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ACN 110 028 825

T: 1800 AUSCRIPT (1800 287 274)

E: [clientservices@auscript.com.au](mailto:clientservices@auscript.com.au)

W: [www.auscript.com.au](http://www.auscript.com.au)

TRANSCRIPT OF PROCEEDINGS

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O/N H-884955

**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**

**9.30 AM, THURSDAY, 19 APRIL 2018**

**Continued from 18.4.18**

**DAY 14**

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

**MR C. SCERRI QC appears with MR S. GOODMAN SC and MR P. JAMMY for  
CBA**

**MR J. SHEAHAN QC appears with MR J. ARNOTT for Westpac**

<CROSS-EXAMINATION BY MR HODGE

5

THE COMMISSIONER: Yes, Mr Hodge.

MR HODGE: Thank you, Commissioner.

10

Could we bring up the document CBA.0001.0095.3334. Ms Perkovic, you've seen this document before?---Yes.

15

This is appendix 1 to a response by CBA – I'm sorry, by Commonwealth Financial Planning Limited to a response to a notice of direction under 912C from ASIC?---Yes.

20

Can we go to page 4, the page ending .3337. You see subparagraph (g), the question that was asked by ASIC was:

*The earliest date that the licensee is able to identify a customer of the ongoing service package who paid for but did not receive all components of the ongoing services they were entitled to.*

25

The bottom of the page?---Yes.

And the response is:

30

*On 14 July 2008, a complaint was made on behalf of a person in relation to lack of service.*

?---Yes.

35

And a fee refund was made?---Yes.

And then if we go to page 65 of the document, which is .3398. So you will see this is the end of a table setting out complaints that had been made in relation to fees being charged for no service?---Yes.

40

So the earliest one identified here is the one on 14 July 2008?---Yes.

And then if we go to the page before that, page 64, which is .3397. Thank you. You will see a series of complaints made in 2008, 2009 and 2010?---Yes.

45

And then if we go to the page before that, page 63, .3396, a series of complaints made in 2010 and 2011?---Yes.

And then we go to page 62, .3395, a series of complaints made in 2011?---Yes.

And then if we go to page 61, .3394, a series of complaints made in 2011 and 2012?---Yes.

5

And then if we go to page 60, .3393, a series of complaints made in 2012. You agree?---Yes.

10 And then if we go to page 59, .3392, a series of complaints made – the earliest of which on this page is 2012 and then going in up until April 2013?---Yes.

15 And you maintain, do you, that notwithstanding these complaints, Commonwealth Financial Planning Limited didn't realise that it had a problem with charging fees for no service until it gave a breach notice in August of 2014?---We apologise for these client complaints - - -

20 No, no, please listen to my question and answer my question. Do you maintain that, nevertheless, Commonwealth Financial Planning Limited did not know that it had a problem with charging fees and not providing services until it gave a breach notice in August of 2014?---No.

You don't maintain that. It's incorrect, isn't it? You knew earlier?---We knew there were isolated complaints but not systemic to the nature in 2014.

25 I tender that document, Commissioner.

THE COMMISSIONER: Exhibit 2.87, CFPL response to notice of direction. Have we got a date for it, Mr Hodge?

30 MR HODGE: There's not a date on the document, Commissioner.

THE COMMISSIONER: Very well.

35 MR HODGE: If we can describe it as appendix 1 to the response to Notice of Direction under section 912C of the Corporations Act 2001 of Commonwealth Financial Planning Limited and I will attempt to find a date.

40 THE COMMISSIONER: It doesn't matter. I was just trying to identify the exhibit properly. Exhibit 2.87 will be appendix 1 to CFPL response to notice of direction CBA.0001.0095.3334.

45 **EXHIBIT #2.87 APPENDIX 1 TO CFPL RESPONSE TO NOTICE OF DIRECTION (CBA.0001.0095.3334)**

MR HODGE: Thank you. And then if we can bring up CBA.0001.0039.0405. You have seen this email before?---Yes.

You were copied to it?---Yes.

5

It's an email from Peter Taylor of Commonwealth Bank to Ms Macaulay of ASIC?---Yes.

10 It purports to be an early warning given on 11 July 2014 of a potential problem of CFPL in relation to the provision of services for fees?---Yes.

15 Why was this sent?---At that time, when we finished the investigation, we recognised the significance of the non-delivery of service. So we did an early warning because we were still – we were still investigating the extent of it, but by that stage, we knew that it was a systemic problem that – that we wanted to escalate and give an early warning to ASIC.

20 Was the purpose of this to attempt to manage ASIC?---No. We have kind of a good governance where if there is a significant breach, but at the time, we're still investigating, so don't know the actual final details, we will do an early warning, and then indicate to ASIC when they can expect – or when we will expect our investigation so that we could do a breach notice with the final details.

25 You knew in 2012 that you had received many complaints in relation to fees being charged and no services being provided?---Yes.

You knew in 2012 that you had no systems capable of confirming whether services had been provided?---Yes.

30 You knew that you had systemic issues – I'm sorry, you knew in 2012 that you had systemic issues in relation to registers not being audited, not being handed over to financial planning managers and then having to be manually recreated?---Yes.

35 And yet you say that even as at 11 July 2014 when you gave an early warning notification to ASIC, that you were still investigating whether you had a systemic problem; is that right?---No, with the early warning is indicating that there is a problem. It's just actually the final details of the investigation.

40 You had given a notice to ASIC in 2013?---Yes.

In relation to fees not being calculated correctly; is that right?---Yes, that's overcharging of fees.

45 Overcharging or undercharging of fees?---Correct. Well, we didn't – sorry, the undercharging, we obviously didn't recruit, but it was the overcharging.

And that was an issue that was also raised in those Deloitte reports we looked at yesterday?---That was a known issue in the Deloitte report yes.

5 They raised there was a systemic issue with not checking whether – with not having fees charged correctly in relation to the fee disclosure statements or product disclosure statements?---There was an issue with that and that’s what they raised.

10 And they also raised this issue about there being no systems at all to check whether services were actually provided?---Yes.

You gave a notice in 2013 about the overcharging or undercharging of fees?---Yes.

15 But you didn’t give a notice until August of 2014 about the fact that you had a systemic problem in relation to not providing services in exchange for fees?---Yes, we – that was actually where we identified that there was a systemic problem. In 2012, the issue with the Deloitte report, which is about the systems and the lack of supervision or monitoring, we had already identified that as one of the issues in the enforceable undertaking. So as far as we were concerned, what was coming out of the Deloitte report, which was we didn’t have supervision or monitoring, we were 20 already working on fixing and putting that in place. This was now confirming that – that based on electronic systems that we had now in place, and – and reviews in that period, that we could actually now account for lack of delivery for each individual service.

25 Were you drip feeding information to ASIC about the problems with your systems?---Sorry, what do you mean by that?

30 Were you not revealing in one go in 2012 or 2013 all of the problems with your systems and instead explaining some problems in 2013 and then giving an early warning notification in 2014, and then finally a breach notification in 2014?---So as we found issues, we reported them to ASIC.

35 After you gave the early warning notification on 11 July 2014, ASIC issued a section 33 notice?---That’s right.

And then after the section 33 notice was issued, it was only then that CFPL gave a breach report on 13 August 2014?---I will just – I will just check the dates, but the intent was always to give ASIC an update once we finished the review by 31 July.

40 I want to move to a different topic, Ms Perkovic, which is - - -

THE COMMISSIONER: Before you do, are you proposing to tender this email?

45 MR HODGE: I am. Yes, Commissioner. I tender that document.

THE COMMISSIONER: Exhibit 2.88 will be email Taylor to Macaulay and others, 11 July ’14, CBA.0001.0039.0405.

**EXHIBIT #2.88 EMAIL TAYLOR TO MACAULAY AND OTHERS DATED 11/07/2014 (CBA.0001.0039.0405)**

5 MR HODGE: Thank you, Commissioner.

I want to now talk about the notification given in respect of the Count business - - -?---Yes.

10 - - - Ms Perkovic, and you've addressed this in your statement 2-2?---Yes.

We spoke a little about Count yesterday. Count operates under a different model from CFPL; do you agree?---Yes.

15 Whereas CFPL employs advisers, Count does not?---Correct.

Instead, its model is a franchise model where accounting firms employ people who have the necessary financial adviser qualifications?---Yes.

20 And they become authorised representatives of Count?---Yes.

And you've identified that the problem that Count had was an orphan clients problem?---Yes.

25 One of the difficulties for CBA is that it has no real visibility on the services being provided by the Count authorised representatives; do you agree?

THE COMMISSIONER: You said "for CBA". I take it you mean CB – FP.

30 MR HODGE: I should actually - - -

THE WITNESS: Yes.

MR HODGE: - - - put that differently.

35

One of the problems for Count is that it had no real visibility on what services were being provided by its authorised representatives?---Yes, which date are you - - -

Well, certainly as at 2012, 2013?---Yes.

40

Now, when the Henderson memo was produced - - -?---Yes.

- - - which we looked at yesterday, Count was asked whether it could have a similar issue with customers?---Correct.

45

And do you recall who asked Count to consider whether it had that problem?---I asked the CEO.

And who considered it?---The CEO.

And what was the report back to you?---So they had a look at the issue, and we're going to confirm through a triage meeting and, yes, come back to me as to what the concerns were. What then eventuated was that there were two items. One was – and I think I mentioned yesterday the difference in the orphan issue for Count versus CFPL. So the issue was that there was inconsistency in the way that we communicated with clients and there was also administrative errors in switching off or dialling up the fee at the point of the time that the client stayed within Count and didn't leave their adviser.

And there was an incident report made into the relevant system on 7 May 2012 – in - - -?---There was, yes.

- - - May 2012; is that right?---Yes.

And you explain in your statement that what was set out in the report was:

*Count has an orphan client list that earns fee income of between 1.5 to \$2 million per annum. The clients on this list do not receive any type of review as they are not assigned to any particular members.*

?---That was in the triage meeting at – with the team.

I see?---I didn't attend that.

And – but that was the problem. That was the first part of the problem that was identified. There was this significant amount of fees that was being received annually from the orphan clients?---Yes. The amount of fees that they – that they got from there was from a similar BIM report that was done at the time.

And the incident – or the discovery date of the incident was said to be 7 May 2012?---Yes.

And CBA understood in May 2012 that charging clients for services that was not – there were not being delivered was unlawful?---Yes.

Let me break it down?---Yes.

You understood in May of 2012 that charging clients for services that were not being delivered was unlawful?---Yes.

And as far as you were aware, everybody within CBA understood that. It's obvious, isn't it?---Well, yes, we would expect to deliver the services to our clients that – that they pay for.

And do you say that at the time that this report was made in the risk insight database, that Count did not know enough to form the view that it was in breach of its obligation to act efficiently, honestly and fairly?---Yes, it still needed to investigate the extent of the – the issue and the problem, because this data at 49 in my statement  
5 was off the back of a review. So it was basically giving us data, but we still needed to determine which clients were orphans.

Deloitte issued a report in relation to Count?---Yes.

10 Can we bring up CBA.0534.0001.0024. So this is a copy of the report. It's described as draft, but there was no final report ever provided?---Think – yes.

And it was treated by - - -?---As the final.

15 - - - Count and the CBA as the final report?---Yes.

All right. And then if we go to page 3, .0026. We see the things that Deloitte were asked to do, which is under Scope and Objectives:

20 *Compiling a comprehensive list of potential risks in Count.*

And the specific risk categories that had been identified by CBA Wealth Management, management over on the right-hand side, the fourth of which is ongoing advice services?---Yes.

25 And if we go to page 5 of that document, .0028, there were a number of issues that were identified with respect to Count?---Yes.

The first of which was:

30 *Sufficiency of governance, risk and compliance arrangements.*

Which was rated very high?---Yes.

35 And there's various other ones, but you will see number 7:

*Overcharging and undercharging of advice fees.*

Which was rated high?---Yes.

40

And:

*Orphan client book.*

45 Which was rated medium?---Yes.

And then if we go to page 14, which is .0037 you see what's set out there, number 8:

*Orphan client book.*

The finding was:

5            *Count has an orphan client book which, as at September 2012, held approximately 10,200 policies, includes clients with multiple policies.*

?---Yes.

10          Continuing:

*This equates to annual fee income of approximately one and a half million dollars for all commissions received.*

15          ?---Yes.

And then you will see at the bottom of the page:

20           *As reported to the Count Risk and Compliance Committee, when –*  
they noted the page –

25           *an adviser leaves the licensee and does not take clients with them and these clients do not respond to Count's attempt to contact them, they are transferred to Count head office.*

?---Yes.

And then it's explained:

30           *Without significant analysis and additional data being readily available, it is not possible to determine the portion of fee income related to adviser servicing fees versus trail Commission or whether fees have been dialled up. It is understood that it is not common practice for Count advisers to dial up fees and, as such, it is not expected that a significant proportion of the fee income received is in relation to ongoing adviser service fees. However, this assumption has not been confirmed.*

35           ?---Yes.

40

And then it explains that:

45           *Approximately three to four complaints are received annually in relation to the non-provision of ongoing services specifically related to orphan clients.*

?---Yes.

And you say, on receiving this report, you still did not understand that there was a problem with orphan clients at Count?---There was a – there was a problem. If you could just go back two pages.

5 Back two pages?---Yes, just the – where the first column of the – the time that it took  
to – yes, if you – if you just have a look at the second column there, which is  
“consider further investigation”, Deloitte identifies an issue there which in – that  
they’ve actually called true orphans. So this data here was in relation to the fact that  
10 at this period of time in Count, there were a number of advisers who had left. And so  
the head office of Count actually had more adviser – more clients and adviser  
movement than it – than it ordinarily would have. That then – the section 912 notice  
that we actually do put in for that, you can see the – the jump in – in clients. So  
Deloitte was telling us that – and, you know, we knew there was a problem. We  
15 need to scope the problem and actually identify who the true orphans were in the  
book because, at that time, there were some advisers that were leaving Count. There  
was a large number of advisers that had left. And so that head office at Count looked  
like there were more clients in there than there actually was or that would stay with  
Count. When we put the breach notice in, we then confirm the actual amount of  
clients and the fees that are paid with – with the orphan clients. So that is just the  
20 work that needed to get done. So column 1, that you referred to, scopes the actual  
potential problem, but Deloitte’s are telling us to still investigate because of this – this  
issue that we had from that period of time, which was in September.

Is it your understanding that until Count had figured out exactly how many clients it  
25 had taken money from without providing services, that it did not need to provide a  
breach notification to ASIC?---With the breach process, you do need to determine  
the significance. So at this time, we were still – yes, we still wanted to put in the  
details in – in the breach notice. What we should have done at this time was actually  
switch off the fees and in hindsight or – well, when we actually went across and  
30 remediated, we did compensate for – for the clients.

I tender that document, Commissioner.

35 THE COMMISSIONER: Exhibit 2.89 draft Deloitte report concerning Count,  
Business Issues Management, 20 November 2012, CBA.0534.0001.0024, exhibit  
2.89.

40 **EXHIBIT #2.89 DRAFT DELOITTE REPORT CONCERNING COUNT,  
BUSINESS ISSUES MANAGEMENT DATED 20/11/2012  
(CBA.0534.0001.0024)**

45 MR HODGE: Thank you, Commissioner.

Now, on 22 August 2014 – so about 20 months after the receipt of that Deloitte report, Count purported to give an early warning notification to ASIC; is that right?---Yes.

5 And then gave a breach notification on 9 September 2014?---Yes.

And do you say it was not until 9 September 2014 that Count understood that it had a systemic problem in relation to charging orphan clients fees and providing them with no services?---The determination had happened at that point in time but, yes, it  
10 should have been done in a more timely manner.

Well, let's just make sure we've understood this. Can we bring up exhibit MP-2 to Ms Perkovic's statement, number 2-2. The relevant document ID is  
15 CBA.0508.0008.0008. You see at the bottom of the page:

*One - - -*

?---Yes.

20 Continuing:

*- - - of the things that the licensee is required to fill in is the date the licensee first became aware of the breach or likely breach.*

25 ?---Yes.

And Count has put in August of 2014?---Yes.

Do you say that's true?---So that is the day that it's determined to be a breach.  
30

Do you say it is true that the first day that – or the first time at which Count became aware of the breach or likely breach was August of 2014?---Well, when we – sorry, when we do the breach, we actually put in the breach notice within that period, but this is based on the breach reporting process. So, yes, the significance of the breach,  
35 yes, was determined at that time.

I'm sorry, I just don't understand that?---Yes. Well, the - - -

CBA's internal process; is that what you mean?---Sorry. Well, I was just saying  
40 we've got a – we've got a – we've got a breach reporting process, and the breach that was identified, the date that is on that breach notice is the day that it would have gone ahead and been identified as the breach on the licence.

By whom?---We have a breach panel process, and that is representatives within the  
45 business.

Is that at the CBA level?---No, sorry, in the – in the advice business which is Count – in the Count business.

Is there a common breach - - -?---Panel across the licensees.

5

All right?---Yes.

So it's a CBA panel, is that right, across all of the licensees?---Yes, so CBA advice wealth panel.

10

And you say the only date you needed to put there was whatever date it finally reached up to that panel; is that right?---Well, the day that – that's actually – yes, the date that the – the breach panel decides that it is a significant breach.

15

Can we go to paragraph 80 of Ms Perrovic's statement.

THE COMMISSIONER: Perkovic.

20

MR HODGE: Sorry, Ms Perkovic's statement 2-2, which is – the document ID is CBA.9000.0007.0001, and go to page 0014, paragraph 80. You were asked some questions – or CBA was asked some questions by the Commission?---Yes.

About the reasons for the circumstances of fees for no service in relation to Count?---Yes.

25

And you see your answer is, relevantly:

30

*The issue for Count only related to circumstances where the customer did not transfer with their adviser when the adviser left Count or nominate another adviser. The issue did not relate to circumstances where the client had an active adviser, but was not provided with the promised service.*

?---That's right.

35

Count hasn't performed any investigation, has it, as to whether it has a systemic problem with its authorised representatives not providing services?---It has. It has done sample testing.

40

When did it do that?---So recently – so – I just go – in 2014 off the back of the CFPL breach notice we had a look at – to see if the other licensees had some issues. And there were sample testing done with Count and also other licensee. At the same time, ASIC had actually asked us and requested that, and so both Financial Wisdom and – and Count have had sample testing to test whether the ongoing services are being provided.

45

Does the sample testing mean that some advisers were selected and audited?---Yes. So it was about 800 files across the two licensees.

Were audited in order to determine what percentage actually had ongoing services provided?---Correct, yes.

5 And do you know what percentage had ongoing services provided?---That piece of work is currently still within the business that I – however, the fail rates for, kind of, both businesses are less than two per cent.

Can I show you CBA.0001.0075.7263.?---Yes.

10 So this is a document from the Count Risk and Compliance Forum in December 2015?---Yes.

And how often does the Count Risk and Compliance Forum meet?---It's a management meeting. So I'm not sure of the frequency.

15

Do you attend it?---No.

Okay. Can we go to page 7277. Now, you're familiar with this type of document, I take it?---It's not the format that it comes to us up at the risk forum.

20

I see. You understand what it's doing, which is setting out the results of - - -?---Yes.

- - - QAA investigation - - -?---Yes.

25 - - - into various authorised representatives?---Yes.

Is this part of the regular reporting of the audit results?---I'm not familiar with the management process, but if there – this would be reviewed and then raised kind of as an issue if the team investigate and put that in as an issue.

30

Is the team currently instructed to determine if there's an issue with ongoing services actually being provided?---Well, the team – as part of the normal review, quarterly – or the review processes of files, they do look at two files. This was a specific piece of work that was done. If you – if you're referring to the sample testing that was done, that was a specific piece. But in the normal course of the quality audit assurance process, they would look at ongoing service files.

35

All right. Well, you see – I will just look at some of the advisers reported here. You see there's an adviser identified here who is given a low rating and it's said had not conducted reviews for ongoing service clients?---Yes.

40

And there's – that was identified in August of 2015 and the update in October 2015 was:

45 *Recommend warning letter as a priority due to four instances and systemic issues identified.*

?---Yes.

This, I take it, is not the type of thing that would be reported up to whatever the risk committee is that would decide whether a breach notice needed to be given to  
5 ASIC?---The – the process that we have is that there’s – you would have instances, and depending on the issues and the – the issues that come up will actually then come up to – to review. So the – the team here would review this. They would work with our line 2 risk management, which is outside of the business, make a determination if it needs to go up into the – into the breach panel process.

10

If we go to page 7281. This is a different adviser?---Yes.

The summary is:

15 *Ongoing services have not been provided to clients. One file client dies in 2007. Contact made with deceased wife in 2013, but no action taken.*

And the action plan is – or at the bottom:

20 *Based on the above, recommend a formal warning be provided.*

?---Yes.

25 And then if we go to 7287 is a report in relation to a different adviser. You will see:

*Adviser provided advice to a client in 2003 who passed away in January 2004. Adviser is aware that the client is dead but the ASF –*

30 what’s that?---Adviser services fee.

Continuing:

35 *... continues to be charged. When asked, he said he didn’t know what to do and he had tried to contact The Public Trustee and had not heard back.*

The Action heading is – see what’s set out there, but number 4:

*Depending on outcome, possible warning to adviser.*

40 Do you see that?---Yes.

If we go to 7290, is a different adviser. Under the summary:

45 *The last three QAA reviews conducted have indicated that this adviser has provided no advice to any client. It was discovered that he was receiving ongoing service fees from clients.*

You see that?---Yes.

And this is another one of the adviser receiving an ongoing service fee for a client who passed away?---Yes.

5

*He has provided no advice to the client, nor her estate and does not have an OGC agreement with her estate.*

?---Yes.

10

And at least on this version, it doesn't even appear that there's a discussion about a warning to the adviser?---I think the document that you have – as I understand how the team use it more as a management reporting. So they would be updating it. They would be updating it frequently.

15

The warning might come later?---Yes.

Is that what you're saying?---Yes.

20 Then if we go to 7293. This is a different adviser again:

*QAA identified numerous instances where adviser service fees are being received on behalf of multiple clients, but there is no evidence of ongoing services having been provided.*

25

?---Yes.

The Action Plan you see over to the side, the third item:

30 *Adviser to consider the need to continue ongoing service agreements for all clients.*

?---Yes.

35 So this is the document from one forum. How many advisers within the Count network would need to not be providing ongoing services before it would be considered a systemic issue?---It would need to be determined as a – through the significant breach panel.

40 And have I understood your evidence to be that some time some years ago, a decision was made in response to a request from ASIC to begin analysing whether or not Count had a systemic problem?---Yes, through – through – through the sample review files.

45 And did I also understand your evidence to be that, even now, that work is ongoing?---I'm not – I'm not familiar with where the team is up to with – with respect to – to discussions with ASIC, but they – they do provide updates to ASIC.

I tender that document, Commissioner.

THE COMMISSIONER: Exhibit 2.90, Count Risk and Compliance Forum, December '15, CBA.0001.0075.7263.

5

**EXHIBIT #2.90 COUNT RISK AND COMPLIANCE FORUM DATED  
DECEMBER 2015 (CBA.0001.0075.7263)**

10

MR HODGE: I want to move to another topic, Ms Perrovic.

THE COMMISSIONER: Perkovic.

15 MR HODGE: Perkovic, I apologise again. You've explained in your first statement, 2-1, at paragraph 149, subparagraph (d), and the document ID for that document is CBA.9000.0006.0001?---Sorry, what paragraph?

Paragraph 149, subparagraph (d)?---Thank you.

20

It's on – on your page number it should be page 24. It has 0024 at the top. Have you got that there?---Yes.

25 I'm sorry, that's the start of 149, and then (d) is over the page in relation to 0025?---Yes.

And this is in relation to variable remuneration plan for Commonwealth Financial Planning advisers?---Yes.

30 Thank you. You explain that:

*On 1 July 2013, CFPL introduced an adviser variable remuneration plan.*

?---Yes.

35

And under that plan:

*30 per cent of an adviser's variable remuneration is deferred until the end of the financial year.*

40

?---Yes.

But it was only in 2015 that a KPI was included of sound risk management which included ensuring delivery of ongoing services to all customers?---Correct.

45

And in your view, is one of the explanations for the problem with the failure of CFPL employees to deliver services that there was no financial incentive to do so

until 2015?---Ongoing service and revenue was always part of their KPIs, but this is where we actually just introduced and changed the REM to make it – to actually improve and enhance the remuneration that we did have before. So this is strengthening it, yes.

5

Do you accept that one of the problems that Commonwealth Financial Planning had was that its remuneration and performance targets were not aligned so as to ensure delivery of service?---Yes.

10 All right. And that was an issue identified by an external audit by PwC in 2014?---It was in 2014, correct, and it was one of the key issues that we did with – off the back of the enforceable undertaking and implementation plan was to actually look at the remuneration and then improve it as we were going through.

15 Now, in your statement, you explain some of the steps that CBA took in responding to the FOFA legislation in 2013?---Yes.

Can we go to page 0012. I want to understand CFPL's attitude to disclosing its fees to its clients as at 2013. The FOFA legislation took effect on 1 July 2013?---Yes.

20

And you explain that in November of 2013, Commonwealth Financial Planning commenced issuing fee disclosure statements to ongoing service customers?---Yes.

25 Why did it not start doing that until November of 2013?---We were still building the systems at the time.

And at the time, as at 1 July 2013, the effect of the legislation was that a fee disclosure statement needed to be given to every client that was receiving ongoing services?---Correct.

30

35 And so as at November 2013, CFPL was planning to issue, in compliance with the legislation, fee disclosure statements to all of its ongoing service clients?---So we were – the fee disclosure statements were for new clients that we were putting on. The – in my paragraph from 81 to 83, actually just is there are periods of time where we did have a no action letter because – as we were still building the systems, and then there were changes with the legislation, and so that – that's actually why there's the different gaps in the different times.

40 Now, you're obfuscating, Ms Perkovic?---Sorry.

40

What you explain is that, in paragraph 80, that:

*In November 2013 CFPL commenced issuing FDSs to ongoing service customers including statements in relation to periods ending from 1 July 2013.*

45

?---Correct.

And then:

5           *On 20 December 2013, the government announced that it was going to make amendments to the FOFA requirements, so that it wasn't necessary to issue FDSs to customers who entered into ongoing fee arrangements before 1 July 2013.*

?---Yes. Yes.

10          And three days later, Commonwealth Financial Planning's – the immediate step that Commonwealth Financial Planning took was to stop generating fee disclosure statements to customers who had entered into ongoing fee arrangements before 1 July 2013?---Yes, we did.

15          And does that reflect an attitude which is, unless you are required by law to provide fee disclosure statements, CFPL will not do it?---Yes.

And then the Senate disallowed the regulation - - -?---Yes.

20          - - - that was to allow financial planners not to make disclosure to clients who had entered into fee disclosure statements before 1 July 2013?---Yes.

And then – and that was in November of 2015, but ASIC - - -

25          THE COMMISSIONER: November of 2014, I think, that is allowance – yes.

MR HODGE: I'm sorry, November 2014?---'14, yes.

Thank you, Commissioner.

30          But then ASIC allowed licensees from 20 November 2014 until 30 June 2015 - - -?---Yes.

- - - to not comply with the law?---Yes.

35          And CFPL took full advantage of that allowance and, only in July of 2015, recommenced issuing fee disclosure statements to all pre-1 July 2013 customers; is that right?---We did. We were still building the system at the time. So it – so that – yes.

40          You must have built the system already because you had already been issuing - - -?---Yes. We - - -

45          - - - fee disclosure statements to the post 1 July 2013 customers, hadn't you?---Correct. Yes. Okay. Yes, we were improving the systems. It was actually – there were components of the systems that were a bit manual, and so we did take

advantage of this relief that allowed us to improve the fee disclosure statements which now are in the business.

5 Does Commonwealth Financial Planning Limited continue to receive commissions from clients who entered into commission arrangements before 1 July 2013?---Yes.

10 Has there been any consideration within Commonwealth Financial Planning Limited of dialling down those commissions to zero and only receiving fees where it provides services to customers?---Sorry, can you just repeat that.

Yes?---Yes.

I will break it up?---Yes.

15 Has there been any consideration within Commonwealth Financial Planning Limited of dialling down those commissions to zero?---No.

20 Why not?---Well, at the moment, the grandfathering arrangements allow us some relief as fee for service fees increase. What we're thinking of actually doing is looking at applying fee – applying opt-in to clients before 2013 as a way for clients to understand their fees pre – because at the moment with opt-in, that category of people don't get – don't get the opportunity to opt in. So one of the ways that we're trying to – instead of your way, we've got an alternative solution, which is to have a look and consider opt-in for pre-2013 clients.

25 How long have you been considering that for?---Just having discussions in the business.

30 THE COMMISSIONER: I think the question was how long, not how long?---Okay. Sorry, yes, I would say in the last six months.

35 MR HODGE: But no action has been taken?---We haven't made a decision, but we do think it's an opportunity for the industry and a way that the industry also could possibly deal with the conflict of remuneration that we know is still not seen as positive in consumer groups.

I want to ask you now, very briefly, about your statement in relation to platforms?---Yes.

40 You've answered a couple of questions in relation to platforms?---Yes.

If you're an employee of CFPL, is the only platform available to you on to which you can put a client CBA affiliated platform?---Correct.

45 And is there any benchmarking produced for CFPL employees to show them how that CBA affiliated platform compares with other platforms in the market?---So the – the research is actually held at the – at the research team, and when an adviser will

do product replacement, they would actually have the tools to see how that platform compares with products that clients are putting into – that they’re looking at, if a client actually comes to them with an existing product. So the client has a tool. The adviser has a tool to help them determine.

5

Is the answer to my question, “No, there is not benchmarking produced for CFPL employees to show them how the CBA affiliated platform compares with other platforms in the market”?---Well, the answer is yes because they would actually have this opportunity, yes.

10

I understand?---Sorry.

What you’re saying is if a client comes to a CFPL planner - - -?---Planner, yes.

15

- - - and already has a product in mind, then it would be possible for the CFPL planner to access some information that would compare that product with the CBA affiliated product?---Correct. That’s correct.

20

But in the ordinary course, a CFPL planner is not provided with information that would enable them to know how the CBA affiliated platform compares with any other platform?---Not frequently, but it will happen from time to time.

25

How? How does it happen?---They would have updates, either at their professional development days, forums within their own teams, and, also, it is looked at in the research committee.

30

And are you aware of the CFPL planners ever having been told that the – a CBA affiliated platform compares poorly with any other platform at any other price point?---Not – not escalated up through to me.

You explain that in a statement of advice to a client, the revenue sharing arrangements are disclosed to the client?---Yes.

35

Can I show you an example statement of advice. It’s CBA.0001.0096.4213. Now, this, you will see, is a statement of advice prepared on 30 October 2014?---Yes.

40

I understand from your platform fees statement that the generic text in this version is still the generic text that is used in subsequent versions; is that right? If you go to paragraph 28 of your statement 2-24?---Yes.

You will see you say:

45

*In the years 2014 to 2018, the CFPL statement of advice contained the following generic information or similar text in relation to investment platforms.*

?---Yes.

And the statement of advice, by my reckoning, is 29 pages long and then has another 10 or so pages of various fact files attached to it?---Yes, they're very long documents.

5 And then if we go to page 4237. It should be page 25 of 29. So this is disclosing, on the 25<sup>th</sup> page of the statement, the revenue sharing arrangements that apply to CFPL?---Yes.

10 And I just want to understand what it is that is being disclosed here, which is that CFPL has revenue sharing arrangements with product providers on the approved product list.?---Yes.

15 Would those revenue sharing arrangements only be if they were under a grandfathered arrangement?---Yes, this would be a grandfathered arrangement.

And is one of the things that CFPL is continuing to do to rely upon the fact that there were grandfathering arrangements entered into pre-1 July 2013 that would also apply to new funds invested after 1 July 2013?---Yes. Well, I will have to take that on notice.

20 No, no, nothing - - -?---Yes. Sorry.

- - - can be taken on notice, I am afraid. Let's break it down. This - - -?---I am – yes. Yes.

25 - - - is a disclosure being given in October of 2014?---Yes.

Where it said:

30 *Up to .10 per cent of funds invested into the Colonial First State FirstChoice wholesale product –*

and it's explained that is also an associated entity –

35 *may be paid to Commonwealth Financial Planning Limited.*

Do you see that?---Yes.

40 And isn't it the case that the position that CFPL has taken is that if it had a grandfathered arrangement in place before 1 July 2013, that arrangement can also apply to new moneys invested after 1 July 2013?---Well, it shouldn't be, so I'm not sure why – why this is in the SOA.

45 You're saying – so it's not the case?---Yes, well, grandfathered – grandfathered arrangements that we – that we had – yes, I'm just not across the actual specific detail of this.

You describe in your statement - - -?---Yes.

- - - that we were just looking at – or, sorry, that you and I have looked at – it hasn't come up on the screen - - -?---Yes.

5

- - - the fact that there are revenue sharing arrangements after 2014?---Yes, I apologise. I can't answer that question now.

10 Do you not know – I'm sorry, I withdraw that. Let me break this down. Can we go to page – can we – I'm sorry, I tender that document, Commissioner.

THE COMMISSIONER: Statement of advice, 30 October 2014, CBA.0001.0096.4213 will be exhibit 2.91.

15

**EXHIBIT #2.91 STATEMENT OF ADVICE DATED 30/10/2014  
(CBA.0001.0096.4213)**

20 MR HODGE: Can we go to Ms Perkovic's statement dated 5 April 2018 in response to 2-24. That is CBA.9000.0009.0001. And if we go to paragraph 28, CBA.9000.0009.0008. This is where you're explaining statements of advice?---Yes. Yes.

25 And you say:

*In the years 2014 to 2018, the CFPL statement of advice contained the following generic information in relation to investment platforms.*

30 ?---Yes.

And then you set it out, and then you say:

35 *Those statements of advice reference the APL process and disclose revenue sharing arrangements in place with recommended platform providers including the entities.*

?---Can I just go back to the statement of advice, please?

40 Yes. Could we bring up that document.

THE COMMISSIONER: CBA.0001.0096.4213 at 4237.

45 MR HODGE: If we go to page 25, .4237?---Yes.

Ms Perkovic?---Yes.

Do you know whether CFPL is continuing to receive commission under – for new investment under arrangements entered into before 1 July 2013?---Arrangements before 2013, yes.

5 Even if it's new investment after 1 July 2013 by clients?---I just need to check if this is an existing client. Can I just have a look at the SOA, please – the first few pages of the SOA.

Yes, I can provide you with the hardcopy?---Yes, sorry. Thank you.

10

THE COMMISSIONER: What the witness has is a hardcopy of the document on the screen; is that right?

MR HODGE: Unredacted, Commissioner.

15

THE COMMISSIONER: Unredacted. Very well.

THE WITNESS: I'm sorry, just for the information that has been provided, I just need to take a bit more time to take a look at it.

20

MR HODGE: What are you trying to figure out, Ms Perkovic? Are you trying to figure out whether it's possible that it might be said that this was an existing client pre-1 July 2013?---Yes. Yes.

25 And, therefore, it would be possible to continue to take a percentage from them?---Of their – correct, yes.

I see?---Which it doesn't appear that it is.

30 It doesn't appear that they are a client that was pre-1 July 2013, does it?---No.

It appears that they're a new client after 1 July 2013?---Correct, yes.

35 And that what is being said to them is that there is a revenue sharing arrangement between the platform and CFPL that would enable up to .10 per cent of funds invested to be paid over?---Yes.

And they're both CBA entities?---Yes.

40 All right. Now, I want to move to one last topic, Ms Perkovic, and that is the enforceable undertaking that was entered into last week by CFPL and BW Financial Advice Limited?---Yes.

45 And are you familiar with that enforceable undertaking?---I am. I did see it as part of being on the board.

Were you involved in its negotiation?---No.

Do you know how long it was negotiated for?---From the original letter that was received by ASIC, I believe that was from February 2017.

So for over a year; is that right?---Yes.

5

And during that period of time, was one of the things that CFPL and BWFA were trying to do to limit the amount of money that had to be paid under the enforceable undertaking?---I wasn't involved in the negotiations.

10 Are you aware – well, you're on the board and there was reporting back to you, wasn't there?---Yes, at a board level when the decision is made final, but not – not the negotiations of - - -

15 Are you saying there was no reporting back to the board as to the negotiations in relation to the enforceable undertaking?---Well, we were getting updates, but as to - - -

All right?---Yes.

20 Were you being updated that CFPL was trying to limit the – and BWFA were trying to limit the amount of money that had to be paid to the community benefit fund under the enforceable undertaking?---I wasn't aware of that. I wasn't involved in those negotiations.

25 Were you given - - -?---We were given an update when the payment - - -

Was agreed?---Was agreed.

30 Were there instructions given by the board as to how much money CFPL and BWFA were prepared to pay to the community benefit fund?---No.

It was just left entirely in the hands of other people to decide?---No. At that time, the group executive of Wealth worked with – yes, worked with the executive general manager in the business now.

35

Are you aware of CFPL and BWFA resisting the attestations that were required by ASIC under the enforceable undertaking?---I'm aware that there were discussions between them.

40 When you say you're aware that there were discussions - - -?---But not resisting. No. I'm not aware that they were resisting. I'm aware that they were clarifying how it will apply and to who it would apply, because how – the entities actually have a general manager running the business, and then that – that goes up into an executive general manager. So the discussions were at what level the – at what level they  
45 would apply.

And can we bring up the enforceable undertaking. Thank you. Can we go to page 4 of that document. So this sets out the various concerns that ASIC had?---Yes.

5 And then if we go over the page, this is the acknowledgement of ASIC's concerns by CFPL?---Yes.

Which appears to be limited to:

10 *CFPL acknowledges that the concerns expressed by ASIC are reasonably held.*  
?---Yes.

15 Just so I can understand, does CFPL also acknowledge that not only were the concerns reasonably held, but they reflect an accurate view of the failures by CFPL to comply with the law?---Yes.

And Count hasn't yet entered into an enforceable undertaking?---No.

20 I don't have any further questions for this witness, Commissioner.

THE COMMISSIONER: Thank you, Mr Hodge. Does any party other than CBA seek leave to examine Ms Perkovic? Very well. Yes, Mr Goodman.

25 MR GOODMAN: No, thank you.

THE COMMISSIONER: All right. Thank you very much, Ms Perkovic. You may step down. You are excused.

30 <THE WITNESS WITHDREW [10.39 am]

THE COMMISSIONER: Now, Mr Hodge.

35 MR HODGE: Commissioner, that concludes case studies 1 and 2. There are some documents that I need to tender for some other entities in respect of which the Commission obtained statements or have not included them as part of the oral examination of the case studies. Can I tender the following: in relation to ANZ, a statement of Darren Williams dated 13 April 2018. The document ID is  
40 ANZ.999.007.0001.

THE COMMISSIONER: Statement of Darren Williams, 13 April '18, ANZ.999.007.0001 will be exhibit 2.92.

45 **EXHIBIT #2.92 STATEMENT OF DARREN WILLIAMS DATED 13/04/2018 (ANZ.999.007.0001)**

MR HODGE: Thank you. And then a statement of Adrian Kwa dated 10 April 2018 also with respect to ANZ, the document ID is ANZ.999.004.0001.

THE COMMISSIONER: Sorry, what date is Mr Kwa?

5

MR HODGE: I'm sorry, dated 10 April 2018.

THE COMMISSIONER: That statement with that doc ID will be 2.93.

10

**EXHIBIT #2.93 STATEMENT OF ADRIAN KWA DATED 10/04/2018  
(ANZ.999.004.0001)**

15 MR HODGE: And an additional statement from AMP in relation to fees for no service of Sarah Caroline Britt, B-r-i-t-t, dated 10 April 2018, the doc ID is AMP.6000.0063.3063.

THE COMMISSIONER: That statement will be exhibit 2.94.

20

**EXHIBIT #2.94 STATEMENT FROM AMP IN RELATION TO FEES FOR  
NO SERVICE OF SARAH CAROLINE BRITT DATED 10/04/2018  
(AMP.6000.0063.3063)**

25

MR HODGE: Thank you. And then in relation to case study 2, platform fees, the issue of platform fees was also raised with two additional institutions, ANZ and Macquarie, and I tender the statement of Mark Pankhurst, P-a-n-k-h-u-r-s-t, dated 13 April 2018 from ANZ, the doc ID is ANZ.999.008.0001.

30

THE COMMISSIONER: That will be exhibit 2.95.

35 **EXHIBIT #2.95 STATEMENT OF MARK PANKHURST DATED 13/04/2018  
(ANZ.999.008.0001)**

MR HODGE: And there are two statements from witnesses from Macquarie. The first is a statement of Cameron Garrett dated 14 April 2018 with document ID MGL.0017.0002.0001.

40

THE COMMISSIONER: Will be exhibit 2.96.

45

**EXHIBIT #2.96 STATEMENT OF CAMERON GARRETT DATED 14/04/2018  
(MGL.0017.0002.0001)**

MR HODGE: And the last statement is a statement of Michelle Weber dated 16 April 2018, doc ID MGL.0006.0003.0001.

THE COMMISSIONER: That will be exhibit 2.97.

5

**EXHIBIT #2.97 STATEMENT OF MICHELLE WEBER DATED 16/04/2018  
(MGL.0006.0003.0001)**

10

MR HODGE: Thank you, Commissioner. Could we adjourn for a few minutes while counsel rearrange.

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

15

MR HODGE: Thank you.

**ADJOURNED**

**[10.43 am]**

20

**RESUMED**

**[10.50 am]**

25 THE COMMISSIONER: Ms Orr.

MS ORR: Commissioner, the next topic that we turn to is the topic of inappropriate advice, and the first case study in relation to inappropriate advice involves Westpac. The first witness in that case study who is sitting in the witness box is Ms Jacqueline McDowall.

30

**<JACQUELINE McDOWALL, SWORN**

**[10.50 am]**

35

**<EXAMINATION-IN-CHIEF BY MS ORR**

THE COMMISSIONER: Thank you very much. Ms McDowall. Do sit down?---Thank you.

40

MS ORR: Ms McDowall, your full name is Jacqueline McDowall?---It is.

And you live in an address in the Northern Territory that you've provided to the Commission?---I do.

45

And you work as a registered general nurse?---I do.

You've made a statement to the Royal Commission?---I have.

That statement is dated 4 April 2018?---It is.

5 And do you have that statement there with you, Mrs McDowall?---I do.

Have you read that statement?---I have.

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

10

I tender the statement, Commissioner.

THE COMMISSIONER: Exhibit 2.98 will be witness statement of Ms McDowall, dated 4 April '18.

15

**EXHIBIT #2.98 WITNESS STATEMENT OF MS McDOWALL DATED 04/04/2018**

20

MS ORR: Mrs McDowall, did you receive a summons to attend today?---I did.

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

25 I tender the summons, Commissioner.

THE COMMISSIONER: Summons for Mrs McDowall will be exhibit 2.99.

30 **EXHIBIT #2.99 SUMMONS FOR MS McDOWALL**

MS ORR: Mrs McDowall, you are originally from Scotland; is that right?---That's correct.

35

And how long have you lived in Australia?---16 years.

And you work as a registered general nurse. How long have you worked in that job?---30 years.

40

30 years, did you say?---Yes. Yes.

And your husband works as a truck driver; is that correct?---That's correct.

45 And in 2015, did you start to think about retiring from your job as a registered general nurse?---I did.

And where were you living at that time?---I was living in Narre Warren in Melbourne, Victoria.

5 Thank you. And what plans did you have for your retirement at that point?---I discussed with my husband that I wanted to leave nursing and set up a bed and breakfast business that I could work on and hopefully gain that money through that business for our retirement together.

10 And did you have a plan for how you would buy the bed and breakfast business?---Yes. We didn't have any funds outside anything, like, savings. So we had some self – our superannuation funds, so we discussed it together, my husband and I, and thought that we would contact the Westpac bank to ask if I would be able to do this strategy using my self-managed super funds.

15 Did you have a self-managed super fund at that time or superannuation funds that were through your employers?---Yes. We had super funds through our employers which were Hesta and CBUS.

20 Hesta and CBUS. And how much money between the two of you did you have in your superannuation accounts at this time?---It came to just over 200,000.

Yes. Thank you. And so you said that you made the decision to approach Westpac to talk to them about this?---That's correct.

25 And in April 2015, did you contact Westpac?---I did.

And did you do that to seek financial advice about this plan that you had for your retirement?---That's correct.

30 And how did you approach Westpac?---I made a telephone call, and I spoke to someone called Monica, whom I explained what I would like to do, and I wanted to find out if that would be possible to do through my superannuation fund. Monica told me at that time that she would get in contact with a professional adviser and get them to call me back.

35 And did you receive a call from a financial adviser at Westpac a few days later?---I certainly did.

40 And that financial adviser was Mr Krish Mahadevan?---That – that's correct.

45 And what do you recall about that conversation that you had with Mr Mahadevan at that time?---Yes. So I reiterated what I would like to do to ask if it was possible. So I said that my husband and I – combined funds from our supers would be about 200,000, and would it be able for me to purchase a property to live in and run a bed and breakfast from.

And did you talk to Mr Mahadevan in this conversation about the sort of purchase price that you were looking at for a bed and breakfast property?---Yes. We said around about a million.

5 Around about a million. And was there any discussion in this conversation of your current home and what you should do with that?---Well, first of all, I did say to Krish – who I will name him as, sorry, because I find it difficult to pronounce his name – that we did have some debt, and then I did mention to him that we did have a family home and what did he think about we should do with that. And he did say we should  
10 put it on the market. Due to us having debt it would – by selling it, we could pay off that debt and it would put us in a better financial position for borrowing for the bed and breakfast business that we were going to hopefully get.

I see. And did Mr Mahadevan tell you to get a valuation of your house?---He did.  
15 He asked us to get one straight away.

And did you do that?---We certainly did.

And what was the valuation that you got for your family home?---The first valuation  
20 we got was – they valued it at 550,000.

Yes?---My husband and I thought at the time that that was a little bit over-exaggerated due to we had a look to see what prices that the houses were going for at that time, but we contacted Krish and we told him of the amount that they had given  
25 us, but we said that we felt it was a bit over. Krish told us at that time not to worry; it was just a ballpark figure to get things rolling.

I see. And did you then have a meeting with Mr Mahadevan later in April  
30 2015?---Yes, we did.

And what did you tell Mr Mahadevan at that meeting?---Again, my husband and I reiterated exactly what we wanted to do with our funds – with our super. We said that we wanted to purchase a property to run as a bed and breakfast for us to live on  
35 and for me to run the bed and breakfast for that, so as we could make some money for us for our later retirement.

Could I ask you to look, Mrs McDowall, at the first exhibit to your witness statement, which will be behind tab 1. That's WIT.0900.0001.0001. Is this a  
40 document that you received from Mr Mahadevan either during or following that first meeting?---I'm – I'm sorry, I just can't - - -

This is behind tab 1 - - -?---Behind 0001. Yes. Yes, that's correct.

Yes. And did you understand that this document had been completed by Mr  
45 Mahadevan using information that you and your husband gave him during the first meeting?---Yes.

Yes. Now, do you recall telling Mr Mahadevan in this meeting that you wanted to establish a self-managed superannuation fund?---We just wanted to know how we would go about it, and Krish says his – how you would do that was you would do a self-managed super fund.

5

Yes?---And that's what we were – the understanding – explained what that was.

And could I ask you to turn to 0015 in this document. You see, Mrs McDowall, the heading on this page Assets and Liabilities?---Yes.

10

And we see there under Lifestyle Assets a reference to principal residence, current value of \$550,000. Is this a reference to information that you gave Mr Mahadevan about your family home and the valuation that you had then received which was \$550,000?---Yes, that was from the first evaluation.

15

Yes?---But we did seek another valuation after that.

And that was later in time?---And that was later, yes.

20

Yes. We will come to that. So at this point, does this reflect in this first table the information that you gave Mr Mahadevan about your assets, your home valued at \$550,000, your home contents valued at \$100,000, and two motor vehicles, one at \$32,000 and one at \$21,000?---Yes, that's correct.

25

And did you also tell Mr Mahadevan that you had \$7000 in a Westpac account, a joint account, and \$590 in a Westpac Rewards Saver account as we see in the second table?---Yes, that's correct.

30

Then if we turn to 0017. Do we see – you see here a reference to your liabilities in the top table there?---Yes.

And we see there a reference to a mortgage that you had over your family home which had \$404,000 owing?---Yes.

35

A personal loan with Westpac for \$44,000?---Yes.

And two car loans. Is that – is that an Audi finance loan for \$30,000 and a Toyota finance loan for \$10,000?---That's correct.

40

All right. So this is the information you gave Mr Mahadevan about your liabilities?---That's correct.

And do we see in the table below the information that you gave him about your superannuation accounts?---Yes.

45

A Hesta account that you had with a current value of approximately \$166,000, and a CBUS superannuation fund that your husband had with a current balance of

approximately \$52,000, taking the total balance to somewhere around \$200,000?---That's correct.

5 And did you also tell Mr Mahadevan about some credit cards that you had?--- Yes, we've told him about some credit cards we had with Westpac bank also.

And do you remember what you told him about those credit cards?--- Yes, I said we roughly had 5000 on one card and 6000 on the other.

10 Okay. And could I ask you then to turn to page 0020 which deals with your insurance position at the time, but before I ask you some questions about that, having given Mr Mahadevan the information about your assets and liabilities and superannuation balance that we've just seen, what did Mahadevan say to you about  
15 whether you could use your superannuation to set up a self-managed superannuation fund and borrow to purchase a bed and breakfast?---He said that because we had over \$200,000, that that was sufficient to go ahead with our strategy of purchasing a property to buy a bed and breakfast, but if it was under that amount, we probably wouldn't go ahead, but that was sufficient funds to go ahead with that plan.

20 Thank you. And turning back to this page about your insurances, does this reflect the information that you gave Mr Mahadevan about the insurance policies that you had. We see there a reference to a life insurance policy that you had through your Hesta super with \$70,000 worth of cover?---Yes.

25 And a reference to your husband's life insurance policy through his CBUS superannuation with coverage of \$158,000?---Yes.

And we see also that your husband had TPD insurance through his CBUS super with a value of \$79,000. That accurately reflects the insurances that you had at that  
30 time?---It does.

And if we look at the following page 0021, we will see that there was an additional policy that you had which was an income protection policy. Do you see that  
35 there?---Yes, I do.

And that was also paid for through your Hesta superannuation fund?---It was.

Thank you. Did you discuss with Mr Mahadevan in this meeting any changes that should be made to your insurance cover?---Krish said to us that due to the property  
40 that we wanted to purchase for our goal of a bed and breakfast, being a million dollars that we were sort of looking at the price of, he said we would need to take out that assurance equivalent to that, so that if anything happened during death, that that would cover us and it would make everything okay for if anything happened to either myself or my partner.

45 So insurance cover to cover you up to \$1 million; is that what you're saying?---Yes, up to \$1 million. Each of us.

Each of you. Okay?---Each of us, yes.

5 And did you discuss with Mahadevan during this meeting how long it would take to put your strategy to purchase a bed and breakfast into place?---Yes, he said about three months, but not longer than five.

10 Thank you. And did another person from Westpac join you at some point during this meeting?---Yes. We were joined by Karl, who was a business banker, during this meeting. He didn't stay for the whole meeting, but he did come in.

15 And what do you recall of what Karl said during that meeting?---Yes. Well, when he came in initially, Krish sort of discussed briefly that we had over 200,000 in our super funds, our Hesta and CBUS, and what we were going – wanting to do with it as a strategy, and Karl came in and he said, “You're in the right place. I'm the moneymen. I'm the man who can lend you up to \$2 million.”

20 And what did you say to that?---I said, “Well, we're not looking to go for \$2 million, but I felt that, you know, because of what we were wanting to borrow for this strategy through funds, that, well, that was going to be possible and we were all on the right page.”

25 Did you discuss the sorts of properties that you were looking for as a bed and breakfast in this meeting?---We did discuss, yes. We had one property in mind – that we did bring the information that my husband left in the car. So Karl asked my husband to retrieve that information and bring it into the meeting. That first property was in a place called Beechworth, and that property was valued at about 1.4 million. So we showed that to Karl, the information that we had gained on that property, and Karl said that we couldn't – that one wouldn't be able to be done through the self-managed super funds because the assets were worth more than the property, and you can't do that through that. It needed to be the property. So we took that into account, and we took on what he said to us and we said, “Okay. We will look at further properties that don't have the assets involved”, because we now knew that it was only the property that you could put through the self-managed funds to run as a bed and breakfast business.

35 And what impressions did you have of Mr Mahadevan and Karl during this meeting? How did you feel about what they told you?---Look, I felt that Karl was a little bit blasé as a professional person, how he came on saying he was a money man, but then I thought, “Well, okay, he seems to know what he's talking about.” I still felt confident in Krish as a professional financial adviser through the Westpac bank who is a big bank, and I felt that going through a big bank like this, that you would be okay and they would look after you and they would be truthful in answering and taking on board what you wanted to do with your financial moneys of your superannuation through that advice.

45

So when you left this meeting, did you think it was possible for you to achieve your goal of using your superannuation to purchase a bed and breakfast to operate in your retirement?---We certainly did.

5 Yes. Thank you. Now, following this meeting, did you obtain another valuation of your house?---We certainly did.

10 And did you do that for the reasons that you explained earlier, that you thought the first valuation was too high?---Yes, we did think it was too high because we had looked at other prices of similar properties within our area.

And what was the revised value you got in that second valuation?---The revised value was between 480,000 and 500,000.

15 And after you got that valuation, did you take steps to put your home on the market?---We – we called Krish first to – just to let him know about the new price so as he could put it into the paperwork, like he said earlier on. And we – he said to – we did – he said to get – put – not get. He said to put the house on the market as soon as possible, and we went ahead and did that.

20

Yes. Now, in June of that year – having had this first meeting in April, in June of that year did you have another meeting with Mr Mahadevan?---Yes, in June we did. I can't remember the exact date.

25 Yes. And do you recall at that meeting, Mr Mahadevan presenting you with a formal document that contained his financial advice?---Yes.

And could I ask you to turn to the second exhibit in your statement, WIT.0900.0001.0037?---Yes.

30

Just wait while that comes up on the screen, Mrs McDowall. Is this the document that Mr Mahadevan presented to you and your husband in this second meeting?---It is.

35 And if we turn to 0038 within that document. We see there at the top areas of advice relevant to you:

*Jacqueline and Hugh, in our meeting, we spoke about, Jacqueline and Hugh, you wish to establish an SMSF and discussion around personal insurances.*

40

And if we look at the following page, 0039, we can see that the statement of advice sets out information about your cash flow on the left-hand side with your salaries, and then information about your insurance situation and superannuation situation in the column on the right-hand side?---Yes.

45

And if we turn to the following page, 0040, we see information that Mr Mahadevan has included about your assets and liabilities?---Yes.

Do you see there?---Yes.

Now, if we could turn to 0041, the following page, we see a reference to your goals. In the first dot point there:

5

*Jacqueline and Hugh, you wish to establish an SMSF with a view to be able to invest in a direct property in the future as part of your retirement investment strategy.*

10 And if we move to the following column:

*Jacqueline and Hugh, you are planning to purchase and run a B & B business as part of your retirement strategy. You prefer to buy an existing B & B business, including an existing property to run the business from. If that cannot be achieved, you will buy a property and start the business yourself. You do not have any surplus funds to do this outside super, but you have approximately 200,000 in your super funds which you can use.*

15

?---Yes.

20

If we turn then to the recommendations given by Mr Mahadevan in this advice starting at 0043 – perhaps we could have 0043 and 0044 brought up on the screen at the same time and we will see the two recommendations. The first recommendation was for you to establish a new self-managed superannuation fund?---Yes.

25

And the second recommendation was to roll over your superannuation accounts into the self-managed superannuation fund?---Yes.

30

And then if we turn to 0047 and 0048, we see Mr Mahadevan’s recommendations about insurance?---Yes.

And these are summarised on 0049. We see there a summary of the insurance policy recommendations made by Mr Mahadevan. We see that Mr Mahadevan recommended that you take out new insurance policies, each of which was through Westpac?---Yes.

35

And he recommended \$1 million worth of life insurance cover for each of you?---That’s correct.

40

Do you see that there?---Yes.

And he recommended \$150,000 of TPD cover for each of you?---Yes.

45

And \$150,000 of income protection cover for each of you?---Correct.

I’m sorry, but the income protection policy was not \$150,000. We don’t have that figure in there. Do you see the reference there to a monthly amount for you of \$5590

in income protection, and \$4280 a month for your husband in income protection?---Yes, I see it now, yes.

5 Yes. Then could we turn to 0058 and we see what Mr Mahadevan has recorded as the key benefits of his advice?---Yes.

And do you see there at the top of the first column:

10 *Jacqueline and Hugh, as you are planning to purchase and run a B & B business, including purchasing a property to run the business from as part of your retirement strategy, by establishing an SMSF and rolling over your existing super funds to the SMSF, this will allow you to purchase a direct property using your super funds down the track. You do not have any surplus fund outside super to purchase the property.*

15 ?---Yes.

20 And could I ask you then to look at 0059, which is the page of the advice that set out the costs to you flowing from this advice, and do you see there that the one-off costs at the top of the page, you were to pay \$3850 for the preparation of this advice?---Yes.

25 And \$1430 for the implementation and processing cost connected with the advice?---Yes.

So a total upfront cost of \$5280?---Yes.

30 Did you make that payment to Mr Mahadevan at Westpac?---Yes, we made that payment by credit card.

Yes. And then we see there are ongoing costs as well. There was an ongoing advice cost of \$3000 per annum. Did Mr Mahadevan discuss this ongoing advice cost with you?---No, I can't remember that being discussed.

35 Did you understand that you were going to be paying \$3000 a year to Mr Mahadevan for ongoing advice?---Not that I can remember.

40 And this page also tells us under the table that there would be establishment, annual administration, audit and corporate trustee fees for establishing and maintaining the self-managed super fund estimated to be \$3905?---I knew that there would be an amount to pay to Heffron who was going to be looking after the funds, but I can't recall the amount that they actually said – or he actually said at that time.

45 Do you recall Mr Mahadevan discussing that amount with you?---Not really.

Okay. And could I ask you to look at the following page, 0060. And this page sets out the insurance premiums that you and your husband would have to pay under the

new insurance policies for life, TPD, trauma and income protection. Do you see there that the insurance policies that Mr Mahadevan recommended would require you and your husband to pay annually just short of \$27,000?---Yes.

5 In Westpac insurance premiums?---Yes.

Thank you. Now, the following page, 0061, is entitled Other Payments. Do you recall Mr Mahadevan discussing this page of the advice with you?---No, not at all.

10 And do you see there that this sets out the commissions that Westpac would receive as a result of you accepting Mr Mahadevan's advice?---No. Not at all.

Do you see that?---I see it, yes, I do see it here, but we never - - -

15 Yes. And you're saying this was not something that was discussed with you?---That's what I'm saying. It wasn't discussed.

And do you see, when you look at it now, that Westpac was going to receive initial commissions, upfront commissions of \$27,180 from the life – from the insurance policies that were recommended for you?---Yes, I'm seeing it now in front of me, yes.

20  
25 And do you see also that Westpac was going to receive on an ongoing annual basis an additional \$2471 in commissions in connection with those insurance policies?---Yes, I do.

And there is a second section on this page entitled Paid by Westpac to Others. Do you see there that it indicates that there was a possible payment to Mr Mahadevan, possible planner share of revenue to Krish Mahadevan of \$16,690 flowing from this advice?---Yes, I do see that there as well.

30 Did Mr Mahadevan discuss that with you?---Never.

35 Now, after this meeting did you authorise Mr Mahadevan to go ahead and implement the advice?---We did. We asked him to go ahead and get the self-managed super funds up and running.

Yes?---Yes.

40 And did you authorise him to take out the insurance policies that were recommended in this advice?---Yes, because we – we felt that Mr – Krish because if he knew of the type of property or the cost of the property we were looking to buy and live in to do a bed and breakfast from was – was what he says, so we felt with his – with his professional advice, he knew what he was talking about, and we felt that, yes, we're all – we're all going together there, he's looking after us. What he has given us is to keep everything okay if – if – if in any event, that anything had to happen.

Yes?---So we were happy with that advice at that time.

5 And did you talk to your family about your plans, having received this advice?---Yes. We were really – we were really excited, so we told our kids. I have a grown up son and daughter and some very close friends, and we told them what we were doing and they said, “That sounds brilliant. Good on you, mum. You will be good at that.” Yes.

10 And did you then proceed to sell your house?---We certainly did.

Yes. And when did that happen, do you recall?---Yes, it happened quite quickly. I think it was around about July.

15 And how much did you receive for selling your house?---We sold our house for 485,000.

20 And what did you do with any money you had from the sale of the house?---Well, we cleared off our mortgage which we owed the 404,000. We paid off the Westpac loan which was the 44,000, and we paid off the two credit cards and we didn't have enough left from the equity to pay off the two car loans that we had.

25 Yes. And where did you live after you sold your home?---We rented a furnished accommodation in a place down in the Peninsula called McCrae, and we put our family belongings into storage.

And at this time, were you still looking for the bed and breakfast property that you wanted to buy?---We certainly were.

30 And did you have a further meeting with Mr Mahadevan and Karl after you had identified some further potential properties?---We did.

And was that in November 2015?---That's correct.

35 And what do you recall of that meeting?---So we went to – we went to that meeting and we took along another two properties that we had looked at. One was in Lakes Entrance which consisted of a private property for us to live in, and it had seven two-bedroom cottages. The other one was in a place in Victoria called Bright, so they were both in Victoria, and that was just one home which had a three-bedroom house for us to live in and it had another five rooms that we could let out as a bed and  
40 breakfast.

Yes. So you took information about those properties with you to the meeting?---We did.

45 And did you discuss those properties with Mr Mahadevan and with Karl?---We did.

And what did they say to you?---We gave Karl the – the first one which was the one with the cottages which was down at Lakes Entrance, and he told us that we couldn't use the self-managed super funds for that because it was on two titles. We said, "Okay, that's fine." So we gave him the other one which was on one title because it was just one big house, and he, again, said that we couldn't use that one either. So we got a bit confused at that point. During this time Karl made a phone call – and I can't remember who he made the phone call to, because we kept saying, "But why can't we do it? You said if it was on one title that we could." And he just proceeded to make a phone call to someone whom, at that time, I can't recollect who this was, but it didn't seem at the time that he was really very interested on what the person was saying to the questions that he was asking, and then when he came off the phone, he further said, "No, no, you cannot do that." He says, "You can – we can't even – we can only borrow to you about 200,000." So at that time I got really – a little bit upset and a little bit emotional, and I says, "This has just been a complete waste of time. We went through all this for five, six, however many months it is, and you're now telling us that from being able to borrow 2 million that we can't even borrow 200,000." So at that time I said, "There's no way that we can do that strategy and the goals and the advice that we gave you because there's no property out there that's ever going to be – that you can buy that we're going to be able to do that from." So I felt very upset. And I just said to them, "So what do we do now? Where do we go from here?" And Krish said, "But you can still buy an investment property." I said, "Well, I don't think that that makes any sense." I said, "We sold our family home on your advice. We now don't have a family home to live in. So why would we then buy an investment property to rent to someone else when we haven't even got a property to live in our self." Sorry. So I got very upset and walked out of the meeting, and Krish was just saying a few things to my husband and my husband said, "Yes." He kept – he kept saying, "Just call us if you need to discuss because we still need to sort something out." And we went home and after a cup of coffee, like you do, and a little bit of time, we – we weren't happy. So we decided to make – to send an email to the Westpac bank to discuss with them how we felt that the professional financial advice that we had been given and where do we go from here. So I sent an email in regards to all the information that were just went through and the position that we were now in.

Before we come to that email, what did you understand in that meeting to be the reason you couldn't now borrow the amount of money you needed to purchase a bed and breakfast?---What I recollect is you could never live in a property and run a business from it which was – we reiterated on many occasions during our meetings that we would live in the property and run the bed and breakfast from it, and I just feel now that all the time after all the insurances, the money taken for the professional advice that we were given, that all along at the end of it, I felt that the aim was that they were just aiming for us to take out a property to rent to someone else and – sorry, I've just forgotten the name – just what I said earlier. An investment property which you can't live in, you have to rent to other people. So I just felt after that that we had been led up the garden path and lied to, just for the Westpac bank to get their bit of the insurances, which were now being taken from our super funds. So that was dropping down. Also the insurance that we had to pay

out with the super fund because you can only take so much insurance from that, which we were told was getting taken out of our personal account. And then we were now in accommodation which we were paying over the odds for because it was furnished, and we didn't feel that we could commit to a 12-month lease because we  
5 thought that we were going to be running our bed and breakfast.

Did you tell your family about what had happened in this meeting?---No, I was too embarrassed to tell anybody. I felt humiliated, stupid, that I didn't – I'm quite an educated person, and I feel that when you go for advice, it's a bit like you go to a  
10 doctor and he has been trained to deal with your problem. You go to a lawyer, and the same thing. So I felt that Karl and Krish, being professional financial advisers and business banker through the Westpac bank, that we had been to a big bank that we had banked in for 16 years and I never thought that I would be lied to. I thought  
15 what I was being told was the truth, and I just felt that I didn't see it and I just felt embarrassed and I couldn't tell my family or friends. I just told them we had changed our mind.

And you said you sent an email to Westpac after this meeting, and that email contained a complaint?---It certainly did.

20 Is that right?---Yes.

And how do you feel about the way your complaint was handled by Westpac?---There was – nothing was in a hurry about it. So I did get an email back  
25 from Danielle Purcell saying that she had read our complaint and the Westpac bank do take matters very seriously in regards to that, and she would get back to me in due turn. But because it was around about the Christmas area – Christmas time, sorry, everything just seemed to take forever and a day.

30 So your complaint is annexed to your witness statement at WIT.0900.0001.0076 behind tab 3, Mrs McDowall?---Yes.

It seems we're having trouble pulling that document up, but I am sure it will come up on the screen at some point, Mrs McDowall. But in response to that complaint, did  
35 Westpac make an offer to pay you some compensation in February of 2016?---They did.

Did they offer to pay you \$17,988?---They did.

40 And did you accept that offer?---We did not.

And why not?---Because we felt that in the mission statement that the Westpac – the Westpac Bank say in their mission statement that if they get it wrong they will put everything right. And by that \$17,000, that was only going to put back what we had  
45 paid for the advice and those costs. It wasn't going to put us back in a home.

And did Westpac make a further offer to you in March of 2016 to pay you \$50,988?---They did.

And did you accept that offer?---We didn't.

5

And why not?---Again, it was – that was just going to put back the insurances that they had taken from our self-managed funds, and, again, just covering all the other moneys that we put out towards professional financial advice. And, again, it wasn't giving us a deposit or stamp duty to get us back into our house which we now didn't have.

10

Did you have any assistance when you were responding to these offers, Mrs McDowall? Did you have a lawyer or anyone else assisting you with the process?---No, we didn't have anyone. We just did it ourselves because we couldn't afford to pay a lawyer.

15

Yes. And that offer to pay approximately \$50,000, was that expressed to you as Westpac's final offer?---Yes.

And I see now we have the email containing your complaint, and if we could move from that to tab 4, which is WIT.0900.0001.0078?---I haven't got - - -

20

Not quite. We're looking for 0078 which is tab 4?---Yes. I've got it now.

I am sure – you have it, Ms McDowall. I will just wait until we have the same document on the screen. And we see this is the letter containing the first offer to make a payment to you on 25 February 2016?---Yes.

25

And if we could go back to the document that we just had up which is 0085, we will see that was the letter from March containing the second offer to make a payment to you. Then you've said you rejected this offer. Did you then make a complaint to the Financial Ombudsman service?---Yes, we did.

30

And how did you know about the Financial Ombudsman service?---It was on some of the –the bottom of the paperwork from the Westpac Bank.

35

Yes. And if we then go to the sixth exhibit in your statement which is 0088. We see your email to the Financial Ombudsman on 28 March 2016?---Yes.

So this was how you initiated the process with the Financial Ombudsman Service?---Yes.

40

And if we turn to the next exhibit which is 0092, we see the recommendation that was made by the Financial Ombudsman Service. If we turn to the second page, 0093, you will see that this recommendation firstly was made on 27 February 2017 which was almost a year after you made your complaint on 28 March 2016 in the document we just saw?---Yes.

45

And we see there that the recommendation down the bottom of the page was in your favour?---Yes.

5 And the FSP, the financial services provider, Westpac, a recommendation was made that they pay you and your husband \$79,322?---Yes.

10 This being a recommendation from the Financial Ombudsman Service was open to you and Westpac to accept or reject. What did you do when you received this recommendation?---We rejected the offer.

Yes. And do we see there, before we leave this document, that the key findings made by the Financial Ombudsman Service above the recommendation, which are that:

15 *The financial services provider, Westpac, was required to consider whether the advice was viable and advise the applicant of the risks once he knew they intended to sell their house.*

And in the next paragraph:

20

*The adviser's actions caused the loss. But for the failing, the applicant would have not proceeded with the strategy and retained their industry funds.*

?---Yes.

25

So having rejected this recommendation, Mrs McDowall, was the process then that that required the Financial Ombudsman Service to make a formal determination of your complaint?---Yes, that was the next level, yes.

30 Yes. And if we go to your final exhibit behind tab 8, which is 0101, and we bring up the second page, 0102, we see, firstly, that this determination was made at the top of the page on 17 August 2017, which was almost 18 months after you made your complaint to the Financial Ombudsman Service?---Yes.

35 And we see there that the determination was in your favour down the bottom of the page under 1.3?---Yes.

Continuing:

40

*This determination is in favour of the applicants. Within 30 days of the applicants' acceptance of this determination, Westpac must pay the applicant \$47,413 for the losses on the sale of the house - - -*

?---Yes.

45

Continuing:

- - - and \$60,061 into the nominated superannuation funds.

So this was the determination made on the basis listed above under Issues and Key Findings. Again:

5

*The adviser should have advised the applicants the strategy to purchase a B & B was not realistic for their circumstances. The adviser's actions caused the loss. But for the advice, the applicants would not have started the strategy and sold their home. They would not have purchased the level of life insurance the adviser recommended and would have retained their existing superannuation arrangements.*

10

Did you accept this determination, Ms McDowall?---Yes.

15

Yes. What can you tell the Commissioner about what this process was like to experience – and I assume, again, you didn't have assistance as you negotiated this process. What was this experience of getting to the point of receiving a determination in your favour in the Financial Ombudsman Service like?---It was very difficult. Every time we put information in, we didn't hear anything, and when we contacted them, they said that that case manager had left, "You were now going to another case manager". We had to refurnish all our information again. The same thing again, "That case manager had left", and so on and so on until we finally got someone who seemed to take notice.

20

25

Did Westpac pay you the \$47,413 we see referred to in this document?---They did.

And what did you use that money for?---To pay off the debts that we got into while we were going through all this - - -

30

And did you have any left over to put towards the purchase of another house?---We didn't.

And did Westpac make the payment of \$60,000-odd into nominated superannuation accounts?---They did.

35

Which superannuation account did they put that into?---They put that back into the self-managed super fund.

40

And is that where you want that money to be?---No. We want that money to be put back into our Hesta and CBUS which we've reopened due to the jobs that we're in again, and, again, we were offered advice and told someone would call us from the Westpac Bank to help us put these funds from Heffron who was holding our self-managed super funds back into CBUS and Hesta. And nearly a year later, the same thing again. Every time we put our information into someone, we don't hear anything. We call back or send an email to be told that someone else has taken over it. You need to give all this information again. Subject to say that the super funds is still with Heffron, not in Hesta and CBUS and they're still taking their commission

45

and we're still no further forward. I still – the new person again is still asking us to furnish the same information that were furnished three times and it's very exhausting.

5 How long have you been trying to transfer the \$60,000 out of the self-managed superannuation fund and into your CBUS and Hesta superannuation funds?---It has got to be coming up for a year now.

10 Mrs McDowall, you moved to the Northern Territory in January 2017; is that right?---That's correct.

And that was while your complaint was working its way through the Financial Ombudsman Service process?---That's correct.

15 And why did you move to the Northern Territory at that time?---My husband and I had to move to the Northern Territory because we had to get jobs that paid a bit more money than we were earning here, to try and get us to gain enough money for a deposit and stamp duty to get us – to buy our own home for our retirement. It wasn't through choice. It was because the money there for the jobs that we do is a lot more than we were earning here.

20 And what jobs are you both doing in the Northern Territory at the moment?---I'm still a registered nurse, nurse practitioner in an Aboriginal clinic and my husband works on the mines.

25 Thank you. Now, have you been able to purchase another home since you moved to the Northern Territory?---Not yet. We're still saving.

30 So you still live in rental accommodation?---We do.

Before all of this happened, when were you planning to retire?---I was planning to retire around about 60.

35 And when do you currently think it's feasible for you to retire?---Probably when I can't walk. Probably when I'm in a wheelchair or Zimmer frame. Looks like I will be working till I'm 80.

40 Have you told your children about what happened with all of this now?---I first told my daughter the night after I got the telephone call from the Royal Commission to ask me to appear, and I told my daughter what was happening, where I was going and she says, "Mum, why didn't you tell us? There is nothing for you to be embarrassed about." And I've only then told my son who is in the UK at the moment with his family. And, again, "They said there's nothing for you to be embarrassed about. You went for financial advice, and you were led up the garden path which is absolutely awful."

45

Mrs McDowall, finally, why have you decided to tell your story as part of the Royal Commission hearings?---I've decided to tell my story because I wouldn't wish this to happen to anyone again. I want it to get out there that when the banks, Westpac or other, train these people up to be professional advisers, that they tell the truth, and they don't skimmy by things and make you feel that anything's possible, and then all of a sudden, they pull the rug from under your feet after they have gained all that money from you and transferred everything in your trust, because, at the moment, I don't know if we're ever going to be able to get into our own home again. Hopefully we will. My furniture is still in storage. I'm still renting. And I just want people out there just to be very, very careful. Even as an educated person, deep down in their paperwork and the way that they speak to you, it's just they're not truthful. And I will never, ever trust anybody again, even if they say they're a professional this or a professional that. It's all just to gain money for their side. We're all here just normal people working and trying to earn a living. Some of us earn more than others, you know, and we all just want to try and get a property and have a little bit put by for our retirement, and I just feel that through this horrible situation through the Westpac bank, the advice that we were given, a bank that's a big bank that I've been with for 16 years, for them to do that to their customers is absolutely and utterly disgusting, and I hope no one ever has to go through it again.

20

Thank you, Mrs McDowall. I have no further questions, Commissioner. I'm told that my tendering of the statement did not extend to the exhibits to the statement. I want to make sure that I have tendered both the statement and the exhibits.

25 THE COMMISSIONER: Yes, thank you.

Do you want to take a break, Ms McDowall?---Yes, please.

All right. We might come back at 10 to midday, I think.

30

**ADJOURNED**

**[11.42 am]**

35 **RESUMED**

**[11.50 am]**

THE COMMISSIONER: Now, Mrs McDowall, are you ready to go on?---Yes, all good.

40

Yes. Does any party other than Westpac seek leave to examine her? No. Yes, Mr Sheahan.

45 **<CROSS-EXAMINATION BY MR SHEAHAN**

**[11.50 am]**

MR SHEAHAN: Thank you, Commissioner.

5 Mrs McDowall, my name is Sheahan and I'm here to represent Westpac, but forgive me for keeping you here just a couple of minutes longer, but it will only be a couple of minutes. I just want to go back to the time before you went to the first meeting at which you met Krish and Karl. Your – at that time, would I be right to think that you had a general understanding that banks had policies about how much they would lend on property, lend on a house?---Yes, absolutely.

10 And in the course of the meeting with Krish and Karl, when Karl was there, there was some discussion about how much the bank would be prepared to lend on a house property?---The only thing that was said was what Krish had relayed to Karl in the first meeting was what we had in our funds and that we had no money outside that. There was nothing else discussed except that Karl said that he could lend us up to 2  
15 million. There was nothing else discussed about how much we could or couldn't borrow. We thought that with the information that was given from Krish, that he was – we were under the understanding that Karl thought that with our strategy of borrowing for a million, that it was. But there was nothing else discussed. He didn't ask us anything else. So we thought he had already looked into this.

20 I see. So what I want to suggest to you was that in the course of the meeting Karl said to you something to this effect: that the bank's policy is to – the bank will lend up to 80 per cent of the value of a house?---I can't remember that.

25 You can't remember that. If he had said that, that would have fitted neatly with your plans?---Well, it would – it would have given us a bit more of an understanding what we could borrow, but when Karl said that we could borrow up to 2 million, that's what we thought we could borrow up to. So when you're told that, you think he's – he's the man who has discussed with the financial adviser with what we have and  
30 what we haven't got, and if he has told him that at that meeting and he has then come out after that information from the financial adviser, to say that, "Well, I'm still your man. I can borrow you up to 2 million", would you not just think, "Well, he has read into it. That must be what I can borrow." Do you think I would then have to read further into it when I'm sitting there with the business banker. He's the man that  
35 knows. He should have asked us or said to us, "Well, Mrs McDowall, you can only borrow 60 per cent or 50 per cent or 80 per cent."

Before you went to see the bank, you were planning to spend about a million dollars. That was your hope - - -?---That's correct.

40 - - - on a property, and you had about 200,000 in the super fund?---That's correct.

So if you could borrow 80 per cent, that would have looked about right?---Yes.

45 Okay. Now, when you saw him again – saw Karl again - - -?---Yes.

- - - so this was the last face-to-face meeting you had, I think, in November of 2015?---November, yes.

5 Okay. And this was the meeting that you came away from extremely disappointed because your plans now looked unrealisable?---Yes.

In that meeting, one of the key subjects of conversation was how much the bank was then prepared to lend, given that you had the \$200,000?---Yes.

10 Now, what I want to suggest to you is that, in that meeting, either Karl said to you that the bank's lending limits had changed, and it could only lend, now, 70 per cent on the value of the property. Does that sound – is that consistent with your recollection?---See, I can't – I can't remember about the percentages. It may be correct; it may be not, but I'm not going to commit to saying I understood. But then  
15 if that was the case, by this time, it's too late.

So I will just - - -?---Yes, sorry.

20 That's all right. I'm not meaning to criticise. But it might seem – what I want to suggest to you is that he said that if the bank's lending limit is 70 per cent and you're – the amount that you can contribute is 200,000, that the maximum the bank can lend you is only 450,000. In other words, it had come down from 800,000 to 450. Is that – is that consistent with your recollection of this second meeting?---Yes, yes.

25 And you, obviously, were very disappointed by that change?---Yes, especially when we were told that we couldn't really borrow anything to get the properties. I just felt it was a little bit too late after everything had been transferred over.

30 Yes, and - - -?---And the house had been sold.

And your view at that time was that if you had 650,000, that wouldn't be enough for your plan?---Well, one of the properties – the one that was under the one title that I mentioned that was in Bright was on for 699. So we thought that even that might have been realistic, but at the end of that meeting, that wasn't realistic either. We  
35 couldn't afford that.

Right. Thank you. That was all I wished to ask?---No worries. Thank you.

40 THE COMMISSIONER: Thank you, is there anything, Ms Orr?

MS ORR: No, thank you, Commissioner.

45 THE COMMISSIONER: Thank you very much, Mrs McDowall, you're excused from further attendance. Thank you for coming?---Thank you.

Mr Sheahan, one matter of information which you may or may not be able to assist me with, Mrs McDowall mentioned an organisation called Heffron.

MR SHEAHAN: Yes, your Honour.

THE COMMISSIONER: Are you able to say whether that is an organisation associated with Westpac?

5

MR SHEAHAN: I believe it is not, but I will have that checked.

THE COMMISSIONER: Yes, thank you. Thank you very much, Mrs McDowall?---Thank you very much. Thank you.

10

**<THE WITNESS WITHDREW**

**[11.56 am]**

15 MR SHEAHAN: I should say one thing, Commissioner, on a slightly different subject – it doesn't need to keep Mrs McDowall here.

THE COMMISSIONER: No, you can go and take a seat in the back of the courtroom if you wish, Mrs McDowall.

20

MS McDOWALL: Yes. Yes.

MR SHEAHAN: In light of some of her evidence, we will seek to tender two documents that I think are not presently available on the court book. I don't need to take Mrs McDowall to them, but just to explain what they are, for future reference, tab 25 to Mr Wright's second statement has an undated email. It's – the document is WBC.503.001.1329. We have found a dated version of that email which we would seek to tender.

25

30 THE COMMISSIONER: Who were the parties to the email?

MR SHEAHAN: Mr Mahadevan and the witness.

THE COMMISSIONER: Well, you say you want to refer to them. You don't think it necessary to take the witness to them. Have you told – spoken to Counsel Assisting about these documents?

35

MR SHEAHAN: No, because it only arose from the evidence. I understand that that will limit the use that we can make of them in submissions, but they will be material in various ways to the issues that are likely to arise.

40

THE COMMISSIONER: Yes. Yes. You mentioned a second document.

MR SHEAHAN: The second document is the information that appears on the website that is referred to in that email.

45

THE COMMISSIONER: Yes.

MR SHEAHAN: And I will seek to tender those documents in due course.

THE COMMISSIONER: Well, I will consider that when the documents are available and what's to be done about them then.

5

MR SHEAHAN: Thank you, Commissioner.

THE COMMISSIONER: Yes. Where to?

10 MR SHEAHAN: I think it's my turn to call a witness, Commissioner.

THE COMMISSIONER: Mr Sheahan.

MR SHEAHAN: I call Michael Wright.

15

**<MICHAEL WRIGHT, AFFIRMED**

**[11.59 am]**

20 **<EXAMINATION-IN-CHIEF BY MR SHEAHAN**

THE COMMISSIONER: Yes, do sit down. Thank you very much. Yes, Mr Sheahan.

25

MR SHEAHAN: Commissioner.

Your full name is Michael Wright with a W?---Yes.

30 And your business address is Tower 2, International Towers, 200 Barangaroo Avenue, Barangaroo, New South Wales?---That's correct.

And your current position is national head of BT Finance?---That's correct.

35 You have attended the Commission pursuant to a summons dated 12 April 2018?---That's correct.

Do you have the original of that summons there?---I do.

40 I tender it, Commissioner.

THE COMMISSIONER: Exhibit 2.100, summons to Mr Wright.

45 **EXHIBIT #2.100 SUMMONS TO MR WRIGHT**

MR SHEAHAN: And Mr Wright, for the purposes of the Commission, you have so far prepared three written statements?---Yes, I have.

All right. The first statement is dated 5 April?---That is correct.

5

Do you have a copy of it there?---I do.

Now, Commissioner, it's time for me to apologise again. There are two non-trivial corrections to this statement. The corrections have been reduced to writing for everyone's assistance. Our learned friends have had the corrections for a couple of days.

10

THE COMMISSIONER: Yes.

MR SHEAHAN: And they are on the system as WBC.900.001.0350. I will hand a paper copy of that to the witness and to you.

15

THE COMMISSIONER: Thank you.

MR SHEAHAN: And by way of explanation, Commissioner, the substance is to correct documents so that they are the current versions of the policies referred to by Mr Wright at the relevant paragraphs of his statement.

20

THE COMMISSIONER: Yes.

25

MR SHEAHAN: I will deal with it in the following fashion, if I may. Mr Wright, you have your statement there in front of you, your first statement?---I do.

And the list of corrections to it?---I do.

30

Right. Now, if you go in your statement to paragraph 51(a)?---Yes.

Do you have a pen?---I do.

All right. Now, paragraph 51(a) is the subject of the first of the corrections that's in the separate piece of paper?---Yes.

35

And it relates to the words in brackets starting:

*See Style Guide –*

40

to the end of that subparagraph?---Yes.

Would you cross out those words and initial that for me, please?---Sorry, was it just cross out "see style guide"?

45

To the end of that subparagraph?---To the end. Yes.

If you go to paragraph 129. The second correction in the separate sheet relates to the words commencing at the end of that subparagraph, exhibit MW1 to the end?---Sorry, could you repeat that?

5 The correction – the second correction in a separate sheet relates to the reference at the end of that paragraph, exhibit MW1 and so on?---Yes.

Would you cross out those words at the end of that paragraph and initial that change?---Yes.

10

Mr Wright, with those changes in the separate document, are the contents of your first statement correct to the best of your knowledge, information and belief?---It is.

15 Commissioner, I tender the first statement of Mr Wright, including exhibit MW1. Its document ID is WBC.900.001.0179.

THE COMMISSIONER: The statement of Mr Wright of 5 April '18 and its exhibit together, I think, with the corrigenda in WBC.900.001.0350 will be exhibit 2.101.

20

**EXHIBIT #2.101 STATEMENT OF MR WRIGHT AND ITS EXHIBIT TOGETHER WITH THE CORRIGENDA DATED 05/04/2018 (WBC.900.001.0350)**

25

MR SHEAHAN: I also tender the four documents referred to in the corrigenda.

THE COMMISSIONER: And part of exhibit 2.101 will be, not only with the corrigenda, and documents identified in those corrigenda. Yes.

30

MR SHEAHAN: Thank you, Commissioner.

Mr Wright, your second statement is also dated 5 April?---It is.

35

You have no corrections to make to it, I think?---I don't.

Are the contents of that statement true and correct to the best of your knowledge, information and belief?---They are.

40

Commissioner, I tender that statement and exhibit MW2.

THE COMMISSIONER: Second statement of Mr Wright of 5 April '18 and exhibit will be exhibit 2.102.

45

**EXHIBIT #2.102 SECOND STATEMENT OF MR WRIGHT AND EXHIBIT DATED 05/04/2018**

MR SHEAHAN: And the document ID is WBC.900.001.0163. There is a third statement of yours, Mr Wright, which is already in evidence. It's a statement dated 13 April 2018. It is exhibit 2.10?---Mine is 16 April.

5 16<sup>th</sup>, I'm sorry. Forgive me, and it is WBC.900.001.0326. Although it's in evidence, Commissioner, I think I should ask the witness if he affirms its contents.

THE COMMISSIONER: Yes.

10 MR SHEAHAN: Mr Wright, are its contents true and correct to the best of your knowledge, information and belief?---They are.

Thank you. I have no further questions.

15 THE COMMISSIONER: Yes, thank you. Yes, Ms Orr.

**<CROSS-EXAMINATION BY MS ORR**

**[12.06 pm]**

20

MS ORR: Mr Wright, you're the national head of BT Financial Advice?---I am.

And BT Financial Advice is a business unit within a company called BT Financial Group Proprietary Limited?---It is.

25

And BT Financial Group Proprietary Limited is the wealth management brand and division of Westpac which provides financial products and financial advice services?---It is.

30 And you've been put forward by Westpac to give evidence about Westpac's financial advice business?---That's correct.

And Westpac operates that financial advice business through a number of different entities?---Yes.

35

It has about 500 employed financial advisers who operate under Westpac's financial services licence?---Correct.

40 And you refer to those advisers in your statement as being part of BT Financial Advice; is that right?---That's right.

And then Westpac has about another 500 financial advisers who operate as authorised representatives on behalf of either Magnitude Group Proprietary Limited or Securitor Financial Group Limited; is that right?---That's correct.

45

And both of those entities are wholly owned by Westpac and have their own financial services licences?---They do.

And you refer to these advisers, this second group of 500 financial advisers in your statement, as being part of a business unit called BT Group Licensees?---Yes.

5 You've provided two statements of your three that deal with the topic of inappropriate advice?---That's correct.

10 And one of those deals with Westpac's financial advice business, generally, and with the conduct of three financial advisers who provide advice on behalf of Westpac?---We did provide advice on behalf of Westpac, yes.

10 Thank you. And the other deals with a fourth financial adviser who did and still does provide financial advice on behalf of Westpac?---As a part of my second statement, yes.

15 Yes. So I want to start with that second statement, which deals with the fourth financial adviser, and that fourth financial adviser is Mr Ramakrishnan Mahadevan who gave the advice we've just heard about to Mr and Mrs McDowall?---Yes.

20 Yes. You've heard the evidence from Mrs McDowall about the advice that she and her husband received?---I did.

25 Thank you. And I'm going to come to that advice in some detail shortly, but, first, I want to ask you about the arrangements that Westpac has with its employed financial advisers using Mr Mahadevan as an example because he is an employed financial adviser for Westpac; is that right?---He is.

Thank you. And Mr Mahadevan commenced as a financial adviser with BT Financial Group in October 2006?---That sounds right. I can't remember exactly.

30 Thank you. Has he been an employee with Westpac since that time?---Yes.

And Westpac has not put Mr Mahadevan forward to give evidence about the events involving the advice provided to Mr and Mrs McDowall?---No.

35 And this is despite him being a current employee of Westpac?---That's correct.

Why not?---We felt that I would be much more appropriate to deal with the statement, in particular with reference to statement 1.

40 What about statement 2, Mr Wright, which deals with Mr Mahadevan's advice to Mr and Mrs McDowall?---Yes, as I said, we felt because I was doing statement 1 which dealt with the issue of inappropriate advice, also for statement 2 Mr Mahadevan, it made sense for me to do that as well.

45 Did you talk to Mr Mahadevan about the events involving Mr and Mrs McDowall to assist with the preparation of your statement?---Not my draft statement, but I did speak to Mr Mahadevan.

When you say “not your draft statement”, the final statement that you provided, did you speak with Mr Mahadevan to assist you with the preparation of that statement?---Yes, I did.

5 You don’t refer to that in your statement?---Apologies. I – I think I do refer to that. I – I can’t remember which paragraph, but I do refer to speaking to Mr Mahadevan.

Well, the paragraph that I think you might be referring to is paragraph 3 which we have on the screen at the moment. We may be in the – I’m sorry, paragraph 12.

10 Thank you. :

*To inform myself about what happened and for the purpose of answering the questions I have been asked, I have spoken to BTFG employees who had some involvement in this matter, including Mr Mahadevan, and I have also reviewed the documents above.*

15

?---That’s correct.

20 That’s the paragraph you’re referring to? Did you speak with Mr Karl Sleiman, the other person who was involved in the provision of the advice?---I didn’t.

You didn’t speak to him?---I didn’t.

25 And is he still employed by Westpac?---He is.

And why is he not giving evidence about these events?---Because we made a call that since I was doing statement 1 on inappropriate advice, I would also do statement 2 in relation to Mr Mahadevan.

30 But you put that statement together without talking to Mr Sleiman?---I didn’t, no.

You didn’t talk to Mr Sleiman?---Apologies. I didn’t speak to Mr - - -

35 Yes?---Yes.

Thank you. But you told us in your statement and you reiterated in your evidence that you did have some discussions with Mr Mahadevan?---Yes.

40 Thank you. And what’s Mr Mahadevan’s current role at Westpac?---Mr Mahadevan is a portfolio adviser.

45 And what is a portfolio adviser?---A portfolio adviser is an adviser that services a portfolio of customers who pay an ongoing advice fee. They don’t take referrals from branches. They just serve their portfolio of customers.

So is that still a financial adviser role?---Yes, it is.

And Mr Mahadevan, you tell us in your statement, was appointed as a senior financial planner in October 2011?---I can't remember the exact date, but he was appointed as a senior, yes.

5 Yes. I will take you to some documents. What I want to understand is whether his role as a portfolio adviser is a more senior role than the role that he had previously at the time of giving the advice to Mr and Mrs McDowall which was a senior financial planner?---No, it's not.

10 Right. And how does it – how does it relate to the role that he was undertaking at that time, the senior financial planner role?---They're equal. He's a senior financial adviser in both roles.

15 Yes?---The subtlety is the current role is only serving and helping a portfolio of a customer's. When Mr McDowall met with – I'm sorry, when Mr Mahadevan met with Mrs McDowall as a senior, he was helping new customers, not serving ongoing advice customers.

20 So now he serves existing customers?---Existing customers only, yes.

And he provides those existing customers with financial advice?---That's correct.

25 Thank you. Could I ask that you be shown a document which is WBC.507.001.1206. And this is a letter to Mr Mahadevan offering him a role as a senior financial planner in BT Financial Group. Do you see that in the first few lines, Mr Wright?---Yes, I do.

30 And Westpac provided this letter of offer to the Commission under a notice to produce which required Westpac to produce any employment agreement between Westpac and Mr Mahadevan. Are you aware of that?---I'm not sure.

You're not aware of that?---Sorry, could you rephrase that?

35 Yes. I just want to understand if you know where this document has come from. What I'm putting to you is that it was provided by Westpac to the Commission under a notice to produce. It is not annexed to your statement. It was provided under a notice to produce which required Westpac to produce any employment agreement between Westpac and Mr Mahadevan?---Yes, I agree.

40 Yes. Thank you. I tender this document, Commissioner.

45 THE COMMISSIONER: Exhibit 2.103 will be letter to Mahadevan 7 October 2011 – sorry, that should be letter Westpac to Mahadevan, 7 October 2011, WBC.507.001.1206.

**EXHIBIT #2.103 LETTER WESTPAC TO MAHADEVAN DATED 07/10/2011  
(WBC.507.001.1206)**

5 MS ORR: Could I ask that you now be shown RCD.999.0014.0007. This is a letter  
that Westpac's lawyers sent to the Commission on Tuesday, on 17 April. Have you  
seen this letter before, Mr Wright?---Do you mind if I just have a quick read of it.

10 Yes. And perhaps we could have both pages brought up on the screen so you can  
read the entirety of the letter?---Thank you. Sorry, your question was?

So have you seen this letter before?---No, I haven't.

15 But you have now read the letter?---I have.

And you can see that in this letter, Westpac's lawyers conveyed to the Commission  
that the document that I have just tendered, the letter to Mr Mahadevan from 7  
October 2011 that was provided under the notice to produce was not, in fact, the  
employment agreement between Westpac and Mr Mahadevan because there was a  
20 system automation process that occurred when the document was accessed which  
meant that it incorporated Westpac's current terms and conditions and not those in  
place as at October 2011. And the letter also tells the Commission that Westpac has  
made further inquiries and undertaken extensive searches to locate the employment  
agreement provided to Mr Mahadevan in late 2011 relating to his role as a senior  
25 financial adviser, but has not located a copy. Westpac has, however, located a draft  
employment agreement for Mr Mahadevan dated 7 October 2011 which appears, on  
its face, to be incomplete. So we see from this letter, Mr Wright, that Westpac  
cannot find the original letter of offer constituting an employment agreement sent by  
Westpac to Mr Mahadevan in October 2011; is that right?---Yes, that's what it says.

30 Doesn't Westpac keep records of its employment agreements with its financial  
advisers?---It does.

35 But you cannot find this one?---Based off what I've just read, no we can't.

Thank you. I tender this letter, Commissioner.

40 THE COMMISSIONER: Exhibit 2.104, letter Westpac solicitors to solicitor  
assisting Royal Commission 17 April 2018, RCD.9999.0014.0007.

**EXHIBIT #2.104 LETTER WESTPAC SOLICITORS TO SOLICITOR  
ASSISTING ROYAL COMMISSION DATED 17/04/2018  
(RCD.9999.0014.0007)**

45

MS ORR: And could I ask you then to look at WBC.104.0002.1918. This is the draft employment agreement that was provided to the Commission under cover of the letter that I just took you to. And we see from this document, if we treat this as if it is the agreement which is the best we can do in the situation, we see here that Mr Mahadevan's fixed pay was \$97,500 per annum, plus superannuation which led to a total fixed remuneration amount of \$106,275 a year. And if we turn to the second page – I'm sorry, let's have the second and the third page on the screen. We see in the final paragraph that the employment arrangements also incorporated accompanying employment terms and conditions which bound Mr Mahadevan. Do you see that? The final paragraph - - -?---Yes, I can.

Yes, thank you. I tender this document, Commissioner.

THE COMMISSIONER: Draft employment agreement, Mahadevan, 7 October 2011, WBC.104.0002.1918 exhibit 2.105.

**EXHIBIT #2.105 DRAFT EMPLOYMENT AGREEMENT MAHADEVAN DATED 07/10/2011 (WBC.104.0002.1918)**

MS ORR: Now, you have annexed to your statement the current terms and conditions of employment for employed financial advisers, Mr Wright?---Yes.

And that is exhibit MW12 to your first witness statement dated 5 April which is WBC.502.001.0007, and do we see if we turn to 0012 - - -?---Sorry, what tab was it?

It's tab 2 of your first witness statement. The page is also on the screen, Mr Wright?---Thank you.

We see there that in relation to Mr Mahadevan's remuneration on the first line:

*In addition to your total fixed remuneration –*

and I'm sorry, I need to make clear, these are the current terms and conditions of employment?---Yes.

And can I suggest to you first that they are substantially in the same terms as the ones that would have applied to Mr Mahadevan in 2011?---I don't know for sure, but that would be my assumption.

Yes. Well, I want to ask you particularly about this paragraph at the top of the page on Variable Remuneration. The current situation for Westpac employed financial advisers is that in addition to their total fixed remuneration, they can be invited from time to time to participate in a variable reward scheme, and the details of that scheme are provided at the time that they're invited to participate in the scheme. Now, was it the case in 2011 as well that people in Mr Mahadevan's role as a senior financial

planner had a remuneration package which was partially fixed and partially variable based on a variable reward scheme?---I'm not sure, actually.

All right. Can I show you the document - - -?---Yes, please.

5

- - - as it was in 2011 to assist you. This is WBC.508.002.0397, and could I ask you to look at 0400, and ask you to read the section there under Variable Reward Schemes?---Excuse me, Ms Orr. Is that dated 2011, is it?

10 Yes. This is the document that we understand was in force in 2011. I'm just looking for a date within it, Mr Wright.

MR SHEAHAN: I can say that it's the policy or the terms effective 18 September 2010, Commissioner, if that helps.

15

MS ORR: Thank you, Mr Sheahan.

20 Now, what I want to understand, Mr Wright, is whether it was the case for Mr Mahadevan in 2011 as it is the case now for employed financial advisers at Westpac that remuneration consists of a fixed component and a variable component under a reward scheme?---Yes, it did.

Thank you. I tender that document, Commissioner.

25 THE COMMISSIONER: Exhibit 2.106 will be Westpac Financial Consultants Limited employment terms and conditions effective September 2010, WBC.508.002.0397.

30 **EXHIBIT #2.106 WESTPAC FINANCIAL CONSULTANTS LIMITED  
EMPLOYMENT TERMS AND CONDITIONS EFFECTIVE SEPTEMBER  
2010 (WBC.508.002.0397)**

35 MS ORR: Now, as a senior financial planner, Mr Mahadevan was invited to participate in the variable reward scheme. That's right, isn't it?---Yes.

40 And can I ask you to look at WBC.506.002.0828. This is the participant guide for the Financial Planner Incentive Scheme for the period you can see on the front there, 1 October 2014 to 30 September 2015, which covers the period in which Mr Mahadevan provided the advice to Mr and Mrs McDowall?---Yes.

45 Thank you. And if we turn to 0831, we see that the people who participated in this scheme included senior financial planners such as Mr Mahadevan?---That's correct.

What would you say – have you seen this document before, Mr Wright?---I have.

Yes. And what would you say this scheme is designed to reward?---The scheme is designed to reward the effort that goes into assisting and helping customers.

The effort that goes into assisting and helping customers?---Yes.

5

Are there any references to that in this document, Mr Wright?---There will be references to customers.

Yes. Any reference to reward being for the effort that financial planners put into assisting and helping customers?---I'm not sure.

10

Well, can I take you to what the document says it is designed to reward on 0832:

*The objective of this scheme is to reward for achieving and exceeding performance targets, specifically to reward for value generated, reward for behaviours that support our values, provide high performers with greater variable remuneration, and have a simple framework and calculation method that provides you with clarity on what success looks like and how we will reward you for that success.*

15

20

Do you see that?---I do.

So you see that the first item mentioned as the objectives in the objectives of the scheme is to reward for value generated, and all of this is referable to achieving and exceeding performance targets?---That's correct.

25

Under this scheme, financial planners could earn a monthly bonus; is that right?---That's correct.

And that monthly bonus was calculated as a percentage share of the revenue that they generated?---That is correct.

30

Yes. Now, apart from meeting a revenue threshold, there were two gate openers that financial planners had to open to be eligible for their monthly bonus?---That's correct.

35

Yes. Can I take you first to 833. Before I come to the reference to the gate openers there which you will see partway down the page, can I take you to the top of the page:

40

*The monthly incentive earned is calculated as a share of accumulated performance adjusted revenue above the total revenue validation threshold. Any revenue above this threshold is shared depending on role type, and revenue above the high performance target threshold is also shared depending on role type.*

45

So that's where we see that this is calculated by reference to revenue brought in. Then if we look at the reference to the gate openers, partway down the page:

5            *To be considered for a variable reward payment, you must meet all the gate  
openers detailed below - - -*

?---Sorry, could you please go up or down, sorry.

10 I'm sorry, you only have part of the page. Would you like to see - - -?---I would like  
to see one and two - - -

Yes?--- - - - and three.

15 If we could have the whole page on the screen?---Thank you.

I think that might assist Mr Wright?---Thank you.

20 And did you have – I'm sorry. Did you have this on the screen before when I read  
from the first paragraph at the top?---I did.

Thank you. Now, you wanted to have a look at the paragraph in between that  
paragraph and the gate openers section; is that right?---Yes, the one you're referring  
to?

25 I'm referring to the gate openers reference?---I'm – apologies.

So the gate openers are listed in the table there; do we see that?---Yes.

30 And there are two gate openers:

*Living the values and operational risk and compliance*

?---Mmm.

35 And to open the "living the values" gate opener, you have to achieve a behaviour  
rating of 2 or 3, and to open the "operational risk and compliance" gate, you have to  
meet the operational risk and compliance objectives detailed in your remuneration  
and benefits policy?---That is correct.

40 So once an adviser has satisfied the gate openers, they're then eligible for a monthly  
bonus, and the amount of the monthly bonus has nothing to do with the gate openers.  
It's determined according to the revenue that they have brought in?---That's correct.

45 Thank you. I will tender this document, Commissioner.

THE COMMISSIONER: Exhibit 2.107 will be Financial Planner Incentive Scheme  
Participant Guide October '14 to September '15 WBC 506.0002.0828.

**EXHIBIT #2.107 FINANCIAL PLANNER INCENTIVE SCHEME  
PARTICIPANT GUIDE DATED OCTOBER 2014 TO SEPTEMBER 2015  
(WBC 506.0002.0828)**

5

MS ORR: Could I ask you now to look at WBC.500.024.7371. This is the remuneration and benefits policy and financial incentives payment plan that, again, would have been in place at the time of Mr Mahadevan's advice. It's dated 1 April 2015?---Yes.

10

And this, again, is a document that applied to senior financial planners such as Mr Mahadevan?---Yes, that's my understanding.

15

And this document gives us some more detail about the components of the scheme that we just saw in the participant guide; is that right?---That's right.

And if we turn to 7384, we see a section headed Reward Calculation. Do you see there that:

20

*The monthly incentive earned is calculated as a share of accumulated revenue above the total revenue validation threshold. Any revenue above this threshold is shared at 20 per cent applied for all planners. Revenue above the HPT –*

that was the high performance target threshold?---Correct.

25

Continuing:

*... is shared depending on role type.*

30

And we see there a reference to AFP. What is an AFP?---Advanced financial planner.

Advanced financial planner, and an SFP is a senior financial planner?---Correct.

35

So the senior financial planner gets 40 per cent above the HPT threshold?---Correct.

So as a senior financial planner, if Mr Mahadevan generated revenue above a target revenue hurdle, he got 20 per cent of the revenue generated above that hurdle as a monthly bonus?---Yes.

40

This is the first hurdle - - -?---Mmm.

- - - the total revenue validation threshold. But if he earned more, if he generated revenue above the high performance target hurdle, then his monthly bonus went up to a 40 per cent share of the revenue generated above that higher hurdle; is that right?---That's correct.

45

And the percentage share could be dialled up even further; is that right?---It can.

5 Yes. And if we see on this – at paragraph 5 on this page, the reference to dial up and dial down. Is it right that the 20 per cent – this is something you deal with in your statement, Mr Wright – that the 20 per cent could be dialled up to 24 per cent, and the 40 per cent could be dialled up to 44 per cent in certain circumstances?---That’s correct.

10 Thank you. Now, can we – first I will tender that document, Commissioner.

THE WITNESS: Sorry, to be clear, I should have stated also it can be dialled down by four per cent.

15 MS ORR: Yes. So it can go up or down?---Yes.

But it can go up as far as 44 per cent?---Yes.

20 The monthly bonus can be as much as 44 per cent of the revenue brought in by the financial adviser?---Correct.

Thank you.

25 THE COMMISSIONER: The document Bank Financial Planners Remuneration and Benefits Financial Incentives Payment Plan of April 2015 will be exhibit 2.108, that’s document WBC.500.024.7371.

30 **EXHIBIT #2.108 BANK FINANCIAL PLANNERS REMUNERATION AND BENEFITS FINANCIAL INCENTIVES PAYMENT PLAN DATED APRIL 2015 (WBC.500.024.7371)**

35 MS ORR: Now, before we leave that document, could I ask you to look at 7381. I just want to ask you some questions about how those targets are calculated. We see on 7381, a reference to the first hurdle or target which is the total revenue validation threshold, and do you see there that that’s determined by applying a multiplier to the planner’s base salary plus super?---Yes.

40 So that’s how the first hurdle is calculated, and then if we go over the page to 7382, we see that the second hurdle or target, the high performance target, is set by the business from time to time to reflect the revenue plan of the business. Do you see that in the first paragraph on that page?---I do.

45 So the upshot of all of this is that financial advisers such as Mr Mahadevan were rewarded with a monthly bonus based on the amount of money that they generated for the business, and the more money they generated for the business, the greater their monthly bonus?---That’s correct.

And the money that they generated for the business included money from customers like upfront and ongoing advice fees; is that right?---That's correct.

5 And it also included money from product providers, such as commissions from insurance policies?---That's correct.

That was all counted as part of the revenue from which the monthly bonus was calculated?---Yes.

10 Now, can we just come back to the concept of the gate openers before we leave these documents. At 7371 – 7379, my mistake. We see that there are three prerequisites for participating in the program there. Do you see that, Mr Wright?---I do.

15 And the three prerequisites include – the third one is what we've just been speaking about. It's achieving the total revenue validation threshold?---Mmm.

20 So that's about achieving the first target for generation of revenue. And the second is the quality advice gate opener, and this related to the rating that the adviser received based on consequence management points; is that right?---Yes, it – it was their risk rating.

25 Yes. And so a financial adviser needed to receive a rating of normal for the gate to open for the following month's payment; is that right?---It's not 100 per cent right. After normal, there's two other risk ratings.

Yes?---If they were deemed mandated improvement which is our lowest - - -

30 Yes?--- - - - then the bonus payment would be stopped for at least two months and it could be longer.

Yes. And this is referred to in the final paragraph on this page, Mr Wright, under how the QAGO works?---Yes.

35 So there's a reference there to the three different ratings that a financial adviser could receive. If they receive normal, then the gate opens?---Correct.

40 But if they receive oversight or mandated improvement, they're the three possibilities, aren't they: normal, oversight, or mandated improvement? If they receive either of those last two, then their monthly bonus is deferred for a minimum of two months, and in some cases can be cancelled?---Correct.

45 Thank you. And the final gate opener is this behaviour gate opener "living the values rating". Now, at 7382, we see some further explanation of this gate opener. It related to a behaviour rating; is that right?---That's correct.

So you needed a behaviour rating of 2 or 3 for this gate to open?---That's correct.

And the ratings were only 1, 2 or 3; they were the options?---Yes, that's correct.

So it was only the behaviour rating of 1 that meant the gate didn't open?---That's correct.

5

Is that right? And was it common for financial advisers to receive a behaviour rating of 1?---No, it's not.

10 Thank you. All right. Can we turn then to the consequence management policy, Mr Wright, which is WBC.104.002.1552. The document that I'm having brought up is dated 25 February 2015. So, again, a version of this policy that was in place at the time of Mr Mahadevan's advice. And this document, when it comes up, gives us information about the consequence management system that was in place at Westpac at this time for financial advisers?---Yes.

15

Are you familiar with that system?---I am.

20 Yes. And under that system you may be able to answer these questions without reference to this document while it's being found, but under that system – I'm sorry, I will repeat the number. It's WBC.500.012.8550. I apologise if I gave an incorrect number, but under this system, a financial adviser starts with 60 points; is that right?---That's correct.

25 And then they receive demerit points for non-compliant activities, and it's the balance of the points that are left that determines what rating they get?---That's correct.

30 Is that right? And that rating is what we saw before. It's normal, oversight, and mandated improvement are the options?---Correct.

35 And I just want to show you a part of this document to see how many points you needed to have for each of those ratings. So I will just have to wait a moment to pull up WBC.500.012.8550. We have it. Thank you. So this is the document that I referred to earlier, Mr Wright. Can I ask you to look at the second page, 8551. You will see there under, "how is my rating determined", points balance at any time. What we've just been discussing that you start with 60 points as a financial adviser, and there's a rating scale that ranges from normal to mandated improvement, and if you have 31 to 60 points, you are rated normal. And if you have 16 to 30 points, you are rated oversight. And zero to 16 points, you're rated mandated  
40 improvement?---That's correct.

45 And we also see from this document that demerit points continue to apply for six months, after which the points will be removed. Do you see that in the second paragraph under the table there, Mr Wright?---I do. The only qualification I would say they're not removed. They still remain in our system – if you see the next paragraph, total demerit points applied over 12 months. That is also another lens over a 12-month period.

I'm just using the language of the document, though, Mr Wright?---Yes.

5 The document says that the points will be removed. The documents are – I'm sorry, the points are restored to the adviser at the end of six months, are they not? So if you have had demerit points applied that take you below 60 points, they are wiped clean at the end of six months. So you get back up to the 60 points?---Yes, for the – for the calculation of your risk rating.

10 Rating?---Yes.

Yes, thank you?---Yes.

And what you were pointing out is that they have some other effect - - -?---Yes.

15 - - - over the annual period referred to in the period at the bottom of this page. Now, can I ask you just to look at 8553 so we get a sense of how many points get deducted for certain events. And we see there that three demerit points are applied if a file is rated as “qualified” at a compliance audit, and 10 demerit points are allocated if a file is rated “requires improvement” at a compliance audit?---Yes.

20

And there are 10 demerit points applied if there's a complaint and the adviser's found to be at fault and the compensation is less than \$25,000?---Yes, that's correct.

25 And 15 demerit points if there's a complaint and the adviser's found to be at fault and the compensation is more than \$25,000?---Yes.

30 So I want to make sure I understand this. You have 60 points and if there is a complaint made about you which is finalised and you are found to be at fault and compensation is made of \$25,000 or more as a result of your conduct, you only lose 15 points from your 60 points?---That's correct.

35 Which would, as we saw from 8551, if we go back to that page – perhaps we can have both on the screen at once – 8551 and 8553 – the loss of 15 points would still place you in the normal rating category?---Correct.

So the gate would still be open for your monthly bonus?---Yes, it would be.

Thank you. I tender that document, Commissioner.

40 THE COMMISSIONER: WBC Consequence Management Policy, 25 February 2015, WBC.500.012.8550 is exhibit 2.109.

45 **EXHIBIT #2.109 WBC CONSEQUENCE MANAGEMENT POLICY DATED 25/02/2015 (WBC.500.012.8550)**

MS ORR: Having gone through those documents, Mr Wright, I want to turn now to the advice that Mr Mahadevan gave to Mr and Mrs McDowall in 2015, and you heard the evidence from Mrs McDowall that in 2015, she contacted a Westpac branch looking for financial advice, and we know from documents annexed to your statement that the branch manager at Westpac's Eden Rise branch in Berwick referred Mr and Mrs McDowall to Mr Mahadevan?---Yes, that's correct.

Yes. And can I ask you to look at exhibit 2-4 which is in your second statement, the statement that deals with Mr Mahadevan, WBC.503.001.1330. We see there the email that the branch manager sent to Mr Mahadevan about the contact from Mrs McDowall?---Yes, I see that.

Do you see the email at the bottom of the page on 20 April:

15 *Hi, Karl. I have a customer interested in buying a B & B for –*

this appears to be a typo. I want to suggest to you the exclamation mark which appears above the number 1 on a keyboard should be 1 –

20 *... in buying a B & B for 1.4 mil. Wants to talk with someone ASAP. Is this something you can do or do I need to refer them to a LBB?*

What is an LBB?---A local business banker.

25 Yes. And:

*They would like to use their super to support investment.*

?---That's correct.

30 You see that reference there? And you have heard the evidence that following this, there was a meeting on 29 April 2015 between the McDowalls and Mr Mahadevan. That Mr – I'm not sure how to say his name – Mr Slyman?---Sleiman.

35 Thank you. That Mr Sleiman also attended. There is a file note of that meeting attached to your statement which is the fifth exhibit to your statement, WBC.503.001.1375. This is Mr Mahadevan's file note of that first meeting?---Yes, it is.

40 Yes. And we see from the second sentence there that Mr Mahadevan records that the McDowalls advised him that they:

*Need help in establishing an SMSF as they plan to buy a direct property soon to run a B & B business.*

45 And - - -?---Sorry, do you mind if I use paper to read. I'm finding it hard to read - - -

Not at all. Not at all, Mr Wright. You're looking for this in your folder?---Yes.

Tab 5?---Thank you. It doesn't seem to match my tab 5. Thanks.

5 Thank you. That's helpful to have that blown up?---Thank you.

Now, we see further down in that first paragraph on the sixth line down, Mr Mahadevan records:

10 *They have been planning to do this business for quite some time and they have accumulated more than 200,000 in their super which they wish to use in their SMSF to then borrow and buy a direct property at a later date to run this business.*

15 And if we go further down in that paragraph towards the bottom, we see Mr Mahadevan's reference to introducing Karl Sleiman to Jacqueline and Hugh and discussing with him their plan to purchase a direct property within SMSF by using borrowed moneys in future. You see that?---I do.

20 And then in the second paragraph, about halfway down, we see a reference to a discussion about personal insurances. About halfway through that paragraph?---And the sentence starts with "also"?

Continuing:

25

*Also discussed –*

Yes:

30 *Also discussed regarding personal insurances –*

and a few lines down we see a reference to:

35 *\$1 million of life cover and 150,000 for TPD and trauma only as they advise me that 1 million for life cover should be sufficient to manage their debts in a significant event of death, and 150,000 for TPD and trauma along with income protection will be sufficient to take care of their lifestyle and any medical expenses in an unforeseen event of disability or specified trauma.*

40 Does this suggest to you that Mr Mahadevan asked the McDowalls to consider insurances at a greater value, and that they said that 1 million and \$150,000 was enough for them?---No, it doesn't.

45 Okay. So having made this file note of the meeting on 29 April, Mr Mahadevan completes the customer profile booklet that Mrs McDowall referred to in her evidence. You have also annexed that to your statement at exhibit 1, WBC.503.003.0903?---Yes, thank you.

And you would have heard the evidence earlier that Mrs McDowall gave about this document reflecting the information that she and her husband gave Mr Mahadevan about their assets, about their liabilities, about their superannuation balances and about their insurance?---I did.

5

Thank you. Now, the liabilities that are disclosed in this document at page 0919. I will just ask you to do some quick maths and accept that the liabilities that the McDowalls had came to \$488,000?---Yes, I agree.

10 And there was just over \$200,000 in superannuation that you can see from the table at the bottom of this page?---Yes, I agree.

And you heard the evidence about the information at 0922 about, not only the insurance policies that they had in place, but the amount of coverage they had under each of those policies?---Yes, I did.

15

After this document is provided, you heard the evidence that there is a second meeting at which a statement of advice is provided?---Yes.

20 And you've annexed that statement of advice at the second tab of your statement which is WBC.503.0003.1148. And you heard the evidence about the recommendations made in this document. There were two recommendations to establish a self-managed superannuation fund to roll over the existing superannuation into that self-managed superannuation fund, and there were also various  
25 recommendations in relation to insurance cover?---Yes.

Now, there's no mention in this statement of advice, is there, of the purpose of the insurance cover which was to cover the debt for the bed and breakfast if something happened to Mr and Mrs McDowall?---I apologise for stalling. I'm just not 100 per cent sure that it's not in the 60 pages.

30

Well, let me put this to you: there's nothing in the statement of advice about the possibility that Mr and Mrs McDowall could have deferred taking out the new policies until they had purchased the bed and breakfast and incurred the debt that the insurance was designed to protect?---Yes, I agree.

35

And what do you say about that? Was that something that should have been discussed in the statement of advice? Is that an option that should have been given to them?---What I say is, as I have said in my statement, this is poor advice. It should have been covered and it wasn't, and it had significant impact.

40

In what way was this poor advice, Mr Wright?---In my view, reading the material – and I've got the luxury of reviewing all this material over the last three years – it's very clear that this was not a viable strategy for the McDowalls, and I'm sure the McDowalls were passionate and excited about what their future could look like, but the reality was it wasn't viable, and at that point in time, as professionals, as Mrs

45

McDowall stated, we should have made it very clear this is not viable. It was poor advice.

5 Are there any other ways in which this advice was poor advice?---For me, that was the – the fundamental issue, the overarching issue. I think if Mr Mahadevan had spoken about the possibility and gave – given, sorry, the McDowalls alternatives right in that first meeting, had offered to do some cash flow analysis, what-if scenarios and help them see that, “Maybe this is not viable as much as you want it.”

10 What about the insurance recommendations, Mr Wright. What do you say about those?---The insurance recommendations in relation to purchasing the B & B, potentially going to debt, I think that is reasonable. The reality though is, Ms Orr, this advice is poor; this strategy was not right. Therefore, by default, there shouldn't have been a need to set up the self-managed super fund. It wasn't viable. Therefore, 15 by default, we shouldn't have set up the insurance; it wasn't viable.

And even if those things were not the case, even if it had been viable at that point, do you accept that on top of that, no insurance policies of this size should have been entered into until the debt had been incurred?---Reading through the material, I think 20 it's – it's obvious that we should make it very clear that if this is something you want to continue with, there is no need to put the insurance in place until you purchase the property. Now, reading through the material, there was conversations – it would be good to have it in place because then we've got one of the elements of the strategy completed. I would wish we had deferred and waited.

25 Yes. One element of the strategy that was never going to be viable?---Yes.

Do you agree with that?---I agree with that.

30 Yes. And this advice was advice that Mr Mahadevan charged the McDowalls \$5280 to prepare and implement. You heard the evidence about that before, and I can show you the page if it assists, which is 1170. And on top of that, there was the fee of almost \$4000 to establish the self-managed superannuation fund. Do you have anything to say about that?---The administration costs for a self-managed super 35 fund?

No, about the entirety of the money - - -?---Sorry, I was - - -

40 - - - paid by Mr and Mrs McDowall for what you have described as poor advice?---Yes. Sorry, I was going to start with the administration.

I'm sorry?---That – that is a reasonable market rate. In terms of the advice preparation – let's assuming this was good advice – then that is not an unreasonable charge to prepare a statement of advice, and the time it takes, but with hindsight, this 45 is poor advice and, therefore, these charges don't make sense.

What about the \$3000 for the ongoing advice. What was that for?---That was to enter into an ongoing advice relationship with Mr Mahadevan to assist the McDowalls achieve and reach their financial goals which Mrs McDowall made very clear was to retire in her own B & B, to work in it, and the intent was to assist.

5

How? What further assistance would they require on an ongoing annual basis?---It's a complex system, our financial services system, particularly superannuation. The – the intent is around keeping people like Mrs McDowall and her husband informed of changes, their needs may change, there may be need for more advice. Having an adviser to help and reassure you to achieve your goals, that is the purpose of ongoing advice.

10

But the goal here was to acquire the bed and breakfast?---Yes, sorry for not being clear. The ongoing costs that you asked about is the charge that would be paid after the initial advice to help them realise their dreams over the journey.

15

Realise what dreams over the journey, Mr Wright. I just want to make sure I understand this?---Of course. The dreams that Mrs McDowall shared with us today.

Yes. But weren't those dreams about the acquisition of a bed and breakfast that she could operate in retirement?---What I heard was at that point – point in time, yes, but the end game, whenever that was going to be, early 60s, was to have a property that she could manage, she could retire comfortably, that she could live the life that she wanted to. That's what I heard.

25

Yes. And so what I want to understand is what Mr Mahadevan was going to do on an annual basis for \$3000 and where we see any record of that in this statement of advice that was provided to the McDowalls?---The fee for the ongoing advice is that – to reassure annually that they're on track to – to realising their dream which I just mentioned. As I said, it's a complex environment. It changes constantly. So it was for the ongoing relationship and advice.

30

I see. But there were going to be ongoing fees in connection with the maintenance of the self-managed superannuation fund paid to Heffron; is that right?---I'm not sure about Heffron. I'm not sure about Heffron.

35

Okay. But you maintain, do you, that there was something more that the McDowalls needed from Mr Mahadevan on an annual basis after they acquired the bed and breakfast that was worth \$3000 a year?---I don't know the McDowalls personally, but there's lots of Australians that want the constant reassurance in a very complex system that they are going to hit what they plan to hit. I don't see that as unreasonable.

40

I see. And what do you say to Mrs McDowall's evidence that she didn't understand what this \$3000 was for and it wasn't explained to her?---I was very disappointed to hear that. Clearly, Mrs McDowall has the right to understand what she is getting

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into. I've got no reason to doubt Mrs McDowall's comments and that was very disappointing to hear.

All right. Perhaps we could break there, Commissioner.

5

THE COMMISSIONER: Yes. Two pm.

**ADJOURNED**

[1.01 pm]

10

**RESUMED**

[2.00 pm]

15 THE COMMISSIONER: Ms Orr.

MS ORR: Mr Wright, I had been asking you some questions about the statement of advice that Mr Mahadevan provided the McDowalls?---Yes.

20 If we could have that brought back up and if I could have you shown WBC.503.003.1172 which is the other payments page of the statement of advice, Mr Wright?---Mmm.

25 And you see there and you've heard evidence about, already, the upfront commissions that Westpac received as a result of this advice being in the sum of \$27,180?---This is a recommendation. This amount of advice wasn't actually implemented.

30 So what wasn't implemented, Mr Wright?---On the meeting on 2 June, Mr Mahadevan had a conversation with the McDougalls, and they decided, based off this recommendation, to extend their waiting period on their life cover from 30 days to 90 days.

35 And that significantly reduced the overall cost by 40 per cent, close to 16,000.

So what were the total upfront commissions that Westpac received as a result of the implementation of Mr Mahadevan's advice?---So it would have been the 16,000 by 110 per cent. I don't know what that number is but - - -

40 THE COMMISSIONER: 17, six?---Sorry?

17, six?---Thank you. In terms of the upfront, that's what it would have been, yes.

45 MS ORR: Yes. So \$17,600 in upfront commissions as a result of the implementation of this advice?---Yes.

A significant amount of commissions for Westpac?---Yes.

That resulted from a recommendation to move from insurance policies covered by existing industry super funds into a suite of Westpac only insurance policies?---Yes.

5 And we see on this page as well, that this advice, if accepted, would have contributed to Mr Mahadevan's share of revenue for the assessment of his monthly bonus. Do you see that under the heading Paid by Westpac to Others?---I do.

10 And do you see over in the right-hand column Method of Calculation, it would contribute \$37,931 towards his total revenue. And if he exceeded his target revenue threshold, he would get 24 per cent of that as a monthly bonus based on the policies we've looked at earlier today, and if he exceeded his high performance target, he would get 44 per cent of that amount as a monthly bonus which is the figure we see in the left-hand column of \$16,690; is that right?---That is possible.

15 Well, that's what this document says, isn't it?---No, it says to me under Type of Payment, possible planner share of revenue to Krish up to 44 per cent.

20 Yes. So it was contingent on him meeting those revenue thresholds as I just articulated to you, but if he did, if he reached the higher revenue threshold, he would get 44 per cent of the \$37,931 which would give him \$16,690 towards his monthly bonus?---In assuming that he received the extra four per cent for the modifiers and assuming that amount was all above high performance target - - -

25 That's right?--- - - - then yes, it is possible.

Well, those assumptions are built into this possibility - - -?---Yes.

30 - - - in the document, aren't they? So I assume it's framed this way because this is the maximum amount he could receive if he not only beat the first target, but beat the second target and then it was dialled up from the 40 to the 44 per cent as well, he would end up with \$16,690?---Over a period of 13 months.

35 What do you mean by over a period of 13 months?---This is very confusing. The - the reality is we've tried to be as prudent as possible. So if you look to the table above on the far right, it talks about the ongoing trail that we would receive, I suppose, at the 13-month mark.

40 Yes?---That amount is also included into that fee calculation and 44 per cent is applied, including also the planning fee right at the front of the advice.

So all of that is built in and that's what we see under the heading Paid by Westpac to Others?---Yes.

45 Yes. And did Mr Mahadevan end up with a monthly bonus following the implementation of this advice?---Mr Mahadevan received a monthly bonus and a contribute - an amount of this did contribute to that, yes.

5 Yes. And do you know what amount?---So this advice was provided in June. Once the McDowalls had signed the authority to proceed with the reduced risk amounts, obviously, they go into the underwriting process. My understanding is that in the September statement which would have been the August payments, there was one component of the insurance that came through.

Yes?---And then there was a second component in the October statement that came through in the September.

10 Right. So the implementation of this advice contributed to his bonuses in September and October; is that right?---It contributed to his bonus in September. There was no bonus in October.

15 I see. And do you know what amount of his September bonus is attributable to the implementation of this advice?---Yes, I have estimated that.

20 Yes. And what is it?---It was indicatively 16,000 – 16,000, I do apologise – 16 per cent of the amount that came in, which I think was around about 9000. So, you know, two and a half to \$3,000.

25 And were there further amounts that came in as a result of the implementation of this advice later?---Yes, the following month, there was another – another amount paid into the performance account. However, Mr Mahadevan, in that month, hadn't reached his validation threshold.

I see. I see. Can I take you to another document, Mr Wright, which is WBC.506.001.0160. Have you seen this document before, Mr Wright?---I have.

30 And this is Westpac's best interest duty policy; is that right?---Correct.

And this was in force from 1 July 2013?---That's correct.

35 Yes. And we can see that from the second page in the document. So this – do you see there “effective 1 July 2013”?---Yes.

So this is an internal policy, is it, that Westpac has to assist financial advisers with compliance with their statutory duty to act in the best interests of their clients?---It is.

40 Yes. And there is still a policy of this sort, is there?---Yes, there is.

Yes. And is the policy different in any substantive way to this policy?---No, it isn't.

45 Thank you. Could I ask you to look at 0166 in that document. And do we see there in the – I'm sorry – yes, thank you. Perhaps we could have 165 and 166 on the screen next to each other. You're familiar with this document, Mr Wright?---I am.

Do you understand that it sets out a series of steps for financial advisers to assist them in ensuring with their – in complying with their best interests duty?---It does.

And are you familiar with step 7?---I am.

5

Continuing:

*Take any other step that, at the time the advice is provided, you consider would be regarded as being in the best interests of the customer, given the customer's relevant circumstances.*

10

?---Mmm.

And do you see there in the right column:

15

*You should consider two questions: (1) is there anything particular to the customer's circumstances that would reasonably require me to do or say something different or further, including explaining something to the customer, asking additional questions, or warning of certain risks or limitations.*

20

?---Mmm.

Did Mr Mahadevan comply with this policy, Mr Wright?---Based off what I've reviewed, it – it's difficult – difficult for me to say exactly. However, my point right at the start, this advice was poor. Some of those themes that you point to here are questions that should have been asked, may have been asked, but there is no evidence that they were asked.

25

Well, your own policy required your advisers, Mr Wright, to consider whether there was anything about the client's circumstances that required action on the part of the financial adviser, and the reality is there was here, wasn't there? This was a client seeking advice on a strategy which you have acknowledged was not viable, and this policy required Mr Mahadevan to explain to Mr and Mrs McDowall at the first opportunity that their entire strategy was not viable, didn't it?---I agree.

30

Yes. And do you accept that Mr Mahadevan did not comply with his statutory duty to act in Mr and Mrs McDowall's best interests?---I'm not sure I'm qualified to make that comment. I'm no lawyer, but I stand by what I've looked at. This is poor advice, and I'm not qualified to say whether - - -

35

Well, let's forget about the legal construct. Do you regard the advice that Mr Mahadevan gave to the McDowalls as being in their best interests?---As I said, it was not – it was not good advice. It was poor advice by default.

40

It was - - -?---It was not in the McDowalls – the McDowalls' best interests.

45

Thank you. Now, what I want to put to you is that Mr Mahadevan acted in his own interests here by giving advice about how to implement an unrealistic strategy because that advice, if implemented, increased his share of revenue?---Sorry, the question is - - -

5

The question is do you accept that instead of acting in the best interests of Mr and Mrs McDowall, Mr Mahadevan acted in his own interests by providing advice that was designed to increase his share of revenue and, therefore, his monthly bonus?---No, I don't.

10

And why do you not accept that?---There's a couple of reasons. The – the first one is it was clear that the McDowalls were very keen to put in place their self-managed super fund to then purchase the B & B. The cover wasn't at an unreasonable level, and then I think in the conversation on 2 June, to have a richer conversation and to reduce with the McDowalls together the premiums by 40 per cent infers to me there was a very two-way conversation. So that would be the first point. That the second point is Krish and advisers in BT and the industry are very aware that if the insurance is put in place and it doesn't – it's not deemed to be affordable or appropriate within 12 months, it's clawed back. And, clearly, if Krish felt that there was no intent or – sorry, there was no – there was no way that the purchase would happen, then it would have been clawed back in total, and the last one is, obviously, I have had a good look at the performance statements and it certainly doesn't show that.

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The performance statements don't show what, Mr Wright?---Your premise was this was done for maximising share of revenue. Reviewing the performance statements for the 12 months for Mr Mahadevan doesn't suggest that to me.

30

It might not have been successful in his strategy to increase his share of revenue, but what I'm putting to you is that that was the strategy that sat behind the advice that you have told us is poor advice?---I disagree with that.

Do you resile from your acknowledgement that this is poor advice?---No, I don't.

35

Thank you. Mr Mahadevan, did he prepare the statement of advice himself?---No. This would have been prepared by our paraplanning team.

40

Yes. Yes. And what do paraplanners do?---Paraplanner's job is, in essence, to create an advice document, like the one we saw, based off information that comes from an adviser.

And we've heard a bit about paraplanners through other witnesses already. The use of paraplanners is common in the financial advice industry?---Yes, it is.

45

Thank you. And does Westpac require its financial advisers to use the services of paraplanners?---In the salary channel, yes, paraplanning is mandated.

And why is that?---In 2014, there was an array of controls put in place, preventative and detective. Paraplanning – the mandating of paraplanning was one of the cornerstone preventative controls.

5 And how does that work? How is paraplanning understood to be a preventative control?---It's preventative in the sense that the request for the statement of advice is generated before it's presented to the customer. So if the request from the adviser is flawed or there's insufficient information, then the paraplanner's job is not just to produce the document; it's to add value in the conversation to make sure it's going to be appropriate for the customer.  
10

And in that way, the paraplanners represent a cornerstone, you said, of your preventative controls?---Yes.

15 Thank you. Can I ask you to look at exhibit 41 to this second statement, which is WBC.503.003.1200?---Mmm.

Now, this is an email chain that we have here, Mr Wright, between Mr Mahadevan and a paraplanner - - -?---Mmm.

20 - - - within Westpac, and if we go to the back of that email chain and see how it starts. On 1201, we see an email from a paraplanner to Mr Mahadevan on 26 May 2015. So this is prior to the finalisation of the statement of advice:

25 *Hi, Krish. Thank you for your statement of advice submission for the abovementioned customer. Could you please address the following questions.*

Now, before I come to these questions, what would Mr Mahadevan have submitted to the paraplanner?---So Mr Mahadevan would have submitted a paraplanning request form. That would have all the information that you would expect: the signed customer profile booklet which we saw a little earlier, the - - -

35 Yes?--- - - - risk profiling document. It would also, as a part of the template, have some text around the strategy. The reason why that's important is, obviously, the paraplanner doesn't meet the customer and they're reliant on what's provided.

So we see here that this paraplanner had a number of questions for Mr Mahadevan about this advice, and the way this email appears to work is we have the paraplanner's questions in the left-hand column?---Mmm.

40 And Mr Mahadevan's response to those questions in the right-hand column. So can we start with the first question the paraplanner posed to Mr Mahadevan:

45 *The OAS fee –*

what is the OAS fee?---Ongoing advice.

Continuing:

*The ongoing advice service –*

5 or is the S - - -

?---Service, yes.

Yes:

10

*The ongoing advice service fee charged is way too high for a Navigate Review package. Please either reduce the fee to 2200 or upgrade the ongoing advice service to a Navigate Focus package.*

15 And Mr Mahadevan's response:

*The ongoing advice service fee is charged based on the complexity as this involves SMSF. The Navigate Review package is appropriate for their current situation.*

20

So Mr Mahadevan did not accept the concern raised by the paraplanner and overrode it?---He did, yes.

Thank you. Then can we look at the third question raised by the paraplanner here:

25

*Alternative strategy. Have you considered to delay the establishment of the SMSF until a B & B property is found? There are a lot of fees in related to establishing a SMSF. So if they can't find a property to buy (you never know), then this SMSF will be established for nothing. The required insurances can be established via a master trust. Have you considered to set up the insurances after the property is found? So we can do a full insurance needs analysis to cover both their personal needs and the loan within the SMSF. When they do find the property to buy, they will have to consider covering the debt anyway. The recommended insurances is costing \$22,524 per annum inside the self-managed super fund which is a big chunk of the \$200,000 balance. If they are considering to buy a property down the track, this large insurance premium may affect their ability to service the loan. They could make additional contributions to super to service the loan but they haven't got much surplus funds outside super at all. This is another reason why they should consider the insurance after the property is found and review the whole situation together to ensure the whole thing (buying a property and getting cover) works without any cash flow issue within the SMSF.*

30

35

40

45 This was the concern – another concern raised by the paraplanner and we see Mr Mahadevan's response:

5 *Yes, I have considered this alternative and discussed with clients, but they want to establish and have the moneys in their SMSF as they want to invest in direct property to establish B & B if they cannot buy the business directly. Yes, we will recommend them to review their personal insurances once they buy the property. However, at this stage, they want advice on the insurances as per their specific needs requested by them as they are confident the amounts of insurances they have requested will be sufficient to manage their debts and fund part of any medical expenses as per CPB.*

10 CPB, the - - -?---Customer profile booklet.

The booklet?---Yes.

Continuing:

15

*Yes. I will be definitely discussing this issue during my plan presentation, but I cannot present a plan without the insurances they have requested for and the cost for the same.*

20 So we see here various concerns, significant concerns, raised by the paraplanner with Mr Mahadevan about this advice. Each of which was overridden by Mr Mahadevan. Do you agree?---I would agree.

25 Yes. So the cornerstone of your preventative controls, paraplanning, can be easily and was, here, circumvented?---No, I wouldn't say "easily". The – it's a complex system with the adviser having the conversation with the customer – many, actually, not the paraplanner, and Karen has done a great job here adding value in what needs to be considered. I think there is a missing piece, though. You know, the point for me has always been, "Was this strategy viable?"

30

That's right. And we've accepted it wasn't, haven't we?---And that would have also been a good question raised here as well.

35 Right. So that's another thing the paraplanner could have raised, but didn't raise, but the things that she did raise were all overridden by Mr Mahadevan and he proceeded with the advice irrespective of the paraplanner's views?---Yes, he did.

40 And what I'm putting to you is that, therefore, the cornerstone of your preventative controls is not effective because a financial adviser can reject the views of the paraplanner and proceed in any event?---Respectfully, I would disagree with that. We have escalation processes in for a paraplanner and for their leader which is a part of the exhibits. It can't be easily circumvented.

45 Well, it was here, wasn't it, Mr Wright? None of these points made by the paraplanner resulted in any changes to the advice that was provided to Mr and Mrs McDowall?---I agree with that.

Thank you. Now, around the time that all of this was going on in July 2015 – so you will recall that the second meeting was in June 2015 to present the statement of advice. On 6 July 2015, Westpac received a notice from ASIC under section 912C of the Corporations Act requiring Westpac to give ASIC information about financial advisers whose conduct had given rise to compliance concerns?---Mmm.

You deal with this in paragraph 31 of your statement. And Westpac responded to that notice on 27 July 2015?---Yes.

Now, you didn't annex to your statement a copy of the response by Westpac to ASIC's notice, but I will show it to you?---Mmm.

It's WBC.507.003.1303. So this is the response to the request from ASIC for information that Westpac received on 6 July 2015?---Yes.

And we see from the first page there that Westpac provided ASIC with a list of advisers whose conduct had given rise to serious compliance concerns?---Mmm.

And a list of advisers whose conduct had given rise to other compliance concerns?---Yes.

Yes. And Westpac included Mr Mahadevan in the list of advisers whose conduct had given rise to other compliance concerns, didn't they?---Yes.

Thank you. And Westpac identified two instances of Mr Mahadevan's conduct in this letter?---Sorry, in this letter or the attached spreadsheet that went - - -

In the letter itself. So I will take you to - - -?---Sorry. Could I please read that?

- - - 1305 of the letter. Mr Mahadevan is not named in these paragraphs, but when we read these paragraphs together with paragraph 32 of your statement, it's clear that the instances referred to in paragraphs 8(a) and 8(c) of this letter both relate to Mr Mahadevan. Would you like to look at paragraph 32 of your statement to satisfy yourself of that, Mr Wright?---Yes, please.

Yes, paragraph 32, it is?---Thank you.

Am I right, Mr Wright, that the instances described in paragraphs 8(a) and 8(c) relate to Mr Mahadevan?---Apologies, I'm just still reading that. So (c), yes, in terms of – so (c), yes.

Yes. And (a)?---And (a), yes.

Thank you. And one of these instances related to a case where Mr Mahadevan had charged an ongoing advice fee without providing ongoing advice?---Yes.

And you tell us in your statement – it's not in this letter, but you tell us at paragraph 32 of your statement that Westpac had to pay that customer \$2213 in compensation as a result of that?---Yes.

5 And the other instance that you disclose to ASIC about Mr Mahadevan in this letter in July 2015 related to the cost of a life insurance policy?---Yes.

And you tell us again in your statement that this customer also needed to be paid compensation as a result of Mr Mahadevan's conduct, and that customer was repaid  
10 \$792 as a result of that?---Yes, we repaid that staff member.

So at the time that this advice was being given and implemented, Westpac knew and was disclosing to ASIC that Mr Mahadevan had previously engaged in conduct that involved not providing an ongoing service under an ongoing service arrangement and  
15 for issues in relation to the cost of life insurance policies?---That is correct.

And did the fact that Mr Mahadevan was disclosed by Westpac to ASIC in this correspondence prompt any action from Westpac in relation to Mr Mahadevan?---No, it didn't.

20

Why not?---As a part of the ASIC notice in mid-July 2015, there was obviously the serious compliance concerns, and then there was the other. The – my understanding of the other, there was various filters such as we've just gone through, complaints. Some of these complaints were low in terms of out – outcome, some of these  
25 complaints had no systemic themes or else they would have been serious, and with the criteria that was supplied to ASIC, and Mr Mahadevan was amongst a number of other compliance concerns that we – we raised with ASIC.

So you had multiple advisers that you were worried about that you told ASIC about in this letter?---We had multiple advisers based off what ASIC asked for and that's what we provided.

30

And these two incidents in relation to Mr Mahadevan you said resulted from complaints by customers?---Yes.

35

Yes. But you describe them as low in terms of outcome?---Mmm.

So do you mean by that, that you didn't have to pay very much money to these customers to fix things, and, therefore, this wasn't a big concern for Westpac?---So  
40 what I meant was that if we go back to the consequence management framework that you took us through - - -

Yes?--- - - - below 25,000 had a different consequence than above 25,000. So that's what I meant. The impact for customers, though, could be real and much bigger.  
45 I'm aware of the second one being a staff member. And that was a processing error around a loading of staff discount. And not providing an ongoing advice fee for a customer is unacceptable.

But you didn't look into whether there were further customers sitting behind this other than the two who had made the complaints?---Not that I'm aware of.

5 And you didn't increase the monitoring of Mr Mahadevan in any way?---No, we didn't.

And you didn't conduct any review of the advice he had been providing?---No, we didn't.

10 All right. So you heard the evidence of Mrs McDowall. Just before I go to that, I need to tender the best interests policy which was the second last document I referred to, Commissioner. It was dated July 2013 and it was WBC.506.001.0160.

15 THE COMMISSIONER: That will be exhibit 2.110, best interest duty policy, effective 1 July '13, WBC.506.001.0160.

**EXHIBIT #2.110 BEST INTEREST DUTY POLICY DATED 01/07/2013  
(WBC.506.001.0160)**

20

MS ORR: And could I also tender the letter I have just taken Mr Wright to, the letter from Westpac to ASIC dated 27 July 2015.

25 THE COMMISSIONER: Exhibit 2.111 will be response Westpac to ASIC under section 912C, 27 July '15, WBC.507.003.1303.

**EXHIBIT #2.111 RESPONSE WESTPAC TO ASIC UNDER SECTION 912C  
DATED 27/07/2015 (WBC.507.003.1303)**

30

35 MS ORR: You heard the evidence of Mrs McDowall before, Mr Wright, about the complaint that Mrs McDowall made to Westpac. You're familiar with that complaint?---I am.

And that complaint was assigned to someone within Westpac to investigate?---It was.

40 And you've annexed some internal correspondence about the handling of that complaint to your statement?---I have.

45 Yes. Could I ask you to look at exhibit 11 of that statement, which is WBC.104.003.7376. This is an email chain describing an investigation into the complaint that was conducted by Ms Purcell. Is that correct?---Sorry, I don't think I've kept up with you. I do apologise.

I'm sorry. It's exhibit 11 in your statement and you will see it on the screen now as well?---Okay. Thank you.

5 So the first document in the chain is 7373. But I want to start at a point within it, which is where I am at 7376. Do you see there the email of 22 December 2015 from Ms Purcell who was conducting the investigation to Ms Hartmann?---Yes.

10 Do you see there Ms Purcell tells Ms Hartmann on the 22<sup>nd</sup> of December that she's typed a summary of the case for your perusal:

*I believe there are a number of issues with the advice. Overall, I think Krish has put the customers in a worse off position. There is also a credit issue with the information or advice provided by the LBB. I will refer this to the credit complaints area also but I would like to get your thoughts on this first.*

15

And then can I take you to a later response in this email chain at 7374 to 7375. Underneath the redacted portion on the right we see Ms Purcell expressing to Ms Hartmann the view on the 5<sup>th</sup> of January 2016 that:

20 *Although Travis, to whom the credit issue has been referred, is of the opinion that all information provided by Karl was compliant and correct –*

25 she disagrees with that. Then if I could ask you to look at the email on the left-hand side, which is, again, Ms Purcell to Ms Hartmann on 6 January 2016, and what I want to direct you to there is Ms Purcell's conclusion immediately after the redacted portion that from her research:

*There isn't any lender in the market that would provide credit for this type of purchase.*

30

So you accept that these were the views expressed by the person investigating the complaint?---I do.

35 Do you disagree with those views?---I don't.

40 Thank you. Now, we've also heard that as a result of this investigation, Westpac decided to make an offer of money – a settlement offer to Mr and Mrs McDowall and that first offer was made in January 2016. And you deal with that offer in your statement. And we've seen some correspondence about that through Mrs McDowall as well. Once you had got to that point where Westpac had decided to make an offer of compensation as a result of these events to Mr and Mrs McDowall, did Westpac take any steps to discipline Mr Mahadevan or Mr Sleiman?---I'm not sure.

45 Well, I want to suggest to you, based on my reading of your statement and all the documents you've annexed, that no step to discipline Mr Mahadevan or Mr Sleiman was made – was taken. Nothing was done, despite the decision to make an offer of

compensation to Mr and Mrs McDowall. Do you disagree with that?---No, I don't.  
At that point in time - - -

5 Well, at what point in time was something done, Mr Wright?---So when this  
complaint was finalised through files and the final outcome was known and,  
therefore, there would be a payment made to the McDowalls, there was a couple of  
things that happened to Krish in terms of consequence.

10 Yes?---And it's more a part of our process. The first one, 15 points of consequence  
management were applied. Secondly, the good value claim that we play – paid the  
McDowalls, that was contraed against Mr Mahadevan's total revenue measure.

Yes?---Which will result this year in no bonus for Mr Mahadevan.

15 So the decision to offer compensation was made in January 2016. What your  
statement tells us is that you deducted those 15 consequence management points  
more than 18 months later in October 2017?---That's correct.

20 Why wait so long to deduct those points?---The – the system that we have in place  
around good value claims for customers is to give the adviser at the end of it, if there  
will be a payment, an opportunity to at least put their case forward whether they were  
at fault or not. But it can't happen until the complaint is actually paid. That's our  
process currently.

25 Even though you had made the decision that this complaint warranted an offer of  
compensation?---We had made the decision. At that point in time, Mr Mahadevan  
may have had a different view and may have wanted to challenge that complaint.

30 So what about protecting the rest of Mr Mahadevan's clients in the meantime over  
this 18 month to two year period where his consequence manage points were  
unaffected by this conduct?---You're right. The consequence management points  
didn't put him on to a higher risk rating.

35 He stayed at normal the entire time, didn't he?---He did.

And even when you deducted the 15 points in October 2017, he still stayed on  
normal, didn't he?---He did.

40 So there were no consequences to him through the use of the consequence  
management point system?---There wasn't.

And do you think that's sufficient? Do you think that's adequate?---No, I don't.

45 And have you changed that situation?---Yes, I have.

And how have you changed that, Mr Wright?---So as I – I state in my first statement,  
it's clear that the design of our consequence management program is inadequate. We

have done some tactical moves or some early adopting moves – I can't think of the right words. December last year – sorry, February last year we increased the points, for example, for a requires improvement audit from 10 to 15, and in December we doubled that to 30.

5

So it took until December last year to make sufficient changes so that an event of this nature would yield an adverse rating under the application of the consequence management system?---I wouldn't say sufficient. We've still got more work to do.

10 I see. And what does that involve? What's next?---So, as I said in my first statement, question 6, we are now putting a strategic solution in place around consequence management. The December move was a good move, and we can discuss that maybe after this case. But we still have more work to do around our consequence management program which we're working on currently at the moment.

15

And what do you plan to do?---So, in essence, the strategic solution will be much more automated, and if I'm going into too much detail you will tell me. The – the solution at the moment only captures, in an automatic sense, audit outcomes and complaint outcomes. There's other instances such as our planner risk insights, such as investigations, such as inappropriate behaviour that has to be loaded into the system by a regional manager. And one of the big enhancements will make as a part of our strategic solution is automating all those things and taking out the human process to get the points loaded in.

20

25 And when do you anticipate that system will be operational?---So the intention, as a part of our controls environment review program, is to have that operational by June 2018.

30 Is that a realistic intention, Mr Wright?---My early sense is no. I think it's probably more September.

Thank you. Now - - -

35 THE COMMISSIONER: But is the informing principle still to be a principle of penalising bad conduct rather than rewarding good?---Thank you for that question, Commissioner. One of the things that – one of the things I mention in my statement 1 is that we established a professional service council back in 2014 and we have an independent external practitioner sit on that who sits on the ethics centre. And we went with our approach around consequence management going forward. His steer was we also need to look at the positive consequence, in the sense that if someone has had incredible compliance outcomes and they've served their customers well, why wouldn't there be, potentially, a positive component of the consequence management process.

40

45 Would you accept that the culture of an organisation is affected by what those at the work face see as being valued by those higher up the chain?---I would.

And would you accept that there is a difference between penalising bad behaviour and rewarding good behaviour?---I do.

5 That on one point of view, penalising bad behaviour points in the direction of obscuring or hiding the occurrence of what has gone wrong. Is that right?---Could you potentially rephrase that a little, please?

If you penalise bad behaviour, there is an incentive to cover up?---Yes, I - - -

10 Do you accept that?---I do.

Yes.

15 MS ORR: The other step that you referred to in answer to my question about what, if anything, Westpac did to discipline Mr Mahadevan once it had made the offer of compensation, the other thing you referred to was taking from Mr Mahadevan's share of revenue the \$107,000 which was the value of the total determination by FOS. Is that right?---That's correct.

20 And that – I just want to be clear, that's another thing that happened well after the decision to make compensation. That happened about 18 months later after that determination?---That's correct.

25 Yes. Now, do you know if Mr Mahadevan was a member of a professional association, like the Financial Planning Association of Australia or the Association of Financial Advisers?---Recently, I do. All the salaried advisers are members of the Financial Planning Association. I can't quite remember the year that we did that and funded that for all our advisers. I think it was 2015 but it's – it's in my table in statement 1.

30 So, at the moment, you don't know whether, at the time of these events, Mr Mahadevan was a member of that association?---He could have been. I – I just can't remember the dates that we put that in place.

35 And let's assume he was, would that have resulted in a report by Westpac about Mr Mahadevan's conduct to that body?---That wouldn't be my understanding, no.

Why not?---I don't know.

40 Those bodies have disciplinary powers in relation to financial advisers, don't they?---I'm not sure.

You don't know what the powers of the FPA are?---The industry bodies do not license advisers. The licensees, the dealer groups, do that.

45 That's right?---I'm just not clear on their disciplinary reach is probably what I'm trying to say.

Well, why do you require your employed financial advisers to be members of the FPA?---The reason is, as a part of professionalising – so there’s the component around education standards and ethics. Another component is being involved and active within an advice association such as the FPA.

5

So it has nothing to do with the disciplinary powers that are available pursuant to those associations?---That’s not my understanding.

All right. I see. So we can assume then that Westpac did not report Mr Mahadevan’s conduct to the FPA, whether he was or wasn’t a member of that association. If he was, you would not have reported it?---Yes, you could assume that.

10

And you also didn’t report Mr Mahadevan’s conduct in relation to Mr and Mrs McDowall to ASIC, did you?---No, we didn’t.

15

And why not?---The – the process to report an adviser to ASIC involves our second line of defence, completing a compliance assessment. That exercise was undertaken. It was determined by the second line of defence that there was no systemic issues. In their view, it potentially wasn’t a breach and it wasn’t significant within the parameters that they work through and, therefore, it wasn’t raised with the breach determination forum.

20

But you’re talking about a report under section 912D of the Corporations Act there, are you? When you’re talking about whether it is systemic, I assume that’s directed to whether it required a report to ASIC under that provision?---No. Again, I’m not qualified, but my conversations and research in terms of forming the statement, that is what I was told.

25

Well, was this conduct a serious compliance concern or an other compliance concern as those terms are used by ASIC?---Again, I – I’m not sure what the definition of “serious” is. I was told that the “other” included if there was a complaint.

30

Yes. And are you aware that the other compliance concern definition from ASIC also includes circumstances where customers suffer loss as a result of the conduct?---No, I wasn’t.

35

But you accept that loss was suffered as a result of this conduct?---Yes, I do.

And on that basis, do you accept that this was a compliance concern that ought to have been reported to ASIC?---Again, I’m not qualified – I don’t make that decision. What I am qualified on is the quality of this advice, and it was poor.

40

The quality of the advice, did you say?---Yes.

45

Yes. But what I’m trying to ask you questions about is what was done in response to the poor quality of this advice, Mr Wright?---Yes.

There was no report to ASIC; there was no report to any professional association; there was no disciplinary measure taken in relation to Mr Mahadevan. What happened? What did Westpac do once it worked out that this poor quality advice had been given to ensure that it not be given again, and to impose consequences on Mr Mahadevan for having given it in the first place?---So I – I won't re-mention the consequences which were applied 18 months down the track.

Yes?---Reading the file, what I sense is it was deemed this was a once-off issue. I have no doubt Mrs McDowall knows exactly what she said. I have no doubt that Mr Mahadevan understood what he heard. The challenge, I think, in this process was that we didn't lift ourselves and just say at the end of the day, "This advice is poor. Our complaint handling process of this got it wrong. This was a bad outcome for the McDowalls. They should never have been in this situation. It should never have gone to FOS. This was a mistake."

And I just want to be clear because, based on the documents we've been to, Mr Wright, this was not a one-off. You had received two previous complaints which had resulted in payments to customers as a result of Mr Mahadevan's conduct, both of which had been identified to ASIC. This was not a one-off event for Mr Mahadevan, was it?---In terms of complaints, no. In terms of the seriousness of the complaints, as I said, one was in relation to an error setting up a staff discount. The second is not acceptable, providing an ongoing advice service.

Particularly in circumstances where the evidence of Mrs McDowall was that she didn't understand what the ongoing advice fee was for here?---Yes, I – I heard that today, and that was very disappointing.

In your statement, you were at pains to point out that Mr Mahadevan's five previous routine audits dating back to 2 December 2010 were all rated effective. "Effective" is the rating that replaced an earlier descriptor, is that right, or – what are the ratings that could be applied in the audit?---So the audits could be effective. That's sort of the best outcome. Second is qualified, and the third is it requires improvement.

Thank you. And so you were, as I said, at pains to point out in your statement that the last five audits dating back to 2 December 2010 were all rated effective?---Mmm.

But we know that Mr Mahadevan had been employed by Westpac for some time prior to that. Is there any reason you only went back as far as 2010?---No.

You didn't know that if you went back just one year earlier to 2009, you would see that Mr Mahadevan's audit reports showed a number of issues?---No.

You didn't know that?---I didn't know that until I read the documents.

You didn't know that the previous two audits resulted in qualified and requires improvement outcomes?---I didn't know that.

I would like them to be in evidence. So I will just show you very briefly the two audit results. The first is at WBC.503.002.0188. We need 0188. Thank you. And perhaps if we could have the second page brought up next to that. So this is a letter to Mr Mahadevan on 16 March 2009, and do you see on the second page there the file outcomes: four files were reviewed, two resulted in a qualified rating, one effective, and the fourth requires improvement?---Yes, I do.

And as a result of this audit, there were exceptions raised across all four files, and there was an action plan created that required Mr Mahadevan to revisit each of these clients and provide them with further information. I will just ask you to look at 0192 which is the action plan. See that?---Yes, I do.

I tender that document.

15 THE COMMISSIONER: Exhibit 2.112, will be Westpac letter and compliance review concerning Mahadevan, 16 March '09, WBC.503.002.0188.

20 **EXHIBIT #2.112 WESTPAC LETTER AND COMPLIANCE REVIEW  
CONCERNING MAHADEVAN DATED 16/03/2009 (WBC.503.002.0188)**

MS ORR: And the second one, Mr Wright, immediately prior to the first one that you referred to in your statement is WBC.503.002.0157. And we see from the second page of that report – you can see that's dated 28 September 2009. There's another requires improvement rating on one of the files there, and, again, an action plan created for Mr Mahadevan which appears at 0160?---Yes.

I tender that document, Commissioner.

30 THE COMMISSIONER: WBC letter and compliance review concerning Mahadevan, 28 September 2009, WBC.503.002.0157 is exhibit 2.113.

35 **EXHIBIT #2.113 WBC LETTER AND COMPLIANCE REVIEW  
CONCERNING MAHADEVAN DATED 28/09/2009 (WBC.503.002.0157)**

MS ORR: Mr Wright, I would like to turn to your other statement now, the statement that deals with the financial advice business generally of Westpac and also with the conduct of three other financial advisers, and I want to focus on the conduct of just one of those advisers that you've dealt with in your statement. That's Mr Andrew Smith. Now, Mr Smith commenced as a financial adviser with St George Financial Planning in May 2007. Are you aware of that?---Yes.

45 Thank you. And in 2008 as part of the merger with St George Bank, Westpac acquired St George's financial advice business?---Yes.

And after that time, Mr Smith was employed by Westpac?---Sorry, Ms Orr, this is very inappropriate, but I need to go to the toilet.

Yes?---Can I please go to the toilet. Sorry.

5

THE COMMISSIONER: Nothing worse than sitting in – there in a rictus of agony, Mr Wright.?---No. No. I could just see you were going to get into it, so - - -

Five past 3?---Thank you.

10

**ADJOURNED**

**[2.56 pm]**

15

**RESUMED**

**[3.05 pm]**

THE COMMISSIONER: Ms Orr.

20

MS ORR: So Mr Wright, we were – I was asking you some questions about Mr Smith who, like Mr Mahadevan, was a senior financial planner with Westpac?---Yes, that's correct.

25

And he, like Mr Mahadevan, provided financial advice under Westpac's financial services licence?---That's correct.

And he left Westpac in April 2015?---That's correct.

30

Now, I took you earlier to the details of the financial planner incentive scheme that applied to Mr Mahadevan. Did that also apply to Mr Smith?---Yes, it did.

So the same remuneration arrangements which involved a fixed component of his remuneration and a variable component based on the reward scheme that we've discussed?---Yes.

35

And on average, do you know what the ratio of fixed to variable income is for a senior financial planner?---I can see it, but I'm just not 100 per cent sure.

Can I show you a document - - -?---Please.

40

- - - to assist which is WBC.506.002.0167. This is a document from August last year, Mr Wright. It's a memorandum to the BT Financial Group Divisional Remuneration Oversight Committee. Have you seen this document before? The first page is the agenda, and then from the second page we have a memorandum to the committee?---Yes, I have.

45

No, not the – we need a different page on the right-hand side, which would be 506.002.0168. So we had the first page of the document before which was enough to allow you to identify - - -?---Yes.

5 - - - the document, Mr Wright. The page within it that I wanted to show you, which I hope will assist with the question I've asked, is WBC.506.002.0173. There we are. So this is part of the document that was prepared for that committee meeting, and it's the first row that I want to direct you to which relates to the remuneration mix. So this is as at August 2017. So do we see there, that for senior advisers, that's the senior financial planners; is that right?---That's correct.

That 77 per cent of their remuneration is fixed and 23 per cent of their remuneration is variable?---Yes.

15 So approximately a quarter of the remuneration that they get is based on that variable component that comes from their share of revenue?---I would agree with that.

Yes. Thank you. I tender this document, Commissioner.

20 THE COMMISSIONER: If I call it BT Finance Group remuneration oversight committee papers 18 August 2017, WBC.506.002.0167 will be exhibit 2.114.

25 **EXHIBIT #2.114 BT FINANCE GROUP REMUNERATION OVERSIGHT COMMITTEE PAPERS DATED 18/08/2017 (WBC.506.002.0167)**

MS ORR: We've already explored a little bit the consequence management system that was in place at Westpac, and which remains in place at Westpac, but I want to explore that a little further through the events involving Mr Smith. So over his time with Westpac, Mr Smith was subject to a number of audits, and I don't want to go to all of them, but I want to go to 2011, which is four years into his time at Westpac, and take you to exhibit 110 to your first statement which is WBC.501.031.5905. And do you see there that this is the result of a compliance audit that was conducted on Mr Smith on 20 April 2011?---Yes, I do.

And the result of this audit we see at 5906 was "requires improvement". Do you see that towards the top of the page?---Yes, I do.

40 And that was the lowest result for a compliance audit?---That's correct.

And the results of the requires improvement rating are described in the consequence management policy; is that right, the consequences for a financial adviser?---Yes, so they have a requires improvement audit.

45 Yes?---Yes, it does.

Yes?---In terms of the - - -

And can we go to the consequence management policy that is at WBC.500.027.0850. This is, if we have the second page on the screen as well, you will see that this is a  
5 version of the consequence management policy that was in place from December 2012?---Mmm.

If you look at the top of the right-hand side of the document?---Yes, I agree.

10 And I took you to a more recent version of this policy when we were discussing Mr Mahadevan; do you recall that?---Yes, I do.

And as under that more recent version of the policy, this policy establishes that risk rating system that we discussed earlier?---Can you just explain that a little bit further,  
15 please?

So your consequence management system applies risk ratings?---Yes.

Does it not?---It does.  
20

And it did in the version we looked at earlier - - -?---Yes.

- - - and it does in this earlier version as well?---Yes.

25 And could I ask you to look at 0854. We see there an explanation of the risk rating system:

*It enables the business to manage the compliance risks associated with each planner. The individual risk rating for each planner will determine the relevant consequences, training and support. For example, lower risk planners will require less monitoring and supervision, whereas higher risk planners will require closer monitoring, supervision, training and/or remediation.*  
30

Then if we look at how the risk rating is determined, we see again this reference to the 60 points that you commence with, and at this point, depending on how many points are deducted, the adviser was given one of four risk ratings, ranking from low risk to extremely high risk?---Yes.  
35

Do you see that?---I do.  
40

And later, by the time we get to Mr Mahadevan, there's three risk ratings which are normal, oversight, and mandated improvement?---Correct.

And, again, we see the range of points that you need to have to be within one of those ratings?---I do.  
45

Yes. And if we could just turn to 0856, you will see the equivalent of the page we looked at in the other consequence management policy that tells us how many points are deducted for various events, and we see there that when a file is rated “requires improvement”, 10 points are deducted?---That is correct.

5

And a file that’s rated “qualified” results in three points being deducted?---That’s correct.

10 And that consequence was the same right through until the period in 2017 that you referred to earlier when you made changes to the number of points that were deducted for these sorts of events?---That’s correct.

15 And if we look at 0859, we will see the consequences that flowed from risk ratings. So do you see there that if you ended up with a high risk or extremely high risk rating, there were revenue implications; do you see that?---I do.

And the revenue implications for a high or extremely high risk rating were reduction of payment of incentives or any other bonus or special incentive?---Yes.

20 But if you ended up with a low or moderate risk rating, there were no revenue implications?---Yes.

25 So you need to fall below the 30 points for revenue implications, and below 15 points for the bonus to be cancelled altogether?---Yes.

Is that right? And another consequence we see in this table relates to supervision. Do you see the reference to regional manager supervision? If you end up with a high or extremely high risk rating you get more frequent field visits from a regional manager?---I do.

30

But if you got a low or moderate risk rating, no enhanced regional manager interaction?---No additional. Yes. I agree with that.

Thank you. I tender this document, Commissioner.

35

THE COMMISSIONER: Bank financial planning consequence management policy December 2012 WBC.500.027.0850, exhibit 2.115.

40 **EXHIBIT #2.115 BANK FINANCIAL PLANNING CONSEQUENCE  
MANAGEMENT POLICY DATED DECEMBER 2012 (WBC.500.027.0850)**

45 MS ORR: And could I ask you also to look at a document relating to the regional manager supervision process, Mr Wright, which is WBC.507.002.0490. And this, we see, is the regional manager supervision policy that was in place from February 2013. Do you see the date there?---I do.

And if we turn to 0496 we will see a reference to the supervision activities that regional managers were to undertake. And they included file reviews, live observations, one-on-one discussions and team meetings?---Yes.

5 And at 0498, we see how many of those you get, depending on your rating. So the minimum supervision requirements for low or medium risk planners are here in this table. Do you see that?---I do.

10 No file reviews, one live observation a quarter, one one-on-one a quarter and one team meeting a quarter?---Yes, I do.

15 But for a high or extremely high risk planner, you ended up with four file reviews a quarter, two live observations a quarter, three one-on-one meetings a quarter and still just one team meeting a quarter?---Yes.

So these were other consequences that flowed from your risk rating?---Yes, additional.

20 Thank you. I tender that document.

THE COMMISSIONER: Bank financial planning regional manager supervision policy of February 2013, WBC.507.002.0490, is exhibit 2.116.

25 **EXHIBIT #2.116 BANK FINANCIAL PLANNING REGIONAL MANNER SUPERVISION POLICY DATED FEBRUARY 2013 (WBC.507.002.0490)**

30 MS ORR: Now, could we go back to the audit report that we looked at earlier which was WBC.501.031.5905. So this audit conducted in April 2011 we've seen resulted in a requires improvement rating. We saw that from the second page. And that was because one file, we see from the bottom of the page, was rated as "requires improvement"?---That's correct.

35 So the result of that would have been that Mr Smith received 10 demerit points?---That's correct.

40 And those points would have lapsed six months later in October 2011?---For the purposes of RM supervision, yes.

45 Yes. Then the next audit doesn't happen until after those points have lapsed in December 2011. And you've annexed that audit report at tab 111 of your statement, WBC.501.031.5893. And if we bring up the second page of this document, we see that the review result for this audit was qualified?---Yes.

And that resulted from three of the four files reviewed being rated "qualified"?---Mmm.

So Mr Smith would have received nine demerit points, three for each of these qualified file ratings?---Correct.

And these points, again, would have lapsed six months later in June 2012?---Yes.

5

Thank you. Both of these results would have put Mr Smith in the low risk category, wouldn't they? Do you recall that?---Yes, I do. I do agree.

10 You recall he would have had 10 points deducted for the first one?---I was just making sure the starting point was – so I do agree.

And nine points here. He would have been on 50 points as a result of the first audit and 51 points as a result of this audit?---Yes.

15 So he would still, despite these results, have been entitled to receive his full monthly bonus?---Yes.

And he would not have been subject to any increased monitoring by his regional manager?---That's correct.

20

And then the next audit is conducted on 11 March 2013. You've annexed that at tab 112 of your statement. That's WBC.501.031.5886. This audit is 15 months after the last time. All his demerit points have reset?---Yes.

25 And for this audit, again, we see from the second page that Mr Smith receives a "requires improvement" rating?---That's correct.

And of the four files reviewed, two were rated "requires improvement" and one was rated "qualified"?---Yes.

30

So this would have led to 23 demerit points being deducted, 10 for each of the "required improvement" and three for the "qualified". So he would have had 37 points left?---I agree.

35 And that would have put him in the moderate risk category which was 31 to 45 points?---Yes.

So he still would have been entitled to receive his full monthly bonus?--- Yes.

40 And he still would not have been subject to any increased monitoring from the regional manager?--- Yes.

And, again, these 23 points would have lapsed six months later in September 2013?---Yes.

45

And there's no further audit until September 2014. Again, you've annexed that to your statement at tab 113, WBC.501.025.5095. There we are. And so this audit is over 18 months after the previous audit?---Yes.

5 Do you know why it took so long for this audit to take place?---I do.

Why was that?---The implementation of FOFA required all resources, if you like, on deck to make sure that we were ready to go and fully operational.

10 So you stopped auditing your advisers to put your resources into dealing with the FOFA reforms?---No, I didn't say we stopped. We reprioritised and, in Mr Smith's case, that was reprioritised.

15 Why was he reprioritised given the audit results that he had achieved in the audits up until now?---I don't know.

20 Was that the right decision?---In hindsight, it doesn't feel like the right decision to me. But I wasn't there and I can't give context on the conversations. But to me it certainly doesn't feel right.

25 So at this audit on 15 September 2014, if we can bring up the second page. Again, we – if we could perhaps have the entire page. We can see the review result up the top is “requires improvement” again. And of the four files, one is rated “requires improvement” and one's rated “qualified”?---Yes.

30 Which would have resulted in 13 points being deducted, 10 for the requires improvement, three for the qualified, meaning that Mr Smith would have had 47 points left after this?---Yes.

35 So he would still have been on a low risk rating?---Mmm.

And he would still have been entitled to his full monthly bonus?---Yes.

40 And he still would not have been subject to any increased monitoring despite these results?---Yes.

45 So at this time, three out of four audits since 2011 had given him the lowest possible rating and the other one had given him the second lowest rating?---Yes.

50 Why didn't any of his regional managers look at his conduct at this time?---As I mention in my statement, the – the control environment and the supervision environment, particularly pre-FOFA, wasn't at the level it needed to be. I'm not going to mention post-FOFA and what's been done. We can potentially talk about that a little later. But – but the reality is the control environment wasn't strong enough. It wasn't robust enough. Unfortunately, even with some of these indicators, the system didn't do enough to make sure that heavier consequences were applied here.

I want to put to you squarely, Mr Wright, that the system failed, because your system was to review four files each year for an adviser, and the adviser could receive subpar results on the majority of those files and still not end up with any increased supervision or even any reduction in their bonus payments?---Yes, I agree.

5

Do you agree that that's a failing?---I do.

And what about the fact that at the end of each six-month period, when audits are conducted annually, the demerit points are wiped clean off the slate?---For supervision purposes.

10

Yes, yes?---I agree. As I state in my statement, that is a design flaw which we will be changing.

And what it meant was that the points that were allocated as a result of an annual audit always disappeared before the next annual audit. So you could never accumulate points?---Mathematically, yes. Yes.

15

There were also complaints made about Mr Smith over this period, weren't there?---There was.

20

There was one in October 2010, there was another in April 2011, there was another in August 2012, and another in October 2014. You tell us that at paragraph 408 of your statement?---Yes.

25

So combined with the audit history over this period, it must have seemed likely to anyone who was looking at the whole picture in relation to Mr Smith, that there were significant problems with his advice beyond those that were apparent from the very small number of files that were being looked at in these audits?---I agree with that, and I mention that in my statement.

30

But, as we've said, he continued to be eligible, despite the complaints, despite the results of the audits for his monthly bonuses and not to receive any supervision as a result of these results?---No additional supervision.

35

Did Mr Smith's regional managers not have access to this information about his audit results and his complaint history?---They did.

They did have access to it?---Yes.

40

And why did they not do anything with it?---One of the – the insights reviewing all this material, it's very clear that, in the past, we've looked – and maybe in the present – we've looked too much at the micro-moment, that event. We haven't holistically looked at the big picture, as you said, because I think if we'd done that, the – the consequence and the conversation would have been very different.

45

So what have you done to fix that?---So in terms of, say, the bigger picture piece, over the last three months we've put in a monthly review, myself with the state general managers and our first line defence team, and second line, to look at the outcomes of our advisers. And all the things that could go into the categories such as audits, complaints and other instances, and to ensure that if we look over the long picture, up to two years, and we don't drop the points off, we add them over the two years to see if there's any concerning trends. We then calibrate – sorry, which, in essence, just means we benchmark them to others, and if there's an issue then we take action.

10 So did you say this is something you've been developing over the last three months?---Sorry, not developing, we've put in place the last three months.

15 And how did the monthly reviews work? Who conducts them?---So in terms of the monthly review of our, if you like, higher risk advisers based off the data, the holistic data, our first line of defence risk and compliance officer runs that. We also have second line. We also have all the state general managers and myself. We review all the data, two years of data, including an aggregation of consequence management points over two years, to see is there a problem with any of our advisers on a bigger picture.

20 And why has it taken this long to implement that system, Mr Wright?---I think the reality is we relied way too much on the system to tell us. I reflect on – on the journey of consequence management, I reflect on the plans that we had in place in '16, big plans that we watered down significantly for business prioritisation reasons. And we made some changes in '17 early. We made some bigger changes in '18. The – the reality is, we've relied too much on the system to tell us when to do additional oversight.

25 30 You have 500 employed financial advisers and you had, up until the last three months, been relying on your annual audits of four files of those advisers?---No. I wouldn't agree with that.

35 What else have you been relying on?---There's a suite of protective and detective controls. Supervision is one of them.

40 Yes, but as we've seen, even with poor audit results, supervision did not get enhanced?---I agree, pre-FOFA, that is definitely the case. The point I was going to make is the – the suite of six controls together mandating paraplaning to look at advice before it goes out. Pre-vetting of all advice documents to ensure that new advisers are fit for purpose. Our planner risk insights, in essence, it's an alarm system. We throw out 24 trip wires over the entire adviser base every quarter, and if someone gets tripped, we look into it and if it needs to be investigated or go to a compliance manager, we do that. The investigations team has been further resourced. And as you would have seen in my table to statement 1, the amount of compliance officers has quadrupled from sort of mid-60s to mid-200 with the adviser

base, in essence, the same. Supervision and the last one – I know there’s a sixth but I can’t remember.

Can we go back - - -?---Actually, I do remember, sorry.

5

Yes?---The compliance audit program, which is very important one.

Yes. That remains a very important part of your prevention and detection, doesn’t it?---It does.

10

Okay. So can we go back to Mr Smith and the next audit result that he got in 2015 on 22 January 2015. You’ve annexed that as tab 114 of your statement. It’s WBC.501.025.5070. And if we could have the second page on the screen as well. Thank you. We see that, again, in this audit Mr Smith receives a requires improvement result and of the four files reviewed, three were rated “requires improvement” and one was rated “qualified”. And this would have meant that he had 33 points deducted, 10 for each of the “requires improvement” and three for the “qualified”. And this time, because this audit was less than six months after the previous audit where he was already down to 47 points, these points took him down to 14 points which put him in the extremely high-risk category. Is that correct?---Your maths is very good. I’m just checking it. I will take you on it.

15

20

Well, you know, don’t you, Mr Wright, that as a result of these audit results, Mr Smith was escalated - - -?---Yes.

25

- - - to the Westpac and St George financial planning risk forum. Can we go to your tab 94 which is the risk forum report, WBC.500.015.1382. And if I could ask you to turn to 1388, Mr Wright. We see there that it’s noted that Mr Smith had received four out of five “requires improvement” ratings since his commencement with the business. And at 1406 there is a recommendation, towards the bottom of the page, from Compliance:

30

*Compliance strongly recommends that St George reconsider whether Andrew should remain operating as a planner under the St George brand.*

35

?---Mmm.

And following this risk forum, there was an investigation into Mr Smith’s conduct?---Yes, there was, a preliminary one.

40

And on 16 March – yes, this was February 2015. And on 16 March you suspended - - -?---Yes.

- - - from providing financial advice to customers pending that investigation into his conduct. Is that right?---That’s correct.

45

And on 25 March, Westpac has a meeting with Mr Smith at which he is presented with a letter containing allegations about his conduct?---That's correct.

5 And that letter is exhibit 96 to your statement, WBC.500.021.6797. And we see – if we could have both the first and second pages brought up. And you have this document in front of you in hardcopy - - -?---I do.

10 - - - as well, Mr Wright. Do you agree with me that the allegations that were put to Mr Smith in this letter included that his conduct constituted a potential breach of the Westpac code of conduct. We see that at the bottom of the first page?---I do.

And breaches of various other Westpac policies relating to the best interests duty?---I do.

15 And breaches in relation to the documentation of advice?---I do.

Breaches in relation to conflicts of interest?---I do.

20 Which were said in this letter at 6799, if proven, if substantiated – do you see towards the bottom:

25 *These allegations made against you, if substantiated, could amount to serious misconduct. Westpac considers these matters to be very serious and, if proven, may lead to disciplinary action being taken against you up to and including the termination of your employment.*

?---Yes, I do.

30 And on the following page – I'm sorry, on this page, Mr Smith is given the opportunity to provide a written response to these allegations by 30 March?---Yes.

But having attended the meeting on 27 March and received this letter – and having received this letter, Mr Smith resigned?---Mmm.

35 And subsequent to his resignation, a report on the investigation into his conduct was created?---The first investigation report?

Yes?---Yes.

40 Yes. On 13 May 2015, at which you've annexed at exhibit 85 to your statement. It's WBC.501.003.5001?---Sorry, what was the exhibit?

85?---Thank you.

45 And we see there from the second paragraph that the investigation flowed from a review of 10 files. And in those 10 files the investigator found numerous serious deficiencies, including a failure to keep adequate records to support the basis of

advice in all 10 of the files, and eight instances where Mr Smith hadn't identified and recorded the subject matter and scope of the advice, and seven instances where he had not demonstrated consideration of any viable alternative strategies?---I agree.

5 And do you see there at the second dot point:

*Failure to use systems as required. This is evident through lack of client details in BPM/CFM.*

10 Can you explain what BPM and CFM are?---Yes, I can. BPM, the acronym stands for business process management. And, in essence, it's the front door to get anything done. So you enter the front door and then allow you to decide how you allocate work and get things done.

15 That's an electronic management system?---Work flow management. Exactly.

Yes?---The additional point I would make is there is – lots of doors close, if you like, and things have to happen before it can go into the next room, if you like. At the back of the house is what we call CFM which is our customer file management system and that stores digitally all our customer records.

I see. And is it compulsory for financial advisers to store their client records in these systems?---Absolutely. This was introduced in 2014, these two systems.

25 I think in your statement you suggest that it was in September 2013, Mr Wright, but I may have that wrong. It's paragraph 417(b) of your statement?---I'm sure – I'm sure you're correct. There was a transitionary phase to when it went live to when it was mandated.

30 But certainly by this point, this was mandatory for your advisers to use these electronic systems?---Exactly. Yes.

And then staying within this investigation report, if we turn to the second page, we see there a particular concern that the investigators have noted in relation to recommendations by Mr Smith that several of his clients invest in NAB capital notes?---Yes.

In circumstances where there was an incentive for planners to recommend that customers invest in these notes. That's dealt with in the second full paragraph on that page. And the investigators noted that Mr Smith may have recommended that clients invest in those NAB capital notes without considering whether they were appropriate for the client and without providing any appropriate advice document for the clients?---I agree.

45 And you specifically refer to this issue in your statement, and you say that Mr Smith appears to have sought to have 20 customers purchase the same hybrid security on

the same day pursuant to execution only instructions in circumstances where it was apparent that he advised the customers to enter into the transaction?---That's correct.

So that's a very significant and concerning matter, is it not?---It is.

5

Because if he's providing personal advice, he should be providing a statement of advice rather than dressing it up as execution only instructions?---Yes. Absolutely.

10 When did you work out that Mr Smith had done that in relation to those 20 customers?---So reviewing the file, it was clear, as this issue was about to close, Mr Smith tried to not circumvent the system but tried to get in the system 20 execution-only pieces of advice and get that processed, which raised significant alarm bells. You know, we are a retail advice business based off personal advice. We're not a stock broking business. This was the way that Mr Smith was acting, and it wasn't  
15 appropriate.

And when did you work out that he had done that?---It was when this issue was close to finishing, which I thought, off my reading, was more around March 2015.

20 March 2015?---Could have been February. It was – it was February/March, I think, 2015.

Okay. And you say in your statement that one of the reasons that you think Mr Smith did this was because he could – he could earn significant fees on the NAB capital notes?---He could.  
25

Yes. So there were placement fees for these securities?---Stamping fees, yes, they were.

30 Yes. And would you accept that those fees offered by NAB in connection with those NAB capital notes influenced the advice given by Mr Smith?---On the surface, it looks to me that it did.

35 So those fees constituted conflicted remuneration?---Stamping fees aren't banned remuneration. But, having said that, it's certainly not the model that we embraced and we actually stopped that practice in July 2015.

40 So why did you stop it?---Well, I think the first reason is it became apparent with the 20 execution-only customers that that was unacceptable. We then realised that we had advisers like Smith acting like stockbrokers, which is not appropriate. So in July 2015 we banned execution-only. We banned salaried advisers receiving a stamping fee. And those proceeds, if they flowed into the dealer group, were put towards education and training.

45 Yes. Thank you. Now, could I take you to exhibit 93 of your statement, which is WBC.500.019.8359?---Sorry. I always miss the exhibit.

Sorry. It's 93?---93. Thank you.

I have five volumes of your exhibits, Mr Wright?---Tell me about it.

5 So there's a number to go to. Now, this exhibit is a report that was prepared in July 2017 in relation to remediation of Mr Smith's clients?---Yes.

We don't seem to have the right document on the screen. WBC.500.019.8356. I'm  
sorry, I think it's my fault. I gave the wrong number. Yes. I'm sorry. It is my fault.  
10 8356. I do want to go to 8359. That's probably why I got the number wrong, but it's  
fair that I show you the first page of this before I do that, Mr Wright. Now if we can  
go back to the page I had in mind, 8359. So in this report which is about  
remediation, principally about remediation of Mr Smith's clients, we see at 8359, a  
reference to this NAB capital notes issue?---Sorry, I have 8356? Do we need to go  
15 forward three?

I think on the screen now is 8359. Do you see the heading Business and Planner  
Conflicts?---Sorry.

20 Yes?---I'm looking – yes. I'm looking on the wrong side. Sorry.

And do we see there that in this document, there is identification of the fact that the  
advice Mr Smith gave to his clients to purchase the capital notes might have been the  
consequence of initiatives – sorry, of incentives?---Is there any chance we could just  
25 re-anchor ourselves back to – can I just look at the start of the document, please.

Yes. Yes. I'm sorry. I have made that very difficult. 8356 is the start of the  
document. So this is the - - -?---Yes.

30 It's an assurance report from 6 July 2017 which appears to principally be about  
reporting on remediation of Mr Smith's clients, but within that document, we have  
this page that I've directed you to, because it deals with the NAB capital notes issue,  
which is 8359. There, you have both of those pages now?---Thank you.

35 And there was an acknowledgement by Westpac in this document in July '17 that the  
advice that Mr Smith gave to his clients in relation to the purchase of those NAB  
capital notes might have been a consequence of the incentives?---Where would I see  
that?

40 May be a function of incentives and cross-referrals is in the first column, in the  
bottom row in the first paragraph?---Yes. I do see it.

And do we see there as well that:

45 *These considerations resulted in the changes –*

that you've described earlier in your evidence?---Yes, I do.

The changes that you said were made in July 2015 to ban this sort of conduct?---That's correct.

5 Okay. Now, can we just come back to the investigation into Mr Smith that was still being conducted. We looked at the first report of the investigation. There was also a supplementary - - -?---Yes.

10 - - - investigation report which is annexure 86 to your statement, WBC.100.004.9464. And this supplementary report was prepared following review of a further 10 files?---That's correct.

So by this time, 20 of Mr Smith's files had been reviewed. And do you see on the first page there that:

15 *Collectively, the initial and supplementary parts of the investigation –*

do you see that reference to “collectively” down the page?---I do.

Continuing:

20

*They showed consistently inadequate investigation into clients' circumstances, needs and objectives, potential poor advice practices, in particular, relating to consideration of alternative strategies, inadequate record management and failure to provide advice documents at the right time or at all.*

25

Now, at 9464 we also see below that:

*We are unable to confirm conclusively that the advice given in any case is appropriate for the clients.*

30

And you see the reasons for that listed below?---Yes, I do.

And on the following page we see things that have hampered the investigation in the final paragraph:

35

*The investigation has been hampered by exceedingly poor management of client file records of this planner. In our experience, the files were put together in such a haphazard way as to be the worst we have seen in recent times. The ability for this to be allowed to occur without being identified and resolved over such a period indicates a potential control weakness that should be examined further by the risk team to ensure other instances are identified in other advice areas.*

40

45 Was that control weakness identified further – or examined further, I should say?---I can't think it was – I know fast forward to 2017, yes. But I'm not too sure then, actually. Sorry.

Well, there isn't anything referred to in your statement, is there, to suggest that at this time after this warning, steps were taken to examine this control weakness that was identified in this investigations report?---No, there isn't.

5 And based on these two investigation reports which you no doubt have read, do you think that Mr Smith provided inappropriate advice to customers?---In many of the cases, it was difficult to determine because of the poor documentation in evidence. There are moments and cases where I do believe inappropriate advice was provided. I'm - - -

10 And you – I'm sorry, you go on?---There – there was moments I mention in my statement around product replacement. I can't remember the customers' names. There was moments where the stamping fee issue, that we have already addressed, and there was moments where the provision of ongoing advice hadn't been provided.

15 Well, you tell us in your statement in paragraphs 379 to 385 that, in your view, Mr Smith recommended investments or strategies that were too risky - - -?---Mmm.

20 - - - given the customer's risk profiles and personal circumstances. In some cases, he transacted without the customer's authority. He charged ongoing advice fees without providing the promised services, and you also identify the issue that you've just mentioned then about the NAB capital notes advice. Do you accept that each of those things happened in relation to the advice provided by Mr Smith?---I accept those statements, yes.

25 Yes. And you've said in your statement that a remediation team was formed to deal with all of this and customer file reviews began in June 2015?---Mmm.

30 And remediation began in August 2015?---Yes, that was a business as usual remediation team that we created.

35 What do you mean by that, Mr Wright?---There's two remediation teams within Westpac. One's a very structured – from the centre, if you like, from head office. That's the advice review team which the Smith case goes to I think in the following year. The business as usual remediation team is more ad hoc. We don't do it very often now, but back then, we did. And then they had to find a couple of planners and a support officer to start remediating the customers.

40 And how much has Westpac paid in remediation to Mr Smith's customers?---So in terms of the business as usual remediation, there were 112 customers that we looked or attempted to speak to. 36 of those customers, around 30, we remediated for 1.6 million.

45 One point six million dollars?---That's correct.

To 32 customers, I think you say in your statement?---32, that's correct, thank you.

And do you – I’m sorry?---There’s a – then there’s the other – sorry to cut you off.

Yes. No. No, you go on?---There’s the other remediation program where they look at the back book of customers, those who weren’t advised by Smith at the time.

5 There’s significant amount of customers, a couple hundred. The advice review team have done the reviews. There’s \$600,000 provisioned to pay 59 customers by January 2018.

By January 2018, did you say?---That’s correct.

10

So we’re now in April?---Sorry, June. June. June. Sorry.

June 2018. So that was 112 customers dealt with by the business as usual remediation program. 59 customers dealt with by the other part that you’ve just described?---Sorry, I wasn’t very clear. The advice review team looked at hundreds of previously advised customers for Smith.

15

Yes?---And identified – and reached out to them.

20

Yes?---And identified 59 customers who need to be remediated.

Yes. So that puts us at about 170 customers affected by Mr Smith’s conduct who require remediation, and remediation that has been paid or will be paid at over \$2 million?---That’s just a – sorry, I’m confusing you. The business as usual remediation, there was 32 customers.

25

Yes?---Plus the 59.

Yes?---Is – whatever that is.

30

I’m sorry, I used the figure of 112?---12 – yes.

When I should have used the figure of 32?---Yes.

35

So the total customers were 32 plus 59?---Yes.

And the total remediation is still over \$2 million?---That’s correct.

Thank you. Now, I was going to move to a separate topic now, Commissioner. I see we’re close to 4. That is a matter for you, Commissioner, as to whether I should continue. I won’t be in a position to finish Mr Wright today.

40

THE COMMISSIONER: Is it worthwhile doing one more subject - - -

45

MS ORR: Yes, I think - - -

THE COMMISSIONER: - - - or am I chancing my arm?

MS ORR: No, I would be happy to do one more, Commissioner.

THE COMMISSIONER: Right.

5 MS ORR: Now, Mr Wright, prior to receiving the supplementary investigation report - - -?---Mmm.

- - - on 6 July 2015, Westpac received a notice from ASIC under section 912C of the Corporations Act?---That's correct.

10

And that notice is annexed to your statement at tab 115. It's WBC.500.021.8896?

THE COMMISSIONER: Sorry, what's the date?

15 MS ORR: 6 July 2015.

THE COMMISSIONER: Thank you.

20 MS ORR: So this is the notice that Westpac received from ASIC. And at 899 – I'm sorry, at 8900, we see what ASIC asked Westpac for. ASIC asked Westpac for information about advisers for whom serious compliance concerns had been identified. And at 8901, ASIC also asked for advisers for whom other compliance concerns had been identified. If we've got both of those pages on the screen at once, we can see the difference here between serious compliance concerns and other  
25 compliance concerns. So serious compliance concerns – I'm sorry, 8899. Yes:

30 *Serious compliance concerns are where the licensee believes and has some credible information in support of the concerns identified that a financial adviser may have engaged in dishonest, illegal, deceptive and/or fraudulent misconduct or any misconduct that if proven would be likely to result in an instant dismissal or immediate termination, or deliberate noncompliance with financial services laws or gross incompetence or gross negligence.*

35 And other compliance concerns are listed there and include:

*... breaches of internal business rules or standards, adverse findings from audits, and conduct resulting in actual or potential financial loss to clients.*

40 So at this time when Westpac received this notice, it had the initial investigation report from May 2015?---Yes.

And work on the supplementary investigation report would have been well underway?---I'm assuming so, yes.

45 Yes. And did Westpac identify Mr Smith in response to ASICs notice?---I know we do, but I think it's a later date.

Yes. In your statement at paragraphs 420 to 421 you tell us, Mr Wright, that you did not identify Mr Smith to ASIC in response to this notice?---Mmm.

5 Why not?---I don't know. I wasn't involved in the preparation. The only – I would only be speculating, actually.

Do you accept, though, that at this point, it was clear that Mr Smith had been the subject of adverse findings in multiple audits?---Yes, I do.

10 And that he had breached Westpac's internal business rules and standards?---Yes, I do.

15 And that was enough to put him in the category of other compliance concerns?---Yes.

And before he resigned, Westpac made allegations against Mr Smith that Westpac said could result in termination of Mr Smith's employment?---Mmm.

20 And that would have put Mr Smith into the category of serious compliance concerns?---Again, I'm not qualified, but that would certainly appear the way.

25 But Westpac did not tell ASIC about Mr Smith's conduct in response to this notice?---I feel a little confused, and I'm sure it's me. Was this in relation to existing advisers?

Yes. Well, if you would like to look at exactly what was asked for, it's 8900:

30 *A list of the names and dates of births of all financial advisers for whom serious compliance concerns have been identified by the licensee.*

?---Okay.

35 Do you accept that Mr Smith ought to have been notified to ASIC pursuant to this notice?---It would appear that way.

Thank you. Perhaps that's a convenient point, Commissioner.

THE COMMISSIONER: Yes. How are we travelling for time, Ms Orr?

40 MS ORR: Not too badly, Commissioner. I - - -

THE COMMISSIONER: Tell me I can start at 9.45, rather than 9.30 is what I'm asking.

45 MS ORR: Yes, you can, Commissioner.

THE COMMISSIONER: Yes.

MS ORR: Thank you.

THE COMMISSIONER: 9.45 tomorrow, then.

5

**<THE WITNESS WITHDREW**

**[4.01 pm]**

**MATTER ADJOURNED at 4.01 pm UNTIL FRIDAY, 20 APRIL 2018**

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