. And that was paid on a fortnightly basis?---As I understand it, yes.

And prior to 2016, the commission structure was a reasonably standard volume-based commission structure. Is that right?---Yes, it was.

And the amount of commission paid depended on the percentage of the sales target that the sales agent met?---Yes, it was.

And in the period from 2013 to '16, if a sales agent met 100 per cent of their fortnightly sales target they got a commission payment of between 600 and $850 a fortnight?---That – that sounds familiar, yes.

Yes. This is from your statement?---Yes. I would have to check the detail but it sounds familiar, yes.

Yes. Now, in the period from the start of 2013 to August 2014, you tell us in your statement that if a sales agent met 250 per cent of their fortnightly sales target, they got a commission of $8000?---That was a theoretical possibility, yes.

Well, that was – that was the structure, wasn't it?---Yes. Yes.

If they achieved 250 per cent of their target, they got an $8000 commission that fortnight?---Yes.

Do you think that that was a driver of inappropriate behaviour, Mr Martin?---It was definitely a contributor to it, yes.

Well, in August 2014, the $8000 was reduced to $5015 a fortnight. Do you recall that?---I will – yes, I will take your word.

Why, was that in recognition of the fact that the $8000 possible commission was driving poor behaviour by the sales agents?---I would have – I – I don't recall exactly why but I presume it was to probably bring back some of the – what do you call it – excess in the system, yes.

The excess in the system?---Yes. As a – well, as you said, being able to earn $8000 or – or offering that is a large amount.

That was incentivising aggressive sales tactics - - -?---Yes.

- - - to make as many sales as possible at whatever cost, wasn't it?---Yes.

Then in March 2016, ClearView moved to a different type of commission structure which was a more complex commission structure?---Yes.

Why did ClearView do that?---That came out of the end of '15 when we closed the Your Insure business and the – I think, as we started talking about earlier this morning, when we had unsatisfactory cancel from inception rates, very high lapse rates, it was all part of a program to wind back incentives at that stage, and trying to encourage the sale agents to take more responsibility for the quality of the business and encourage them to write better business. It was all part of trying to improve the quality of the business that was being written at the end of '15 into '16.

But the new Commission structure still rewarded sales agents by reference to volume of sales?---Yes.

There were some additional factors that went into the amount of commission paid. Is that right?---Yes.

There was a quality assurance rating?---Yes.

And there was consideration given to rates of cancellations from inception and dishonours?---Yes.

And there was also consideration in the calculation of the channel of lead. Why was that there?---I – I can't actually answer that question. That was a – a – I don't understand why there was a slight difference between the ClearView channels and the other channels. I don't recall why it was there.

I see?---It doesn't make a lot of sense to me.

There were three gate openers that were introduced at that time?---Yes.

Prior to that time, there were no gate openers, just a sales target?---That's correct.

But from March 2016, there was a financial gate opener?---Yes.

And that meant that an agent was only eligible for commission if they wrote a certain amount of annualised premium?---Yes.

And they also had to sell a certain number of policies per fortnight?---Yes.

That was part of the financial gate opener. There was a quality assurance gate opener?---Yes.

How did that one work?---That meant they had to have a – a rating that said – I forget what the per cent – was it 60 or 70 per cent was absolute minimum of calls that had absolute no – no issues with them, not only not breaches but met every internal process that ClearView had for the calls.

Well, the gate opener started the quality assurance gate opener started as requiring a quality assurance rating of 70 per cent or more for about six months, but then from 30 November 2016, it was changed to only require a quality assurance rating of 60 per cent. Do you know why that happened? Were sales agents finding it too difficult to meet the 70 per cent target for quality assurance?---I believe when I was preparing for this, there was mention of some changes to the quality assurance process at that stage and it was toughened up so they changed it a bit. I – it's not a – it's not something I would have done and I'm – I'm not sure that I had visibility of it at the time.

Well, they didn't toughen it up, they made it easier, didn't they, by taking the - - -?---No.

- - - score that you needed to get down from 70 per cent to 60 per cent. Is that right?---No, my understanding was the quality assurance process itself and the checklist was expanded and had more requirements on it. So it was harder to pass with a fully clean skin, so to speak, as I – my understanding from what I've seen in the material, that that was the reason why it was done. As I said I wasn't necessarily aware of this at the time.

All right. So accepting that it became harder to pass, do I take from that that your quality assurance requirements were more rigorous and that you were taking greater care with whether your sales agents were complying with the law?---And internal - - -

And your own requirements?--- - - - requirements. Yes. That's – my understanding was that the quality assurance process itself was toughened up at that point.

But in - - -?---I know - - -

To counterbalance that - - -?---Yes.

- - - you then dropped the score that was required from 70 to 60 per cent?---As I said, I – I wasn't – I would not have done that myself. I'm just saying my – what I've seen within ClearView direct, that was the rationale that they had. I'm only answering the question why they did it. I'm not saying it was a good idea.

Do you think it was a good idea?---No.

Yes. And there was finally a cancellation from inception gate opener. Can you tell us how that one worked?---Yes. So that was the requirement that if an agent had – had written business that had more than a – a 17 per cent or – 27 for ClearView, more than a 17 per cent cancel from inception rate, then that meant the – the agent wouldn't have got the commission for the – for the – for the fortnight.

So there were different tolerances for cancellation from inception rates depending on the channel, weren't there?---Yes, there were. And, as I said before, I – I'm not sure that I understand exactly why we tolerated 27 per cent for – for ClearView. I wouldn't have tolerated that, because at that point ClearView is not making money at that point. I don't even understand it.

So there was a much larger tolerance for cancellations by customers in the outbound sales channel, the ClearView sales agents than in any other channel wasn't there?---ClearView direct seemed to have done that.

So more than a quarter of people to whom the agent sold policies could cancel the policy before any premium was deducted without affecting the agent's eligibility for commission?---Yes.

Was that acceptable?---Not to me.

Now, you tell us in your statement that the average proportion of variable remuneration to fixed remuneration for the sales agents across the three years, 2013 – I'm sorry, 2014 to '16 was generally about 30 per cent?---I will - - -

In paragraph 210 of your statement, you tell us that it was 29 per cent in 2014, 32 per cent in 2015, and 29 per cent in 2016?---Sorry, I was remembering the number in its 20s, but, yes, 29, sorry. Yes.

THE COMMISSIONER: What's the comparison? Fixed to variable?

MS ORR: Yes.

THE COMMISSIONER: Fixed is 30 per cent of variable, is it?

MS ORR: You tell us, Mr Martin? And to make sure I haven't misinterpreted the figures, what is the 30 per cent, fixed or variable remuneration?---My understanding is that of – of the total remuneration, 32 per cent was variable, which means 68 per cent would have been fixed.

Yes. Thank you. Now, ClearView considered its commission arrangements to be an important feature in attracting direct sales staff, didn't it?---Yes.

And in motivating them to make sales?---Yes.

The commission that a sales agent could achieve was uncapped, wasn't it?---Yes.

Do you think that was a desirable structural feature of the commission model, Mr Martin?---Given the nature of the business, no.

We see from ClearView documents that it was regarded as driving a high performance sales culture?---Yes. I've seen those comments.

And the more you write, the more you earn?---Yes.

And by at least early 2017, ClearView had concerns about whether the balance it had struck between fixed and variable remuneration was working?---So when was that?

Do you agree with that?---When was that date?

From at least early 2017, ClearView had concerns about whether the balance it had struck between fixed and variable remunerations for its sales agents was working?---Sorry, did you mean '17 or '16?

Well, do you accept that that was - - -?---By '17 that was - - -

- - - by 2016?---Sorry, we changed the model, as you said, in March '16 to bring in QA. By 2017 – by early '17, Ms Orr, I – I – I was in the mindset that this business was being shut. So I – you can – some of these details, I – yes. I – I don't recall that it was changed further in '17 although that rings a bell.

The reason I referred to early ’17 is that by that point your new commission structure had been in place for some time?---Yes.

But it was still not resolving the issues with poor sales agent behaviour, was it?---No.

And we see from internal assessments of the direct sales business, we see comments like this, which I can bring up on the screen if it assists:

> *That the historic sales agent commission structure has been built with a relatively minor disincentive for compliance breaches and only applies to agents who are meeting a minimum level for sales. There has historically been no monetary disincentive to not breach for agents who are not meeting this minimum level of sales.*

Do you agree with that - - -?---Yes.

- - - assessment of the model?---Yes.

All right. Now, I want to turn from remuneration to the culture within ClearView, and you were careful to distinguish between the culture in ClearView more generally and the culture in ClearView direct when I asked you about this before. What I want to put to you was that there was a culture, at least in ClearView direct that tolerated, if not encouraged, aggressive sales tactics at the cost of compliance?---It – yes. I would – in retrospect we’ve now understood that, yes.

Could I just take you to some scripts that your sales agents used to sell products. There were different scripts for each type of product. Is that right?---Yes.

But there were common elements across a lot of the scripts?---Yes, the scripts, to my recollection, are very similar except the product features and some of the lead-ins are different.

So I want to take you to the injury cash product scripts that were provided to ASIC as part of the anti-hawking investigation, and suggest to you that they show that it was part of ClearView’s sales processes to try and get a potential customer to disclose enough information about their life to build trust with the person and to build a need on the part of the person for the product. Do you agree with that?---Yes.

Can I take you to ASIC.0052.0004.0594. Now, this is a script to be used in an outbound telephone call to attempt to sell a person the Bupa injury cash insurance product?---Yes.

And we see at 0594 that it directs the sales agent to discover the needs of the customer under the heading Discovery:

> *What is important to them. Spend four to five minutes to build trust and need.*

?---Yes.

Can you explain what "building need" means in this context?---I – I would understand that to mean through conversation with the client, to try and get them to turn their mind to – well, what their insurance needs would be, and to consider the product.

Is that associated with the notion that we spoke about earlier of effective disturbance?---Well, that's in the – as I said, yes, within the initial engagement to get the customer to turn their needs to their – their risk exposure and their families, to then consider the product, yes.

And then at 0596 we see that sales agents were advised prior to the close of the call to:

> *Recap on what was important for the customer linking them to the product.*

?---Yes.

Continuing:

> *Financial, children, partner, protection, etcetera.*

?---Yes.

Why was this done?---I would imagine as part of the sales process that was to help reinforce the – the reason why the customer had bought the product and trying to improve their engagement on the whole sale.

I will tender that script, Commissioner.

THE COMMISSIONER: Bupa injury cash insurance script, ASIC.0052.0004.0594, exhibit 6.47.

EXHIBIT #6.47 BUPA INJURY CASH INSURANCE SCRIPT (ASIC.0052.0004.0594)

MS ORR: Now, while we're looking at the close in this part of the script, we see that this script, like many other scripts within ClearView, frequently use the language of "confirm" with the customer in the close. Do you see that?---Would you - - -

Continuing

> *Now, customer, can I confirm your direct debit details.*

?---Yes, I see those words

Was that deliberate, that throughout these scripts the word “confirm” was used at points when something was being asked for, to convey an impression that it had already happened, that something had already been done and was just being confirmed?---Sorry, I would have to look at the whole script a little bit more carefully. When was it – when was – when did the customer actually say yes to the application in this script?

I will – I will let you look at the previous pages, if that assists, at 0595 and 0596. 0596 is the page we have. Perhaps if we could also bring up 0595?---Yes, okay. Because what I’m just referring to is under the quoting section is where it seems to be that there’s a discussion about an application and everything has happened. So at this point it should be confirming the sale rather than - - -

But it’s not confirming the customer’s payment details, is it? The - - -?---Sorry, I - - -

The request is for the payment details:

> *Could you provide me with your direct debit details?*

?---It – yes, sorry, you’re right. That probably would be better wording.

I am just wonder if this is a deliberate choice that the language of “confirm” is used all the way through these scripts often at points where there is nothing yet to confirm?---I’ve not read it that way in the past but now that you point it out, given the other things we’ve heard on calls, that is not inconsistent with that.

Do you accept that in a number of these scripts, a key piece of information, which is that the first payment is likely to be – or will be debited within 48 hours is not given until after the customer has provided their payment details?---Yes, I agree that that’s where it occurs, yes.

Is that fair, that the customer hands over their payment details before they appreciate that within 48 hours the first premium will be deducted?---It’s a curious order but yes.

Is it fair to the customer? Does it allow them to properly assess the financial impact of the decision that they’re making?---It would have been better to discuss the whole thing upfront before you got into that, I agree, yes.

All right. The scripts that were used by ClearView sales agents were generally authorised scripts like this one. But there were also unauthorised scripts that were being used at different points in time, weren’t there?---Yes, I’m aware that they were discovered twice.

Well, let's go to one of those that was discovered in early December 2015. Could I take you to CVW.5000.0001.3231. Now, this is an email chain referring to the discovery of one of these scripts. If we go to 3232 we see the script as an attachment to the email. If we could just take that page down because I think there should be a redaction within it. But we're looking for the page following which is 3232.

THE COMMISSIONER: If it's an attachment it has probably gone in as a separate entry I suspect as CVW.5000.0001.3232. If we search on that.

MS ORR: Thank you, Commissioner.

THE COMMISSIONER: Thank me when it comes up, Ms Orr, not before. More accurately, if it comes up.

MS ORR: Do you recall this script, Mr Martin? Have you seen it before?---Yes, I've seen it. I've seen it.

And do you recall that it set out three different forms of close, a close being the final part of the call, to close the sale?---Yes.

And do you remember that there were three types of close, one called the "is it fair enough close", one called "the partner close", and the other one called the "I want to read it in black and white close"?---I believe – yes, I – I know the scripts you're referring to. I can't recall the exact words of them. I was just appalled by them.

You were appalled by them, did you say?---Yes.

So you remember the three different types of close. Hopefully they will appear on the screen to assist you in a minute. But you said you were appalled by them. What was it that appalled you?---Well (a) their existence when they're unauthorised. Why they were there, I don't know. The language in it was – yes, in a – just – I just found it challenging and odd language. And it didn't seem – it didn't do what it was supposed to do under the script.

It was really three different ways of managing particular customer objections, wasn't it?---Yes. Yes.

So perhaps if I read to you the is it fair enough close. :

> *Bob, I have three quick questions I would like to ask you, because when you do receive everything and read it, or even speak to your partner, these are still going to be the three questions you will still ask yourself. Now, if you answer no to all these three questions, I feel you're still not ready* to take out cover. *But on the other hand, if you do answer yes to all these questions, I will get you involved today, because you understand how it works. Is that fair enough? Questions: (1) is the dollar figure per week affordable for you. Yes or no. (2) did you like the benefits? Yes or no. Which one stood out the most? (3) will*

> *your family benefit from this $500,000 if something happens to you? Yes or no. Can you please confirm you would like to proceed to purchase?*

?---Yes.

That was one of the methods - - -?---Yes.

- - - that had been in use by sales agents for a few months when this script was detected?---Yes.

The partner close:

> *Bob, I know you're serious about protecting your family because we've been on the phone now for 20 minutes. When you speak to your partner, you know him or her much better than me, but hand on your heart, will your partner object to this wonderful gift that you chose to give to them in the advent that you were not around to take care of them any more? Can you please confirm you would like to proceed to purchase?*

?---Yes.

That was another technique that had been in use by ClearView sales agents for several months before this script was detected?---Yes, some of the sales agents, yes.

And the final one, "I want to read it in black and white", which is an objection to be used when a customer says "I want to read the details":

> *Of course you do. I am so glad you mentioned that our process allows you to do that. We cover you today, give you a policy and promise to pay your family if anything happens to you. It takes about three to five working days for you to receive all your documents in the mail and we encourage you to take your time going through everything because there's nothing malicious in it that would stop you from having cover with ClearView. It is a pay as you go cover, so if you find that this cover doesn't suit you, then you're more than welcome to stop it. You're not locked into anything. However, I can't imagine why you wouldn't keep this cover based on what we've discussed, but the controls are always in your hands. Can you please confirm you would like to proceed to purchase?*

?---Yes.

What would you like to say about those techniques that were being used by some of your sales agents in 2015?---I think I would describe them as almost classic cornering techniques that you – sales techniques where you get somebody to say yes, yes, yes, and sort of corner them into a purchase.

It was deeply inappropriate, again, wasn't it?---Yes, it was inappropriate.

This is pressure sales tactics?---Yes.

Yes. Now, there was an assessment made by Mr Coshott, Clearview's head of operations that the use of the script appeared to be widespread and frequent. Have you seen that?---Yes.

The script was developed by one of the ClearView business managers?---Yes.

And the name of that business manager is the subject of a non-publication direction. I'm just going to refer to him as the business manager. And the use of the script caused significant concern within ClearView, didn't it?---Yes.

Now, could I take you to CVW.8000.0001.0181. While that's coming up, I'm in the Commissioner's hands as to whether we tender the document that I was unsuccessful in bringing up on the screen. I have read the document into the transcript.

THE COMMISSIONER: It would be as well to have the document if we can. It's – I think there's a hard copy available, Ms Orr. Email concerning script copy and attached scripts, plural, Ms Orr, is it?

MS ORR: One script.

THE COMMISSIONER: One script and attached script CVW.5000.0001.3231 and its attachment, exhibit 6.48.

EXHIBIT #6.48 EMAIL DATED 26/11/2015 CONCERNING SCRIPT COPY AND ATTACHED SCRIPT (CVW.5000.0001.3231 AND ITS ATTACHMENT)

THE COMMISSIONER: The email is dated 26 November '15. You're now going to CVW.8000.0001.0181. Is that right?

MS ORR: 8001.

THE COMMISSIONER: 8001.

MS ORR: 0001.

THE COMMISSIONER: Zero - - -

MS ORR: 181.

THE COMMISSIONER: I am dyslexic by this stage of the day, Ms Orr. Yes.

MS ORR: I don't think it's you, Commissioner. Now, you had accepted, I think, Mr Martin, that there was significant concern within ClearView about the use of this script, and I was going to take you to CVW.8001.0001.0181. Now, Mr Coshott was the head of operations. And we see that he framed his concerns in the bottom of the page:

> *Aside from appalling grammar and a few statements about malicious intent which I'm sure legal would like to be comfortable with, I am worried that this is a cooling off script and that it may be an unauthorised script being passed around the floor leading to high CFI.*

Cancellations from inception?---Yes.

And in response we see that Mr Julius, a direct sales manager – the direct sales manager? Is that - - -?---Yes, he was – he was – just – I'm not sure exactly at this date what his title was but he was a senior person.

Direct sales manager:

> *Mate, that is terrible. This is not a signed-off script. Nor have I seen, nor am I happy with the content. Mate can you share –*

I won't read that next part:

> *... and kill off any scripts that may be floating around. Sonja and I are having a scripting clean up and location made for scripts that are signed off in the next two weeks.*

?---Yes.

Yes. I tender that email, Commissioner.

THE COMMISSIONER: Emails of 3 December '15 concerning script CVW.8001.0001.0181, exhibit 6.49.

EXHIBIT #6.49 EMAILS DATED 03/12/2015 CONCERNING SCRIPT (CVW.8001.0001.0181)

MS ORR: Now, two weeks later, Mr Julius took a different view to this. Can I show you CVW.8001.0001.0252. And we see here, if we turn to 0253, the following page, we see that Mr Coshott emailed Mr Grant Elliott. Perhaps if we could have both pages brought on the screen at once. Mr Elliott was ClearView's head of contact centre delivery. Do you see that? Now, we see that he emails in relation to an extremely disappointing display of behaviour from someone. Now, you know who that person is and it appears to us to be the same business manager who authored the scripts. Is that correct?---Yes. That's – yes, correct.

So Mr Coshott says:

> *I am quite distressed by the experience. I will be considering my options with regards to what has transpired. The person has stated openly on the floor to me three times that my lack of support for the sales team is disturbing.*

?---Yes.

Continuing:

> *I await a response from you*

Said Mr Coshott. Now, Mr Elliott involved Mr Julius in the discussion and we see Mr Julius' response on the left-hand page:

> *I am aware of how this came about and from my view it is extremely poor leadership from James with his continuous approach to find anything he can to smear the hard work of the sales floor. Regarding the issue at hand is around objection handle points once again, with James more concerned with raising issues than understanding our process. Sorry, I am not in today to back my sales floor which I seem to have to do each time I'm away from work.*

Now, Mr Julius, we see here, was defending the sales floor's aggressive objection handling, handling of objections made by customers in sale calls. He was defending them from critique – from Mr Coshott, the head of operations?---Yes.

Was that appropriate?---No.

All right. I tender this email, Commissioner.

THE COMMISSIONER: Emails 18 December '15 between Coshott, Elliott and Julius CVW.8001.0001.0252, exhibit 6.50.

EXHIBIT #6.50 EMAILS DATED 18/12/2015 BETWEEN COSHOTT, ELLIOTT AND JULIUS (CVW.8001.0001.0252)

MR CHESHIRE: Sorry, I note on that on the second page there's various telephone numbers. It's an ex-employee. So it's not as it were a matter strictly for me but I simply raise that for the Commission. I understand that ordinarily it would be redacted but I will leave it up to you.

MS ORR: These documents have been through a redaction process by ClearView. We had understood that these were parts that they did not want redacted. We are happy to further redact the document to remove those details.

THE COMMISSIONER: Very well.

MS ORR: What actions, Mr Martin, were taken against this business manager in relation to the creation of this unauthorised script, or in relation to the conduct that's referred to in this email that's on the screen?---My understanding within the ClearView direct business, not much was done. There was a warning and that was about it.

A warning?---Yes.

Was that - - -?---Was my - - -

Was that an appropriate response, Mr Martin?---No.

What should have been done?---This is very serious. I think this would have to have been at least – well, I struggled with the whole culture that – that surrounds this, to be quite honest, you know, what's the right answer.

That's why I'm taking you to these documents - - -?---Yes.

- - - Mr Martin because of what they reveal about the culture within ClearView?---Yes.

What do they reveal to you?---As you said, this – this reflects a culture within the ClearView Direct that was a full-on sales culture without much regard for customers or – or – or, in fact, the thing I find, you know, even – we didn't make money by doing this stuff. Like, this is sales for sales without actually an economic reward for it either. It's just – yes. I would sack them.

It led to very poor customer outcomes - - -?---Yes.

- - - didn't it - - -?---Yes.

- - - Mr Martin?---Yes.

All right. And this unauthorised script that I have taken you to, that was the second instance of an unauthorised script being circulated amongst ClearView sales agents, wasn't it?---This one was a second one?

The script that I attempted to get on the screen but did not, the one I read to you?---Yes.

That was the second of – of two instances that I think you referred to earlier of unauthorised scripts?---I – there was one in 2015 and then there was one that seemed to have come back at late '16 into '17, yes.

I see?---Yes.

So it was subsequent to the first script that the second script emerged?---Yes.

All right?---Or I think it may have even been the same script.

I see. I see. Now, do you accept that there was a genuine tension between what ClearView's sales team – direct sales team regarded as appropriate and compliant behaviour and what the compliance team regarded as compliant and appropriate behaviour?---I'd say there was quite a disconnect between ClearView direct and ClearView in general, yes.

And that went on for some time, didn't it, Mr Martin?---Yes, it went on unrecognised for some time.

For many years?---Yes, a number of years.

Thank you. Now, I want to turn to ClearView's standard authorised objection handling procedures. We've seen an example of some unauthorised objection handling procedures. But I want to take you to the ones that ClearView encouraged its sales agents to deploy. Could I ask that you look at CVW.5000.0003.5394. So this is a training package. It's a presentation from 2014 relating to the handling of ClearView sales calls. We see from this that it relates to inbound sales calls?---Mmm.

Was there any difference between the objection handling practices across inbound and outbound sales calls?---I – I'm not aware of the – of differences or similarities. These were – sorry, I don't mean to distance myself. They were ClearView direct internal documents that until recently I had not personally seen. So I actually don't know the answer to that.

I see. Can I take you to what this document encourages ClearView sales agents to do to handle customers' objections at 5405:

> *Objection handle how many times on the call.*

Now, objection handle is handling an objection by the customer as to why they may not wish to purchase the life insurance. Is that right?---Yes.

Those statements by a customer in a sales call are treated by ClearView as objections that need to be handled?---Yes.

Continuing:

> *So how many times? A minimum three times. If more is necessary, then more. The difference between a salesperson and a customer service agent is objection handling. This is what I will be looking for on every call.*

And then if we turn to 5406, we see an expansion:

Remember, every time you objection handle, you increase your chances of selling by 50 per cent. If you objection handle three times, you've increased your chances by 150 per cent.

Was this an appropriate message to be giving to ClearView sales agents?---No.

It encouraged aggressive and unfair sales practices, didn't it?---It was unfair sales practices, yes.

Yes. And it was – your sales agents were being trained to engage in unfair sales practices?---Yes.

Yes. And to understand exactly what they were being encouraged to do, I just want to take you to some of ClearView's objection handling scripts. I will tender this document.

THE COMMISSIONER: Inbound sales workshop session 3, objection handling CVW.5000.0003.5394, exhibit 6.51.

EXHIBIT #6.51 INBOUND SALES WORKSHOP SESSION 3, OBJECTION HANDLING (CVW.5000.0003.5394)

MS ORR: Much of the objection handling was designed to get people to sign up and to get them to sign up immediately, wasn't it?---Yes.

Now, if we look at CVW.5000.0003.0614. We see that this is a ClearView document that contains a list of objections which are described as conversation triggers. And the offered suggestion in response. Now, if we look at 0616, we see that the conversation trigger down the bottom of the page is:

I don't want to add anything to my current policy.

And in response, the sales agent is directed to say, amongst other things – if we go over the page to 617 – perhaps if we can have both pages on the screen at once, we will see that the sales agent is encouraged to say – the last paragraph:

The policy also comes with a 14 days cooling off period which gives you the opportunity to review this policy's benefits against what you already have and ensure you have protection against accidental injuries as well.

You see that?---Yes.

So the response sought to use what was essentially a protective feature of the statutory framework, the cooling off period, as a selling feature for a ClearView policy?---Yes.

And some of the objection handling was designed to deal with a situation when a customer asked to have the product disclosure statement resent to them. If we turn to 618, we see the conversation trigger:

> *Can you resend the PDS or info?*

Do you see that there?---Yes.

And the response is, after you have spoken about the product, second paragraph:

> *I can do better than that. What I have gone through with you now is what you would have received in the post.*

And later on:

> *You also get a 14 days cooling off period and you will be fully covered during this time.*

?---Yes.

So why not have a script that tells the sales agent that when a person asks to have a copy of the PDS sent to them, they are to agree to send the PDS and refrain from attempting to sell until the person has received and had an opportunity to consider the PDS?---It should have done.

And some of the objection handling was also designed to dissuade people from speaking with their partner?---Yes.

And taking out cover immediately. You've seen that?---Yes, same sort of techniques.

Yes. So you've seen the documents that show that sales agents were told to say when a customer said, "I need to speak to my partner":

> *I am so glad you see the value in working together and that you realise the importance of having this in place with your partner. I am curious, when you say you need to speak to your partner, what that might mean.*

Do you recall that?---I remember words to that effect when I read these things recently, yes.

And there was a tip in that same document:

> *Resell the benefits in an effort to empower the customer to make a decision without having the need to consult his or her partner.*

?---Yes.

Why not have a script that tells sales agents that when someone wants to discuss a purchasing decision with their partner, the call should be terminated to permit them to do so?---It should do. I have no argument.

All right. Now, can I play a short extract to conclude - - -

THE COMMISSIONER: Do you want to tender that document?

MS ORR: I do, I'm sorry, Commissioner.

THE COMMISSIONER: ClearView injury cash insurance conversation triggers, CVW.5000.0003.0614, exhibit 6.52.

EXHIBIT #6.52 CLEARVIEW INJURY CASH INSURANCE CONVERSATION TRIGGERS (CVW.5000.0003.0614)

MS ORR: I see the time but if possible I would like to play three short extracts from one telephone call to demonstrate objection handling in practice.

THE COMMISSIONER: Yes.

MS ORR: The recording is ASIC.0069.0001.0158C. And could we have ASIC.0069.0001.0356E on the screen. Now, this is the first part that I'm going to play of this call, Mr Martin.

RECORDING PLAYED

MS ORR: All right. Now, if we could move to a later part of that same call at 0158D. And the transcript is 0356. 365E. Sorry, just 0365. So same customer, same call, slightly later on in this call that went for 17 minutes.

RECORDING PLAYED.

MS ORR: Now, we heard in that extract, Mr Martin, that this customer wanted to talk to the boss, who we assume was the missus that he had referred to earlier in the call. That objection was handled and he was told in that part of the objection handling that there were no contracts, which was not correct?---Yes.

So an additional problem in the way he handled this objection, because that was an untruth to say that there were no contracts, wasn't it?---Yes.

And if we could play the final part of this call, 0158E and display 0366 on the screen.

RECORDING PLAYED

MS ORR: So we've played three extracts from that call. In the middle part we heard the objection handling relating to the person wanting to speak to their partner. In the last extract, a very brief extract, we heard the customer in response to a question about his address, trying to spell his address unsuccessfully and then indicating to the sales agent that he had problems reading and writing. That sales agent went on in those circumstances to sign up the individual to a life insurance policy, didn't he?---Yes.

Was that acceptable, Mr Martin?---No.

I tender that transcript and recording, Commissioner.

THE COMMISSIONER: The recording number is ASIC.0069.0001.0158. Is that right?

MS ORR: Yes, it is, Commissioner.

THE COMMISSIONER: Recording of sales call. That will be exhibit 6.53.

EXHIBIT #6.53 RECORDING OF SALES CALL (ASIC.0069.0001.0158)

THE COMMISSIONER: Transcript of the sales call, which is exhibit 6.53, namely ASIC.0069.0001.0357 is exhibit 6.54.

EXHIBIT #6.54 TRANSCRIPT OF THE SALES CALL, EXHIBIT 6.53 (ASIC.0069.0001.0357)

THE COMMISSIONER: Somebody is going to have the courage to tell me I've got the numbers wrong.

MR CHESHIRE: Sorry, Commissioner, I think the number was 356 at the end rather than 357. That was all.

THE COMMISSIONER: Yes.

MS ORR: We think it is 356, Commissioner. That's the doc ID for the transcript. 356.

THE COMMISSIONER: Yes.

MS ORR: Commissioner, if that's a convenient time. I'm not able to finish Mr Martin before tomorrow. I think it would be useful to start again at 9.45 tomorrow if we could.

THE COMMISSIONER: Yes. We will have to get you to come back at 9.45, Mr Martin?---Yes, Commissioner.

<THE WITNESS WITHDREW **[4.21 pm]**

THE COMMISSIONER: Thank you. Adjourn until 9.45 tomorrow morning.

MATTER ADJOURNED at 4.21 pm UNTIL TUESDAY, 11 SEPTEMBER 2018

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