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TRANSCRIPT OF PROCEEDINGS

O/N H-919882

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, TUESDAY, 11 SEPTEMBER 2018

Continued from 10.9.18

DAY 51

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

MR P. SILVER appears for Freedom

<CROSS-EXAMINATION BY MS ORR

5

THE COMMISSIONER: Ms Orr.

10 MS ORR: Mr Martin, late yesterday I was asking you some questions about the way that ClearView trained its sales agents in objection handling. Do you recall that?---Yes.

15 And we were looking at a document containing training instructions, which I will bring up again. That's CVW.5000.0002.6593. This is the objection handling workbook that I took you to yesterday afternoon. Do you recall that? And we were looking at conversation triggers and responses to those conversation triggers. Can I ask you to look at 6595 in the document. Now, this shows, in the middle of the page, the training that was given to ClearView sales agents if a customer said, "I want to think about it." Do you see that there?---Yes, I do.

20

And do you see that the response that ClearView sales agents were trained to give included making the following statement:

25 *I completely appreciate where you're coming from. I like to think about important decisions as well. Is this because you like to read over everything in black and white? Me too. The great thing is that I'm going to send out everything to you in black and white for you to read over to make sure everything I've told you makes sense. Putting the cover in place today means you will have the peace of mind that you're covered as soon as you hang up the*
30 *phone.*

35 That was the training given to ClearView sales agents?---I – I will say yes. I'm not quite sure of the – the exact status of this document although there was – ones you showed us yesterday that clearly had ClearView training written on them. I am not sure about this document but - - -

Well, let's go back to the first page of this document so you can see, because this is a separate document to the one that we looked at yesterday?---Yes. That's right.

40 I will come back to that document as well because I don't think I tendered that document at the end of the day, Commissioner, just so the Commissioner can check whether I'm correct about that. That one was - - -

45 THE COMMISSIONER: Well, exhibit 6.52 is the ClearView injury cash insurance conversation trigger document, which is CVW.5000.0003.0614. This one, I think, is

not one we looked at yesterday, or if we did look at it yesterday, I didn't take a note of it.

MS ORR: No. I apologise, Commissioner.

5

THE COMMISSIONER: No, that's all right.

MS ORR: I will tender this document. I didn't show this to you yesterday. I just want to give you the opportunity to look again at the front page, so that you can see that it's an objection handling workbook, ClearView Campaign, and the metadata of this document as produced to the Commission tells us that it was dated 9 January 2014?---Yes.

10

So you accept that this was a training document at that time for ClearView sales agents?---Sorry, I – I'm not trying to dissemble here, it's just that it was on a – you're right. It was on an email. It was clearly within the direct business. I'm just saying I am not sure to what extent this was used but I accept it was obviously there, yes.

15

Well, why – do you have some doubt about whether it was used?---Simply - - -

20

It's a document that was provided to the Commission in response to a request for training documents?---Yes.

MR CHESHIRE: Commissioner, I am not sure that's technically correct. I think it's attached, as the witness said, to a particular email. So I am not sure that it is necessarily produced separately as an individual training document.

25

THE WITNESS: Yes. Anyway - - -

30

MS ORR: It is correct that it was produced attached to an email but it is a training document, isn't it?---Yes.

We see that from the nature of the document?---I will accept that, Ms Orr.

35

Yes. And it's a ClearView training document. That's clear from the front. And as I indicated to you, it appears to be from early 2014?---Yes. Yes.

Now, it's of a similar nature to the document I took you to at the end of yesterday which was a document that dealt with conversation triggers. And then you will recall there was a column with a proposed response?---Yes.

40

This is another style of document dealing with the same - - -?---Yes.

- - - matters, how to handle objections. And what I had asked you about was the response that this document indicates that ClearView sales agents should give - - -?---Yes.

45

- - - when the objection made by the customer is, "I want to think about it"?---Yes.

Now, you heard what I read out - - -?---Yes.

5 - - - about the response to that. And do you agree that ClearView sales agents were trained, when someone said they wanted to think about it, to proceed to sign them up and tell them that they could read the policy documents after they had been signed up?---Yes, I agree. That's what it – what they were told.

10 And that's an entirely inappropriate way of conducting the sale, isn't it, Mr Martin?---Yes, I agree.

All right. I tender that document, Commissioner.

15 THE COMMISSIONER: Objection handling workbook ClearView campaign, 9 January 2014, CVW.5000.0002.6593, exhibit 6.55.

20 **EXHIBIT #6.55 OBJECTION HANDLING WORKBOOK CLEARVIEW
CAMPAIGN DATED 09/01/2014 (CVW.5000.0002.6593)**

MS ORR: And I apologise for the confusion, Commissioner. The document that I referred to late in the day yesterday, which I have not tendered with the conversation
25 triggers, was CVW.5000.0001.0747. I tender that document as well.

THE COMMISSIONER: Can we just bring that document up, because I'm not sure that – if we did see that yesterday, Ms Orr, I'm sorry, I - - -

30 MS ORR: This is the - - -

THE COMMISSIONER: You're challenging my memory and causing grave doubt, Ms Orr.

35 MS ORR: That's my fault, Commissioner.

THE COMMISSIONER: No, no.

MS ORR: I just want to find the part of this document that I took Mr Martin to. If
40 we could bring up 0616 in that document.

THE COMMISSIONER: It can't be 0616.

MS ORR: I'm sorry. I'm sorry. Could I ask Ms Zeleznikow to fix this situation for
45 me and give you the correct document reference. I'm sorry, Commissioner. That document we did tender. It was the document in between that document and the one I've shown you this morning but I just need to find the doc ID for it. It may be that

I've tendered everything that I need to tender, Commissioner. If not, I will come back to that, I'm sorry. That last form of objection handling, Mr Martin, that I just asked you about, when a customer says, "I want to think about it", I would like to play you an extract from one of the calls provided to ASIC so that we can see how that played out in those calls. Could we please play CVW.5000.0002.6593. I'm sorry, instead it's ASIC.0069.0001.0171A. And could we display on the screen ASIC.0069.0001.0248E.

10 **RECORDING PLAYED**

MS ORR: Now, we heard there, Mr Martin, an example of a customer who asked to have the details of the policy sent to him before making the decision to purchase?---Yes.

And we saw your training in action, because we saw the ClearView sales agent proceed by insisting on signing up the customer and indicating that the documentation could be sent out later?---Yes.

I will tender that recording and transcript, Commissioner.

THE COMMISSIONER: Recording of sales call ASIC.0069.0001.0171A, exhibit 6.56.

EXHIBIT #6.56 RECORDING OF SALES CALL (ASIC.0069.0001.0171A)

THE COMMISSIONER: And the transcript of the sales call exhibit 6.56 which is ASIC.0069.0001.0248E is exhibit 6.57.

EXHIBIT #6.57 TRANSCRIPT OF THE SALES CALL EXHIBIT 6.56 (ASIC.0069.0001.0248E)

MS ORR: Commissioner, Ms Zeleznikow has confirmed for me that I tendered each of the documents that I referred to yesterday. I apologise for the confusion.

Now, Mr Martin, these techniques that we've seen, these objection handling techniques, this morning and in the documents that I took you to yesterday were all directed towards having people sign up to their policies – the ClearView policies immediately, weren't they?---Yes, they were.

And why was it so important to ClearView to sign people up immediately?---It – it wasn't important to ClearView. I – and I've said before I don't agree with those

techniques, but they were, as you said, they were the techniques that were being used on the sales floor.

Was it - - -?---And they seemed to be promoted within ClearView direct.

5

Yes. Yes?---Yes.

Were ClearView sales agents trained in this way to sign people up immediately because ClearView was worried that if it gave people time to understand the products they were purchasing, they may not choose to purchase them?---It seems to be that was the training that was given to them, yes.

10

Or they might realise that they had no need for this sort of product?---Again, I agree. I – as I was trying to explain yesterday for ClearView as a – as an insurer, having customers who sign up for contracts they don't want for very long is – was not in our interests. So this – this was – it was poor for the customer. Terrible for the customer and of no economic value for ClearView either. So it was silly.

15

Well, it resulted in a lot of customers signing up for and paying for products that they didn't need or want, didn't it?---Yes, it did.

20

ClearView didn't want to give people time to reflect before making the purchase, did they?---No, the direct business didn't.

Or the opportunity to be influenced in that purchasing decision by someone else like their partner or a friend?---No, that's correct.

25

And the purpose of this objection handling system was to ultimately wear down the customer to the point where they no longer viewed their objection as a point worth continuing to raise?---Yes, either wear them down or side-step them.

30

Wear them down or side-step them?---Yes, I'm agreeing with you.

35

Yes?---100 per cent.

Yes. So the overarching theme that we see, both from the scripts that I took you to yesterday as to how the sales agents were to conduct the calls, and from the objection handling training that I took you to yesterday and this morning, is a sell at all costs approach, and that was reflective of ClearView direct's broader culture. Do you accept that?---I would accept that. That seems to be the case, yes.

40

And another way we saw that – we see that culture having played out within ClearView was random incentive days that ClearView held. Do you know anything about those?---I've seen some material since, yes.

45

There were days every now and then when ClearView staff were encouraged to sell frenetically?---It would appear that they – that was the case.

All right. Could I show you CVW.5000.0001.3277. This is an email chain from September 2015. Could we have both the first and second page of that email on the screen. We see there at 3278:

5 *Team, I am putting a random incentive day. I want this joint pumping with
belling, clapping and sales. Let it rain gift cards.*

Do you see that?---Yes, I have seen that.

10 Just above:

Guys, we are chasing your premiums targets today.

In capital letters?---Yes.

15

Above that on the previous page:

First sale for the day gets a ticket. Who will the first ticket go to?

20 ?---Yes, I see that.

So this is an example of one of the incentive days that ClearView had to incentivise its sales agents to sell lots of policies?---Yes.

25 I tender that document, Commissioner.

THE COMMISSIONER: Emails re incentive day, let's rip it up, 9 September '15, CVW.5000.0001.3277, exhibit 6.58.

30

**EXHIBIT #6.58 EMAILS RE INCENTIVE DAY, LET'S RIP IT UP DATED
09.09/2015 (CVW.5000.0001.3277)**

35 MS ORR: And can I take you to another incentive campaign in late 2016, where ClearView decided that an injection was required to "stimulate the team and revive the cultural pulse". Can I take you to CVW.5000.0004.9765. And could I ask you to look at the second page of that document, 9766 under the heading Recommendation. You see the sentence that I just read out:

40

*We believe an injection is required to stimulate the team and revive the
"cultural pulse".*

And a reference there to:

45

*Rebuilding momentum and running a strategic sales incentive. It would run
over a five month period (November to March), open to sales consultants only.*

5 *Rather than qualifying by achieving agreed performance hurdles, we will take the top third of the sales team to drive the bar higher. Another two places will be reserved (at my discretion) to recognise business contribution, leadership behaviours, greatest improvement. Our event company has first right of refusal on a special deal to Queenstown.*

10 So that's what the prize for this one was, a travel package to Queenstown. And if we pan back a bit we will see that the prize was travel, accommodation and entertainment in this trip to Queenstown. Do you see that?---Yes, I do.

10 And do you see also the paragraph, three paragraphs in under the heading Estimated Costs:

15 *Whilst aware of the optics around direct position to budget, this is not a junket or a celebration. It's a considered investment into the build out of a direct business model for ClearView. In fact, strategic programs such as this should be seen as a necessary cost of running a direct operation (costs should probably be allocated as a recruitment rather than an entertainment line item).*

20 What do you say to that, Mr Martin?---It was just inappropriate activity. In fact, that arrived, I believe, in November '16. As far as I was concerned, that – that whole document, and there's some other issues with that, really signal that we under – when we really started to understand that the culture in that business was not what we thought.

25 What are the other issues you're referring to with this document or this campaign?---Just – just the whole language that's in there and some of the things you talked about was, you know, not only this stuff but that particular reference here.

30 The next sentence in here is:

35 *Measuring the return on investment is difficult to quantify. However, we should all be confident with the conceptual notion that the monetary benefits associated with proactively reducing turnover are greater than doing nothing, ie, simply banking the money.*

Do you understand what that means?---No, I – I actually don't understand what that means - - -

40 Yes?--- - - - at all.

45 Yes?---It seemed to be almost – actually read – it reads as sales spiel to me as if somebody was trying to sell to senior management something that was just wrong, considering at this point we were trying to refocus to the mid-market, address problems that had already been raised with the business, and – and this – this materialises.

Can I ask you to look at the very final sentence on the page which is not highlighted at the moment – we will need to pan back – the author of this document – do you know who wrote this document?---Yes, I do.

5 Who was it?---I believe it was the head of ClearView direct.

The head of ClearView direct. So the person in charge of running your direct sales?---He either – he either wrote it or he was the one who sent it on, yes.

10 So we see that the head of direct says in the final sentence on this page – which perhaps we could enlarge:

15 *We will work with respective departments to reduce tax exposure (FBT implications) and circumvent regulatory barriers (packaged as a training/educational trip in lieu of FOFA/conflicted remuneration).*

?---That is one of the words in there that you were – I was referring to. Circumvent.

20 This is one of the other issues with this document, is it?---Yes, that was one of the serious issues.

25 So the head of direct sales within ClearView knew that this was conflicted remuneration, a breach of the FOFA reforms, knew that it would breach regulatory provisions, knew that it was a breach of the law, and, therefore, elected to package it deceptively as a training or educational trip?---I – well, I – I could actually not tell you whether it was – it would be actually a breach of the law but the very thought that he thought it could be and decided to circumvent was the thing that concerned me more.

30 It concerned you, did you say?---More than concerned me, yes.

When was this document first brought to your attention, Mr Martin?---I think it was very – was it mid to late November.

35 Mid to late November which year?---'16. Is that right?

40 Well, this is a document from November '16, as we understand it. The final quarter of 2016 is all that we are able – it's an undated document but the content makes clear that it's from the final quarter of 2016. You say it was brought to your attention in November 2016. What action did you take when it was brought to your attention?---I don't actually recall, but I – I have seen emails involving this and there's no response from me other than, I suspect, I – well, I don't actually know that I read all the way to the bottom either at the time. But I'm sure I went and visited the MD and the CFO and said, "Over my dead body." Or words to that effect.

45

You visited the managing director and the CEO and said words to the effect of “over my dead body”?---And the reaction – the reaction from them was the same. They went no.

5 So did this incentive campaign proceed?---No.

And what action was taken against the head of direct sales at ClearView in connection with this campaign that he was orchestrating?---There was nothing taken at the time but this was one of the – one of the matters that precipitated review of the
10 whole business in then January and the plan to close it and terminate.

But was – were there any consequences for the head of direct sales at ClearView for intending to circumvent regulatory barriers by packaging this sales incentive scheme as an educational trip?---No, there were not.

15 Why not, Mr Martin?---I – I – we were probably just focused on shutting the business. As I said to you before, I’m not sure when I actually saw this originally that I read all the way through. I only got to sales – an incentive program for Queenstown which was just inappropriate at the time.

20 Do you think the managing director or the CEO, whose attention you drew to this document - - -

25 THE COMMISSIONER: The CFO.

MS ORR: I’m sorry, the CFO, whose attention you drew this document to read all the way through?---I – I don’t – I actually don’t know, and they could well have reacted similar to me that it was – at the time just, you know, we weren’t going to do that. It wasn’t – it just wasn’t going to happen.

30 But none of you took any steps to discipline or otherwise sanction the head of your direct sales for his clear intention to breach the law?---Well, as I said, I – I actually don’t know what – what – what may have been discussed between the MD and the – and the head of direct, but as far as I’m aware, we didn’t take any action.

35 Was that a satisfactory response?---Not in retrospect, no.

A few weeks ago your chief executive officer, Mr Simon Swanson, gave an interview to The Australian. Have you read the press clipping about that?---That’s
40 the one you sent through recently, yes.

And he said in that article that:

45 *ClearView has a strong positive culture, that champions the client and strives for continuous improvement.*

Did you see that in the article in The Australian?---Yes, I did.

A quote from Mr Swanson. And are the matters that we see in this document representative of that sort of culture, Mr Martin?---No. This document is not representative of that culture at all.

5 It's the antithesis of that sort of culture, isn't it, Mr Martin?---It is, indeed.

I tender this document, Commissioner.

10 THE COMMISSIONER: Strategic sales incentive proposal 2016,
CVW.5000.0004.9765, exhibit 6.59.

**EXHIBIT #6.59 STRATEGIC SALES INCENTIVE PROPOSAL 2016
(CVW.5000.0004.9765)**

15

MS ORR: Now, I want to move, Mr Martin, to asking you some questions about the third and final issue that I identified yesterday as contributing to the systemic compliance issues at ClearView. And that third issue that I identified yesterday was ineffective compliance systems. Do you recall that?---Yes.

20

Now, the quality assurance methodology that was used for the direct sales business was flawed, wasn't it?---As we know now, yes.

25 Yes. In what way was it flawed?---In particular, it – it wasn't measuring or identifying, in particular, pressure selling, some of the techniques we discussed a little while ago on some of those phone calls.

30 So your quality assurance team were not picking up the sorts of conduct that we've discussed yesterday in the sales calls?---That's correct.

We know from yesterday that the focus of the quality assurance team's work was on flagged agents rather than standard agents?---That's correct.

35 Those flagged agents being the new agents and agents who had already been identified as having compliance breaches?---That's correct.

40 And internal documents show us that ClearView was aware that agents who knew that they had not been flagged felt some sort of immunity and were more relaxed and complacent with compliance requirements as a result. Have you seen those documents, Mr Martin?---I have become aware of those, yes.

45 Whereas, the agents who knew that they were flagged tended to become more disciplined because they knew their calls were being scrutinised?---That's correct.

And once ClearView became aware of that, did it take any steps to address that, to change the system about which calls it was monitoring?---I – I can't remember when

we became aware of that. If that was around the middle of 2016, one of the strategies at that time was to actually move to 100 per cent review of all calls and implement a 100 per cent QA process at that time.

5 In the middle of 2016, you say?---Well, the – around August, September '16, after we had the problem with the – the 42 calls that went to ASIC, and then we had the – we did our separate review, and by the end of August we realised that there were some – some issues. We still weren't clear at that stage exactly the extent of those issues, but to my mind I started discussing them with the head of direct to move to a
10 system which was just 100 per cent review of all phone calls that were sales, and move to a – a methodology of faster remediation if there was any issues, and that was being investigated from that point forward.

15 And did you ever get to the point where you were reviewing 100 per cent of sales calls?---I don't believe we got to the point of implementing the contract with the party to do that.

20 Okay?---We weren't going to do it internally and we had the Queenstown email by that stage and we were moving in January then to shut the business down.

I see. So you made a decision to move towards a model of monitoring 100 per cent of sales calls, but you never ended up executing that decision?---No, we decided to quit the business before that.

25 I see. Can I show you a document that is an assessment of the direct sales business from early February 2017. CVW.8000.0002.0511. Have you seen this document before - - -?---Yes.

30 - - - Mr Martin? Now, ClearView's assessment of its direct business, as contained in this document from February 2017, included a number of very damning findings, didn't it?---Yes, it did.

Including about your quality assurance processes?---Yes, it did.

35 And one of the issues that we see raised in this document is that there was an insufficient division between the sales team and the quality assurance function?---Yes.

40 If we look at the second page of this document, 0512, we see next to the word Structure. Do you see four rows down the page Structure:

The head of contact centre delivery is responsible for both sales, operations and compliance and quality assurance. This is a conflict as sales are prioritised ahead of compliance and operations.

45 ?---Yes.

And had ClearView always structured its direct business in that way?---My understanding is that's the way the ClearView direct business was structured, yes.

So that had been the model for a number of years?---As I understand it, yes.

5

And is this one of the things that you were referring to in your statement when you said that ClearView's quality assurance staff were not sufficiently independent of the underlying business?---Yes.

10 Were you also referring to the fact that the Your Insure quality assurance team was in-house?---I wasn't referring to that but – yes.

Are you aware that they were?---Yes.

15 Are you aware that they were moved in-house with the sales team to allow Your Insure to focus on client acquisition?---I think I may have heard that reference, yes.

Now, after ASIC became involved in 2017, ClearView decided to separate its compliance staff from its sales staff. Is that right?---Sorry, when was that?

20 After - - -

After ASIC became involved, in 2017 - - -?---Yes.

25 - - - was there a decision made to separate your compliance staff from your sales staff? Was a decision made to move the compliance staff to head office so that they couldn't, in the words of ClearView internal documents, be personally influenced by the call centre staff?---It was to – yes, do that and also make sure that we were happy internally within head office that the QA was actually doing what it was supposed to do.

30

Why wasn't the quality assurance team separated and independent from the sales team from the start?---On reflection, it – it should have been. It just – we just didn't. We just made a mistake.

35 ClearView never prioritised compliance, did it?---I – no, the – the direct team did not prioritise compliance, no.

And that was reflected in the decision to put the quality assurance team, who were meant to be monitoring the sales team, in with the sales team?---Yes. Yes.

40

Okay. We see also in this document, on this same page, 512, that there are suggestions that the quality assurance team wasn't sufficiently well-resourced to allow a searching quality assurance process for calls other than sales calls.

45 Do you see that reference?---Where – yes. I – yes.

You know that that's the case?---That was an expression of a – of the person who wrote this opinion but yes.

5 Do you agree that there was a lack of resourcing for the quality assurance function?---I'm not sure that I would entirely agree with a lack of resourcing, but it could have been better resourced. And more importantly, the – the – to my mind, the bigger issue in all of this was the QA wasn't focused on the right things rather than necessarily - - -

10 What were they focused on, Mr Martin?---Well, as we – as I was referring before, they weren't focused on the pressure selling aspects.

What were they looking for?---They were looking for - - -

15 What was their job?--- - - - as I understand it, in retrospect, lots of things around personal advice, other – you know, misdescription of products, other breaches. But the thing they weren't focused on is some of those subtle points that we have been talking about over the last few hours around the selling on free look periods and some of that things that you were - - -

20 The subtle points, did you say?---I don't mean subtle points but I meant those – those – those points, yes.

25 So you said they weren't focused on pressure selling?---Mmm.

That's not a subtle thing - - -?---No, sorry.

- - - to pick up, is it?---I don't mean it that way. But, yes, they weren't – it was those particular points, those sales techniques, they weren't focused on or they weren't
30 measuring and they weren't reporting on.

Right. So there was a problem with what they were doing. And there was a problem with which calls they were doing anything to in the first place, wasn't there?---Well, I think focusing on actual sales calls was – was reasonable. As you said, we
35 discovered later on that unfortunately the agents started to game that. I would have said if we had a just a normal conversation and you said you were going to flag or put more effort on to new agents or agents who had caused breach before, I don't think anybody would think that was an unreasonable thing, not understanding that the agents would then, you know, behave in response to that was – was another
40 matter, yes.

There was also a problem with the quality assurance and compliance team lacking the necessary expertise in relation to direct sales, wasn't there?---I believe that that may have been the case as well, yes.

45 Do you see from the row headed Direct Experience in this document:

There appears to be a lack of direct experts at ClearView. In particular, there is a lack of end-to-end direct specific legal and compliance experience, particularly in the direct business.

5 ?---Yes.

Do you see that?---Yes.

Continuing:

10

There is a quality assurance team of four and no resource with legal or compliance experience or knowledge in the direct business.

?---Yes.

15

Continuing:

20

While the group legal and compliance resources do not have deep direct business experience, the language of the scripts suggest that there may also not be expertise in script writing.

?---Yes, I see that.

25

What was their expertise in, Mr Martin?---This was – this document here is – is an assessment, as you said, in – in February, and I actually asked for it to be produced, about what the truth of the matter of direct was. The intention was that we had employed experienced people in direct to run a direct business. This was the assessment that we got to that, in fact, in the totality they actually hadn't – didn't – didn't have the people and the skills to do the job properly.

30

And we see next to QA Process in this document that there were concerns about:

35

...the quality of quality assurance performed as there have been differences between quality assurance results when legal and group compliance have reviewed them.

And that was what we saw yesterday, wasn't it, with the 42 calls?---Yes.

40

And is that what you've described in your statement as ClearView's quality assurance staff not being suitably qualified, these sorts of matters that we see in this document?---They – they lacked both qualifications, but more importantly, the direction they were given was poor, yes.

45

Yes. So they lacked qualifications, they lacked experience, they lacked supervision, and they lacked resources?---Yes.

The quality assurance function at ClearView was hardly a quality assurance function, was it, Mr Martin?---No, it was weak.

5 And you tell us in your statement that the staff who were responsible for overseeing compliance of the relevant business were not sufficiently experienced in outbound direct life sales despite many having sound life insurance backgrounds?---Yes.

10 So is that what they came from, was there background in the selling of life insurance?---No, I think that – that was meant to be a reference to people outside the ClearView direct team. So that was within the legal team and the head office compliance team, while they all had deep life insurance experience, most – most of the team outside ClearView direct did not have - - -

15 I see?--- - - - deep direct experience to identify some of these issues.

And there were issues with the escalation, the reporting of quality assurance issues, we see from this page as well, don't we?---Yes.

20 Under the heading Reporting and Governance at the bottom of the page:

25 *Inaccurate quality assurance data has been provided. This is possibly due to a number of reasons, stretched resources, little attention to detail and manual nature of quality assurance process. The level of detail provided to the Direct Risk and Compliance Committee is insufficient to form an accurate view on the state of compliance.*

?---Yes, that's what we had come to form the view of at that stage, and I think we saw an email yesterday around some scripts that also is relevant.

30 So this document which was created at your request revealed that it was not possible to say what the level of compliance was within the direct sales business?---Correct. At that stage, yes.

35 And can we just go back to the previous page, 0511, because I just want to ask you as well about the portion described as Executive Skills Gaps:

40 *The general manager of direct has experience and skills in direct sales, operations and marketing but less experience and skills in the financial management of a direct business and generally has potential gaps in the areas of regulation and compliance.*

?---Yes.

45 By this point, you knew that there were more potential gaps with his conduct, didn't you? You had seen the Queenstown incentive campaign and how he wanted to dress that up to circumvent regulatory barriers?---Yes, I'm not sure that the person who drafted this note necessarily had seen that, but anyway, yes.

All right. So do you accept overall, Mr Martin, that there were very significant deficiencies in ClearView's compliance programs and processes that were a significant contributor to the compliance outcomes that we saw in the 42 calls, and which you acknowledged yesterday were endemic beyond those 42 calls?---Yes, they were significant beyond those calls, yes.

All right. I tender this document, Commissioner.

THE COMMISSIONER: ClearView assessment of the Direct business, draft, February '17, CVW.8000.0002.0511, exhibit 6.60.

EXHIBIT #6.60 CLEARVIEW ASSESSMENT OF THE DIRECT BUSINESS, DRAFT, FEBRUARY '17 (CVW.8000.0002.0511)

MS ORR: Now, Mr Martin, in September last year, a few months after ClearView ceased its direct sales business, ASIC and ClearView negotiated terms by which ASICs investigation into ClearView's contraventions of both the Corporations Act and the ASIC Act would be resolved?---Yes. Yes.

You were part of those negotiations?---Yes.

All right. Can I ask you to look at exhibit 54 to your statement, CVW.6000.0001.0855. You have seen this letter before, Mr Martin?---Yes, I've seen it before.

This is the proposal that ASIC sent to ClearView to resolve its investigation on 19 September last year?---Yes, that's correct.

Now, on this first page, we can see that ASIC referred to the concerns that it held about potential contraventions of the anti-hawking provisions, contraventions of the general obligations of financial services licensees imposed by the Corporations Act, and contraventions of the consumer protection provisions of the ASIC Act?---Yes, I see that.

And we see that under the heading ASICs Response, that ASIC was:

Willing to resolve this matter on the condition the licensee agrees to undertake the following.

And if we could turn to the next page. There were eight conditions imposed by ASIC, which involved:

ClearView engaging Ernst & Young to do a piece of work and to implement recommendations that came from that piece of work, to implement and finalise a consumer remediation program, to prioritise your resources to that

5 *remediation program, and undertake it in a timely manner, to provide ASIC with copies of scripting and correspondence referencing the remediation program, to ensure that all communication with consumers about the remediation program is behaviourally informed and in terms approved by ASIC. To confirm remediation details as soon as possible, and if at any point in the future the licensee intends to recommence offering life insurance policies to retail customers through the direct or non-advised channel, to advise ASIC before doing so.*

10 These were the eight conditions imposed by ASIC to resolve these breaches?---Yes, that's correct.

 Now, ClearView agreed to those terms?---Yes.

15 And we see in this letter that ASIC told you that a media release would be published in relation to the matter, and that ClearView would be given an opportunity prior to the media release to tell ASIC if it had concerns regarding any factual inaccuracies?---Yes.

20 Now, you agreed to the terms, and then there was subsequent discussion about the boundaries of the remediation program. Is that right?---Yes, I think that's correct, yes.

25 And the remediation program extends to 32,068 policies sold by ClearView over a three and a half year period from the start of 2014 to the middle of 2017?---That's correct.

30 And how were those 32,000-odd policies identified?---Essentially, they're – all the – all the policies that were sold that we could identify – sorry, let me rephrase that. All the policies essentially that were sold via ClearView direct over that period, only excluding a few – few policies that we could clearly identify weren't outbound telemarketing, which in fact was very few. It was essentially – essentially all of them.

35 So ClearView accepted that the policies sold over that period, excluding the small number that weren't on outbound sales that you've mentioned, included calls that showed pressure selling tactics being used, and misdescriptions of the policy terms being used, and other levels of unfair sales practices that we've discussed this morning and yesterday?---Yes, the 32,000 includes all sales whether or not they had those features but obviously within there we – we – we believe there – or we know there were significant numbers of all those events, yes.

45 You tell us in your statement that there are three categories of people within the remediation program, but all up the remediation program encompasses about 26,000 people. Is that right?---There is – we – there's one – one group at the moment. There's 6000 customers. We're just in discussion with ASIC about, out of the 32, that at this stage while they were classified as sales, they were, in fact, policies that

never completed and never paid a dollar, and as far as we could tell, never incurred any – any costs at all. So we're just with ASIC now just talking about what – what remediation we actually do for those, but that's – that's – that's the difference between the 26 and the 32.

5

So how many customers do you presently estimate will be covered by the remediation program?---Well, we've already mailed the 26,000. We've already paid out – we – we sent compensation amounts to 53 – nearly 10,000 at this stage and I think 60 per cent of those people actually have the money in their hands. The others we have to get bank account details or something to actually physically give them the money. One of the unfortunate things is if you pay your bills by credit card and the credit card expires, it's quite hard to give the money back to a credit card. So we're just trying – we have a process at the moment to get bank accounts to actually get the money in those customer hands. And that's – when I was referring yesterday to about two months from here, we expect to hopefully have the program finished. There will be - - -

10

15

And not everyone is getting a full refund of their premiums. Is that right?---No.

20

25

30

35

And how have you identified who gets a full refund and who doesn't?---Well, we worked with ASIC. We did some very detailed analysis across the book. Basically, the conclusion was anybody who kept their policy for less than three months or people in – in the indigenous postcodes who we thought would include vulnerable people we extended that to five months. So they've been given all – all their premiums back as clearly people who displayed by, you know, by dint of that short ownership that they were, you know, unwanting of the contract and – and likely that that would have included the vast majority of people who were subject to pressure selling and those three – you know, free look periods, selling, and all the rest of it. At the other end of the spectrum, there's obviously something like obviously 9000 policies that are still in force at the moment and people have had those policies for a number of years. They clearly have rights under those contracts, and so at the moment they're the ones who we've mailed to say if you have any concerns about the way you were sold, please contact us and we will review your call, and, you know, subject to that if there's, you know, if there's pressure selling where we have a process at the moment to – to provide compensation, but it's not a – it's not all premiums are refunded because that would mean a cancel of the contract which they obviously have.

40

Why does it mean that? Why can't you refund the premiums and keep the policies on foot?---Refund them to – to where?

45

Refund – well, refund the premiums to the people that you think may have been sold the policy in circumstances where there were pressure sales tactics, premiums could be paid going forward but why can't you refund some of the premiums that have been paid?---Our – well, that could be a methodology that was not what we've agreed with ASIC. As I said, we've agreed an amount of compensation, but it was – there's also just a question of – we've tried to be fair and equitable on this as well.

5 So if somebody has had their policy for five years and somebody has had two years why do you give somebody two years and keep it, somebody keeps five and what happens if somebody comes back in 10 years' time and says I think I was pressure-sold 10 years ago. Do they get all their money back. It's just trying to balance those issues out, is all. That's all.

So there is a category of customers who are encompassed by the remediation program who have to opt in to receive the remediation?---Yes.

10 They have to respond to your letter and explain why they feel - - -?---No, they don't have to explain anything.

15 What do they have to explain?---All they need to ask is for their case to be reviewed and we will review it, make a decision and if we have any concerns about it, including if there's any, you know, misdescription of products or anything else in there, we will remediate it or - - -

20 So by your engagement with ASIC and your development of this remediation program, does ClearView accept that in the pressure sales that it made between 2013 and 2016, its representatives breached the prohibition on unconscionable conduct on occasion?---Yes.

And that they breached the prohibition on misleading or deceptive conduct?---Yes.

25 And that they breached ClearView's duty of utmost good faith to its policyholders?---Unfortunately, yes.

30 And does ClearView accept more broadly that its processes for pressuring customers to sign up to policies immediately, and its processes for aggressive objection handling, were unfair to its customers and led to customer detriment?---Yes, we do.

35 And as a result of those contraventions and those unfair processes, does ClearView accept that it contravened its obligation to do all things necessary to ensure that the financial services covered by its AFSL were provided efficiently, honestly and fairly?---Yes, we – we didn't do enough.

You didn't do enough?---Yes, we breached it, yes.

40 You breached 912(1)(a) of the Corporations Act?---I believe so, yes.

And you failed to ensure that your representatives were adequately trained?---Yes.

45 And you failed to take reasonable steps to ensure that your representatives complied with the financial services laws?---Yes.

And does ClearView accept that the remuneration and incentive structures that it had in place encouraged sales agents to make as many sales as possible, sometimes at the expense of the customers' best interests?---They would have had that effect, yes.

5 And in that regard, there was a failure to have in place adequate arrangements for the management of the conflict that ClearView created between the interests of its employees and the interests of its customers?---That's – that's the nub of the issue was the lack of control, that's right.

10 Now, as part of your resolution with ASIC, you've agreed to tell ASIC if at any point in the future you intend to recommence selling through the direct channel?---Yes.

Does ClearView presently have any intention to do that?---No.

15 Can you imagine a situation in which that would occur?---If direct means things like online or something like that maybe, if it means outbound telephone, no.

In your view, is it possible to sell life insurance in outbound sales calls in a way that is both financially viable and legally compliant?---In retrospect I find it difficult to understand how you can reconcile those things. I – I – it is possible – it would be possible to make it legally compliant. My difficulty personally with it is I just don't understand how a customer in a phone call that lasts 20 minutes can come to a view of – of – you know, understanding exactly what they've bought in a fairly complex sort of area of financial services. I – I personally just think it's problematic. There would be the possibility of inbound calls. So if somebody had researched it, understood what they wanted and then rang in to buy a product, that's one thing, but an outbound arrangement I find just – just difficult.

20
25
30 Now, I want to ask you apart from this negotiated resolution of the contraventions with ASIC, what action has ASIC taken against ClearView in relation to the 300 to 303 thousand criminal offences that were comprised of the breaches of the anti-hawking provisions?---We've not had further discussions at this stage with ASIC on that.

35 Do you understand that ASIC will be taking any action against ClearView?---We have – I don't know.

40 Do you understand from this letter that ASIC regards its investigation as having been resolved?---That's what the letter said but I'm – I – it would always be open. I would have – well, this investigation is resolved. I'm not sure what – what – whether that meant that they closed the case completely on this. So I'm - - -

45 Has ASIC indicated to you that it will recommend pursuing a criminal prosecution of ClearView for those 300 to 303 thousand criminal offences?---No, I have heard nothing to that effect.

Has ASIC indicated to you that it will take any action against ClearView in relation to the unconscionable conduct?---No.

5 Has ASIC indicated to you that it will take any action in relation to the misleading or deceptive conduct?---No.

10 Has ASIC indicated that it will take any action against ClearView in relation to its licence because of any breach of section 912(1)(a) of the Corporations Act?---No, it hasn't.

Do you understand that ASIC intends to take any further action against ClearView?---At this stage, I don't understand they were doing anything further, no.

15 Okay. Thank you, Mr Martin. I have no further questions.

THE COMMISSIONER: Thank you, Ms Orr. Yes, Mr Cheshire.

20 <RE-EXAMINATION BY MR CHESHIRE [10.41 am]

MR CHESHIRE: Commissioner, just – I don't have questions for Mr Martin. Two issues of documents, if I may. I've discussed both of these with Ms Orr. The first one is that Ms Orr yesterday asked Mr Martin questions about a document
25 correspondence with ASIC in March 2017 which referred to two letters in February of 2017 from ClearView. One of those was in evidence being the letter of 3 January. The letter of 10 January is not in evidence. I have a copy of it. It's on the system. And I seek to tender that document.

30 THE COMMISSIONER: What's the doc ID?

MR CHESHIRE: CVW.7002.0005.1482.

35 THE COMMISSIONER: That will become exhibit 6.61. Letter from ClearView to ASIC, 10 February 2017.

40 **EXHIBIT #6.61 LETTER FROM CLEARVIEW TO ASIC DATED 10/02/2017 (CVW.7002.0005.1482)**

THE COMMISSIONER: Yes.

45 MR CHESHIRE: And the other matter is Ms Orr yesterday questioned Mr Martin about documents that had not been exhibited to his witness statement, in particular some correspondence with ASIC. At transcript 5335 and 5336 Ms Orr also stated that the Commission had obtained those documents from ASIC. I want to make clear

that by that – by the time of the relevant witness statement from Mr Martin, ClearView had, in fact, already produced in response to notices to produce from the Commission versions of all of its correspondence with ASIC, including all of the documents to which Ms Orr took Mr Martin yesterday. Commissioner, those were
5 the only matters I wished to address.

THE COMMISSIONER: Thank you very much. Yes. Yes, Ms Orr.

MS ORR: Commissioner, perhaps if we could have a brief break before the next
10 case study which involves a different entity.

THE COMMISSIONER: If I come back at 10 to 11.

MS ORR: Thank you, Commissioner.
15

<THE WITNESS WITHDREW [10.43 am]

20 **ADJOURNED** [10.43 am]

RESUMED [10.50 am]

25 THE COMMISSIONER: Yes, Ms Orr.

MS ORR: Commissioner, before we move to the next case study, we wish to tender
30 another witness statement concerning the direct sale of life insurance. This time by Suncorp Life and Superannuation Limited. As we mentioned in our opening statement yesterday, Suncorp Life is a life insurance company that is part of the Suncorp Group. Between January 2013 and December 2017, another company in the Suncorp Group, Suncorp Financial Services sold life insurance policies issued by Suncorp Life over the phone. We asked Suncorp Life to provide a witness statement
35 about the processes and controls that it had in place to ensure that the sale of its life insurance policies by phone complied with regulatory requirements.

Suncorp Life provided a witness statement of Allison Smith, dated 27 August 2018. Ms Smith told the Commission that in December 2017, the Financial Ombudsman
40 Service identified a possible systemic issue relating to the distribution of life insurance policies issued by Suncorp Life over the phone. FOS identified that the systemic issue had two aspects. First, representatives of Suncorp Financial Services were providing personal advice, or opinions to consumers. They were not making all relevant health and lifestyle questions. And they were not capturing all relevant
45 answers accurately.

And second, in the period from 2014 to June 2017, the quality assurance system used to monitor the sale of those policies by phone did not mark calls as non-compliant in circumstances where a medium or high risk operational requirement was not met.

5 An example of an operational requirement is the requirement that the representative comply with the Suncorp code of conduct. Ms Smith accepted that there was misconduct and conduct that fell below community standards and expectations where representatives of Suncorp Financial Services who distributed Suncorp Life policies by phone under a general advice model provided personal financial product advice to customers.

10 She also accepted that the failure by a representative to ask or record responses to relevant health and lifestyle questions, or to observe medium or high risk operational requirements could also give rise to misconduct or conduct that fell below community standards and expectations. Commissioner, I tender the statement of
15 Allison Smith, dated 27 August 2018.

THE COMMISSIONER: That statement is exhibit 6.62.

20 **EXHIBIT #6.62 STATEMENT OF ALLISON SMITH DATED 27/08/2018**

MS ORR: Now, our next case study, Commissioner, involves Freedom Insurance. And the first witness in that case study is Mr Grant Stewart.

25 THE COMMISSIONER: Mr Stewart.

30 <BRUCE GRANT STEWART , SWORN [10.54 am]

<EXAMINATION-IN-CHIEF BY MS ORR

35 THE COMMISSIONER: Thank you, Mr Stewart. Do sit down. Ms Orr.

MS ORR: Mr Stewart, could you please state your full name?---Bruce Grant Stewart.

40 Thank you. And you live at an address in Melbourne that's known to the Commission?---Yes, I do.

And what is your occupation, Mr Stewart?---I'm a Baptist Minister.

45 And you have been issued with a summons to attend and give evidence?---Yes.

Do you have that summons there?---I do.

I tender that summons, Commissioner.

THE COMMISSIONER: Summons to Mr Stewart is exhibit 6.63.

5

EXHIBIT #6.63 SUMMONS TO MR STEWART

10 MS ORR: And you have made a statement to the Commission dated 4 September 2018?---Yes, I have.

Are the contents of that statement true and correct?---They are.

I tender that statement, Commissioner.

15

THE COMMISSIONER: That statement is exhibit 6.64.

EXHIBIT #6.64 STATEMENT OF MR STEWART DATED 04/09/2018

20

MS ORR: Now, Mr Stewart, how long have you been a Baptist Minister?---For 35 years.

25 And are you married, Mr Stewart?---Yes.

Do you have children?---Three children.

And how old are your children?---They are 28, 32 and 34.

30

Now, the statement that you've made to the Commission relates to your younger son. It relates to his purchase of insurance from Freedom Insurance in 2016. Is that right?---Yes.

35 How old was your son at that time?---He was 26.

Now, I want to ask you some questions about your son. Could we start by you telling us about what you learnt about your son shortly after he was born?---Our son was born prematurely, about six weeks early, and was quite ill when he was born, had to be in intensive care for three weeks, I think, altogether. About the second week he was in intensive care, we were taken aside by some doctors and said they had run some tests, and it looked like our son or our son had Trisomy 21, otherwise known as Down's Syndrome.

45 Now, can you tell us about your son in 2016 when he was 26 years old. Where was your son living at that time?---He was living with us at home.

And did he require your assistance?---He did. On – in a number of ways, yes.

5 Could you explain some of those ways in which he required your assistance?---Our son is relatively high functioning for his syndrome. But he requires a good amount of assistance on general care issues, on making decisions, on – on living life, basically, yes.

10 What would you say about your son’s level of independence at that time?---He was somewhat independent. He was able to – to read and write, had reasonable literacy. He was able to take public transport to get around. The things he had difficulty with were dealing with concepts, abstract things, and – and needed assistance in – in basic living and independent skills.

15 Can you tell us about your son’s education?---He was – we were keen to see him normalised as much as possible. And so with the assistance of teacher aides, he went to mainstream schools from an early age, until he got to year 9 and it became obvious then that things had got a little bit beyond him, and he needed some extra help. So he went to a special school for his last two years of school.

20 And how are his literacy and numeracy capabilities?---Well, we think they’re reasonable. Many of his friends with the same condition aren’t able to read and write much at all. But he does require assistance in understanding what words mean.

25 And numeracy?---Reasonable again, but has difficulty in understanding the relative value of numbers, for example.

30 In 2016, did your son manage his own finances?---Somewhat, in the sense he had his own debit card, but we had to assist with that and we are co-signatories on his account to help him manage his finances.

35 And how did you assist your son generally with his finances?---We helped him to try and understand what things were worth, and so he would often call us if he was out wanting to buy something and ask if that was expensive or cheap or was it worth it, or did he have enough funds to do this. Yes.

40 And how does your son cope with complex instructions or situations?---He found those quite difficult and we found that we had to make lists if we wanted him to do more than one thing at a time.

45 And how does he cope in unfamiliar settings?---He finds those quite difficult to manage.

Now, in 2016, what was your son’s source of income?---He was on a disability support pension.

And did he undertake any sort of work at that time?---He had some voluntary work that he was doing, but not paid employment.

Now, I want to ask you some questions now about the events that took place in June 2016. At that time, in June 2016, did you become aware that your son had been sold insurance by Freedom Insurance?---We did become aware when a letter arrived for him.

5

You've attached the letter that arrived to your statement as exhibit BGS-1. If we could bring that up it's FIG.0001.0001.0057. And could we bring up 0057 and 0059. So this is the letter that your son received from Freedom Insurance. Is that right, Mr Stewart?---Yes, yes.

10

And we see from the letter on the left-hand side that it recorded that your son had taken out a Freedom Protection Plan. Do you see that in the first line?---I do.

And that it commenced on 8 June 2016?---Yes.

15

Is and the letter annexed the document on the right-hand side, which was a certificate of membership for the Freedom Protection Plan?---Yes.

20

And we see from that document that the Freedom Protection Plan had three components: an accidental death policy with a benefit amount of \$50,000, an accidental injury policy with a benefit amount of \$50,000, and the final expenses cashback policy with a benefit amount of \$10,000?---Yes.

25

And then if we look back to the letter on the left-hand side, we see that it recorded, about halfway down the page, that the fortnightly premium for the plan was \$10.60 which would be deducted from the account nominated in the application, and that the first payment was due on 20 June, so 12 days after this letter. You see that - - -?---Yes.

30

- - - Mr Stewart. And the letter went on to say:

However, if your plan includes final expenses cover, premiums for this benefit will not be due for another 12 months as your first year of cover is free.

35

And we saw from the certificate of membership that the plan sold to your son did include final expenses cover?---Yes.

40

Now, the first payment in respect of the other two parts of the policy, we see from the letter, was due 12 days later?---Yes.

Now, what did you think when your son brought this letter to your attention?---I was quite staggered because we had no idea that this had happened and I – yes, was flummoxed really.

45

What did you understand had happened at this point?---We didn't at that point know about how it had happened and so I questioned our son about how this could have taken place, and that was when he remembered talking to someone on the phone.

What else, if anything, did your son tell you about what had happened?---Not a lot more at that stage, because he was quite distressed about it and thought he had done something wrong, and seemed embarrassed and perplexed about the whole thing.

5 Did you have a view on whether your son needed insurance?---We didn't think he needed this kind of insurance at all, no.

And why not?---We already have our own insurance cover and have made provision for him in our wills, and including having a trust established for him. Yes.

10

And did you and your son discuss whether your son had provided any debit card details in the course of this call?---I asked him about that, and he said yes, but he didn't know why he had provided those details.

15 From talking to your son, do you think your son understood that he had provided those details, those debit card details, to purchase an insurance policy?---No, he did not.

20 And what did you do after you read this letter and had that discussion with your son?---I got in touch with the insurance company. I rang them. And explained the situation to him – to them and asked if we could cancel the policy.

25 Now, Freedom has provided you and the Commission with a copy of a recording of your first conversation with Freedom, and a transcript that it has produced of that conversation. And you've annexed both of those to your statement?---Yes.

I want to play you an excerpt from that first telephone call that you made to Freedom, which is FIG.0001.0001.0060. And if we could have the transcript on the screen, FIG.0001.0001.0258 and 0259 together on the screen would be helpful.

30 Now, the excerpt that I'm going to play, Mr Stewart, starts one minute and 15 seconds into that call. And we will play until two minutes and 12 seconds into the call and then I will ask you some questions?---Sure.

35 **RECORDING PLAYED**

MS ORR: Now, that's an excerpt from that first call that you made to Freedom, Mr Stewart. Were you able to cancel your son's insurance in that call?---No.

40

The Freedom representative in that call told you that she would look into a recording of the call and then call you back. Do you recall that?---Yes.

And did she do that?---No.

45

And how did you find the experience of that call, Mr Stewart?---Extremely frustrating.

I will tender the recording and transcript of that call - - -

THE COMMISSIONER: They're exhibited, aren't they?

5 MS ORR: I'm sorry, as part of the exhibit we can treat it as tendered.

THE COMMISSIONER: Yes.

10 MS ORR: Now, Mr Stewart, having been unable to cancel your son's insurance policy in that call, did you then decide to email Freedom as well?---Yes, I did.

And you emailed Mr Harvey Light, Freedom's head of operations whose name was on the letter that had been sent to your son?---Yes.

15 And you've exhibited a copy of the email that you sent to Mr Light to your statement. That's exhibit 4, RCD.0014.0044.0004. Now, this is an email starting partway down the page just from the top, an email that you sent on the same day as the call that you made trying to cancel the policy. Is that right?---Yes.

20 You sent this email at 9.41 that night to Mr Light. And by this email you lodged an official complaint regarding your son's Freedom Protection Plan?---Yes.

And you said to Mr Light in this letter that yesterday your son had received the letter that we looked at earlier and:

25

This was news to us as carers for our adult son aged 26 years. Our son has Down's Syndrome and has been assessed as having a moderate intellectual disability. Although he copes well with many things in life, he does not possess the capacity to discern and indeed to make informed decisions about such things as his need for life insurance. It is with considerable dismay that we learned that as a result we believe of a phone conversation with a member of your sales staff, he had agreed to take out this policy. Not only that, but your staff managed to persuade him to give them his debit card details as well. We believe that this is unscrupulous conduct at best and that taking advantage of a person with an obvious intellectual disability for the purposes of luring them into buying one of your policies cannot be condoned.

30

35

You then referred in the next paragraph to the conversation you had had earlier that day in which – with a Freedom representative in which you had tried to cancel the policy. And you told Mr Light that you had also spoken with the Financial Ombudsman Service, as well as been told to get in touch with the Consumer Action Law Centre?---Yes.

40

You then said:

45

I am hoping that this is an honest mistake by an overzealous salesperson and that you will rectify it by cancelling this policy forthwith.

So that was the email that you sent to Mr Light at Freedom on 15 June 2016?---Yes.

Yes. Thank you. Now, did you get any response to this email from Mr Light?---Not that I recall, no.

5

So two days later, on 17 June, you and your son telephoned Freedom again?---Yes.

And Freedom have provided you with a recording and a transcript of that phone call, and you have again annexed those to your statement?---Yes.

10

Now, that particular call was a 16 minute and 47 second call. And I want to play you three extracts from that call. If we could play FIG.0001.0001.0181. This is an extract that begins three minutes and 37 seconds into the call, and finishes four minutes and 56 seconds into the call, and the transcript is FIG.0001.0001.0261 at 15 0263.

RECORDING PLAYED

20

MS ORR: We just missed the last bit of that - - -

THE COMMISSIONER: “Want to keep that”

25

MS ORR: - - - “Just in case you might want to keep that”.

So that’s the first extract of that call. Could we now play the second extract and bring up the transcript at 0264. This excerpt begins eight minutes and four seconds into the call and finishes nine minutes and 30 seconds into the call. And just while 30 that’s coming up, this excerpt relates to a part of the call after you’ve been put on hold, do you recall that, and the representative appears to have gone off and discussed the matter with someone else and has come back to you?---Yes.

35

RECORDING PLAYED

MS ORR: Now, Mr Stewart, what did you think about what you were being told by this representative about it not being apparent to the sales representative that your 40 son had a disability?---I – I disagree.

Now, can I play the final excerpt from the call. And bring up the transcript at 0266. By this time, you were 15 minutes and two seconds into the call. And we will play a short excerpt that ends 15 minutes and 56 seconds into the call.

45

RECORDING PLAYED

MS ORR: Now, Mr Stewart, can you describe the experience of participating in that telephone call?---Well, yes, I found it a very frustrating experience, and was angry that our son had to go through that.

5 And early on in that call, you were transferred from an initial representative within Freedom to another department within Freedom. Do you recall that?---I do.

And the second person you spent – that you spoke with, as we heard, spent some time telling you about the benefits of the products that your son had signed up
10 to?---Yes.

What did you think of that?---I thought that was a waste of time, to be honest.

She emphasised to you multiple times that the policy was free for the first 12
15 months?---Yes.

And what did you think of that?---Well, I didn't think that was the case because there were already some benefits that were going to be deducted for some amounts.

20 And at various points in the call you were put on hold and the person appeared to be making inquiries of someone else in the background. Do you recall that?---I do.

And someone appeared to have listened to the call, and then, as we heard, the person told you that Freedom didn't consider that there were any indications in that call that
25 your son had a disability?---Yes.

Now, towards the end of that call, you asked Freedom to send you recordings of the calls in which the sale had been made to your son, didn't you?---I did. I was interested to hear the conversation that he had with them.
30

And if we bring up 0265 of the transcript, we see the exchange that you had about receiving the phone calls. We see your request to receive a copy of the phone calls at the top of the page, which you repeat. Then the sales representative says that she will need to speak to her manager?---Yes.
35

Then there's another break with hold music. She comes back and says she has spoken to her manager and that you will need to send an email in relation to that. Do you recall that?---I do.

40 You told her that you had already done that?---I did.

And she asked when. You explained that it was yesterday and you were then put on hold again. She comes back and explains to you that:

45 *It will probably be looked at within the next two to three working days. And then they will be able to get back to you. But yes, that's what we can do from there. We can terminate the cover as of today.*

?---Yes.

Now, did you receive the recordings of those calls following this phone call?---No, I did not.

5

Now, by the end of this call, you had managed to terminate the insurance policy that your son had taken out?---Yes, that's what I was told.

10 And we heard the part of the call where your son said the necessary words – the necessary form of words to cancel the policy. In your observation, did your son find that process difficult?---He found it difficult to articulate the words, let alone understand what they meant.

15 In your view, did he understand what was going on in this call?---No.

20 What did you observe about how he responded to the experience of participating in this call?---He was quite distressed about it. As I said, he believed he had done something wrong and was embarrassed, and didn't know what it was that he had done.

20

So having got to this point, where after two calls and an email you had managed to cancel the policy, what was your view of the process that you had had to go through to get to that point?---I thought it was a difficult process to go through, and I especially felt for our son having to – to add distress to his situation.

25

And at around this time, did you decide to contact ASIC about what had happened?---I did.

30 And you lodged an e-complaint with ASIC. Is that right?---Yes.

And you've annexed that e-complaint as exhibit 7 to your statement?---Yes.

35 Now, despite Freedom agreeing to cancel the insurance, did you nonetheless cancel your son's debit card?---We did. I wasn't convinced that payments wouldn't – or have gone out in the meantime or would go out. And so I contacted the bank. And they said, "You can't stop those payments. The only thing you can do is cancel the card." So that's what we did.

40 Now, all of those events happened in the middle of 2016. And in early July this year, so about two years later, you still hadn't received the recordings that you had requested of the sales calls from Freedom?---No.

Did you follow up with Freedom and ask for them again at that time?---I did.

45 Now, your first communication with Freedom in July this year is exhibited to your statement as exhibit 8, FIG.0001.0001.0198. If we could go to 0199. We see a letter

that you wrote to Ms Delahunty, the risk and compliance manager at Freedom, on 10 July this year?---Yes.

5 In that letter, which I think is just coming up now, you asked Ms Delahunty to provide you with various materials. We need to go to 0199. You asked Ms Delahunty to provide you with various materials including the recordings of the calls that you had requested two years earlier?---Yes.

10 Now, on the same day that you sent this communication to Ms Delahunty you got an email back from Ms Delahunty saying that she would likely be in a position to get back to you the following week?---Yes.

15 Again, you've exhibited that communication to your statement. Did Ms Delahunty get back to you the following week?---Not with the information, no.

And on 24 July, did you send an email to Freedom following up on your request?---I did.

20 And about a week after that, on 1 August, you got a response from Ms Delahunty?---Yes.

And Ms Delahunty told you in that communication that she was aiming to provide you with a response within a few days?---Yes.

25 Now, soon after that, did you receive a letter from Mr Orton, the chief operating officer of Freedom?---I did.

30 You've exhibited that letter as exhibit 12 to your witness statement. We will go to that. FIG.0001.0001.0236. Now, the letter from Mr Orton annexed the material that you had sought, including the audio recordings of the calls?---Yes, it did.

And transcripts of the calls that Freedom had created?---Yes.

35 And the letter also annexed various internal communications within Freedom regarding your complaint?---Yes.

40 Now, if we turn to the third page of that letter on 0238, we see under the table that Mr Orton told you that it wasn't the usual practice of Freedom to generate transcripts of audio recordings, but they had done that and they were providing you with those transcripts. And then two paragraphs down, Mr Orton said to you:

45 *In the course of responding to your information request, we have again very carefully reviewed the complaint you made on your son's behalf in June 2016 as to the issue of the Freedom Protection Plan to your son. We have also considered how we responded to and dealt with the complaint. After receiving your complaint on 15 June 2016, we immediately commenced an internal*

investigation into the circumstances of the issue of the Freedom Protection Plan to your son. We determined that your son's policy ought to be cancelled.

5 And the next paragraph refers to the phone call in which you and your son participated in which the policy was cancelled?---Yes.

And then over the page at 0239, we see that Mr Orton tells you that:

10 *A feature of the policy was that the first 12 months of cover were provided at no cost. Prior to completing our internal investigation, we ensured that no premiums were payable by and no amounts were in fact paid by your son. The sales agent who arranged for the Freedom Protection Plan to be issued to your son was exited from the business shortly after the sale took place.*

15 In the next paragraph Mr Orton tells you about steps to enhance their sales processes and procedures. And in the paragraph after that Mr Orton said:

20 *We sincerely apologise for any inconvenience or distress this may have caused you or your son. In the course of reviewing the materials, I was disturbed and disappointed to review the exchange contained in attachment 13.*

Now, that was one of the internal Freedom communications?---Yes.

25 Continuing:

This does not reflect the culture and behavioural standards of Freedom Insurance. I have personally contacted and counselled the staff involved and reiterated that conduct of this nature is unacceptable and will not be tolerated.

30 Now, that was the letter you received from Mr Orton in August this year. That's right, Mr Stewart?---Yes.

35 So two years after your son was sold these policies, you were given this explanation?---Yes.

40 And having reviewed that response and reviewed the materials that came with the response, what were your thoughts about the response?---I felt disturbed at the – some of the communication that was involved and that you referenced before, some of the internal communication. I thought that it was a long time coming, an apology for what had happened, and I – I guess I was more disturbed at the potential for this kind of experience to happen to – to other people in similar circumstances to our son.

45 Do you recall any of the things that disturbed you in the internal communications?---I think what disturbed me was making light of the complaint and ridiculing it, in some way. Yes.

Do you have any recollection of how you were referred to in the internal communications in Freedom?---I do. I can't remember the exact words but they weren't complimentary.

5 Now, did you listen to each of the call recordings that were provided to you?---I have.

So you listened to the calls in which your son participated, including the call in which he was sold the policies?---Yes.

10

Now, I want to play you parts of two of those calls. I want to play, firstly, the entirety of a short call that took place between a Freedom representative and your son on 6 June. That's FIG.0001.0001.0002. And the transcript is FIG.0001.0001.0248.

15

RECORDING PLAYED

20 MS ORR: Now, Mr Stewart, what did you think when you listened to that call?---I was – yes, I was disturbed at some of the responses, fairly minimal responses that were made. And then at the end where the caller asked if his mother is at home and he says no, he said – he hung up then and said he would call back later.

25 I want to play you some extracts of a longer call that took place on 8 June in which your son was sold the policies. And that was a call that lasted for 18 minutes and 12 seconds. And I just want to play two excerpts of that call. The first one FIG.0001.0001.0003. And the transcript FIG.0001.0001.0250 to 0251, 0249 being the first page of that transcript.

30

RECORDING PLAYED

35 MS ORR: All right. And then if we could play the second and last extract from later on in this call, which begins 11 minutes and six seconds into the call and ends 12 minutes and 45 seconds into the call. The transcript is 0254. And we're still in FIG.0001.0001.0003 is the recording.

40

RECORDING PLAYED

45 MS ORR: Now, I've played you only two relatively short extracts from that lengthy call that, as I indicated, went for 18 minutes, Mr Stewart. You listened to the entirety of the call?---Yes.

And you read the entirety of the transcript?---Yes.

5 What did you think after you had done that?---I was, yes, quite disturbed by the whole process because I really didn't think during the call that our son indicated any understanding of what he was signing up for, or why the information was wanted. He was being compliant and trying to be polite, but didn't understand.

10 And do you think it would have been apparent to the person on the other end of the phone that your son had an intellectual disability or that he was otherwise struggling to understand the questions he was being asked?---Well, I would have thought so.

Do you think your son understood the purpose of this phone call?---No.

15 Do you think he understood what he was committing to in this phone call?---Not at all.

Do you think he understood what he was providing his direct debit card details for?---No, and to our knowledge, that's the only time he has done that.

20 And what observations do you have about the way that the sales representative conducted the call with your son?---I just thought he had a script in front of him and he was asking the questions he needed to be asked until he got the answers that he wanted.

25 Do you think the call was conducted in a way that was fair to your son?---No.

30 Having listened to the call what did you then think about the position that had been taken by the Freedom representative you spoke to in 2016 who told you that it wasn't apparent in that call that your son had a disability?---I wondered whether they had actually listened to the call, to be honest.

35 What has the impact of all of this been on your son, Mr Stewart?---He – he became quite apprehensive about answering his phone, and even though we had put his number on the Do Not Call Register, he continued to get phone calls from – we don't know who but he no longer would answer his phone to anyone whose number he didn't know.

40 Does your son know you're giving evidence in the Royal Commission today?---He does.

And what does he think about that?---He – he thinks it's about “those calls that I used to get”.

45 And why have you decided to come along and give evidence in the Royal Commission, Mr Stewart?---I was – I was disturbed at this process, and was concerned that others would be targeted in similar situations to him. And perhaps others who didn't have the support that he has to challenge this kind of process.

Thank you, Mr Stewart. I have no further questions.

THE COMMISSIONER: Thank you, Mr Stewart. Mr Silver.

5 MR SILVER: No questions, thank you, Commissioner.

THE COMMISSIONER: Thank you very much, Mr Stewart. You may step down?---Thank you.

10

<THE WITNESS WITHDREW

[11.44 am]

MS ORR: Commissioner, the next witness is Mr Craig Orton from Freedom.

15

THE COMMISSIONER: Yes.

<CRAIG FRANCIS ORTON, AFFIRMED

[11.45 am]

20

<EXAMINATION-IN-CHIEF BY MR SILVER

25 THE COMMISSIONER: Do sit down, Mr Orton. Yes, Mr Silver.

MR SILVER: Thank you. Mr Orton, could you tell the Royal Commission your full name, please?---Craig Francis Orton.

30 And your business address?---Level 12, 20 Bond Street, Sydney.

And what is your current occupation?---I'm the chief operating officer of Freedom Insurance.

35 Since what date?---Since February this year.

And is it correct that you received a summons to be here today to give evidence and produce witness statements?---Yes, that's correct, Mr Silver.

40 And do you have a copy of that summons?---Yes.

I tender the summons, Commissioner.

THE COMMISSIONER: Exhibit 6.65 will be the summons to Mr Orton.

45

EXHIBIT #6.65 SUMMONS TO MR ORTON

MR SILVER: Mr Orton, you signed a witness statement concerning Rubric 6-22 dated 24 August 2018?---Yes.

Do you have a copy of that statement with you?---I do.

5

Save for a few things I will point out in regard to your statement, is the statement true and correct to the best of your belief?---Yes, it is.

Could you turn to paragraph 15 of that statement, please?---Yes.

10

You will see there's a description of the types of life insurance cover distributed by life. Would you like to make a comment on paragraph 15(b) in regard to accidental death?---Yes. From 6 August 2018, we no longer make outbound calls for accidental death.

15

And in regard to paragraph 15(c) in regard to accidental injury?---From 6 August 2018, we no longer make outbound calls for accidental injury.

20

In regard to paragraph 15(d) regarding term life?---Yes. From 21 September 2018, there are no outbound calls for term life. From 6 August 2018, there is no downgrade option to accidental death, in the case where the customer fails underwriting.

25

And then moving to paragraph 15(e) regarding trauma, have there been changes there?---Yes. From 21 September 2018 there are no outbound calls for trauma.

30

And finally in regard to paragraph 15 – move to paragraph 15(f) which relates to loan protection cover, are there any changes in that regard?---Yes. From 30 September 2018 the suspension of marketing of loan protection cover.

35

At the bottom of that same page on page 3, paragraph 19, there's a paragraph that deals with life insurance policies that Freedom distributes through two Sydney-based call centres. Moving to paragraph 19(b), which deals with Peakbound Holdings, has there been any change in that business?---Yes.

Could you tell us what it is?---That's to be ceased on 21 September 2018.

If you could turn to page 16 now, paragraph 71?---Yes.

40

Which deals with telemarketing data and the use of it. Has any change taken place in that regard?---Yes.

Could you describe that, please?---Since 31 August 2018 Freedom has ceased using customer lead data sourced from telemarketing lists.

45

Thank you. At paragraph 18 of your statement – sorry, page 18 in part (c) which deals with remuneration, which is just before question 7, have there been any changes in regard to the structure for remuneration - - -?---Yes.

5 - - - at life?---Yes, there has.

That’s at Freedom. Can you tell us what they are?---As at 30 September 2018 there is – there is no commissions for sales and retention personnel. Remuneration is by flat rates. And there’s no non-monetary incentives based on sales or retention
10 volumes.

I see. And finally in regard to this statement, at page 22 in paragraph 111 which deals with the current incentive programs, if you turn over the page to page 23, subparagraph (e) which deals with the performance management and disciplinary
15 policy, has there been any development in regard to that policy recently?---Yes. The sales agent performance management and disciplinary policy was endorsed by the board on 5 September 2018.

And that statement that you made and signed, were the exhibits attached to that
20 statement?---Yes.

I tender that statement with the exhibits, Commissioner.

THE COMMISSIONER: That statement will become exhibit 6.66. That’s the
25 statement concerning Rubric-6.22 dated 24 August ’18.

**EXHIBIT #6.66 STATEMENT OF MR ORTON CONCERNING RUBRIC-6.22
DATED 24/08/2018**
30

THE WITNESS: Sorry, Commissioner, do I put both statements, the changed
statement?

35 MR SILVER: I will come to the second statement shortly.

THE COMMISSIONER: If you keep the second one.

MR SILVER: Mr Orton, you also signed a witness statement concerning Rubric 6-
40 66?---Correct.

Dated 27 August 2018. Correct?---Correct.

45 Do you have a copy of that statement with you?---Yes, I do.

And subject to one change, are the contents of the statement true and correct to the best of your belief?---Yes, they are.

Turning to that statement which deals with life insurance, accidental death cover, has there been any change in the Freedom business since you signed that statement?---Yes, there has.

5 And what is that?---As at 6 August 2018 Freedom Insurance no longer sells any accidental death cover or accidental injury cover on outbound telephone sales calls.

Thank you. And to the best of your knowledge, that statement is true and correct now?---Yes, it is.

10

I tender that statement together with the exhibits to it.

THE COMMISSIONER: That statement and its exhibits, namely, the statement in relation to Rubric 6-66 of 27 August '18 becomes exhibit 6.67.

15

EXHIBIT #6.67 STATEMENT OF MR ORTON AND EXHIBITS, NAMELY, STATEMENT IN RELATION TO RUBRIC 6-66 DATED 27/08/2018

20

MR SILVER: Thank you, Commissioner.

THE COMMISSIONER: Thank you, Mr Silver. Yes, Ms Orr.

25

<CROSS-EXAMINATION BY MS ORR

[11.52 am]

30 MS ORR: Mr Orton, you've been put forward by Freedom Insurance Group to answer questions in relation to its operations and in relation to the interaction of Freedom representatives with Mr Stewart and his son?---That's correct.

Now, you were appointed to the role of chief operating officer of Freedom Insurance Group quite recently, in February this year?---Yes.

35

And you tell us in your statement that you were appointed:

...in order to lead and achieve changed management structural process compliance and operational improvements across the business.

40

?---That's correct.

45 So what type of structural improvements were necessary?---There has been a number of changes that have been made since my arrival. Number one is ensuring that the quality – quality assurance on the calls is maintained and we now target 100 per cent of all sales calls, being – quality assurance being conducted on them, which is important to ensure that none of these types of issues go through. There has also

been enhancements to vulnerable customer training and more practical guidance on customer training to ensure better customer outcomes.

5 The insurance arm of Freedom Insurance Group is Freedom Insurance Proprietary Limited. Is that right?---Freedom Insurance is a distributor. So I'm not sure what you mean by the insurance arm.

10 Well, what does Freedom Insurance Proprietary Limited do?---Freedom Insurance Proprietary Limited is the company, but it is a distributor and distributes other insurance – insurance products.

Okay. So Freedom Insurance Proprietary Limited has an AFSL?---Yes.

15 An Australian financial services licence. And it markets and distributes life insurance products. Is that right?---Yes, that's correct.

And it markets and distributes them direct to consumers?---That's correct.

20 Freedom itself doesn't issue life insurance products?---That's correct.

The life insurance products that you market and distribute are also issued by licensed life insurers?---That's correct.

25 Now, Freedom markets and distributes life insurance products solely through telephone sales?---Yes, that's correct.

And those comprise inbound calls where a potential customer calls Freedom and outbound calls where Freedom calls them?---That's correct.

30 Now, what proportion of sales are made in inbound calls?---I don't recall the exact number but by far and away the majority of calls are outbound.

The vast majority of your - - -?---Yes.

35 - - - sales are achieved through outbound sales calls, aren't they?---Correct.

And you've got two Sydney-based call centres?---We do at the moment although we're – we are terminating the relationship with the external call centre, Peakbound.

40 Yes. So you've decided to cease using that external call centre and just have your in-house call centre. Is that right?---That's correct.

And that's going to happen from 21 September this year?---That's right.

45 Now, Freedom currently distributes six types of life insurance cover. Is that right? I just want to go through them with you and you can tell me if I've got this right.

There's the final expenses cover, which is a form of funeral insurance?---That's correct.

5 And a distinctive feature of that product is that Freedom doesn't charge premiums for the first year?---That's correct.

Then Freedom also covers life cover, life insurance?---Yes, it does.

10 Trauma cover?---Trauma is attached to the life cover but that's right, yes.

Yes. Loan protection cover?---Correct.

Accidental death cover?---Correct. It's available, yes.

15 And accidental injury cover?---Correct.

Now, Freedom told the Commission at 3 o'clock yesterday afternoon that it has decided to cease selling all of these products except funeral insurance and loan protection cover through outbound sales calls. Is that right? That's what you told us at 3 o'clock yesterday afternoon?---That's correct. That's correct.

That's a very significant change, isn't it, Mr Orton?---It is a significant change.

25 And why has Freedom made that change?---There are a number of reasons. One, we want to ensure that we're working on any regulator concerns in the market, particularly around accidental death and accidental injury. We want to change the sales process so that for all of our products there is a 12 month period where customers can understand the purchase decision, and as part of that we've ceased taking – we've ceased collecting banking details on the first call, so that it truly is 12 months free cover, and we're trying to work through that structure orderly and as quickly as we possibly can to improve consumer outcomes.

30 Having received the information from Freedom at 3 o'clock yesterday that you had made this significant change to your business model, the Commission sent a notice to produce to Freedom overnight. Have you seen that notice to produce?---Yes, I have, Ms Orr.

All right. I will bring that notice to produce up on the screen. That's RCD.9999.0067.0001. There we have it. This is the notice to produce that was sent to the Commission – sent by the Commission to Freedom at 6 o'clock last night. And what the Commission sought were documents recording the decision which it was advised of yesterday, the decision made by Freedom to cease the outbound sale of accidental death, accidental injury, term life insurance policies and trauma policies. And also documents recording the decision made by Freedom to cease commissions for sales and retention personnel as of 30 September, and there was a third category which we will see over the page, which related to your decision to

cease providing non-monetary incentives based on sales or retention volumes as of 30 September 2018?---Correct.

Now, that notice was returnable at 9 o'clock this morning?---That's correct.

5

How many documents did Freedom produce under that notice?---One which was the board minutes of the meeting in relation to item (b).

10 So one document was produced about all of those decisions, and it was minutes of a meeting of the Freedom Insurance Group board on 5 September this year?---That's correct.

All right. I tender the notice to produce, Commissioner.

15 THE COMMISSIONER: Exhibit 6.68 will be notice to produce NP1410 to Freedom Insurance Group Limited, RCD.9999.0067.0001.

20 **EXHIBIT #6.68 NOTICE TO PRODUCE NP1410 TO FREEDOM INSURANCE GROUP LIMITED (RCD.9999.0067.0001)**

MS ORR: Now, can I take you to the single document that Freedom produced under this notice to produce which is FIG.0011.0001.0001. Now, this is the minutes of the board meeting on 5 September. We see from the first page that you were an attendee at that meeting?---That's correct.

25

You see that? You recall this meeting?---I do.

30 Now, can you identify where in this document the decisions that you advised the Commission of at 3 o'clock yesterday are recorded? I would like to give you a hard copy of the document to look through. We have one here. The hard copy document that you have has the document ID numbers at the top of the page. So if you could use those to identify any part of these minutes that records the decisions that you advised the Commission of yesterday.?---Ms Orr, on – would it be possible to see the notice to produce again just so I can align them.

35

Yes. Yes. Certainly. The notice to produce which we had on the screen just before - - -?---Yes.

40

- - - was RCD.9999 – we have it now?---Yes. So in relation to point (b).

Yes?---If we move to item number FIG.0011.0001.0005 - - -

45 If we could have that on the screen at the same time that would assist. Yes?---Item 5.

Yes. What does item 5 record?---Sales and retention agent remuneration.

Yes?---And my explanation to remove the variable commission component from the remuneration package provided to sales and retention agents.

5 Yes. I see. So item 5 which we see on the right-hand side of the screen you say records the decision which is dealt with in category (b) of the notice to produce?---Correct.

The decision to cease commissions?---Yes.

10 And do you see any other decisions reflected in this document?---No.

Are there no documents meeting the description of category (a), are there no documents recording the decision made by Freedom to cease the outbound sale of those sorts of policies as of those dates?---No, there is not but I can explain.

15 Yes, please?---So the decision was made in late July to cease collecting banking details on the first call. This was done for a couple of reasons. The main reasons – reason was to allow customers a true 12 month period and move from an opt-out method to an opt-in method where they had to provide their banking details beyond
20 that period should they wish to continue the cover. It also gave customers the opportunity and us the opportunity to provide further information along the way to ensure that they understood their purchase decision. When we looked at the accidental death and accidental injury products which comprise quite a small component of Freedom’s total business, we decided that it was better to remove
25 those because they did not have the 12 month period. It was - - -

When did you make that decision?---Late July, early August, that decision was made, August 6, I believe.

30 And there are no documents recording that decision that you made in late July or early August?---There are no documents because it was the decision between the CEO and I.

35 Why are there no documents when it’s such a significant change to your operating model, Mr Orton?---Ms Orr, it’s not a major component of our business, accidental death and accidental injury. We knew that the – the regulator had some concerns. It seemed like the better option for customers to simply cease selling it.

40 You didn’t think that was something that you should tell the Commission in either of the witness statements that you provided the Commission in late August?---In hindsight, you should have been told.

45 Well, one of those statements was directed entirely to your sales of accidental death products. You didn’t think to tell the Commission in that statement, which you made on 27 August this year that you had decided in late July or early August to stop selling those policies by outbound sales?---At the time, we were still selling the product and we are still selling the product.

Yes?---It's just not by outbound sales.

5 Yes. You didn't think that was a relevant matter to deal with in your statement to the Commission about your accidental death product?---In hindsight, I agree. It should have been – it should have been - - -

10 Why was it not included, Mr Orton?---I don't – I don't have an answer for that, Ms Orr. There was no intent to not provide the right information and we have provided a lot of detailed information to the Commission.

Just not a key piece of information, Mr Orton, which is that you've ceased the outbound selling of those products from late July or early August?---I agree.

15 I will let you continue. You were explaining how these decisions were made and you dealt with the accidental death and I think you incorporated accidental injury in that decision process that you've just described as well?---Yes. Yes.

20 What about the decisions that were made to stop selling life insurance policies and trauma policies by outbound sales. Can you tell us why there are no documents recording those decisions?---Yes, I can. That was – that was a decision late last week, and the decision was that given that we're moving to this new sales process without collecting bank details, and providing customers an opportunity to learn more about – about the product before they need to actually pay anything, term life and trauma policies didn't fit into that category. We only had a very small number of agents working on that in an outsourced contact centre, which is Peakbound, the one that we are ceasing, and we decided that it was better to not do that at the moment, given regulatory concerns around giving customers the right information. And - - -

30 Better to not do that at the moment. What exactly is the decision that you've made in relation to your sales of life insurance and trauma policies?---To cease outbound.

And you say you made that decision late last week?---Correct.

35 Who made the decision late last week?---It was discussion between the head of marketing, the CEO, and myself.

And none of you recorded that decision in any document?---No, not that I'm aware of.

40 Why not, Mr Orton?---Because it was a decision that we could deal with without creating unnecessary paperwork.

45 Unnecessary paperwork?---I don't know why we would have to record that decision. It was as simple as arranging for the outsource call centre to cease – to cease operating outbound calls for life and trauma.

Your business model, Mr Orton, involves making sales, almost every sale, through an outbound sales model. Do you agree with that?---Correct.

5 And you sell six products through outbound sales, and you tell me that the decisions you've made to stop selling four of those six products through outbound sales are not decisions that warrant any formal recording. They are significant changes to your business model, are they not, Mr Orton?---Those products – those four products combined that you're talking about make up less than 15 per cent of sales.

10 So what does that mean? What is the remainder made up of?---The final expenses product.

So most of your business is in selling funeral insurance. Is that right?---That's right.

15 What proportion of the 85 per cent is sales of funeral insurance?---Sorry, no, 85 per cent is funeral insurance.

20 And what about your loan protection product. That's the other product?---Very small. Very small product that was trialled and that was already being considered to be shelved for a while.

I see. So you've decided to continue selling your main product, the funeral insurance product through outbound sales. Is that right?---We've decided at the moment to work with ASIC on the model. We've engaged ASIC on a number of occasions to talk through the appropriate way, with a view to better outcomes. We've removed – we've removed billing details, like I said, upfront, and we're trying to provide more information to customers before they are committed to pay anything for – for a funeral product.

30 So is the answer to my question yes, you are going to continue to sell your main product, funeral insurance, via outbound telephone sales?---Yes. At this stage, yes.

35 Okay. At this stage. Is that under review?---Well, at the moment we're in discussions with ASIC and we want to ensure that the model that we're proposing fits in with their concerns about outbound.

40 And who is going to sell funeral insurance in outbound sales? You're closing down one of your sales centres which was the external sales centre. So is it going to be in-house Freedom people in your own sales centre who will sell funeral insurance?---That's correct.

45 Okay. Now, I want to take you to some aspects of the minutes that you've provided under the notice to produce. Perhaps if we can take the notice to produce down now and bring up the first and second pages, 0001, 0002 of the minutes?---Yes.

Can I take you first to item 3, Royal Commission:

5 *The board was informed that CO – Craig Orton – has been subpoenaed to give evidence at the Royal Commission early in the week commencing 10 September 2018. Craig Orton has been intensively reviewing the documents and witness statement with a focus on what is perceived as the key issues. Craig Orton is being assisted by lawyers.*

DC – now that is – I can't see a DC there. That must be a typographical error?---No, it should be Dean Carrigan.

10 It should be who, sorry?---I believe that should be Dean Carrigan.

15 Dean Carrigan – DO informed the board that the key themes that are likely to be focused upon by the Royal Commission are targeting of vulnerable customers, conduct of sales agents (including high pressure sales), the retention and cancellation process, objection handling by sales and retention agents, remuneration structures for sales and retention agents, and the quality assurance process.

Do you see that there?---I do.

20 Continuing:

But it might potentially broaden to other matters.

25 We then see a reference to a witness statement from Mr Stewart, who has just given evidence, being placed in evidence and it is likely that this will be an area for questioning. You indicated that if given the opportunity in evidence you would apologise to Mr Stewart and his son for any distress caused. And you confirmed that the company has separately apologised directly to Mr Stewart. I'm happy to give you that opportunity right now, Mr Orton?---Thank you. Thank you, Ms Orr. Mr Stewart, to you and your son, I sincerely apologise for that – your son had to be put through that, and you have that from the bottom of my heart. It should not have occurred.

35 You also indicated to the board in this meeting, Mr Orton, that your approach to providing evidence would be to assist the Royal Commission and to openly acknowledge where conduct or underlying processes do not meet the standards that you and the company find acceptable. You indicated that where appropriate, you would inform the Royal Commission of the significant changes and initiatives that have either been recently completed or which are otherwise progressing. You confirmed with the board that key initiatives that have been implemented or which are otherwise in the process of being undertaken were under the guidance of the compliance and operational committee. And the board endorsed those changes and initiatives. So we see after that discussion that DH, the chairman, David Hancock, stated that :

45

As there is potential damage to brand arising out of the Royal Commission hearing, he requested that preparatory work to be able to respond immediately following the hearing be commenced forthwith.

5 ?---Correct.

Did that occur?---Yes.

10 Okay. Now, over the page at 0003, we see an item that refers to the ASIC Direct Life Review. And we see that Keith Cohen, one of the directors, gave:

...a high level summary of the main issues arising for Freedom from the ASIC Direct Life Review.

15 ?---Correct.

And then if we turn to 0004, we see a further discussion of the ASIC Direct Report. Do you see there:

20 *ASIC have yet to reach a determination on what outbound activities will be restricted but the message was clear that there will be significant restrictions introduced on the making of pure outbound calls for the sale of life insurance products.*

25 ?---I do.

And below that we see that:

30 *Freedom undertook to take the ASIC feedback to its board and consider the implications.*

And finally, can I take you to 0007 in this document, which is headed Market Notification. And do you see the second paragraph there:

35 *The board agreed that following the ASIC Direct Life Review and ASICs*
comments at the meeting of Monday, 3 September 2018, it is apparent that the
company will need to change its business practices to some extent. Whilst the
full extent of the changes is not known and that no clear decision on the future
40 *of the business model will be made until after the strategic review, it was*
considered that this must be disclosed to the market, together with the fact that
the business is reviewing its model in light of the likely regulatory changes and
will take into account ASIC input in this process.

45 What are the likely regulatory changes referred to in that paragraph, Mr Orton?---We obviously reviewed, Ms Orr, the Direct Life report. There were a number of recommendations in that report around accidental death, around accidental and concerns with it, around some other issues with outbound telemarketing and ensuring

better consumer outcomes. We were suggesting that particularly with the statement that outbound telemarketing should be ceased, that we needed to look at various options. That's what it was mainly around.

5 So had there – are there likely regulatory changes or is it just that ASIC has indicated the approach that it intends to take in enforcing the law?---We do need to – and we want to engage with ASIC more on determining exactly what their recommendations are. They – in a meeting with ASIC that I held, they were keen to say that there will be a transition period, and that they will consult with industry during this process. So
10 we were working through those various issues.

A transition period in relation to the cessation of outbound sales of life insurance. Is that what you understood that to mean?---Yes, but when I read the – the report from ASIC, it talks about certain outbound for – for those products.

15 And why have you decided to continue with your outbound sales of funeral insurance?---I think there's varying degrees of outbound, Ms Orr, and one thing we would like to discuss with – with ASIC is the new business model that we have, (1), that I've already described. We'd also like time to consult with them on exactly
20 what they mean by the cessation of outbound, because there's still a lack of clarity on what that means. Does it mean that if someone comes to your website, that you cannot call them back. Does it mean that if someone searches for you and asks for a call, you cannot call them back, or are we talking about variances on the lead generation side. And that's what we want to talk to ASIC about and comply with the
25 law, and ensure better customer outcomes.

Well, I want to put to you that you've decided to continue outbound sales of funeral insurance not because of any varying degrees of outbound sales but because 85 per cent of your business comes from outbound sales of funeral insurance?---Definitely
30 that is the most – it is the most important part of our business. I agree.

And that's why you've decided to continue it in the face of ASIC's report on the direct sales of life insurance?---That's not true, Ms Orr. That's not the reason. The reason is that we can provide the true 12 month cover on that area. Certainly it does
35 benefit us as well, I agree.

You've referred a few times to true 12 month free cover. Do you accept – I take it you do from that language – that when you did what you did until very recently, which was take someone's payment details when the purchase was made and hold on
40 to them so that you could start charging them at the expiration of the 12 month period, you were not truly giving them a 12 month free period because you were not giving them the option to opt in at that time, you required them to opt out, to actively contact Freedom and tell them at the end of the 12 month period that they didn't want to continue with that product?---I think it was a bad choice of words for me
45 saying 12 – true 12 month period but you're right, it is now the opt – opt in at the end of the 12 months rather than the opt out.

And do I take it from that that you accept that the opt-out model was not a model that you should have had in place?---I don't think, Ms Orr, that the model itself was a bad model. I think it could have been improved. I think the intention was always to provide people an opportunity to learn more about their cover over that 12 month
5 period. They were given updates and renewal letters at minimum prior to any drawing occurring from their account, but I agree, it could have been done better.

Well, they had to actively take a step to cancel that policy before you started activating the direct debit payments. And if you didn't hear from them, the direct
10 debit payments commenced at the expiration of that 12 month period, didn't they?---That's correct.

But you say that this was a good thing, or at least not a bad thing, because it gave them a 12 month opportunity to learn more about their cover?---Correct.

15 Well, shouldn't the situation be that they have learnt all they need to learn about their cover before they make the decision to purchase that cover?---I agree. I agree with what you're saying. When I say they've had no monetary loss over that 12 month
20 period. If we do provide more information during that period, I think it may help the customer in the long term. I agree that they are purchasing the product at that stage.

And do you agree that the way you sell the product with the 12-month free period may confuse customers who feel that they're not purchasing the product at that time, they're not purchasing it until 12 months later when direct debit payments come out
25 of their account?---No, I don't agree with that. I – I think it's quite clear that - - -

But you've made the decision to change this?---Yes.

30 Commissioner, I tender the minutes of the board meeting dated 5 September 2018.

THE COMMISSIONER: They're marked as draft, I think. Draft minutes board meeting 5 September '18, FIG.0011.0001.0001, exhibit 6.69.

35 **EXHIBIT #6.69 DRAFT MINUTES BOARD MEETING DATED 05/09/2018 (FIG.0011.0001.0001)**

40 MS ORR: Now, Mr Orton, you were present for the evidence that was given by Mr Stewart earlier today?---I was.

And you heard that Mr Stewart's son was sold a Freedom Protection Plan which encompassed three different products, the funeral policy, an accidental death policy and an accidental injury policy?---Yes.

45 Now, the accidental death policy, I want to ask you some questions about that. As you told us yesterday, you're no longer selling that through outbound sales, but you

are still selling that. That is a policy that you will still market and distribute?---We will have it available.

5 Will you market and distribute that product?---It will be on a website, so if that's marketing, yes. What it's – what it's available for is many funeral products have an accidental death benefit. When someone transfers to us, if – they may contact us and say that they want the accidental death benefit. And at that stage we may offer it to them. But we certainly will not be promoting it in any other way.

10 What does the accidental death policy that you offer provide?---It provides coverage – the accidental death component provides coverage in the event of accidental death.

And what coverage does it provide then?---A benefit – a life benefit for the accident – in the event of – of an accident. So for loss of life.

15 And what about your accidental injury policy, what does that provide?---It provides a number of benefits for major injuries, and then also has a broken bone component which provides benefits as a proportion of the total benefit paid for accidental injury for broken bones.

20 In your statement you say that:

Accidental death cover, combined with accidental injury cover, provides a relatively low cost alternative insurance benefit to full life cover.

25 Can you explain what you mean by that?---It provides a cheap alternative but doesn't provide coverage for natural causes.

30 Well, it's not a true alternative to life cover, is it?---No. No, you're right.

And that's because the circumstances in which you can claim on an accidental death policy and an accidental injury policy are much more limited than under a life insurance policy?---That's correct.

35 Okay. Now, your flagship accidental death product has been the Freedom Protection Plan accidental death policy and that was the product that was sold to Mr Stewart's son?---That's correct.

40 And that's the only accidental death cover that you currently distribute and market?---Correct.

45 Okay. And you describe it in your statement as a simple insurance product that is fairly generic in nature. What do you mean by that?---Most accidental death policies are very similar. They don't have a lot – they do have some exclusions, of course, but they're – they're fairly generic. And by that I mean that they're – it's death by accident.

Can I take you to an exhibit to one of your statements?---Yes.

5 Exhibit CFO-1 tab 8 which is FIG.0003.0001.0022. Now, this is a recent product training presentation given to Freedom sales agents. Is that right, Mr Orton?--- Yes. Yes, Ms Orr.

We see it's dated July last year?---Yes.

10 Now, can I take you to 0044 within this document, which sets out the main features of Freedom's accidental death cover?---Yes.

So we can see from this slide that applicants for accidental death cover have to meet age and residency criteria?---Correct.

15 And all lives insured also have to meet those criteria, and certain criteria in respect of their relationship to the policy owner?---Correct.

20 And the cover requested must be within the permitted sum insured, which is 50 to \$500,000 for adults and 10 to \$30,000 for children?---Correct.

But beyond those matters, there are no additional underwriting criteria for acceptance?---That's correct.

25 So in contrast to life insurance, where there would be a detailed set of medical or health questions, none of those questions need to be addressed for the sale of accidental death insurance?---That's correct.

It's a guaranteed acceptance product?---Yes.

30 Now, this slide also makes clear that a Freedom accidental death policy can provide cover for up to eight family members. Do you see that? Under special features?---Yes.

35 Why is that? Why do you have that feature?---Because cover is – is available for most of our product – or for the – for the funeral plan, Freedom Protection Plan and with accidental death cover for each family member up to eight – up to eight customers.

40 Do you encourage your sales agents to tell – to sell cover for up to eight family members?---I think they have been encouraged in the past, yes.

The premiums for accidental death cover, you tell us in your statement, are a flat rate?---Yes.

45 Is that right? And can I take you to the equivalent of this slide for accidental injury cover at 0050. You have to take out accidental death cover to be eligible for accidental injury cover. Is that right?---That's correct.

And the accidental injury cover works as an advanced payment of the accidental death cover benefit?---Correct.

5 It's a once-only benefit. We see that from a couple of pages on, but am I correct in saying it's a once-only benefit?---Depending on the injury.

I will take you to 0052 and perhaps you can help me understand that, because it says, middle paragraph:

10 *Other than for a broken bone, an accidental injury benefit is a once only benefit.*

?---Yes.

15 So what does that mean?---You would only be paid the benefit for once.

Okay. Now, we see also from this slide that any payment under the accidental injury cover reduces the amount payable under the accidental death cover?---Correct.

20 Right. Now, prior to the changes that you told the Commission about yesterday, in what circumstances did Freedom try to sell a customer an accidental death or an accidental injury policy?---They were sold with the final expenses product on the Freedom Protection Plan and prior to the dates that I spoke about before they were sold for people who failed the underwriting of a premium life product or a term life
25 product.

So they were sold to people who bought funeral insurance?---Correct.

30 And they were sold to people who didn't pass the underwriting process for a life insurance product?---That's correct.

Now, you heard – did you hear the evidence yesterday of Mr Martin from ClearView?---I heard some of it.

35 Did you hear the questions that I asked Mr Martin about the views that ASIC has recently expressed in relation to downgrading sales practices for accidental death insurance?---I didn't hear the questions but I know ASICs view.

40 What do you understand ASICs view to be, Mr Martin?---I don't believe – I don't believe that ASIC thinks that it's appropriate for a downgrading from a term life – failed term life. And if it is to be offered, then the sale should not be concluded at that time. There should be some time to review.

45 But do you accept that Freedom did engage in downgrading sales practices in relation to the sales of accidental death insurance?---Yes, we did.

And it should not have. Is that your position?---My position now is that I think it is not clear enough on all occasions that the benefits for the customer. So, yes, I don't think it should be done.

5 It shouldn't be done?---No, I agree.

Now, in addition to selling accidental death and accidental injury policies to people who don't qualify for life cover, or who have bought a funeral insurance policy, it has also been Freedom's practice to try and sell these sorts of policies when people call up to cancel an existing life insurance policy, hasn't it?---It has, yes. You're right.

Now, why does that happen? Why does Freedom, when someone asks to cancel their life insurance policy, try to sell them an accidental death and accidental injury policy?---I'm not sure of the actual occasions and I would have to know from that individual, but I can imagine if it was – if it was a situation where the cost was prohibitive, they may offer it as an alternative.

Well, it's not something that was done just by an individual, was it? It's something that Freedom told its sales agents?---Correct.

I'm sorry, its retention agents - - -?---Correct.

- - - to do?---Correct.

25 Do you agree with that?---Yes, I do.

Could I show you FIG.0008.0008.0013. Now, this is Freedom's retention training manual, which appears to us, from the metadata, although it's undated, to be from 3 July 2017. Have you seen this document before, Mr Orton?---I have.

And it's a training manual for retention officers. Now, they're the Freedom representatives who handle calls from customers who want to cancel their policies. Is that right?---That's correct.

Why are they called retention officers?---They're actually called customer care agents as well, but they are – their job is to try to retain the customer.

It's their job to try and talk the customer out of cancelling their policy, isn't it?---It's their job to provide alternatives, but certainly, yes, it's better for the company if the customer keeps it.

So they're instructed to try and talk the customer out of cancelling their policy, and, if necessary, downgrade them to an accidental death or an accidental injury policy?---They're instructed, Ms Orr, to provide alternatives for the customer calling in to cancel.

Well, could I ask you to look at a particular page in this training manual, which is 0044. We see a page headed Cancellations. :

5 *The majority of calls you take will be cancellation requests. This is where your sales expertise and problem-solving skills come into play. Every call should be treated as if it is your first call for the day. Motivation and key in this role. You should always try your hardest to stay motivated and determined regardless of your save percentage that day.*

10 What was the save percentage?---The save percentage is the number of people – policies that they manage to save.

So they had targets for how many policies they had to save?---They did.

15 So that was part of their KPIs?---Yes.

And that was part of their remuneration structure?---Yes.

Continuing:

20

That next call could be the save or the conversation you were waiting on to turn around your results. Try your best on every single call. Every premium counts when it comes to our team targets. If you cancel a policy, remember you must offer accidental death and injury cover. You will fail your quality assurance if you don't.

25

?---Correct.

30 So it's a very strong direction to your retention officers, they will fail their quality assurance unless they attempt to sell the customer accidental death and injury cover?---Yes, it is.

35 Was that an appropriate direction to give your retention officers, Mr Orton?---No, I don't think it is. I don't think it is.

35

Is that still a direction that is given to your retention officers?---I don't know. I will need to check that but it should not be offered and it will not be offered in the future.

40 I see. So if that is still the position, you will make changes, will you?---I will.

40

45 Okay. Now, do you agree that the practice of trying to sell accidental death policies when people are calling up to cancel their life insurance creates a risk that they think they're getting something like a life insurance policy for a lower cost when they're really getting a very different sort of product?---I do think if it's not clearly explained that there is that risk, yes.

How was Freedom remunerated when it sells accidental death policies for an insurer?
What does Freedom get for doing that?---We receive an upfront commission and a trail commission.

5 And what's the size of the upfront commission?---Accidental death – I don't have it to hand. I can – but it's well within any of the LIF requirements. I want to say around 50 but I don't know the actual amount for accidental death.

10 Well, you tell us in one of the exhibits to your statement dealing with accidental death cover that the initial commission can be between 33.5 per cent and 60 per cent?---Yes. That sounds right.

And what about the trail commission. Do you know how much that is?---Less than 20.

15 Less than 20 per cent. How much less?---I'm not sure of the trail commission on accidental death. I apologise.

20 The ASIC Direct Life Insurance Report, I take it from answers you've already given me that you're familiar with it?---I am.

Before I move to asking you some questions about that, I will tender the retention training manual.

25 THE COMMISSIONER: Freedom insurance retention training manual, July '17 FIG.0008.0008.0013, exhibit 6.70.

30 **EXHIBIT #6.70 FREEDOM INSURANCE RETENTION TRAINING MANUAL, JULY '17 (FIG.0008.0008.0013)**

35 MS ORR: Now, the ASIC Direct Life Report contains concerns not just about the way accidental death products are sold but about the value of those products. Are you familiar with those concerns?---Yes.

And you may have heard me take Mr Martin yesterday to ASICs view that these are policies that offer very limited benefits to consumers?---I did hear that, yes.

40 And ASIC in that report analysed the claims ratio for accidental death policies across the entities that it reviewed, which didn't include Freedom?---Yes. That's right.

45 But we see from those entities – and I'm happy to take you to this part of the report if it assists – RCD.0003.0075.0138. And if we could go to 0146. We see at paragraph 35 that ASIC found that:

...data shows that this product offers little benefit to consumers. The claims ratio for the 2015 to '17 financial ratio for the 2015 to '17 financial years was 16.1 per cent. This means that for every \$1 of premium paid by consumers, only 16 cents was paid in claims by insurers.

5

And if we turn to 0169 in the document. We see from figure 5 there that from all the types of life insurance, accidental death had the lowest rate of claims accepted. 26 per cent of claims were accepted across the entities that ASIC reviewed?---Yes.

10 36 per cent were denied and 38 per cent were withdrawn?---Yes.

Now, we've referred to this report a number of times, Commissioner, but I haven't yet tendered it. I will tender it now.

15 THE COMMISSIONER: Exhibit 6.71 will be ASIC report 587 sale of direct life insurance, RCD.0003.0075.0138, exhibit 6.71.

20 **EXHIBIT #6.71 ASIC REPORT 587 SALE OF DIRECT LIFE INSURANCE (RCD.0003.0075.0138)**

MS ORR: Now, as I said, this analysis didn't involve analysis of Freedom data, but the Commission asked Freedom to provide it with that data. So you've provided
25 information about your accidental death claims ratio and other sales information covering a number of years. I want to take you to that data, particularly for the last three years. But before I do that, do you know what proportion of deaths in Australia are the result of accidents?---I don't know off the top of my head but it's a small percentage.

30

How small do you think it is?---I don't know.

Well, can I ask, while we have this report on the screen, for us to go to page 0208, where ASIC refers to some ABS statistics. Sorry, if we could go to 0206. Do you
35 see there paragraph 358:

Accidents make up a very small proportion of deaths in Australia. Data from the Australian Bureau of Statistics indicates that of all the deaths that occurred in 2016, around five per cent were as a result of accidents.

40

?---Yes, I see that.

Now, can I take you to the numbers of accidental death policies sold by Freedom over the last three years. We will bring up your accidental death statement, which is
45 FIG.0006.0001.0624. And I want to display a table which you have included in paragraph 43. That's 0639 in the statement. And we see from that table at paragraph

43 that in 2015 – I'm going to deal with the last three years – 2015 Freedom sold 9611 accidental death policies?---Correct.

And in 2016, the number more than doubled to 19,282?---Correct.

5

Do you know why?---Yes, I believe so. I think there was a massive increase in sales for the final expenses product which also had accidental death included for – as an option during 2016 and 2017. The growth – the growth of the business has been quite strong over recent years.

10

So just to be clear, although you are going to continue to sell the final expenses product, the funeral insurance product in outbound sales, you're no longer going to give the option of accidental death cover with that policy. Is that right?---Not through outbound sales, no.

15

Thank you. Now, in 2017 the number of accidental death policies that you sold increased again to 21,079 policies?---Correct.

20

And this year, the numbers are on track to increase again because halfway through this year you've already sold 12,007 accidental death policies?---That's correct.

25

Now, I want to turn to what you've told us about the premium income and the claims made in each of those years. So if we could display both 0640 and 0646 on the screen we will see two tables that you've given us?---Yes.

30

The one on – what will be the left-hand relates to premium income. And the table on the right-hand side relates to claims. And if I could start with 2015, we see that the total annual premiums paid for accidental death policies on issue that year was over \$366,000?---Correct.

And in that year, you got four claims on your accidental death policies?---Correct.

Do you see that?---Yes.

35

And all four of those claims were allowed in full?---Correct.

And the ratio of premiums received to amounts paid out for that year was, therefore, 55 per cent?---Correct.

40

From then on, the product became increasingly profitable because if we look at 2016, your total premiums were over \$1.1 million?---Correct.

In that year, you got 10 claims on accidental death policies?---Correct.

45

You allowed eight of those. One was withdrawn and one was denied?---Correct.

So the ratio of premiums received to amounts paid out was 46 per cent?---Correct.

Then in 2017, the premiums paid had increased to over \$2.1 million?---Correct.

You got 22 claims?---Correct.

5 And you allowed 10 of those?---With a number still in pending.

That's right. So so far you've allowed 10?---Correct.

And you've made an ex gratia payment in relation to one claim?---Correct.

10

Why did you make that payment?---I can't recall the actual details but it may have been that there was incorrect or insufficient information given for that customer.

Right. But you don't recall the details?---That's as much of the detail I remember.

15

And three of the claims were withdrawn for 2017?---Correct.

Two were denied in full?---Correct.

20 And six are pending?---Correct.

And the ratio of premiums received to amounts paid out fell to 14 per cent in 2017?---That's correct.

25 And then for 2018, the total premiums so far are over \$1.6 million?---Correct.

So you're on track to well exceed the premium income of the previous year again?---From premium income point of view, yes. Yes.

30 You got 18 claims?---Correct.

You've allowed three of those so far?---Correct.

One is withdrawn, four were denied, and 10 remain pending?---Correct.

35

And the ratio of premiums received to amounts paid out is 25 per cent so far for this year?---That's correct, but I would point out there's still 10 in pending.

40 That's right. Does it surprise you that Freedom has sold substantial numbers of accidental death policies in the tens of thousands each year, and generally it only receives a very small number of claims, no more than 22 in any of the last three years?---It probably doesn't surprise me for an accidental death product, but they are larger benefits.

45 Why doesn't it surprise you?---They generally are a small number of claims but of higher value.

Well, that's about how much is paid if a claim is made. But does it surprise you that so few claims are made?---Not really. Not – there's not that many claims in life insurance either when you consider the number of policies that – that occur.

5 So it doesn't trouble you that you sell tens of thousands of these policies each year and receive no more than 22 claims in a year?---It - - -

Does that say anything to you about the value of the product for the consumer?---From the consumer's point of view, I'm more concerned about what's
10 given back, and the loss ratio. And if that loss ratio is at appropriate levels, and I don't think that 14 per cent is appropriate for the year that it was in, but when you're looking at others that are 55 and already 25 this year, I don't think it's too low, but it could – with accidental death products, it could be – you could have a very bad year in terms of financial loss for an insurance company, a good year for the customer, or
15 probably not, but it is – it does have variations.

Well, I want to put to you that it's reflective of the limitations of the product, and to put that proposition to you, I want to ask you to look at one of the exhibits to your witness statement. Tab 8 to exhibit CFO-1, which is FIG.0003.0001.0022. This is
20 the product training presentation that I took you to earlier, Mr Orton. Can I ask you now to look at page 0042?---Yes.

Because from this page we see Freedom's training for the sales of accidental death cover. Can I ask you to look at the following page, 0043. And in the blue box at the
25 bottom of the page, we see the definition of accident for the purposes of this policy:

*An accident means an unexpected event occurring while the insurance is in force resulting in bodily injury where the injury is directly and solely caused by
30 accidental, violent, external and visible means without any other contributing causes such as illness or disease.*

?---Correct.

35 So to qualify as an accident, a person has to suffer an injury which, firstly, is directly and solely caused by an accident?---Correct.

And the injury, secondly, has to be caused by accidental, violent, external and visible means?---Correct.

40 What does that mean?---I think it means – and if I continue the – the sentence, it can't be contributed to by illness or disease. So someone with osteo who leans on something and breaks their bone, it - - -

45 Would not be covered?---Would not be covered, correct.

Are you able to offer any more explanation of what the phrase “accidental, violent, external and visible means” is intended to cover?---I can't.

And the third thing is that there need to be no other contributing causes, such as illness or disease?---Correct.

5 This is a very narrow definition of an accident, isn't it, Mr Orton?---Yes, it could be construed that way, yes, yes.

Is there any other way to construe it, Mr Orton?---No. No.

10 And this is the same definition that applies to your accidental injury policies?---Yes.

So not only does the policyholder need to meet the definition of accident, this narrow definition, but their coverage is further diminished by a number of very significant exclusions under the policy, isn't it?---Correct.

15 Can I ask you to look at 0045 in this document. And we see there that:

20 *A benefit will not be payable if the life insured's injury occurred before the policy commencement date. Additionally, a benefit will not be payable if the life insured's injury is a direct or indirect result of: self-inflicted injury, criminal activity, aerial activity, motorised sport, war or terrorism, alcohol or drugs, intentional act by carer, and specific occupational tasks.*

?---Correct.

25 Those are the exclusions. And we see that the exclusion applies if the injury is as a direct or indirect result of any of these things. Indirect result is a very elastic term, isn't it, Mr Orton?---It can be, yes.

30 Yes?---Yes.

And you explain these exclusions in your witness statement. You tell us that:

35 *Aerial activity means the life insured flying or otherwise engaging in any aerial activity, except as a fare-paying passenger in a fixed wing motorised aircraft that is operated by a licensed airline or charter company.*

?---Correct.

40 So it would exclude an injury sustained, for example, in a helicopter accident?---By that definition, yes, yes.

And motorised sport, you say means participating in any motorised sport as a rider, driver, passenger or crew?---Correct.

45 And the alcohol or drugs exclusion means that where an accident is the direct or indirect result of the effects of alcohol or drug misuse or any illicit drug use, that's also excluded?---Correct.

And the specific occupational tasks that are excluded include working above 10 metres from the ground?---Correct.

5 Working underground, working on a boat or an oil or gas rig, and any underwater diving?---Correct.

10 So given that there are already a very small number of people in Australia who die as a result of an accident, your accident definition and these exclusions are likely to have a very significant impact on the ability of a person to ever claim under these policies?---I agree.

Thank you. Commissioner, if that's a convenient time?

15 THE COMMISSIONER: 2 pm.

MS ORR: Thank you, Commissioner.

20 THE COMMISSIONER: Yes. If we could have you back in time to begin at 2 o'clock, please. 2 pm.

ADJOURNED **[1.00 pm]**

25 **RESUMED** **[2.00 pm]**

THE COMMISSIONER: Yes, Ms Orr.

30 MS ORR: Mr Orton, before the break I was asking you questions about the benefits provided under your accidental death and accidental injury policies. And I asked you about the definition of "accident" and I asked you about the exclusions under those policies. Now, do you consider that Freedom has given its customers adequate notice of the exclusions and of the nature of an accident that is required to qualify for
35 benefits under those policies?---Not always over the phone.

When you say "not always", when did it happen?---I'm not sure. I'm not sure.

40 Are you aware of - - -?---No, I'm not.

- - - adequate notice ever having been given over the phone?---No, I'm not.

45 You've reviewed the scripts that were used by your sales agents?---I have reviewed the scripts, yes.

Yes. And you've annexed the Freedom accidental death cover script to your statement as tab 18 of your first statement. And we see from that script the

statements that a sales agent has to make about the benefits under that policy?--- Yes, I remember that, yes.

5 And there was nothing in the statements that the sales agent was required to make that dealt with, in any detail, the nature of the definition of “accident” or the exclusions that applied under the policy, was there?---They are referred to another folder, a supplementary folder which has some of that information in it, although I agree that there was insufficient information.

10 Where are they referred to? They’re not referred to in the scripting?---There’s a PDS sign on – on the script that says go to the PDS and read some areas out but I agree that it wasn’t done regularly.

15 All right. Perhaps if we just have a quick look at that script you’ve provided us then. FIG.0006.0001.0566. This is the script that you annexed to your statement for selling accidental death over the phone?---Yes.

20 And we see on this first page the Benefit Overview, and we see what the sales agent was directed to tell the consumer about the benefit available under the policy?---Yes.

25 And you accept that there was nothing in there about the nature of the accident that was needed to qualify for benefits or the exclusions under the policy?---Not in that section of Benefit Overview. I was referring to the – the definitions, which is in eligibility, but you’re correct, Ms Orr, it’s not there.

Are you referring to the definitions of Australian resident - - -?---Yes.

- - - partner, de facto and relative - - -?---Yes.

30 - - - on page 31 of the product disclosure statement?---Correct.

Which is not relevant at all - - -?---No, I agree.

35 - - - to the nature of the accidental death benefits, is it?---No, I agree.

So you accept that your sales agents didn’t bring these matters to the attention of people to whom they were selling these policies?---I agree.

40 Now, Freedom’s own claims handling records, which you’ve given us data from in your accidental death statement, suggest that there may well be confusion by people who make claims under accidental death policy about what they’re covered for. Do you agree with that?---There could be confusion. I agree.

45 Well, you tell us that since 2014, there have been 55 claims received by Freedom under accidental death policies. And seven of those have been denied in full. Do you recall that?---I do.

And of those seven, five were denied on the basis that the death that gave rise to the claim was due to a non-accidental cause?---Okay. Yes.

5 And the other two were denied on the basis that the policy's drug and alcohol exclusion clause was enlivened?---Yes.

10 So does that suggest to you that there might have been a poor understanding of both the definition of "accident" and the exclusions under the policy?---It's hard to tell from that data, Ms Orr. There could be a number of reasons. When somebody dies, it's not uncommon for the estate to send in requests or claims without actually reviewing it. It could be a misunderstanding of the policy. But it could be a number of reasons.

15 So of those 55 claims, five were withdrawn before they were determined by Freedom?---Yes.

And all five of those claims were withdrawn because the claimant told Freedom that the death which gave rise to the claim was due to a non-accidental cause?---Correct.

20 All right. Now, the final position expressed by ASIC about accidental death policies in its recent report was that unless firms can demonstrate that accidental death insurance can provide a benefit to consumers, we expect them to stop selling the product. Are you aware of that?---Yes.

25 And ASIC said that if firms don't stop selling the product, it would consider the need for more formal action in the future?---Yes.

30 And there's a reference in the report to ASIC suggesting that, if necessary, it will use its current and/or proposed future powers, including product intervention powers, to intervene?---Correct.

35 So just so I understand the situation correctly as a result of the decision that was conveyed to the Commission yesterday, Freedom intends to keep selling accidental death policies through inbound calls?---Yes.

It will not sell them through outbound calls?---Correct.

40 And on the inbound calls, how does Freedom propose to demonstrate to ASICs satisfaction that the policies provide a benefit to consumers?---Inbound calls, Ms Orr, are very different to outbound calls, in that the customer has generally researched and has requested information on it. I concede that we need to get better at the exclusions and explaining those to them. So we will review that process to make sure that the appropriate information is being given. They will be sent the information and, if necessary, we will look at a two-stage approach for that as – a
45 two-stage sale which is - - -

What do you mean by that, sorry?---One of the recommendations from ASIC is a two-stage sale. So if it was – in that particular case with accidental death, then we could – we could review that.

5 So are you considering adopting the two-stage sale recommendation?---No, we're looking at reviewing everything and all options at the moment but we haven't reached a decision.

10 Is that one of the options you are considering?---It could be an option, yes.

Right. But you haven't yet made a decision - - -?---No, that's correct.

- - - about how you are going to conduct your inbound sale - - -?---That's correct.

15 - - - of accidental death products?---Correct for accidental death.

But at this stage you are going to continue to offer that product?---Correct.

20 Okay. Now, I want to move on to asking you some questions about how Freedom ensures that it's dealing appropriately with vulnerable people when it's making sales or attempting to make sales to those people. You tell us in your statement that you have carefully listened to the audio recordings of the telephone conversations that led to the sales of the policies to Mr Stewart's son?---I have.

25 And you tell us in your statement that those calls do not make for comfortable listening?---Agree.

30 And you accept that Freedom should not have sold those policies to Mr Stewart's son?---Definitely.

And you accept that the sales agent who sold those policies didn't meet the fair dealing standards and conduct that Freedom expects and requires of its staff?---Agree. I do. Yes. I agree.

35 Do you accept that in selling the policies to Mr Stewart's son, Freedom engaged in unconscionable conduct?---I – I don't know if – the legal term if that's – that's the appropriate one. Do I think that the individual knew what he was doing? Yes, I do. And I think it was inappropriate.

40 When you say he knew what he was doing, what do you mean by that?---Well, I think he knew that that person was not capable of understanding. Mr Stewart's son, was not capable of understanding what he was telling him and he should not have been sold the product.

45 And you say that his conduct was inappropriate?---Absolutely.

It was deeply troubling conduct, was it not, Mr Orton?---It was, yes.

And you tell us in your statement that Freedom has implemented a number of improvements to its customer sales and quality assurance processes since that time?---Yes.

5 But despite those changes, Freedom has continued to receive a significant number of complaints about its treatment of vulnerable customers, hasn't it?---It has received some but I would like to also just go back on actually when the vulnerable customer training and some of these things were put in place. The first vulnerable customer training was put in place in February 2017. It was updated again in December 2017.
10 And then again in March 2018 to make sure that it provided some more practical guidelines on how to deal with vulnerable customers. And then again in August, there was some more work done and – on how to practically deal with vulnerable customers when you come across them. It's quite a difficult thing to do in some instances, to determine whether someone is vulnerable. In the case of Mr Stewart's
15 son, that should not have been difficult at all.

It wasn't difficult there, was it, Mr Orton?---No, it wasn't. Not – not in my view. That was quite – that was quite obvious. Whether the agent had been given sufficient training at that time, I don't believe they were. I think they would be
20 today, but regardless of that, that should never have occurred, that sale.

So Freedom had no training in relation to handling vulnerable customers before February 2017?---Not specifically for vulnerable customers, no.

25 Why not? Isn't that an important part of an outbound sales model?---There were informal – from my understanding, there were informal guidelines, in terms of ensuring that people understood, but there was certainly nothing that was determined to be vulnerable customer policy or training in place before that time.

30 What was the nature of the informal guidelines?---It could be a range of – it could be a range of things that they may encounter on the phone. It could be people under illicit substances, it could be people who have English as a second language and don't understand what's happening. It could be people with intellectual disabilities, a range of things, but they – it was not documented well enough, in my view.
35

And what were the guidelines, whether they were documented or not, what were the guidelines about how to deal with those people?---To try – to try and deal with the call and, if necessary, at the time, escalate it to their sales manager or send out the information.
40

How do you know that those were the informal guidelines, Mr Orton?---I was advised by the head of marketing.

And, again, they weren't in a document?---No, they weren't.

45 Why not?---I don't know, Ms Orr.

So the head of marketing told you that these were things that were informally said to sales - - -?---Yes.

- - - agents at different points in time?---Correct.

5

Is that what happened?---Correct. That's what I'm advised.

Is that good enough, Mr Orton?---No, that's not good enough.

10 All right. Now, could I ask you to look at RCD.0001.0089.0022. Now, this is a response from Freedom that was given to the Commission in August, a response to a letter asking Freedom to identify any instances of misconduct or conduct falling below community standards and expectations since 1 January 2013. Are you familiar with this document?---I am, Ms Orr.

15

So we see that it's a fairly lengthy table that runs for a number of pages. And if we turn – if we start with this page, 0022, we see that the first entry – and just so that we understand the way the table works, Freedom has elected to assign the letters CS or M to each of these entries in the far left column. CS meaning that the conduct fell below community standards and M meaning misconduct?---Correct.

20

So we see that the second entry there is an early incident that led to a complaint which was identified on 16 October 2013 and Freedom acknowledged that there was misconduct. There was a complaint about a sales agent trying to contact the complainant's disabled brother and attempting to sell the brother insurance?---Correct.

25

So that's an early example of conduct similar to what we see through Mr Stewart's evidence today. You acknowledge that that occurred on this occasion as well and constituted misconduct?---Yes, I do.

30

And if we move to 0024, and we look at the fifth entry on that page, we see that that entry relates to the sale of the policies to Mr Stewart's son. Is that correct?---Correct.

35

And Freedom also acknowledges that that constituted misconduct?---Correct.

And if we move to 0025, and we look at the last entry on that page, we see that this relates to an incident that led to a complaint more recently, on 13 February 2017. The complaint was made by the mother of a person – made on behalf of her disabled son, and if we bring up the following page, we will see the full entry. The policy was cancelled and full refund of the premium was made. So this was another instance, after the sale of the policies to Mr Stewart's son, that involved the sale of policies to a disabled person whose parent called and complained about that conduct?---That's correct.

40

45

And then if we look at the first full entry on this page that we have up, 0026, we see that this relates to an incident identified on 17 February 2017. A person who had

suffered a stroke had been sold insurance in circumstances where she did not understand the nature of the policies that she had entered into?---Yes, I see that. Yes.

5 Now, Freedom did not accept to the Commission that that constituted misconduct, only that it constituted conduct that fell below community standards and expectations. Why was that?---On reviewing the call, I believe it was difficult to understand if that person had had the stroke.

10 Difficult to understand?---Difficult to – to determine if - - -

Whether the person had had a stroke?---Yes. I believe so for that one.

Right. And is that reflected in the language that we see there:

15 *Who may not have understood the nature of the policy she had entered into.*

?---Sorry, I don't understand the question.

20 Sorry. Is that uncertainty that you have about whether the person had presented in a way that revealed that they had suffered a stroke, reflected in the assessment that this was a person who may not have understood the nature of the policy she entered into?---I agree. That – yes.

25 Right. But if there was any doubt about whether she understood the nature of the policy she has entered into, that would be highly problematic, wouldn't it?---Yes.

But you chose to characterise this as conduct that fell below community standards and expectations?---Yes.

30 And then if we turn to 0028 and we look at the fourth full entry on that page, we see that it relates to an incident identified in November last year. A complaint was made by the brother of another disabled policyholder about the sale of the policy. And Freedom acknowledged that this sale involved misconduct?---Correct.

35 Now, in a covering letter that came with this table, which – are you familiar with that covering - - -?---Yes, I am.

40 Covering letter. Freedom also acknowledged that as a result of this incident – I'm sorry, I will make sure I get this right – that the policyholder had also made a number of unsuccessful attempts to cancel their policy. Do you recall that?---Yes, I do.

Yes. And in the table, you explain that as a result of this particular incident, a decision was made to update the vulnerable customer training?---Correct.

45 So that's customer training that you've told us now was introduced in February 2017?---Yes.

And updated in December 2017 as a result of this complaint?---Yes.

Is that right? And what were the nature of the updates that were made as a result of this complaint?---I can't remember the detail between all the variations, but there
5 was more practical advice in dealing with and identifying the issues.

Why didn't you create some vulnerable customer training after the incident involving Mr Stewart's son in June 2016?---Sorry, I don't know. I don't know why that wasn't
10 done.

Okay. But you do know that as a result of this November 2017 incident, the training was updated?---Yes.

And then if we turn to 0031, there's another entry that's split across two pages. The
15 last entry there is from 3 April this year:

The policyholder sought a refund of premiums of a policy she did not remember purchasing due to her health conditions. Freedom agreed –

20 And over the page we see –

...to refund the first premium.

That's another sale that Freedom acknowledged fell below community standards and
25 expectations?---Yes.

And then can I ask you to look also at 0032, the fifth full entry. Do you see there:

The complainant contacted FOS on behalf of the policyholder.
30

This was on 26 April this year:

Complainant contacted FOS on behalf of the policyholder who is her mother. 29 lives were ensured. The complainant requested that Freedom refund premiums.
35

Now, that is acknowledged to be conduct that fell below community standards and expectations, but not misconduct. Why?---I've listened to this call a number of
40 times. There would be no indication on the sales call that they were vulnerable at all. I don't think it's appropriate for 29 people to be covered. I think that was a failure of – failure of processes by the company and it shouldn't have allowed that to happen. The customer was asked if it was affordable. And the team leader did ask if it was affordable. But regardless of that, I'm not justifying it because it should – no one
45 should ever have 29 people put on their policy.

Do you know why this happened?---I don't know exactly why because I don't know what was in their mind at the time. But I'm assuming that it was because they wanted to – to continue to get additional lives on that policy.

5 And therefore maximise their commission?---At the time I think that would be correct, yes.

Yes. All right. So these are some examples – I've just pointed to a few – of incidents both before and after the sale of the policies to Mr Stewart's
10 son - - -?---Yes.

- - - that involved vulnerable customers and in which Freedom acknowledges its conduct either fell below community standards and expectations or constituted misconduct?---Yes.

15 Is this too many? Is this too many incidents of this nature for Freedom to be having?---One is too many, really. One of the issues, apart from the vulnerable customer training, is that there wasn't sufficient QA – quality assurance – coverage during the time. I believe that has been rectified for – for sales. You know, we do
20 aim to have 100 per cent of all calls go through a quality – a listening where they're rated. It's not always reached. It's not always reached. But it's very close to that. In the last – since I've been here, I think, it's averaged higher than 95 per cent. And that's, I believe, industry leading to be listening to every sales call.

25 Why is it not always reached?---It's not always reached because there are fluctuations in sales – in sales. And we do go back on them when the – when the QA agents have some spare time. But it can vary. 94.5 to 98.5. I just want to be clear it's not always 100 per cent.

30 And when did you start that process of aiming to listen to 100 per cent of the sales calls?---The process was started last year. But it wasn't achieved. It was certainly achieved – and it was one of the key things that I wished to do when I came into the organisation, because I think it's – it's a double-check and it's very important from a customer perspective. So we were certainly within the 90s, I believe, from April.

35 From April this year is when you started to achieve or substantially achieve - - -?---Substantially achieve, yes.

- - - that goal?---Yes.

40 All right. I tender the table of acknowledged misconduct and conduct falling below community standards, Commissioner.

45 THE COMMISSIONER: Freedom's response to Commission request of 3 August '18, RCD.0001.0089.0022, exhibit 6.72.

**EXHIBIT #6.72 FREEDOM'S RESPONSE TO COMMISSION REQUEST OF
3 AUGUST '18 (RCD.0001.0089.0022)**

5 MS ORR: And I will tender for completeness the cover letter that I referred to and
asked you a question about, which is RCD.0014.0047.0001. It's a letter dated 24
August 2018 from Mr Orton to the Royal Commission.

10 THE COMMISSIONER: Letter of 24 August '18, Freedom to the Commission
RCD.0014.0047.0001, exhibit 6.73.

**EXHIBIT #6.73 LETTER DATED 24/08/2018 FREEDOM TO THE
COMMISSION (RCD.0014.0047.0001)**

15

MS ORR: Now, Mr Orton, last Tuesday you told ASIC that Freedom would be
filing a breach notice which related to specific issues arising from some customer
complaints. Is that right?---Correct.

20

And you told ASIC that the issues related to a set of complaints that had been
provided to ASIC and the Royal Commission?---Correct.

25

And you provided that breach notice to ASIC last Friday?---Correct.

And part of the breach notice related to five specific complaints that had been made
to Freedom, including the complaint made by Mr Stewart - - -?---Correct.

30

- - - about his son. Is that right?---That's correct.

And three of the other complaints that you notified to ASIC as part of this breach
notice were complaints that I've just raised with you relating to vulnerable
customers?---Yes.

35

Is that right?---Correct.

And the final complaint that you notified to ASIC was a complaint in relation to
downgrading sales conduct. Is that right?---Downgrading to accidental death.

40

That's right?---Correct. Yes.

Now, can I take you to that breach notice, which is ASIC.0073.0001.0001. Now, can
I ask you to look at pages 0003 and 0004. We see a table listing the complaints.
And we see under the table on the right-hand side, three paragraphs down:

45

*Having regard to the personal circumstances of the customers, Freedom
Insurance has formed the view that when taken together, the conduct of the*

sales agents in connection with the sales calls constitutes a potential breach of section 912A(1)(a), 912A(1)(ca) or 912A(1)(f) of the Corporations Act

?---Correct.

5

Now, they are the provisions of the Corporations Act that require holders of AFSL licences to do all things necessary to ensure that the financial services covered by the licence are provided efficiently, honestly and fairly?---Correct.

10 To take reasonable steps to ensure that your representatives comply with financial services laws?---Correct.

And to take all reasonable steps to ensure that your representatives are adequately trained and are competent to provide financial services?---Correct.

15

So on that basis, you have issued a breach notice last Friday to ASIC explaining that you believe that these five calls demonstrate potential breaches of those sections?---Yes.

20 And does Freedom also accept that some, if not all, of these complaints that were made in respect of vulnerable customers, referred to in this table, involve unconscionable conduct on the part of Freedom?---I'm – I'm not sure from – like I said this before, Ms Orr, from a – from a – I'm not a lawyer. Do I think that some of these individuals potentially acted unconscionably, yes, I do.

25

And I want to take you to the last part of the letter, but before I do that, can I ask you to explain why you think Freedom has had these sorts of issues with mis-selling to vulnerable customers?---My disappointment – and I don't think you can ever stop all sales to a vulnerable customer, but I'm disappointed that the company did not pick this up and I think that's a result of the QA. I think over those – that period of time, given the number of calls that are made, that it's not surprising that there were a few. I'm disappointed in the individuals that made those calls. I'm disappointed that the sales training prior to February '17 wasn't strong enough. But I can't explain why they – why they came through.

30

Well, in the breach notice we see from 0005, under the heading Preventative Action:

Freedom recognises a link between its remuneration structures and the mis-selling to vulnerable customers.

35

Doesn't it? Do you see the last dot point there:

In order to prevent similar occurrences from recurring in the future Freedom Insurance has taken a number of steps including implementing various changes to its remuneration structures for sales agents, including the removal of commission-based remuneration with effect from 1 October.

40

45

?---Correct.

So you accept that the remuneration structures you had in place were a driver of this behaviour?---My view is that any commission payable by a sales agent has the
5 potential to be conflicted. It doesn't matter how big, how small. It has the potential, so that's why the decision was made to eradicate commissions. So, yes, I do.

I tender the breach notice, Commissioner.

10 THE COMMISSIONER: Freedom breach notice 7 September 2018
ASIC.0073.0001.0001, exhibit 6.74.

EXHIBIT #6.74 FREEDOM BREACH NOTICE DATED 07/09/2018
15 **(ASIC.0073.0001.0001)**

MS ORR: I want to turn to asking you some questions about the
20 remuneration - - -?---Sure.

- - - structures, Mr Orton and I will ask you about the model that you are proposing
to move to from 1 October?---Yes.

But can I start with how you presently remunerate your sales staff for selling
25 insurance policies. What's the model?---At the moment – and I will talk about the final expenses product which is the main – the main product – they receive a flat fee. It's independent of – of lives or value of the sum. That's an amount of \$50. They then must cover their expenses, their expenses include the value of their – their wage, the value of the lead that they have used, given that lead costs vary quite
30 dramatically. They then have an unfortunate term called wastage, which I don't like, which includes compliance fails which is subtracted, and other QA fails that come through. Their commission is then multiplied by an average – an agent quality rating score. And then by an average QA score. And that determines their commission.

35 A very complex commission structure, isn't it?---It is complex. Yes, it is.

I want to ask you some more questions about it but can I just look a bit further back
in time and see how you've changed the commission structure?---Sure.

40 Because from 2013 to 2015, you paid your sales agents volume-based commissions, didn't you?---Yes.

Initially, sales agents had to sign up 20 new funeral insurance applications before
45 they were eligible to earn a weekly commission?---That sounds right, yes.

And then it moved to – you had to sign up 30 applications a fortnight. So it reduced
down a little?---Yes. That sounds right.

Yes. And if you met the minimum number of applications, you were eligible for a policy commission that was calculated by reference to how many people you had signed up?---Correct.

5 And the amount that the sales agent received increased the more people you signed up?---Yes.

And from April 2014 you could also earn an additional lives commission if you covered a minimum of 50 people in a fortnight?---Correct.

10 And that was an additional amount that you were paid on top of the first layer of commission?---That's right.

Is that right?---That's right. I believe that's right.

15 Then from 2015, Freedom started making structural changes to the commission model?---Yes.

20 And it introduced this commission multiplier that you just referred to, or is that a different form of multiplier?---The commission multiplier is different, yes.

Can you explain the commission multiplier?---Yes, the commission multiplier is – was in 2015 depending on the number of sales that you had, you got a higher commission.

25 I see. And I think we see from your statement that it ranged between 60 and 200 per cent of total commission amount achieved each fortnight?---That sounds right.

Yes. And in June 2015, the upper limit was increased to 250 per cent?---Correct.

30 And what was the purpose of the commission multiplier?---To encourage sales.

35 Now, in June 2015, for the first time, it seems, Freedom changed the commission model so that any new applications which were marked as a failure during quality assurance checks were not considered for assessing commission?---Correct.

So prior to them there was no quality assurance component in the commission structure?---That's right.

40 Then in January 2016, at the beginning of the year in which Mr Stewart's son was sold his policies, Freedom began to introduce measures that were designed to recoup from the sales agents the costs that Freedom incurred by employing them?---No.

45 No?---Not – no. Not to recoup the cost. The sales agent was never required to – to pay Freedom anything.

No?---That's – but it was – they certainly had to cover the cost of their seats.

Yes, they couldn't - - -?---And the cost of their lead, that's right.

They started in the negative, didn't they, Mr Orton?---Yes. Yes, they did.

5 And they couldn't earn commission until they had earned enough to cover the costs of Freedom having them there selling the policies?---Yes, the cost of their salary, that's right.

10 There were two main components to that, weren't there? There was something called a seat cost?---Yes.

Can you explain what a seat cost is?---Yes. The seat cost is their salary. So 37 and a half hours times whatever their salary is.

15 Why did Freedom introduce a seat cost?---It's really not necessary apart from one thing, in that it encourages – one of the big issues in a contact centre is people actually turning up. If they know they've got to turn up, then – to cover their seat cost, then that assists. But that's the only reason for it.

20 But they start from behind, again, don't they, because they have to earn – they have to make enough money for Freedom to cover their seat cost before they can start earning their own commission that they can take home?---Well, I wouldn't say they start from behind because they're paid – they're paid a wage, but once they cover that wage they can make commission.

25 I see. There was also a cost per lead attempted?---Yes.

And that was deducted from the sales agents' commission?---Yes.

30 Can you explain what that was?---Yes. That's a – the cost per lead – leads that are provided to – to any company vary in quality. Someone who's, you know, chasing down a product generally the lead provider will charge more. And it's only reasonable that if that particular agent is using all of the very good leads, that they should pay – pay – pay a higher amount for that lead.

35 What are the very good leads?---Someone going to website and searching and asking for a call back is a very good website. There has been in the past some live transfers where people have said, "I'm very interested and I want this – I want this product." It varies.

40 So the greater the certainty that the customer had indicated a willingness to buy the product, the better the lead was?---That's right.

45 And the greater the cost that the agent had to incur in connection with having that lead?---I wouldn't say incur but, yes, it was in the calculation. Yes. That's right. That's right. That's right.

Well, the greater amount that was going to be deducted from the commission that they made at the end of the day?---Yes. Yes.

5 What were the inferior leads. What's a poor quality lead?---Look, none of them should be poor quality, they're just varying qualities. And the high quality leads for the company cost the company a lot of money.

And how do you pay for those leads?---Pay directly to the lead provider.

10 Yes. So you pay a third party for the customers' information?---Yes.

Yes?---On many occasions. There are other occasions, Ms Orr. So there are customers who come through the website or through other but predominantly it would be through lead providers, yes.

15

Yes. And are you able to give me any more information about what a lower quality lead would be?---Look, they all – they do vary, the cost. A lower quality lead might be someone who in the past has had – filled out a survey and requested to get information sent to them, or requested a call from Freedom, for Freedom to call us back, but it could be multiple companies that they've – they've requested that for.

20

I see. I see. Which - - -?---That would be the cheaper ones.

Which means you have less certainty that they're interested in your products?---Yes.

25

Yes. I see. So by introducing those two costs for the agents at the start of 2016, the seat cost and the cost per lead, Freedom was trying to shift some of its costs of doing business on to the sales agents?---Not really, because the – the starting point was – was relatively high. The – the amount they got in what we call seating credits. The seat cost was there to encourage them to go to work. That was the main reason. And the other cost was to make sure that the – it was fair to all of the agents, in that if they were going to utilise better quality leads, that they paid for those better quality leads. So those two components weren't - - -

30

35 Having to – knowing that those two costs were going to be factored into the calculation of your commission as a sales agent - - -?---Yes.

- - - increased the chances that the sales agent was going to engage in aggressive sales practices to try and make more sales and cover those costs, didn't it?---I think it can increase the – increased the possibility that the salesperson will be pushier, yes, I agree.

40

Because they need to sign people up to policies in order to cover those costs and still emerge with what they regard as a satisfactory commission at the end?---I don't think it's the covering of the costs. I think it's the fact that there's a commission payment, is my personal view, which is why I've been very keen to get rid of commissions.

45

At the same time that Freedom introduced those two costs, the seat cost and the cost per lead, it attempted to recalibrate the commission structure more generally. Do you agree with that?---Yes.

5 It removed the requirement for a minimum number of applications to be written in order to be eligible for commission?---Correct.

And it expanded other parts of the commission structure, including by allowing sales agents to earn commission on the accidental death and accidental injury policies?---That's right.

10 But it also expanded the circumstances in which early policy cancellations could be factored into the commission. Is that correct?---Yes. I believe so, yes. Yes, it was, yes.

15 So that was the structure that was in place when a Freedom sales agent sold the policies to Mr Stewart's son in the middle of 2016, that no commission was payable until the seat costs and the lead costs had been recouped, and a commission was payable on accidental death and accidental injury benefits?---Correct.

20 And the commission that a Freedom sales agent could earn at that time, and today, is uncapped?---Correct.

25 And that has been and remains something that Freedom emphasises in recruiting its sales agents. Do you accept that?---I accept that, that that was the case but it's certainly not now.

It was the case as recently as last week?---Yes, I saw that as well.

30 You accept that?---I do.

Yes. So as recently as last week, you were advertising for people to join your business on the basis that they would be rewarded with uncapped commissions?---I didn't know that but yes, it was. I agree. And that was the website. And I didn't realise it was there. If I had known that was there, it wouldn't have been.

It has been there, that sort of advertising for a long time, hasn't it, Mr Orton?---It has, but it has been – in the last few months, I have had a focus on that.

40 All right. Then going back in the chronology, we're at your 2016 changes?---Yes.

That's what I've been discussing with you. And then in the middle of 2017, last year, there were further changes to the commission model?---Correct.

45 And as I read your statement, the principal change was that the entitlement to and calculation of commission was based on what you describe as a form of balanced scorecard approach?---That's right.

So eligibility for a commission and the amount of the commission was and still is now determined by particular formula?---It is, yes.

5 Yes. And that formula is set out at paragraph 95 of your statement, and it's also dealt with in an exhibit to your statement which I will ask to be called up. FIG.0002.0005.0034. So that's the formula?---Correct.

10 Commission equals revenue, minus expenses, minus wastage, times agent quality rating, times quality assurance average factor?---Correct.

Now, this slide relates to the Freedom Protection Plan sales team?---That's right.

15 And as of quite recently, it's the same formula and structure for the life products sales team?---Yes, it is.

Yes. Now, can I just ask you about some aspects of this formula. If we look at revenue, you say in your statement that the revenue component is seeded?---Yes.

20 Based on the level of sales made by the sales agent. Can you explain what you mean by "seeded"?---Yes, sure. In this model, if – for the first policy that they get, it's – it's the upfront amount that they would get which is \$80, and – in this example. If they get a second life on the policy, they get a further \$20. So if they put their spouse or someone else on it's another \$20. And then another \$10 for every additional life, it could be their children or it could be whatever else it may be on the policy. And then for every AD or accidental death or accidental injury benefit, they get an additional \$5 per – on each life sold.

25 So the seeding credit for these products, the Freedom Protection Plan products was initially, as I understand it, based on a flat rate for each product sold, each policy sold, and for each additional life insured under the policy?---Correct.

30 And the seeding credit for the life products was based on annualised premiums?---That's right.

35 But as of about a month ago, the seeding credit is now a flat rate across both of them?---That's right.

Now, if we turn to expenses in this calculation, Freedom deducts from an agent's seeding credits two things: the seat cost?---Yes.

40 And the total aggregate cost that Freedom has allocated to the leads provided to the sales agent?---It's – yes, the leads where they're able to make a contact.

Where they've made contact?---Yes.

45 And a sales agent is only entitled to commission if they have accrued seeding credits in excess of their seat cost and the cost of their leads?---That's right.

And there's then the reduction for wastage which you referred to earlier?---Yes.

5 What does wastage mean in this context?---Like I said, I don't like the – I don't like the terminology, but it's fails – QA fails, it's data capture errors where they've put in the wrong information into the system. It's any benefits that were cancelled within six weeks. So if a customer decides to cancel. And ipSCAPE and Ebix wrapping is just the dialler and how they wrap the call at the end of it as closed, as a completed sale.

10 What does that mean, to wrap the call?---It's just a wrap code, so they decide that it's an answering machine, it's whatever else it may be that they've used.

15 Can the wastage reduction lead to a total loss of the seeding credits for a particular sale?---Over the last month it can. But prior to that, no. And the reason it can is that the compliance fails, and – which we've improved, have a deduction of 16 points on some key ones. Two of those in any 20-day period would result in the commission being void for that entire period.

20 Okay. So over the last month compliance fails have been introduced into the analysis?---Well, greater compliance fails.

Yes?---There was always compliance fails and greater penalties for them.

25 Greater consequences for a compliance fail?---Yes. And greater penalties. Yes.

Now, if the result of the revenue minus the expenses minus the wastage is a figure of zero or less, then no commission. Is that how it works?---Correct.

30 But if the figure is positive, then there's an amount of commission to be paid which can be increased or decreased depending on the factors in the second row. Is that right?---That's right.

And the first of those is the agent quality rating?---Yes.

35 Can you explain what that is?---Yes. This is a mark that the agents get by the quality assurance agents. And it's more about the – how the customer was dealt with by the agent in terms of demeanour, they listened to, their questions were listened to, was it a good customer experience. That's a rating – there's five questions given. It's a rating out of 10. And then that becomes their AQR.

40 So this is a factor that can allow a sales agent to earn a premium on their commission. Is that right?---It can.

45 And it can allow a sales agent to earn up to 200 per cent commission on their sales?---If they got every single score perfect over the entire time they could earn 200 per cent, you're correct.

Yes. Now, if their agent quality rating is within five points of the average agent quality rating, then they get 100 per cent of their commission?---Correct.

5 So a high agent quality rating results in a positive multiplier, and an increase in commission. And a low agent quality rating results in a reduction in commission?---Correct.

And the second multiplier is the quality assurance average rating factor?---Mmm.

10 I'm sorry, average factor - - -?---Average factor, yes.

- - - it's described as. Can you describe what that is?---Yes, this is the quality assurance assessment score. So in the example that I gave before – and this is – this is a more recent change, but for any indication of any level of pressure selling, they
15 would lose 16 points from 100 point start. They would be ineligible for the commission on that – on that policy. The average is over – over a period, over the period of the commission which is usually a week. And then it's multiplied and it – it either increases or decreases commission payable.

20 So this is an average of the quality assurance scores that are assigned. Is that right, for the calls?---It's an average for that – that agent.

Yes. And that score reflects whether quality assurance have decided that the agent has met regulatory and compliance and process requirements in making the
25 call?---Correct.

And it starts at 100 per cent, that score?---That's right.

30 Is that right? And deductions are made for each issue detected. And is there a point at which the score drops to a percentage that means that the call has failed the quality assurance process?---85.

85. Now, we see from your statement that the effect of this factor seems to be that if a sales agent has an average quality assurance score of 79 per cent or less, the
35 multiplying factor is zero. Is that right?---Correct. Is that on the quality rating?

Is that on the quality rating or the quality assurance average factor?---I would have to see it, sorry, Ms Orr. I mean, it's quite – I agree it's quite complex.

40 It's very complex, Mr Orton. If I could just ask you to look at paragraph 108 in your statement at FIG.0003.0003.0022. I will ask you just to read that paragraph 108 which is under the heading Quality Assurance Average Rating?---Yes, that's correct. Under 80 per cent.

45 The proposition I put to you is correct?---You're right.

Okay. So if you get a high quality assurance average rating, you get a positive multiplier again?---Correct.

And that increases your commission?---Correct.

5

All right. Now, there are other factors outside of that formula that also bear on the sales agent's commission?---Yes, there can be.

Yes. Freedom can apply penalties or fines?---Yes.

10

And they're effectively a reduction in commission. Is that right?---Yes.

And they're at the discretion of the head of sales?---They are.

15

And you tell us in your statement that previously, a sales agent's entitlement to commission has also been subject to the discretion of the head of sales?---Sorry, can you say that again?

20

You tell us in your statement that it has previously been the case that payment of the commission is subject to the discretion of the head of sales?---Yes.

But there was no policy document that governed or in any way explained how that discretion was to be exercised?---No. I agree.

25

Why not?---It should have been there. I agree.

You say that even though there wasn't any formal documentation, typically the head of sales refused to give someone their commission where there had been gross misconduct, poor sales practices, poor professionalism, or material noncompliance?---Correct.

30

So what sorts of conduct has led to the head of sales refusing to permit a sales agent to get their commission on the basis, for example, of gross misconduct?---I am aware of a couple. There – on gross misconduct, I think there was an occasion where someone was sold an AD policy and they – it was not made clear that it was for accidental death and the agent was fined all of that commission – all of his commission for that. I believe there's some other in the information that we provided where they were fined for various things, including not call wrapping, which is the other stuff, which is a minor – minor issue. But my honest view, Ms Orr, is that the company has not been hard enough on its sales agents in doing this.

35

40

And the instances where the discretion has been exercised to withhold a sales agent's commission have been few and far between. Do you accept that?---Yes, I do.

45

But you say that there are now formalised and specific qualification requirements for sales agents and where a sales agent now fails to meet one of those criteria, that's intended to result in them being excluded from the incentive scheme. Is that

right?---If they fail two in a period, two of those, then they would be excluded for the entire period. There's also the sales agent disciplinary policy that we've been working on. But we need to be tougher.

5 And is that going to happen?---It's going to happen with me.

Now, having introduced that formula-based commission program in July 2017, about 15 months ago, there were further changes made to the commission program to increase the base salary and reduce the variable remuneration. Is that right?---Yes,
10 that's right.

But the variable remuneration has remained uncapped?---At the moment, correct.

And I want to put to you that the practical effect of the remuneration frameworks that
15 you've had in place for the last five years is that sales agents have been able to substantially increase their remuneration through commissions?---Yes, they have.

And the average proportion of remuneration for both Freedom Protection Plan sales
20 agents and life insurance sales agents that has been attributable to commissions has been 32 per cent?---I don't think you can add those two numbers together. I think it's 24 per cent for the Freedom agents and 40 per cent for the life.

How about I take you to a particular year. In financial year 2016, we see from
25 paragraph 117 in your statement - - -?---Yes.

- - - which is slightly further in. It's at 0024?---Yes.

So in 2016, it was 32 per cent for both of them?---Sorry, 2016. Correct. I was
30 looking - - -

And for this year, it's 24 per cent variable remuneration for the Freedom Protection
Plan agents and 40 per cent for the life insurance agents?---Sorry, you're right.

I think that's what you were referring to?---Yes. Yes, that's right.
35

Now, so the average proportion of remuneration for those who sell life insurance at
Freedom has increased?---On small numbers, yes, yes.

And I want to also put squarely to you that the commission structure that you've had
40 in place in recent years has created a situation where your sales agents have been incentivised to aggressively pursue sales?---I agree. I think all incentives have that effect.

And that that was likely to, and has in fact, led to poor customer outcomes?---I think
45 it can lead to poor customer outcomes. Not on every occasion but we've got some examples here today which I can only apologise for.

Where it has?---Yes.

And yesterday, as part of the information that was given to the Commission at 3 o'clock, we were told that Freedom would be ceasing commissions for its sales personnel from 30 September?---Correct.

And we saw the decision – the record of that decision in the minutes I took you to earlier this morning?---Yes.

10 And if I could just take you back to that document, to look at that part of the decision again, if I could take you to FIG.0011.0001.0001 at 0005. And if we could perhaps have 0005 and 0006. 0011 – I apologise if I gave the wrong number – 0011.0001.0001. And I want to go to 0005 and 0006. And we see the resolution that was made at 0006, the board resolved. That was what you took me to
15 earlier - - -?---Yes.

- - - in answer to a question I put to you about where we see the decisions in this document, Mr Orton?---Yes.

20 And if we look at the description of the discussion prior to the resolution at the bottom of page 5, we see in the second paragraph, about four lines down towards the end of the line:

25 *This initiative will remove in its entirety –*
I think that should be entirety –

30 *...any potential for the variable incentive component to inappropriately influence the conduct of the sales or retention agents whether this influence be actual, or perceived. Its removal is consistent with the principles set out in the ASIC review regarding conflicted remuneration.*

?---Correct.

35 So recognition in this set of minutes of the meeting of the board that the commission structure that you've had in place had the potential to inappropriately influence the conduct of sales agents?---I agree.

40 And that has been the primary reason for its removal. Is that right?---Correct.

Thank you. Now, I want to take you back to the breach report that you provided to ASIC on Friday last week – ASIC.0073.0001.0001 – because there were other aspects of that breach report that went beyond the complaints about the vulnerable customers that I took you to earlier?---Yes.

45 If we turn to 0002 in this document. We see that Freedom there told ASIC – I am just going to find the relevant part. In the paragraph that starts “Therefore” two

paragraphs from the bottom – under the heading, I should say, Remuneration Arrangements for Representatives, and there’s some information about that:

5 *With effect from 1 January 2018, Freedom Insurance’s remuneration arrangements for its representatives were structured on the basis that variable monetary benefits given to its sales agents were within the exemption from the ban on conflicted remuneration as set out in –*

10 A particular regulation in the corporations regulations?---Correct.

And in April 2018, we see in the next paragraph:

15 *Freedom commenced a detailed review of the balanced scorecard framework to enhance its effectiveness. Since April 2018, Freedom Insurance has progressively made a number of changes to the balanced scorecard framework and supporting structures.*

?---Correct.

20 Then if we go over the page to 0003, we see that Freedom told ASIC that it had formed the view that:

25 *During the period between 1 January 2018 and May 2018 there has been a potential breach of section 963E of the Corporations Act in respect of the variable component of sales agent remuneration.*

?---Correct.

30 So this is another recent breach that has been identified by Freedom to ASIC?---Yes.

Which relates to the commission structure that you have had in place, particularly in the life of that commission structure post 1 January 2008 when the life insurance framework regimes came into place?---Correct.

35 Thank you. Now, I will just point out also on 0003 that you emphasise there that it was – that:

40 *Freedom was not aware of any consumer detriment, financial loss or other damage arising to customers as a result of the potential breach.*

But that you had:

45 *...determined in the interests of full and frank disclosure that it was appropriate to report the potential breach to ASIC.*

?---Correct.

5 All right. So no commissions from 1 October this year. But serious problems with the commission structure that was in place prior to that time, both in terms of incentivising poor sales agent behaviour and in terms of noncompliance with the law since 1 January this year?---I think that's right. I think structurally, the balanced scorecard was trying to do the right thing in terms of the quality assurance and the quality rating, but I think it fell short.

10 And Freedom has offered for some time incentives beyond commissions for its sales agents, hasn't it?---It has.

Over time, there have been a number of different types of incentive campaigns for Freedom staff?---Yes.

15 Some are one-off schemes?---Yes.

Some are run more regularly?---Not very regularly. I mean, there might be a dinner or something but I wouldn't say that they're very regular.

20 Sometimes the purpose of the incentives has been to "specifically and deliberately drive sales". That's your language from your witness statement - - -?---Yes.

- - - at paragraph 141?---Yes, I - - -

25 Can I show you FIG.0005.0012.0013. Now, this is one example of a relatively recent short-term incentive that was intended to specifically and deliberately drive sales?---Yes.

This is an email from 14 July last year to the sales team?---Yes, it is.

30 Continuing:

35 *Hi all. I feel like giving a bit of money away. It will run from now until close of business tomorrow. Oldies – anyone that gets eight funeral lives or more will go into a draw on Monday morning. Newbies – anyone that gets six funeral lives or more will go into a draw on Monday morning. Every life over your target you will get a bonus entry. \$100 to give away. First prize \$70, second prize \$30. Get selling. Show me the money.*

40 So this was one of your incentive campaigns?---It was.

From last year. And what observations do you have to make about this sales campaign, Mr Orton?---I think it's absolutely inappropriate. And while I will – that will not happen under my watch.

45 Do you accept that this was likely to drive highly aggressive and inappropriate sales practices so that people could meet their targets and be eligible for the money?---I do.

I tender that email, Commissioner.

THE COMMISSIONER: Email 14 July '17 concerning incentive, FIG.0005.0012.0013, exhibit 6.75.

5

EXHIBIT #6.75 EMAIL DATED 14/07/2017 CONCERNING INCENTIVE (FIG.0005.0012.0013)

10

MS ORR: And could I ask that you look now at FIG.0005.0012.0017. This is another example of one of those campaigns from July last year, an email to the Freedom sales team:

15

Morning everyone. We've got \$150 to give away in today's incentive. Target is 400 lives by lunchtime. Everyone aiming for seven lives over the first two sessions, 3.5 lives per session, easy peasy and we will smash 400 lives to lock in the incentive money for the last part of the day. Also, the draw for Tuesday is coming up. Let's smash it out, folks, and lock this cash money in.

20

Any observations about this campaign, Mr Orton?---Inappropriate – inappropriate again.

Likely to drive very poor behaviour by your sales agents and to lead to consumer detriment as a result?---I agree. Apart from being unprofessional.

25

I will tender that email, Commissioner.

THE COMMISSIONER: Email 20 July '17 concerning today's incentive, FIG.0005.0012.0017, exhibit 6.76.

30

EXHIBIT #6.76 EMAIL DATED 20/07/2017 CONCERNING TODAY'S INCENTIVE (FIG.0005.0012.0017)

35

MS ORR: Freedom also offered substantially more valuable and substantially more elaborate incentives, didn't it?---It did.

And in your statement you say that there was usually a quality assurance requirement in order to qualify for participation?---Correct.

40

But not always?---Not always.

Can I ask you to look at FIG.0005.0006.0007. Now, this was the Freedom boat party incentive which ran from June to July in 2016?---Yes, I believe so.

45

And if we look at 0009, we see that the Freedom boat party offered Freedom employees a three hour cruise around Sydney harbour on a luxury cruiser with a food and beverage package?---Correct.

5 At 0008 we see that there were two ways to secure a spot on the Freedom boat. One was to win automatic selection as one of the top 12 point scorers. Points were received for hitting each daily expectation, policies, lives or accidental death expectations?---Correct.

10 And sales agents would lose a point for every quality assurance fail?---Correct.

So this is an example of one of the campaigns that did have a quality assurance component. The other method of entry was a passport draw which was a second chance draw?---Yes.

15

I tender this document, Commissioner.

THE COMMISSIONER: Freedom boat party, June/July 2017, FIG.0005.0006.0007, exhibit 6.77.

20

**EXHIBIT #6.77 FREEDOM BOAT PARTY, JUNE/JULY 2017
(FIG.0005.0006.0007)**

25

MS ORR: Now, in contrast to the Freedom boat party incentive there were a number of incentive programs of high value which weren't pitched as being subject to any quality assurance limitations. Do you agree with that?---Yes.

30 And I will show you an example. FIG.0005.0006.0005. This is an incentive program from November and December last year. It was an incentive campaign offering a trip to Bali?---Yes.

35 And this was the email which notified staff about the incentive program. Is that right? And we see at the very bottom of the page that the person who sent it was from Freedom's quality assurance department?---I believe he was at the time. He's a contractor.

40 Was it - - ?---He was looking at some various options for QA. He wasn't a QA operator or dealing with sales staff.

45 Well, was it normal for sales incentive programs to be run through Freedom's quality assurance department?---No. No, it wasn't. This is an individual who provides some various consulting to the organisation.

And did so as part of your quality assurance department?---He was looking at quality assurance in general.

So he was chosen to communicate the news about the let's go to Bali incentive?---Yes.

Continuing:

5

There are only 27 working days between today and our Christmas break. We want a huge sales result in the run up to Christmas. So we are going to offer all sales agents an amazing incentive. Today, each agent will be given an individual sales target covering the next 27 days including today. Every agent that reaches their target will win a luxury seven day holiday for two people to Bali, including airfares, accommodation, and complimentary treats. So it's not anyone can win it, it's everyone can win it. Your target is achievable as long as you work hard. More details will be given over the next 48 hours, but we wanted to let you know immediately because every call counts, so your efforts need to start today. Let's all go to Bali.

10

15

Now, there was no suggestion anywhere in this communication that eligibility was contingent on sales agents meeting quality assurance requirements, was there?---No, there's not.

20

The message was that sales staff were to sell hard without regard to quality assurance requirements?---That's the message in that communication. I agree.

25

And that message was reinforced throughout the campaign. I want to show you another document. I tender this communication, Commissioner.

THE COMMISSIONER: Email, let's go to Bali, 15 November '17, FIG.0005.0006.0005, exhibit 6.78.

30

EXHIBIT #6.78 EMAIL, LET'S GO TO BALI DATED 15/11/2017 (FIG.0005.0006.0005)

35

MS ORR: Could I ask that you look at FIG.0005.0006.0019. And if we could have 0019 and 0020 on the screen. We see that this is an email from December last year:

40

Hi guys. This Saturday, 16 December, is the last free shot Saturday of the Bali incentive. Start the morning here with a coffee and Krispy Kreme donuts. Get on the phone and sell, sell, sell with one thing in mind: get to Bali. At 1.30 we will break for a Subway lunch.

And over the page, 0021:

45

At 4 pm we will break out the Bintang beers and ciders. Use this last free shot day to get you to Bali.

Any observations about this communication, Mr Orton?---I am as livid with it as you are.

5 The message was in Freedom's terms "get on the phone and sell, sell, sell with one thing in mind, get to Bali"?---Inappropriate.

Again, incentivising your sales agents to aggressively sell leading to situations of customer detriment?---I agree.

10 I tender that document, Commissioner.

THE COMMISSIONER: The email last Saturday of Bali selling, 13 December '17, FIG.0005.0006.0019, exhibit 6.79.

15

EXHIBIT #6.79 EMAIL LAST SATURDAY OF BALI SELLING DATED 13/12/2017 (FIG.0005.0006.0019)

20 MS ORR: Then in January this year there was another Bali incentive campaign, wasn't there?--- Yes, there was.

25 And it was, again, administered by the same person through the quality assurance department?---Yes. He had organised the tickets and the arrangements. I believe that why – that's why there was an extension. There was tickets left over.

So if we look at FIG.0005.0006.0001:

30 *Bali. Bali. Bali. It's on again. Another Bali incentive.*

And I won't read through this but if we could just bring up on to the screen 0002 and 0003. We see, again, that the key message at the end of this email:

35 *Get your target and you're in.*

Yes?---Yes.

Yes. I tender that email dated 12 January this year, Commissioner.

40 THE COMMISSIONER: Email it's happening again, 12 January '18 FIG.0005.0006.0001, exhibit 6.80.

45 **EXHIBIT #6.80 EMAIL IT'S HAPPENING AGAIN DATED 12/01/2018 (FIG.0005.0006.0001)**

MS ORR: Now, two other higher value incentive programs that ran during this period excluded from sales targets policies which resulted in cancellations from inception, but didn't otherwise exclude non-compliant calls. Now, these were another Bali campaign that ran from March to April of this year, and a Vespa scooter campaign that ran from November last year to January of this year?---Correct.

And if I could just take you to FIG.0005.0006.0014. We see an email about the Vespa scooter competition, which again was sent by the same person within the quality assurance department. And this email made clear that sales agents would earn certain points, depending on factors that included the type of policy sold, the number of additional benefits taken out, and the amount of premiums written. Do you see that?---I do.

But beyond that, we see:

The winner takes all. No handicapping so you need to be number one to win.

?---Correct.

I tender that document, Commissioner.

THE COMMISSIONER: Email Vespa scooter competition, 24 November '17, FIG.0005.0006.0014, exhibit 6.81.

EXHIBIT #6.81 EMAIL VESPA SCOOTER COMPETITION DATED 24/11/2017 (FIG.0005.0006.0014)

MS ORR: Now, you accept that these sorts of incentive programs, particularly the higher value incentive programs, encourage conflicted conduct by sales agents?---Yes.

And do you accept that conflicted conduct is particularly likely, in circumstances where no quality assurance qualifications are placed upon participation in the program?---Absolutely.

And you tell us in your statement that Freedom is now changing its approach to the provision of non-monetary benefits because of the introduction of the life insurance framework in January this year. Is that right?---Not only for that reason.

What other reasons?---It's not only – it's not only to comply with regulations. I don't believe in it.

You don't believe - - -?---I don't believe in these sorts of incentives. I don't believe in commissions that are sales or retention driven. I think it should be about quality.

And I think if you can get the quality right, you can improve consumer outcomes. If you improve consumer outcomes, you can have a profitable business.

Are you aware, though, of the life insurance framework reforms?---I am.

5

And can you explain your understanding of those reforms?---Yes. Anything that's determined to be conflicted remuneration should not be offered. And I – this was conflicted remuneration.

10 So you know when those reforms came into effect?---1 January 2018.

And as part of that same breach report that I've taken you to twice already, the one that was filed with ASIC last – last Friday, Freedom also notified ASIC that it had breached the Corporations Act in the provision of some of its 2018 incentive programs. Is that right?---Correct.

15

If we just go back to that breach report at ASIC.0073.0001.0001 and turn again to 0002. We see under the heading Non-Monetary Benefits for Representatives that in August 2018 – this is what Freedom told ASIC:

20

Freedom formed the view that certain non-monetary benefits comprised of reward-focused travel and vehicle incentives –

Are we referring there to the Bali trips and the Vespa scooter campaign?---Correct.

25

Continuing –

...given to representatives during the period from 1 January 2018 to April 2018 fell within the scope of the presumption in section 963L of the Corporations Act regarding volume-based benefits.

30

?---That's correct.

And Freedom told ASIC that it had determined that the:

35

Travel and vehicle incentive awards given to representatives –

In that period –

... constituted conflicted remuneration and that there had therefore been a breach of section 963E of the Corporations Act.

40

?---That's right.

45 And, again, Freedom emphasised over the page that it:

... wasn't aware of any consumer detriment but had determined in the interests of full and frank disclosure that it was appropriate to report the breach.

?---Correct.

5

Now, you may not have been able to identify consumer detriment, but you agree with me, I think – you already have – that running campaigns like this is likely to result in consumer detriment?---I think it can result in – in consumer detriment. I agree. If the sales people are too pushy and driving towards those incentives.

10

And these incentive programs were encouraging them to behave in that way, weren't they?---Yes.

15

Now, in the meeting that Freedom had with ASIC on Tuesday last week, which I referred to earlier, ASIC asked you whether inappropriate behaviour had occurred at Freedom because of these incentive schemes. Do you recall that?---I don't recall that particular part but if you – if that's within the notes, then yes.

20

The notes of that meeting suggest that you said you would take that question on notice, or someone within the meeting, possibly not you, another representative of Freedom may have said that that question would be taken on notice?---Probably me.

25

And I just want to understand whether Freedom's statement in the breach report that it's not aware of any consumer detriment represents Freedom's final position on that point?---We're not aware at this stage. If we're talking about some of the issues that we've had today in terms of the reports and the misconduct, we're not aware of – of any of those cases where we haven't acted and refunded premiums or remediated. But I can't guarantee that they're not out there.

30

All right. Now, I want to turn from that discussion of remuneration and incentives, Mr Orton, to just discussing in a bit more detail the quality assurance processes that have been in place, which you've conceded already were inadequate. Is that a fair assessment of your evidence today?---There was inadequate coverage. I think it's important to get the QA coverage rates up around that 100 per cent mark for sales.

35

But I think in general, the QA structures, although they can always be tweaked and improved, are quite strong, are quite detailed. The QA marking guidelines are relatively strong.

40

Do you think they've always been strong, when you look back at the marking guidelines over the last few years?---I think they're picking up the right things in general. I don't think that they're – the consequences of picking those things up has been strong enough.

45

So back in 2016 when the policies were sold to Mr Stewart's son, only some of Freedom's calls were being assessed against the marking guidelines. Is that right?---Correct.

Do you know what percentage of calls were being assessed at that time?---I don't know the percentage for 2016, but I know the percentage for the beginning of 2017 to – up until June which was 42 per cent of all calls.

5 But back in 2016, you don't know how many were being marked?---I can't recall what it is, no.

10 But we know that the call that sold – the call that led to the sale to Mr Stewart's son was not assessed against the marking guidelines. It was not - - -?---That's correct.
- - - picked up and monitored, was it?---That's correct.

15 Now, I just want to take you to some iterations of the marking guidelines. They're an essential part of the quality assurance process, I take it?---Yes.

20 Yes. And if we look at the marking guidelines that were in place at the time of the sale to Mr Stewart's son, they're at FIG.0002.0004.0333. Now, just so I make sure that I understand the structure of these marking guidelines, the headings for the columns – can you explain what each of those headings mean, 01, F, PA, CB?---It's just a mark out of – so 01 is just a mark out of 0 or 1 for that particular item. F is fail. A PA is pass. And CB is call back. So you can have fail and call back.

25 A call back meaning that the customer needs - - -?---Call the customer back.
- - - to be contacted about that call?---Correct.

And what would lead to a score of zero and what would lead to a score of one?---If they didn't introduce themselves by their first name, then they would get zero.

30 I see. So you're aiming for ones in that column, are you?---Yes.

35 All right. Now, if we turn to – we can see from this set of marking guidelines that it's structured in accordance with the stages of the call. We see Introduction at the head of this page. Is that right? Is that about the introductory part of the call?---Correct.

40 And if we carry through to 0335, we're in a part of the marking guidelines that deals with final expenses cover. And if we look at item 13, we see that sales agents would fail this stage if they neglected to offer accidental death cover or accidental injury cover?---Correct.

45 And then if we turn to 0337, and we look at item 19, at this point we're in the accidental death cover portion of the marking guidelines. Can you see the heading at the top of the page?---Yes.

And item 19:

Was the premium calculation provided correctly?

And we see that sales agents would fail if they gave the incorrect premium amount, but not if they failed to advise the customer that premiums would be due within 28 days?---Yes, I can see that.

That was an important piece of information for the customer, wasn't it?---I agree. I agree.

Should that have been a fail?---Well, they would – they would have been given a welcome pack. I still think it's inappropriate that they would have been called back and it should have been a fail.

Should have been a fail - - -?---And a call back, yes.

Now, if we turn to the final section which is headed the Call Mandatory Section at 0342, we see item 33:

Did the agent provide correct information, use appropriate objection handling, and avoid personal advice?

Now, all of those are important considerations to ensure that the calls are legally compliant, aren't they?---Yes.

And we see on this page that it was still not a fail to provide many categories of misleading, deceptive, false or incomplete information. It was not a fail, for example, to say that Freedom's cash back offers were a type of savings plan, superannuation fund, or endowment. Do you see that about - - -?---I can see that one, yes, yes.

That wasn't a fail?---No.

And it wasn't a fail if the sales agent told a potential customer that they were obtaining their bank account details for a purpose other than processing premium payments?---Sorry, I can't see that one but - - -

It's about halfway down the page above the dot point. Two lines above the dot point?---It should definitely have been a fail and call back.

Yes. If the sales agent says to a customer, "I need your bank account details" for something else - - -?---Absolutely.

- - - it's not about taking your premiums for the policy, that should have been a clear fail, shouldn't it?---Agree. Yes, definitely.

But it wasn't?---No.

And it wasn't a fail to advise customers that their premiums would never increase. You see three lines below that dot point when talking about cover with stepped premiums?---No, that's right.

5 That should have been a fail too, shouldn't it, Mr Orton?---I would think so, yes.

And it wasn't a fail to tell a customer that the final expenses cover, the funeral insurance, is the exact same cover as a competitor product. Do you see that?---Yes.

10 It should have been a fail?---Definitely.

And not a fail to tell a customer that Freedom would cancel their existing cover for them, even though presumably Freedom couldn't do that?---It should have been a fail. Agree.

15

So do you still maintain the view that you expressed to me earlier about the robust nature of these marking guidelines?---Not in 2016, I don't, no. I think they've improved.

20 But you accept that the sorts of statements that we see here that didn't constitute a fail would have contravened the prohibition on misleading or deceptive conduct or false or misleading representations in the ASIC Act?---Potentially could, yes. Yes. When I was talking about the structures, Ms Orr, I was talking about what they're trying to pick up and the consequences are not strong enough. And I think that's

25 proving that the consequences – it's being picked up but there's no consequence.

But what's the point of picking it up if it - - -?---I agree.

- - - doesn't lead to a fail, Mr Orton?---I agree.

30

Someone has gone to the trouble of thinking about all of the things that might go wrong in the call but not to the trouble of identifying which of them should lead to a consequence?---Yes. I agree.

35 So you accept that the marking guidelines, at least at this stage, were not robust?---Were not robust, I agree.

And you accept that they show that Freedom didn't consider that a potential breach of the law was sufficient to make a call a failed call?---In those instances, yes, I

40 agree.

And if we turn to 0344 within this document, we see at 36:

Did the call meet Freedom's service standards and quality guidelines?

45

We see that it was – I take it that brackets around an F is a possible fail. Is that right?---I'm not sure what the brackets there – I'm sorry.

Well, whatever it means, we see that if an agent used undue pressure to purchase, the consequence seems to be some sort of qualified failure. Is that right?---I'm sorry, I don't know that one.

5 And if the – the same result for if the agent sold excessively on cancellation or sold excessively on the free period. Do you see that? The other two Fs with brackets around them?---I do. I do. And I don't want to guess at it but given the seriousness of those three things that you just went through perhaps that's almost like highlighting a fail. But I don't know.

10 Well, I want to suggest to you that there's different levels of seriousness there, because using undue pressure to purchase is a much more serious contravention than selling excessively on the free period?---Yes.

15 Do you agree with that?---Agree.

But they seem to yield the same result, a result which I think you're unable to explain for us?---I'm sorry, I'm unable to explain that one.

20 All right. But do you accept that this scorecard, these marking guidelines as they stood in 2016 at the time that Mr Stewart's son was sold his policy, were not a robust way of assessing whether your sales agents were complying with the law and behaving appropriately on sales calls?---I do. They were – I honestly think that if the call went through quality assurance for Mr Stewart's son, it would have been picked up straight away regardless of this.

Well, how can you be so confident of that, Mr Orton? We heard that one of your sales agents listened to the call, appeared to discuss it with someone else, and then came back and said to Mr Stewart that they couldn't see anything wrong, in effect, with the call?---Yes. I couldn't – I don't understand that.

30 Yes. So you can't be confident, can you, that if that call had been - - -?---No, that's fair.

35 - - - listened to, anyone would have thought anything of it at Freedom?---I can't guarantee it, you're right.

Now, since this time there have been further versions of these marking guidelines, haven't there?---Yes.

40 I will tender this version.

THE COMMISSIONER: Freedom marking guidelines, 1 June '16, FIG.0002.0004.0333, exhibit 6.82.

45

**EXHIBIT #6.82 FREEDOM MARKING GUIDELINES DATED 01/06/2016
(FIG.0002.0004.0333)**

5 MS ORR: Can I just take you to the marking guidelines issued in February of this year. They are FIG.0002.0004.0181. Have you seen these more recent marking guidelines, Mr Orton?---Are they up on the screen yet? I have but I – I believe that there's further updates since this time.

10 Yes. Yes. So this is the version from February 2018. And I want to suggest to you that there were still deficiencies in the marking guidelines as recently as then. If we go to 189 in the document, back to the call mandatory section, we see in the second line up from the second dot point that it was still not a fail to tell a customer that their bank information was being used for something other than paying the
15 premiums?---Where are we, sorry, Ms Orr?

If you go to the second dot point under 29?---Yes.

20 And go two lines up?---Yes. Yes. That's correct.

And it still wasn't a fail to tell a customer that certain types of Freedom cover were exactly the same as a competitor's cover?---Correct.

25 And it still wasn't a fail to tell a customer that Freedom would cancel the customer's policy for them?---Correct.

It still wasn't a fail, second line from the bottom in 29, to provide information about a competitor product that was inaccurate?---Correct.

30 And further down the page in item 30, it wasn't a fail for the agent to provide personal advice, which is a breach of the Corporations Act, isn't it?---It is.

35 So still in the version of these marking guidelines that was in place just a few months ago we see that Freedom was not imposing consequences for multiple types of breaches of the law?---I'm confused, Ms Orr, because I – I can't understand why that would not be a fail if they were – if they were into personal advice. I'm wondering if I'm misunderstanding this sheet.

40 Well, if you're able to explain it - - ?---Can you show me the latest sheet?

Yes, I can. So this was the version up until, as we understand it, July this year. First, I will tender that version, Commissioner.

45 THE COMMISSIONER: Freedom marking guidelines 16 February '18, FIG.0002.0004.0181, exhibit 6.83.

**EXHIBIT #6.83 FREEDOM MARKING GUIDELINES DATED 16/02/2018
(FIG.0002.0004.0181)**

5 MS ORR: And we understand the document I'm about to take you to to be the current marking guidelines. FIG.0002.0004.0210. Does that look familiar to you - - -?---Yes, it does.

- - - Mr Orton. Dated 24 July 2018?---It does.

10

And I – I'm happy for you to look through this document, but what I want to suggest to you is that the deficiencies that I've been taking you through are resolved at this point. In July this year, the sorts of matters that I have been taking you to for the first time are recognised as fails in the marking guidelines?---Okay. Sure.

15

Is that correct?---Can I - - -

I'm happy - - -?---Can I just see it? Yes.

20 I'm happy to take you to it. If we go to 0222 and 0223, you will see the part of the marking guidelines that contains most of the questions that I've directed your attention to already. You can immediately see a lot more Fs in the fail column?---Yes.

25 And you can see at 222, on the left-hand side, two lines up from the second dot point, for example, that it's now a fail to tell a customer that their bank details are being used for another purpose?---Yes, I can. I was reading it correctly.

Yes?---Yes.

30

So you accept that it wasn't until July this year that Freedom was using marking guidelines that failed calls on the various bases I've taken you to?---I think that's right.

35 Why did it take so long for Freedom to implement a robust marking guideline that imposed consequences for breach of the law?---QA has been something I've been reviewing for a while. It shouldn't have taken until 24 July. But it has been – it has been something that I was first keen on getting the resourcing up to. It's clear that some of these marking guidelines prior to these changes were – were insufficient.
40 There is a sign-off procedure with our insurers as well, and I think that – that potentially could have slowed it down. I'm happy to see that they're there now but I concede that it should have been in earlier, even earlier in my tenure.

I tender that document, Commissioner.

45

THE COMMISSIONER: Freedom marking guidelines 24 July '18, FIG.0002.0004.0210, exhibit 6.84.

**EXHIBIT #6.84 FREEDOM MARKING GUIDELINES 24 JULY '18,
FIG.0002.0004.0210**

5 MS ORR: Now, under the current marking guidelines, we see that when the quality assurance officer reviews the call, they're to score the call. Is that right?---Correct.

So they progressively mark down the call if there are deficiencies?---That's right.

10 And where there's a regulatory or compliance item that has not been met, a call is marked down from the 100 per cent starting score by four per cent. Is that right?---They were four per cent. These new – these new fails are 16 per cent which is an automatically fail of the call and that's where you get two of those in a period which was voiding commission.

15 And when did that come into play, that regime, Mr Orton?---It's recent. I don't know the exact – the exact date, Ms Orr. It would be July/August.

A matter of weeks?---Yes.

20 Yes. So prior to then there was a four per cent deduction for regulatory and compliance fails?---Correct.

25 And a score that was required for the call to be compliant was 80 per cent?---Correct.

So you could have multiple deductions of four per cent for regulatory or compliance fails, but still meet the 80 per cent target?---Correct.

30 And you say within the last few weeks that has now changed?---It's 85 and it's 16 for one of them.

Each fail is 16 per cent?---Each of – it's – each of a grouping of them that are more serious in the fails.

35 I see. So what are the nature of the more serious fails?---Undue pressure.

Undue pressure?---There's a range of other ones, I would have to see the document in front of me, but there are some – other – others.

40 There are some fails that give?---An automatic fail for one.

An automatic fail because it takes it below the 85 per cent straightaway?---Correct. That's right.

45 Are there still other regulatory and compliance requirements that result in a four per cent deduction?---I'm not sure, to be honest. I think the majority of those are regulatory ones. There could be – there could be a couple there.

Do you know what the consequence is now of telling someone that you're taking their bank details for a purpose other than to use them for premiums?---Not without seeing the details. I just can't remember them all.

5 Okay?---What they all are.

That information that you're providing us with now is not information in your statement?---No, I don't think so.

10 I assume this is all changes that have been made - - -?---Yes.

- - - since your statement. So I'm unable to put a document before you to assist you in answering these questions?---No, that's right.

15 Now, can I turn to the disciplinary process that Freedom had in place. That's another important part of the compliance system. Is that right?---Yes.

20 And the disciplinary process that was in place in 2016 at the time Mr Stewart's son was sold his policies, they were fairly informal processes, weren't they?---They seemed to be, yes.

25 So there was a process which meant that the quality assurance team provided feedback of some nature on failed calls to a sales team leader, and the team leader then gave some sort of feedback to the sales agent. Is that right?---I believe that's right, yes.

And it was an inadequate system for dealing with sales agents who engaged in misconduct, wasn't it?---Yes.

30 And I want to explain how inadequate it was by looking at how Freedom dealt with the sales agent who sold the policies to Mr Stewart's son. You've seen the documents in relation to that?---I have.

35 Now, could I start by showing you FIG.0004.0002.0019. Now, this is a document that Freedom used to give weekly feedback to its sales agents, at least in 2015, because this document is dated 1 December 2015. Is that right?---Yes.

40 And this document has been completed with feedback for the sales agent who sold the policies to Mr Stewart's son in 2016. So we're before he sold those policies in this document?---Correct.

45 Do you understand? Yes. And we see from the text below the table that this was relatively early on in the sales agent's employment. The agent was told that he had made a great start overall on the sales front?---Yes, I can see that.

He had met his sales target by selling 20 policies in the week ending 29 December, although one had been cancelled. Do you see that from the table?---Yes, I can.

And he had met his target of lives insured by ensuring 56 lives in that same week?---Yes.

And the main piece of feedback to the agent was, in the box below:

5

Just need to get yourself 100 per cent focused to ensure your attention to detail is where it needs to be.

And the team leader said that if the agent did this:

10

Not only will your sales improve but so will your commission.

?---I can see that, yes.

15 And if we go over the page to 0020, we see that of four main identified areas for improvement, the first was accidental death:

20

You must be selling this on every call from now on. You've started off really well, showing you can do it. So with today being the start to a new month, I would like to see your MTD percentage above 40 per cent for December.

MTD?---Month to date.

Month to date. Thank you. I tender that document, Commissioner.

25

THE COMMISSIONER: What do I call it, Ms Orr?

30 MS ORR: Well, I've been referring to it as the Freedom insurance weekly 121 document, dated 1 December 2015, obviously for the sales agent who sold the policies to Mr Stewart's son.

THE COMMISSIONER: So weekly 121 document date – what period?

35

MS ORR: It's 1 December 2015.

THE COMMISSIONER: 1 December '15, FIG.0004.0002.0019, exhibit 6.85.

40 **EXHIBIT #6.85 WEEKLY 121 DOCUMENT DATED 01/12/2015
(FIG.0004.0002.0019)**

45 MS ORR: Now, you're aware, I'm sure, Mr Orton, that the name of the sales agent is the subject of a non-publication direction?---I am.

So I won't refer to him by name. Now, could I ask you to look at FIG.0004.0002.0021. We have a document that's a couple of months later. It's

dated 28 January 2016. So within that couple of months, it seems that the attitude towards the sales agent had changed somewhat. This is a written warning that was given to the sales agent by his manager and by the head of sales in relation to consistent incorrect logging of calls?---Correct.

5

What's that involve?---That's like the call wrap, how you log the call at the end, whether it's answering machine or if it's – you've got through to the customer or it's a sale. It's incorrect logging of it. That's all.

10 And the warning made clear that:

... the agent had been spoken to by at least two senior staff members previously in regards to incorrect call logging but the agent continued to abuse the system we have put in place.

15

And we see there's also a reference to the agent's excessive use of Facebook including whilst on the phone to customers in circumstances where he had previously been asked to refrain from doing that?---Yes.

20 And the warning stated that:

Further misconduct could lead to further action, possibly termination, depending on the severity of the misconduct.

25 Do you see that?---Yes.

I tender that document.

30 THE COMMISSIONER: First written warning 28 January '16
FIG.0004.0002.0021, exhibit 6.86.

**EXHIBIT #6.86 FIRST WRITTEN WARNING DATED 28/01/2016
(FIG.0004.0002.0021)**

35

40 MS ORR: Could I take you now to FIG.0004.0002.0024 to a document two weeks later on 16 February 2016. We're still well before the sale of the policies to Mr Stewart's son. And in this document, the agent received a final written warning from his manager. And from the head of sales. Again, in relation to consistent incorrect logging of calls. And the warning again said that the agent had continued to abuse the system that had been put in place?---Yes.

45 And this time the warning said that:

Further misconduct will lead to termination with Freedom Insurance.

?---Yes, it does.

I tender that document.

5 THE COMMISSIONER: Final warning, 16 February '16, FIG.0004.0002.0024, exhibit 6.87.

10 **EXHIBIT #6.87 FINAL WARNING DATED 16/02/2016 (FIG.0004.0002.0024)**

MS ORR: Now, as a result of that warning, a \$2000 penalty was imposed on the agent?---I believe so, yes.

15 And that penalty was to be deducted from his commission by the amount of \$500 a fortnight for four fortnights?---Correct.

Now, the documents produced to the Commission by Freedom show other examples of Freedom imposing fines or penalties on sales agents for conduct or compliance
20 issues. Was that sort of response counterproductive because it could result in a sales agent feeling they needed to sell even more aggressively because they had to earn enough commission to pay the penalty?---I think it could have that effect. I think that's fair. That's fair. I mean, I would much prefer – and that's why the sales and agent disciplinary policy is in place, to go through a formal procedure and if they're
25 not operating both efficiently and in the interests of the customers, then appropriate action should be taken.

But this was the system at the time?---Yes.

30 So this particular sales agent got the \$2000 penalty to be taken from his commission over the next four fortnights?---Yes.

Now, can I ask that you look at FIG.0004.0002.0025. This is another fortnightly review document for the sales agent for the period from 8 to 21 February 2016. And
35 that was the fortnight in which the agent got the final warning and the penalty that I've just taken you to. Do you recall that that document was dated 16 February?---I do.

40 So the review we see here was completed by the same team leader, as the team leader who signed the final warning?---It appears so, yes.

But there's no mention of the final warning in the fortnightly review?---No.

45 Should there have been?---Absolutely.

In fact the tone of the fortnightly review is that the agent should be selling even harder, isn't it?---It is.

We see in the comments from the team leader:

5 *A bit of a mixed bag in relation to leads the past fortnight. Although lives were decent, just below the expected number of 120, you can be one of the top sellers in the company if you put your mind to it. Less distractions and more sales which means more commissions.*

?---Commissions, yes. I'm sure.

10 And then:

Excellent accidental death/accidental injury conversion –

15 Of a particular per cent:

So well done there. Keep that up.

That's a conversion of 80 per cent.

20 *Three quality assurance fails. Again, it's all down to you not focusing enough. Less fails again means more money in your pocket. Still, good commissions earned at \$2276 but again I feel you should be closer to the \$3000 mark. Aim big.*

25 Was this a responsible message to be giving a sales agent, who in this same fortnight had received a final warning and a \$2000 penalty to be deducted from his next four sets of commissions?---Not in my opinion, no, it wasn't.

30 You can't explain why this happened?---I can't explain why that happened but it's – it's not appropriate, I agree.

I tender that document, Commissioner.

35 THE COMMISSIONER: Freedom Insurance fortnightly 121, 16 February '16, FIG.0004.0002.0025, exhibit 6.88.

40 **EXHIBIT #6.88 FREEDOM INSURANCE FORTNIGHTLY 121 DATED 16/02/2016 (FIG.0004.0002.0025)**

MS ORR: Now, over the following months, there were continuing issues with this agent's sales practices, weren't there?---From the notes that – yes. Yes.

45 You've seen the documents - - -?---I've seen the documents, yes.

- - - that we provided to you and you accept that characterisation?---Yes.

There continued to be issues with the agent failing to log calls correctly. That was one of the problems?---Yes.

5 You've seen that? But there were also issues with him pressuring customers to provide their bank details. Have you seen those references?---I can't recall them at the moment but if you say they're there, yes. Yes.

Would you like me to show you that document?---Sure.

10 Yes. FIG.0004.0002.0030. This is an email to a person named Nicole about retention control checks on the dishonour list. And it relates to our sales agent. And we see some highlighted portions here about a particular call:

15 *Agent gets the –*

PO is policy holder. Is that right?---Yes. Policy owner.

Continuing –

20 *To select the date of payment. Then instead of asking the policy –*

Sorry, policy - - ?---Owner.

25 Owner. I'm sorry –

...policy owner which payment method she would prefer, the agent straightaway says, "Your debit card, when does that expire please? Can you read that out to me quickly? What's that?" The agent repeats, "Your debit card. When does it expire? Can you check that for me quickly."

30 Policy owner says:

But my money don't come out of my debit card. It come from my Bendigo Bank. Agent: "That's okay. You can change it at a different date." Policy owner asks the agent if he wants her debit card. Agent tells her he wants to check it. Policy owner says "It don't work, I'm telling you." Agent says "No, that's fine. It's okay. I just got to set it up with that though, okay." "I dunno, eh. It don't work I'm telling you." Agent ignores the policy owner's warnings that the card doesn't work. Instead the agent says "All right. Okay. What's the expiry date?"

And we see down the bottom:

45 *Agent then enters this information incorrectly which causes the policy to dishonour.*

So you agree that those were issues in relation to the agent pressuring customers to provide their bank details?---Absolutely.

Yes?---And poor behaviour.

5

Yes. I tender that document.

THE COMMISSIONER: Email concerning call converted date 2 March 2016
FIG.0004.0002.0030, exhibit 6.89.

10

**EXHIBIT #6.89 EMAIL CONCERNING CALL CONVERTED DATE 2
MARCH 2016 (FIG.0004.0002.0030)**

15

MS ORR: So that related to a call from 2 March. We're getting closer to the period in June when Mr Stewart's son was sold the policies. But throughout this period, even with these sorts of matters being detected, the agent was continually given positive feedback because he was making lots of sales, wasn't he?---I think there are some positive feedback in some of those notes, yes.

20

Yes. Well, let's have a look at FIG.0004.0002.0029. This is a fortnightly review from the period from 29 March to 13 March. The agent was told:

25

Excellent work on your accidental death and injury cover. You're converting at 82 per cent. One of the highest conversions in the company. Keep it up. You always do well with accidental death and accidental insurance. You are only six lives off your expected target, even after a poor second week. You're well capable of smashing out the policies and lives once your head is in the right place. A bit disappointing when you look at your commission for this week but I have no doubt in the coming fortnight you will be back up at the top of the pile.

30

So this is the sort of feedback that the sales agent was getting?---It's not consistent at all. I agree.

35

It's what, sorry, Mr Orton?---Inconsistent with his two warnings.

Yes. Well, he's got two warnings and complaints are being made about him pressuring customers - - -?---Yes.

40

- - - into providing their bank details. He's still not logging his calls correctly but the feedback is all about how well he is doing with his sales targets. You accept that?---Yes.

45

I tender that document, Commissioner.

THE COMMISSIONER: Fortnightly 121 for period 29 February to 13 March '16, FIG.0004.0002.0029, exhibit 6.90.

5 **EXHIBIT #6.90 FORTNIGHTLY 121 FOR PERIOD 29 FEBRUARY TO 13 MARCH '16 (FIG.0004.0002.0029)**

10 MS ORR: But then by early April 2016 there were serious concerns about the agent's behaviour. I would like you to look at FIG.0004.0002.0004. This is an email from the sales agent's team leader to the sales agent. Now, he says:

15 *Mate, you really need to be careful how you speak to customers. Quality assurance are on your case at the moment. There's absolutely no need for you to be like that. Like I said in your 121, you could be right up there with the likes of –*

Others –

20 *There's not many people who are close to them two. You're doing really well, like I said, but some of your calls are bad. But I can't keep covering your back. It's going to go downhill if they keep coming back to me with issues from your calls. Just be polite with people. This customer told you he wouldn't renew because of the cost but you still put it through knowing he wouldn't renew.*
25 *These calls are not acceptable and it makes retention's job 10 times harder to save at renewal. I know you need the cash because you're heading home, but you shouldn't be sacrificing your job because of it. Buck up now. I don't want any more feedback from quality assurance for you. It's me who Adrian speaks to about it, okay. This is the email I received.*

30 And he then sets out an email with some feedback about a particular call that the sales agent had. So these were the sorts of concerns that were being expressed by quality assurance and being conveyed to the sales agent by the team leader?---Yes. Yes.

35 I tender that document.

40 THE COMMISSIONER: Email from Bryan Reilly 4 June '16, FIG.0004.0002.0004, exhibit 6.91.

EXHIBIT #6.91 EMAIL FROM BRYAN REILLY DATED 06/04/2016 (FIG.0004.0002.0004)

45 MS ORR: I'm sorry, Commissioner, I should have made clear we understand this email to be in the American date form so 6 April.

THE COMMISSIONER: 6 April '16.

MS ORR: Thank you. Now, this level of concern was reflected in at least one of his fortnightly reviews. Can I ask you to look at FIG.0004.0002.0260. And this is a
5 fortnightly review from the first half of April 2016. We're now a couple of months before Mr Stewart's son was sold the policies and we see the comments are in this document that covers 4 to 16 April:

10 *Again, you've shown how well you can, smashing over 200 lives and earning amazing commissions. But all of that counts for nothing when you continue to receive negative feedback in relation to your professionalism, quality assurance. There's only so much I can do for you but when you continue to do the same things over and over, it's a problem. You need to get your act together and start doing things correctly.*

15 So we see from this fortnightly review and from the previous document that the sales team leader was trying to protect the sales agent from continuing scrutiny by the quality assurance team?---I think in general the company has had – has not been
20 tough enough on the agents. And that's – that's apparent in these.

And do you accept that we see the sales team leader here attempting to protect the sales agent from further quality assurance scrutiny?---I am not sure I'm seeing he's protecting him but he's saying this is – this is the issue. But it's not good enough. I mean, he has been given a lot of chances already.

25 Well, why was Freedom not moving at this point to terminate the sales agent?---Yes, I can't answer that but I believe he should have been terminated by this stage given the quality.

30 He had been given a final warning. And there had been multiple problems with him since the final warning, including serious concerns about the way he was conducting calls. Was it because he was too successful at selling products to let him go?---I
35 honestly think the reason is that the company was too soft on agents in the past. I've seen – or I've heard examples of agents being kept as well who were low sellers with – for long periods of time. So it's – it's just – it has been a little bit soft in that area.

What did it take to be terminated by Freedom?---Well, I think the situation has changed now.

40 And what did it take at this time?---It took a call to a vulnerable customer to terminate this – this person.

I see. So you say that after the complaint that was made by Mr Stewart about his son, that led to the termination?---Yes.

45 But none of what we've seen in the documents I've just spent some time showing you led to his termination?---It didn't appear so.

The warning signs were all there, weren't they, Mr Orton?---Yes.

I tender this document, Commissioner.

5 THE COMMISSIONER: Fortnightly 121 review period 4 April to 16 April '16
FIG.0004.0002.0260, exhibit 6.92.

10 **EXHIBIT #6.92 FORTNIGHTLY 121 REVIEW PERIOD 4 APRIL TO 16
APRIL '16 (FIG.0004.0002.0260)**

15 MS ORR: Now, in April and May 2016, the agent corresponded directly with the
head of sales. Have you seen those communications?---Yes.

And he said that he was worried about his situation within the company, and
acknowledged that he had made stupid mistakes through greed. Do you recall
that?---I do recall that.

20 And he highlighted to the head of sales how good his up-selling skills were. Do you
recall that?---Yes, I do.

What do you think he was referring to there?---It could be increasing the coverage or
it could have been adding the accidental death and accidental injury.

25 And - - -?---Which is more likely.

And in May there were serious complaints continuing to come in about the sales
agent. Do you accept that?---Yes.

30 There were customers who were unhappy with the way he had spoken to them?---I
can't recall that one but yes, if you say that, yes.

35 Do you recall that there were assessments of him as being rude and
assessments - - -?---I do, yes.

- - - that he had berated customers for not listening to him?---Yes.

40 And there were more complaints that he had pressured customers to provide their
bank details. Do you recall that?---I do.

And did Freedom move to terminate his employment at that point after those
additional complaints were received?---No, they did not.

45 Should they have?---Yes.

And then in June 2016, in the week after the agent sold the policy to Mr Stewart's son, the quality assurance team dealt with a call in which the agent had engaged in serious misconduct by signing up a person who had explained that they were on a disability pension and had mental health problems in circumstances where it was clear that they weren't competent to make the decision to purchase the policy. Have you seen the references to that?---Yes, I have.

So that was another incident in the week after the sale to Mr Stewart's son?---Correct.

And in your statement you say that the agent was exited by Freedom on the basis of unacceptable sales conduct, including his conduct in selling the plan to Mr Stewart's son?---Correct.

Now, the agent went home to the UK for an approved holiday in the middle of June, didn't he?---Yes.

And under his visa, he had a few weeks in which he could continue working at Freedom upon his return to Australia?---Yes.

But before he left, his team leader told him that it was unlikely that Freedom would accept him back?---Some advice, yes, yes.

And then the complaint from Mr Stewart came in?---Yes.

And Freedom decided not to have the sales agent back when he returned to Australia?---That's correct.

So he wasn't so much exited on the basis of unacceptable sales conduct, as not permitted to return to work for the last few weeks after his holiday?---My understanding of the situation was that my predecessor reviewed the complaints register, and found the call that – Mr Stewart's son's call and the situation, and then spoke with Adrian and also sent an email to Adrian, who's the head of sales, and they determined that he definitely should not be coming back. But, no, you're correct. I can't point and say the sole reason for his departure was because of the call.

It wasn't, was it?---I don't think – I think there were other reasons as well. But I think this was certainly part of it.

He shouldn't have still been there to make that call - - -?---I agree.

- - - should he, Mr Orton?---Not in my opinion.

Can I ask that you look at FIG.0001.0001.0075. Now, we see on this page an email from your predecessor, the chief operating officer, to the head of sales referring to the call that had been made to Mr Stewart's son. Do you see that - - -?---Yes, I do.

- - - on 1 July 2016, part way down the page. Your predecessor, the chief operating at that time, said "Morning A" to Adrian Turner, the head of sales:

5 *I am just doing the complaints register and came across this one. Did customer service let you know about this? The call is a bit of a shocker! The sales agent is gone and policy has been cancelled. So nothing to be done.*

10 That was the email from your predecessor, the head of operations at Freedom?---The chief operating officer, yes.

I'm sorry?---Yes.

The chief operating officer?---Yes.

15 Was that an appropriate response, in your view?---No. It wasn't. It wasn't strong enough.

20 And we see that the head of sales responded to that email from the chief operating officer:

Good call. He has been a liability in the way he gets the sales. I will ask CS to make sure they give you feedback when they get complaints like this, and also to let me know. I felt so sorry for the poor customer throughout the call. Sad face.

25 Was that an appropriate response from your head of sales to your chief operating officer about the call in which Mr Stewart's son was sold these policies?---No. It's not.

30 These are very senior people within your organisation?---Yes.

And this was an inappropriate email exchange, wasn't it?---And childish.

35 It minimised - - -?---I agree.

- - - the gravity of what had occurred?---I agree.

I tender that document, Commissioner.

40 THE COMMISSIONER: Email of 1 July '16 concerning complaint/do you get notified, FIG.0001.0001.0075, exhibit 6.93.

45 **EXHIBIT #6.93 EMAIL DATED 01/07/2016 CONCERNING COMPLAINT/DO YOU GET NOTIFIED (FIG.0001.0001.0075)**

MS ORR: So it had been clear for at least four months prior to the sale of the policies to Mr Stewart's son that the agent was, to use the chief operating officer's words, a liability in the way he gets sales?---Correct.

5 But Freedom didn't take any adequate steps to stop the agent from causing harm to Freedom's customers or to Freedom itself?---No. It appears not.

He was given compliance warnings, but at the same time he was strongly encouraged to continue trying to hit sales targets and maximise his commission?---Correct.

10

Do you think the community would expect Freedom to have taken much more decisive action in relation to his repeated misconduct?---I do, and I can say that there would be much more decisive action today.

15 And we see from this email that the chief operating officer asked the head of sales whether customer service let her know about complaints. CS is customer service, is that right?---Yes, that's right.

And the head of sales responded that he didn't recall:

20

... being notified of this and I couldn't find anything in my emails.

?---Yes, look, I think – I think some of that is a failure of processes with the company growing so quickly. It is a young company. And it is on a bit of a journey to improve some of these things. But he should have known.

25

And the chief operating officer responded:

30

I will ask customer service to make sure they give you feedback when they get complaints like this and also to let me know.

?---Yes.

So there were broader problems with the feedback - - -?---Yes, I agree.

35

- - - loop within Freedom at that time because serious complaints weren't even drawn to the attention of the head of sales?---No, that's what I'm saying. I think that's – that's the journey the company has been on. I think that would definitely – well, I know that that would be drawn to my attention today.

40

Commissioner, I'm not going to be able to finish with Mr Orton this afternoon. I'm about to embark on the last substantive topic. I'm happy to start that or to start that in the morning.

45 THE COMMISSIONER: I think start in the morning. Is that going to derange the program?

MS ORR: No, not at all, Commissioner.

THE COMMISSIONER: If Mr Orton has got to come back in any event. I'm sorry, Mr Orton, but we will have to have you back. If we resume at 9.45 tomorrow?

5

MS ORR: Yes, thank you, Commissioner.

THE WITNESS: Thanks, Commissioner.

10 THE COMMISSIONER: If you can be back in time to begin by then, Mr Orton, please?---Yes.

And we will adjourn until 9.45.

15

<THE WITNESS WITHDREW

[4.14 pm]

20 **MATTER ADJOURNED at 4.14 pm UNTIL
WEDNESDAY, 12 SEPTEMBER 2018**

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