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TRANSCRIPT OF PROCEEDINGS

O/N H-884954

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, WEDNESDAY, 18 APRIL 2018

Continued from 17.4.18

DAY 13

**MS R. ORR QC appears with MR M. HODGE QC and MR M. COSTELLO as
Counsel Assisting with MR M. HOSKING**

MR R. HOLLO SC appears with MS E. HOLMES for AMP Limited

**MR C. SCERRI QC appears with MR S. GOODMAN SC, MR P. JAMMY, MS Z.
HILLMAN and MS L. HULMES for CBA**

THE COMMISSIONER: Mr Hodge.

MR HODGE: Commissioner, there is a further witness in relation to the first case study concerning fees for no service and that is Ms Perkovic from CBA. However,
5 in terms of the structure this morning, Ms Perkovic will be the third witness today and, for practical and thematic reasons, the first two witnesses will be witnesses from AMP and CBA that concern the second case study about platform fees.

THE COMMISSIONER: Yes, I see.

10

MR HODGE: The first witness that will be called in relation to platform fees is Mr Keating from AMP. Before Mr Keating is called, I want to say a little about why this case study has been selected for this module. Some of the largest financial services entities in Australia both provide financial advice to clients and also manufacture
15 products, or financial products that are available for investment in or through by those clients. In January of this year, ASIC released Report 562 which arose from a project that ASIC conducted to understand how well these entities managed the conflict of interest that arose from having both of these functions, both providing advice and manufacturing the products. We have already referred to that Report 562
20 on Monday when the statements concerning vertical integration were tendered.

The ASIC project focused on the five largest banking and financial services institutions in Australia: AMP Limited, ANZ, CBA, NAB and Westpac. ASIC sought information from the two largest advice licensees controlled or owned by
25 each of these five institutions. One of the matters upon which ASIC focused was the proportion of funds invested by product type in external products as compared with internal products. Platforms had the highest proportion of total funds invested by all customers in in-house products. Across the 10 licensees, 91 per cent of funds invested by customers in a platform were invested in an in-house platform during the
30 period under review. For new customers, 96 per cent of funds invested in a platform were invested in an in-house platform. When customers invest in a platform they are charged an administration fee, often that is a fee calculated as a percentage of the funds invested. The compounding effect of those fees over time may be significant.

35 In this case study, we are going to explore some aspects of the potential conflicts in relation to the use of platforms. In particular, we will seek to assist you to understand the decision-making process by which a financial planner recommends a platform, the role of the platforms in facilitating the charging of ongoing service fees, and the commissions and revenue sharing arrangements that exist in relation to the
40 platforms, including how those commissions and arrangements intersect with the FOFA grandfathering provisions. Commissioner, that's all I wanted to say in opening, and now the first witness in relation to this case study will be Mr Keating.

THE COMMISSIONER: Yes. Is Mr Keating in the room? If you could come into
45 the witness box, please, Mr Keating.

<EXAMINATION-IN-CHIEF BY MR HOLLO

5

THE COMMISSIONER: Thank you very much, Mr Keating. Do sit down. Yes, Mr Hollo.

10 MR HOLLO: Your full name is John Patrick Keating?---Yes.

And your business address is 750 Collins Street, Melbourne; is that correct?---Yes, it is.

15 And you are presently head of platform products at AMP?---Yes, I am.

And do you have with you in the witness box the summons issued to you by the Royal Commission to give evidence?---I do.

20 I tender the summons.

THE COMMISSIONER: Exhibit 2.68, summons to Mr Keating.

25 **EXHIBIT #2.68 SUMMONS TO MR KEATING**

MR HOLLO: Mr Keating, you have prepared a statement in response to certain questions asked by the Commission; is that correct?---Yes, I have.

30

And it's styled rubric 226?---Yes, it is.

And you have that statement with you in the witness box?---Yes, I do.

35 And you also have some exhibits in the folders that are in front of you?---Yes.

Is that right?---Three folders.

40 And those exhibits are the exhibits to the statement that I've just referred to?---Yes, they are.

If I may interpolate, Mr Commissioner, Mr Keating has the exhibits to his statement, other than the exhibits in tabs 6 and 12. The reason for that is that they are very voluminous and - - -

45

THE COMMISSIONER: You're going to give me a single sheet of A4 giving me a summary of them, are you, Mr Hollo. By 5 o'clock tonight will do. Yes.

MR HOLLO: I tender the statement and the exhibits, Mr Commissioner, and also the exhibits.

5 THE COMMISSIONER: Exhibit 2.69 will be the statement of Mr Keating with exhibits.

EXHIBIT #2.69 STATEMENT OF MR KEATING (AND ATTACHED EXHIBITS)

10

MR HOLLO: Mr Keating, are you satisfied the contents of your statement are true and correct?---Yes, I am.

15 Thank you.

THE COMMISSIONER: Thank you, Mr Hollo. Yes, Mr Hodge.

20 <**CROSS-EXAMINATION BY MR HODGE** [9.51 am]

MR HODGE: Thank you, Commissioner.

25 Mr Keating, you're the witness that has been presented by AMP to respond to a series of questions that the Commission has asked in relation to platforms?---Yes, that's correct.

30 And, as you've already indicated, you're the head of platform products?---Yes, I am.

And you explain at paragraph 6 of your statement that the team that you head, the platform products team, is responsible for a number of things. The first is platform product strategy for retail superannuation and investments platforms; what does that mean?---That's, again, the product design and the product set that we have and making sure that's fit for purpose in terms of our – our customers.

40 And the second is the development and management of AMP platform products, which you define as investor directed portfolio services, IDPS-like schemes and superannuation funds. Can we just break that down? What is an investor directed portfolio service?---That is a non-superannuation investment product in the name of the individual customer.

And would that be - - -

45 THE COMMISSIONER: Sorry, Mr Keating, you're going to have to keep your voice up a bit further?---Sorry.

Thank you. Yes.

MR HODGE: So that would be something like a RAP platform available to any investor rather than somebody investing in superannuation?---That is one of the
5 product types that's available on a RAP platform. So there's also a superannuation product option, a pension product option as well as the IDPS product type.

And, again, I just want to make sure we distinguish between these different types of products. The non-superannuation, non-pension products, is that what's referred to
10 as an IDPS product?---Yes, that's correct.

And a RAP platform might be an IDPS product?---Yes.

Could a RAP platform also form part of a superannuation product or a pension
15 product?---Yes, it can.

Okay. And then the second type of product you refer to is an IDPS-like scheme; can you explain what that is?---Similar. Again, it's a non-superannuation investment product in the name of the customer. Similar in all respects other than the – the legal
20 structure which is – as it's described IDPS-like, very similar.

All right. Perhaps if you just again explain for the Commissioner, in the way AMP distinguishes between these things, what's the distinction in legal structure between an IDPS and an IDPS-like scheme?---Effectively, in all – you know, in basic terms I
25 think they're very, very similar. One is run by an operator, which is the IDPS, and an IDPS-like scheme is run by a responsible entity but again, they're AMP entities.

And then the third type of product is a superannuation fund?---Yes, that's correct.

30 And does the description “superannuation fund” embrace a master trust-type scheme?---A superannuation fund can have master trust products. So - - -

All right?--- - - - as part of that super fund.

35 So in terms of what your team does, each of these types of platforms that are – that are offered by AMP is something that would be developed and managed by your team?---Yes, that's correct.

All right. And would your team also determine the pricing that applies - - -?---Yes
40 we do.

- - - to those platforms? And then you also refer in paragraph 6(d) to:

45 *Managing AMPs relationships with third party platform providers.*

Can you just explain what that means?---So for some of our platform products, we outsource elements of the – of the proposition. So by that I mean, ASGARD capital

management is one of those groups where we outsource effectively the technology and superannuation that is part of that offering.

I want to just focus on that for a moment to understand the nature of the relationship.
5 There's a product that AMP offers which is called PortfolioCare?---Yes, that's correct.

There might actually be a few variations of PortfolioCare, are there?---Yes, there are. There's three.

10 Three, did you say? And one of those variations is a PortfolioCare WRAP service; is that - - -?---Yes, that's the PortfolioCare eWRAP product.

And is that something that is outsourced or is that something that's done entirely in-house?---So AMP is the superannuation trustee, AMP retains the operator status of the – the non-super aspect to that product. What we outsource is the administration services and the technology that the products sit on to ASGARD.

So ASGARD develops the technology for you?---Yes, they do.

20 And they maintain it?---Yes, they do.

But they don't set the fee that's charged for it?---No, we're in control of that.

25 Okay. And is ASGARD related to BT?---Yes, they are part of the BT Financial Group.

All right. And so you have some arrangement where you pay – well, pay ASGARD for undertaking the development in relation to that platform; is that right?---Yes, that's correct.

All right. And if we then go over to paragraph 9 of your statement, which is page 3. Thank you. You set out here the various products that fall within these three types of categories, one IDPSs, one IDPS-like schemes and one superannuation. In relation
35 to the IDPSs, how many of those that are listed there are currently open for new investment?---There is five of those products.

All right. Which are the ones that aren't open for new investment?---North Investment is closed to new business.

40 North Investment, yes?---And the wealth view eWRAP investment is also closed to new business.

Right. And were they open for new business in 2016?---Yes, they were.

45 Okay. And then if we go to paragraphs 14 and 15 of your statement. You explain there some aspects of the nature of the wrap platform arrangement. I want to take

you through that but I want to make sure we're doing it by reference to some specific products so that we make sure we're talking about the same thing. The WealthView eWRAP investment, that was a pure wealth platform; is that right?---Yes, that's correct.

5

The PortfolioCare eWRAP investment that's also a pure wrap platform?---Yes, it is.

Okay. Are all the other IDPSs that we saw listed in 9(a) also pure wrap platforms?---Yes, they are.

10

Okay. And the way in which the wrap platform works is, as a starting point, the investor places money into the wrap platform in some way?---Yes, that's correct.

15

And then the money is then invested into various products that are available through the wrap platform?---Yes, that's right.

And there's an approved products and services list; is that right?---Yes, there is.

20

And the approved products and services list will set out products that are approved for availability through the wrap platform?---Yes, that's correct.

Is it possible through the wrap platform to invest in products that aren't on the approved products and services list?---No, it's not.

25

Okay. So if an investor or client came to an AMP financial planner and wished to invest in a product outside of the approved products and services list, they couldn't go on to an AMP wrap platform?---In that case, an adviser could seek an exemption to use a platform product that's not on the APL. So they would - - -

30

Could it be invested in through the platform or would it need to be invested in outside of the platform?---Outside of the platform.

35

All right. And where an investor's money is invested in a product through the platform, who is the legal owner of the investment?---Depending on – if it's an IDPS or IDPS-like product, it's the individual customer.

40

All right. And so again, just so I understand, you see in paragraph 14 where you say – you refer to title in those investments is owned by the wrap operator or its custodian on behalf of the investor.

45

What does that mean?---Effectively, they're – so in the case of the superannuation or pension product, they are in the name of the superannuation trustee. In terms of administering that portfolio, that's done by the wrap operator, and with services from a custodian as well in terms of placing money in investment products and taking money out of investment products.

Let's, for a moment, focus on it outside of the context of superannuation. If a client comes to an AMP financial adviser and wants to invest \$100,000 in a range of investments, and that \$100,000 is placed into, say, the PortfolioCare platform, and then, in turn, that \$100,000 is invested in various funds that are available through the platform, who is the owner of the interest in those funds?---The beneficial owner is the customer, ultimately.

I see. So the – in the – the title is owned by the wrap operator but it's held on trust for the particular investor; is that right?---Yes, in an individual account in that investor or customer's name.

All right. And if an investor wants to move wrap platforms, is it possible to move wrap platforms without selling out of the fund that their money has been invested into?---Yes, it is.

Is that possible regardless of whether it's an AMP platform that they wish to move to or somebody else's platform?---Yes, that's correct.

All right. So I will just make sure we've understood this accurately. If, for example, a client was invested in the WealthView platform that's now been – or invested through the WealthView platform in, say, the Platinum International Fund and they wished to move over to the PortfolioCare platform, which is also an AMP platform, then they could do so without having to first sell out of their interest in the Platinum Fund?---Yes, that's correct.

Okay?---Through - - -

I'm sorry, you were going to say how; is that right?---Yes, so they can move through an in specie transfer process where they retain beneficial ownership.

In that way does it avoid triggering a capital gains tax event?---That's right. There's no buy or sell event associated with that transfer.

And, similarly, if an investor was invested in the WealthView platform and wished to move from the WealthView platform to a platform operated by Colonial, say the Colonial First WRAP Plus Investment platform, they could also do that by an in specie transfer; is that right?---Yes, they can if the platform offers the in specie transfer feature.

If the incoming platform offers the in specie transfer?---It's both on the outgoing platform as well as the platform where the funds are going to, in terms of accepting an in specie transfer in.

All right. Well, in the case of AMPs platforms, does it offer in specie transfer for all outgoing transfers to external products?---Not for all platform products, no.

Which are the platform products that it won't offer in specie transfer for to external products?---I believe one of those is the PortfolioCare Master Trust product.

5 All right. But if they were – again, we will take the example of WealthView. For WealthView, which is now closed to new investments, if an existing investor wants to transfer out of that to an external platform, is there anything on the AMP end that prohibits that occurring on an in specie basis?---I would have to refer to some detail in terms of for that particular product if the in specie transfer out is a feature that's available.

10 Right. And why is in specie transfer not available on all products?---It's just – it's a feature that has been developed over time, and is available on a number of the platforms, but for historical reasons, and some of those platforms have been around for some time in specie transfer functionality wasn't available.

15 It's just a technological issue; is that right?---Yes, it is, yes.

And the technology has been applied to some platforms but not to other platforms?---Yes, that's correct.

20 And is there some difficulty with retrofitting existing platforms with the technology?---Not necessarily, no, it's just a case of building that functionality.

25 Well, the functionality is presumably already built, isn't it, if it already exists for some platforms?---It does, that's right, replicating existing functionality on other platforms.

30 And has there been any consideration given to whether that functionality should be extended to all platforms operated by AMP?---I would say yes, in looking at the design of those products, when the products were designed, and then, over time, as we review products and the features that are available from time to time, so we do consider that.

35 And – I'm sorry, I may have confused you then. This functionality, are we only talking about the functionality of transferring to an external platform operator?---Yes, we are.

40 So that the functionality for transferring to an internal platform operator already exists?---No, it's the same concept in terms of the in specie transfer function.

All right. And so the consequence of that then is that if you're on a platform that is charging higher fees but doesn't permit in specie transfer, you can't move to another platform, whether internal or external, without triggering a capital gains tax event?---Yes, that's correct.

45 THE COMMISSIONER: In particular, as beneficiary, you can't call for the asset which is held on trust for you; is that right?---Yes, that's correct.

An unusual form of trust, I would have thought, that the beneficiary can't call for the asset. Is that the position?---The beneficiary, the owner of that asset.

5 The beneficial owner cannot call for the asset that, you say, AMP or the relevant platform holds on trust for that beneficiary?---No. In other to move, they would need to sell that asset.

10 MR HODGE: Now, I want to ask you some questions about the charging of fees. Each of the platforms charges a fee to the client who has invested through the platform?---Yes, that's correct.

And in some cases, that fee is calculated by reference to a percentage of the funds invested through the platform?---Yes, it is.

15 Are there any platforms that AMP operates that don't charge by reference to a percentage of the funds invested?---No, there's not.

20 Okay. So all platforms that AMP operates are charging a percentage of funds?---Yes.

And the percentage of funds that's charged will vary depending upon which platform it is?---Yes, it will.

25 And, again, just because of the difference in terminology, can I make sure that – if we go back to paragraph 9 of your statement where you've set out IDPSs, IDPS-like schemes and superannuation. Is the statement that all platforms charge a percentage of the fees invested through the platform applicable to every product listed here?---Yes, it is.

30 Okay. And for superannuation products, is the percentage typically lower than for the non-superannuation products?---It's quite similar.

35 I see. So that is the MyNorth super and pension platform would charge a similar percentage to the NyNorth investment platform?---That's correct, yes.

And does the percentage apply both to the cash balance that is held through the platform and also the invested funds?---On some platforms it does, yes.

40 Okay. But on some platforms it doesn't apply to the cash balance?---That's right.

And how is the decision made as to which platforms which charge the percentage on the cash balance?---Again, I think it's a decision made when the product designed as to how the admin fees will be applied and whether or not they will be applied to the cash account.

45 And it could presumably be changed easily now?---Yes, it can be.

And is there any reason why for some platforms AMP continues to charge a percentage of the cash balance?---Again, that would just be existing product design and product features of that particular – the particular platform.

5 Is there interest that is payable on the cash balance held through the platform?---Yes, there is.

And is the interest rate standard across the cash balances through all platforms?---Is that all – all AMP platforms?

10 Yes?---No, there will be some variations across platforms.

Okay. But in any event, at the – is it possible, for example, that you could be paying .77 per cent as a administration fee on a cash balance and then earning, say, two per cent as an interest rate on the cash balance?---Yes, that’s correct.

And then on top of that, could you also be being charged an adviser service fee with respect to that cash balance?---Yes, an adviser service fee on the – the total account balance, yes, which includes that.

20 And when AMP deducts fees for advice, it’s doing so, as I understand it, on the instructions of the investor?---Yes, it is.

It requires the investor to sign some form that’s submitted to AMP to give instructions to allow that to be deducted?---Yes, that’s correct.

And that fee will – I’m sorry, that form will set out different options as to how the fee might be calculated?---Yes, that’s correct.

30 And it might be that it’s described as just a flat fee?---Yes, it can be.

But more commonly, the option that will be ticked is a percentage fee?---Yes, that’s correct.

35 Is there an option to apply the percentage only to funds invested rather than to the cash – rather than also to the cash balance?---Typically, no. So it’s across the account balance.

40 So then once that form is submitted, AMPs system will automatically deduct that fee if it’s on a monthly basis every month?---Yes, it will.

I’m sorry, I should go back a step. The form will also identify what the interim period is between each deduction for the advice fee?---Yes, it does.

45 And the system will just automatically deduct it according to the boxes that it ticked and the amount identified?---That’s correct, typically monthly or quarterly.

And AMP imposes a cap on the amount of the advice fee?---Yes, we do, and that cap is based on the account balance.

5 I'm sorry, I don't understand that. What do you mean?---So – so the caps that we apply on platform products around advice fees, there are some caps that are related to the balance of the customer's account.

10 So – I'm sorry, we might be at cross-purposes here. Are you talking about the cap for the advice fee or the cap for the administration fee?---No, the cap for the advice fee.

15 I see. So if, for example, a client has \$250,000 invested through a platform, will there be some cap that applies as to how much the adviser can deduct as an advice fee?---Yes, there is.

And does that vary depending upon the platform?---Yes, I think there will be some variation.

20 And what is – or do you know – and I know you've got some spreadsheets which we can go to if that will help you, but do you know what the typical cap is that's applied?---If I use the MyNorth platform product as an example - - -

25 Yes?--- - - - the cap for a customer of \$250,000, the cap on advice fees would be approximately \$5250 and a percentage up to 2.51 per cent.

And that applies regardless of what the balance is. That's just the overall cap?---Yes.

30 Okay. So when you were making the point that it's linked to the balance, is that because there's a – the absolute amount of the fee is capped by virtue of the fact that you can only charge a maximum percentage as against whatever the current funds are in the platform?---The – I was referring to lower balances. So on a – for instance, again, the MyNorth platform product, if the account balance is under \$1500, which is quite a small amount you can't charge an advice fee, if the balance is between \$1500 and \$10,000, the cap on the advice fee is 2.51 per cent, and then lastly, everything
35 above \$10,000 is as per the cap that I just explained.

5200 - - -?---\$5250 plus the percentage amount.

40 I'm sorry, \$5250 plus the percentage of 2.51 per cent?---Yes, up to 2.51 per cent.

I see. Were you involved in the decision by AMP to implement that technological cap on the maximum fees?---No, I wasn't personally.

45 Was that a cap that applied before you joined the team?---Yes, that's correct.

There have been new products that have been developed while you've been a member of the team?---No, the most recent new product is the MyNorth product, and that was 2016.

5 I see. You weren't even a member of the team at all before you became the head?---I was a member of the team at that time, yes.

In 2016?---Yes.

10 Okay. So when you were a member of the team and that product was developed, did you participate in a discussion about what the cap would be for the advice fees?---No, I did not.

15 Okay. Are you aware of how the cap was arrived at?---Not in any – any real detail other than I know the cap has been approved by the superannuation trustee, and the – and the operator of the – the platform in – in the case of MyNorth.

I see. Now, when it comes to the advice fees, as I think we've already agreed, the platform is automatically deducting the fee from the member's funds available?---Yes, it is.

25 And if there's insufficient cash available in the cash balance to pay the fee, what occurs?---There is a sell down of invested assets to top up the cash balance to cover those fees.

So the platform does that automatically?---Yes, it does.

30 There's no need for the adviser to give instructions for that to occur?---The adviser can provide automated or regular instructions in terms of what assets to sell down to top up cash, so there are some settings there that the adviser can set. They're known as sell instructions.

35 But regardless of whether the adviser has done that, the platform will automatically sell down in order to make sufficient cash available to pay the fees?---Yes, it will.

And that will occur both to pay the administration fee, if there's insufficient cash to pay the administration fee?---Yes, that's correct.

40 And it will also happen if there's insufficient cash to pay the advice fee?---Yes.

Okay. And you're aware, I assume, that since 2013 there have been legal obligations on financial planners to have clients opt in to continuing to pay advice fees?---Yes, I am aware of that.

45 And since 2013, has AMP taken any steps to develop the technological capacity within its platform to only pay fee – to only remit the fees to the planner or the licensee if the client has opted in to continue to pay fees?---No, we haven't.

And why is that?---The – as I say, the – the platform collects the fees as per the agreement between adviser and customer, and passes those fees on to the advice licensee. And the controls, in terms of services for those fees, are managed through the advice licensee.

5

So the advice licensee or the planner?---The advice licensee.

I see. And I'm – I just want to make sure that I've understood how this fits together. So there's a form that gets submitted that has been signed by the client, and it will have agreed to some fee being deducted. That's the first step; is that right?---Yes, it is.

10

And then, in accordance with that signed instruction, the platform will automatically deduct the fee each month or each quarter and remit that amount to the relevant licensee?---Yes, that's correct.

15

And then what is the control that the licensee has over whether the fee continues to be deducted?---So the – the control that I was referring to is the audit and compliance team within the licensee, looks at those fees that have been passed over from the platform to the licensee, and then audits advisers to check that services are being provided for those fees.

20

I see. And then it will be possible for either the relevant planner or the licensee to turn off the deduction of those fees; is that right?---Yes, a request to turn off those fees could come from three places. It could come from the customer themselves, it could come from the adviser, or it could come from the licensee.

25

If the customer requested to turn off the fees, what would happen?---They would typically contact – contact us by phone through the – the call centre. And then that request would be actioned through the operations team to turn off the fees.

30

And if the adviser fees are turned off, is there any change to any other fees?---No, there's not.

35

Okay. So the management fee that's – I'm sorry, the administration fee that's charged by the platform operator stays the same, regardless of whether there's an adviser linked to the product or not?---Yes, that's correct.

Okay. And is there any technological reason why AMP couldn't require advisers to confirm every two years that their clients had opted in to continue to pay the fees?---That's certainly possible to do, yes.

40

Has there been any consideration given while you have been the head of the team to implementing such a technological solution?---I think that's certainly a key theme, when we think about platform development in the future, is the integration between the platform and – and advice processes and – and how to best do that.

45

Was that something that was already in consideration when you became the head of the platform?---Yes, but there's different aspects of – of that.

5 What does that mean? What are the different aspects of it?---So one example is today the – a platform provides data feeds from the platform to financial planning tools that advisers use. So that would be an area where we have – you know, we have that integration in place and we – we manage and we develop that, and I guess I'm talking about in future an extension of the level of integration between platform and advice processes.

10 But is – there's no reason, is there, why AMP couldn't automatically turn off the advice fees every two years unless the adviser had confirmed that the client had opted in and submitted a copy of the opt-in notice?---Yes, that's – that's possible to – to put in place.

15 And is that something that that particular approach – is that something that AMP has considered?---Not to my knowledge. Not – not - - -

20 And is there any reason for that failure to consider that?---Not that – not that I'm aware of, other than there's controls in place that are off – that are separate from the platform.

25 Well, the controls in place – I'm sorry I interrupted you. Did you want to finish saying something?---No, I was just saying no, other than those controls that are mentioned in place that are off the platform, if I could describe it that way.

30 But the controls in place are that the licensee might audit the adviser, discover that no services are being provided, and then contact the platform in order to tell the platform to turn off the advice fees; is that right?---Yes, that's right.

Is there any other control in place?---No.

35 And do you know how often, since you've been the head of the product team, that has occurred, that an advice licensee has contacted the platform to tell them to turn off the advice fees?---No, I'm – I'm not aware of the volume or frequency of that.

Okay. Do you know whether it has happened at all?---I understand, yes, there have been requests which go through the operations team - - -

40 I see?--- - - - to do that.

45 And if your team was to consider implementing such a technological change to require advisers to confirm that the clients had opted in to continue to pay fees, is that something that you could simply implement without the approval of other people within AMP?---We – we would typically engage business stakeholders that are involved in – in – in the process, and the reasons – you know, the basis for that

platform development. So we would be engaging with stakeholders across the business before we did that.

5 And has there been any discussion amongst stakeholders as to technological controls that might be implemented within the platform to ensure that advisers have had their clients opt in to continue paying fees?---Not that I'm – not that I'm aware of.

10 As the head of the platform team, is it a matter of concern to you that AMPs platforms are automatically deducting the fees and paying them to the licensees without confirming that the legislative requirements for those fees to be deducted have been complied with?---I wouldn't say it's a matter of concern. I would say that the arrangement is between the adviser and client around the – the adviser fees and the services for those fees. So – and, yes, the platform provides the collection mechanism for passing those fees across to the licensee.

15 Yes. And as the provider of the collection mechanism, is it a matter of concern to you that no steps are taken to ensure that the legislative requirements for the deduction of those fees have been complied with?---Well, again, I – I would look to the existing controls that are in the advice audit and compliance team.

20 All right.

25 THE COMMISSIONER: The expression “collection mechanism” itself is an interesting characterisation. Whose assets are you holding?---Well, ultimately, it's the individual customer's assets.

30 You're disposing of the individual customer's assets when you pay the fee; is that right?---Yes, if the cash account balance is – if there's not enough funds in the cash - - -

Whether or not cash is available or has to be realised, you are disposing of the customer's assets; is that right?---Yes, that's correct.

35 You do that without any assurance to the platform operator that the disposition is permitted?---Yes, that's correct.

Yes.

40 MR HODGE: Commissioner, I was going to move to another topic, unless - - -

THE COMMISSIONER: Yes.

MR HODGE: Thank you.

45 Now, Mr Keating, you've given some evidence in your statement about benchmarking of platforms?---Yes, I have.

And is that benchmarking something that's undertaken by your team?---No, it's not.

So there's some other team within AMP that undertakes that benchmarking?---Yes, that's the advice research team in the Advice business.

5

I assume you've looked at it, you've exhibited it?---Yes, I have.

The benchmarking guidelines?---Yes.

10 Okay. And, as I understand it, the way in which the benchmarking guidelines work is to attempt to benchmark AMP products against similar products on the market; is that right?---Yes, that's correct.

15 In order to establish whether the products offered by AMP are competitive or not?---Yes, that's correct.

20 Okay. Can I – sorry, just before I do that, I should confirm: you've exhibited a number of different benchmarking guidelines. As I understand it, there are separate benchmarking guidelines for each of AMP Financial Planning, Charter Financial Planning, Hillross Financial Services, and ipac securities; is that right?---Yes, they are.

But they appear to be very similar?---Yes, they are very similar.

25 And the products that are being offered may differ slightly between each of those four licensees?---Yes, there is – there are some differences.

30 But insofar as they're offering the same product, for example, if all of them are offering the WealthView eWRAP product, is there any reason why that product would be rated higher or differently when it's being offered through AMP Financial Planning than when it's being offered through one of the other licensees?---No, I don't see any reason why.

35 It should be all the same. You charge the same administration fee, for example, regardless of which licensee uses it?---Yes, that's correct.

40 All right. So can we have a look at the benchmarking guidelines for AMP Financial Planning as an example. Can we bring up tab 7 of Mr Keating's – of the exhibits to Mr Keating's affidavit – I'm sorry, statement.

THE COMMISSIONER: Have you got a doc ID?

MR HODGE: Yes, it's AMP.6000.0043.0379.

45 So this is version 1 of the AMP Financial Planning benchmarking guidelines, Mr Keating?---Yes, it is.

And it's not dated on the front but if we go to page 2, which is .0380, you see down the bottom of the page this is the version from 2013?---Yes, I can see that.

5 And this was – well, presumably, then, this benchmarking first occurred in 2013?---Yes, I believe so.

And do you know why the benchmarking began in 2013?---No, I don't.

10 Was it to comply with the best interests or to enable the financial planners to comply with their best interests duty?---Yes, it was, actually, in terms of their duties around personal advice.

15 All right. And if we then go to page 7 of that – I'm sorry, page 9 of that document. So this is a chart that sets out the colour coding by which benchmarking of products has occurred; do you see that?---Yes, I can see that.

20 And, as I understand it, the colour coding reflects how competitive the product is by price compared to comparable products in the market?---Yes, compared to an average of the set of platforms that are being considered.

Yes. And so if a product is rated – I will say bright green, tier 1, then the product is competitive on price alone for the client at the relevant price point?---Yes, it is.

25 And if a product is rated tier 2, which is light green, then the product is described as being:

Competitive on price alone based on the particular threshold.

30 Which is the prices – there is no more than a 10 per cent different to the average price or a \$100 per annum difference to the average price?---Yes, that's correct.

35 And if a product is rated yellow, tier 3, then that means the price difference is greater than 10 per cent but less than 15 per cent compared to the average price for the AMP product?---Yes, that's correct.

And the adviser guidance for that is:

40 *The product is generally not competitive on price alone at the relevant price point.*

?---Yes, that's correct.

45 And there's certain recommendations as to what the adviser ought to do if a client is using that product?---Yes, there are.

And then if a product is rated red, or tier 4, then that means the product difference is greater than 15 per cent for the AMP product compared to the average price?---Yes, that's correct.

5 And in which case the adviser guidance is:

The product is not competitive on price alone at the relevant price point.

10 And there's a whole series of steps that the adviser ought to take if the client has invested in that product?---Yes, that's correct.

15 And can we go then to page 14 of that document. So this is one of the benchmarking pages as at 2013. Before we come to the colour coding, can you just explain to the Commissioner what a category 1 pricing analysis is?---Category 1 refers to a client or a customer with more complex needs in terms of their investment portfolio.

20 All right. And the assumption is that for more complex needs, they might need additional functionality; is that right?---Yes, or a broader range of investment choice, as well as features and functionality.

Okay. So if there's a comparison of an AMP product in category 1, it will be compared to other products on the market that also offer that sort of greater range of flexibility or options or functionality; is that right?---Yes, that's right.

25 And there's then – I assume you know – and we will come to this in a moment – but there's two different ways that the pricing analysis is done or for two different types of investments. One is the full range of investments, which is what we're looking at here?---Yes.

30 And the other is what's described as single diversified multi-sector solution?---Yes.

35 Can you just explain the difference between those two things?---So the latter would be a simple multi-manager fund that the client might be invested in, and that's typically available on all of our – that type of investment is available on all of our platforms and in the marketplace.

40 And maybe if I attempt to flesh that out and see if you agree: that would mean, for example, it might be invested in a platinum fund, it might be invested in a rare fund, it might be invested in a perpetual fund spread across different types of funds; is that right?---It might be invested with different fund managers - - -

Yes?--- - - - such as the ones you've named, yes.

45 That's a single diversified multi-sector solution; is that right?---Yes, that's correct.

And whereas a full range of investments would extend outside of just multiple different fund managers?---Again, it would be different types of managed funds, for

instance, in – in terms of the broad range that’s available on the – on the full menu – the full investment menu for the platform.

5 All right. And that might be, for example, investing in listed securities?---Yes, it could include that.

10 Okay. And we can see that as at 2013 for the WealthView eWRAP platform, that it was rated red by AMPs benchmarking analysis if there was an investment of either \$50,000, \$100,000 or \$250,000 through the platform?---Yes, I can see that.

And if there was an investment – sorry, and that’s for the full range of investments?---Yes, under category 1. That’s correct.

15 And if there was an investment through PortfolioCare, then it was rated red at the \$100,000 amount of investment, yellow for investments at \$500,000, \$750,000 and \$1 million, and then red for \$1.5 million?---Yes, that’s correct.

20 And then if we go over to page 16, which is .0394, we can see, again, that for WealthView, it’s rated red at \$50,000 and \$100,000 and yellow at \$250,000?---Yes.

And for PortfolioCare, it’s rated yellow at \$50,000 and red for everything else?---Yes, it is.

25 And if we go to – sorry, I don’t think – yes, it does come here, if we go to page 30, so this sets out for category 1 what the products have been benchmarked against?---Yes, it does.

30 All right. And now can we bring up what is the last tab of tab 2 of the exhibits to Mr Keating’s statement. I believe the document number should be 6000.0065.0111. It should be a spreadsheet. If we go to the very last tab which should be tab 15. Thank you. Table of Clients. And can we scroll down, keep scrolling. All right. And just stop – no, go, thank you, go up slightly. A little more. A little more. Thank you. And then can we blow up - - -

35 THE COMMISSIONER: That’s very scientific, Mr Hodge.

MR HODGE: Yes, Commissioner. Can we blow up rows 35 through to 57. Thank you.

40 So one of the things that the Commission asked you to do or asked AMP to do, Mr Keating, was to break down the number of clients from affiliated advisers and unaffiliated advisers invested at various platforms in various years at various price points; is that right?---Yes.

45 And this is the spreadsheet that you’ve produced?---Yes, it is.

And if we look at the PortfolioCare eWRAP number, to begin with, we can see that in 2013 there were over four and a half thousand clients invested in PortfolioCare eWRAP; can you see that?---No, I can't at the moment.

5 I'm sorry. We've – we need to go over a little more to the left. Thank you. There you go. 4572?---Yes, I can see that.

All right. And that's the total number of clients. And then down at WealthView, the total number of clients invested is 2401; do you see that?---Yes, I can see that.

10 And the split of those 2401 for WealthView is 2305 from affiliated advisers and 96 from unaffiliated advisers?---Yes, it is.

15 And so, roughly speaking, it would seem that about 96 per cent of the clients invested in the WealthView product are invested by affiliated advisers?---Yes, they are.

And that appears to hold true for each subsequent year, 2014 through to 2017?---Yes, it does.

20 And is this data that has been provided by the platform operator to the auditing section of AMP?---Not that I'm aware of, no.

25 All right. Have – are you aware of any request by the auditing section of AMP for this type of data?---No, with the example of WealthView, that's on the APL for AMP Financial Planning. So it was only on the AMP Financial Planning APL, I believe.

30 Right?---So, therefore, that – that is the group using it so that number would be AMP financial planners for that licensee.

I'm sorry, you're saying all of the affiliated adviser clients would be coming from AMP Financial Planning?---Just using WealthView as an example.

35 For WealthView?---They would be AMP financial planners.

And has AMP Financial Planning requested this type of data from your section, so far as you're aware?---No.

40 All right. And you will recall for the benchmarking exercise that WealthView was rated red for clients at \$50,000, \$100,000, and \$250,000. Do you want to bring that back up?---Based on what I saw before, I agree with what I saw earlier, so if that's consistent, yes.

45 And is there a reason that you can think of why a financial planner would recommend a client invest through a platform rated red in that way?---There may be exceptions why there would be a valid reason for a client to be invested in the

platform. That may relate to a unique feature that platform may have. It may be a case of specific fee features as well, so things like – on some of our platforms, as an example, we have family fee aggregation. So if there are other members of a – of a family group that are already customers on that platform, that it may mean a new customer, so the – let’s say the son of somebody, that they – there are – the fees are cheaper for them. So that would be a – something that isn’t contemplated in the benchmarking that we see before us.

10 So in the case of WealthView, does it offer some unique feature?---Not that I’m aware of, no.

Does it offer family fee discounts?---I would have to check on that in terms of fee aggregation features.

15 All right. And I assume you’re aware that the benchmarking of WealthView gets worse over time?---Yes, I am.

And so that was 2013. Can we go back to tab 7 – I’m sorry, tab – yes, tab 7 of Mr Keating’s statement. And if we go to the page AMP.6000.0043.1077. Thank you. So you see this is version 4 from April 2015. If we – I’m sorry, if you just zoom out so Mr Keating can see the bottom of the page. And you see – you can see that, Mr Keating?---Yes, I can see that date.

25 So by April 2015 both WealthView and PortfolioCare service are rated red at every bench – at every price point benchmarked by the relevant AMP team?---Yes, I can see that.

30 And if we go to page – and I’m sorry, I should indicate that’s for the category 1 full range of investments. You can see that at the top of the page?---Yes, I can see that.

If we go to page 16 of that document, which is .1079. We can see for that single diversified multi-sector solution that the WealthView product is only rated yellow at \$1 million and \$1.5 million but is still rated red at every other price point?---Yes, I can see that.

35 And PortfolioCare is rated red at every price point?---Yes, it is.

40 And then if we then go through to the last benchmarking guideline that we’ve been provided with, which is October 2016, and go to AMP.6000.0043.1937, you can see at the bottom of the page, Mr Keating, this is version 8.1, October 2016?---Yes, I can see that date.

45 And, again, PortfolioCare – it’s now called Super Service. Is that different from the previous one we were looking at?---No, I – it’s the same. PortfolioCare service I think it was referred to earlier.

And it’s rated red at every price point?---Yes, it is.

And WealthView is rated red at \$50,000, \$100,000, \$250,000, \$500,000, and \$750,000?---Yes, it is.

And then yellow at \$1 million and \$1.5 million?---Yes, that's correct.

5

And then if we go over the page to .1939, we can see, using the different single diversified multi-sector solution, PortfolioCare is still rated red at every price point?---Yes, it is.

10 And WealthView is rated red at \$50,000, \$100,000, \$250,000 and \$500,000?---Yes, it is.

And rated yellow at \$750,000?---Yes.

15 But green at \$1 million and \$1.5 million?---Yes, it is.

Well, I'm sorry, that's actually light green. That means, as I understand it, a less than 10 per cent different to the average price?---That's right. Tier 2.

20 And it appears, as I read it, that it's at \$1 million still seven per cent more expensive than the average – that the average competing product?---Yes, that's correct.

And at \$1.5 million, still 5 per cent more expensive than the average competing product?---Yes.

25

And I should have asked you earlier but I didn't: PortfolioCare Service or PortfolioCare Super Service, does that platform offer any unique feature?---Not that I'm aware of, no.

30 All right. And those two platforms were then in 2016 placed on hold?---Yes, that's correct.

And can you just explain what that means?---I understand that to mean that advisers can't simply place customers – new customers into those products without first seeking permission from the research team who manage the APL.

35

All right. It continues to be the case that there are clients of AMP affiliated advisers invested in those products?---Yes, there are.

40 And perhaps if we just go back to that tab we were looking at, which is AMP.6000.0065.0111, and we can see for WealthView, the number has fallen as at 2017 to 1332 clients invested through that platform?---Yes, I can see that.

But of that, only 46 are from unaffiliated advisers?---Yes, that's correct.

45

And 1286 are from affiliated advisers?---Yes.

I take it – and this follows, I think, from a question I asked you earlier – AMP Financial Planning hasn't asked you for the names of the financial planners that are still investing clients through WealthView?---No, that hasn't been requested.

5 Is there any practical reason why those clients couldn't be moved to a better performing platform?---No, there's no practical reasons for why they couldn't be moved. There are practical reasons why they might stay in the product.

10 And what are they?---So one example would be clients who are in pensions and there have been changes, I think in early 2015, around the deeming rules that Centrelink apply, so that's a consideration in terms of moving out of that pension product, and what bearing it might have on their Centrelink benefits. So that is, in some cases, it's more appropriate for the customer to stay in the product. So that would be one example.

15 Are there any other examples you can think of?---Potentially, the other examples would be the insurance arrangements on the platform. So, again, I can't comment specifically but they may be their insurance terms and so forth that are appropriate for the customer to retain, and they – that would potentially change if they changed
20 platforms. So, again, it's another consideration between adviser and customer.

I'm sorry, when you say the insurance arrangements might change, I'm just not sure I understand what that means?---So typically through platforms you can access
25 insurance. Some of the older platforms is – they're group insurance arrangements and some of the more contemporary platforms it's individual retail insurance. So potentially some of these clients may be – have insurance attached to their account or associated with the platform account, and that would change if they moved to another platform that has a different insurance provider.

30 Sorry, what would – I am not sure I follow what the disadvantage would be to the client?---They would be moving out of one insurance policy - - -

Right?--- - - - a set of terms and conditions and premiums, and that would change to
35 another insurance provider on a different platform. So – and, again, could result in a change in terms of coverage and premiums.

But they could move even to another AMP platform?---They could, and there would be differences in insurance, for instance.

40 I see. And for PortfolioCare Services, we can see that as at 2013 there were almost 20,000 clients invested through that platform?---Yes, I can see that.

And of that, more than 17 and a half thousand were from affiliated advisers?---Yes, that's correct.

45 And by 2017, that number had halved down to about 10 and a half thousand?---Yes.

But about 90 per cent of those clients were from affiliated advisers?---Yes, and the PortfolioCare platform's predominantly used by the Hillross licensee, so, again, they would be Hillross advisers in that case.

5 And has Hillross sought from your team a list of the advisers that still have clients invested through the PortfolioCare Services platform?---No.

To your knowledge, has it done that at any time during the period 2013 to 2017?---Not that I'm aware of.

10

And similarly, in relation to AMP Financial Planning, has it, at any time between 2013 and 2017, sought a list of the advisers that still have clients invested through WealthView?---Not that I'm aware of.

15 All right. And does WealthView offer in specie transfer to other platforms?---I'm not sure of the answer there. I'd have to check.

And what about PortfolioCare Services?---I think the answer is no, but, again, I would need to check the product disclosure documents.

20

Is there any reason why WealthView – or I'm sorry, why your team couldn't reduce the cost of the WealthView platform to make it competitive with other platforms?---That's certainly an option.

25 Is there any reason why it hasn't done that?---Nothing specifically, no.

And did your team have access to these benchmarking results in 2013?---Not that – not that I'm aware of. So probably the earliest that I'm aware of is probably 2015 and onwards.

30

All right. So in – from about 2015 your team had access to these benchmarking results?---Certainly in terms of having conversation or dialogue with the research team to ask about – to inform us of where the products have appeared in terms of the benchmarking results, and ask the product team in terms of plans around pricing and product development, and so forth.

35

And has there been any discussion within your team as to the possibility of trying to make the WealthView platform competitive on price?---Yes, there has been, yes.

40 Is that a recent discussion?---Probably in the same timeframe, around 2015, 2016.

And a decision was made not to do that?---A decision was made to – we

re-priced the PortfolioCare eWRAP product which was the most contemporary of the products on the list that I can see there.

45

Yes?---But the decision was made not to re-price PortfolioCare Service or portfolio – or Elements or WealthView, the other three products listed there.

5 And why was that decision made? What was the reason?---Again, I think our focus was on the most contemporary product offering which was, in that group, the eWRAP offering.

10 But you know – or you knew as at 2015, that there were clients in these platforms and they were being charged a price uncompetitive with the market?---Yes, according to the benchmarking, yes.

Sorry, did you have any reason to think it wasn't uncompetitive with the market?---No, sorry, no.

15 All right. So you knew that they were being charged a price uncompetitive with the market but decided not to adjust your price?---That's correct. We – we provide – there are other choices for advisers in terms of similar products to use with alternate pricing.

20 And why not adjust your prices to be competitive in the market?---I think we – we would look at our set of products and typically focus on the most contemporary products in terms of – but, again, we look at everything, but we – we have recently focused on the more contemporary offers in terms of pricing changes.

25 Why did your team not feel competitive pressure to have to price two of your products at a point competitive with the market?---I think, based on – when we looked at flows into different platform products from the different advice groups, we were seeing, you know, less interest or less flows going to those products and increasing flows going to some of the more contemporary offerings. So that was one
30 of the – that was one of the factors.

Is the point that you weren't – well, the first point is you weren't seeing clients going into – new clients going into PortfolioCare Services or WealthView?---Yes, that's correct.

35 You saw them going into other products?---Yes, we did.

And so the products that they were going into, you wanted to make those price competitive?---Yes, make sure they were.

40 But for the clients already in WealthView or PortfolioCare Services, you just didn't have any interest in making those products price competitive?---No, I think we – we just made the decision to leave them as they were in that case.

45 Because the clients were already there and possibly trapped there?---I wouldn't describe it as trapped but, yes, the clients – there were already existing clients in those products.

And there might have been disadvantages to them if they tried to move to a more price competitive product?---We talked earlier around, yes, what – what’s involved in moving, and – and, yes, there are steps to be taken for the – for the client to move platforms.

5

Now, AMP stopped doing its benchmarking in the second half of 2016?---I’m unaware of that. Stopped benchmarking?

Well, the latest benchmarking document that you have produced is October 2016?---Yes, I believe that’s the most recent benchmarking guideline document.

10

And until that point in time, from 1 July 2013 until October 2016, AMP had produced what appear to be nine versions of the benchmarking guide. There’s – you understand why I say that, which is October 2016 is version 8.1?---Yes.

15

So AMP appears to have produced nine benchmarking guides between 1 July 2013 and October 2016?---Yes, that’s correct.

And are you aware of why it hasn’t produced any further benchmarking guide for AMP Financial Planning after that point in time?---No, I’m not.

20

So whether the position of the AMP products has improved or worsened is something you’re unaware of?---That’s right. That’s the most recent document I’ve seen.

25

And similarly, as far as you know, the financial planners operating in AMPs network would be unaware of whether AMPs products have improved or got worse in price competitiveness in the last year and a half?---Yes, I can’t answer that. I’m not – I’m not sure.

30

All right. Now, I want to move to another topic, Mr Keating, and that is to understand some things about the fees and commissions that NMMT Limited pays and receives. So if we can just be clear about this: NMMT limited is the company within the AMP group that operates its wrap platforms?---Yes, that’s correct.

35

And there’s also another company that operates the superannuation wrap platforms?---NM Super is one of – for instance, one of the superannuation trustees - - -

All right?--- - - - who then outsource the platform operation to NMMT that you referred to.

40

If a fund is going to appear to be – is going to be available through an AMP platform, then it’s necessary for that fund to be on AMPs approved products and services list?---Yes, that’s correct.

45

And in respect of some of the funds managers, they have agreements with NMMT Limited that they will pay amounts of money to NMMT Limited?---Yes, that's the case, and some of those arrangements are pre-2013.

5 I understand. And is it necessary for a fund manager to have an arrangement with NMMT Limited to pay money to NMMT Limited in order for the fund to appear on one of the platforms operated by AMP?---No, it's not.

10 All right. So of the fund managers that are offering platforms – I'm sorry, are offering funds through AMP's platforms, what percentage of them would not be paying any fee to AMP – I'm sorry, to NMMT Limited?---I don't know the answer to that, I'm sorry.

15 All right. Are you able to approximate it for the Commission?---No, I know I have certainly stated in my submission the top five fund managers appointed to NMMT, but right now I couldn't – I wouldn't estimate that.

20 THE COMMISSIONER: You're dropping your voice. Speak up, please. What did you say?---I said, Commissioner, that in my statement I've indicated the fund managers – the top five fund managers in terms of payments they make to NMMT, but I'm not in a position to estimate what percentage of existing fund managers make payments to NMMT overall.

25 You're not able to give an approximation?---No, I'm not.

MR HODGE: And at paragraph 89, subparagraph (a) of your statement you refer to something called the Comprehensive Manager Reporting Fee?---Yes, I do.

30 This is a fee paid to NMMT by fund managers?---Yes, it is.

And is it a fixed amount?---Yes, it is.

And do you know what the fixed amount is?---I believe it's \$25,000 per annum.

35 Per fund or per fund manager?---I'm not sure of the answer of that.

All right. And that's a fee that's payable by a fund manager to NMMT for what you describe as monthly reporting and statistics?---Yes, that's correct.

40 And is that a fee that's only payable if the fund has entered into an arrangement after 1 July 2013?---Yes, that's correct.

45 And do funds that entered into – I'm sorry, fund managers that entered into arrangements before 1 July 2013 also get access to monthly reporting and monthly platform statistics?---Yes, they do.

Do they also need to enter into one of these arrangements to pay a comprehensive manager reporting fee to get access to that information?---I believe so, yes.

5 Okay. So this is a fee that would effectively be paid by any fund manager that wants to get access to this reporting information?---Yes, that's correct.

And the arrangements, though, would only be something that's entered into after 1 July 2013?---Yes, for the comprehensive manager reporting, that's correct.

10 And is that on the basis that this is a reasonable fee for a service provided by NMMT to the fund manager?---Yes, I believe it is.

15 And, therefore, it fits within one of the grandfathering exceptions in the FOFA legislation; is that your understanding?---Sorry, could you just repeat that question again?

20 And so, therefore, on the basis that it's a reasonable fee for a service provided to the funds manager, it fits within one of the grandfathering exceptions – I'm sorry, it fits within one of the exceptions under the FOFA legislation?---Yes, that's correct.

And then the second type of fee that you talk about in 89(b) is a fund manager's administration fee?---Yes, it is.

25 And you describe that as:

A fee payable by the funds manager for the distribution of their managed investment scheme on the platform pursuant to –

30 what you say are:

...longstanding contractual arrangements entered into prior to 1 July 2013.

?---Yes, that's correct.

35 So this is a fee payable on the basis that it fits within the grandfathering exception under FOFA because the arrangement was already in place before FOFA came into operation?---Yes.

40 And I want to just understand some aspects of that. You've picked out the top five fund managers that are paying you these fees as at 1 January 2018. That's at the – effectively page 21 of your statement?---Yes, I have.

45 And so in each of those – in respect of each of those fund managers, they had already entered into some sort of contractual arrangement with NMMT before 1 July 2013?---Yes, that's correct.

And the contractual arrangement would be that the fund manager would pay to NMMT some percentage of the total value of the funds invested in a particular fund through AMP platforms; is that right?---Yes, that's correct.

- 5 And would the percentage vary depending upon which fund of the fund manager's was under consideration?---Yes, I believe there was some variation.

And so, for example, to take Perpetual, which is the fifth highest amount, Perpetual might offer a number of funds that are available through AMPs platforms?---Yes.

10

And the number of basis points on the total funds under management through AMPs platform that would be paid might, in some cases, be 10 basis points, in other cases, 15 basis points?---Yes, that's correct.

- 15 If a fund manager adds a new fund to – or is allowed to add a new fund for availability through an AMP platform after 1 July 2013, will they also be expected or would they pay any percentage of the funds under management for that new fund?---No, they would not.

- 20 All right. So the policy of AMP is the grandfathering arrangements only apply to funds where there was – to specific funds where there was already a contractual arrangement before 1 July 2013?---Yes, that's correct.

- 25 But for funds that fall within that category, that is, they already are subject to an arrangement before 1 July 2013, does the number of basis points paid ever vary after 1 July 2013?---Not that I'm aware of.

All right?---I believe it has stayed the same.

- 30 But if a new client entered into an AMP platform in, say, 2016 and part of their moneys were invested in a fund that had been subject to an arrangement before 1 July 2013, the fund manager would have to pay some number of basis points to AMP for that new moneys?---I don't believe so. I think any new moneys post 2013 is not part of that - - -

35

I see. Is that a – is that some variation that's been done to the AMP contracts?---I'm not sure. I - - -

- 40 All right?---We do have copies of the agreements in the – in the statement.

Is there some technological system that performs this calculation?---Yes, there is. I'm not sure exactly what system that is.

- 45 All right. Why would a fund manager before 1 July 2013 have agreed to pay some number of basis points to NMMT for investments through AMPs platforms?---I believe it was for access to distribution of their – of their investment products.

Well, does that mean they wouldn't be able to get access to distribution unless they paid the fee?---No, I don't think that was the case.

5 So if they could get access to distribution without paying the fee, why would they pay the fee?---I'm not sure of the answer. It's obviously a commercial conversation between AMP and the fund manager in terms of that arrangement.

10 You were not involved in those negotiations - - -?---No, I am not involved in any of those negotiations.

And then at 89(c) you talk about fund manager rebates?---Yes, I do, yes.

15 And do they fall into the same category as fund manager administration fees?---Yes, they do.

That is, it only applies for arrangements that are entered into before 1 July 2013?---Yes, that's correct.

20 And also if new funds are made available by a particular fund manager after 1 July 2013, there wouldn't be a rebate payable by that fund manager for the new fund?---That's correct, yes.

25 All right. And then in 90(a) of your statement you explain key partner program payments?---Yes, I do.

30 Can you just – well, you identify key partner program payments. Can you just explain to the Commissioner what those are?---That's an agreement between the fund managers and AMP advice licensees where a payment is made to be – by the fund manager to the licensee to be part of the key partner program. And that – and that's to have access to participate in professional development forums for advisers. So effectively, the opportunity to engage with advisers about their investment products.

35 I see. The fund managers pay money to an AMP licensee in order to be able to have access to the authorised representatives of that licensee?---Yes, that's correct.

40 And can I also ask then about something that's not addressed in your statement, for good reason, because we hadn't asked you any questions about it, but this is about platform – the payments by the platform operator to advice licensees. You've referred to one type of payment that is made by platform operators to advice licensees, which is remitting the member service fee or advice fee. Are there other types of payments that are made by NMMT to advice licensees?---Not that I'm aware of, no.

45 All right. Before 1 July 2013 were there such payments?---Again, not that I'm aware of.

Okay. Commissioner, I don't have any further questions for Mr Keating.

THE COMMISSIONER: Yes, thank you. Does any party, having leave to appear other than AMP, seek leave to cross-examine? No. Mr Hollo?

5

<RE-EXAMINATION BY MR HOLLO

[11.19 am]

10 MR HOLLO: Thank you.

Mr Keating, you gave some evidence this morning that, in certain circumstances, advisers could seek exemptions to use platform product not on the approved product list; do you recall that?---Yes, that's correct.

15

And if I could ask you to go to paragraphs 86 to 87 of your statement. I think you deal with the circumstances there; is that right?---Yes, I do, in paragraph 86.

20

And then in paragraph 87 you indicate that in certain circumstances, advisers are not required to seek that approval; is that right?---Yes, that's right.

25

Can I ask you this: do you know how many applications were made to use wrap platforms and master trusts or investments made through them that were not on the approved product list in the last quarter of 2017?---Yes, I'm aware that there are approximately 1050 requests from advisers to the research team in that regard that were approved.

30

Sorry, could you break that down for us? How many – do you know how many applications?---I believe it was approximately 1200 applications.

And how many – I'm sorry, and how many of those were approved?---1050, approximately.

35

Thank you. And you made reference to investments that were made through wrap platforms, are those investments – do those investments include products that aren't issued by any AMP entities?---Sorry, can you just repeat that question?

40

Yes. You've said that – you answered my last question on the basis that – I withdraw that. You understand, don't you, that investments of various kinds can be made through wrap platforms and master trusts?---Yes, I do.

45

My question is those investments that could be made through wrap platforms and master trusts that are on the APLs include both products issued by AMP entities and those that are not?---Yes, that's correct.

And where would those products – where would those products be found or listed?---They are – they are on the investment menu for each of those platform

products. So as part of the disclosure documents there's an investment options document which sets those out.

5 Are you referring to a product disclosure statement and another document?---Yes, that's correct, and associated - - -

What's the other document?---Associated document in relation to the investment options for that product.

10 Thank you. You also were asked some questions about caps on advice fees; do you recall that?---Yes, I do.

15 And you gave some fairly specific answers in respect, I think, of the MyNorth WRAP product?---Yes, I did.

Where was that information – from where was that information obtained?---It's available in the product disclosure document which is publicly available and is part of what a customer receives.

20 Thank you. Thank you.

THE COMMISSIONER: Thank you, Mr Hollo. Is there anything arising, Mr Hodge?

25 MR HODGE: No, thank you, Commissioner.

THE COMMISSIONER: Thank you very much, Mr Keating. You may step down. You are excused from attendance.

30

<THE WITNESS WITHDREW

[11.24 am]

35 THE COMMISSIONER: Now, Mr Hodge, where to from here?

MR HODGE: Commissioner, could we just adjourn for five minutes so that we can rearrange - - -

40 THE COMMISSIONER: Yes. What's the next - - -

MR HODGE: Mr Elkins, who is a witness from CBA.

45 THE COMMISSIONER: Yes. Changing of the guard at the bar table. Well, if I come back at, what, half past 11?

MR HODGE: Thank you, your Honour, Commissioner.

ADJOURNED

[11.24 am]

RESUMED

[11.30 am]

5

THE COMMISSIONER: Mr Costello.

10 MR COSTELLO: Commissioner, the next witness is from the Commonwealth Bank of Australia, Linda Maree Elkins.

<LINDA MAREE ELKINS, SWORN

[11.31 am]

15

<EXAMINATION-IN-CHIEF BY MS HILLMAN

20 THE COMMISSIONER: Thank you very much. Do sit down. Yes.

MS HILLMAN: Ms Elkins, can you give the Commission your full name, please?---Linda Maree Elkins.

25 Your business address?---201 Sussex Street, Sydney.

And have you received a summons to appear today before the Commission?---I have.

Do you have a copy of your summons with you?---I do.

30 I tender the summons, Commissioner.

THE COMMISSIONER: Exhibit 2.70, summons to Ms Elkins.

35 **EXHIBIT #2.70 SUMMONS TO MS ELKINS**

40 MS HILLMAN: Ms Elkins have you given a witness statement that is dated 5 April 2018 to the Commission?---I have.

I understand that you wish to make a correction to subparagraph 3(d) of your statement?---Yes.

45 What is that correction?---I realised I have resigned my directorship from the – well, sorry, my membership of the Financial Services Council Superannuation Board Committee.

And when did you resign?---I think it was effective 4 April.

Can I ask you to just amend paragraph 3(d) of your statement to reflect that change.
And will you initial that change that you've made to the statement?---Yes.

5

With that change, is your statement true and correct?---Yes.

Commissioner, I tender the statement and the exhibits to it.

10 THE COMMISSIONER: The witness statement of Ms Elkins and exhibits?

MS HILLMAN: Yes. There - - -

THE COMMISSIONER: And exhibits will be exhibit 2.71.

15

EXHIBIT #2.71 WITNESS STATEMENT OF MS ELKINS (AND ATTACHED EXHIBITS)

20

MS HILLMAN: Thank you, Commissioner.

THE COMMISSIONER: Yes. Mr Costello.

25

<CROSS-EXAMINATION BY MR COSTELLO

[11.32 am]

MR COSTELLO: Thank you, Commissioner.

30

Ms Elkins, you're the general manager of Colonial First State?---I'm the executive general manager of Colonial First State.

You've been in that position since?---2012.

35

In your witness statement you mention two legal entities: Colonial First State Investment Limited and Avanteos – is that the correct pronunciation?---That's right.

Investments Limited?---Yes.

40

Are you responsible for both of those entities?---Yes, I am.

In the scheme of the Commonwealth Bank, where do those entities sit? To who do you report?---I report into the chief operating officer of the Wealth Management Division.

45

And who is that?---Michael Venta.

Right. Now, there are other legal entities with the name Colonial First State within the Commonwealth Bank group?---Yes.

5 Is the entity for which you're responsible related in any way to Colonial First State Global Asset Management?---Colonial First State Global Asset Management is also a subsidiary of the – of the Commonwealth Bank. The businesses at one time in the past – the dates I wouldn't remember – were – were joined together. These – this was one business that has been split over time.

10 Right. So you're not responsible for Colonial First State Global Asset Management?---No, not at all.

15 What is the business of Colonial First State that you're responsible for?---I am responsible for the platform business to over simplify it, I guess, for the platforms within Colonial First State - - -

Right?--- - - - both the master trust and the wrap platform.

20 Is "platform" a convenient expression to describe both master trusts and wraps?---That's correct.

All right. And in your witness statement, at paragraph 13(b), you also mention private label wrap products?---Yes.

25 What are private label wrap products?---Private labels is where another entity would be using our administration services, but we're not the trustee or the product issuer.

30 I see. Now, you've been put forward by the Commonwealth Bank to answer some questions that the Commission has put to the bank about platform fees?---Yes.

Other of those questions will be answered by Ms Perkovic?---Yes, that's right.

35 All right. And what was the reason for the division between the two of you?---Because of the separation within the business of where responsibilities lie. One of the ways we think about management of conflicts within a vertically integrated business is to think about how the businesses need to be split and having different leaders responsible for different activities. So the questions you're referring to were in regard to advice business APLs, which is something I have no responsibility or visibility over.

40 When you say "APL" you mean approved product list?---Sorry, approved product list.

45 Yes, all right. Now, at paragraph 15 of your witness statement you set out two tables?---Yes.

You can see it either in your hardcopy or on the screen, whichever is more convenient to you. And in those tables you set out which platforms Colonial First State – I might call CFS?---Okay.

5 Offers?---Yes.

And which platforms AIL, which is Avanteos, offers and whether they are available to affiliated advisers or unaffiliated advisers. Could you explain to me first in this context what you mean by an affiliated adviser?---Affiliated with the Commonwealth Bank.

10 An example of an affiliated adviser would be an adviser working within CFPL?---Yes, Commonwealth Financial Planning Limited - - -

15 Right?--- - - - Financial Wisdom or Count and previously Bankwest.

Yes. And an unaffiliated adviser is anybody else?---Correct.

20 All right. And why is it that some platforms are made available to affiliated advisers, some to unaffiliated advisers and others to both?---That only happens in the Avanteos part of the business - - -

Yes?--- - - - and that would be where there is a white label arrangement in place.

25 If there is a white label arrangement in place, does that mean it would be available only to an unaffiliated adviser?---By nature, that white label would be made available to the licensee responsible for it, although it can happen that it is also made available to other advisers or it can happen that an adviser who is affiliated subsequently goes to another licensee but can continue to write the product. But generally, that's right, that's - - -

30 All right. I'm not sure I entirely understand the white labelling process yet. If I'm a consumer and I go to an unaffiliated financial adviser and they give me advice to make an investment through a platform - - -?---Yes.

35 - - - and it happens at that platform is a white label platform manufactured by Avanteos - - - Yes.

40 - - - I won't know that it's Avanteos, is that right, it will be labelled something else?---The label would be the relevant white label, but it will be disclosed in the PDS that the administrator or product issuer is Avanteos and that is a subsidiary of the Commonwealth Bank.

45 Would the white label typically be the brand of the unaffiliated adviser?---Typically, yes.

Right. Thank you. I want to ask you a few questions about - - -?---Sorry, I mean, you can see – I don't think the name is the same, like it's not, for example, in Count it's not called the count white label it's called star portfolio. So it would be the brand name that is - - -

5

The unaffiliated adviser might have a - - -?---A brand.

- - - platform brand name - - -?---Yes.

10 - - - that they distribute, but your entity would be the manufacturer?---Yes.

Thank you. I want to ask you some questions about platform fees. Generally, what are the type of fees that Colonial, if I can refer to Colonial as being both entities, charges for platforms?---So the fees are either administration fees that we charge for running the platform, or we charge fees that we then pass on to service providers such as investment managers or insurers.

15

All right. Can I take you to an exhibit to your witness statement. It's LME59 which is CBA.9000.0003.0041. This is a spreadsheet that you have exhibited to your witness statement - - -?---Yes.

20

- - - that sets out some fee types for Colonial First State Investment Limited products. And the first one noted there is an investment fee?---Yes.

25 Now, what is the investment fee?---The investment fee is – in this case we're looking at the CFSIL entity. The CFSIL entity is a master trust structure and uses a mandate structure in terms of how purchases the underlying investments. In that case the investment fee relates to the fees that would be paid to that underlying investment manager, an administration fee is paid to us for carrying out the unit price functions in relation to those investments.

30

It uses a mandate arrangement?---Yes.

35 Could you explain what a mandate arrangement is?---Yes. So a mandate arrangement is where we buy our own vehicle from the relevant asset manager rather than investing into one of their existing managed investment schemes.

40 When you say your own vehicle, do you mean you establish a managed investment scheme that is for your particular use?---I'm not sure that it's a managed investment scheme. We refer to it as a mandate. It may be technically, but it's our own vehicle with that investment manager as opposed to pooling into a vehicle with other investors.

45 The investment fee, that's listed in this spreadsheet, that's a fee paid by the investor?---It's – it – they're – so that when we carry out the unit pricing function, the – the fee that is – is charged is included in that unit price. So it's charged across the fund as a whole as opposed to per individual account.

Is the investment fee a one-off fee or is that a recurring fee?---That's a recurring fee.

How often would that ordinarily be charged?---It's charged monthly.

5 Charged monthly. And what's the basis by which that fee would be calculated?---The funds under management.

All right. And then the administration fee is the next fee in the spreadsheet and there - - -?---Yes.

10

- - - two administration fees noted there. What's the administration fee in a general sense?---The administration is the – the fee for carrying out the client operations, if you like, for managing the administration services in relation to the client's account.

15 And how often would an administration fee ordinarily be charged?---Monthly as well.

All right?---Part of the unit price.

20 And the investment fee and the administration fee are in addition to fees that might be charged by the fund manager; is that right?---No, that's included.

They're wrapped together?---Yes, so the fee that an individual would pay depends on which investment they chose.

25

I see. And would that be the case for all products – all platform products across the Colonial First State portfolio?---I believe so, yes.

All right. So all consumers that invest through a Colonial First State platform will pay, as a general rule, an investment fee and an administration fee?---Yes.

30

But they will not pay a fee to the ultimate fund manager; is that right?---We pay that fee to them.

35 You pay that fee?---Yes.

So that fee is incorporated, what, within the investment fee?---Into the unit price.

I see?---Yes.

40

All right. And the fund manager's fee would ordinarily be calculated by reference to funds under management?---Yes.

Or sometimes called funds under administration?---Yes.

45

And your investment fee is also calculated in that way?---Yes.

And is the administration fee calculated in that way?---Yes, it is.

And what's the - - -?---Sorry, I'm sorry, but you can see here on the exhibit administration fees can be dollar based as well in some cases.

5

Yes. What is more common?---Fund under management.

And what's the relationship between funds under management and the administration expenses that the platform operator might incur?---So the – the main relationship between those things is the – I guess the risk we carry in relation to the unit pricing function that we carry out, and there can be a relationship, although it will vary, between the – the amount of service that would be required on the account if – if the account balance is higher, there can be additional servicing needs, but I would say it's predominantly the risk in relation to the higher amount.

15

All right. So you've mentioned risk and servicing. Can I deal with risk first. What's the risk that you're exposed to?---If we get – the unit pricing is incorrect, then we would be responsible for the remediation of that.

Does that happen often?---No, it doesn't. We – we – we are – obviously, there is audit functions that – that are carried out with our external auditors, and we perform at – or we believe we're at industry best practice.

Presumably, correct me if I'm wrong, the unit price would be, at least in part, a function of the total value of the underlying investments?---That's right.

25

And it would need to be divided by number of units issued?---Yes.

And explain to me the other vagaries that create the pricing risk?---The – the – if we got – if we made an error, if we got it wrong.

30

In the division?---Or in – you know, things like the withdrawal of the administration fee or in the recouping of expenses, wherever it might be.

THE COMMISSIONER: You charge more against the prospect that you might do something wrong?---We – the question you asked me was what's the relationship, so no I wouldn't – I wouldn't say that that is the relationship. And I would also agree that it is industry practice that these fees are asset based.

35

MR COSTELLO: But you would also agree that you're pricing in your risk - - -?---Yes.

40

- - - of miscalculation - - -?---Yes.

- - - which might result in a requirement for remediation?---Yes.

45

And that affects the price the consumer pays?---Yes.

And that's the risk component. And the other component was the servicing component?---And, again, that's not necessarily a direct relationship, but it is a factor that it can be. And I would agree that using asset-based fees is – is the common method that's used in the industry.

5

What type of services are contemplated by the servicing fee?---So the servicing fee covers the administration of the account. So the application process, any redemption process, call centre activity reporting, and so on.

10 The application process would not be covered by an initial application fee; is that right?---It's included in that – in the administration fee.

There's no separate application fee?---No, there's not.

15 Is there a separate fee for redemption?---No.

All right. So - - -?---Historically there are products – there has been differences over time but at the moment, no.

20 So entry fees and exit fees have now been merged into an administration fee and the administration fee also includes - - -?---Those functions cover that.

- - - call centre type activities?---Yes.

25 Is that your evidence?---Yes.

All right. And the administration fee will generally be charged by reference to funds under management?---Yes.

30 And is there any relationship between the administrative tasks that Colonial would undertake and the amount of funds under management?---As I said, it would – it would vary. I mean, no, this is the standard method that the industry uses.

This is almost uniform practice within the industry, isn't it?---Almost uniform.

35 There are products that are fee-based – that are dollar fee-based.

Are they newer products as a general rule?---Yes, yes. In our case, I can't speak for the broader industry.

40 And if I can take another asset class, for example, that a consumer might consider making an investment in, a consumer might have an ability to, say, invest in direct property?---Yes.

45 Or invest in a managed fund through one of your platforms. And if the consumer invested in direct property, they might appoint a manager to manage the property, and that manager might charge a fixed fee, he might charge a flat fee or might charge a fee based on rent received, that is, the income, but that type of arrangement would

almost never involve the – a fee based on the capital value of the property acquired. Do you – is that how you would understand a direct property investment to work?---That – that – I think that’s fair, yes.

5 That’s quite a differential method of calculation of fees between that particular type of investment that – the type of investment you offer - - -?---Yes, that’s fair.

- - - and the principle reason why funds are – sorry, fees are recouped on the basis that they are is historical practice; do you agree with that?---I think that – yes.

10

All right. And has there been any consideration given to whether or not it remains appropriate to charge fees by reference to funds under management when the costs incurred by the fund manager are not referable to the amount of funds under management?---I haven’t been involved in those discussions.

15

If there had been discussions within Colonial, would you have been involved?---We – sorry, I should say, obviously, we have launched products that are dollar fee-based, so our thinking around that was that’s a new product that we’ve brought to market to see what the appetite for that was.

20

What’s that product called?---That’s the CommSec Portfolio Service.

When did you launch that product?---Sorry, I can’t remember the launch date. It was relatively recently.

25

Would it have been this year?---No.

Last year?---Last year.

30

All right. And that’s the only product you have?---Other products in the white labels, for example, the arrangement could be a combination of asset-based and dollar-based fees.

35

Have you got any products where the investment fee is anything other than a percentage of funds under management?---There’s – term deposits are available on these platforms, so that – that’s a different – they’re obviously subject to the interest rate.

40

So I want to make sure I understand that. Are you saying if somebody invests in a term deposit through a Colonial platform, they’re not charged investment fee based on funds under management?---Not the investment fee. They would be charged the – they can be charged an administration fee, but they wouldn’t – they would receive the interest rate that’s relevant to that term deposit.

45

That’s what they would receive?---Yes.

My question is what would they pay?---They would pay just an administration fee.

All right. Can I deal quickly with the expenses that Colonial might incur in administering or operating master trusts and platforms. And can I take you to exhibit 56 of your witness statement, which is CBA.9000.0003.0037. Are you familiar with this spreadsheet upon seeing it?---Yes.

5

This is a spreadsheet where you have had your staff at Colonial set out by total categories the expenses incurred in relation to operating your portfolio of platforms; is that right?---This spreadsheet is in relation to CFSIL.

10 Only?---Yes.

That's Colonial First State only?---Yes.

15 Not Avanteos. Thank you. And you can see at the top in the grey column it says Expenses and then it has got dollar sign and three zeros. So these figures, take, for example, the first figure for financial year '11 in column 6 which says 162,534, that's actually 162,534,000, is it?---Yes.

20 All right. And then if you go down to row 12. Perhaps if rows 12 to 15 could be made a little larger. There are Commission expenses?---Yes.

And that starts in financial year '11 and runs through to financial year '17?---Yes.

25 And it's broken into two categories: Related Parties and Third Parties?---Yes.

Related parties are other Commonwealth Bank entities; is that what that means?---That's the advice entities that we described before.

30 The FPL, count?---Financial wisdom.

And formerly BW - - -?---Formally Bankwest.

- - - which is Bankwest?---Yes.

35 All right. So your business, to take financial year '11, to begin with, paid – what's that \$53 million in commissions to other Commonwealth Bank entities?---That's right.

40 Is that right?---Yes.

And in that same year it paid 127 and a half million, nearly, in commissions to third parties. That means unaffiliated advisers - - -?---That's right.

45 - - - does it? All right. And you can see that the figures continue through to financial year '17. Now, beyond financial year '13, once FOFA commenced - - -?---Yes.

Are these grandfathered commissions?---They are.

And do they include volume-based shelf space fees?---No, they are just the commissions.

5 Do you pay volume-based self--base fees?---Grandfathered volume based fees we do.

You don't pay volume based shelf base fees otherwise?---No.

10 Why is that?---Because FOFA.

But you are aware, aren't you, that there are two exceptions to the general prohibition on volume-based shelf-space fees? Are you aware of that?---Sorry, where – where they're covered under the - - -

15 Well, where you are - - -?--- - - - grandfathering provisions?

Where it is still permissible - - -?---Yes, I'm sorry, yes, we - - -

20 - - - for them to be paid?--- - - - pay those, yes.

You still do pay them?---We do. If they're permitted under FOFA.

25 So beyond 1 July 2013, these figures would be both grandfathered commissions and permissible volume-based shelf-space fees?---No, the volume-based rebates I don't believe are in – in those numbers. We can confirm that but I don't believe so. I believe that's just the commissions.

30 Do you receive volume-based shelf-space fees?---We – from fund managers, you mean?

Yes?---Yes, we do prior to them ceasing as well under FOFA.

35 Yes. And to the extent they're still permissible, do you still receive them?---We do. And there's – in my witness statement they are described.

Yes. Thank you. Do you have an understanding of the exceptions to the ban on volume-based shelf-space fees?---Yes.

40 Could you, perhaps, explain to the Commissioner, so far as you're able, what a volume-based shelf-space fee is? I am not asking what a permissible one is, I'm just asking as a general concept. What is the concept?---The concept was that fund managers were – were – paid us for access on to the platform, and for the carrying out of administration tasks in relation to that.

45 All right. And who do you pay volume-based shelf-space fees to now?---To the – to licensees where that is permitted under the grandfathering provisions.

And who do you pay commissions to?---The same. To the licensees, where – where that’s permitted under FOFA.

5 All right. I want to ask you a few questions about charging of fees. That spreadsheet can come down now, thank you. Can I take you to paragraph 30 of your witness statement, which is at CBA.9000.0008.0001 at 0011. Actually, if we could go back one page first, I will just show you the question that you’re responding to here. Can you see question 5 there? I will just make it a little larger. Thank you. You were asked this question:

10

In respect of each identified wrap platform or master trust during the period from 2011 to date, what are the systems or procedures that govern whether a fee, identified in answer to 3(a) above –

15 3(a) above is where you set out the general fees that you charge for your platforms:

...is automatically charged to a client and how is or was any fee calculated?

And then we asked you to expand on your initial answer in (a)(1) there by saying:

20

How members authorised Colonial or Avanteos to deduct an adviser service fee or an ongoing adviser fee.

25 That was the question. And if I can take you to paragraph 30 of your statement now, you said there – you can see:

Members are required to authorise the payment by Colonial or Avanteos, as the case may be, of any adviser service fee including any ongoing adviser service fees to any dealer group or any financial adviser.

30

Just pausing there. When you say “members are required” who are members?---Customers, investors, the - - -

35 Right. I see. Members of the fund?---Yes.

Continuing:

This authority can only be given by a member via appropriately executed request. This authority is typically included as part of the application form for an interest in the relevant offering but may be provided in a standalone document.

40

45 So in addition to any fees that you charge as platform operator, an adviser service fee might also be deducted from the value of the client’s investment; is that right?---Yes. Where there has been an agreement between the customer and their adviser, then they can authorise us to deduct that fee.

I see. And where is it deducted from?---In the case of CFSIL, from – by redeeming units from their account. In the case of Avanteos, the wrap business, from the cash account that it operates through.

5 I see. Colonial’s ability to deduct fees from clients’ investments is, in effect, what allows ongoing service fee relationships to work in a practical sense, isn’t it?---That’s right.

You’re the conduit between the clients’ - - -?---Yes.

10

- - - money and the payment of the ongoing service fee?---Yes.

All right. And you would appreciate that ongoing service fees are a very significant income stream for advisers?---Yes.

15

And a very significant income stream for other Commonwealth Bank entities such as CFPL?---Yes.

All right. Can I take you to paragraph 31 of your statement now, please. Sorry, 31. This is now in respect of fee disclosure statements or renewals?---Yes.

20

You say there:

The fee recipient –

25

that is, the financial adviser or dealer group:

...has the obligation to send fee renewal notices and seek confirmation that their client wishes to renew the ongoing fee arrangement.

30

Does Colonial take any steps to ascertain if fee disclosure statements have been sent by the financial adviser?---So what we do is require licensees, dealers, to enter into a dealer terms of trade with us - - -

35 Yes?--- - - - that warrant – where they’re providing as a warranty that they will comply with their obligations.

Does Colonial take any steps to ascertain if a disclosure statement has been provided before deducting the fee?---We – we’re not involved in the process of sending the fee disclosure statement. This is something we have given consideration to what our role could or should be in relation to this. We first considered this when we were introducing FOFA and becoming aware that licensees would have this obligation to see whether that was a service that we could or should assist with. What we found, though, was because the – the fee and the part of the relationship that’s visible to us is just in relation to this product, that we didn’t have visibility of the – the whole relationship and often somebody can hold more than one products. Plus the key interactions that happen under this agreement, for example, one of the most valuable

45

parts of the service often is the face-to-face annual renewal, is not something we're a party to. So the view we take is that we are interested in assuring that the fee is properly incurred in relation to the – the part of the fee that relates to – to this product, but we don't have a process by which we're monitoring or supervising the sending of the FDS. We're using the dealer terms of trade to ensure that they are obligated to advise us through the dealer terms of trade if that doesn't occur, that licensees.

10 I will come back to the dealer terms of trade in a moment. I think there might be two concepts being conflated in your answer. The first, that I asked about, is fee disclosure statements?---Yes.

15 And fee disclosure statements are separate from but in some sense related to the delivery of ongoing service; would you agree with that?---Yes.

All right. So the question that I asked was whether Colonial takes any steps to ascertain if fee disclosure statements have been provided?---We don't. We require the licensee to advise if the renewal doesn't occur.

20 And while you've pointed to some difficulties that you might have in ascertaining whether service has been provided under an ongoing service fee arrangement, there – it's not the same difficulties in ascertaining whether or not a fee disclosure statement has been provided, are there?---There could be. The relevant licensee would need to look at the fee disclosure statement and then potentially send to each of the product providers assurance. So the fee disclosure statement would relate to all of the products and services that's being received under that statement.

Yes?---Of which a single product would be one of the services. So - - -

30 A single product being one of your platforms?---It – it could be, yes, yes.

Yes?---Yes.

35 And so by seeing a statement of the type that you've just described, you would be satisfied that there had been disclosure made in respect of your platform?---Sorry, I didn't understand the question.

40 If you saw a fee disclosure statement that expressly included a reference to one of your products, you would be comfortable that there was – there had been disclosure made?---Yes.

45 And that would give you a level of comfort in deducting fees?---Yes. And the way we receive that comfort is by requiring licensees to notify us if that doesn't occur, or if the renewal doesn't occur.

Because the obligation lies with them?---The obligation lies with them. The other – the other piece of this that I think is important is the additional disclosure. So if we

start with what the client sees, which is the fee disclosure statement and then, of course, they've got the two year renewal process in regard to what their adviser sends them. In relation – in addition to that, their disclosure from us as their product provider will clearly set out the fees that are related to their holding in that product.

5 So we are – that disclosure of the fees that relate to the holding in the product or platform that's relevant to me is disclosure that I'm also continually making visible to the customer.

10 I see?---So in that regard, the customer also has the opportunity to turn the fee off at any time, or to be aware if – if they haven't been – haven't received the fee disclosure or the renewal process.

15 Do you accept that's a large step to deduct an amount from a client's investment?---It – absolutely, yes.

And it could be a particularly large debt because of the compounding effect of fees being taken from client investments?---Yes, I do accept that, yes.

20 And you could require, couldn't you, dealer groups to confirm in respect of each client that they have fulfilled their obligation in respect of fee disclosure statements. That's not beyond possibility?---It's not beyond possibility, but I think we would want to understand what the system capability would be required for that, versus, at the moment, what we have is the obligation for them to advise us when a failure occurs.

25 Well, there's any number of methods, aren't there? At one end of the spectrum, for example, you might require positive proof of the fact that a fee disclosure - - -?---Yes.

30 - - - statement has been provided?---Yes.

And perhaps, at the less rigorous end, you might conduct randomised auditing of the licensees to see whether or not they have been provided?---Yes, that's right.

35 But, at this point, you don't do either?---We're not doing the auditing, but I – I think you're right. I think that is steps that we could add to the way we're administering the dealer terms of trade that would improve.

40 You say "steps we could add", is there any current plan to add?---To be honest, I – I think, through the course of the Commission this week, there has been – it will be something that I will be going back to the office and doing, yes.

All right?---Yes.

45 You mentioned the dealer terms of trade. Can I take you to paragraph 31 of your statement, please. And you will see at the second sentence there that – it's on the screen or you can use your hardcopy, that you:

Impose rules and limitations in terms of trade that are binding on each relevant dealer group –

?---Yes.

5

Continuing:

...which includes an obligation on each dealer group to comply with its obligations under relevant laws.

10

?---Yes.

And then if we go to paragraph 32, you give some detail of the terms of trade with dealer groups:

15

Including a requirement that dealer groups comply with statutory ongoing fee arrangements and requirements.

And that paragraph concludes with a reference to subclause 2.1(c) of the dealer terms of trade that:

20

Require the dealer group to comply with the financial services law which includes relevant Corporations Act obligations.

And that's the type of obligation that you were alluding to in your evidence a little earlier; is that right?---Yes. Yes.

25

How would Colonial become aware that a dealer group was in breach of a statutory obligation?---We would expect the dealer group to advise us.

30

Insofar as the dealer group concerned is affiliated, that is, it's a Commonwealth Bank subsidiary, for example, say CFPL, the contractual terms that you've pointed to in paragraph 32 are not enforceable in any practical sense, are they?---Yes, they are, because we could – we could off-board, we could cease to deal with the relevant licensee.

35

THE COMMISSIONER: Sorry, what was your answer. You could - - -?---We could stop dealing with them.

Stop dealing - - -?---We could off-board.

40

Within the group?---Or any, either.

You were asked about company within the group - - -?---We could do that.

45

- - - are you telling me that you could cease to deal within the group?---The power would be there for us to do that.

I understand the power - - -?---Yes.

5 - - - may be there, are you telling me that's a realistic possibility?---I would think that that would be unlikely, but not impossible, and I think it would – the governance structure we have in place across these entities, they are governed by independent boards. So I do think it would be possible, but I with agree that it would be unlikely and hopefully because we would have knowledge of – of the steps being taken to remedy any situation that it would be possible.

10 MR COSTELLO: Well, let me put a few things to you in that connection: it's inconvenient receivable, isn't it, that Colonial would sue another Commonwealth Bank entity for breach of that sort of a term?---I honestly don't know the answer to that. The situation hasn't arisen.

15 It hasn't arisen - - -

THE COMMISSIONER: I think that's the point?---Yes.

20 I think that's the point. It hasn't arisen. Yes, go on.

MR COSTELLO: When you say "it hasn't arisen", what do you mean?---There hasn't been a case I've been involved in where we've been considering that.

25 But it certainly has arisen that affiliated entities have breached their obligations under the Corporations Act, hasn't it?---Yes, that has happened.

30 And when you say it hasn't happened, what you mean is you haven't considered whether to take any action as a consequence of a breach?---No, what I'm saying is we – knowing the action that the entity was taking, satisfied us that we didn't need to consider taking any further action, that, rather, what we were focused on was ensuring that the relevant entity was appropriately considering remediation and redress, where that had occurred or if that was necessary for the clients.

35 It's inconceivable, isn't it, that you would kick CFPL off a platform?---I would have to agree that that would be unlikely. I don't know that it's inconceivable. So with independent board structures it's possible but I do agree with what you're saying, yes.

40 Colonial is a wholly owned subsidiary of - - -?---Yes, Commonwealth Bank.

- - - Commonwealth Bank, ultimately?---Yes.

45 And do you understand whether or not the directors of the company are ultimately allowed to act in the interests of the ultimate holding company?---No, we're there to act in the interests of our investors.

Yet you say it is almost inconceivable that you would remove CFPL from a platform if it was, say, an egregious breach of its Corporations Act obligations?---No. In that case it would be conceivable because of the – you know, at least because of the independent board structure. I’m saying in the cases that have occurred, we were
5 satisfied with the actions that the licensee was taking in regard to remediating for the customers that we are responsible for.

How many non-Commonwealth Bank entities have you taken action against for Corporations Act breaches?---I – I couldn’t – there have been licensees that have
10 been off-boarded, but I don’t know the answer to that. We would have to let you know.

When did that last happen, to your knowledge?---I – I – I would have to check. I am
15 not sure, yes.

Are you aware of it occurring since August 2012 when you started in your current
role?---It may have. I’m not sure.

And you’ve mentioned a few times the board and the role of the board, would a
20 decision to take action as a consequence of a breach of dealer terms of trade be a decision that would ordinarily reside in the board?---No, but if – if it – if it – well, I would – rather, the – if the board became concerned it could go either way. It could be management alerting the board through the risk committee, or – or it could be management itself taking action.

25 Well, assume for a moment that it’s a decision of management?---Mmm.

Whose decision is it? Yours?---It would be my decision to – to instigate that with
30 the board, or to escalate up my management line.

To who?---I would have both of those avenues.

Who would you escalate it to?---Initially to – you know, my – at the moment, the
35 chief operating officer who I report to.

Is that the chief operating officer of the Commonwealth Bank?---No, of – well,
initially the escalation would be to my immediate boss.

40 Who is?---Michael Venta, the chief operating officer.

Of what?---Of the wealth management division.

Of the Commonwealth Bank?---I would also have ability to escalate directly with –
45 with the executive committee. I would also have ability to escalate directly with the CBA board if I – if I thought that was warranted.

With the CBA board?---I could do that, yes. I could raise an issue.

Why would you raise with the CBA board whether or not it was appropriate for two separate legal entities with their own contractual arrangements to take action against another Commonwealth Bank entity?---I don't think that's the context in which I – I meant that. If – if CFSIL was going to take action against another CBA entity,
5 you're right, that – that would be with the CFSIL board, yes. Sorry, I was talking about management escalations on the issue.

I see?---Yes.

10 You're aware of the fees for no service issues that Commonwealth Bank has had?---Yes, I am.

And you know that Commonwealth Bank group entities have charged more fees for no service than any other financial services entity in the country; do you know
15 that?---I do know that.

It would be the gold medallist if ASIC was handing out medals for fees for no service, wouldn't it?---Yes.

20 And at any point in time have you considered whether or not it is appropriate for the entities that you manage to take action of any kind in respect of the deduction of fees from client accounts that you manage?---Sorry, say that again? Take action – in the case of Commonwealth Financial Planning, we were satisfied that Commonwealth Financial Planning and CBA were – were investigating and – and remediating where
25 this issue had occurred.

When did you become satisfied of that fact?---The – the open advice review in – in 2014 is when it was very obvious the extent to which, as I said, both Commonwealth Bank and the licensee were – were investigating not only the fee for no service issue
30 but issues within the – within the Commonwealth Bank. Actually, in two – sorry, in 2014, the issues were related to inappropriate advice. I think out of those investigations, and the desire to look further, the fee for no service issue arose.

Just as I put to you earlier that you could require the licensee to certify that a fee disclosure statement has been received, you could do the same in respect of the
35 provision of ongoing advice, couldn't you?---We could do it, yes.

Have you thought about doing it?---We have thought about doing it. Sorry, I – sorry, are you – are you saying again the renewal notice?
40

No, I'm not. I'm saying separately to the renewal notice, the issue – or one of the issues that Commonwealth Financial Planning and other entities within the group is in a remediation program for is the provision – is the charging of fees without receiving a service?---Yes.
45

You understand that?---I do.

And in many cases, those fees would have been deducted from – by way of platforms that you operate?---Yes.

5 And I'm asking you if, at any point, you have considered whether or not it would be appropriate for you to require the dealer groups to certify in respect of each customer that they have complied with their obligations to provide service?---Well, I'm using the dealer terms of trade to do that, and – and I do agree, we should look at how we could strengthen the way we're administering that dealer terms of trade.

10 But you're not really using the dealer terms of trade to do that, are you. You're just pointing to the fact that there is at least a possibility that if you wanted to you could do something?---In relation to the Commonwealth Financial Planning incident, as I've already said to you, when we became aware of the matter, we were also aware of the open advice review and the seriousness with which they were taking around
15 that – the remediation. I – I can certainly assure you, as the product issuer, I was very unhappy at what was happening, but I did believe that allowing Commonwealth Financial Planning to investigate and carry out their remediation was the best – was going to get the best outcome for our members.

20 Did you consider whether you had any independent obligation to remediate your members?---Again, because we were satisfied that they were going to be remediated, I didn't consider that. I did, however, consider and have considered in hindsight, now that we can see the full extent of what happened, I have turned my mind to what could I have done differently or was there interventions that I could have taken, and I
25 would still, even looking back in hindsight, say that allowing Commonwealth Financial Planning to carry out the investigation and remediation was what gave the best result to the end customers. If I, with the limited knowledge and view I had of the issue, was trying to make unilateral decisions or impose my own outcomes, it actually could have either confused the remediation or, in some cases, even caused a
30 detriment for the client.

While it might be the gold medallist, Commonwealth Bank is not the only entity who has had fee for no service problems?---Yes.

35 Have you written to any other dealer groups seeking any confirmation in respect to the provision of fees for no service?---No, again, we're relying on the dealer terms of trade.

I asked you earlier how would it be that you would become aware of a dealer group
40 breaching an obligation under the Corporations Act that would engage the dealer terms of trade, and your answer to me was you would expect them to self-report; is that right?---That is right.

All right. You understand, don't you, that fee disclosure statements were brought in
45 as part of the FOFA regime?---Yes.

And that at least part of the purpose of fee disclosure statements is it minimises the prospect of passive arrangements where fees are being deducted without services being provided?---Yes.

5 And notwithstanding that that was – that is one of the intentions of fee disclosure statements, you still haven't put in place any regime to satisfy yourself that they're being issued?---Not in relation to the fee disclosure statements, but the improvements that we have put in place – we did also in CFSIL update the terms of trade to have specific clauses in relation to the opt-in provisions, and in addition, as I've said, to the fee disclosure statement, the renewal process, we've also done a lot of work to improve our own disclosure to the customer in relation to those fees. We carried out a major – what we call a customer centre design piece of work around the periodic statement to ensure that we were at best practice in terms of how we were disclosing ourselves, but the fees that related to those services, to customers. And in the case of Commonwealth Financial Planning, where they're using the First Choice platform over that same period of time we've also made that periodic disclosure available, because one of the other problems we see sometimes is people don't necessarily engage with their statement as much as we would like. So we've made those statements available to them in the net bank portal and the CommBank app to increase the presence and visibility of the fees for the customer.

And those statements would typically in the event of an ongoing arrangement say something like an adviser fee?---Yes.

25 And has that been changed?---Changed? Since the - - -

In the improvements that you've just been speaking about, has there been any change to the way that ongoing service fees are presented on the statement the consumer looks at?---It's the entirety of the statement and the way it looks and the way the – the transactions are made very clear, and that the label on the fee, of course, they're separated out and labelled as adviser service fees.

Was that not the case before this project that you're speaking of now?---The project that I'm speaking of improved the overall readability of the statement. So it – it has been an issue in our industry that customers do find disclosure hard to understand, and we were aware of that. And as we were moving into the FOFA regime alongside the fee disclosure statement, we wanted to carry out this piece of work so that we could get even more comfort that our statements were able to be read and understood by customers. So a lot of the – the change is in the – in the layout and design and clarity of the statement.

Is there an explanation in the statements of what an adviser service fee is?---I would have to check whether – I think there is. I would have to check that that's there.

45 You think that there is?---I – I would have – I would have to check as to what the written explanation is. In the statement what is very clear is the dollar amount coming out of their account, and the impact that has on their account.

Yes, I understand that. But my question was: is there a statement within the document that explains what an adviser service fee is?---I don't have it in front of me. I think there would be but I don't want to say that definitively if I don't have it in front of me. As I said, the fee is very clear and there are notes, you know, as well
5 as the statements there's – there's notes attached, yes.

Have there been any other major changes to your business as a consequence of the FOFA reform?---So obviously the implementation of the FOFA – all of the things that we've – we've spoken about are the changes that we've undergone, yes.
10

And those changes, if I can summarise them quickly - - -?---Yes.

- - - are the banning on shelf - - -?---Yes.

15 - - - space - - -?---And commissions.

- - - volume fees, subject to two exceptions, the grandfathering of commissions?---Yes.

20 Anything else?---Well, there has been a range of regulatory reforms over that form. I'm sorry, I'm going a bit blank - - -

I'm just trying to understand how - - -?--- - - - obviously we implemented all of FOFA.
25

Yes?---Yes.

But insofar as how you interact with a consumer, the principle change to your internal business processes as a consequence of FOFA is the redesign of the statement to try and give greater visibility of the fees; is that your evidence?---The
30 redesign of the statement wasn't necessarily a FOFA initiative. It – it was an initiative probably that we would have undertaken anyway, but it certainly does complement – we're continually looking for improvement and way – ways to do things – ways to do things better and the statement would fit into that category, but it
35 was of comfort to us that it ensured that the disclosure in relation to those fees was clearer.

If you were to take some of the steps that we've spoken of in the course of your evidence today directed to ensuring that clients have a better understanding of their –
40 the fees that they are being charged and requiring your business to have a better understanding of whether or not those fees have been properly disclosed and whether service has been properly provided, would that reflect itself in an additional fee?---Sorry, I didn't understand that.

45 Would you increase the fees that you charge?---Are you talking about the regulatory reform fee?

Yes?---Yes.

Is that a separate fee?---That is a separate – a separate fee that we – we have been charging in order to recoup some of the regulatory reform costs.

5

And how that fee calculated?---We – in the first year – well, every year we carry out a process of looking at the regulatory reform and this is not just FOFA this is all of the regulatory reform that has been undertaken over that period and we then, you know, consider of that what is appropriate to be passed on in regard to ensuring that it's not part of already duplicated in the administration fee, that it is – that is genuinely additional cost that – sorry, if I go back a step, the alternative would have been to have to increase the administration fee.

10

Yes?---Rather than doing that, our view was to calculate what's appropriate to be passed on with a view that – and charge that annually with a view that that fee will – will cease at some point.

15

When did you first start charging that fee?---I think the date is in my witness statement. I would have to check - - -

20

Do you remember the year?---Is it 2012, I think.

Was it before FOFA?---Sorry, I've gone – I can't remember the date, but it would be - - -

25

That's all right?--- - - - in the fee table.

But it has been charged for some years?---Yes, it has.

30

And is it charged as a flat fee applied equally to all or is it charged as – on a pro rata basis of a total charged by funds under management?---Yes. It's included in the – it's charged by redeeming units from the individual accounts.

35

So what's the basis upon which the redemption takes place? Is it funds under management?---It differs. Part of the consideration in charging the fee – and there's a cap. So the details are – are in my witness statement.

All right. But just let me ask a simple question: is it calculated by reference to funds under management?---I believe in some cases, yes.

40

When you say "some cases" do you mean some years or do you mean it's charged in a different way for different products?---There's a – there's a cap as well.

No, no, no, my question was - - -?---Yes. The answer is yes.

45

No, I'm not sure the answer can sensibly be yes. My question was: when you say it's charged differently in different ways, do you mean it's charged in different ways in different years or do you - - -?---No.

5 - - - mean it's charged in different ways in respect to different products?---Different products.

Different products. So some products the consumers would pay – what did you describe it as, a regulatory?---Reform.

10 Reform charge, fee?---Mmm.

Based on funds under management and others would pay it on a differential basis, perhaps a fixed fee?---Yes, I need the detail in front of me.

15 All right?---The detail is in my witness statement.

All right. And that has been charged for some years now. Is there any plan at the moment for when that charge might stop?---We assess it every year in relation to what has occurred. Our plan is for the fee to stop and that's why it's separate.

20 Do you recall now how that fee is described in statements sent to customers?---I would need to see the statement but it would be disclosed in the statement, yes.

25 As a separate line item?---I believe so, yes.

And do you know if on the statement there would be an explanation of what that fee is or would that explanation come from another document?---I think it is on the statement but without it in front of me I don't want to be categoric.

30 Thank you. Commissioner, I have no further questions.

35 THE COMMISSIONER: Yes. Thank you. Can I just take you back, Ms Elkins, to the dealer terms of trade point. They can include an obligation on each dealer group to comply with its obligations under relevant laws. Can you explain to me how making a contract with someone, that they will obey the law has any effect?---It's a – it's a warranty, and – and the obligation is to inform us where – and – where that's not the case. That's right.

40 So the term is not just to obey the law, but is there an express term in the dealer terms to report any breach?---Yes, there is.

I see. Anything arising out of that, Mr Costello.

45 MR COSTELLO: No, thank you, Commissioner.

THE COMMISSIONER: Thank you. Does any party, other than the Commonwealth Bank, seek leave to cross-examine. No. Very well.

MS HILLMAN: Nothing further, Commissioner.

5

THE COMMISSIONER: Thank you. Thank you, Ms Elkins?---Thank you.

You may step down. You are excused.

10

<THE WITNESS WITHDREW

[12.32 am]

THE COMMISSIONER: Where to, Mr Hodge.

15

MR HODGE: The next witness is Ms Perkovic. Can we just take a five minute break to, again, do a reorganisation and then we will keep going?

THE COMMISSIONER: Certainly. If I come back at shortly before 20 to 1.

20

MR HODGE: Thank you, Commissioner.

THE COMMISSIONER: Yes.

25

ADJOURNED

[12.32 pm]

RESUMED

[12.38 pm]

30

THE COMMISSIONER: Yes, Mr Hodge.

MR HODGE: Commissioner, the next witness is Ms Perkovic.

35

<MARIANNE PERKOVIC, SWORN

[12.39 pm]

40

<EXAMINATION-IN-CHIEF BY MR GOODMAN

THE COMMISSIONER: Yes, thank you, Ms Perkovic. Do sit down. Yes.

45

MR GOODMAN: Ms Perkovic, could you please tell the Commissioner your full name?---Marianne Perkovic.

And your business address?---Is 201 Sussex Street, Sydney.

And your occupation?---I am the executive general manager of Commonwealth Private and Commonwealth Bank.

5

Are you here in answer to a summons issued by the - - -?---I am.

Do you have a copy of that summons before you?---I do.

10 I tender that summons, Commissioner.

THE COMMISSIONER: Exhibit 2.72, summons to Ms Perkovic.

15 **EXHIBIT #2.72 SUMMONS TO MS PERKOVIC**

THE COMMISSIONER: We don't have the summons?---I think it's coming, yes. Thank you.

20

Can I just explain, Ms Perkovic, it's for your protection so that there's no doubt that you're here under compulsion, and that all the consequences that attach under the Act, they're engaged. it's not just some mindless ritual I'm going through. So exhibit 2.72 will be the summons to Ms Perkovic.

25

MR GOODMAN: Ms Perkovic, have you made a statement in answer to rubric 2.1?---Yes, I have.

30

Is that statement dated 3 April 2018?---Yes. Sorry. Yes.

And I understand you have some corrections to that statement?---I do.

Is the first correction at paragraph 119?---Yes, it is.

35

And could you please tell the Commissioner what that correction is?---The last sentence, the word "I", could you please replace that with Ms Maria Lykouras.

And could you please spell Lykouras?---L-y-k-o-u-r-a-s.

40

And would you mind, please, making that correction?---Yes.

And initialling the margin.?---Yes.

45

Ms Perkovic, is the next correction to paragraph 120?---Yes.

And would you please tell the Commissioner what that correction is?---So in the fifth – about the fifth line there’s some words in brackets there, if we could replace that with:

5 *Approximately 10,000 as at May 2012.*

And would you mind, again, please, making that change in your handwriting?---Yes.

10 And initialling it in the margin. And having made those corrections, is that statement true and correct?---Yes, it is.

Commissioner, I tender the statement of Ms Perkovic dated 3 April 2018 together with its exhibits.

15 THE COMMISSIONER: Exhibit 2.73 statement of Ms Perkovic 3 April '18 and exhibits.

20 **EXHIBIT #2.73 STATEMENT OF MS PERKOVIC DATED 03/04/2018
(WITH ATTACHED EXHIBITS)**

25 MR GOODMAN: Ms Perkovic have you made a supplementary statement in answer to rubric 2.1?---Yes, I have.

Is that supplementary statement dated 4 April 2018?---I’m just trying to locate it. I think it might be in the folder.

30 THE COMMISSIONER: I don’t think – has the witness now got it?

THE WITNESS: Sorry.

35 MR GOODMAN: Is that statement – sorry, I will go back a step. Do you have before you a supplementary witness statement dated 4 April 2018?---Yes.

Are the contents of that witness statement true and correct?---Yes.

40 Commissioner, I tender that supplementary statement. Its doc ID is CBA.9000.0021.0001.

THE COMMISSIONER: Exhibit 2.74 will be supplementary statement for Ms Perkovic, 4 April '18, CBA.9000.0021.0001.

45 **EXHIBIT #2.74 SUPPLEMENTARY STATEMENT FOR MS PERKOVIC
DATED 04/04/2018 (CBA.9000.0021.0001)**

MR GOODMAN: Thank you, Commissioner.

Ms Perkovic have you made a statement dated 3 April 2018 in answer to rubric 2.2?---I have, yes.

5

Are the contents of that witness statement true and correct?---Yes.

Commissioner, I tender that witness statement together with its exhibits. Its doc ID is CBA.9000.0007.0001.

10

THE COMMISSIONER: Exhibit 2.75 will be further statement of Ms Perkovic, 3 April 2018 CBA 9000.0007.0001.

15 **EXHIBIT #2.75 FURTHER STATEMENT OF MS PERKOVIC DATED 03/04/2018 (CBA.9000.0007.0001)**

MR GOODMAN: Ms Perkovic, in answer also to rubric 2.2. have you made a supplementary witness statement dated 4 April 2018?---Yes, I have.

20

Is the contents of that witness statement true and correct?---It is.

Commissioner, I tender that witness statement. Its doc ID is CBA.9000.0022.0001.

25

THE COMMISSIONER: Further statement of Ms Perkovic 4 April '18, CBA.9000.0022.0001 and exhibits, exhibit 2.76.

30 **EXHIBIT #2.76 FURTHER STATEMENT OF MS PERKOVIC DATED 04/04/2018 (AND ATTACHED EXHIBITS) (CBA.9000.0022.0001)**

MR GOODMAN: Thank you, Commissioner.

35

Ms Perkovic, in answer to rubric 2.5, have you made a witness statement dated 3 April 2018?---Yes, I have.

Are the contents of that witness statement true and correct?---Yes, it is.

40

Commissioner, I tender that witness statement. Its doc ID is CBA.9000.0005.0001.

THE COMMISSIONER: Exhibit 2.77 is further statement of Ms Perkovic, 3 April '18, CBA.9000.0005.0001.

45

**EXHIBIT #2.77 FURTHER STATEMENT OF MS PERKOVIC DATED
03/04/2018 (CBA.9000.0005.0001)**

5 MR GOODMAN: Ms Perkovic, in answer to rubric 2.17, have you made a witness statement dated 9 April 2018?---Yes, I have.

And I understand there is one correction that you wish to make to that statement?---Yes.

10

Is that correction to paragraph 58 subparagraph (b)?---Yes, it is.

And would you please tell the Commissioner what that change is?---On the – on the fifth – fifth line there’s a date there that says 2 September 2013. I would like to change that to 23 April 2013.

15

And with that correction - - -

THE COMMISSIONER: Perhaps if you could make it first and initial it.

20

MR GOODMAN: I’m sorry, Commissioner.

Ms Perkovic, you have made that correction and initialled it?---Yes, I have.

25 And having done so, is the contents of your – of that statement true and correct?---Yes, it is.

Commissioner, I tender that statement and its exhibits. The doc ID is CBA.9000.0012.0001.

30

THE COMMISSIONER: Exhibit 2.78, further statement of Ms Perkovic, 9 April ’18, CBA.9000.0012.0001.

35 **EXHIBIT #2.78 FURTHER STATEMENT OF MS PERKOVIC DATED
09/04/2018 (CBA.9000.0012.0001)**

40 MR GOODMAN: Finally, Ms Perkovic, have you made a witness statement in answer to rubric 2.24?---Yes, I have.

Dated 5 April 2018?---Yes, I have.

45 Are the contents of that witness statement true and correct?---Yes, it is.

Commissioner, I tender that witness statement and its exhibits. Its doc ID is CBA.9000.0009.0001.

THE COMMISSIONER: Exhibit 2.79, further statement of Ms Perkovic, 5 April '18, and exhibits, CBA.9000.0009.0001.

5 **EXHIBIT #2.79 FURTHER STATEMENT OF MS PERKOVIC DATED
05/04/2018 (AND ATTACHED EXHIBITS) (CBA.9000.0009.0001)**

10 MR GOODMAN: Thank you, Commissioner.

THE COMMISSIONER: Thank you. Mr Hodge.

15 **<CROSS-EXAMINATION BY MR HODGE** **[12.47 pm]**

MR HODGE: Thank you, Commissioner.

20 Ms Perkovic, you're the executive general manager and a director of Commonwealth Private Limited?---I – I am, yes, thanks.

And you sit – or that section sits within the business and private banking division of - - -?---It does.

25 - - - the Commonwealth Bank of Australia?---Yes.

And you've been put forward by the Commonwealth Bank to give evidence about two issues, one is what has been described as fees for no service?---Yes.

30 And you've also been put forward to answer some of the questions that the Commission asked with respect to platform fees?---Yes.

35 Now, with respect to the fees for no service issue, as it arose for Commonwealth Bank entities, there were two types of fees for no service issues that arose with respect to those entities?---Depending on which entity. So with Commonwealth Financial Planning there were three issues that arose.

40 All right. Well, why don't you summarise in your view for Commonwealth Financial Planning what the three issues were?---Okay. So for Commonwealth Financial Planning, the three issues were, firstly, there was a – there was actually an overcharging of OGS or ongoing service fees. We found that and remediated that. The second issue was actually in relation to what we call orphan clients. These clients are clients that actually aren't allocated to a financial planner, and we found occasions where advisers weren't allocated in appropriate time to actually deliver the ongoing service. And the third instance was where delivery of the service was not
45 provided, or we couldn't find record of that delivery.

And with respect to – so that was Commonwealth Financial Planning?---Yes.

With respect to BWFA, that's Bankwest Financial Advice?---Correct, yes.

5 Which of those three issues applied to that entity?---Okay. With respect to that entity, it was the orphan issue where we found a few cases of that. And then the delivery of no service based on advisers not delivering the service that they needed to, or there was no documentation of that service.

10 And then with respect to Count, which of the issues replied to Count?---Okay. So with respect to Count 1, Count is a separate issue. In relation to clients that were – in relation to advisers who actually had left Count those clients didn't go along or didn't leave the business with Count and Count actually applied a fee to provide some service to those clients. So it wasn't an ongoing service fee, it was a separate
15 fee. So that was kind of a third or separate issue to the other two.

It was also an orphan client issue, wasn't it?---It was an orphan client but a different orphan client issue to the one in Commonwealth Financial Planning.

20 I see. And to date – I am sorry, not to date, as at 31 December 2017, the Commonwealth Bank of Australia had paid out approximately or offered approximately \$118.5 million of refunds including interest to customers who had been victims of these issues?---We did. We paid compensation to clients across the different issues.

25 And has there been further compensation paid or offered since 31 December 2017?---The only offers – sorry, across the different entities there is a provision. This relates to clients that we can't contact or that we're still trying to contact.

30 Even now, today, is the Commonwealth Bank still trying to identify all the clients that might have been victims of these issues?---We're not – we have already identified those clients. What we are waiting for is just some confirmation to be able to make some payments. There are only a small amount, about 98 per cent of the payments have already been made.

35 All right. And the relevant period to which those payments apply is from July 2007 to June 2015?---Correct. For – for Commonwealth Financial Planning and for BWFA, and in my witness statement for Count, is a different date.

40 All right. Well, we can come to that?---Yes.

And I want to just make sure we've understood correctly the structure of how all of this fits together. Commonwealth Financial Planning is a wholly owned subsidiary of the Commonwealth Bank of Australia?---It is, yes.

45 And it holds its own Australian financial services licence?---Yes.

And Count, which was previously a publicly listed entity, is now a wholly owned subsidiary of CBA?---Count is, yes.

And it was acquired by CBA in 2011?---Correct.

5

And you had worked at Count for some period of time before its acquisition?---I was, yes.

Were you still working at Count up until the point when it was acquired?---No, I left Count in 2009 and joined CBA in 2010.

10

And how long had you worked for Count before then?---So I started in Count in 1998. So a period of 11 and a half years.

And so when you came over from Count over to CBA, were you already familiar with the practice of Count in relation to dealing with clients where the adviser had left the Count network?---Yes.

15

Okay. So you were aware of what it was that Count did?---Yes.

20

And just explain to the Commissioner what was it that you understood that they did?---Okay - - -

That is, at the time when you left Count?---At the time that I left Count?

25

Yes?---Okay. Yes. So we were solely for an issue which was the way that Count operates – and I think if I just give a bit more context to give you the answer, so Count operates as a franchised model, Count has the licence and the Count businesses are self-employed – predominantly accounting based firms. Some of the products that they use, and this predominantly is – is actually wrap accounts – they need to – you need an adviser to be attached to those clients for the client to transact. Now, when a client – when an adviser left the Count practice, we had a process which we wanted the – the – the Count client to absolutely know that the adviser was leaving the Count licensee, and that their – the advice that they were providing was no longer under the Count licence. So each – that meant that each adviser needed to send authorisations to the product providers to change the dealer group because, in actual fact, they were going to another licensee. Now, what actually occurred – and this kind of issue really stemmed when we bought on the BT wrap account, that is attached to an adviser servicing that client. Now, we sent out a letter to the client when their – when the firm leaves the licensee to go on to another licensee, the advisers process is to then transfer the clients across to a new licensee and new product provider. It's up to the client to decide actually whether they go with the adviser or not and Count has no ability to reallocate the clients or send them to another adviser if they choose not to travel with their – with their current adviser. So after a three month period we – are left with some clients that, for whatever reason, by their choice have not left with the adviser. It's usually a small amount of clients because in the Count business they are accountants and usually they have the

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relationship as an accounting-based relationship with their clients. So if they decide not to go, Count, as the head office, actually does not provide financial advice, and – however these clients needed access to some of these products for transactions. So what we did do was actually charge a fee to transact on their behalf if they wanted
5 access or transactions to – to that. That orphan issue is very different to actually what is in Commonwealth Financial Planning, and by nature it is very client directed, there is transparency, and once a client decides not to leave with their adviser, Count sends a letter to that client to explain that there is no ongoing service relationship, and in actual fact if they need access to their products, which they can't do because at
10 that time that there was no access directly to those products, that they could ring Count head office and we would facilitate transactions for them. So in actual fact, we were operating like a client service function for them for them to have access to these products, because they couldn't access them directly.

15 Let's break down a few parts of that: you referred to a problem that arose with respect to the BT wrap platform - - -?---So this problem - - -

- - - during the course of your answer?---Yes. So what I was explaining is when – with the BT wrap platform - - -

20 Maybe if I just - - -?---Yes.

- - - walk us through this?---Okay.

25 Some time before 2009 when you left - - -?---Yes.

- - - Count made the BT wrap platform available to financial advisers acting under the Count licence?---Correct.

30 Is that right?---Yes.

And under the BT platform, an adviser service fee would be automatically deducted?---Yes.

35 And it would be remitted to Count as the licensee?---In 2009, no. The Count adviser actually put the adviser services fee on the platform and that was remitted by the product provider directly to the adviser.

40 I see?---That changed. It did change in 2013 where it came to Count.

I see. And when the adviser left Count, how was it, then, as at 2009, that Count continued to receive payments with respect to that client?---Okay. So the payment that Count received – and there are multiple product providers but I think if we just use that BT product as an example, Count would communicate to the client that the
45 adviser has left, that there is no ongoing service relationship, because with the adviser leaving, they would have left that BT platform that we had. And in place, Count would charge a fee to – which is obviously a lower fee, not to provide ongoing

service but to actually be able to give the client access to, you know, their platforms that they couldn't at that time ordinarily access directly with the product provider.

And you referred before to Count's three month rule?---Yes.

5

So what was Count's three month rule?---The three months that we went through this process was actually to give the firm time to transition their clients across to their new licensee and to the new platform provider.

10 And who received the adviser fees during the first three months?---So the adviser fees that any adviser charged for ongoing service would go directly to the adviser.

I see. And would the adviser continue to repay any of that amount to Count?---Through that period, depending on when the client left because they obviously left throughout the period, if the client was charged – if the client was still in the product – up until the day the client left the product, there would have been like a fee that Count would have received as part of the arrangement.

20 And how does Count – or how did Count receive that fee?---So that was off the back of fee that we had which was the administration fee within the platform. So there's two different fees. So every client had an administration fee. Some clients were on ongoing service relationships, and where they were on ongoing service relationships, the adviser at that time would put it on to the BT platform and then they would remit that directly to the adviser.

25

But for that - - -

THE COMMISSIONER: I think we might perhaps take it up after lunch, Mr Hodge.

30

MR HODGE: Thank you, Commissioner.

THE COMMISSIONER: Yes. 2 pm.

35

ADJOURNED

[1.01 pm]

40

RESUMED

[2.00 pm]

THE COMMISSIONER: Yes, Mr Hodge.

MR HODGE: Thank you, Commissioner.

45

Ms Perkovic, just before the break we were talking about an issue that had arisen whilst you were at Count before you left to come to CBA; do you recall that?---We

spoke about a process that we had, the actual issue was discovered when I came later into – into CBA. So what we were describing was actually the process that we had at Count when we dealt with clients who actually did not want to go with their – or chose not to go with their adviser, and how we gave them access to their products.

5

I understand. What you were aware of at the time that you left Count was that where a client's adviser left the Count business and the client didn't go with that adviser, that after a period of three months the client would be allocated to Count head office; is that right?---Yes, when the client chose not to go with the adviser, the client stayed with head office but not under an ongoing service arrangement.

10

And that's what you knew about as at the time that you left Count in 2009?---Correct.

15 And what was supposed to happen in that circumstance was that the fees would be dialled down; is that right?---So – yes, it was a different combination, because it was a few different products. But the fees – yes, ongoing service fees, obviously left with the adviser, or not anything to do with Count. In its place was what was called administration fee, and that fee was actually where – for the service of actually transacting. It was – so that's just a distinction, and I know it's important to explain because it is very different to the other orphan issue.

20

Was it for the same amount as the service fee?---No.

25 It was a different amount?---Yes, it was a lower amount.

I see?---Because there was no ongoing service provided.

30

And was the administration service provided?---No. It – sorry, I will just correct that. It depended on which product the client was at. So if it was a wrap account, the way that wrap accounts operate is, you know, those – those clients would stay within the wrap account, they would get an administration fee, but any dial-up or dial-down of fee just depended on the different products. So master trusts were very different to wrap accounts.

35

Did Count head office provide administration services to orphan clients in relation to wrap accounts?---The Count – yes, so if a client rang – sorry, if a Count client contacted head office and they wanted to do transactions on their account, the Count head office would transact for that client.

40

Were there other products other than wrap accounts where the head office was unable to transact for the client?---Sorry, unable or - - -

45

Would not provide any transaction service – administration service for the client?---Okay. Outside of the wrap accounts, the master trusts, the clients – they could contact the services, but if they actually, yes, wanted some information around that, then they would contact head office as the adviser of their relationships but not

on an ongoing service basis. As I said, it's more like a client service is how we intended the system to – the service to operate.

5 All right. Well, let's – we will return to that in due course. Now, CBA had also had ownership of another AFSL holder, which was BW Financial Advice Limited?---We did, yes.

And that – the BW there stands for Bankwest?---Correct.

10 And CBA acquired BWFA when it acquired Bankwest in 2008?---That's right.

And BWFA ceased operations in October of 2016?---Yes.

15 And there are some other entities within CBA, in addition to the three we've spoken about, which is CFPL, BWFA and Count, that provide financial advice through employees or authorised representatives?---No, there's another – sorry, there is another, Financial Wisdom, which is through self-employed authorised representatives.

20 All right. And you haven't been asked to give a statement in respect to Financial Wisdom?---No.

25 Okay. Now, the vast majority of CFPLs financial advisers are employed by an entity within the CBA group?---Correct, yes.

And that entity is Colonial Services Proprietary Limited?---Yes, the employment contracts are generally that – that provider. There are some additional different contracts, but depending on when people started that's the majority of people are in that contract, yes.

30 And those employed advisers work typically in a CBA branch?---They do, yes.

35 I said typically. Is it typically or in fact universally they work in a CBA branch?---So they would be – they have access to the branch. In some cases, depending – basically, the branch – if they can't locate the – locate the adviser actually in the branch, then their office might be near the branch but they would generally see clients within the branch. We also have a phone base and a video conferencing service, and so they're located at – at head office.

40 And there's also some financial planners that are self-employed and act as authorised representatives for CFPL?---Correct. And that business unit is called Pathways.

45 And it appears, from your statement, that the number of employed financial advisers employed by CFPL has decreased since 2008?---It has.

And is that part of a conscious decision to reduce the size of the financial planning workforce?---It's not – I would say that through the transformation of when I came

into the business in 2012, we have been very focused on recruiting the right people within the business. Obviously, we had actually, from a cultural perspective, had terminated advisers through the course of that, and on – in 2015 we introduced new education standards for advisers. So we – it was harder to recruit, you know,
5 different types of people that were very much focused on having people in the business that had an advice-based culture. As a result of that, it takes us longer to find planners of the right culture and fit that we want in the business now, and so we don't have a conscious decision to reduce, but it is based on finding the right people to be employed in our business.

10

Can we bring up Ms Perkovic's statement, which is the supplementary witness statement to rubric 2-1, the doc ID is CBA.9000.0021.0001.

15

This is a supplementary statement of yours which has already been tendered, Ms Perkovic?---Yes.

And this was in response to some supplementary questions that the Commission asked to establish the number of clients - - -?---Yes.

20

- - - of financial advisers. Can we go to page 2 of that document. Thank you. And if we just blow up the table in the top half of the page, we see the fourth column from the left is Total Number of Clients of Employed Financial Advisers. And it has increased since the end of December 2008 until the end of last year from 105,988 clients to 191,830 clients; do you agree?---Yes.

25

And, as we understand it, that number is, in each case, comprised of three types of – or three classes of client. The first is clients who are signed up to any ongoing service package for any calendar year?---Yes.

30

The second is clients who paid Commission in any calendar year?---Yes.

35

The third is clients who received advice from a Commonwealth financial planner, financial adviser or pathways authorised representative including one-off advice provided in any calendar year?---Yes, there's a separate column I think for the authorised representatives. It relates to - - -

That's right?---Yes.

40

The column on the right-hand side applies just for authorised representatives?---Yes.

And that would be just the pathways authorised representatives?---The pathways, yes.

45

If we take the number as at 31 December 2017 of 191,830 clients, do you know what proportion of those clients are clients that were signed up to an ongoing service package for any calendar year?---So it's about 20 per cent of clients. So – so we generally had – so it was about 20,000 – sorry, there's about 20,000-odd OGS clients

that we had at any one time that obviously increased as the population was – was increasing.

Well, if it was - - -?---So 10 per cent, sorry, yes.

5

About 10 per cent is - - -?---Yes.

- - - ongoing service clients; is that right? So back in - - -?---In 2017, yes.

10 All right. So in December 2008, you think it would have only been about 10,000 clients that had ongoing service arrangements?---Yes, off the top of my head, yes.

And of the balance then – let’s take the year ending 31 December 2017, about 20,000 then are clients who are on ongoing service packages?---Roughly, yes, those
15 numbers, yes.

And how many of the balance are clients who are receiving one-off advice?---Well, the rest – yes, the rest of the clients would either be clients that have received one-off advice at any particular time.

20

Well, presumably, it’s only one-off advice in that year, isn’t it? If they receive one-off advice in the year 2008, you’re not counting them as a client in 2017, are you?---Sorry, I will just – yes, so what – what – yes, maybe just rephrase that? So what are you – can you just ask your question again, please?

25

Yes. Of the 191,000 or so - - -?---Yes.

- - - you think about 10 per cent are ongoing service clients, so about 19 or 20,000, of the balance then of about 170,000, how many of those clients are clients that received one-off advice in that year?---I don’t know that number.

30

Okay. Do you know how many are clients in respect of whom commission is paid?---No.

35 Can I show you a document, which is CBA.0001.0095.3334. So you see this is an appendix to a response by Commonwealth Financial Planning to a notice of direction under section 912C of the Corporations Act?---Yes.

And it asks for the total number of ongoing service package customers in each of the financial years: financial year ’11, financial year ’12, 13 and 14?---Yes.

40

And you see there’s a table in the bottom third of the page – can we just blow up that table – and that seems to suggest that there were somewhat consistently, in the period 1 July 2010 to 30 June 2014, about 20,000 clients receiving on ongoing service contracts; does that sound right?---Yes, I know the number to be about 20,000 but it varied from year to year.

45

All right. So – but was it about 20,000 every year?---Well, I know this notice that we produced, and we did actually – off the back of getting that number was once we had got Deloitte to help us determine the exact number of clients, so that’s – yes, that’s – that would be the numbers that we – we – we have.

5

All right. And that, obviously, ends as at 30 June 2014. Does the number of ongoing service clients remain constant, that is, about 20,000 each year?---I don’t know the exact number, but certainly it was – yes, it’s roughly around that – that number.

10 Okay. Roughly around 20,000 each year?---Yes.

And I might just tender that document, Commissioner.

15 THE COMMISSIONER: Exhibit 2.80 will be response to notice of direction – or appendix 1 response to notice of direction, CBA.0001.0095.3334.

**EXHIBIT #2.80 APPENDIX 1 RESPONSE TO NOTICE OF DIRECTION
(CBA.0001.0095.3334)**

20

MR HODGE: Thank you.

25 Now, if we bring back up the statement that we were looking at, which is CBA.9000.0021.0001, and go again to the second page, let me just clarify a few other things about this: you see that the number of clients for the year ending 31 December 2013 is said to be 164,000 clients?---Yes.

30 Now, that number continues to increase through to the end of 2017. Would that increase include any clients who were paying additional clients paying commission to Commonwealth Financial Planning?---Okay. Can I just clarify when you talk about “commission”, are you talking about grandfathered arrangements or are you talking about ongoing service fees or initial advice revenue?

35 Well, your statement says in paragraph 6:

The total number of clients in the fourth and fifth columns in the table above comprise clients that –

40 and then subparagraph (b):

...paid commissions in any calendar year.

45 And then you explain:

Where the relevant fee or commission was paid out of a CFS product or, in the case of the total number in the third column above, a fee or commission paid in respect of a CommInsure policy.

5 ?---Right, yes, okay.

So that's what you meant?---Yes.

10 So what I want to understand is: is it possible that that increase from 164,000 to 191,000 included an increase in the number of clients paying commission?---The way that fees – so before – obviously pre-FOFA there was commission that was paid on – on – that clients paid commission with. After FOFA, it's an advice services fee. So it's kind of a different fee. And that's – and then the actually ongoing service fees are on top of that. So commission, yes, would be that we would earn revenue
15 for that – for those clients across that. As to the break-up of kind of all of those payments, I'm unaware of. But it would be us looking at our systems. So it is whatever revenue Commonwealth Financial Planning was earning and it was in the form of different payments.

20 I think we might be at cross-purposes, Ms Perkovic?---Yes.

As you've noted from the introduction of FOFA it wasn't possible to receive - - -?---Correct.

25 - - - commissions in respect of new clients?---Yes.

It was possible to continue to receive grandfathered commissions - - -?---Correct, yes.

30 - - - in respect of existing clients; correct?---Yes.

And there are some products, though, that FOFA doesn't apply to, like life insurance?---Yes.

35 And CommInsure offers life insurance?---Yes.

Is it possible that some of this increase in the number of clients from 31 December 2013 to 31 December 2017 includes clients that CFPL has signed up to CommInsure life insurance policies?---I don't think the increase is just because of - - -

40 No, no?---Yes.

I understand. I am just asking is any part of it - - -?---Yes, it is. Yes, insurance commissions would be included in that.

45

Okay. So what appears to have happened is that from the end of 2008 until the end of 2017, the total number of clients has almost doubled; do you agree with that?---Yes.

5 And at least from 31 December 2013, new clients wouldn't have been paying commission on investment products?---That's right.

10 So the new clients after 31 December 2013 must be confined to, (a), clients who are on ongoing service packages, (b), clients who are receiving one-off financial advice, and, (c), clients who are being signed up to insurance policies that are outside of the FOFA regime; do you agree?---That's right, yes.

15 And during that same time period from the end of 2008 until the end of 2017, the number of employed advisers has fallen from 733 to 582?---Yes.

And that's a drop of, what, about 25 per cent in the number of advisers; do you agree?---Yes.

20 So the number of clients has increased by 100 per cent, the number of advisers has decreased by about 25 per cent; do you see?---Yes.

25 Is there a concern within CFPL about what this means for the ability of any of those employed financial advisers to actually service those clients?---Because the – yes. Okay. The – numbers – now, the actual way that service and advice is provided through – through that period and systems that we have in place have changed. So while, yes, the number of advisers has decreased and we have increased the number of clients coming through, it is not really a strategic move to – to do any of that. It's basically that, you know, we are servicing ongoing service arrangements with clients and we're also using other methods to service clients as well, like telephone-based and video conferencing, which makes it a bit more efficient.

30 I'm not sure you're answering my question - - -?---Yes.

35 - - - Ms Perkovic. What I'm asking – or the question I asked was: is there a concern within CFPL about what this means for the ability of those employed financial advisers to actually service those clients?---Because we – sorry, the reason that – I'm just thinking through this – is because as the years – as we get through the transformation and do work through the business, there are other measures that we have to – that we actually help the advisers and ensure that their ongoing service arrangements are being met. So for example, what wouldn't happen earlier but now happens is that advisers that have large ongoing service books get higher supervision and monitoring, and also get kind of assistance with the servicing planner through that book. So what we have got better at and what we focus on is ensuring the number of clients that advisers have that they can actually meet the obligations that they need for an ongoing service arrangements for the clients that they actually have, and that is basically going in the later years, because obviously we know the issues that we had in the business before.

I'm still not sure that you've answered my question, Ms Perkovic. Let's break it down a little bit more. You understand, as a starting proposition, you have less financial advisers now than you did in – at the - - -?---Yes.

5 - - - end of 2008?---Yes.

About 25 per cent less. You agree?---Yes.

You have about 100 per cent more clients?---Yes.

10

Do you agree?---Yes.

Which means 25 per cent less advisers have to service 100 per cent more clients; do you see that?---Yes, I see on the mathematics, yes, but it - - -

15

This isn't the first time you've considered that change, have you – is it?---No.

All right. You've thought about the fact that you have less advisers and more clients?---Yes.

20

And you've thought about how it is that you can meet the servicing obligations to those clients?---Yes.

And you're aware that a specific issue that has been raised by ASIC is a concern that financial planning entities have been taking on too many clients for the number of advisers they have?---Okay. Well the concern – yes, the concern of ASIC is on the supervision and monitoring and fulfilling obligations. Yes.

25

Perhaps I will ask that question again. You're aware that a specific concern raised by ASIC in report 499 - - -?---Yes.

30

- - - is about financial planning entities having taken on too many clients for the number of financial planners that they have?---Yes.

All right. And is that a concern that you personally have had to consider in terms of the management of the financial planning business?---Well, we have, but we have actually implemented different controls to ensure that that service is delivered in – yes.

35

Does that mean you've – you're saying you've changed your systems so that each adviser needs to do less per client than they needed to do 10 years ago?---No, we have improved – we – sorry, if I just take it through – because I know – there's different transformation that's happened through the business. So if you're asking me am I – how am I confident that the advisers are meeting their ongoing service obligations, it is because through the transformation of the business and particularly post the – the issue with OGS, we have additional controls that we have put in that ensure those obligations are being met by the planners.

40

45

I can't – I'm sorry, Ms Perkovic, I just can't tell whether you're deliberately not answering my question?---Yes.

5 The question that I asked was concerned with the fact that the number of clients that you have has risen by 100 per cent and the number of advisers that you have has fallen by 25 per cent?---Yes.

10 And my question is: is it a matter of concern for you how it is that that smaller number of advisers can meet all of their commitments to that greater number of clients?---Yes. So in CFPL – so importantly, the actual licensee helps and assist the planners with their – with the – the work that they do. So thing – so the – so we actually have things like a paraplanning service that actually assist the advisers to do their work. We also have had some efficiencies in them – in their ability to – to do their reviews. So there are – you know, I think there is always – you know, work
15 that we ensure that we're meeting our obligations, and it's not just us focusing on adding more clients. We would put more financial advisers on. There's no – there's actually no reason at all for us not to put on more financial planners, other than now we're very strict on what types of planners and people that we bring into the business. So the business then ensures that the right obligations are being met to the
20 clients, but it might not always just be, you know, service through the planners. They have support that they can actually call on in – with head office – head office systems.

25 Right. So I've heard, I think, picking things out of your answer, three things that you've identified to attempt to explain how you can deal with this increased number of clients with fewer planners. The first thing is paraplanners?---Yes.

30 Is that right? And the second – and we will come back to that in a moment. The second is increased efficiencies?---Yes.

And the third is support from head office?---Correct, yes.

35 Before we go through each of those, is there anything else that you want to identify as a reason why you are apparently unconcerned by the 100 per cent increase in the number of clients as compared with the 25 per cent decrease in the number of advisers?---I don't think so at this stage.

All right. So let's take paraplanners first?---Yes.

40 What is a paraplanner?---Okay. So a paraplanner works with the financial – well, the paraplanning team helps assist financial planners put together a statement of advice.

45 Were there no paraplanners in 2008?---There was a smaller team of paraplanners in 2008.

I see. So in 2008 it would be necessary for the financial adviser to put together their own statement of advice for the client?---They still had – they had – they had paraplanning services but they were very small.

5 I see?---Yes.

There were fewer paraplanners that they could rely upon?---Correct, yes.

10 And now CBA has increased the number of paraplanners that it has?---Yes, through that period.

15 And I assume a paraplanner is cheaper for CBA than a financial planner?---I don't know their salaries but it – it – the remuneration would be a different structure because they're not review – they're not looking at clients or revenue generating.

And the increase – and what I understand you to be saying is that now rather than particular work being undertaken by the financial adviser, it is, instead, being undertaken by the paraplanner?---Correct.

20 Is that right?---Yes, yes.

25 And that's not a matter of concern for CBA?---No. I think it's great that an individual client comes in and there's more than one person that reviews the advice and helps in assisting the advice. So they work very closely together.

30 A paraplanner doesn't need to have the same qualifications as a financial adviser?---At CBA the paraplanners – we actually have the paraplanners to have the same qualifications, which is degree qualified and RG146 as we do with supervision and people that supervise the monitor. So they're not – they're not authorised – so they're not authorised to give advice but they do need to work with the adviser and understand the advice process.

All right. The paraplanner is not authorised to give advice?---No.

35 They have not achieved whatever is necessary in order to be authorised to give advice?---No, paraplanners still go through the training, the same training that a planner does at CBA with the – with the induction.

40 So why don't they get authorised to give advice?---Because they're – well, their job role is to actually complete – help the advisers complete the SOAs. So these are people that work with the planners but they're not people that – that actually, yes, give advice directly to clients.

45 And then the second gain was in relation to efficiencies?---Yes.

So can you explain what that means?---Okay. So efficiencies in systems that we have. We also – with respect to financial planners when they go through the advice

process, we help them – well, the advice process and the documentation, we work through systems that can help them work through – work through kind of their issues. And also – yes, so when – yes, so basic – so – sorry, because I’m just – working through and I think the confusion is while the number of advisers are
5 reducing, we actually have support staff at head office that is increasing, and that’s where the difference is in actually helping the obligations in – in actually servicing and looking after our clients.

10 I’m sorry, I’m not sure if we’re now blending - - -?---Sorry.

- - - from your second reason to your third reason - - -?---Yes.

- - - for being unconcerned. The second reason was efficiencies. The third reason is assistance from head office?---Correct.

15 You’ve offered an explanation as to what you mean by efficiencies. I’m not sure, frankly, what it means?---Okay. So with - - -

20 Do you want to try again?---Yes. So with the efficiency part, over the years, we have worked – we’ve worked to actually have systems in place where we can track, you know, the advice process better, financial planners can – can – can draw on a team to help with the – particularly people with ongoing service, they can help with actually looking and monitoring investments that clients have. So there’s a lot of, yes – I know I’m blending the two because probably the efficiencies are both at a head
25 office level and also at a planner level. Buy I would say, you know, a client coming into a planner in 2008 versus 2017, the experience would be different and planners would have a lot more resources available to them to fulfil their obligations and go through the advice process. So there’s no question that, you know, advice is still,
30 you know, a very paper-based system, but through – you know, through systems and processes that we’ve implemented across that period, we have just been able to help monitor and – and help advisers with their – with their obligations.

35 When you say if you come in face-to-face the experience must be different, the most obvious way it must be different is it must be much shorter?---It can be shorter, depending on what the advice the person is getting.

Well, it has to be. You had 25 per cent more people - - -?---Yes.

40 - - - 10 years ago dealing face-to-face with half the number of people. Now you have twice the number of people – twice the number of clients and 25 per cent less people seeing them?---Yes. The length of – sorry, the length of the time doesn’t – the length of the time that a planner spends with their – with their client depends on the circumstances of that client, and, you know, an adviser’s obligations in going through the financial needs analyse and also through the statement of advice.

45 Can we go to the third reason you offered, which is head office support. Can you explain what you mean has changed in relation to head office support?---Okay. So in

respect to head office support we have teams that help with the monitoring of investments. We also have teams that – that help with particularly, for example, if a client cannot or an adviser cannot do an ongoing service obligation or meeting, then we have phone-based and video conferencing teams that the advisers can actually use
5 as well for that – for that process. And I think better education and training as well.

Can I just clarify: when you talk about having advisers who can do phone-based - - -?---Yes.

10 - - - and video conferencing, those advisers are included in this count of the number of employed financial advisers; correct?---That's right, yes.

So was it the case that going back 10 years ago there wasn't a head office function where there are employed financial advisers?---Correct.
15

So, in fact, this table is not deliberately but slightly misleading because what we should understand is that 10 years ago there were 733 financial planners that were effectively out in the field; is that right?---Correct, yes.

20 And now it's not the case that there are 582 planners out in the field. In fact, there are even less than that?---Well, no, they're still out in the field but the location – yes, they're still out in the field.

25 Well, some of them are sitting back in head office in order to provide this support; is that right?---Yes. But they're – they're the team that actually they can tap into. So those individuals will still be supporting, you know, clients that we have as well.

30 And is another reason that the – that you're unconcerned about meeting the ongoing service requirements that you have changed or standardised the nature of those ongoing service requirements?---Yes.

35 And does that mean, to put it very bluntly, the service that you are contracting to get now is less time consuming for CFPL than the service that you would be getting had you contracted in 2010?---No, that's not right. The service that you – for an ongoing service arrangement, the experience and what the client receives, 100 per cent depends on what the actual client wants.

40 All right. Well, we will come back to that. So let me now move to BW financial advice?---Yes.

We've mentioned already that that was acquired by CBA in 2008?---Yes.

45 And as with CFPL, BWFA financial advisers are typically employees rather than authorised representatives?---That's correct.

And BWFA ceased full scale operations in October 2016?---Yes, it did.

And what happened to the financial planners that were employed at BWFA at that time?---So they had a few options. So the financial planners could either join one of our other licensees or CFPL.

5 I'm sorry, go on?---That's okay. So our – so at the time the financial planners had options, obviously the business closed and they – their roles were made redundant. They could have had options to – if they chose, to go to work at CFPL or one of our other licensees.

10 And is that what they all did?---Different combinations of people, I – I actually left the business in September to take on my new role, so actually the – the work and where people ended up, I'm not familiar with, but people took different – different employment operations.

15 All right. Now, I want to just work through the ongoing service packages that were available from CFPL and BWFA over time?---Yes.

Both of those entities offered ongoing service packages?---They did, yes.

20 And could you just explain what you mean by an ongoing service fee package?---Okay. And this – so an ongoing – an ongoing service fee package is where a client would pay a fee for an ongoing relationship with their client. They would have certain services that the adviser would – would have with – with that client, and in particular, probably the most important element of an ongoing service
25 relationship is to have an annual review.

All right. And between at least 1 January 2008 and I assume now, CFPL had an ongoing service package available to its clients?---CFPL did, yes.

30 All right. It still has an ongoing service package available to its clients?---It still does, yes, different packages.

Does it only have one now?---It only has one now, correct.

35 Okay. And you mentioned that the most important element of an ongoing service package is the annual review?---Correct, the opportunity for a client to have an annual review.

Well, that's quite different, isn't it? There's two different things here, aren't there?
40 One is you have a service package which means you have an annual review, and on the other hand, you have a service package which means that in some sense you have the opportunity to be offered an annual review?---Every ongoing service arrangement invites the client for an annual review, but it is actually at the client's discretion whether that annual review occurs or – or not.

45 And at the moment, then, the package – the one package that CFPL still offers - - -?---Yes.

- - - that contains an offer of an annual review; is that right?---It contains – yes, contains an offer of an annual review.

5 And is that an offer that requires the planner to contact the client to make the offer?---Correct, yes.

And is that, you say, consistent with what has always been the case, that it's simply a requirement that they be offered an annual review?---Correct.

10 But the fee gets paid regardless of whether the annual review occurs?---Correct.

All right. And BWFA also offered ongoing service packages from about - - -?---It did, yes.

15 And I just want to break down some of these packages because they have changed. There's something that was called the ongoing service package and is now referred to as the Legacy ongoing service package?---Yes. So you're looking at CFPL first?

20 Yes?---Yes. Yes.

And that was something that was offered from 1 January 2008 until June 2013?---Yes.

25 And then there was another package called the standard service package?---Yes, standard service was a different package to an ongoing service relationship, because standard service did not have an annual review.

30 Well, it didn't have the offer of an annual review?---There was no annual review in service.

No possibility of an annual review?---An annual review, correct.

And that was offered from 3 September 2009 until June 2013?---Correct.

35 And then there was, on 1 July 2013, two new packages that were introduced?---They were, yes.

One was the ongoing service package?---Yes.

40 And the other was – I'm sorry, one was the local ongoing service package; is that right?---Yes.

45 And the other was the central ongoing service package?---Okay. Yes, so the central ongoing service package, again, was a health check and a phone-based. So that package itself, like, wasn't considered – it's not – it didn't have the ongoing – it didn't have the annual review meeting in there.

I understand, this can be quite confusing, I think, because it's called the – by you – –?---Yes.

– – – the central ongoing service package?---Yes, yes.

5

But what it doesn't actually have is ongoing service by your definition, which is an annual review?---Yes. Yes. So there is service obligations that the client can have access to a financial adviser but the actual one component, which is the annual review, yes, isn't in that package.

10

And CFPL stopped offering the central ongoing service package in November of 2016?---It did, yes.

15 Can you explain why it did that?---When we were reviewing the packages that we had – so as part of having a look at what we wanted to do going forward, we felt that from an ongoing service relationship wanted one package, and that package to include an – an annual review.

20 And Pathways doesn't have the same packages, but, rather, it's up to each adviser to craft their own package?---Yes, so Pathways – each – each individual adviser will have kind of a list of services that they provide, but the ongoing service package will include an annual review. So a service or the standard type service package doesn't – is not in Pathways. It's only really that one annual review package.

25 And BWFA was offering similarly named packages, that is – – –?---Yes.

– – – standard service, ongoing service, local ongoing service, central ongoing service – – –?---Yes.

30 – – – from about November 2010 until – – –?---Correct.

– – – it was shut down in 2016?---Yes.

35 I'm sorry, I may have asked you this, why did – why was the decision made to shut down BWFA?---Okay. So if I can make a distinction because the licence for BWFA is still existing but it doesn't give any financial advice. When I was – when I was responsible for the business, I did a strategic review. There were a few elements that was important to have the Bankwest Financial Advice model ensure that we could grow the business. The difference between this business and Commonwealth
40 Financial Planning – and Commonwealth Financial Planning obviously works very closely with our retail banking customers – with Bankwest, we weren't as integrated in the Bankwest model, there were different systems that we were operating off because Bankwest obviously had different systems, and so from a strategic
45 perspective, we needed investment in the business to help it grow through that, the Bankwest leadership team – we went to the Bankwest leadership team to ask for that and they preferred that we looked at other options to service the Bankwest clients. Off the back of that, we then reviewed and thought that it was more efficient and a

better way to offer service for these clients using our existing licensees. Obviously through that process we had already identified the – the – the OGS issue in Bankwest and decided as a go forward – go forward it is better for those clients to be serviced from our other licensees who are equipped and resourced.

5

And so just so I can clarify, it wasn't connected with the extent of the failure of BWFA financial advisers to actually provide service to clients who had contracted for ongoing service?---One of the – sorry, out of the three factors – so one was we needed more investment. Secondly, we already had licensees that had established, and the third was we needed – we needed better supervision and monitoring to ensure that the ongoing service packages, yes, could be delivered.

10

And - - -?---And it's the third one that we decided a better way going forward is to use one of our existing licensees where we – where we have the supervision and monitoring.

15

Because of the extent to which BWFA advisers were not providing services to their clients?---Well, didn't have the proper supervision and monitoring, and we didn't have the proper supervision and monitoring as a licensee, and for those clients, wanted to give them the opportunity to – to use one of our other licensees.

20

Are you trying to say because you didn't have the proper supervision and monitoring, that, therefore, BWFA financial advisers were not providing ongoing services to their clients and that was the thing of concern?---Yes, we – yes.

25

And it was the extent of that failure to provide services which was the reason why you decided you needed to move those clients to other businesses?---Yes, it was one of the three contributing factors, yes.

30

All right. Now, the Legacy or what's referred to by you as the Legacy ongoing service package, that contained an obligation to have an annual meeting; is that right?---Correct, yes.

35

And if the client did not want to have an annual meeting, did that have any effect on the fees that were charged?---No, the fees – the fees for these packages wasn't actually differentiated between whether the annual review went – if the client decided that they didn't want to have an annual review, then that was – that was their choice.

40

I just want to understand this a little bit better. Can we bring up Ms Perkovic's statement CBA.9000.0006.0001. This is your first statement of 3 April 2018, Ms Perkovic?---Yes.

45

And if we go to paragraph – I'm sorry, if we go to page .0004, and you see in paragraph 24:

A consistent core component of the Legacy ongoing service package was an annual review meeting.

?---Yes.

5

And you explain there that:

10 *From January 2008 until around September 2009, template statement of advice would provide at each annual meeting we will revisit your objectives, cash flow management, investment strategy tax planning and any other issues such as the state planning and social security in line with any changes in the year ahead.*

?---Yes.

15 And then from September 2009 until June 2013 you explain in paragraph 25 that the template statement of advice became even more explicit about this:

20 *You will meet with me at least annually to discuss your financial plan. During this meeting I will discuss with you whether your goals have changed and review your plan to ensure it still meets your needs.*

?---Yes.

25 So that it would appear as if a fundamental component of the service to be provided under the Legacy ongoing service package was the annual meeting and not just an offer of it. It actually occurring; do you agree?---Yes.

30 And your answer to some questions before where you talked about it always only being an offer of an annual meeting, that doesn't seem to quite be correct; do you agree?---Yes, so the – I just want to – because there – sorry, we're dealing with multiple entities across multiple years, what I was actually trying to say is the package offered the review but it's actually up to the individual client to decide on that review. Now, with these packages and the review for the periods that you – that you're talking about, we know that we had concerns in the business and we had kind of issues where because of lack of supervision and monitoring, we couldn't
35 determine whether the packages and the service had been delivered, and also the existing issues in the business which is part of the transformation, you know, we had documentation issues. So I was just trying to work through if we're going to go through each of the packages, you know, there are solutions and known issues that
40 happy to talk through, this is going through each of – yes, each of the – the actual packages themselves.

45 Was the known issue with the Legacy ongoing service package that the fundamental part of it which was the annual review was not occurring?---For – firstly, there's instances of it, obviously, that we find out later that wasn't occurring, and then we didn't have proper systems to record that that meeting had happened. So there was

known issues in the business with respect to document management, and – and, secondly, there – you know, we know that advisers didn't meet their obligations.

5 Is it the position of CFPL that if a client was on the Legacy ongoing service package and was offered an annual meeting but declined to attend, that, nevertheless, CFPL is entitled to a fee for that year?---It – you would have to look at the actual reason for why the client – yes, so if the client – if there was – if – yes, so if the client actually chose not to have a review, there was a file note that the advisers would need to put on, and they need to understand exactly why the client didn't want to – to go ahead
10 with that review.

So I think the answer to my question is “yes”, that the position of CFPL is if the annual review doesn't occur, that doesn't – I will put the question a different way – that doesn't necessarily mean that CFPL isn't entitled to a fee?---If you're talking
15 about a period at that time?

Yes?---Yes.

20 This is in relation to this, to the Legacy ongoing service package?---Service, yes.

When you're saying we're talking about then does that mean the position has changed so that now for the most recent package if a review doesn't occur CFPL won't charge a fee?---The review is very – a very important component for people on the ongoing service. So what we have done now is actually ensure that 100 per cent
25 of clients get their review, and we've put extra controls in place so a client can actually have that – their review. So – so every client that is signed up for an ongoing service package will – will have a review.

30 Sorry, will have a review or will have an offer of a review?---Will get a review as part of their package.

Okay. And so the position of CFPL now is if a client declines a review it doesn't need to pay the ongoing fee?---So if a client declines a review – sorry, because I think we're just wanting to just make sure that we're – we're – we're clear here.
35 Under – with CFPL, the – the review needs to happen. Now, if a client declines a review for – you know, they – they actually still need – we need to understand why that client has declined a review, and it is up to – you know, we need to – we need to work out whether they need to be on an ongoing service package or not because not every client is on an ongoing service package. So if you decline – I just want to – so
40 if you decline a review so part of your package is the offer of – is to actually have a review, okay, now, if the client decides not to have the review, then it's actually at their discretion, and if I take you to, you know, where we are now, the client and the fees are totally transparent to the client. So the client gets a fee disclosure statement. And every two years will opt in. So it is up to that client to decide – if they decide
45 that they don't want to have review, they have full transparency that they are still being paid – that they still, you know, have – have – are getting charged for the ongoing service package.

Do you understand the distinction between - - -?---I do, yes.

- - - an offer of a review and having a review?---Yes.

5 You appreciate that those are two different things?---Yes.

Is CFPL contracting with its clients to make an offer of a review or to have a review?---Okay. It is an offer of an annual review.

10 And does it follow that the position of CFPL is that regardless of whether the review does or does not take place, so long as it in some fashion offers a review, it is entitled to continue to charge service fees - - -?---Yes.

- - - to the client? All right. And does CFPL have a way of valuing what an offer of an annual review is?---I think if you look on the statement – on my statement at part 53 - - -

20 Yes?--- - - - there is a whole list of – there is actually a whole list of services that – that – that we part as part of the ongoing service package. The fees that are charged for the – for the ongoing service package are a flat dollar fee and they’re determined based on a number of – a number of situations for that client. So depending on what you – depending on the type of advice or the investments that you have will determine what fee you’re being charged, and so then that fee is actually for the whole raft of items that are on 53.

25 The flat fee, according to paragraph 55 of your statement, can vary from one and a half thousand dollars per year to a maximum of \$21,600 per year?---Yes.

30 And I think you were attempting to explain to us how is the actual fee calculated within that range?---Okay. So the advisers have a tool, which is called an advice valuation tool, and that tool allows them to put in the actual client situation, and off the back of that will determine what fee is being charged.

35 I’m sorry, I just don’t know what that means, Ms Perkovic?---Okay.

40 What does that mean?---So if you’re in – if you’re in – if you’re a client and ongoing service is appropriate to you, there will be a number of factors that will determine what that fee – the flat fee is for you. For example, it might be based on your advice, you might be needing, you know, more strategic advice, it might be on the amount of investment – dollars invested, it might be on the complexity of the advice that you have. So it’s a whole range of things that the advisers would use to determine what fee would be charged for that ongoing service.

45 Does it vary based on the amount of money that you’re investing?---That is one factor but not the only factor.

So is one factor that the fee varies to some extent according to how much money you're investing; is that right?---One factor is, yes, but not the only factor, because if you have strategic – you might need strategic advice, it might be a self-managed super fund, which is more complex. So there's a – there is a range of factors, but one is, yes, the amount of money that you invest but it's not the only factor.

And does that mean you might charge more to a client that has a self-managed super fund and is investing \$250,000 as compared to a client who is investing \$250,000 in a wrap platform?---Okay. I don't think we would – we would put somebody in a self-managed super fund with that amount of money but – but it would just be on – yes, it would – the – the – the value is one part of it, and then there's complexity of the advice that's provided across – across that amount. So it might be easier to give a few examples which I had attempted to do. So, for example, you might just be consolidating a group of your superannuation assets. You might be in a pre-retirement and you need to go to a post-retirement – you know, like a pre-retirement moving to a post-retirement strategy where you need ongoing service. You might have some complexities across that. So there is a range of factors that the advisers use, you know, that – that actually helps them determine what the ongoing service fee would be for clients that actually need ongoing service arrangements.

Is the starting point how much money is being invested?---It's not the starting point, but it is one – the starting point is the complexity of the advice that's provided, and then there's a whole range of different issues.

So is the way that it works that a CFPL planner will have to categorise the advice to be provided according to its level of complexity?---Different strategies determine different levels of complexity.

Okay. And so to take the simplest possible example, if you have a client that is being put into a wrap platform who is investing \$250,000, they will pay less than a client who is investing \$500,000 in a wrap platform?---Depending – that – not trying to not answer your question but it's just not a simple answer because it just does also depend on other factors that might be – that you need in the – in the advice relationship. So if all things are equal, that may be a determining factor, but it doesn't always come out – it – there's no – it doesn't always come out that way because if you have more money, you might – it's not a determining factor on the complexity of it.

All right. Can we go back to paragraph 24 of your statement, which is on page .0004. What you're explaining here is the Legacy ongoing service package which we've looked at whereas you've noted and I've noted a critical component is the annual review?---Yes.

Let me see if I understand your position correctly: do you regard this component of having an annual review as being equivalent to the component in the local ongoing service package of an offer of an annual review?---Well, the way that this is worded is that you would have a meeting each year.

Yes?---Yes.

So you're agreeing, I think, that this means that this is different – this required a meeting – as distinct from an offer of a meeting?---The way that it's worded, yes.

5

I'm sorry, you keep saying that, the way that it's worded. I'm asking about how you understood it?---Yes.

And you have been in the business for the last five years at least. Have you understood that there is a difference between what was being offered in 2013 and what is being offered now?---Yes, so I think you referred to the Legacy ongoing package, which varied around, yes, the different components, but yes.

10

Let's move to a different topic. I want to ask about the discovery of the fees for no service issue?---Yes.

15

When did you first become aware that there was a potential issue of clients of CFPL being charged ongoing service fees but not receiving the service?---Okay. So there's obviously three components of issues that CFPL was working through - - -

20

THE COMMISSIONER: Ms Perkovic, I have hesitated to interrupt you. I will interrupt once?---Yes.

25

We will get on better if you listen to counsel's question?---Yes.

If you have to stop and think about the question, do it, but listen to counsel's question and answer what you are asked?---Thank you. Yes, Commissioner.

30

Please put the question again.

MR HODGE: Thank you, Commissioner.

35

Ms Perkovic, when did you first become aware that there was a potential issue of clients of CFPL being charged ongoing service fees but not receiving the service?---Okay. There was a – the actual potential issue, not – if it is just called a potential issue in the business, then that is off the back of work that we did which we were trying to identify what other issues, you know, were in the business at the time of the transformation. When I found out that there – that there was the possibility of the issue, with respect to the ongoing service arrangement, it actually was after we did a thorough review across the '13 and '14 year.

40

Let's start with the Henderson memo. Could Ms Perkovic be shown CBA.0523.0001.0464. For some reason, Mr Costello and I have two different numbers at the top of the same document. Can we bring up CBA.0001.0089.3797. Thank you.

45

Now, this is a memorandum from Mr Henderson to Lisa Chambers dated 12 April 2012, Ms Perkovic?---Yes, Mrs Henderson.

I am sorry, Mrs Henderson?---Yes.

5

And you've seen this before?---I have, yes.

And you saw it about the time that Ms Henderson provided it because it was emailed to you, I think, on 3 May 2012?---Correct, yes.

10

And I will show you the email at CBA.0523.0001.0451. Can we put that up next to it. Thank you. So on the right-hand side of the screen you will see an email from Peter Sutherland to you and Ms Lykouras and copied to Ms Weber?---Yes.

15 And that's on 3 May 2012. You see a reference to Annabel in the first line there?---Yes.

Is Annabel Annabel Spring?---Yes.

20 Can you recall the circumstance of Ms Spring making a request for an update?---Yes.

And what was that?---Okay. So if I pull the Henderson – so can I just actually talk through to give you some contextually of this memo?

25 I think it might be better if you - - -?---Yes.

- - - just start by attempting to answer my question?---Yes.

30 Can you recall what Ms Spring's request was for an update?---Yes. Ms Spring was requesting at the time of the – in the business we were working through transformation. This issue does not actually relate to the Henderson memo. So the Henderson memo is actually or the ongoing service memo is about a particular issue in regards to how advisers – how clients were being allocated on a departure of an adviser. The second email that you have off the back of that is where Ms Spring is asking for any potential or unknown issues that we have at the – in the business, and
35 off the back of that is where we are trying to establish some unknown issues in the business. So the reference there on OGS is – is firstly one item of the Henderson memo or OGS memo, which is about how we allocated or didn't allocate clients once a adviser departed and then asked, kind of, is there any other potential issues, and at
40 this stage its potential unknown issues in relation to OGS.

Perhaps the way we will do this, Ms Perkovic, is to walk through the Henderson memo, as it is the earlier document in time?---Yes.

45 And then go back to the email. So the memo is dated 12 April 2012?---Correct.

It's from Ms Henderson to Ms Chambers?---Yes.

Were you aware of a request that Ms Chambers had made for Ms Henderson for the memo?---I wasn't – I was only aware once the memo came out.

5 And was the first time you were aware of the memo when you received the email on 3 May 2012?---Correct.

And the memo explains that its purpose is to:

10 *Provide an outline of the ongoing advice service offering and information on the manner in which the business identifies, records and tracks OGS clients to then inform potential risks that exist in relation to them.*

?---Correct.

15 And then in paragraph 2 it identifies what it is that OGS clients are told that they will receive?---Yes.

20 And then in paragraph 3 it explains that – it explains how the business currently ensures it delivers its OGS obligations?---Correct.

Or perhaps, more accurately, it explains that the business doesn't really do anything to ensure that it delivers its OGS obligations?---Okay. The two – yes, the two issues are – from this memo is, (1), at that point in time Ms Henderson, based on the information that was available, found that there were clients that were attached to advisers who had departed. So that was actually one issue. So we had OGS clients that were attached to an adviser that actually had departed the business. It didn't record whether – whether service was delivered or not. So that's actually a component in there. It goes on to say that there's an identification of 257 clients that on that point or that time when that report – when that memo was – was made, those – those clients did not – or not – were not attached to an adviser. So what we knew was that we had an issue with how clients were allocated once an adviser departed.

35 Well, let's – let's attempt to take this piece by piece. Again, if you could just try to focus on the questions that I ask you and answer those questions?---Yes.

In section 3 what is being considered by Ms Henderson is how the business actually tries to meet its ongoing service obligations; do you agree? The section is titled - - -?---Yes, yes.

40 - - - How Does The Business Currently Ensure It Delivers Its OGS Obligations?---I see it, yes.

Do you see that?---Yes.

45 You agree that's what that section is considering?---Yes, it's outlining them. Yes.

And it explains that an engagement letter is sent to the client confirming the offering to the client. You see that, the first sentence?---Yes.

And then it explains that:

5

The financial planner is required to flag the client as being an OGS client in COIN.

?---Yes.

10

What is COIN?---COIN is the financial planning software.

That is used by CFPL?---Used by CFPL at the time.

15

And then it explains that a timetable of OGS obligations is available on the intranet?---Yes.

And the timetable, it is said by Ms Henderson, is generally kept as a hardcopy in the client file with diarised reminders?---Correct.

20

But then it explains:

There is no licensee standard which outlines this process and we do not have sufficient information available to verify whether or how the COIN process is being utilised or the monitoring method.

25

Do you see that?---Yes.

30

And so if we return to the question I asked you a few minutes ago: what the memorandum explains is that CFPL doesn't really do anything to ensure that it delivers its OGS obligations; do you agree?---What the memo is telling us at the time is that there is no, yes, supervision and monitoring to identify whether the obligations – whether we are delivering the service. It is not saying the service isn't being met.

35

And then the memo goes on to explain:

The financial planner is required to maintain a register of all their OGS clients.

40

?---Correct, yes.

But:

The register is not audited for accuracy.

45

?---Yes.

And:

The departing planners may refuse or be unable to provide that register on departure.

5

?---Yes.

And then over the page, page 2, if you go to the top of the page, it then explains:

10

A check of the existence of OGS checklists for specific clients are conducted when general file reviews are completed by advice assurance, advice quality coaches and financial planning managers.

?---Yes.

15

What that section then is identifying is the absolute limit of what it was that CFPL was doing at the time to check that ongoing service obligations were being met by its employed advisers; do you agree?---Yes, so it's – it's identifying that the lack of ongoing – it is identifying the lack of supervision or monitoring systems.

20

All right. And then in section 4, this is then when it turns to consider what happens when a financial planner leaves the business?---Yes.

And this is when it then moves to identifying the orphan client issue?---Yes.

25

And it explains that:

At present, when the financial planner leaves their role as the financial planner, it is the FPMs obligation to ensure all clients are transferred to new planners within the business.

30

?---Yes.

And is FPM financial planning manager?---Manager, correct.

35

And it's explaining the FPM needs to ask for a copy of the OGS register from the financial planner?---Yes.

And if the register is able to be relied upon, the clients are transferred?---Yes.

40

And that's a reference back to the fact that no one actually audits the registers?---Yes.

And if the register is not available or not complete, then the financial planning manager has to investigate further to identify who the financial planner's client base is?---Yes.

45

And it's explained that this is currently done manually using a number of data sources.

?---Yes.

5

And it then identifies the first source of data as being the CFP operations team?---Yes.

And how that list is collated?---Yes.

10

And then it explains that there was no source of truth identified in Ms Henderson's investigations to reflect a single reference point of all OGS clients?---Yes.

Continuing:

15

That the collation of OGS clients is a manual investigation involving searches of multiple different databases and sources of information.

?---Yes.

20

And Ms Henderson observes:

That even with thorough investigations, clients can be missed due to issues with adviser codes.

25

?---Yes.

And you referred before to the 257 clients. Can we be clear what Ms Henderson said about the 257 clients. She said:

30

On my initial and very brief analysis of FMS/first choice data, I have identified 257 clients who are paying OGS fees and who are not assigned to a financial planner.

35

?---Correct.

And you certainly don't mean to suggest that she was in any way suggesting that the problem was limited to 257 clients?---The memo, at that time, yes, suggested on her analysis that there was 250 – on that day there were 257 clients, correct, who were paying OGS fees and weren't attached to a financial planner.

40

The memo which we have in front of us - - -?---Yes.

- - - said that there were 257 clients that she had identified on a very brief and limited review?---Yes.

45

You agree that in no way does it suggest that the problem is limited to 257 clients?---No, I agree, yes.

5 And then - - -?---But it does – I – sorry, I just want to be clear because it is a point in time – and the process to actually allocate clients to the planners who had departed, you know, would vary across – across the time. So I just wanted to be clear because it’s – it is an issue that’s identified and the second part which you’re talking about, the supervision and monitoring or lack of systems to do that, is – you know, basically the memo’s telling us, yes, that, you know, we – we, you know, have this current
10 concern with the 257 clients who are not attached to an adviser, and we have limited supervision or no supervision or monitoring, you know, on, you know, with respect to – to issues. The context that I just want to provide, if you allow me to provide, is that this is a time of the business that we are going through significant transformation. I think it’s important to identify that because it will help put some
15 context as to what is happening in the business at the time. So from – is that okay if I – if I do that? Okay.

Ms Perkovic - - -?---Yes.

20 - - - is the reason that you are dissembling in the way you are dissembling because you are trying to pre-emptively explain why it took CFPL more than two years to notify ASIC of its breach?---I am trying to – yes, I am trying to – sorry, I am just trying to explain to you in this two year period before we actually identified that we actually had a problem with OGS as to what we were solving for with the
25 information that was in front of us in a broader context of the business.

THE COMMISSIONER: Ms Perkovic, I do not regard that as answering counsel’s question. Please ask the question again. I want you to listen to it and I want you to answer it directly as you can?---Okay.

30 Please put the question again.

THE WITNESS: Thank you. Yes. I apologise.

35 MR HODGE: Ms Perkovic, is the reason that you are dissembling in answering my question in order to attempt to pre-emptively explain why it is that CFPL took more than two years to notify ASIC of its breach?---So at the point in time in 2012 there was no known breach. When we knew the breach had occurred in 2014, that is when we notified ASIC.

40 Ms Perkovic, if you look at the memo, you see that Ms Henderson explains how she captured the 257 clients?---Yes.

45 That’s in the third last - - -?---I understand that.

- - - paragraph from the bottom?---Yes.

Then you see the second last paragraph says:

5 *The initial analysis has not captured those financial planners who have left the business and who still have active CFS first choice adviser codes due to time constraints. It is highly likely that there will be more clients captured on conducting a more in depth analysis.*

?---Yes.

10 And then it says:

There is a project on hold that was being led by –

15 is that Huseyin Boztepe?---Yes.

15

Continuing:

20 *...senior manager strategic development wealth manager finance strategic to investigate the OGS issues, I was not able to find out when, or if, this project would resume.*

Do you see that?---Yes.

25 And what was the project that had been put on hold?---Okay. That project was not the issue with – with identifying any failure in OGS. It was actually a piece of work that was happening in the business that was looking at OGS packages.

At the ongoing service packages; is that right?---Yes.

30 That's what the project was looking at?---It's totally a separate different - - -

Was it looking at whether OGS was being provided?---It was not, no.

35 It was just looking at the composition of the OGS packages, is that right?---The business was looking at – the – leading into FOFA, I think the business was looking at what are the ongoing service packages, and how they could be reviewed, and that was actually what these program of work was doing.

40 All right. So you – and you were aware of what that project was at the time you received this memorandum?---No, I wasn't.

45 When did you find out what the project was?---I found out after when I made some inquiries, because we weren't sure. We just wanted to clarify exactly what was occurring within – within – within the business.

All right. Well, the memo is dated 12 April 2012. You received it as an attachment on 3 May 2012?---Yes.

Had you already received the memo in some other form before the email that we have?---This memo, no.

5 Okay. So you received the memo, you saw the reference to the project, and then you made some inquiries to find out what that project was?---Okay. I just want to clarify that it is two separate issues here. The OGS reference in that memo stems off other issues. The OGS issues – and I think this is why – and I apologise not answering your direct questions because I want – I just wanted to put some context. This was a program - - -

10 THE COMMISSIONER: Well, Ms Perkovic, I will interrupt you?---Yes.

We will get along much - - ?---Sorry.

15 Just listen to me?---Yes.

We will get along much more quickly and efficiently?---Yes.

20 And if I may put it quite bluntly, it will be safer for you if you attend to counsel's questions. Listen to them. If you need to stop and think about your answer, take your time?---Yes.

25 Stop, think but then answer the question you are asked and stop?---Okay. I apologise.

Go on, Mr Hodge.

MR HODGE: Thank you. Ms Perkovic?---Yes.

30 Perhaps if I just ask you another question. Maybe we have misunderstood. The attachment to the email of 3 May 2012, are you saying it is not Ms Henderson's memorandum?---Yes. The update on OGS, which Annabel is – it was requested by Annabel in PR is actually – this – is off the back of this memo but the actual project that's being put on hold here is not a project to identify whether ongoing service was
35 delivered. This was a piece of work that was already happening in the business around ongoing service packages. So it's a separate piece of work that that was actually happening in the business at the time.

40 I think I understand?---Yes.

Let me see if I can attempt to put it back to you in a way so that we can all be on the same page: in the document, which is the email from Mr Sutherland to you, which attaches an OGS memo.docx?---Yes.

45 Do you see that?---Yes.

The OGS memo.docx is the memorandum from Ms Henderson - - ?---Yes.

- - - that is on the left-hand side of the page; is that right?---Yes.

And what you're saying is that Ms – well, Annabel, Ms Spring, was undertaking some different project and this memo was provided in response to a request that she
5 had made for an update?---So Annabel – off the back of this memo, it identified that we – on – on this day we had clients that were not allocated to financial planners, and we also told us that we had issues with supervision and monitoring. The most important component of this is that it told us that we needed to investigate this further. The memo in here does reference another separate piece of work that's
10 happening, titled OGS Issues, but it actually is not in reference to any of this. It is actually a separate piece of work that was happening at the time of the business which they were just looking at OGS packages. So there was no real – no real link or look – looking at that piece of work around whether OGS was being provided or not.

15 I'm sorry, I just do not understand - - -?---Okay, sorry.

- - - why anything that you are telling us matters. Why does it matter that there was some other project looking at the composition of OGS packages? Why is it preventing you from being able to answer my questions?---Because I feel that we're
20 just – the – the complexities around this is that I think the title of looking at OGS Issues in that piece and then having a look at this memo and then actually having a look at that, it seems to be tying together a piece of work that's having a look at whether OGS is being delivered or not. And that's what I just feel - - -

25 The facts are these, aren't there: there was a memorandum - - -?---Yes.

- - - that was prepared by Ms Henderson - - -?---Yes.

- - - in April of 2012. And we've seen that. You agree?---Correct, yes.

30 I tender that document, Commissioner.

THE COMMISSIONER: Yes. It's now so long ago I have lost - - -

35 MR HODGE: I'm sorry.

THE COMMISSIONER: - - - my note of what the - - -

40 MR HODGE: It's CBA.0001.0089.3796 – sorry, 3797.

THE COMMISSIONER: Exhibit 2.81, memorandum Henderson to Chambers and others, is that right, 12 April 2012, CBA.0001.0089.3797.

45 **EXHIBIT #2.81 MEMORANDUM FROM HENDERSON TO CHAMBERS AND OTHERS DATED 12/04/2012 (CBA.0001.0089.3797)**

MR HODGE: Thank you, Commissioner.

THE COMMISSIONER: Exhibit 2.81.

5 MR HODGE: And that memorandum was received by you no later than 3 May 2012 when it was attached to this email?---Yes.

I tender that email, Commissioner.

10 THE COMMISSIONER: Email Sutherland to Perkovic and others 3 May 2012 CBA.0523.0001.0451 will be exhibit 2.82.

15 **EXHIBIT #2.82 EMAIL FROM SUTHERLAND TO PERKOVIC AND OTHERS DATED 03/05/2012 (CBA.0523.0001.0451)**

MR HODGE: Thank you.

20 And what the email from Mr Sutherland asks you and Ms Lykouras to do is to size the exposure along a range of scenarios?---Correct, yes, of latent issues.

And that was size the exposure in relation to the issues raised by Ms Henderson?---One of the issues – and – and sorry I know that – I just wanted to be
25 really – can I just be kind of really clear on here: is the memo here is actually sizing one issue which is about – you know, we have clients or orphan clients, as we call them, to be allocated – to be allocated. A separate – in the time – and sorry, I just need to – I feel like I just need to provide some context because, at the time of the
30 business, we obviously are going through transformation, and there’s known issues that we are working through. One is off the back of enforceable undertaking that we have, one is off the back of remediation, and at this time we are then looking for a third stream of work which is we know a lot of – we know – we know obviously off the back of the enforceable undertaking at CFP at the time, there’s document
35 management issues and there’s a whole range of issues that we need to solve in the business and we are transforming. The second piece is that we are doing remediation program for inappropriate advice. Off the – the request off here is what are the – you know, let’s actually, you know, keep seeing what other issues – potential issues there are in the business that we need to fix as part of our transformation that’s happening in the business. So the Henderson memo was off the back of what else could there
40 possibly be that we don’t know at the time but need – you know, we actually really need to – to look into. This memo here identified the allocation of clients when they – you know, when we had an adviser departing, and also told us that we need to do some more work to investigate what the actual issues are. So at this point it’s a memo giving us indication that more work needs to be done to identify. It’s not
45 telling us that we have an ongoing issue other than 250 clients on that day are not allocated to an adviser that are paying ongoing service arrangements. So off the back of the memo we allocate these clients to ensure that they are receiving ongoing

service. The second piece of work that we do is improve the process for allocating advisers, and so that's an important context piece here. But this is – this request here is us trying to understand what other unknown issues there are in the business as we're working through our known issues of the enforceable undertaking of the remediation, and what else possibly could that – could that be. It's not suggesting that we have a piece of work ongoing which is looking at whether we are – are meeting our ongoing obligations or not, it's just a very specific different piece which is the culture of what are the – you know, what possibly could else be in the business, we need to review that, and find that. And that's the context why I apologise, I'm struggling, but I just wanted to give you the full picture as to what this memo was about. So it's not telling us that we have OGS issues, it's telling us we need to continue to investigate to find whether or not we have an issue in the business or not.

Ms Perkovic, you're not seriously suggesting, are you, that you understood from that memo that any problem was limited to 257 clients?---The problem – the – when we received the email – the memo, we identified at that time that we had a problem with actually departing clients, and allocating – sorry, departing advisers and allocating those advisers. So that was one component. The second component of it was that we needed improvement to our supervision and monitoring framework that was already going on off the back of the enforceable undertaking with respect to CFPL.

Ms Perkovic - - -?---So it was telling me that we still needed to identify - - -

Ms Perkovic – Ms Perkovic - - -?---?---Yes.

- - - can you just return to the question that I asked you. You're not seriously saying, are you, that you understood from this memo that the problem was limited to 257 clients?---The two things from this memo was, yes, the problem of orphan clients, and second was we needed to investigate further.

Is the answer to my question no, you're not saying that, you well understood that there was some issue wider than 257 clients, you just didn't know how wide?---I didn't know if I had a problem or not at the time, and so this memo was telling me that we needed to investigate further as to, (1), was there a problem and, (2), the extent of that problem.

You didn't know that you had a problem when the memo said:

There is no licensee standard which outlines any process, we do not have sufficient information to verify whether the process is being utilised or the monitoring method, we are not requiring financial planners to maintain a register of their OGI clients. This register is not audited for accuracy. It is also the case that departing planners may refuse or be unable to provide that register on departure. There is no source of truth identified in my investigations to reflect a single reference point for all OGS clients. Everything is done manually and by a number of data sources and, in the case of a departing financial planner, it is necessary for the financial planning

manager to effectively require the departing financial planner to provide a copy of the register or otherwise to manually attempt to figure out when the financial planner's client base is.

5 That's what the memo says. Do you really say you didn't understand there was a problem?---The memo was telling me that I needed to investigate.

And the request that was made of you by Mr Sutherland was to scope the size of the problem; do you agree with that?---The memo at the time - - -

10 No, no?---Yes.

Please listen to my question?---Yes.

15 Mr Sutherland asked you to scope the size of the exposure?---Of the unknown issue, yes.

And you did that?---We tried to do that.

20 Can we bring up CBA.0523.0001.0492.

This is an email from you to Ms Spring and Mr Sutherland and copied to Ms Lykouras; do you see?---Yes.

25 Is AFS a reference to Ms Spring?---Yes.

And you explain what the – based on limited analysis, what Ms Lykouras has identified so far in terms of the quantification of CFPLs potential exposure?---So the request – because obviously there is email chains between here. The request from Annabel was to – to actually put together – to see if we have – or what a provision would be if the – if we did have three components of an ongoing service problem. The first one is the – if we actually just – yes - - -

35 I'm sorry, I'm sorry - - -?---Yes.

- - - did you just say if we have three components of an ongoing services problem?---No there's three components.

40 That's what you just said?---Sorry. Sorry, I apologise. The memo – I'm just trying to explain what the memo is doing because at this point in time in the business - - -

THE COMMISSIONER: The memo or the email Ms Perkovic?---Yes.

45 Your attention was directed to the email?---Yes.

Would you be good enough, Mr Hodge, please, to ask your question again. I am not sure that the witness has understood it.

MR HODGE: Thank you.

THE COMMISSIONER: Would you ask her again.

5 MR HODGE: Ms Perkovic, you sent this email on 11 May 2012 to explain - - -?---Yes.

- - - what Ms Lykouras had identified as the potential quantification of the potential exposure?---Correct.

10

And you explained in your email that there were three key issues which would potentially, in your words, “impact us”?---There were three, correct, yes.

The first was ongoing service fee for no service cap breaches?---Yes.

15

The second was ongoing service fee reimbursements?---Yes.

And the third was client remediation costs?---Yes.

20 And in relation to the second, ongoing service fee reimbursements, you explain in your email:

This is where we have failed to provide the service.

25 Do you see that?---Yes, this is explaining – can I take a moment just to go through the memo?

Do you mean this email?---This email, sorry, yes. The first problem – the first one which is the OGS fee cap breaches, was – was a known issue that we had – had – had worked through. What the – what the memo – and the second part was obviously the issue, if we do have orphan clients, and the third component is the – is where OGS is not being delivered, correct. Now, at this time – I just want to be clear – is that we don't know the scope of that third component, which is actually has ongoing service been delivered or not. We're trying to size an unknown problem to – to put – to actually see that, you know, if there was a problem that we have in the business with respect to OGS, what would be the – the – the – what would be the potential exposure. But we weren't saying that we actually had the problem in the business at the time. And that's pretty – the importance of that is that what we're trying to do is really see, you know, what are the other issues through the transformation that we actually need to – need to look at. And so the context at the time of the – the memo – I know the wording of it is that we don't – it's not saying that we have an issue, it's just basically saying what's our potential through that – through that – through that process. The two known issues was that we did have a fee cap breach. We did know, you know, clearly that we would have this, you know, orphan allocated issue, but the one where advisers were not delivering their services was not known whether that was occurring at the time. We did know that we didn't have effective supervision and monitoring. Yes, we did know that, but we had no other indicators

45

to indicate that that – that was happening at that time of the business. What we needed to know was that we actually needed to investigate further and that’s what we did. That’s what we did across the 2013/14 year.

5 Ms Perkovic, your email says:

We have three key issues which will potentially impact us.

10 ?---Yes. So this email here is the – the email from – yes, we – we tried – so Annabel is asking us – Ms Spring is asking us, you know, what are the potential issues that we have in the business. I know the wording is not – is that but it’s actually trying to scope an unknown problem that we have.

15 Can I suggest this to you - - ?---Yes.

- - - it’s not an unknown problem. What was unknown was the value of the exposure of CFPL to the problem?---What we didn’t know was whether service was being delivered or not to clients who had ongoing service arrangements.

20 Well, you knew that there was no supervision or monitoring and you knew that there were some orphan clients?---Sorry, off the back of the OGS memo, yes.

25 And you identify that there are these two situations, the first is where the adviser fails to provide service in dealing with their client’s. The second is where the adviser has left. And we, that is CFPL, reassign the client for a period of time to an EM, FPM or regional support planner?---Yes.

30 And what you were attempting to do was assess the likely exposure of CFPL to each of those problems?---Potential problem for the ongoing service delivery at this stage. It is unknown.

You say in your words at the time:

35 *In relation to the first issue of the adviser fails to provide service in dealing with their clients, the total exposure for this is unknown but I have estimated to be \$3 million.*

?---Okay, the “I” in there is Ms Lykouras.

40 I am sorry, Ms Lykouras had made that estimate?---Ms Lykouras had made that estimate.

Are you saying you didn’t agree with it at the time?---Sorry, no, I didn’t - - -

45 Are you saying - - -?--- - - - say I didn’t agree with it, I said - - -

So you agreed with it?--- - - - Ms Lykouras – Ms Lykouras is being instructed to – for – to see what the potential exposure we could have in a raft of ongoing service problems. Now, that is, yes, if a client – if there is – if – if an adviser fails to deliver a service to their clients, then that’s obviously an issue, but she’s not actually saying that at that time CFPL is failing to deliver service to ongoing service clients. That was unknown at the time.

10 In relation to the orphan clients issue what is explained is that the adviser has left and the client has been reassigned for a period of time to an EM, FPM, or regional support planner?---Yes.

What is an EM?---An executive manager.

15 We know what an FPM is. What is a reasonable support planner?---So that would be a support person that the adviser – it’s a planner, in effect, a financial planner.

20 All right. The reason it’s framed in that way is because you knew at the time that clients were being reassigned to an EM, FPM or regional support planner; you agree?---Off the back of the memo, correct, yes.

You also knew at the time it was unlikely in the circumstances that the client would be serviced during that period?---Yes.

25 And then the potential qualification is how vigilant the FPL has been in the past in reallocating clients?---Yes, will vary.

But the estimate is that the exposure is potentially \$2 million?---Potentially, correct, yes.

30 Are you trying to once again suggest that you didn’t know that this orphan client issue was a problem. It was just some ephemeral possible problem?---Okay. Off the back of the OGS memo, we had identified at that time that the clients were not assigned to a financial planner. To remediate that issue, they would be assigned to a planner so that service could be delivered within that period. If clients couldn’t be – couldn’t get service delivered through that period, then, yes, the service wasn’t delivered and that would be an orphan issue where we would go on and remediate that.

40 Now, you’re aware, I assume, on 6 June 2012 Deloitte issued a draft report?---They did.

And - - -

45 THE COMMISSIONER: Just before we come to that, is this email to go in?

MR HODGE: I’m sorry, yes, Commissioner, I tender that.

THE COMMISSIONER: Exhibit 2.83 will be email Perkovic to Spring and others
11 May 2012, CBA.0523.0001.0492.

5 **EXHIBIT #2.83 EMAIL FROM PERKOVIC TO SPRING AND OTHERS
DATED 11/05/2012 (CBA.0523.0001.0492)**

10 THE COMMISSIONER: Sorry, you were going to a Deloitte - - -

MR HODGE: Thank you, Commissioner.

15 Deloitte had been engaged some time in May 2012?---Yes, we – yes, we engaged
Deloitte to come and help us with a third piece of work that we were doing at the
business which was to help us identify any potential issues that we have in the
business. We had known issues with respect to client remediation. We had known
issues in transforming the business through – through the back of the enforceable
undertaking but we wanted to then actually have a look at what else is out there as
part of our transformation. And that was the purpose of engaging Deloitte.

20 Can we bring up CBA.0520.0002.7799.

This is the draft report of Deloitte?---Yes.

25 Dated 6 June 2012?---Yes.

Did you see it at the time?---Yes.

30 That is, on about 6 June 2012?---Yes.

Do you know why it was never finalised?---Yes, I'm not sure why it wasn't finalised,
but we certainly treat it as being - - -

35 You treated this as - - -?---Yes.

- - - being, effectively, the final report?---Yes.

40 All right. And then if we go to page 7800. So this sets out a summary of different
issues?---Yes.

And do you see in the middle of the page the issue ongoing advice service?---Yes.

And it's rated as high?---Yes.

45 And the interim priority rating high is explained as meaning:

Scope area may contain a potential issue that is considered of high priority to examine as part of phase 2.

?---Yes.

5

And if you then go to page 7815. You will see this is a section titled Scope Area 6 Ongoing Service Overall Priority Rating High?---Yes.

Related risks:

10

Ongoing service not provided despite fees charged; obligations in customer agreements are not understood, monitored and/or complied with; clients are not appropriately notified when a significant event has occurred in the funds they have invested in.

15

Do you see that?---Yes.

And you see that it then identifies potential issues which are:

20

Systems to identify clients that have signed up to and/or receive ongoing service arrangements are inadequate.

And the priority rating is high and the comment is:

25

A known issue with CBA wealth management and a common issue with other industry participants.

Do you see that?---Yes.

30

And then:

The process to identify and communicate with customers in a timely manner is ineffective.

35

That's also high. It has the same description?---Yes.

Continuing:

40

Process to monitor whether authorised representatives follow processes and procedures in relation to ongoing advice service.

That's also high:

45

Management report a difficulty in identifying such instances outside of AA reviews.

?---Yes.

AA is advice audit?---Audit at that time, yes.

And then over the page:

5 *Licensee standards may be ineffective in providing guidance on compliant and quality advice. Purpose of rules, that is, whether purpose is to achieve compliance or an interpretation of leading practice, unclear.*

And the priority rating is medium, and the comment is:

10 *Not a known issue with CBA wealth management, however, has been identified as an issue with other industry participants.*

?---Yes.

15 And do you say, having received this report, that you still weren't sure whether you had an issue about the provision of ongoing service to clients?---The report told us what we knew, which was that we didn't have effective systems and monitoring to be able to identify had service not been delivered. It didn't tell us that we weren't
20 delivering ongoing service.

Can I make sure that I'm understanding the reason you're so emphatically emphasising what you describe as "context"?---Yes.

25 Is the explanation that you want to offer as to why it is that it took CBA more than two years to notify ASIC of its ongoing service fee problems that CBA systems were so hopeless that it had no idea what was going on in its business?---The – the issues that we had with our systems were already known and we were remediating that as
30 part of the CFP enforceable undertaking that was happening in the business. So, yes, that – that enforceable undertaking – and that's why I just wanted to provide the context to that, was already a known issue, and what we were working on was
35 building systems of supervision and monitoring and supervision and – and frame works to actually satisfy the concerns that ASIC had in the enforceable undertaking of the business that – that was in the business from 2011. So we were working on those known issues which was, yes, there were no systems and there was inadequate supervision and monitoring at that time. That was a known issue and we were working on remediating that through the enforceable undertaking.

40 But the answer to my question is yes, isn't it?---Yes. Yes.

And then can we go to – I'm sorry, I tender that document, Commissioner.

45 THE COMMISSIONER: Exhibit 2.84 will be draft report of Deloitte, 6 June 2012, CBA.0520.0002.7799.

**EXHIBIT #2.84 DRAFT REPORT OF DELOITTE DATED 06/06/2012
(CBA.0520.0002.7799)**

5 MR HODGE: Can we bring up CBA.0520.0002.6443.

This is a further draft report of Deloitte?---Yes.

It's dated 19 July 2012?---Yes.

10

It's titled the Business Issues Management Report?---Yes.

And it's referred to sometimes as the BIM report; is that right?---Correct, yes.

15

And, again, do you know why it was issued as a draft report?---I don't know.

Do you know - - -?---We treat – we treated it as a final.

All right. And, again, you saw it at the time?---Yes.

20

All right. And if we go to 6445. In this executive summary Deloitte set out the scope of what they've been asked to do?---Yes.

And they explain they have four core objectives; do you see that?---Yes.

25

The first is to provide – compile a comprehensive list of potential risks in the financial advice business.

?---Correct.

30

The second is to:

Assess potential latent issues agreed with CBA wealth management

35

?---Yes.

The third is to:

Identify high risk planners based on a set of risk criteria agreed with CBA wealth management

40

?---Correct.

The fourth is to:

45

Propose recommended actions for improvement.

?---Correct.

And the risk categories, which are identified under the heading Approach, identify 13 risk categories that have been agreed with CBA wealth management as in scope for
5 the engagement; do you see that?---That's right, yes.

And number 6 is:

10 *Ongoing advice service.*

?---Yes.

Number 7 is advice fees?---Yes.

15 What was number 13 revenue leakage?---I don't recall that one.

I mean, I ask because it appears - - -?---Yes, no. Yes.

20 The one thing you did have systems to track was to make sure that you were getting revenue?---Yes.

And then can we go to 6446. And this explains what the key findings are. And you see there's a heading Overcharging and Undercharging of Fees?---Yes.

25 And it explains:

Controls have not been designed to prevent fees being overcharged or undercharged.

30 ?---Yes.

And it offers a curious explanation which is:

35 *There's only 180 clients that have been identified as currently being overcharged ongoing service fees by a total of \$35,000 each year.*

?---Yes.

And:

40

5000 ongoing service clients paying less than the minimum relevant FSG fees by \$4.3 million.

?---Yes.

45

But then goes on to add a qualification which is:

However, if these clients are found to not be receiving ongoing service due to data quality, then they appear to have been overcharged for standard service fees.

5 ?---Yes.

And then under the heading Ineffective Provision of Ongoing Service, it explains:

10 *Clients in ongoing service programs are at risk of not receiving contracted services due to a number of observed deficiencies.*

?---Yes.

And it explains:

15 *Controls have not been designed to ensure that ongoing service clients are reviewed on an ongoing basis.*

?---Yes.

20

He explains:

25 *Clients have been flagged in FMS as OGS clients are not always on OGS programs.*

?---Yes.

It explains:

30 *Clients may be removed from ongoing service without the client being consulted.*

?---Yes.

35 And Deloitte, as at this date, have explained that:

40 *We identified over \$700,000 in ongoing service fees being charged on an annual basis to over 1050 clients that are allocated in the system to over 50 inactive planners that left before 2012.*

?---Yes.

And they make a recommendation, which is:

45 *Starting with sample based analysis validate whether issues are due to data quality or whether OGS services have been provided, develop and document*

effective controls for managing an OGS client, including initial set-up ongoing service and removal from the program.

?---Yes.

5

Do you still say to the Commissioner that, as at this date, on reading this report, you still weren't sure whether or not you had an issue in relation to ongoing service fees being charged for no service?---Can I just break it down to three components? I don't want to – so at this stage we knew what was known at the time was that we didn't have the correct systems to – to monitor, we didn't know whether it was an issue, but we knew that we did not have systems to supervise and monitor the effective provisioning of ongoing service, yes.

10

THE COMMISSIONER: Did you doubt what Deloitte had told you?---We didn't doubt the fact that we knew at the time of the business we knew that we didn't have the systems correct.

15

I'm sorry, I don't think you're quite - - -?---Yes.

20

- - - grappling with my question?---Okay.

My question was quite narrow: did you doubt what Deloitte told you?---No.

25

MR HODGE: If we go to page 6448. This is the findings or the summary of findings by Deloitte. You see finding number 2:

Overcharging and undercharging of fees. Finding rating very high.

?---Yes.

30

Finding number 3:

Ineffective provision of ongoing service. Finding rating very high.

35

?---Yes.

And then if we go to 6451. We see the rating methodology which explains what a very high finding means?---Yes.

40

Which is:

For the client the finding may lead to significant loss in client numbers or significant client restitution.

45

?---Yes.

As a legal and regulatory issue:

The finding may result in systemic and/or significant breaches resulting in a loss of major fines or significant regulatory action. That is to say enforceable undertakings, licence condition changes.

5 ?---Yes.

And operational:

10 *Finding may lead to significant data integrity issues or significantly impact ongoing effectiveness or efficiency.*

?---Yes.

15 And then if we go back a page to 6450, see this is a chart setting out the recommendation made by Deloitte and categorised according to level of – level of effort along the X axis and potential value along the Y axis?---Yes.

And recommendation 4 is:

20 *Develop effective OGS management system.*

?---Yes.

25 And that is rated very high in potential value and level of effort?---Yes.

It is in the top right corner, it must be the most serious of all of the issues?---Yes.

30 And then if we go to 6452, at the bottom of page 2 we can see there's a more detailed explanation of overcharging and undercharging of fees?---Yes.

And then if we go over to page 6454, you see there's a more detailed explanation of the findings as to the ineffective provision of ongoing services?---Yes.

35 Do you agree that at the time of this BIM report, CFPL did not have effective controls in place to prevent ongoing service fees being charged inappropriately?---Yes.

40 Do you agree that CFPL did not have effective controls in place to assess whether clients were receiving the services for which they were being charged?---Yes.

Do you agree that CFPL did not know what advice were being given to clients who were paying for ongoing advice?---Yes.

45 Do you agree that CFPL did not have controls in place to ensure when an adviser left the adviser's clients were moved to a new adviser?---Yes.

Do you agree that CFPL did not have controls in place to stop fees being charged to clients who became orphaned?---Yes.

5 Do you agree that CFPL did not have controls in place to ascertain if clients were being notified of significant events that may require action to be taken to protect their position?---Yes.

10 Do you agree that CFPL used ad hoc systems to store data that could not be centrally checked other than by manual processes?---Yes.

Do you agree that CFPL habitually charged clients for services that were not provided?---We didn't know whether the services were provided or not.

15 Well, you knew that at least in the - - -?---Yes.

- - - case of 1050 clients it was by Deloitte's consideration at least highly likely, if not certain, that these clients were not being - - -?---Yes.

20 - - - provided with services because they were allocated to 50 inactive - - -?---Yes.
Inactive planners. You agree?---Yes.

25 So I will ask my question again: do you agree that as at the date of this report, CFPL knew that it habitually charged clients for services that were not provided?---We knew that we didn't have the supervision and monitoring to determine whether the services were being provided or not.

30 The very simple reality is, isn't it, that as at the date of this report in July of 2012, CFPL had no capacity to ensure that contracted services were delivered to clients?---We did have capacity because we did have financial planners who were the people that were actually delivering the services. What we didn't have was the monitoring and supervision of those services, and we didn't have document management systems to record those services.

35 And my question was do you agree that CFPL had no capacity to ensure the contracted services were delivered to clients at the time of this report?---We had -- yes, well, we had no systems to do that, yes.

40 And - - -?---So what is known is that we need a system to track and monitor ongoing service, absolutely.

And so -- I'm sorry, I tender that document, Commissioner.

45 THE COMMISSIONER: Draft report of Deloitte's 19 July 2012, Business Issues Management Report CBA.0520.0002.6443 will be exhibit 2.85.

**EXHIBIT #2.85 BUSINESS ISSUES MANAGEMENT REPORT OF
DELOITTE'S DATED 09/07/2012 (CBA.0520.0002.6443)**

5 MR HODGE: At this time, at the time of this report, the only system that CFPL had in place that was effective in any way was a system for charging clients?---Correct.

Now, the BIM report or at least its findings, was presented to the board of CFPL?---Yes.

10

And what was the role of that board?---So the CFPL board is an AFSL licensee board.

15 And what was the role of that board in relation to the BIM report? What action, if any, would that board take?---Okay. So the – the – well, the paper was presented – sorry, the paper was presented to the board as outlining – outlining the things that we needed to continue to work on in the business. So the actions – sorry, the actions was that on receiving the BIM report, the action was for management to go and investigate and the other component of this is that we are currently building systems
20 to be able to track this off the back of fee disclosure and FOFA. So the actions of the board was for management to come back and actually identify out of the findings from the BIM report what work was already happening and how we would go about to size this potential unknown problem, which is was service delivered or not, and the systems around that. That was what – that's what happened after that BIM
25 report.

The finding of the BIM report was also presented to the board of CBA?---It was, yes.

30 And do you recall when that occurred?---It was soon after. It's just in my - - -
Was it about 14 August 2012?---Yes. Yes.

35 14 August 2012? Or do you not have a date in your statement?---Just – I don't – it would have been around that time. So I can – yes.

Can we bring up CBA.0502.0001.4916. This is a – some papers for the meeting of the board of CBA on 12 February 2013?---Yes.

40 Do you know what occurred between the BIM report in July of 2012 and 13 – or 12 February 2013 in relation to fees for no service?---Sorry, from - - -

From the date of the BIM report - - -?---Yes.

45 - - - which is July 2012 - - -?---Yes.

- - - until February 2013, did anything occur in relation to fees for no service?---We would have – the work that was happening was the ongoing work which was

developing the tool to track the services. So it was the FDS tool. We also commenced the work on the two known issues, which was the under and overcharging of fees and also the orphan issue in starting to work to setting up a program to identify kind of the scope of that to work towards remediation.

5

Actually, I will – I will come back to that document in one moment?---Yes.

Can we bring up CBA.0002.0860.0677. This is the agenda and papers for the licensee risk committee - - -?---Yes.

10

- - - on 1 March 2013?---Yes.

Were you a member of the licensee risk committee?---I was.

15

I'm sorry, you were?---Yes.

All right?---Yes.

20

Have you looked at this document recently?---Can you – will you pull up the whole document or - - -

Yes, can we go to the second page. What I'm wondering about is have you looked at the papers for this meeting of 1 March 2013 recently? You don't recall?---I did look at – sorry, I looked at them as part of - - -

25

You didn't attend?---Sorry.

You gave an apology for that meeting on 1 March?---Correct.

30

All right?---Yes.

Do you recall, giving you were a member of the committee, you would have reviewed the papers for the meeting nevertheless?---Yes.

35

All right. Can we go to page ending – I will just get a non-stapled version – can we go to page 0792. Thank you. So you see there's an issue at the top of the page which is ongoing service fees?---Yes.

40

This is – I can bring this up, if necessary, but this is as part of a list of the status of current and emerging matters?---Yes.

And do you see in relation to ongoing service fees, it said:

45

Controls in relation to the charging of ongoing service fees, as well as provision of the ongoing service to clients, are either not in place or not robust. As a result, clients have potentially been over or undercharged OGS fees.

?---Correct.

Continuing:

5 *These fees have been charged since 1 July 2004.*

?---Yes.

Continuing:

10

And a remediation proposal has been completed and submitted to senior management for approval.

?---Yes.

15

And was there some notification given to ASIC in relation to this part of ongoing service fees in 2013?---There was. There was a breach report.

20 All right. We will come to that. And then you see section 4 Timeliness of Breach Reportability and Assessments?---Yes.

And what's explained is:

25 *Wealth management advice is operating in an environment of increased regulatory and scrutiny.*

?---Yes.

And 4.3 explains:

30

RG78 provides guidance about materiality for reporting of key items and, as such, our philosophy around potential/likely reportable breaches should be to err on the conservative side and this should be the basis for our risk posture and principles around breach reporting. It is recommended WRM and all licensees adopt a conservative approach about likely or potential breaches.

35

?---Yes.

And at the bottom of the page at the end of 4.4 you see:

40

It has been noted by ASIC through recent notices that the process in determining if a matter –

and this is over the page:

45

If a matter is a potential and/or significant reportable breach from the time the matter was identified is considerably longer than desired.

?---Yes.

And it then explains:

5 *WRM are reviewing all processes around significant breach reporting.*

?---Yes.

And then under 4.6:

10

*The matters under compliance evaluation are currently considerably high (26).
The need to assess the status of all matters under compliance evaluation should
be expedited. Evaluations will be conducted in three categories.*

15 Do you see that?---Yes.

And then next to Other there is Excessive Ongoing Service Fees?---Yes.

And next to Count there is:

20

Orphan clients assigned to head office paying ongoing adviser commission.

?---Yes.

25 Can I suggest then that you and the other members of the risk management
committee – I'm sorry, the licensee risk committee must have been conscious as at
March 2013 of, first, the significance – the significant emphasis that was now being
placed on breach notification by ASIC?---Yes.

30 And you understood the criteria to be applied?---Yes.

And you were aware that there were issues in relation to orphan clients?---Yes.

35 And you were aware that there were issues in relation to advisers not providing
services and there not being any facility to monitor whether services were being
provided?---We were aware that there was no supervision and monitoring and that
was a known issue with respect to the enforceable undertaking. We still had to
investigate whether or not there was an issue with the delivery of ongoing service.
40 So at this point in time, if I explain, from respect from the business we're working
with issues that were already reported to ASIC under the enforceable undertaking
that we are trying to resolve with respect to supervision and monitoring of the
business through the transformation. It was clear there was over and undercharging,
we breach report that and we remediate that immediately. It was very clear that we
45 didn't have a system or a process when advisers left that clients were allocated. We
changed that process and then we looked at what clients were impacted by that so
that we could work through that – that process. What we did know at the time was
that there was no effective systems and we were working to remediate that in the

business. So that's why the context of this and the team and the people in the business who are working through the transformation is very clear that they know the ongoing issues that we have. They're very clear as to what has already been reported and working through with the enforceable undertaking. And so that's the context of
5 – of – of – of – the areas across that. The other point, just to make on this, is with respect to the issue of significance, so when we evaluate the different areas, it's a known problem that there is no systems. We didn't have a system to identify our clients and we were working through to ensure that we could actually get those systems in place so that we could go ahead and identify have we had non-delivery of
10 – of systems. We know that we do because we fast forward to now. So we absolutely apologise for the length of time that it's taken, and I just wanted to provide some context in the business at the time because the focus is very much on remediating the known issues and we did know that there was the supervision and monitoring. There was no other indicators telling us that the delivery of the services weren't occurring because a delivery is between the adviser and the client. So the fact – if the ongoing services were or were not occurring is a service that we very much relied on the advisers – the advisers actually doing that service. We knew that we didn't have systems, we knew that we didn't have the supervision and
15 monitoring. It was a known problem that we were remediating with the enforceable undertaking.
20

You took no step in 2013 to notify ASIC of the issue?---The known issue at the time of the business was the ineffective supervision and monitoring. The known issue was the overcharging. We did notify ASIC on a breach – from a breach perspective
25 on that. And the orphan issues, we were still identifying and assessing, and we apologise for the time that it has – that it took, but a lot of these issues really stemmed from the known issue which was actually lack of systems and lack of supervision and monitoring processes which were being worked on at that time.

30 Can I tender that document, Commissioner.

THE COMMISSIONER: Licensee risk committee agenda and papers 1 March 2013, CBA.0002.0860.0677 will be exhibit 2.86.

35

EXHIBIT #2.86 LICENSEE RISK COMMITTEE AGENDA AND PAPERS DATED 01/03/2013 (CBA.0002.0860.0677)

40 THE COMMISSIONER: How long do you expect to require with Ms Perkovic?

MR HODGE: At this point I don't expect that I will finish Ms Perkovic today, Commissioner, I'm sorry.

45 THE COMMISSIONER: Is it, therefore, appropriate that I should begin at 9.30 tomorrow rather than at 9.45 because I think we are now - - -

MR HODGE: Yes.

THE COMMISSIONER: - - - well behind time.

5 MR HODGE: I would be content to start even earlier, if you would like,
Commissioner.

10 THE COMMISSIONER: Well, counsel being content is usually the quickest sneer
that counsel can produce. So is there any reason why we shouldn't begin at 9.30, Mr
Hodge?

MR HODGE: No, Commissioner.

15 THE COMMISSIONER: What about from the CBA side. Is there any - - -

MR GOODMAN: No problem with that at all, Commissioner.

20 THE COMMISSIONER: I shouldn't be so cynical, should I, Mr Hodge. Ms
Perkovic, can you be back here in time to recommence your evidence at 9.30
tomorrow morning?---Yes, thank you, Commissioner.

<THE WITNESS WITHDREW

[4.24 pm]

25 THE COMMISSIONER: I will adjourn until then.

MR HODGE: Thank you, Commissioner.

30 **MATTER ADJOURNED at 4.24 pm UNTIL THURSDAY, 19 APRIL 2018**

Index of Witness Events

JOHN PATRICK KEATING, SWORN	P-1209
EXAMINATION-IN-CHIEF BY MR HOLLO	P-1209
CROSS-EXAMINATION BY MR HODGE	P-1210
RE-EXAMINATION BY MR HOLLO	P-1238
THE WITNESS WITHDREW	P-1239
LINDA MAREE ELKINS, SWORN	P-1240
EXAMINATION-IN-CHIEF BY MS HILLMAN	P-1240
CROSS-EXAMINATION BY MR COSTELLO	P-1241
THE WITNESS WITHDREW	P-1264
MARIANNE PERKOVIC, SWORN	P-1264
EXAMINATION-IN-CHIEF BY MR GOODMAN	P-1264
CROSS-EXAMINATION BY MR HODGE	P-1269
THE WITNESS WITHDREW	P-1324

Index of Exhibits and MFIs

EXHIBIT #2.68 SUMMONS TO MR KEATING	P-1209
EXHIBIT #2.69 STATEMENT OF MR KEATING (AND ATTACHED EXHIBITS)	P-1210
EXHIBIT #2.70 SUMMONS TO MS ELKINS	P-1240
EXHIBIT #2.71 WITNESS STATEMENT OF MS ELKINS (AND ATTACHED EXHIBITS)	P-1241
EXHIBIT #2.72 SUMMONS TO MS PERKOVIC	P-1265
EXHIBIT #2.73 STATEMENT OF MS PERKOVIC DATED 03/04/2018 (WITH ATTACHED EXHIBITS)	P-1266
EXHIBIT #2.74 SUPPLEMENTARY STATEMENT FOR MS PERKOVIC DATED 04/04/2018 (CBA.9000.0021.0001)	P-1266
EXHIBIT #2.75 FURTHER STATEMENT OF MS PERKOVIC DATED 03/04/2018 (CBA.9000.0007.0001)	P-1267
EXHIBIT #2.76 FURTHER STATEMENT OF MS PERKOVIC DATED 04/04/2018 (AND ATTACHED EXHIBITS) (CBA.9000.0022.0001)	P-1267

EXHIBIT #2.77 FURTHER STATEMENT OF MS PERKOVIC DATED 03/04/2018 (CBA.9000.0005.0001)	P-1268
EXHIBIT #2.78 FURTHER STATEMENT OF MS PERKOVIC DATED 09/04/2018 (CBA.9000.0012.0001)	P-1268
EXHIBIT #2.79 FURTHER STATEMENT OF MS PERKOVIC DATED 05/04/2018 (AND ATTACHED EXHIBITS) (CBA.9000.0009.0001)	P-1269
EXHIBIT #2.80 APPENDIX 1 RESPONSE TO NOTICE OF DIRECTION (CBA.0001.0095.3334)	P-1278
EXHIBIT #2.81 MEMORANDUM FROM HENDERSON TO CHAMBERS AND OTHERS DATED 12/04/2012 (CBA.0001.0089.3797)	P-1303
EXHIBIT #2.82 EMAIL FROM SUTHERLAND TO PERKOVIC AND OTHERS DATED 03/05/2012 (CBA.0523.0001.0451)	P-1304
EXHIBIT #2.83 EMAIL FROM PERKOVIC TO SPRING AND OTHERS DATED 11/05/2012 (CBA.0523.0001.0492)	P-1310
EXHIBIT #2.84 DRAFT REPORT OF DELOITTE DATED 06/06/2012 (CBA.0520.0002.7799)	P-1313
EXHIBIT #2.85 BUSINESS ISSUES MANAGEMENT REPORT OF DELOITTE'S DATED 09/07/2012 (CBA.0520.0002.6443)	P-1319
EXHIBIT #2.86 LICENSEE RISK COMMITTEE AGENDA AND PAPERS DATED 01/03/2013 (CBA.0002.0860.0677)	P-1323