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TRANSCRIPT OF PROCEEDINGS

O/N H-884956

THE HONOURABLE K. HAYNE AC QC, Commissioner

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

MELBOURNE

9.45 AM, FRIDAY, 20 APRIL 2018

Continued from 19.4.18

DAY 15

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

**DR M. COLLINS QC appears with MS K. WILLIAMS SC and MR E. HYDE for
ANZ**

**MR J. SHEAHAN QC appears with MR S. LAWRENCE and MS P. ABDIEL for
Westpac**

<CROSS-EXAMINATION BY MS ORR

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THE COMMISSIONER: Yes, Ms Orr.

10 MS ORR: Mr Wright, we finished yesterday with some answers that you gave to questions from me about a notice that was served on Westpac by ASIC in July 2015. You said that Westpac did not identify Mr Smith in response to that notice. And a few months later, ASIC sent Westpac another notice; is that right?---That's correct.

15 And that was on 11 September 2015?---That's correct.

And that notice also requested information about advisers for whom other compliance concerns had been identified?---That's correct.

20 And in response to this notice, Westpac did identify Mr Smith to ASIC?---That's correct.

As being someone for whom other compliance concerns had been identified?---Yes, that's correct.

25 Okay. And so what had changed between July and September 2015 that meant Westpac thought it was, by then, appropriate to notify ASIC about Mr Smith?---What I can sense, reading through the information – and I refreshed my understanding last night – was the first notice, particularly around serious conduct, asked for all advisers, past and present. My interpretation of the first notice around
30 “other”, it was only in relation to existing, which Mr Smith was not an employee at that stage. The second notice, which was just around “other”, was – my understanding was in relation to all advisers, past and present.

35 And what did you base that interpretation of the first notice on? What was it that led you to believe it excluded advisers for other compliance concerns that were no longer with Westpac?---Again, I'm not qualified, but – but reading that notice, that was the way I interpreted it.

40 There was no express exclusion, though, was there, Mr Wright?---No, there wasn't.

Thank you. On 3 November 2015

45 MR SHEAHAN: Commissioner, just to be fair, I think there is actually express language in the notice that draws that distinction, but I just want to raise it with my learned friend so that she can take it up with the witness while he's still there.

THE COMMISSIONER: Yes.

MS ORR: Perhaps we will dig the notice out, Mr Wright, which is exhibit 115 to your first statement. This is the notice we looked at yesterday.

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THE COMMISSIONER: Mr Wright is going through the papers.

MS ORR: And the doc ID, Commissioner, is WBC.500.021.8896.

10 I see, so page 8901 in that document, Mr Wright?---Yes.

We see there – well, we will see there paragraph 3:

15 *A list containing the names and dates of birth of all financial advisers authorised by the licensee as at the date of this direction.*

Is that what you're – well, I was going to say is that what you're referring to, but you didn't refer to this. Mr Sheahan referred to this. Do you see that there, Mr Wright?---I do.

20

And do you want to change your answer now to me about whether this did have an express exclusion for advisers who had – who were no longer working with Westpac?---Yes, please. It's very clear that it was express.

25 Thank you. Now, I was moving, Mr Wright, to 3 November 2015 when the Westpac Group Compliance Breach Determination Forum met?---Yes.

And determined that the incidents in relation to Mr Smith were significant. You refer to this in your statement?---Yes.

30

And following this, on 17 November 2015, Westpac made a notification to ASIC under section 912D of the Corporations Act?---Yes.

So that was a significant breach notification?---Yes.

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And it was made several months after the investigation report and the supplementary investigation report?---Yes.

40 And why did Westpac delay before making that breach notification to ASIC?---Reading through the material, it's very clear that there was a series of investigations. There was the initial, then there was the supplementary. Throughout that process, there was also compliance assessments done by second line. There was an interim one done in May and an interim one done in September and then a final in October. The final in October was very clear, and it made a recommendation to the breach determination forum in relation to notifying ASIC. The complication was in
45 relation to finalising legal opinion. The other complication is we need to get this right because the consequences of getting it wrong is significant for our people

because, obviously, it goes on their record as a part of the ABA reference checking. I do acknowledge it feels like quite a long time, but there was a lot going on.

5 Well, it does, doesn't it, Mr Wright, because your first investigation report was in May 2015 and findings were made - - -?---Yes.

- - - in May 2015, and your second report was in July 2015 and further findings were made then?---Yes.

10 And by July 2015 you were remediating Mr Smith's clients?---We were.

But you took until November 2015 to tell the regulator anything about this?---We did.

15 Yes. I should qualify that to say anything to the regulator about this in terms of a significant breach notification?---Yes.

It had only been described as an "other" compliance concern?---Prior to that, yes.

20 Thank you. You say in your statement that from February the following year, February 2016, Westpac provided a significant number of documents relating to Mr Smith to ASIC?---Yes.

25 And this was in response to multiple notices from ASIC that were issued after you made the significant breach notification?---Yes.

30 And can I ask you to look at your exhibit 91, WBC.501.004.6906. This is a document entitled Summary of Key Factual Matters Concerning the Planner Mr Andrew Smith?---Yes.

And did Westpac produce this document to ASIC?---Yes.

And it was produced pursuant to one of the notices issued by ASIC?---It was.

35 And did Westpac prepare this document for the purpose of producing it to ASIC?---Yes, it did.

40 Thank you. Now, in this document there are a number of concerns identified by Westpac in relation to Mr Smith. We see the heading at the bottom of the first page Westpac's Concerns with Andrew Smith. We then see a heading on the next page about the first of those concerns, which is Poor File Management. Do you see that on the following page, Mr Wright?---I – I do.

45 And if we move through the document we see that the next concern at 6908 is confirmed concerns with Mr Smith's advice or advice giving processes?---I do.

And under this heading at paragraph 13, subparagraph (a), there is the identification of a single instance of Mr Smith issuing execution only statements in relation to Westpac – I’m sorry, in relation to NAB capital notes in February 2013 in circumstances where it appeared that personal advice had been given?---I do.

5

And the next heading in the document, if we stay on that page, but pan out, the next concern was a concern with Mr Smith’s advice or advice giving processes. And if we move to the following concern at 690 – well, I’m sorry, we move to the next heading and we have finished the identification of the concerns and we’re now in background to Westpac’s identification of the concerns, and under this heading in 19(b), there is a reference to the review that identified customers of Mr Smith who had applied for the NAB capital notes with a combined value of \$3 million. Do you see that?---I do.

10

15 Now, you have given evidence about the review that led to Westpac working out that 20 customers of Mr Smith had applied for those capital notes in circumstances where they had not been given personal advice. Execution only instructions. You told us yesterday in your evidence that Westpac identified that issue in February or March of 2015?---Yes.

20

And this is a document in response to ASICs request for information in April 2016?---Yes.

25

Why didn’t Westpac disclose as one of its concerns about Mr Smith’s conduct, in this key factual matters document, the view that had been formed over a year earlier that Mr Smith had presented 20 transactions as involving execution only instructions in circumstances where he gave personal advice?---Can I just read that paragraph, please.

30

Yes. And just to help you when you’re reading it, my point is that this document contains a long list of concerns identified by Westpac with Mr Smith’s conduct. Those concerns do not include the execution only instructions to the 20 customers who acquired NAB capital notes. That is referred to only in passing in the background to the identification of those concerns in this part of the document, but why is that? Was Westpac downplaying that incident?---I can’t explain why that is the case. I apologise.

35

40 Do you accept that it should have been disclosed as one of the concerns to ASIC at this time?---Again, I’m – I’m not qualified, and – and these reports are done by our second line mapped against the legislation. I made it very clear yesterday what I felt in terms of the notes issue and what we did.

45

Yes. Well, the conduct of Mr Smith in connection with that issue was a breach of his obligation to give a statement of advice when providing personal advice?---Mmm.

Yes?---No, so Mr Smith was providing execution only advice - - -

Yes?--- - - - which the requirement for documentation is significantly less.

5 Yes, but it was not – it was personal advice, wasn't it? I thought you had conceded this yesterday and, therefore, required a statement of advice, but it had been dressed up by him as execution only?---No, sorry, there must have been a misunderstanding. It was execution only. My concern was that we are a retail advice business that provides personal. He was acting like a stockbroker. That's why we stopped it and, therefore, personal advice needed to happen with this type of arrangement going forward.

10 Well, perhaps if we could turn to paragraph 384 of your statement, Mr Wright?---Yes.

15 Perhaps if we could have WBC.900.001.0263 brought up?---Sorry, was it 384?

15 384, Mr Wright. You see there what you told the Commission in your statement, Mr Wright, was that:

20 *The investigations into Mr Smith identified instances where Mr Smith appears to have failed to provide customers with the requisite advice documents. In particular, the investigations documents identify an incident in which 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 Mr Smith had advised the customers to enter into the transaction.*

25 ?---Yes, I do.

30 Do you resile from that evidence?---No, I don't.

35 Right. So what I'm putting to you – what I'm putting to you, then, Mr Wright, based on your evidence here, is that Mr Smith had breached his obligation to give a statement of advice when providing personal advice in relation to these hybrid securities?---Sorry, it's a technicality under 384. I don't mention statement of advice. Within the advice industry, there is a series of advice documents: statement of advice, record of advice, and execution only.

40 I see. I see?---So when I'm talking about the requisite advice document, it's the execution only document.

40 So there was a failure by him to provide requisite advice documents. Let's park for now exactly what style of advice documents?---Yes.

45 Your evidence is that he failed to provide the customers - - -?---Yes.

- - - with that in circumstances where he had advised them. Now, this was dishonest conduct, was it not, Mr Wright, in that he sought to conceal that he was giving

personal advice and to present it as involving execution only instructions?---No, I disagree with that. He wasn't giving personal advice. That was my concern. The advice he was giving was like a stockbroker, which was execution only, customers going to these offerings. That was my concern.

5

Where do we see that concern in this paragraph, Mr Wright? The concern you express here is about his failure to provide them with advice documents?---The requisite advice documents being execution only, yes.

10 Yes, I see. I will come back to the ultimate question about this, which is why was it not disclosed to ASIC in the document we have just looked to, given that it was detected by Westpac in February or March of 2015, and not told to ASIC in April 2016?---Unfortunately, I don't know. I didn't create this document.

15 All right. Mr Wright, I asked you yesterday about whether Mr Mahadevan was known by Westpac to be a member of a professional association such as the AFA or the FPA?---Yes.

Do you know if Mr Smith was a member of a professional association?---I don't.

20

Do you know if Mr Smith's conduct was reported by Westpac to any professional association?---I don't.

25 And when I asked you yesterday why Westpac requires its advisers to be members of the FPA, as part of your answer, you said to me that it was part of professionalising - - -?---Mmm.

- - - those advisers. Do you recall that?---As a part of professionalising the way we go forward as a business, yes.

30

What do you mean by "professionalising"?---What I mean is, since 2014, we have had a significant focus on education standards within BT. We have also had a significant focus on ethics and a focus on our people being reflective practitioners, in the sense that they're always improving themselves. Joining the FPA is just a component of the overall package of being a true profession – sorry, a true professional.

35

"A true professional", did you say?---Yes.

40 Do you see financial advisers as being professionals, part of a profession?---I see financial advisers definitely being professional. I see that the industry of advice is on the cusp of becoming a true profession.

45 What's stopping it from becoming a true profession, Mr Wright?---I think there's some – there's some – a couple of things. I think the first one is around education, expectations, and professional standards, and there's a significant amount of work been done on that recently. I think our industry will always need to manage, like all

businesses, conflict. As I say in my statement, whether it's remuneration or product, that conflict will always need to be managed, whether it's actual or perceived. And the third pillar for me is that the customer is always at the centre of everything. So they would be the three themes for me around becoming a true profession.

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Do you say that up until now the customer has not always been at the centre?---I think there's instances where that has been the case, particularly early on in this timeframe I was asked to look at, which was over 10 years.

10 Do you think that the public place their trust in financial advisers in the same way that they place their trust in other professions, like doctors and lawyers?---No, I don't.

And why not?---Because we haven't earned it yet.

15

Do you agree that the financial advice industry has its origins in being a way to promote or sell financial products?---In terms of its origins, do you mean – yes.

Of the industry?---Three or four decades ago? Yes, I would.

20

Do you agree that, in the past, the financial advice industry has had a strong sales culture?---I think that would be a fair comment.

And do you think that's changed?---I do.

25

And how has it changed?---I think it's changed significantly.

How?---Well, I think the first thing is if we reflect on FOFA, the – the fundamental changes that came with the Future of Financial Advice were considerable, particularly banning conflicted remuneration from July 2013. In essence, that meant that for us to provide advice, we needed to show real value to customers because they were paying for the service in relation to an ongoing advice relationship. The other cornerstone, part of the Future of Financial Advice legislation, was transparency, in terms of the fee disclosure statement for ongoing advice customers but, more importantly, the ability for them to opt in regularly. I think there is an opportunity for us to take it to another level, and I think the debate around grandfathering will be a debate that this industry needs to have.

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And what do you think should happen with grandfathering?---Well, I think there's – there's two components to the grandfathering of the legislation. Often, we talk about commissions, but there was another grandfathering moment around ongoing advice and opt-in. BT made a very clear decision at that point that every ongoing advice customer deserved the opportunity to opt in from July 2013, whether they were pre-FOFA or post. I think there's a real opportunity for the industry to debate that. The second piece which is much more topical is grandfathered commissions. I think it's – it's – it's more complicated, but I think FOFA has proven that customers are willing to pay for advice if they can see value. I think we have grown up enough to

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start the opportunity and the debate around what we do with grandfathered commission. I don't think it's an easy one. There's real implications if you were to move first, but I think the debate should start.

5 And what's your position on what should happen with the grandfathered commissions? Do you think it's fair that commissions should still be realised by financial services entities in 2018 beyond – and beyond in relation to arrangements that were put in place before July 2013?---What I believe is that the provision of quality advice is critical to Australians, and reading through the treasury paper as a part of this Royal Commission, it was very clear that they could see significant benefits in advice if done – done well. I believe that too. I think the – the challenge for – for us as an industry is a couple of fold. If an organisation decided to stop paying grandfathered commissions, the reality is it would put themselves in a very significant competitive disadvantage, in the – in the sense that the commissions that are being received by dealer groups and advisers to – to supplement their advice and subsidise their advice, that would stop. That would have significant brand damage on that product provider. I think the other thing is that we need to make sure that Australians can get quality advice, and I think the – the latest change as a part of the life insurance framework really make that clear around insurance. The last piece is there's hundreds, thousands, of small businesses, partnerships, and equities – sorry, and corporate structures that employ financial advisers to help customers. Moving those trails overnight would impact, potentially, the viability of their businesses. So – so my – sorry, to answer your question.

25 Yes, thank you?---Sorry. My personal opinion is I can't wait to the day when we are fully fee for service for insurance and super. We have seen it's possible. I think for – for it to occur, though, the debate needs to rage. I do think legislation needs to be a part of the conversation because there's significant disadvantages for someone unilaterally moving first.

30 Do you think of yourself, Mr Wright, as a sales professional?---No, I don't.

I have had a look at your LinkedIn profile which lists various things about what you do, and one of the descriptors that you give of yourself is as a sales professional; is that right?---It could be.

Would you like me to show it to you or – I'm happy to?---No, I'm happy to believe you.

40 I'm interested in that because I want to understand whether you think of the financial advice industry as a sales industry?---I don't.

45 You don't. And do you think it's possible for a financial adviser to be both a salesperson and a trusted adviser at the same time?---Well, to me, they're – they're connected. To be a trusted adviser means that you understand your customer, you tailor their needs to their needs – sorry, to their desires. Often, to realise that, you need to put strategies in place which, in essence, result in products. So, by default, if

you genuinely care in taking action, there will be an element of product to bring that to life. So, yes, you could say that is a sale.

5 Maybe there won't, Mr Wright. Maybe the right advice for a person is not to sell them products?---Yes, I agree.

10 Maybe the right advice is to set up a budget for them and give them some realistic appraisals of their financial situation and their goals and objectives?---Yes, I totally agree with that.

15 But we're in a world, in Westpac and in other entities, where advisers are remunerated, at least in part, significant part, by the revenue that is brought in from their sale of products?---Yes, I agree with that.

20 So how does that work? How can an adviser be relied on to give appropriate advice to a customer in circumstances where their remuneration is dependent on whether they sell that person products?---So to go back to your first point, we have hundreds of situations where there's strategic advice with no product that we charge a customer a fee. We also have a significant amount of cases, every year, where it's actually in the customer's best interests not to do business with us. What they have got in place is actually really good. And we're constantly telling customers, "Just stay. You're doing well", and we collect nothing for that. Where there's a genuine need, and there are product solutions that are required, well, yes, we will construct the portfolio or – or put the risk in place. Yes, that goes against – sorry, that goes towards their outcomes within the scorecard, and as you have seen in my statement, the – the changes that we're about to make to our remuneration model are significant. Revenue will not be the hero item and, frankly, for most of my advisers, it never has been the hero item, but I do think the time is right to help me manage the perception of conflicts and, hence, why the significant change.

30 I want to come to your remuneration changes?---Of course.

35 I will do that, but for now, I want to put to you that even with the changes you're going to make, the revenue brought in by the adviser is still a component of their remuneration?---Yes, but we – we can have that conversation.

But it is, isn't it?---It is a small component, yes, it is.

40 It is a component. And what I want to squarely put to you is that, although you say you have examples, perhaps large numbers of examples of advisers within Westpac who tell customers they should do nothing - - -?---Mmm.

45 - - - that your system gives them no incentive to give that advice because they are still rewarded if they sell that customer a product?---I totally agree, the situation where an adviser says to a customer, "You're doing awesome. Stay what you're doing," there is no incentive to them, apart from feeling like they have actually done the right thing by that customer.

Yes. All right. Thank you for answering those larger questions, Mr Wright. Can I just come back briefly - - -

5 THE COMMISSIONER: Before you depart from them, you say it is a frequently occurring case where the adviser will tell the client, “No, you have done the right thing. Do nothing more.” Does that event find any reflection in reporting to senior management so that senior management can – or more senior management can get some idea of the way in which the particular adviser is approaching his or her task?---Within my business, no.

10 So, again, just to follow it out one step further, leave aside whether there’s a direct reward of money for giving that sort of advice, how, if at all, does the immediate supervisor or the more senior management know whether the adviser is taking that kind of approach?---They wouldn’t know systematically. They potentially could see 15 it as a part of their supervision program where they’re doing the live observations with an adviser and a customer, and at that conversation, they may say, “Look” – but it would be very ground level, not – not systematic.

20 And, in particular, does it follow that it’s not something that’s taken to account in determining promotion within the organisation, or added responsibility, or other general advancement in the organisation?---Yes, that would be a fair comment.

25 Yes, because I think you have probably answered these questions fully in answer to Ms Orr, but I just want to make sure that if there is more you want to add, you have the chance to add it. Come back to what I think I was saying to you yesterday, I think, that what employees pursue is often affected by what they see their immediate supervisors and more senior people as valuing?---Yes. That’s correct.

30 Is that – do you accept that, do you say?---I do.

In effect, how does the frontline adviser recognise that this kind of approach, “Note: your portfolio is superb; you have done a great job; do nothing more. Nothing more I can do to help you, have a good day”, how does the frontline employee see that as something which the organisation values?---Unfortunately, they don’t. I haven’t 35 done enough to make sure they feel that.

40 Well, forget beating up on yourself, Mr Wright. Can you offer any way in which that sort of thing – I’m trying to find a neutral expression – could be reflected in management structures, organisation, or anything of that kind?---I can. As I mentioned yesterday in the conversation around consequence management and through the professional service council, we have an independent – I wouldn’t call them a director – just an independent observer, Simon Longstaff, that is constantly challenging me to the spirit of your conversation around how do you elevate good behaviour, how do you recognise other themes as opposed to what you do today. I’m 45 sure he is listening; he will be latching on to the comment around the times that we say to a customer, “Keep doing what you are doing.” So I think it’s the right – the right question. We’re refreshing our remuneration structure at the moment which

involves our scorecard. I think we need to take it to another level, and we will take it to another level.

Yes. Thank you. Yes, Ms Orr.

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MS ORR: Mr Wright, I said I was going to return briefly to Mr Smith?---Mmm.

In your statement, you say that one of the reasons that Mr Smith has given inappropriate advice was for the purpose of increasing or maintaining his share of revenue?---Yes.

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In other words, to increase his monthly bonuses?---Yes.

And why do you say that?---The - - -

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You deal with this at paragraph 391 - - -?---I do.

- - - onwards if that helps?---No. No, I'm very clear on this. The reason I feel that Mr Smith has looked to maximise his share of revenue is, in essence, there were three themes. The first one we spoke about yesterday was the capital notes issue and, obviously, the stamping fee that's associated with that. That was a real alarm bell for me. The second one was there's cases there where the provision of ongoing advice has not been provided, which is unacceptable, and it was systematic. It looked, to me, deliberate. It's unmoral and I was very disappointed with that. And I think the only justification I could see was to sort of maintain your level of remuneration. And the third theme was, you know, we just touched on the point around, you know, if it's in the customer's best interests to stay where they are, there was too many cases, for my liking, where, the product replacement, I couldn't see any real value for the customer.

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So one of those three themes that you mentioned then related to charging fees without providing the service?---Mmm.

How often do Westpac financial advisers charge fees for ongoing service?---So there is 64,000 customers within BTFG that are on a ongoing advice arrangement per annum, with BT financial advice and BTGL.

35

And what does that represent as a proportion of the total customers?---So the total – this is directional – there's about 200,000 customers all up, a big chunk of those are self-directed or unadvised. So 60,000 of 200 would be 30-ish per cent. I think it would be more in the BTGL – I think the mix would be much more towards ongoing advice.

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BTGL being?---Magnitude and Securitor.

45

Yes. So you're distinguishing between your employed financial advisers and the authorised representatives?---That's correct, yes.

And what sort of numbers do you think would apply in relation to the authorised representatives part of the business?---So the 64,000 is pretty much half-half. Most of their customers are actually on an ongoing advice relationship. There isn't many customers that – that are not.

5

Most of whose customers? The authorised representatives - - -?---That's correct.

- - - customers?---That's correct.

10 So it's the majority of those who are on an ongoing - - -?---That's correct, yes.

- - - fee arrangement. And so it's commonplace, is it, then, to include an ongoing fee service within an advice provided?---Yes, absolutely.

15 And what is it that is generally being provided pursuant to those arrangements?---Yes. I think before FOFA, the conversation was much more around performance. Post-FOFA, and particularly now in our businesses, the conversation is much more around strategic advice and reassurance. This is a very complex system. You know, it was interesting reading the treasury report – you know, I think
20 there was 12 regulatory guides that have been provided since FOFA updated which put significant change in the system. There has been nine pieces of statute and legislation. There has been four significant wealth reviews. All those things change the system – potentially change rules. So the intent of ongoing advice is to have a conversation regularly, to ensure that your strategic advice is going to ensure that
25 you meet your goals and aspirations. It's reassuring customers that they're on track, but just as importantly, it's reflecting on all those changes I just mentioned, and as the true professional, it's allowing and ensuring the customer's needs are met, and if we need to change or rebalance or reposition to ensure they meet their goals, then that is the purpose of ongoing advice.

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So do I understand that answer then to mean that the things that are generally provided under a fee for service arrangement are a regular conversation - - -?---Mmm.

35 - - - between the adviser and the customer, reassurance to the customer about how they're tracking - - -?---Yes.

- - - and, thirdly, reflection on the various legislative and regulatory changes that are occurring?---Perfect. I just add one more.

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Yes?---In terms of that strategic advice conversation and reassurance, there will be often changes that will need to happen within the portfolio to make sure that they can still achieve their goals. Sometimes it's actually also an opportunity to hold the customer accountable to what they were going to do, eg, save more money so they
45 could reach their dreams. So a lot of the time, it keeps them honest as well to their plan.

Do customers tend to come to an adviser asking for an ongoing fee arrangement? Do they come wanting a service to be provided over multiple years, or do they come to an adviser because they have a requirement for insurances, a requirement for advice about their superannuation, some other temporal requirement that they want advice on?---No, I don't think they would come and ask for ongoing advice.

So why do they end up with ongoing advice?---For all the reasons I just said.

Because the adviser believes those things warrant – the things that you have referred to warrant the provision of ongoing advice for a fee?---Absolutely, and as a part of the conversation and the advice, we would explain that. Yes, there's lots of customers that would decline ongoing advice, but a lot of customers accept it. A lot of customers are very thankful they have had it. I meet a lot of customers, and some of these customers we have had for over 20 years, and they have been on ongoing advice, and you – they're just glowing of the help that they have had over that journey. I mean, they're not experts and we are.

I want to come to your remuneration changes, Mr Wright - - -?---Mmm.

- - - which you have mentioned a few times already. You say, as you have, that one of the reasons Mr Smith gave inappropriate advice was connected with increasing or maintaining his share of revenue, and as a result of that and other instances of that, I assume, these changes to your remuneration framework have been made; is that right?---That's definitely an element, yes.

Yes. Well, can you explain for us, in brief terms, what the changes to your remuneration system are?---Yes, I can. So, briefly, on 1 October this year, we will no longer have a share of revenue scheme which is very common within the industry. We will no longer pay bonuses monthly. We will have a balance scorecard that is based off 80 per cent non-financials and 20 per cent financials, being the revenue component you were referring to before.

Yes?---That's well ahead of the Sedgwick report which recommended scorecards to be no more than a third by 2020. The other significant thing that I'm very proud of, and I think this could be attractive to a lot of advisers in the industry, the way that we will set their fixed pay – sorry, the last bit I should say, there – there will be a bonus of – off a balanced scorecard, but it will be paid annually. The – the way that we're – we will be setting the salaries of advisers and their target bonus, I think it's going to be very attractive to a lot of practitioners in the industry. In essence, we will be setting people's remuneration based off their qualifications, based off their competency as an adviser, based off the standards that they go through with customers. I probably will be throwing in one other theme, and it will be thank you to the Commissioner, around how do we elevate moments of real best practice. The key will be it will need to be demonstrated. So we will not set people's remuneration, fixed or variable, based off how much money they write.

But you will still have one fifth of the scorecard dedicated to financial measures?---Yes, we will.

5 Yes. And why is that?---We debated this long and hard. The reality is we want to have a viable, sustainable, professional business. Hundreds, thousands of Australians need advice. We're not a charity. We need to make sure we get the – the commercial reality right. We need to make sure we act in the customer's best interest. Having the revenue lens just ensures that people are clear whether we are, at minimum, moving forward. If we're declining in revenue, that would be a real concern in terms of the health of our business.

So you considered whether to move financial advisers across to a completely fixed remuneration package?---No, no, not fixed.

15 No?---We considered removing revenue from the scorecard and having 100 per cent non-financial.

Non-financial?---Yes.

20 So always a variable component?---Correct.

But in the end, you decided there needed to be a financial component to the variable component for the profitability of the business generally; is that right?---No.

25 For – you explain to me?---Sorry. No, that was not the reason. If we get this right, the profitability of the business will be sorted. The point was we want to make sure that people are very clear on the health of our business. So if revenue's declining, then our business is not healthy and that is a concern for me, because what it means is maybe the viability of the business could be in question, and, therefore, maybe we could be in a position where it's going to be difficult to help customers.

30 THE COMMISSIONER: Can I just understand that a little better, because we're talking about revenue, generally?---Yes.

35 Is the revenue fee income?---Yes.

And product income?---So – yes, for insurance; no, for grandfathered.

You go on, Ms Orr.

40

MS ORR: Well, I'm just trying to understand why you made the decision to keep that fifth component in the balance scorecard, and you're talking about the viability of the business. You have drawn a distinction with my language which was about the profitability of the business?---Mmm.

45

You resisted that. But it seems to me that, ultimately, when you're talking about these things, about the health of the business, what you're talking about is Westpac

continuing to flourish, continuing not just to be viable, but to be doing well, and that you want, as part of that strategy, to have financial advisers still incentivised to generate revenue for the business through fees and sale of products?---I want our advisers to be aware of their contribution, and one of the KPIs is by helping
5 customers, whether it's collecting customer fees, whether it's collecting commissions for meeting unmet risk needs, I want them to know that they're growing their business every year because it's an early indicator of the viability of the business. Just on the – thank you for raising your clarification, Commissioner – the grandfathered product commissions will not go into their revenue from the 1st of 18.

10 Why is that? Why have you made that decision, Mr Wright?---Two reasons. The reality is it's actually not a big amount for BTFG and it only impacts a handful of our advisers. And, secondly, as we look to really drive the profession, driving our culture is critical, and culture is made up of messages and symbols. This is a really
15 important symbol. The way that we go forward is helping our customers, showing value, and those customers, if they see value, will have the opportunity to enter into an ongoing advice relationship. If that doesn't suit, then we won't be collecting a commission.

20 You spoke before, earlier in your evidence, Mr Wright, about a first-mover problem in relation to grandfathered commissions. Is this you taking a first step in relation to grandfathered commissions?---So – if you're referring to my statement 3; is that correct?

25 I was referring to something you said earlier in evidence today about when I asked you about your views about grandfathering?---Yes.

And you said that you would be – this wasn't your word, but something to the effect of delighted when we move to a world where there aren't grandfathering
30 arrangements for insurance and superannuation. But in the context of that answer, you also talked about a first-mover problem and competitive disadvantage - - -?---Yes.

- - - if there was a change to the way an entity dealt with grandfathered commissions. I'm just trying to reconcile that answer with the fact that your new remuneration
35 system is not counting grandfathered commissions in the revenue component of the scorecard?---Yes. And just a little clarification, when I talked about grandfathering, it was only super investments.

40 Yes?---Not risk.

Not what, sorry?---Not – not risk.

45 Not risk, and what's the distinction there?---Sorry, insurance.

Insurance. Thank you?---Yes, sorry. I can see why the clarification is important. In essence, through this conversation, I have got sort of two hats on. The first hat is the

leader of our advice business, which is product agnostic, and your point around me deciding to remove grandfathered commissions for super and investments as at 1 October is an important symbol in my advice business. So that's the first thing. Personally, I believe in a fee for service arrangement, and I would be delighted in the future, whether it was two years, five years, 10 years, that – well, there is an industry. So that's the first bit. The other hat I have got on is a part of my statement 3, was representing BT to talk through conflicted REM, and in that statement, we do mention the first-mover disadvantage, if you like, and the unilateral consequence of a product provider stopping paying grandfathered commissions. So that's the two hats I'm playing.

Yes, I see. Why is insurance carved out in your answers in relation to the grandfathering provisions?---Well, firstly, insurance was never a grandfathered product. It was an exempt product, and it was, therefore, allowed. The reason being, back in 2013, was, rightly so, the legislators were concerned that if they also moved to no commissions and, in essence, fee for service, that Australians wouldn't be able to afford insurance and, therefore, we would have this huge underinsurance. So they engaged Trowbridge to do a report, and as it clearly states in the treasury paper, that was legislated through life insurance framework which came into effect on 1 January 2018. In essence, by default, that legislation has made those commissions permitted. And, in essence, it's going to reduce the upfront commission for insurance to 60 per cent of the premiums by 2020, and the trail to 20 per cent, and increase the clawback period from 1 year to two year. I actually think that is the right decision. Do I think we could get to a world where it's fully fee for service on risk only? There are providers doing it. I think it's possible for the right customer, and it's probably more a – a more affluent to high net worth customer. I don't think we can quite get there until we have better capability around providing unmet risk, maybe self-directed for customers via technology, and I think if we get to that point, then I think we could. But, you know, in essence, I agree totally with the life insurance framework that's just been legislated.

But is it enough? Why should insurance continue to be treated differently?---Because the reality is it subsidised the cost of advice, and I would much prefer to have Australians insured as opposed to having them not insured.

Do you think they won't pay for insurance under a fee system?---I think it is – the cost will be too prohibitive at the moment, and we're not quite ready for that, but I do think it's something we need to keep challenging ourselves. But, as I say, I think we have got to have a stronger capability for those customers who potentially can't afford the fee, or the advice, and we're not quite there yet.

Can I just ask you to look at a document while we're on this remuneration topic, Mr Wright, which is WBC.506.002.0167. Now, this is an agenda, and if we have the second page up, we will see the start of a memorandum for the BT Financial Group Divisional Remuneration Oversight Committee?---Mmm.

It relates to a meeting in August last year at which we can see you were in attendance?---Yes.

Yes. And have you – are you familiar with this document, Mr Wright?---Very.

5

And can I ask you to look at WBC.506.002.0176. And do we see here an assessment of, as at August last year, your remuneration and reward principles?---I do.

10 Yes. And do you agree with the comments expressed in this document?---Any particular line?

Well, I think each of them are important. We can see that the left-hand column is about the principles of the system, and the right-hand column - - -?---Yes.

15 - - - is a comment on the effectiveness of that. So the very first one is that a principle of your system is to:

Align remuneration with customer and shareholder interests

20 And the comment is:

That the share of revenue plan emphasises revenue, potentially placing customer interests at risk.

25 ?---Yes, I see that.

Yes. You agree with that?---I didn't author this paper.

30 No?---And I debated significantly some of the language from the author. However, do I think the spirit of what she was trying to say around, "Could a share of revenue potentially impact the interest of customers in certain instances?" Yes, I would agree with that.

35 As in Mr Smith's instance?---Yes, exactly.

And the second principle of the system was to:

Support an appropriate risk culture and employee conduct.

40 ?---Mmm.

And the comment is:

45 *Performance assessment and variable remuneration arrangements encourage revenue generation over conduct and risk management.*

Do you agree with that?---I didn't agree with that at the time. In the sense that it's very clear that there is a gate – gate opener, which we talked about yesterday, in terms of the risk rating. The bit I did agree, though, is that our reliance on the risk rating, as we discussed yesterday, is – is the real issue.

5

Well, speaking of the gates, the third principle is about:

Differentiating pay for behaviour and performance in line with our strategy and vision.

10

And the comment is:

Revenue is the primary performance measure. Behavioural gates are in place theoretically. However, there is no evidence that a behavioural assessment occurs for all advisers on a monthly basis.

15

?---So I – I would agree with that comment. Factually, though, there – there are situations where advisers are knocked out because of a one rating. I can think of a couple I was involved in last year. And one in particular had significant impact on their remuneration.

20

Can we look finally at the last principle of the remuneration and reward system at Westpac which is:

25

To be simple flexible and transparent.

And the comment we see is that:

Share of revenue arrangements for both partners and advisers are incredibly complex. In December 2016, a review of past payments was requested by the general manager of risk and the general manager of reward and performance, and could not be completed due to complexity. Deferral arrangements for advisers & partners are similarly complex and can be harmonised in line with the Group Deferral Framework.

30

35

Do you agree with that, Mr Wright?---Yes, I would agree they're complex.

Yes. And what's being done about that?---We're putting in a new remuneration structure on 1 October 2018.

40

So, sorry, I should have asked a different question. Are you dealing with the complexity in the new system that you're putting in place?---We are.

45

Okay. Now, could I tender this document, Commissioner.

THE COMMISSIONER: Exhibit 2.117 will be BTFG Divisional Remuneration Oversight Committee August '17, WBC.506.002.0167.

Just on that “simple, flexible and transparent idea”, Mr Wright, that’s one of the chief challenges, isn’t it, of devising some remuneration strategy that rewards good behaviour that doesn’t reflect in a dollar sign at the end of it?---Yes.

5 And that’s the chief challenge in it, isn’t it?---It is, Commissioner, and I think the realisation for us is, as we move to this new remuneration structure, some of our people won’t embrace it, and that’s fine. They – they will make a choice, which will probably be to – to go elsewhere. So I think you’re right. It’s a big business. For some people, this won’t suit. I think a lion’s share, though, it will.

10 But any system that’s based on ultimately subjective assessment - - -?---Mmm.

- - - is one where those who don’t benefit from it are inclined to see favouritism at work?---Yes.

15 Is that right?---I would agree with that, yes.

And so you have got a difficult and complex management problem, I suspect – correct me if I’m wrong – in trying to frame a remuneration policy that is cast other than in terms that have a dollar sign in front of them; is that right?---It is.

20 Yes. Just while I have interrupted you, and going back to the remuneration changes, I understand the revenue component, the size of it has diminished, but the revenue component does include reflection of the amount of insurance the adviser sells; is that right?---Yes. There’s four revenue components. One is life and, yes, I suppose in the few instances, if someone want to over insure someone to maximise, yes, that is a possibility.

30 Yes. Yes, Ms Orr.

MS ORR: Commissioner, I attempted to tender that last document but Mr Hosking helpfully reminds me that I have already tendered it because I took Mr Wright to another part of it yesterday.

35 THE COMMISSIONER: So exhibit 2.117 is redundant?

MS ORR: Yes, it is. I’m sorry. I’m sorry, Commissioner.

40 THE COMMISSIONER: I can hardly wait until we get to exhibit 2.117 properly then.

MS ORR: It won’t be long, Commissioner.

45 In your discussion with the Commissioner just then, Mr Wright, you talked about some advisers will make a choice as a result of these changes, and they will go elsewhere. Mr Smith is an adviser who made a choice to leave Westpac, to resign, when your investigation was underway and allegations were made. And in your

statement, you talk about the systems and processes that Westpac has in place to prevent, detect and remedy inappropriate advice, and one of the measures that you refer to there is your recruitment processes. You say that one of the things that you rely on is conducting due diligence about new advisers at that recruitment stage.

5 And in September 2016, the Australian Banking Association released a reference checking and information sharing protocol. Are you familiar with that document?---I am.

10 Which relates to recruitment of advisers and the sharing of information about advisers between financial services entities?---I do.

And that protocol commenced in March 2017. I'm sorry, you might just need to say - - -?---I'm sorry. Yes.

15 Thank you. And does Westpac subscribe to that protocol?---We do.

And since when has Westpac subscribed to that protocol?---We are a founding member, along with another seven large banks and institutions making eight in total, and I think there's 40 licensees who are subscribing in total.

20

So do you recall when that was? That was at the time of the commencement in March 2017?---Yes.

25 Is that what you're saying?---That would be my understanding, yes.

30 And what does the protocol require Westpac to do when hiring a new financial adviser?---So the – the protocol, in essence, is not intended to judge character. There's other processes for that. This is a protocol and sharing information to determine the compliance history and capability of the potential adviser joining, and, also, is there any issues or matters that need to be disclosed such as investigations or large complaints.

35 And what does it require Westpac to do when another licensee is hiring a former Westpac adviser?---So – I can't remember – I think there's – there's six questions that you go through. So we would complete those questions, including their compliance history and detail that, including any investigations and any large customer complaints.

40 Can I show you a copy of the protocol - - -?---Yes, please.

- - - Mr Wright, which is RCD.0021.003.0009. That is the ABA protocol, Mr Wright?---Yes, it is.

45 And we see the obligations on subscribers at 0010?---Yes.

And we see there that:

5 *Subscribers are to make reasonable endeavours to meet the requirements of the protocol to give and receive information in accordance with the protocol procedures and timeframes and ensure that all internal policies and contractual arrangements entered into with employees from the implementation date do not preclude the sharing of information in accordance with the protocol.*

?---Yes.

10 Could I tender that document, Commissioner.

THE COMMISSIONER: Exhibit 2.117 will be ABA Banking Industry Conduct Background Check Protocol RCD.0021.0003.0009.

15

EXHIBIT #2.117 ABA BANKING INDUSTRY CONDUCT BACKGROUND CHECK PROTOCOL (RCD.0021.0003.0009)

20 MS ORR: Mr Wright, do you know if Mr Smith is still working as a financial adviser?---I do.

And do you know which licensee he currently provides financial services on behalf of?---I do.

25

And who is that?---Based off the financial adviser register, the ASIC one, it's Dover.

Dover Financial Advisers?---That's correct.

30 So you have looked at ASIC's financial adviser for Mr Smith?---As I have for lots of advisers, yes.

Yes. And you have seen from that that Mr Smith joined Dover Financial Advisers on 27 April 2015 shortly after he left Westpac?---Yes.

35

And he's still there with Dover Financial Advisers?---I am not sure. He's still authorised, so - - -

40 And did Dover contact Westpac for a reference in relation to Mr Smith in 2015?---They did.

45 Could I ask you to look at DOV.0001.0001.0098. So this is a letter from Dover Financial Advisers to Westpac dated 6 May 2015 about six weeks after Mr Smith resigned from Westpac at the end of March 2015, and you can see from this letter that Dover asked Westpac:

5 *If it was aware of any circumstances or actions that might affect Mr Smith's ability to provide advice honestly and fairly, of any client complaints which may give rise or had given rise to a claim, and whether he had been subject to any action, investigation, inquiry, or audit concerning his character, competence or conduct.*

?---I do.

10 Yes. Do you know if Westpac responded to this letter?---I do.

All right. We will come to that. I will tender this letter first, Commissioner.

15 THE COMMISSIONER: Exhibit 2.118, letter Dover to Westpac 6 May '15, DOV.0001.0001.0098.

EXHIBIT #2.118 LETTER DOVER TO WESTPAC DATED 06/05/2015 (DOV.0001.0001.0098)

20 MS ORR: So to be clear, Mr Wright, by this time, on 6 May 2015, Westpac had suspended Mr Smith?---That's correct.

25 And Westpac had made serious allegations against Mr Smith?---That's correct.

And Westpac had accepted Mr Smith's resignation in response to those allegations?---That's correct.

30 And the first investigation report into Mr Smith's files which had identified serious deficiencies was shortly to arrive on 13 May 2015?---Yes.

35 All right. Can I ask you to look at DOV.0001.0001.0670. This is an email from Dover. Mr Peter Thompson at Dover to Mr George Kovanis – I'm sorry, to a representative of Westpac, and we see from this email that Westpac advised Dover that it was not their policy to give written replies with respect to reference checking, nor to go into any specifics. Do you see that reference in the first paragraph?---I do.

40 Why not?---At the time that was our approach. Mr Kovanis sought legal opinion, but at the time that was our approach. Clearly, that's not the case today.

THE COMMISSIONER: Just one question. I see that the addressee of the email is redacted.

45 MS ORR: I'm not sure why that would be the case other than - - -

THE COMMISSIONER: Nor am I - - -

MS ORR: The contact details, I understand, were to be redacted. I think this is a redaction made in error.

THE COMMISSIONER: Right.

5

MS ORR: The name of the person who sent the email, I do not understand to have been the subject of a non-publication direction. I'm receiving confirmation.

THE COMMISSIONER: Right. Okay.

10

MS ORR: Now, instead of replying to Dover's written inquiry in writing, there was a telephone call between Mr Kovanis and Mr Thompson?---There was.

And we see that Mr Thompson has summarised that telephone call in this email:

15

During our call you responded to my questions in the following manner: would you please advise if you are aware of any circumstances or actions that may affect his ability to provide financial advice honestly and fairly?

20 The response was:

We have concerns regarding his conduct. Are you aware of any client complaints in connection with the above named which may give rise or has given rise to a claim?

25

Answer:

We have concerns regarding his conduct. Has the adviser been subject to any action, investigation, inquiry or audit concerning character, competence or conduct during his/her time at your organisation or at a time of resignation?

30

The answer was:

There is an ongoing investigation taking place.

35

?---Mmm.

So those were the oral communications made over the phone by Mr Kovanis, and do you see there that Dover put on the record in this email that:

40

It wanted an immediate response in respect to the ongoing investigation taking place once your findings have been included. If the investigation concludes that Andrew Smith has committed or was likely to commit a significant breach, Dover requests that we are informed as soon as practical and forwarded a copy of ASICs form. Please note that this must be lodged with ASIC no later than 10 days after you become aware of a likely or committed breach. If ASIC is not notified for whatever reason, please also communicate this to Dover.

45

Do you see that, Mr Wright? I tender that document, Commissioner.

THE COMMISSIONER: Exhibit 2.119, email Thompson to Kovanis of 14 May '15, DOV.0001.0001.0670.

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**EXHIBIT #2.119 EMAIL THOMPSON TO KOVANIS DATED 14/05/2015
(DOV.0001.0001.0670)**

10

MS ORR: Do you think, Mr Wright, that that disclosure was adequate in circumstances where Westpac's investigations had, by this time, revealed serious deficiencies in Mr Smith's conduct?---I think today's standard, the short answer is no. Mr Kovanis had legal opinion, and he followed that legal opinion. It was clearly a significant case for us that we were working through. The reality is, though, Mr Kovanis is very clear: there is issues with the conduct and an investigation is taking place.

20 But Mr Kovanis was also very clear that he was not going to tell Dover what the nature of those issues was?---I agree with that and that was the advice he was given.

Do you stand by that decision?---I have no reason not to stand by that decision.

25 Well, do you – what do you say to the need to protect Mr Smith's future clients from his conduct and the importance of licensees sharing information with each other to protect those clients?---Critical.

30 Yes. And this is not consistent with that, is it?---No, and today, it wouldn't meet today's standard.

Can I show you another document, Mr Wright, which is DOV.0001.0001.0288. So we see from the first email here that on 30 June 2015 – and I will just remind you that the last communication we looked at was dated 14 May 2015 – so on 30 June 2015, Dover made a follow-up phone call?---Mmm.

35

And as the email that we have here records, Westpac's maintained its policy not to provide written correspondence about its concerns with Mr Smith?---Yes, that's correct.

40 And Dover pressed again for any information that had come to light in the investigation, including any report to ASIC?---Yes.

I tender that document, Commissioner.

45 THE COMMISSIONER: Exhibit 2.120, email Thompson to Kovanis and others, 30 June '15, DOV.0001.0001.0288.

EXHIBIT #2.120 EMAIL THOMPSON TO KOVANIS AND OTHERS DATED 30/06/2015 (DOV.0001.0001.0288)

5 MS ORR: So by this time, Mr Wright, on 30 June 2015, the first investigation report had been received?---Yes.

And the supplementary investigation report was close to being finalised. It was finalised in July 2015?---Yes.

10

And following the finalisation of that supplementary report in July 2015, you have told us that some months later in November 2015, Westpac notified ASIC under a serious breach notification about Mr Smith's conduct?---That's correct.

15 Did it ever – did Westpac ever communicate those matters to Dover?---Not that I'm aware of.

Why not?---Well, clearly, I wasn't involved in these conversations. I do – I wish, to help this Commission, I'd found out more information on the point you are raising. I just don't know. I apologise.

20

Do you accept that in a situation like this where Westpac has extensive concerns about the conduct of a financial adviser and Westpac knows that that adviser is moving to practice with another licensee, that the community would expect Westpac to communicate those concerns to that further licensee?---Yes, I would agree with that.

25

And not just allow Mr Smith to continue to provide financial advice at a new licensee?---Yes, I would agree with that.

30

Thank you. Now, another measure that you talk about in your statement, Mr Wright, is being preventative and to detect inappropriate advice is conducting compliance audits?---Yes.

35 And you have given evidence about compliance audits both in relation to Mr Mahadevan and in relation to Mr Smith. And in your evidence yesterday, you told me that there was a period when Westpac diverted or re-prioritised resources from auditing advisers into dealing with the FOFA reforms. Do you remember that?---I do.

40

Now, Westpac's a big bank. Were there not adequate resources to carry out both monitoring and supervision activities of its financial advisers as well as responding to the FOFA reforms?---To put that in – in context, the year before FOFA we had 186 risk officers.

45

Yes?---The year of FOFA, and that was a big year, implementation of FOFA, that increased to 233, and, currently, we're at 254. I would argue, based off what I know

today, that the level of risk officers for the implementation of FOFA may have needed to be a little more. There was significant programs going on costing significant amounts of money with significant resources. The challenge is, in our industry, a lot of the resources outside of programs are business specialists, and, therefore, they have to rely on the business specialists within the business, and they're very hard to replace and backfill, if you like.

Well, couldn't you have just hired external auditors for your advisers, if necessary?---Yes, that – that could have happened.

But you didn't do that. You just reduced the frequency of your auditing of your advisers?---No. What – what I said yesterday is Mr Smith's audit was re-prioritised and delayed.

Yes?---That's what I said.

Yes, which I want to put to you is the same as reducing the frequency of the audits?---For Mr Smith, yes.

Yes. And for other advisers. Surely, this wasn't just in relation to Mr Smith?---I would only be speculating. I don't know. But for Mr Smith, it was definitely delayed.

Yes. And it's a fair assumption then, isn't it, Mr Wright, that it was also delayed for other financial advisers?---It appears reasonable to me.

Yes. What I want to put to you is that monitoring compliance by your advisers was not a priority?---Sorry, our advisers don't monitor. Our compliance officers do, and I would disagree with that. It is a significant priority.

Well, it's inconsistent with that, isn't it, to reduce the frequency of the audits and fail to engage extra people to perform that audit function when people were moved off into dealing with the FOFA reforms?---At that point in time, I think that's a fair argument.

Another measure that you refer to in your statement for preventing and detecting inappropriate advice is having appropriate policies and procedures in place?---Yes.

But it's not enough, is it, Mr Smith, to have those policies and procedures in place. Financial advisers need to comply with them?---Absolutely.

And that means, doesn't it, that the policies have to be easy to locate and easy to understand?---I would agree with that.

And would you say that Westpac's policies and procedures meet those requirements?---Are they easy to locate? Yes, they're within a central depository.

Are they easy to understand? There's some range in that, for sure. So I would say, yes, you can find them, and yes, you can read and understand them as a professional.

5 What about the document I took you to earlier today and yesterday, Mr Wright, which was the memo to the BT Financial Group Divisional Remuneration Oversight Committee at the meeting you attended which described the policies as incredibly complex. So much so that a review of past payments couldn't be completed due to the complexity?---Yes, I think that was a very narrow conversation around remuneration. So do I agree that the remuneration policy and structure and system is
10 complex, absolutely.

Do you know how many policies and procedures are in place across Westpac relating to the provision of financial advice?---I heard, as a part of our control environment review program, and one of the themes is around policies, I think for advice, there
15 was 54 policies with a strong lens around advice. There's – there's also group policies doing the right thing: fraud, money laundering, all those – anti-money laundering, I should say.

Are you referring – are you including in your calculations there policies and
20 procedures under the different brands that Westpac operates under?---No, sorry, that was just for the salaried channel.

Yes. And if we move into your authorised representative world as well, how many
25 policies and procedures are we looking at?---I don't know.

You estimate many more than the 54 core ones that you have identified for your
employed advisers?---No, I wouldn't, but – and there – there would be a lot of similarities, but it wouldn't be many more. I think it could be slightly less, actually.

30 Slightly less?---Yes.

So do they not – are they not governed by the Westpac policies as well?---They are.

They are. So there are additional policies that govern them from their own dealer
35 groups?---There is a fundamental difference between the salaried and the authorised. Obviously, the authorised are small businesses. They're not – they're not employed. They're small businesses, partnerships, corporate entities that have an owner and a principal. Within that structure, they will have additional policies to deal with their authorised reps - - -
40

Yes?--- - - - to complement the ones that we provide. So, hence, BT may have a smaller suite - - -

Yes?--- - - - for them to adhere to, but then they have got their additional.
45

Could I ask you to look at WBC.104.002.1774. This is a draft report for Westpac from Deloitte?---Yes.

And it's dated, we see, down the bottom April 2018?---Correct.

So this is a report that Westpac has commissioned from Deloitte, which is an Advice and Services Review; is that right?---That's correct.

5

And what Westpac has asked Deloitte to do, we see at page 1775 of this document, Deloitte has been engaged in the first paragraph there we see:

10 *To provide advisory services to assess the design of its advice and service delivery framework to determine if BT financial group's advice process and control environment is adequate to provide quality advice outcomes and delivery of service.*

?---Yes.

15

And can I ask you to look at 1794 of the document. You see that one of the findings in this draft report is that:

20 *There is a proliferation of tools and ill-defined practices at an adviser policy level to support the provision of quality advice.*

?---Yes, I do.

Do you see in the second paragraph there that:

25

The adviser policy governance framework, drafted in 2010, to support ongoing maintenance of adviser policies was never implemented completely.

?---Yes, I do.

30

And three lines down:

35 *In addition, adviser policies are high level and are not supported by practical guidance to enable advisers to understand what is required of them.*

?---Mmm.

And in the final paragraph:

40

Advice tools and templates are managed and maintained by the Advice Documentation Team and are stored on BTAS, the adviser intranet. However, there is uncertainty around who owns a number of tools and templates, and changes or new tools have been created outside of the advice documentation team's standard change management requirements. The result of this is that the changes may not have received appropriate sign-off, may not comply with regulatory expectations, and there are multiple versions of templates stored in

45

multiple locations across the business, rather than in the “one-stop-shop” BTAS.

And there’s a reference there to:

5

Work underway to create a matrix of all adviser tools and templates, the owners and the location of the documents.

10 Is this an accurate description of the situation at the moment, Mr Wright?---I would say no. This is a draft document. It is an independent report from Deloitte on two things. One you mention around the design assessment of our controls. Another is assurance standards on five of our big controls.

15 Yes?---This report has been provided to the business, eg, the draft, to fact-check the information, which is happening as we – as we speak. There’s some elements – so this is one page in 40.

20 Yes?---There’s some elements in here I do agree with. There’s some elements in here I disagree with, and there’s some elements in here I’m not fully clear on.

So this is the views of an independent consultant?---Yes.

25 Who has been tasked to look at your policies and practices. You don’t accept that these are accurate findings?---As I said, there’s some sentences in here that I do.

Yes?---There’s some that I don’t, and there’s some - - -

30 So what don’t you agree with, Mr Wright?--- - - - that I’m unsure. Well, I think the first piece is the second paragraph, first sentence. So, yes, the framework, potentially, may have not been refreshed. However, policies within the framework have been constantly refreshed, and we have seen that even with consequence management, as we went through yesterday. The complication that this doesn’t pick up is the ever-changing business. We have now split advice delivery service business, our back-end service, into a different division of BT. So there’s just –

35 more information needs to be provided. I do agree with a comment around our policies. We are good, really good, at telling our people what to do. We are very poor at showing them how to do it, and one of the things that they draw out which I think is spot on is that, within our policies, yes, there’s going to be a tell piece, but how do you also show them how to do it and put into practice.

40

One of the things you referred to in your answer there was, again, the consequence management system - - -?---Yes.

45 - - - which we discussed yesterday. And one of the things that you said yesterday that I want to come back to is that there were big changes to the consequence management system that were planned in 2016, but that those changes were watered down significantly for business prioritisation reasons?---Yes.

Can I just ask you to explain that further?---Yes. So during that period, there was significant programs after FOFA and particularly all the changes we made in 2014. There was still programs of work taking place under the banner of changing face of advice, and consequence management was one of them. It was a funded program.
5 We spent significant amount of time understanding the issues and redesigning how we take it forward. There were higher priorities at that time in our business. So unfortunately - - -

10 What were they, Mr Wright?---The establishment – so if I reflect on the phases. So 2013 was the year of FOFA; 2014 was a year of visibility; 2015 was the year of taking action and reporting; and 2016 was the year of – let’s just say remedy. We did not have a structured program in place to deal with the advisers that we reported in 2015. We had to create one, an advice review team. That team took up significant amounts of resources that weren’t funded. The business had to find a way. It was
15 critical that we did that program, and it was, in essence, trying to make right from right. It was just that that right was bigger than that right.

Too many problems to fix with too few people?---There was a lot of problems to fix.

20 And too few people to fix them?---Well, I think the – the reality is I would debate that. We have got nearly 4000 people in our organisation. The problem is they haven’t all got the exact skills that you need, and that’s – that’s a challenge. But we haven’t got a shortage of people, far from it.

25 No, but you didn’t have enough people to go ahead with the changes to the consequence management system that you had in place – that you had in mind, I’m sorry?---We didn’t have enough specialist resources and we didn’t have enough money to make the changes, as I mention in question 6 of my statement, particularly around automating some of the incidents which was millions of dollars.

30 You refer then to the BT advice group that was set up at that time?---Yes.

That was where some of this money went; is that right?---To the advice review team, yes.

35 Yes. And that program was a remediation review program?---Mmm.

And you say in your statement that that program has so far paid to customers who have received inappropriate advice \$14.692 million?---That’s correct.

40 Thank you. Has Westpac made any provision for how much it expects that program to pay to customers in the future?---I’m aware of provisions for individual advisers within that program, as we discussed with Mr Smith yesterday, the provision of 600,000. I’m aware of a provision for another program, which I state in my
45 statement. I’m 100 per cent sure there is a provision set aside for the advice review team. I just can’t exactly think of the number.

Okay. I tender this Deloitte report, Commissioner.

THE COMMISSIONER: Draft report of Deloitte April 2018, WBC.104.002.1774 is exhibit 2.121.

5

**EXHIBIT #2.121 DRAFT REPORT OF DELOITTE DATED APRIL 2018
(WBC.104.002.1774)**

10

MS ORR: I assume, Mr Wright, this report has not yet been finalised?---No. It's being fact-checked as we speak.

15 And when do you expect it to be finalised?---I think there would be lots of people working on that right now. I would be surprised if it's not finalised by next week.

Thank you?---And sorry, I'm speculating with that comment. I don't know.

20 In your statement, Mr Wright, you describe a number of changes that Westpac's made over the past few years that you say are relevant to the provision of quality advice?---Yes.

25 And those changes include the remuneration changes that we have been discussing and the consequence management framework changes that we have discussed?---Yes.

And some of the changes you say are still ongoing?---Such as?

30 Got the remuneration one?---Yes.

35 And you say in your statement that even with all of the changes that Westpac has made since 2013, and the changes that are still coming, financial advisers, you say, will continue to provide inappropriate advice to customers?---No, I didn't say that. What I said in my statement is there could be a "maybe" incidences of inappropriate advice. I believe the controls we have put in since FOFA has reduced the number of inappropriate advice incidents significantly. And you can actually see that in statement 1, Table 1, whereas, I think, 15, 16, 17, there is – 18, there is a significant drop in cases of inappropriate advice. Unfortunately, I don't think I can control away inappropriate advice in every instance. Some people, the minority may, for whatever reason, be dishonest, put their own interest before others. I can't control that away.

45 I understand that, Mr Wright, but do you say, as a result of the changes that you have made, there's been a drop in inappropriate advice?---Yes.

Okay?---And sorry, to qualify, not what I have just made. The – the leaders before me.

Yes. Thank you. I'm sorry, the changes that Westpac has made since 2013?---Yes.

You say they have resulted in a drop in inappropriate advice?---Yes.

5 Okay. And the changes that you have described in your statement have mostly been introduced after the time that we were looking at in relation to Mr Mahadevan and Mr Smith; is that right?---Yes, that's correct.

10 Okay. Could I ask you to look at WBC.500.002.1440. Do you see, Mr Wright, that this is a report for the BT Financial Group Advice Risk Forum, dated 14 July 2015?---I do.

15 What's an advice risk forum?---An advice risk forum is a regular forum where we meet as a senior leadership team to talk about the risks in our business and emerging themes that could potentially become risks.

20 Okay. And you attend these forums?---I do. This – this one is titled BTFG. The subsequent ones that I'm sure you will take me to are BT advice. I definitely attend the BT advice ones.

Yes, thank you. And can we – do you see the key risks or issues identified in the executive summary of this document, the first one is:

25 *Two high residual risks. Risk number 24, inadequate or inappropriate provision of advice to customers. And risk number 21, inadequate customer account management process which is provision of ongoing advice services and fees.*

30 ?---Yes, I do.

Okay. So that's risk number 24 and risk number 21. Can I ask you to look at 1444 in this document. This is something called the Advice Risk Heat Map?---Mmm.

35 As at the date of this document, which is in July 2015, and we see risk 24 listed on the right-hand side:

Inadequate or inappropriate provision of advice to customers.

40 ?---Yes.

And do I interpret this Risk Heat Map correctly to see that risk 24 is shown in a part of the table that suggests that it is a risk with a major impact?---Yes.

45 And a risk that is, as a likelihood, possible more than 26 per cent and less than 50 per cent – or 26 to 50 per cent?---Yes, you do.

So it's a possible risk with a major impact?---That's correct.

Which gives it an overall characterisation of a high risk; is that right?---High residual risk.

5 A high residual risk. Thank you. And we see that on 1448, some of the factors that contribute to the risk are listed in this document. Do you see there:

Risk 24: inadequate or inappropriate provision of advice to customers.

10 ?---Yes, I do.

And the emerging factors include:

Insufficient MIS.

15 Is that management information systems?---Yes, it is.

Continuing:

20 *Insufficient management information systems to monitor high-risk planners in security and BT Select.*

And do you see also that there is a reference to an increase in planner incidents across BT advice?---Yes.

25 And do you see finally that:

The Securitor audit ratings are outside tolerance.

30 ?---Yes, I do.

What does that mean?---So what that means is as a part of this risk control review, we also establish an acceptable level of tolerance, and that's actually metricated or there's numbers, sorry, attached to those. So, for example, one of the current indicators is around audits, compliance audits for advisers. It's acceptable to have up to 10 per cent failing an audit and becoming "requires improvement".

It's acceptable to have up to 10 per cent failing?---No, no. Sorry, I should rephrase that differently. Within setting the tolerance - - -

40 Yes?--- - - - we have a range. It says over 10 per cent is unacceptable, if it's above that, and, therefore, from a risk appetite, we don't accept it.

45 So from a risk appetite perspective, you have a tolerance for 10 per cent of your advisers providing inappropriate advice?---And I should qualify that. You're assuming that every "requires improvement" audit is in relation to inappropriate advice. It's far from the truth.

I see?---Today, most of our advisers are failing because their record keeping is not where it needs to be, and the lens that we have put is what ASIC would expect.

5 That's a very significant problem, isn't it, because if the record keeping is poor, there is no way to determine whether the advice that was given was appropriate?---There is, but ASIC's not going to do that.

10 Well, it's not just about ASIC, is it, Mr Wright? Surely, Westpac wants to have the ability to satisfy itself that its advisers are providing appropriate advice?---I agree. That is the standard that we set ourselves internally.

Yes?---The file needs to stand on its own two feet - - -

15 Yes?--- - - - in our customer file management system, and if ASIC came in, they could see that everything was – was appropriate. The reality is, that is - - -

20 THE COMMISSIONER: If the immediate line supervisor came in, the immediate line supervisor has to see that everything is okay, don't they?---That's correct. That's correct.

But no record, the line supervisor can't check it, can they?---Sorry, my point was poor record keeping - - -

25 Yes?--- - - - in the customer file management system. Where I was going to go is you could approach the adviser and there could be more information that fully builds out the case to show there is no inappropriate advice. But what we want to stop is doing that and have it centrally stored, the file stands on its own, and by reading it, you know it's appropriate.

30 MS ORR: Well, can I just drill a bit deeper into these tolerances, Mr Wright. If we turn to 1459, we see, there, a chart in relation to compliance reviews?---Yes.

35 And this chart shows that at this time, in 2015, at the beginning of this program of changes that you were introducing, the percentage of files rated effective or qualified, it shows that across the various Westpac advice businesses?---Mmm.

40 And what we don't see is the remaining percentage which would be the percentage that are rated requires improvement; is that right?---Within a salaried or CapC within the authorised representative business.

45 Yes. We saw earlier that a single file rated requires improvement now warrants 30 demerit points which would put you immediately in the high-risk category; is that right?---No, I don't – I think if you're talking about the additional supervision, that would come off the back of a failed audit. If they were at 60 and they lost 30, they would still not be on - - -

I see?--- - - - additional, yes.

I see?---Yes.

What I want to put to you is what this table shows is that, consistently, about 10 per cent of files at Westpac Financial Planning, St George Financial Planning and
5 Magnitude received the result of requires improvement - - -?---Yes.

- - - in the period covered by this chart?---Mmm.

10 And it shows that about 20 per cent of the files at Securitor received that result?---Mmm.

So, again, just to be clear, because I want to show you another of these documents, this is at the start of the period when you say your changes are being implemented?---Yes.

15 Could I tender this document, Commissioner.

20 THE COMMISSIONER: Report to BTFG Advice Risk Forum, 14 July '15, WBC.500.002.1440 is exhibit 2.122.

EXHIBIT #2.122 REPORT TO BTFG ADVICE RISK FORUM DATED 14/07/2015 (WBC.500.002.1440)

25 MS ORR: Now, can I show you a very recent version of this style of document, Mr Wright, which is WBC.507.002.1785. So do you see, Mr Wright, that this is another BT Advice Risk Forum for a forum dated 31 January 2018?---Yes, I do.

30 Could we look at the Advice Risk Heat Map in this document at 1806. So if we look for the same risk again, Mr Wright, number 24, inappropriate provision of advice to customers, the risk of inappropriate provision of advice is still ranked high. Number 24 is still a major impact, but, actually, things have got worse because the likelihood of that risk is now not possible. It's likely. It's more than 51 per cent and up to 85
35 per cent likely?---Yes, I agree with that.

So things have got worse, despite the changes that you have implemented?---So in terms of assessing high residual risk, yes.

40 Thank you. I tender this document, Commissioner.

THE COMMISSIONER: Report to BT Advice Risk Forum, 31 January 2018, WBC.507.002.1785 is exhibit 2.123.

45 **EXHIBIT #2.123 REPORT TO BT ADVICE RISK FORUM DATED 31/01/2018 (WBC.507.002.1785)**

MS ORR: And can I ask you to look, Mr Wright, at WBC.507.001.1143. This is a memorandum to the BTFG, the BT Financial Group Risk Review Committee from 6 March 2018, about six weeks ago?---Yes.

5 What's the difference between the Advice Risk Forum and the Risk Review Committee?---The Advice Risk Forum is a division within BT Financial Group, and this report is going to the group BT Financial Group.

I see. Could I ask you to look at 1150. And this is the BT Financial Group risk appetite statement metrics outside appetite as at 31 January 2018. And what we see here are a number of metrics that are identified as outside the risk appetite as at that date. And we see that 24 per cent – and I am in the column about risk 24 – sorry, I'm in the row about risk 24, inappropriate provision of advice to customers. And we see there that 24 per cent of BT Group Limited files are rated as requires improvement, which is more than 15 per cent out of appetite. Do you see that reference at the bottom of the second column?---I do. Sorry, it's not 15 per cent out of appetite. It's above the threshold of 15 per cent, hence, that is - - -

20 Yes, I'm sorry. I put that very awkwardly. So what this tells us is that more than 15 per cent is out of appetite?---That's correct.

But what you actually have is 24 per cent of your files rated as requires improvement?---That's correct.

25 So well outside your appetite?---That's correct.

And if we turn to 1151, we see there, again, a further reference to risk 24 at the top of the page. And we see that 29 per cent of call audited failed the risk and compliance checks. And there, anything above 10 per cent is out of appetite?---Mmm.

30 Is that right?---That's correct.

Okay. So, again, well outside your risk appetite?---That's correct.

35 And if we turn to 1153, still dealing with risk 24, inappropriate provision of advice to customers, we see that within BT Financial Advice and Wealth Connect, 41 per cent of files reviewed were rated "requires improvement", and this is said to result from a new assessment program?---That's correct.

40 So now, as I understood it, a requires improvement file was enough for a planner to be identified as high risk, but you say not so. It's still not enough points; is that right?---So in terms of the supervision, that's correct. You would need to be 31.

45 Right. But, still, the situation is that 41 per cent of the files reviewed within those groups have that rating?---They have a requires improvement for audit.

The worst rating?---Yes.

The worst rating available?---That's correct.

Thank you. I tender that document.

5 THE COMMISSIONER: Memo to BTFG Risk Review Committee, 6 March '18,
WBC.507.001.1143 is exhibit 2.124.

10 **EXHIBIT #2.124 MEMO TO BTFG RISK REVIEW COMMITTEE DATED
06/03/2018 (WBC.507.001.1143)**

MS ORR: And the final document I want to take you to, Mr Wright, is
15 WBC.508.001.0001. This is a report that was prepared in January of this year in
relation to risk 24 which is the risk of inappropriate advice being provided to
customers. And we see on this first page in the second paragraph:

20 *That this review assessed the controls, processes and governance mechanisms
currently in place across the business that could impact the provision of
appropriate advice to our customers. This review did not identify one key
control failure or control gap that individually results in the potential for
inappropriate advice to be provided to our customers. Rather, the risk of
25 inappropriate advice occurs as a result of a number of interrelated control
weaknesses across the governance, control design and operational components
of the business with heightened risk due to the current adviser share of revenue
model, system complexity, and regulatory change.*

?---Yes.

30 And could we then turn to the control weaknesses that are discussed in this
document, and the first we will see at 003 – 0003, the first weakness, control
weakness, is the BT Advice Policy Framework?---Yes.

35 And the second control weakness at 0004 is the design of the consequence
management framework?---That's correct.

40 So we have talked about the changes that have been made to the consequence
management system in recent years, but as recently as January of this year, there are
still significant weaknesses with the consequence management system identified in
this document?---Yes, as I said yesterday.

Thank you. And at 0007, one of the control weaknesses is the effectiveness of the
paraplanning control environment?---Yes.

45 And an improvement that you referred to in your statement was the introduction of a
paraplanning compliance checklist. Do you recall that?---I do.

But this review indicates that that checklist isn't being used?---That's correct.

And we see there that:

5 *In two of the five samples selected, we could not confirm whether the compliance checklist was used. Further, discussions with the paraplanning team indicated that the compliance checklist was not perceived to be mandatory, and, therefore, was used on a discretionary basis.*

10 ?---That's correct.

Now, does this document and the various control weaknesses identified within it in January of this year, Mr Wright, indicate that there is still a significant amount of work to be done at Westpac to ensure that your customers receive appropriate financial advice?---There will always be significant work. This – this document doesn't infer that to me, no.

But you know that there is more work that needs to be done; is that your evidence?---Well, I think the point is will I always be productively paranoid to make sure we do as much as possible? Yes, of course.

I tender this document, Commissioner.

25 THE COMMISSIONER: Provision of appropriate personal advice control deep dive memorandum of 26 January '18, WBC.508.001.0001, exhibit 2.125.

30 **EXHIBIT #2.125 PROVISION OF APPROPRIATE PERSONAL ADVICE CONTROL DEEP DIVE MEMORANDUM DATED 26/01/2018 (WBC.508.001.0001)**

MS ORR: Mr Wright, what do you think is an acceptable level of risk that Westpac customers will be given inappropriate advice?---Ideally, we could create a system, a perfect system where there is no risk. The reality is personal advice, the – the inherent risk or the natural risk without any controls is significant. It's – it's individual, it's tailored, it's a complex system. We have put in a significant amount of controls to reduce – to reduce that natural risk within that inherent practice. The residual risk we talk about is the fact that we haven't reduced all of that risk, and do I think that we will ever reduce it and have no residual risk? I don't. The one thing I do, if it is okay with you, would like to make clear, the "high" in front of residual risk doesn't mean there's a high risk of us providing inappropriate advice and a high risk of impacting our customers. What the "high" means is an assessment that we do on five lenses. And you touched on impact and likelihood. The five lenses are financial, customer, our staff, regulatory, and reputation. The first three within our matrix are actually quite low, and – so, therefore, the impact to customers assessed is quite low. Now, I don't want to – I don't want to be insignificant on that because,

for an individual customer, that is very real and it could be quite significant. The high impact that you talked about was regulatory and reputational.

5 Yes?---There is a high probability that the regulator could take action against our dealer group. That is why - - -

Yes?--- - - - the residual risk of inappropriate advice is deemed high, not because of customers, it is because of the risk of regulator taking action.

10 And the high risk of the regulator taking action arises from the high risk that your financial advisers are breaching the law?---I'm not going to speak for the regulator, but one thing that I'm absolutely clear on is that the instances of inappropriate advice, whether determined as a breach through legal or whether possible for every situation we have provided in table 1 – and you can see there is significant reduction
15 from '15, '16, '17, and '18 – I won't rest until that number is a zero. There has been a significant amount of work done to drive that towards zero.

You have a long way to go, don't you, Mr Wright?---We have been on this journey for a long time. I think, pre-FOFA, we needed to do more around detect, prevent,
20 and remedy. Post-FOFA, we have done a significant amount. I think about the year of FOFA 2013, yes, it was a legislative requirement, but our business took it to another level. We didn't accept conflicted commissions, July 2000, in the transitional year. We actually went straight to a fee for service model. We didn't accept the grandfathering ongoing advice arrangements pre-FOFA in any sense. So
25 every customer, pre or post, gets the opportunity to opt in. Sorry, I was about to make a speech, and I won't.

I'm interested, Mr Wright, in whether you think it's possible for any organisation with as many financial advisers as Westpac has to ever put in place adequate
30 measures to ensure that its customers receive quality financial advice?---Yes.

And are you there?---I believe we are.

35 Even though, in your statement, you can't eliminate the possibility of the provision of further inappropriate advice, and even though the documents we have just looked at demonstrate significant existing control weaknesses?---In the aggregation of those controls, yes, but the reality, as I said, there is residual risk in the provision of advice. We haven't controlled away all of it. I don't think we ever will. The most important thing to me, though, is that risk is not high to customers. That risk is deemed high
40 because of the regulatory impact.

Yes. I just want to be clear about that. It's not deemed high by Westpac. It might be deemed high by customers who are affected by the inappropriate advice, but in your matrix it's not deemed high?---I would totally agree.

45 Yes?---And I made that comment, and I think, yesterday, we saw a prime example with Mrs McDowall. I totally agree.

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

THE COMMISSIONER: Thank you, Ms Orr. Does any party other than Westpac seek leave to examine this witness? Very well. Mr Sheahan.

5

<RE-EXAMINATION BY MR SHEAHAN

[11.47 am]

10 MR SHEAHAN: Commissioner, thank you.

Mr Wright, just a few more questions if I may. You were asked this morning about a summary of the circumstances of Mr Smith's case that was given to ASIC?---Mmm.

15 Do you recall those questions and the document is WBC.501.004.6906. It's tab 91 of your exhibits in NW1?---I'm already on it. Yes, I do.

And you were asked, in particular, about the text at paragraph 19 on page 6909?---Yes.

20

You will see in subparagraph – in each of the subparagraphs, there's a reference to a document by a doc ID number, WBC dot something, something, something?---Sorry, are we in 19(b)?

25 19(a) - - -?---A - - -

- - - and (b) in each of those paragraphs?---Yes, I do.

30 Yes. Do you know whether documents were made available to ASIC as part of the provision of this summary?---I don't know.

All right. Thank you. Going back to yesterday, or perhaps still today, I should say, Mr Wright, you were asked some questions about the new remuneration structure. And you said – and you had mentioned in your statement that it will be based around – that the variable part of the remuneration will be based on what you called a balanced scorecard?---Yes.

35

Of which 20 per cent will be referable to a financial metric?---Yes.

40 I think you had also said that it was not a share of revenue?---Yes.

Can you explain what kind of financial metric it was, if it wasn't a share of revenue?---Thank you for clarifying. The – the revenue metric that will be in the adviser's scorecard is the total customer revenue. So all the customer fees that are received, any life commissions received. In essence, it's the total revenue. It's – it's not a share of. It's – it's the amount of revenue that they have generated over the period.

45

Thank you. And of the 80 per cent, is there – what is your current thinking about the sorts of matters or categories of matters that will be taken into account in that part of the equation?---They're very customer heavy. So one of the things that we're – we're very proud of is that we launched BT Adviser View in 2014 which, in essence,
5 run the financial advice register that ASICs put in place. So we have two key performance indicators for that: (1) is how many responses you receive from your customers, and the more responses you receive, the better. And then (2) the customers get a chance to rate you a score out of five, and also the customers give chance to give feedback.

10 I will just need you to explain mechanically how this works. Is it done by phone call, or a letter, or the internet or - - -?---So we send a letter – or an email, actually, to the customer. They then go to the website, BT Adviser View. It invites them to give commentary on their adviser and answer the four or five questions, which are around
15 the experience, “Were they knowledgeable?” We send about five and a-half thousand responses to customers every year to provide feedback on BT Adviser View.

20 So that's part of the 80 – going to be part of the 80 per cent?---That's – sorry, so that's part – we have also got another customer metric called People Helping People. In essence, it's around how many customers you can see a week and add value in terms of a conversation. It doesn't mean sales. Some of those conversations could be discovery, conversations where you're educating and informing. Some could be at a plan presentation. Some could be a ongoing advice review, but it's, in essence,
25 the level of conversations that you're having every week.

And – so that's two items. Are there any other categories that go into the 80 per cent?---So that's three.

30 Sorry, three.

THE COMMISSIONER: I got to two, I'm afraid, Mr Sheahan, only. Not three, I thought, but - - -?---Sorry, I should have been clearer, there's one - - -

35 There's the financial metric. There's the two KPIs, which you described as customer heavy, the responses from customer, customer ratings, then People Helping People?---Yes.

40 Yes. Have I covered the field so far?---You have nailed it. That's four.

Yes?---And we - - -

45 I won't debate the maths?---The maths is good, and there is a fifth. I can't remember it. I wish I could. It's brilliant. That's all

It's the thing you will remember as you're walking down the street, Mr Smith?---Yes.

We have all had that experience?---Yes.

Mr Sheahan, do you want to lead him on this fifth?

5 MR SHEAHAN: Is there an education and training aspect to the new category?---That sounds like it would be a good key performance indicator.

10 Now, you were asked, Mr Wright, some questions yesterday. This was at transcript 1429 to 30. About control weaknesses regarding the failure to detect poor file management. This was specifically referable to Mr Smith's case, I think. And specifically with reference to the supplementary investigation report, which I think is at tab 86 of your exhibits. Do you recall the passage? Turn it up, by all means, if you wish. It's - - -?---I do recall.

15 - - - WBC.100.004.9464 at 9465. And you were asked about, I think, changes that had been made since these events - - -?---Mmm.

20 - - - that might bear upon these sorts of problems. I think in your statement, you deal with that topic generally at paragraph 417; is that right?---Yes, in relation to Mr Smith?

Yes?---Yes, that's correct.

25 Now, there's a very large number of items there, but what I wanted to ask you was whether 18N might have some significance to the control risk in relation to detection of poor file management?---Yes, absolutely.

30 All right. And I think I'm right in saying that the topic you deal with there is elaborated on at paragraph 195 in your report – in your statement; is that right?---Yes, in terms of the changes to the compliance audits late last year, which have had a significant impact on the results, as Ms Orr pointed out, yes, that is right.

35 Thank you. Now, while we have got paragraph 417 there, if you can go back to it. In subparagraph (g), there's a reference to the introduction of two new roles not remunerated on a share of revenue basis?---That's correct.

And one of those is the portfolio adviser role?---Mmm.

40 Is that the role that Mr Mahadevan now has?---That's correct.

Thank you. Yesterday, you were asked at transcript 1404 about paraplaning in the context of Mr Mahadevan's advice. Do you recall those questions? It was put to you, I think, that Mr Mahadevan had been able to override - - -?---Yes.

45 - - - in effect, the paraplaner's suggestions?---Mmm.

You said, in answer to my learned friend, that you didn't think that this control was able to be easily overridden. You said:

5 *We have escalation processes in for a paraplanner and for their leader. It can't be easily circumvented.*

Can you describe for the Commission what the escalation processes are that you were referring to?---I can. So I think the first piece of context is that the paraplanning team sits in another division, which is our operation division, does not sit in advice. That's the first thing. Within that team, there is two escalation policies. One is for a paraplanner to escalate, and the second is for a paraplanning leader to escalate. In essence, those escalation policies are around where they feel that, potentially, it's not in the customer's best interest, or, potentially, the adviser behaviours is inappropriate in terms of demanding that the production of the advice document gets a hurry on. If – if they cannot deal through that – through the escalation, which is – is registered, then it will go to the leader. Over the last year, I have probably been involved in four escalations. Two have – mainly around poor adviser behaviour in over demanding. Those have resulted in two informal performance management, and the other two are able to sort out. So there's a very structured process to make sure it's – it's visible, it's escalated, and it's acted.

And what are the consequences of escalation?---Well, the – I just – sorry, I should have been clearer. Of the four cases that come to mind, two last year resulted in formal management for the advisers, one of them in writing, and that had impact on their consequence management points. So worst-case scenario would be termination because the conduct is just so inappropriate, but that's possible.

All right. Thank you. Now, since yesterday morning, Commissioner, we have discovered an additional documentary reference error in Mr Wright's statement which I can deal with him now, if it's convenient. I have drawn it to my learned friend's attention.

THE COMMISSIONER: Well, perhaps deal with it now. Yes. Go on.

35 MR SHEAHAN: Thank you, Commissioner. In paragraph 25 of your first statement?---Paragraph 25 of my first, yes.

I'm sorry, forgive me, paragraph 218. Now I'm making mistakes. You refer to a document at tab 25?---Yes, I know this. It's not there.

40 And if you look at tab 25 - - -?---Yes.

- - - I think you will see it's not the document - - -?---Yes.

45 - - - to which you intended to refer?---Mmm.

Is this – I will give you a hardcopy for the moment, but is this the document to which you intended to refer. I don't know if it's in the system yet, Commissioner, but it will - - -

5 THE WITNESS: Thank you.

MR SHEAHAN: - - - be WBC.104.004.0471.

THE WITNESS: Yes.

10

MR SHEAHAN: Thank you. I will ask that it be substituted for the existing tab 25, Commissioner.

THE COMMISSIONER: Is there any reason not to, Ms Orr?

15

MS ORR: No, Commissioner. Thank you.

THE COMMISSIONER: Very well.

20

MR SHEAHAN: I'm sorry, the existing tab 25 is referred to for another purpose at tab – at paragraph 53. So if this can just be tendered as an exhibit.

THE COMMISSIONER: Well, I'm lost, Mr Sheahan. What are we doing?

25

MR SHEAHAN: Tendering it as an exhibit.

THE COMMISSIONER: Yes. Exhibit 2.126, document entitled “another exciting move, BTFA remuneration framework”, WBC.104.004.0471 will be exhibit 2.126.

30

EXHIBIT #2.126 DOCUMENT ENTITLED “ANOTHER EXCITING MOVE, BTFA REMUNERATION FRAMEWORK” (WBC.104.004.0471)

35

MR SHEAHAN: I have no further questions, Commissioner.

THE COMMISSIONER: Thank you.

MR SHEAHAN: Might Mr Wright be excused.

40

THE COMMISSIONER: Ms Orr, is there anything arising?

MS ORR: Thank you, Commissioner.

45

THE COMMISSIONER: Mr Wright, thank you for your evidence?---Thank you.

You can step down. You're excused from further attendance.

5 MR SHEAHAN: Commissioner, you asked me yesterday about the position regarding Heffron, the people who organised the self-managed superannuation fund for the complainant.

THE COMMISSIONER: Yes.

10 MR SHEAHAN: I can tell the Commission what my instructions are about that, if it would assist.

THE COMMISSIONER: Yes.

15 MR SHEAHAN: That they have been communicated in writing to the Commission solicitors.

THE COMMISSIONER: Yes.

20 MR SHEAHAN: Heffron is an independently owned self-managed superannuation fund administration business that assists clients in administering their SMSF structures. Westpac has no financial interest in Heffron, does not hold shares in Heffron. Since June 2011, Westpac has had an agreement known as an alliance agreement that governs the services that Heffron provides to Westpac and its clients.
25 For example, the agreement requires Heffron to provide all services reasonably required for the proper administration of Westpac clients' self-managed superannuation funds. The alliance agreement does not oblige Westpac to refer clients to Heffron, and Westpac does not receive any payment from Heffron if it chooses to refer clients.

30 THE COMMISSIONER: Yes. Thank you.

MR SHEAHAN: Finally, Commissioner, I mentioned yesterday that I would seek to tender two other documents related: one is a dated version of the email that
35 already appears at MW2, tab 25, and the dated version is WBC.104.003.7507. And with it, Commissioner, I tender a web archive print from the relevant period, 28 March 2015, for the website that's referred to in that email that's WBC.104.003.8323. The only relevant passages being those on page 8347 commencing at paragraph 291 and going to paragraph 295.

40 THE COMMISSIONER: Yes. Those documents together will be exhibit 2.127.

45 **EXHIBIT #2.127 DATED VERSION OF EMAIL AT MW2 AND WEB ARCHIVE PRINT DATED 28/03/2015 (WBC.104.003.7507) (WBC.104.003.8323)**

MR SHEAHAN: Thank you, Commissioner.

THE COMMISSIONER: Yes. Ms Orr.

5 MS ORR: Commissioner, the next case study through which we will examine
inappropriate advice relates to ANZ. So it may be necessary to have a brief
adjournment to allow ANZs representatives to come up to the bar table.

10 THE COMMISSIONER: If I come back at 10 past 12.

MS ORR: Thank you, Commissioner.

15 **ADJOURNED** [12.05 pm]

RESUMED [12.10 pm]

20 MS ORR: The first witness in the case study, Commissioner, is Mr Whereat from
ANZ.

THE COMMISSIONER: Yes, Ms Williams or Dr Collins?

25 MS WILLIAMS: Yes, if it please the Commission. Yes. Mr Whereat is in the
hearing room. If he might now come forward to the witness box.

30 **<DARREN JOHN WHEREAT, AFFIRMED** [12.11 pm]

<EXAMINATION-IN-CHIEF BY MS WILLIAMS

35 THE COMMISSIONER: Do sit down, Mr Whereat. Yes, Ms Williams.

MS WILLIAMS: Thank you, Commissioner.

40 Would you please state your full name?---Darren John Whereat.

And are you the head of Aligned Licensees and Advice Standards at ANZ Banking
Group Limited?---Yes, I am.

45 And the head office of ANZ Banking Group Limited's business address is 833
Collins Street, Docklands in Victoria; is that correct?---That's correct.

And have you made a witness statement together with exhibits in response to some questions asked of you by the Commission?---Yes, I have.

5 All right. And I believe you have part of your witness statement exhibits there, but you're missing some volumes. Might I ask that those be provided to Mr Whereat through the assistant.

THE COMMISSIONER: Yes.

10 MS WILLIAMS: Thank you. Mr Whereat, have you received a summons to appear to give evidence before the Commission and produce your signed statement?---Yes, I have.

Do you have the summons with you?---I do.

15

I tender the summons, Commissioner.

THE COMMISSIONER: The summons to Mr Whereat will be exhibit 2.128.

20

EXHIBIT #2.128 SUMMONS TO MR WHEREAT

25 MS WILLIAMS: Mr Whereat, I understand there are some corrections you wish to make to your statement; is that correct?---That's correct.

Is the first correction to paragraph 4.36 at page 17 of your statement?---Yes, it is.

30 And is the correction the addition after the word "terminated" on the second line of paragraph 4.36, the addition of the words "with effect from 30 June 2016"?---That's right.

Thank you.

35 THE COMMISSIONER: Perhaps if you make the amendment in handwriting and initial it for us. That would be kind. Yes.

40 MS WILLIAMS: Could you turn to page 30 of your statement, please, Mr Whereat, and paragraph 5.48. Is there a correction to be made in the sixth line of paragraph 5.48 by the deletion of the words in parentheses:

To save fees equal to 1.4 per cent of the balance.

45 ?---That's right.

And is there a further correction that you wish to make inserting in that place, the words:

... with more expensive fees.

?---Yes.

5 If you wouldn't mind making that correction, please, if that's appropriate, for the Commissioner. And finally, Mr Whereat, would you turn to paragraph 5.126 of your statement on page 42. Was paragraph 5.126 of your statement correct when your statement was signed on 5 April 2018?---Yes, it was.

10 Has there been a subsequent development in relation to the matters you refer to in that paragraph?---Yes, there is.

And what is that development?---I have asked for a case to be escalated and reviewed for remediation.

15

Thank you very much. And subject to those matters, Mr Whereat, are the contents of your statement true and correct?---Yes, they are.

20 Commissioner, the statement is produced in response to the summons, and I tender the statement and the exhibits.

THE COMMISSIONER: The witness statement of Mr Whereat and exhibits is exhibit 2.129.

25

EXHIBIT #2.129 WITNESS STATEMENT OF MR WHEREAT AND EXHIBITS

30 MS WILLIAMS: May it please the Commission.

THE COMMISSIONER: Thank you. Yes, Ms Orr.

35 **<CROSS-EXAMINATION BY MS ORR** [12.15 pm]

40 MS ORR: Mr Whereat, you have been put forward by ANZ to give evidence about advice provided by two financial advisers, Mr John Doyle and Mr Christopher Harris?---That's true.

They have both provided advice on behalf of financial planning businesses owned by ANZ?---That's correct.

45 And ANZ operates its financial advice business through four entities; is that correct?---Yes, it does.

And they are ANZ Financial Planning, which operates under ANZ's financial services licence?---That's correct.

5 RI Advice Group Proprietary Limited which is owned by ANZ, but has its own financial services licence?---Yes.

Millennium3 Financial Services Proprietary Limited which is also owned by ANZ, but has its own financial services licence?---That's right.

10 And Financial Services Partners Proprietary Limited, another entity owned by ANZ, but with its own licence?---Yes.

15 And you refer in your statement to RI Advice Group, millennium3 and Financial Services Partners as ANZ's aligned dealer groups?---That's right.

And how are they different from ANZ Financial Planning?---The difference is that the aligned dealer groups are self-employed business people. So there's no employment relationship with the advice given there.

20 With who, sorry?---With their advice. They – they own the businesses. So they're self-employed.

25 Yes, thank you. And you joined ANZ in February 2013 as the CEO of RI Advice Group?---That's right.

And since April 2016, you have been the general manager of Aligned Licensees and Advice Standards at ANZ?---Yes.

30 Okay. And in that role you're responsible for supervising and monitoring the activities of the three aligned dealer groups?---That's right.

35 And you also supervise the advice review team, which is responsible for determining whether clients have suffered financial detriment as a result of misconduct by an adviser from one of those three aligned dealer groups?---Yes.

And also from ANZ Financial Planning?---That's right.

40 And that team decides on the amount of compensation that should be paid to those clients?---They follow a process that's been defined to calculate any detriment.

Yes. Thank you. The first adviser that you deal with in your statement is Mr John Doyle?---That's right.

45 Yes. And Mr Doyle became an authorised representative of RI Advice Group on 8 May 2013?---Yes.

Could I ask you to look at ANZ.800.447.0172. This is a document described as a Principal Authorised Representative Agreement?---Sorry, what tab is that?

Sorry, it's not in your statement?---Okay.

5

It should be on the screen for you there?---My mistake. Yes.

You have that, Mr Whereat?---Yes.

10 So you see there that it's a Principal Authorised Representative Agreement?---Yes.

If we turn to 0178, we will see that the parties to the agreement are RI Advice Group and the representative, and that it's executed on 8 May 2013, and at 0220, we will see who the representative is. So the representative is the Carrington Corporation.

15 That's a corporate entity associated with Mr Doyle?---That's correct.

And the principal person we see there is Mr Doyle?---Yes.

20 And could I ask you to look at 0195 and clause 10 of this agreement. Clause 10 deals with remuneration. Perhaps if we could have, yes, the entirety of that clause blown up. Clause 10.1 tells us that:

The adviser has to ensure that all fees and commissions are paid directly to RI Advice Group.

25

?---Yes.

And 10.2 tells us that:

30 *The representative is entitled to the remuneration set out in item 4 of schedule 1.*

We will turn to that, which is 0221. And we see there at the top that:

35 *The representative is entitled to receive –*

I will just check. We have a redaction that I had not understood had been made here. In the first line there, the non-publication order permitted the redactions in the table. There is a reference there to a percentage of fees and commissions, but until we
40 check whether that was a permissible redaction, I will leave that for now, Mr Whereat. Do you have a copy of this document in unredacted form?---I'm unsure.

We will pass a copy to you, Mr Whereat?---Thank you.

45 What I want to put to you relates to the redactions in the table. We will see there that there's a practice fee and an authorised representative fee that are payable by the representative to RI Advice Group. Those figures have been redacted, but what I

want to ask you, with the unredacted version, is if you agree with me that the amount of the practice fee that the representative has to pay decreases, the greater the revenue that the representative brings in. We are at 0221 in the document, Mr Whereat, looking at the table.?---Right. Thank you. Yes, the practice fee decreases
5 as the total revenue of the business increases.

Thank you. And the amount of the authorised representative fee that the representative has to pay to RI Advice Group also decreases the greater the revenue the representative brings in?---So it's the greater the revenue of the business, yes.
10

Yes. So there is an incentive to earn revenue because there is a portion, that I won't mention, of the fees and commissions that is payable directly to the representative, and the greater the revenue brought in, also the lower the practice fee and the authorised representative fee that the representative has to pay to RI Advice
15 Group?---Yes.

Thank you. I will tender that document, Commissioner.

THE COMMISSIONER: RI Advice Group Principal Authorised Representative Agreement, 8 May '18 with – was it Carrington?
20

MS ORR: Carrington Corporation Proprietary Limited.

THE COMMISSIONER: Corporation Proprietary Limited, ANZ.800.477.0172 is
25 exhibit 2.130.

EXHIBIT #2.130 RI ADVICE GROUP PRINCIPAL AUTHORISED REPRESENTATIVE AGREEMENT WITH CARRINGTON CORPORATION PROPRIETARY LIMITED DATED 08/05/2018 (ANZ.800.477.0172)
30

MS ORR: Mr Whereat, have you heard of a financial advice entity called Australian Financial Services Limited?---Yes, I have.
35

Are you aware of action that ASIC took in 2011 against that entity?---Yes.

Are you aware that following a six-month surveillance of that entity, ASIC identified a range of concerns with its practices which led it to impose additional licence conditions on the entity?---So the extent of my knowledge of the circumstances is
40 what's been limited to publicly available information.

Yes. So let's go to that publicly available information at RCD.0021.0001.0398. This is a media release from ASIC about the action it took against Australian Financial Services Limited dated 7 November 2011, and do you see there the reference to ASIC imposing conditions on the licence of Australian Financial Services Limited – first sentence?---Yes.
45

Following a six-month surveillance?---Yes.

And do you see the reference to the concerns identified by ASIC during that surveillance which are listed about halfway down the page:

5

The surveillance identified concerns in relation to the management of conflicts of interest relating to advice provided to clients to switch their investments to financial products associated with and/or related to the licensee, concerns with meeting the requirements of a compliant dispute resolution system, concerns with the monitoring and supervision of staff and representatives, concerns with compliance with the requirements of section 945A of the Corporations Act, the requirement to have a reasonable basis for advice provided to clients, and concerns with compliance with section 947D of the Act, the requirements when advice recommends replacement of one financial product with another.

10

15

?---Yes.

You were aware of these concerns and the results of these concerns in 2011 which was the imposition of ASICs – imposition of additional licence conditions by ASIC on this entity?---Yes, from the information on the screen, yes.

20

Thank you. And were you aware of this information at the time in 2011?---It was generally available out into the market, so - - -

And were you aware of it, Mr Whereat?---I was aware of what was going on with AFS.

25

Yes?---So the specifics that are referenced there, I don't recall, but, certainly, what had happened to the AFSL, that was AFS, yes, I was aware.

30

Thank you. I tender this document, Commissioner.

THE COMMISSIONER: ASIC media release concerning Australian Financial Services Limited, 11-243 MR, RCD.0021.0001.0398 is exhibit 2.131.

35

EXHIBIT #2.131 ASIC MEDIA RELEASE CONCERNING AUSTRALIAN FINANCIAL SERVICES LIMITED, 11-243 MR (RCD.0021.0001.0398)

40

MS ORR: Could I ask that you look at ANZ.800.512.0002, Mr Whereat. This is an ANZ document, Mr Whereat, dated 22 March 2013 entitled AFS Retention Strategy. Have you seen this document before, Mr Whereat?---I have.

Is AFS there a reference to Australian Financial Services, the entity to which I have just referred?---Yes.

45

Thank you. Could I ask you to look at 0003 in this document. We see there an executive summary headed Background and Problem to Solve, remembering that this document is dated 22 March 2013. We see that the document records that Oasis and AFSS commenced the strategy badged product suite on 1 July 2000. Oasis was the product issuer and administrator whilst Strategy Portfolio Limited was the distributor. The product is used by advisers licensed through AFS as well as advisers from several other dealers and licensees:

10 *At 11 March 2013, the total –*

Is that “funds under management”?---Yes, it is.

Continuing:

15 *The total funds under management in Strategy products was \$1.04 billion. This can be categorised between funds under –*

advice?---Yes.

20 Continuing:

25 *... controlled by AFS advisers, being 677 million or 65 per cent with the other 364 million controlled by other dealers or licensees, 35 per cent. AFS has attempted several sale processes over the last few years, most recently coming to financial terms at a dealer level with BT. We understand that AFS has substantial financial liabilities, both institutionally and to its own advisers. We are recently aware that the BT commercial arrangement has experienced issues through the due diligence process. In light of this, several institutions are aggressively approaching AFS advisers directly with financial offers. A and D have confirmed that the majority of AFS funds under advice is now at significant risk of migration to competitive platforms as AFS advisers are recruited into institutional licensees. This paper considers how we might best retain our current strategy funds under advice through a proposed recruitment of quality or high value AFS planners into our aligned advice networks. A and D have currently identified adviser practices representing \$386 million of AFS funds under advice that they would like to take a commercial proposal to. A and D advise this funds under management is at significant risk to competitors in the market.*

40 Now, Oasis – referred to here as the product issuer and administrator, Oasis is associated with ANZ?---Yes, it is.

It’s a product issuer owned by ANZ?---Yes, it is.

45 So we see here that, having identified this problem, ANZ identified two approaches to solving this problem. The first is reflected on the following page, 0004: scenario

1 was to offer former AFS advisers a financial incentive to move to ANZ's aligned dealer group?---Yes.

5 And we see in the right-hand column in the middle that this would have an upfront cost of 1.2 million in FY13, but there would be a net present value to ANZ of 1.6 million?---That's correct.

10 And if we turn to the second potential solution identified by ANZ at 0005, the other option was to offer no financial incentive to AFS advisers, and we see, again, in the right-hand column in the middle of the page that this would lead to the funds under management moving off the platform and a loss of revenue of \$6.2 million over four years?---Yes. That's what the paper covers.

15 I'm sorry?---That's what the paper covers off.

20 Yes. And at 0006, we see the recommendation which is that an offer be made to selected AFS advisers on the terms set out on this page. They needed to sign up to one of the aligned dealer groups for a minimum term of three years. We see the upfront payment there which would be capped at \$150,000 paid to adviser practices, and all new business had to be written to ANZ product offerings, Voyage, in line with standard aligned dealer terms.

25 *It was conditional upon advisers, using best endeavours, to move existing Strategy funds under advice to Voyage and/or Aspire, and all transition fees were to be waived for advisers moving their funds under management from Strategy to Voyage or Aspire.*

30 And do you see there, Mr Whereat, that there was an acknowledgement on this page that this was a strategy undertaken with things happening prior to advisor execution – sorry to adviser acquisition? The first was to execute appropriate adviser due diligence prior to adviser practice acquisition to ensure ANZ Wealth is appropriately protected from any on boarding risks?---Yes, I do.

35 Now, one of the targeted advisers from AFS was Mr Doyle?---Mr Doyle.

Yes?---Yes.

40 And if we go to 0007, we see the reference to Mr Doyle five or six lines down and his practice, Carrington Financial Service. And we see there that Mr Doyle had \$60 million worth of funds under management in the Strategy product?---That's correct, yes.

45 Which made him equal for the highest funds of the advisers on this page with funds under management in that platform. You will see there's another adviser down the bottom of the page who also had \$60 million funds under management on the platform?---That's correct.

So RI Advice Group decided to actively seek out advisers from Australian Financial Services?---The AFSL of the Australian Financial Services was being closed down.

5 Yes?---And there was competitive pressure in the market at the time for us to acquire, via our licence, some of those businesses.

Yes?---And that diagram there shows businesses that were interested in potentially what we could bring.

10 So do you agree with my proposition, Mr Whereat, that RI Advice Group decided to actively seek out advisers from Australian Financial Services?---Yes, I do.

15 And they did this despite the fact that ASIC had imposed additional conditions on the Australian Financial Services licence as a result of adviser misconduct?---Yes, we were aware of that.

20 And it did this because it wanted to bring in the \$677 million of funds under management in the Strategy product?---The money in the Strategy product was already with the organisation, in the Oasis administration system.

You wanted to retain it there, though, didn't you?---Absolutely.

25 You wanted it not to go to others in the market?---It was – it was part of the strategy for the market at that time, yes.

And you needed to do this, bearing in mind that this document is - - -

THE COMMISSIONER: 22 March '13.

30 MS ORR: March 2013 because the 1 July 2013 FOFA deadline was approaching?---Yes, it was before 1 July - - -

And the ban on conflicted remuneration was approaching?---Yes, it did start then.

35 And after that date, if these things weren't on your books, you would be prevented from receiving commissions in relation to these products?---Yes, FOFA has banned those payments.

40 Thank you. I tender this document, Commissioner.

THE COMMISSIONER: Exhibit 2.132 is memorandum AFS retention strategy, 22 March 2013, ANZ.800.512.0002, exhibit 2.132.

45 **EXHIBIT #2.132 MEMORANDUM AFS RETENTION STRATEGY DATED 22/03/2013 (ANZ.800.512.0002)**

MS ORR: And in April 2013 after this March 2013 document, ASIC contacted ANZ about its recruitment of Australian Financial Services ex-advisers?---ASIC did make contact, yes.

5 Yes, and could I ask you to look at ANZ.800.038.2780. These are the papers of a meeting of the Advice and Distribution Risk and Compliance Board Committee on 29 May 2013?---That's correct.

10 We can see from this first page, Mr Whereat, that you were present at this meeting?---Yes.

Are you familiar with this document?---In the course of preparing the statement, yes.

15 And could I ask you to look at 2801. We see there a reference under the heading of On-boarding of AFS advisers, that on 5 April, Money Management had released a press article discussing RI Advice and its recruitment of ex-AFS advisers.

20 *ASIC subsequently contacted ANZ global wealth risk and compliance seeking to meet to discuss concerns regarding the compliance framework of AFS. On 16 April a teleconference was held –*

which you participated in –

25 *with ASIC representatives, ASIC was keen to ensure that, in relation to professional indemnity insurance, all parties understand the obligation of the new licensee and the adviser in respect of past advice.*

Do we see that:

30 *Management emphasised ANZ's interest in protecting its reputation and those of its clients by appropriately managing the risks. And ANZ –*

or I should say RI –

35 *RI advice group confirmed it would only on-board those advisers who met our enhanced due diligence standards.*

40 Do you recall this conversation Mr Whereat?---I don't recall the specifics of the conversation, given the amount of time, but, certainly, the flavour of the minutes does reflect what the conversation with ASIC was about.

45 And do you recall that assurance being given by RI Advice Group to ASIC that it would only on-board AFS advisers who met your enhanced due diligence standards?---Yes.

I tender that document, Commissioner.

5 **EXHIBIT #2.133 ADVICE AND DISTRIBUTION RISK AND COMPLIANCE
BOARD COMMITTEE PAPERS DATED 29/05/2013 (ANZ.800.038.2780)**

10 MS ORR: Now, the day before that teleconference on 16 April, a recruiting
summary document for AFS was circulated within ANZ. Can I ask you to look at
ANZ.800.508.0103. That's an email attaching some documents on 15 April, and can
I now take you to one of those attachments which is ANZ – I'm sorry, it follows. It's
800.508.0104. So this is a recruiting strategy document for ex-AFS advisers at RI
Advice. And if we turn to 0105, we see a reference in the middle of the page there to
15 the approximately \$6 billion in funds under advice with AFS, and we see also there:

*Awareness by RI Advice Group of the licensing condition that was added in
2011 requiring additional focus on supervision due to use of own products.*

20 ?---Yes.

And if we turn to the following page, 0106, we see that:

25 *The plan at RI Advice Group was to utilise the instability within AFS to target
only their higher calibre businesses.*

?---Yes.

30 And at 0107, we see a reference to ANZ making non-binding offers to AFS practices
subject to due diligence. And do you see there the reference to – in the fourth dot
point down:

*It remains subject to an extensive due diligence review by RI before
proceeding.*

35

?---Yes.

40 And at 0109, we see that Carrington Financial Services, one of – that's Mr Doyle's
company, on the fifth line down, is listed as one of the target practices. Do you see
that?---Yes.

45 And this document tells us that, at this time, that practice had accepted a non-binding
offer? The third column. And at 0110, we see that RI Advice Group is to strictly
adhere to its on-boarding process. Do you see this at the third dot point, including
reviewing the last compliance and audit reviews and vetting every statement of
advice for an initial period? So these were the on-boarding processes that RI Advice
Group put in place for its recruitment of AFS advisers?---Yes, that's correct.

Thank you. And at 0115, can I just direct your attention to the adviser appointment process and the fact that it included, on the top row there in the middle, the administration of a competency and knowledge test before the agreements were issued. Do you see the agreements issued is over at the far right column?---Yes.

5

I tender that document, Commissioner.

THE COMMISSIONER: With the email or without?

10 MS ORR: With the email, thank you, Commissioner.

THE COMMISSIONER: Email Younger to Williams 15 April '13 ANZ 800.508.0103 and attachment ANZ 800.508.0104 together will be exhibit 2.134.

15

EXHIBIT #2.134 EMAIL YOUNGER TO WILLIAMS DATED 15/04/2013 AND ATTACHMENT (ANZ 800.508.0103) (ANZ 800.508.0104)

20 MS ORR: Can I ask that you now be shown ANZ.800.511.1804. This is an application form that Mr Doyle submitted to be appointed as an authorised representative of RI Advice Group. I will show you the page that makes clear it's about Mr Doyle. It's 1814. Sorry, on 1814, you will see the signature and the date. And if we could also have 1807 brought up. You will see there the reference to Mr
25 Doyle. At 1807, we see that Mr Doyle has described himself as having a Diploma of Financial Planning. Do you see that? Do you see that box ticked at the top right-hand?---Yes.

30 And if we move below that, we see that Mr Doyle has identified himself as being a member of a number of professional associations, including the FPA and the AFA?---Yes, that's correct.

35 And he provides information about the areas of advice that he gives on the bottom of the page. It appears that he provides advice on a very wide range of topics?---Yes, I can see that.

I tender that document, Commissioner.

40 THE COMMISSIONER: Authorised representative application form by Doyle, 13 April '13, ANZ.800.511.1804 is exhibit 2.135.

EXHIBIT #2.135 AUTHORISED REPRESENTATIVE APPLICATION FORM BY DOYLE DATED 13/04/2013 (ANZ.800.511.1804)

45

MS ORR: I have taken you to the Principal Authorised Representative Agreement that Mr Doyle, through his corporate entity, entered into with RI Advice Group in May 2013. There was another agreement entered into which was called a commitment deed. Can I show you that document, which is ANZ.800.447.0150.

5 Can I ask you to look at schedule 1 of that document, which is at 0154 containing the commercial terms. And the amount has been redacted, but we see there that under this commitment deed within 30 days of the date of appointment RI Advice paid to Mr Doyle's practice an upfront payment?---That's correct.

10 And we see from clause 7 here that RI Advice Group and Carrington also agreed that RI Advice Group would pay Carrington a transition payment for any external funds under advice belonging to existing clients transitioned to certain platforms, being the OneAnswer Frontier platform and the Oasis Voyage platform?---That's correct.

15 Transition payments like this were likely to influence Carrington and Mr Doyle to convince clients to change over to those platforms, weren't they?---After meeting all their professional obligations, yes, I do believe these payments would influence that.

20 Well, this is, therefore, conflicted remuneration, is it not, Mr Whereat?---Post-FOFA, yes, it would be.

Yes. So if this agreement had been entered into two months later in July 2013, it would have been unlawful?---That's correct.

25 Thank you. I mentioned earlier that – I'm sorry, I will tender that document, Commissioner.

THE COMMISSIONER: Commitment deed, 6 May 2013, ANZ.800.447.0150 is exhibit 2.136.

30

**EXHIBIT #2.136 COMMITMENT DEED DATED 06/05/2013
(ANZ.800.447.0150)**

35

MS ORR: I mentioned earlier that the recruiting strategy that we looked at said that RI Advice Group would review Mr Doyle's last compliance audit. Do you recall that document?---I do.

40 And did that occur before RI Advice Group appointed Mr Doyle as an authorised representative?---It's my understanding that Stephen Blood, which is head of compliance, reviewed five files of Mr Doyle.

45 When do you say he did that, Mr Whereat?---Before Mr Doyle was brought on to RI.

And do you have any documents about that?---I believe I have sighted documents in my investigations to prepare this statement.

All right. The recruitment strategy also mentioned that Mr Doyle would be subject to a competence or knowledge test. Do you recall that?---I – I recall you putting it up. I don't recall it at the time.

5 Do you know if that occurred before RI Advice Group appointed Mr Doyle as an authorised representative?---I'm – I'm unsure, but I have since found yesterday that Mr Doyle had attempted to complete that competency assessment.

10 Well, let's look at his exam results under that competency assessment, Mr Whereat, at ANZ.800.511.1849. We may need to blow this up so that we can read it. But these are the results of Mr Doyle's compliance exam, aren't they, Mr Whereat?---They are.

15 So this was conducted on 15 July 2013?---That's correct.

And that's after Mr Doyle became an authorised representative of RI Advice Group in May 2013?---Yes, it is.

20 Why didn't RI Advice Group require him to complete the exam before it appointed him, as the documents we have looked at indicated they were going to do?---I don't have an answer. I'm unsure.

25 And we see here that the pass mark, the basic pass mark, up in the top line for this test was four out of six. See that in blue up the top?---I can.

And in four of the seven categories, Mr Doyle was assessed as being "not competent"?---Yes, I can see that.

30 And the overall score, do you see above the table, was "not yet competent"?---Yes.

And did RI Advice Group take any steps to ensure that Mr Doyle passed a competence test before he provided advice to RI Advice Group customers?---I'm unsure.

35 Did RI Advice Group apply any enhanced monitoring or supervision to Mr Doyle as a result of these exam results?---As a direct result of these exam results, again, I'm unsure.

40 Have you seen anything to suggest that RI – excuse me – that RI Advice Group did do anything to apply enhanced monitoring or supervision to Mr Doyle as a result of these tests?---No.

45 Thank you. I haven't tendered that document, I don't think, Commissioner. I tender the exam results.

THE COMMISSIONER: Doyle exam results for financial planning knowledge, 15 July 2013, ANZ.800.511.1849, exhibit 2.137.

**EXHIBIT #2.137 DOYLE EXAM RESULTS FOR FINANCIAL PLANNING
KNOWLEDGE DATED 15/07/2013 (ANZ.800.511.1849)**

5 MS ORR: A bit over 18 months after these exam results in February 2015, RI Advice Group, we can see from the documents, conducted an audit of five of Mr Doyle's client files?---That's correct.

10 Now, is it possible that that is the review of five files by Mr Stephen Blood that you were referring to earlier?---No.

You maintain that there was an earlier review of five additional files?---Before Mr Doyle was brought on, yes.

15 And audits are the main way that RI Advice Group monitors the quality of its advice?---Yes, it's – it's one of the ways we do that, yes.

Well, they're the main way that - - -?---Yes.

20 - - - RI Advice Group does that, aren't they?---Yes.

And why was this particular audit, in February 2015, conducted on Mr Doyle?---It was conducted on Mr Doyle because he had cleared vetting, and that was his first review whilst being part of the RI Group.

25 How frequently are RI Advice Group advisers supposed to be audited?---The audit cycle is every 12 months.

30 Yes. But we see that the first audit that Mr Doyle was subjected to was in February 2015, and he had commenced as an authorised representative in May 2013?---That's correct. What – what you have – what's been shown, as I was going through and preparing this, is there was – the control in place to do a review three months after they have cleared vetting was an issue because it allowed people to go past that 12-month cycle. So that process has since been changed, but as you have pointed out, 35 John was there for a longer period of time; Mr Doyle was there for a longer period of time.

He was there for almost two years before his first audit?---That's right.

40 Okay. And in August 2013 – we're going back now, remembering he started in May 2013. In August 2013 not long after he started, RI Advice Group received a complaint about Mr Doyle, didn't they?---I'm – I'm unsure. I don't recall that - - -

45 Well, could I show you a document, Mr Whereat - - -?---Mmm.

- - - which is ANZ.800.283.0043. Have you seen this document before, Mr Whereat?---I can't say I have seen the exact document, but I'm reading through it now.

5 Do you see it's a complaint directed to RI Advice Group by a client on 7 August 2013, and the client tells RI Advice Group in this letter that she dismissed Mr Doyle as her adviser in 2007. Do you see that in the second paragraph?---Yes, I can.

10 But that he continued charging her ongoing fees after that time?---That's correct.

And the overcharging amounted to about \$1650?---Yes.

15 And did ANZ or RI Advice Group refund that amount to the customer?---Again, not being – not being able to recall the details of this particular complaint, I'm – I'm unable to answer that one.

20 Shouldn't this complaint have indicated that there was a need to conduct an early audit of Mr Doyle's files, certainly, before two years had passed?---Well, I don't think it's acceptable for someone not to have an audit for a two-year period. I believe a flag like this is certainly an early indicator that you need to – to have a look at the files.

25 So why did that not occur?---I'm unsure. The process at the time was waiting for people to clear vetting. That process is not good enough for us. We have made those modifications.

I tender that document, Commissioner.

30 THE COMMISSIONER: Complaint letter 7 August 2013 concerning Doyle, ANZ.800.283.0043, exhibit 2.138.

35 **EXHIBIT #2.138 COMPLAINT LETTER CONCERNING DOYLE DATED 07/08/2013 (ANZ.800.283.0043)**

MS ORR: I'm about to turn to the results of the audit conducted in February 2015, which is the start of a new topic, Commissioner, if it's an appropriate time.

40 THE COMMISSIONER: Probably better if we resume at 2 o'clock, I think, Ms Orr.

MS ORR: Thank you, Commissioner.

45 **ADJOURNED**

[12.58 pm]

5 THE COMMISSIONER: Mr Whereat, would you come back into the witness box, thank you. Yes, Ms Orr.

10 MS ORR: Mr Whereat, before the break, I said I was going to go to the results of the audit that was conducted in relation to Mr Doyle in February 2015. You have annexed the results of that audit to your witness statement at exhibit 1, ANZ.100.008.0935_0001, we see from this document, Mr Whereat, that the review was conducted on 3 February 2015. And it was a review of five client files for Mr Doyle; is that right?---That's right.

15 How were those five client files selected?---They're selected by the advice assurance officer, and they're out of Mr Doyle's selections.

20 Out of Mr Doyle's - - -?---Sorry, they're selected by the - they should be selected by the - the advice assurance officer, which is an ANZ employee, and they are selected at random for advice given in the preceding 12-month period.

So that's the usual process, but - - -?---That is the usual process.

25 But that wasn't the process here in relation to Mr Doyle?---That's what I understand, yes.

Yes. So if we turn to 0002 we see an audit note:

30 The files provided for this review were selected by Mr John Doyle on 2 February 2015. This is outside of the standard file selection process for ANZ Global Wealth Advice Assurance; preselected files from advice assurance officer's list were unable to be provided by Mr John Doyle on the day of the audit.

?---That's correct.

35 Is that satisfactory, Mr Whereat?---No, it's not.

But, nonetheless, the audit proceeded on the basis of the five files selected by Mr Doyle?---That's right.

40 There wasn't a decision made to postpone the audit to another date when the randomly selected files would be available?---No.

45 And based on the files selected by Mr Doyle, Mr Doyle received an advice quality rating of 5. We see that at 0003. Do you see that, Mr Whereat?---Yes, I can.

What does an advice quality rating of 5 mean?---It's a failed audit.

A rating of 5 is the worst possible rating on a scale of 1 to 5?---Yes, it is.

And it meant there were more than five high rated issues identified across these files?---That's right.

5

So in this audit, Mr Doyle had nine high rated issues, 17 medium rated issues, and four low rated issues?---That's correct.

10 What's a high rated issue?---It's the – the scoring system between low, medium and high is around the advice quality. So the output. And a high issue is one that we believe is a contributor to poor advice outcomes.

15 A contributor to poor advice outcomes. What about a medium?---A medium and lows are generally associated with more failure to document, because we're – we're having a look at the file, but nonetheless, each of the scoring systems, we're really looking for those high issues.

Let's look at one of the high issues identified for Mr Doyle at 0006. We see the third row relates to high rated issues, and do you see in the final column that:

20

There was no evidence on the file to support that the planner has completed RI licensee approved risk profile questionnaire.

?---Yes, I can.

25

So no evidence to suggest that Mr Doyle had assessed the risk profile of the client?---No – no evidence that it was assessed - - -

Yes?--- - - - under the RI template.

30

I see?---Recognition that there was an older profile.

Yes, I see. And that was rated a high risk issue?---That's right.

35 And if we look at one of the medium rated issues at 0011, we see there that a medium rated issue at the top of the page on the right-hand column was that:

The statement of advice recommended that the clients take out a 100 per cent LVR –

40

an LVR?---Loan valuation ratio.

Continuing:

45 *... via the recommended margin lending facility which is outside of the RI policy guidelines with anything above 50 per cent of loan to value ratio requiring a business case. No documented approval on file.*

Do you see that?---Yes, that's correct.

And another of the high rated issues at 0016 in the second row, we see that:

5 *Mr Doyle made a recommendation to maintain some insurance cover within Catholic Super and transfer over to fixed cover, but no evidence of approval being sought to recommend a non-APL product was found on the file.*

10 So a non-APL product is a product that's not on the RI Advice Group approved product list?---That's correct.

Thank you. And as a result of this audit, we see at 0018 that RI Advice Group required Mr Doyle to undertake a number of mandatory remedial actions?---Yes.

15 And they had to be taken in relation to each of the files that were audited?---That's correct.

And at 0022, we see that RI Advice Group required Mr Doyle, at the top of the page to:

20 *Commence a pre-vet program.*

Is that right?---That's correct.

25 Did that mean that he was required to submit all his advice documents to a vetting officer for review?---Prior to them going out to clients, yes.

Thank you. So that's what it means when we talk about advice being pre-vetted?---That's right.

30 Thank you. Now, can I take you to ANZ.800.165.3273. This is the advice vetting standard for RI Advice Group at the relevant time, in September 2013?---Yes.

35 And if we turn to 3276, we see the purpose of pre-vetting, in the third paragraph down:

40 *It assesses all parts of the advice process up to, but excluding the presentation and implementation of advice. It involves the submission of a proposed statement of advice and supporting documents to advice assurance for review. An advice assurance then assesses the proposed advice and determines whether any issues are present, and any issues are reported back to the adviser to correct before presenting the advice to the client.*

45 ?---That's right.

That's how the pre-vetting process worked?---Yes.

And at 3277, we see under the heading Approved, under the heading above that Vetting Outcome:

5 *To receive an approved rating from pre-vetting, the file must not have any high rated issues or three or more medium rated issues.*

?---That's correct.

10 And at the following page, 3278, we see that through the pre-vetting process, the other outcome is not approved, towards the top of the page:

And to receive "not approved", the file has at least one high issue or three or more medium rated issues.

15 ?---That's correct.

I tender that document, Commissioner.

20 THE COMMISSIONER: Advice Vetting Standard, May 2013, ANZ.800.165.3273 is exhibit 2.139.

**EXHIBIT #2.139 ADVICE VETTING STANDARD DATED MAY 2013
(ANZ.800.165.3273)**

25

MS ORR: Mr Doyle's audit results in that audit we have just discussed were discussed at a meeting at the RI Advice Risk Forum on 30 April 2015 which you attended? I'm sorry?---Yes.

30

Yes. You were the CEO of RI Advice Group at this time?---That's right.

35 Yes. And you have exhibited a document about that risk forum meeting at exhibit 4 of your statement, which is ANZ.800.370.0522. I'm sorry, that's the agenda for the meeting, and the report itself is at exhibit 3 which is ANZ.800.370.0523. And we see at 0525 in that document under the Executive Summary for Advice Assurance and Vetting, the third dot point:

40 *The increase in a number of the high and medium rated issues for the period was skewed by the results from John Doyle's advice assurance review in February 2015.*

?---That's correct.

45 So at this meeting, it was recognised that Mr Doyle's results were so significant that they had skewed the results across the business?---Yes.

But at that time, the only step that RI Advice Group took in relation to Mr Doyle was to require him to submit his advice for pre-vetting?---So in addition to the pre-vetting that Mr Doyle was placed upon, there was also supervision by our practice development managers, more frequent supervision required by our practice
5 development manager.

How much more frequent, Mr Whereat?---My understanding in pulling this together is that there would need to be more frequent visits than we would normally pay to an adviser. So I can't quantify. What I know is that he was on added supervision post
10 that first failed audit.

And how many visits are normally paid, if you're not on enhanced supervision?---Well, it depends on the type of business, but generally speaking, the supervisors would be in or around or in contact with the advisers probably, at least
15 quarterly, if not, for our bigger businesses, monthly.

And we're talking about the RI Advice Group business, or are we talking about the business run by Mr Doyle?---So – no, so we're talking about the RI business there, but, certainly, in terms of our supervision into Mr Doyle's business, I do recall that
20 first failure certainly made us aware that we needed to be more visible and in Mr Doyle's office.

So you say there was greater supervision. That greater supervision wasn't successful, was it?---Based on the entirety of the file, no.
25

No. So there was a further audit in May and June of 2015 which, again, involved five of Mr Doyle's client files?---That's right.

And this was a targeted review this time rather than a routine review; is that
30 right?---Yes.

And we see the results of that audit at exhibit 6 to your statement, which is ANZ.100.008.0927_0001. Now, this is a letter sent to Mr Doyle on 18 June 2015. And if we turn to 0002, we see the advice quality rating that Mr Doyle received. It
35 was "not applicable, five equivalent". What does that mean, Mr Whereat?---At the time, the targeted reviews weren't equating to – well, weren't scored, but we have changed that process since, such that we score them exactly the same way we would score a normal audit. What this is saying is if you were to – if you were to rate this as a normal audit, it would be another five rated audit.

40 So why weren't the targeted reviews scored?---Again, what we're looking at when we go into the targeted reviews is we're looking – we're actually looking a lot deeper than we would normally look, in terms of the audit. The process is better aligned today in terms of the targeted review and our audit system, but what this clearly
45 shows is by a second failed audit, both equivalent to number 5 for the targeted review and 5 for the first review, that the files that we had selected were not acceptable.

Well, this time, Mr Doyle, we can see, had 27 high rated issues, 24 medium rated issues, and 6 low rated issues?---That's correct.

5 So these results were much worse than the results from the previous audit?---That's correct, yes.

10 And one of the high rated issues was, again, recommending products that weren't on your approved product list? I can show you the page if you would like to see that, Mr Whereat?---If you could show me the page.

It's 0004?---Yes, it recognises that.

15 So there were a range of high and medium rated issues which were not dissimilar to the issues identified in the previous audit; do you agree with that?---I do.

There were failures to provide financial services guides?---Yes.

And that's a breach of the Corporations Act?---That's right.

20 And there were failures to provide statements of advice documenting the advice given?---That's right. None of the files that we audited had evidence in them of doing both of those things.

25 None of the files?---Sorry, the files that have been picked up.

30 Yes. And we see at 0026 that a low rated issue there was a failure to provide a statement of advice documenting the advice given? I may not have the right page reference to that. If you would give me a moment, Mr Whereat. We will look for that. Can I ask you, while we look for that, to turn to 0028. And we see, again, there were a series of mandated remedial actions in relation to each of the client files that were reviewed as part of this audit?---That's correct.

35 Okay. Four days after this document, on 22 June 2015, you wrote a letter to Mr Doyle's firm in your capacity as CEO of RI Advice Group?---That's right.

And we will turn to that letter which is at exhibit 7 of your statement, ANZ.800.382.0232. This is a letter you wrote on 22 June 2015, Mr Whereat?---Yes.

40 And do you see at the top here that you formally gave notice that:

45 *RI Advice Group was exercising its rights pursuant to clause 16.7 of the Principal Authorised Representative Agreements in respect of the Carrington Corporation Proprietary Limited to terminate those agreements. I note that termination pursuant to that clause takes effect at the end of a period of six months from the giving of this notice, being 21 December 2015.*

So by this letter, you terminated the authorised representative status of Mr Doyle's company?---We gave notice to terminate with effect from – from that date, yes.

Yes. The termination didn't take effect for six months?---That's right.

5

And that was because you relied on the provision in the authorised representative agreement that allowed termination on six months' notice?---That's right. Our – the files that we had reviewed, as the audits indicate, his failure to document and evidence the basis for that advice meant that we really couldn't conclude exactly the issues that John had in his business. So we used the six-month clause four days after those results were available to us.

10

What do you mean when you say you couldn't conclude the issues? So he had failed two consecutive audits?---Yes.

15

Achieving the worse rating available?---Yes.

With a range of problems across each of the files that were looked at?---Yes.

20

It was sufficient for his authorised representative agreement to be terminated, was it not?---At that stage, and – and looking back now, certainly, at that time, we felt that the process associated with John being able to substantiate additional information through the files would take too long. So we issued our six-month clause to ensure that we had given him the right amount of notice, but in hindsight and having a look at the breadth of files, yes, I do believe we had sufficient information at that time.

25

Sufficient information to what?---To terminate with cause.

30

And are you drawing a distinction between termination with six months' notice and terminating with cause?---After considering the breadth of the file that I have had in preparing this statement.

So is your evidence now that, looking back at this, you think he should have been terminated with immediate effect, rather than on six months' notice?---No.

35

No?---No. With the benefit of having a look at the entire file - - -

Yes?--- - - - then, certainly, you can see a pattern and a thematic. Our driver, at this stage, was we – his failure to document and the evidence of the files, we just couldn't work out definitively whether we had that reason to terminate for cause. So at this time, on 22 June, we were terminating without cause. Obviously, with the benefit of hindsight and all the information available to me – some of that is post-dated to this letter.

40

Well, much of it is not, isn't it, Mr Whereat? The fact that he had failed his competency requirements on his entry into the business was known?---It was known, yes.

45

And the fact that he had been the subject of a customer complaint was known?---Yes.

As was the fact that he had achieved the lowest rating possible on the only two audits conducted in his time with the business?---Yes.

5

Okay. Can I take you back to the Principal Authorised Representative Agreement that you had in place with Mr Doyle's company which we have already looked at. It's ANZ.800.447.0172. Thank you, and can I take you to the clause that you relied on in that agreement, which is at 0206. It was 16.7 that you relied on which said

10

You could terminate the agreement by giving six months' written notice of termination to the representative after which termination will occur, unless otherwise agreed by the representative. The representative is not entitled to challenge any such termination.

15

That was the clause you relied on?---Yes, it is.

Why didn't you suspend Mr Doyle immediately?---The – the deeds certainly, in our view, didn't give us sufficient power to step in and suspend.

20

All right. Can I show you the deed?---Sure.

ANZ.800.447.0157. This is Mr Doyle's individual representative deed with RI Advice Group?---Yes.

25

And can I ask you to look at clause 8 at 0165. See the suspension clause there in clause 8 which says that:

Without limiting rights under another clause, RI Advice Group can suspend the individual representative's appointment under the deed for any period during which a breach of any provision of this deed that relates to a breach of the Corporations Act, any other regulation, law or instrument, or to a material breach of the manual or any guide or instructions has not been remedied to RI Advice Group's reasonable satisfaction.

30

35

Or:

The individual representative is suspended under any other agreement that it has entered into with RI Advice Group.

40

Couldn't RI Advice Group have relied on this provision and suspended Mr Doyle while he remedied or attempted to remedy the issues in the audits?---Yes, we could have.

45

And why did you not do that?---I'm unsure why we went with clause 16.7 at the time.

If you had exercised your rights under this clause we see just before clause 9 starts, that the effect would have been that Mr Doyle would have been prevented from performing any act as RI Advice Group's authorised representative during the period of suspension?---That's correct.

5

But you did not exercise your rights under this clause?---No, we didn't.

I tender that document, Commissioner.

10 THE COMMISSIONER: Individual representative's deed with Doyle, ANZ.800.447.0157, exhibit 2.140.

15 **EXHIBIT #2.140 INDIVIDUAL REPRESENTATIVE'S DEED WITH DOYLE (ANZ.800.447.0157)**

MS ORR: Can I come back to the letter that you sent to Mr Doyle at exhibit 7, ANZ.800.382.0232. You see in the second paragraph there, you said to Mr Doyle:

20

It is important that we remind you that, by giving this notice, you are not absolved of any of your duties under either of the principal authorised representative agreements or your individual representative deed. All of those obligations remain in force during the notice period, and many of the obligations, including in relation to confidential information, continue beyond the termination of those agreements and deed.

25

30 So by this time, Mr Doyle had had one audit with nine high rated issues and 17 medium rated issues, which was so significant that it had skewed the results across the business, and he had had a second audit a few months later with 27 high rated issues and 24 medium rated issues, and he had also been placed on your RI Advice Group, on watch list; is that right?---That's right.

35 What basis did you have to trust that Mr Doyle would faithfully and diligently comply with his obligations under the agreement deed and at law? And that – I ask you that question noting that that is the language that you used in the final paragraph of the letter:

40 *We trust that you will faithfully and diligently comply with all of your obligations under the agreement deed and at law.*

45 ?---My recollection of the time, in terms of our motivation for this, was we – it was clear, two failed audits. We wanted to ensure John was reminded of his obligations in terms of both of those deeds. In addition to that, we did put some added support into the business in July in and around his – some paraplanning services, so that we could improve the quality of his files, which clearly weren't up to – to our standards.

And from that aspect at the time, I certainly would acknowledge that we could have done better and we should do better, but - - -

5 Well, Mr Doyle had already demonstrated that he wasn't capable of complying with the obligations that you refer to in this letter, hadn't he?---Certainly, the state of his files would indicate that, yes.

10 But you allowed him to carry on providing advice to clients for another six months after this time?---So, yes, John was able to give vetted advice to his clients, and we, as the statement will show, took some more affirmative action at that time frame that you mentioned but, yes, John was able to offer advice during that period.

15 He was able to offer advice but the pre-vetting requirement was in place?---Yes, it was.

15 Thank you?---In - - -

20 And two days after this letter, ASIC sent RI Advice Group a notice under section 912C of the Corporations Act?---That's right.

And under that notice, RI Advice Group was required to provide ASIC with a written statement about certain matters?---Yes, we needed to respond.

25 And ASIC specifically sought information about Carrington and Mr Doyle?---That's correct.

And RI Advice Group responded to that notice?---Yes, we did.

30 And did RI Advice Group ask ASIC why it was seeking information about Carrington and Mr Doyle?---I'm unsure what conversations were had with ASIC. Certainly, none by me directly.

35 Well, why are you unsure, Mr Whereat? You were the CEO of RI Advice Group at this time, and ASIC has sent a notice to RI Advice Group seeking information about Carrington and John Doyle. Are you saying you don't know whether anyone had any discussions with ASIC about why they were interested in Carrington and John Doyle?---The – the liaison point of our business backing to ASIC is managed by another individual. I wouldn't like to speculate in terms of whether that conversation had been had, but, certainly, I know we did respond back to ASIC and we had regular dialogue with ASIC over a long period of time in regards to Mr Doyle.

45 And was there any increased vigilance in relation to the advice that Mr Doyle was giving after this communication from ASIC that indicated their focus on Mr Doyle and Carrington?---So the – the paraplanning services that we had put into the business. We also – that was to reengineer his processes. We also had two other resources to complete and document the files prior to them being sent into pre-vet.

And in July, only a month later, you conducted another audit in relation to Mr Doyle?---Yes, we did.

5 And this was an audit of six more files?---Was it six or – I'm just - - -

I will show you?---Sure.

It's dealt with in your exhibit 9?---Yes.

10 Which is ANZ.100.008.0934_0001. I'm sorry, I have taken us one document ahead. The audit is referred to in 4.8 of your statement and it's exhibit 8 of your statement?---Thank you.

15 Which is ANZ - - -?---Yes, I concur. It was six files.

Yes, six files. I'm sorry. And the audit identified further issues of similar kinds to those that have been identified before?---Yes, it did.

20 And this audit showed, did it not, Mr Whereat, that Mr Doyle had not been submitting his advice documents for pre-vetting?---That is correct.

And on 25 August 2015, you wrote another letter to Mr Doyle which is what we have on the screen at the moment. That's exhibit 9 to your statement?---Yes, it is.

25 And this time you suspended Mr Doyle's appointment under the individual representative deed, effective immediately?---That's correct.

30 And you did so on the basis of breaches of the Corporations Act that you have listed in the letter that were evident in some of the 16 files that had now been reviewed across the three audits?---That's correct.

And that permitted you to suspend his appointment under the clause that we looked at before, clause 8(a) of the individual representative deed?---Yes.

35 And the breaches of the Corporations Act that you identified included breaches of the best interests duty, the obligation to give a statement of advice, the obligation to give product disclosure statements, and the obligation to give fee disclosure agreements?---That's correct.

40 But you allowed Mr Doyle to remain in the business after the suspension, did you not, Mr Whereat?---He was licensed.

45 But you allowed him to continue providing advice to existing clients after this suspension?---We did. We suspended John and enabled him to give advice to his existing clients or at our direction to remediate the files that we needed and the clients that we needed him to work with.

Well, the conditions that you imposed in this letter were that he could provide advice to existing clients as long as the client approached him - - -?---That's right.

- - - seeking advice, and the advice was pre-vetted?---That's right.

5

Even though you had seen that the pre-vetting requirement had been ignored by Mr Doyle previously?---Mr Doyle's had gone outside the pre-vet control. We have since recognised that is unacceptable from a control aspect, and we have moved to ensure that we are – those advisers on vetting are contacted monthly to remind them of their processes, etcetera. So what you're actually showing is a learning from the process to – to make sure that our processes continue to change, but certainly, as you say, Mr Doyle, yes.

10

I want to put to you that there should have been learning at the time, because you suspended him because he had not complied with your pre-vetting requirement, and then you continued to permit him to provide advice as long as he submitted his advice for pre-vetting?---Yes, that's true.

15

How was it consistent with the clause I took you with earlier in the individual representative deed, clause 8 – how was it consistent with that clause for you to permit him to provide advice while he had been suspended?---I'm unsure of the legalities associated with that. Our intention here was to ensure that those clients that were already in John's business with our vetting controls, our taking control of his diary, were enabling us to correct any issues that he had created through his failure to document and also those other issues highlighted in the audits.

20

25

But you were purporting to suspend him by this letter, and if we just bring up again on the other side of the screen ANZ.800.447.0165, we have it there, we see that the final sentence in clause 8 makes very clear that after suspension:

30

The individual representative must not perform any act as RI Advice Group's authorised representative during the period of suspension.

?---That's what it says, yes.

35

But you, despite this clause, permitted him to continue providing advice while suspended?---Yes.

Do you accept that that was a mistake?---I accept that that is a mistake.

40

It was unacceptable, wasn't it, Mr Whereat?---It was unacceptable.

Approximately how many existing clients did Mr Doyle have at this time?---He – around about 700 in his business at that stage.

45

So you permitted him to continue providing advice to up to 700 clients, even though at this point, your concerns about his conduct were not only sufficiently serious to

warrant suspension, but also to warrant a report to ASIC on the basis that there was a potential significant breach under section 912D of the Corporations Act?---We – yes, with the controls that I have mentioned in and around John’s business, yes.

5 Yes. So it was 31 August, about a week after this letter, when you wrote to ASIC notifying them of that breach, wasn’t it?---Yes, it was.

10 We saw earlier, Mr Whereat, in the documents that were submitted by Mr Doyle when he commenced with RI Advice Group, that he indicated that he was a member of a variety of professional associations, including the AFA and the FPA. Did you report his conduct to the AFA or the FPA?---I’m unaware of what information was exchanged with either of those associations.

15 Well, Mr Whereat, you were the CEO at the time and you have been put forward to give evidence about Mr John Doyle. Are you unable to tell us whether any report was made to either of the two professional associations of which Mr Doyle was a member?---I’m unable to confirm that. I have – in the entirety of the file and the exhibits that I have done, there’s no evidence that that was done.

20 Thank you. Did you consider that this pre-vetting requirement that you imposed on Mr Doyle would protect his clients from receiving inappropriate advice?---At the time, yes, we certainly believed the ability to vet the file prior to it getting to the client is an important part to ensure the clients are getting the right advice, yes.

25 Well, I want to put to you that, by this time, when you were imposing these pre-vetting requirements on Mr Doyle, your business knew that pre-vetting was an ineffective control mechanism, not just for Mr Doyle, but for all advisers?---Certainly, we acknowledge that the control for a vetting needed to be tightened because, as you suggested, it could be circumvented. What I would note in
30 Mr Doyle’s case, that since we did put the paraplanning resources into his business, some 300-odd plans during just over a 12-month period were in fact vetted prior to going to clients.

35 But, nonetheless, you accept my proposition that, across the business, you knew by this point that pre-vetting was not an effective control to prevent inappropriate advice?---Certainly, in the instance of Mr Doyle - - -

40 No, I’m not talking about Mr Doyle. I’m talking about at a business level?---I wouldn’t say, at a business level, we didn’t believe it is an effective control. In the case of Mr Doyle, he was operating outside of the process that had been designed. So I acknowledge it for him.

45 Yes. No, I’m not talking about his circumvention of pre-vetting. I’m talking about the business’s knowledge that this was not a useful measure to protect clients. Perhaps if I just show you - - -?---Sure.

- - - a document that you have annexed to your statement at exhibit 48, which is ANZ.800.225.1484. This is a report to the Risk and Compliance Board Committee of Financial Services Partners, millennium3, RI Advice Group and Elders Financial Planning. It is for a meeting on 17 August 2015?---Yes.

5

You attended this meeting, Mr Whereat?---Have we got the attendee list there?

No, it is not part of this document, but there is a reference to you in the meeting that we will come to, but can I just point out first that the meeting was on 17 August 10 2015, which was eight days before you sent the letter suspending Mr Doyle, and if we could turn to 1500. You see, there, key controls testing:

Key controls testing status is as follows: ineffective controls. Pre-vetting: this control is rated ineffective in that it can be circumvented. The pre-vet team 15 distribute a listing of advisers on vetting each month. However, as this listing is not validated by the ADGs, the aligned dealer groups, we cannot confirm that advisers on pre-vet are not writing business without submitting to pre-vet for clearance.

20 And you're listed as one of the owners of this issue, Mr Whereat?---Yes, I acknowledge that.

Yes. Thank you. Was this issue with the ineffectiveness of pre-vetting as a control fixed while Mr Doyle was an authorised representative of RI Advice Group?---I'm 25 unsure of when the changes were – were specifically made. The controls put into the Carrington business were not usual in terms of us putting paraplanners directly into the business. So I'm unable to specifically state that.

30 So while Mr Doyle was suspended, you conducted an investigation into his conduct; is that right?---That is right.

And in November 2015, RI Advice Group extended Mr Doyle's authorisation – November 2015 was the end of the six-month period that we had seen before after – 35 for termination. But instead of terminating him in November 2015, there was an extension of his authorisation until June 2016. Why?---We were considering a number of options for John, and – and John's business. And the view taken at the time was for if we could find a buyer for his business, one that specialised in the market that Carrington operated in, which – then we would have a more effective solution in terms of the client, because we would have a business that we could 40 continue to work with to remediate the issues that we had found, and then we could also terminate John and Carrington business as at 30 June 2016.

45 So you were trying to sort out a buyer for his business, but, in the meantime, for another six months, he was permitted to provide advice to his 700-odd existing clients?---Yes, he was.

And in February 2016, partway through that period, a draft investigation report was produced?---That's right.

And you got a copy of that report?---I did.

5

And that report is exhibit 11 to your statement, ANZ.800.382.0003. And at 0007 of that document, you see at the top, Issue/Concern. That:

10 *In addition to the possible breaches of the Corporations Act and based on information from the business, there were concerns there could be considerable client detriment due to the advice provided by John Doyle for clients to roll over funds from the defined benefit scheme to a self-managed superannuation fund, and 11 clients were identified as having been provided this type of advice.*

15 And an investigation of those 11 files suggested that:

20 *There was insufficient documentation to determine their objectives, the clients' objectives, financial situation and needs, and, therefore, you were unable to prove that Mr Doyle had satisfied the best interests duty.*

?---That's correct.

And at 0022:

25 *The investigation was unable to conclude whether there was any detriment to the clients who had been given the SMSF advice.*

?---That's the – yes.

30 And in order to work out whether there had been detriment, it was necessary to reengage with the clients?---Yes.

And we see from 0043, that most of Mr Doyle's defined benefits clients were teachers and public servants?---That's correct.

35

And at 0023, we see that a further issue was identified during the investigation, and that was that Mr Doyle had provided advice to clients about structured products that were not on ANZ's approved product list?---That's correct.

40 And there's a reference there to two types of structured products: the Instreet products and the Macquarie Flexi 100 trust?---Yes.

45 And following this draft investigation report, the advice review team reviewed the files of 21 of Mr Doyle's clients who had invested in the Instreet products?---That's right.

Now, before I come to the report of the advice review team about their findings, I just want to ask you some questions about structured products and ANZ's approved product list. Can you explain, firstly, what a structured product is?---Generally speaking, it's a product that involves a high degree or a degree of gearing to invest
5 and have exposure to, generally, an index like a share market.

And you had, at RI Advice Group, an approved products list?---Yes.

10 And what process did advisers need to follow if they were to recommend a product that wasn't on the approved product list?---They needed to send that information into the advice research team for that product to both be reviewed. Now, that review may have been done by an external research house if there was some ratings there, and if there wasn't a rating, then the advice research team would do that themselves to determine suitability, if you like, for the product.

15 And were the - - -?---And the client.

Were the Instreet products on the approved product list?---No, they weren't.

20 And the Instreet products were a geared structured investment that took the form of a three-year deferred purchase agreement?---Yes.

And a decision was made by RI Advice Group not to include the Instreet products on the approved product list because of both the complexity of the product and the
25 advice risk around the product?---Yes.

And Mr Doyle requested a waiver permitting him to recommend the Instreet products in June 2013, shortly after he started with RI Advice Group in May 2013?---Yes, he did.

30 All right. The Macquarie Flexi 100 product, was that on the approved product list?---No.

Why not?---Again, for the reasons that you gave for Instreet.

35 Complexity and risk?---Complexity and risk.

And they were also, the Macquarie Flexi 100 products were also geared structured investments?---Yes.

40 And Mr Doyle also asked for a waiver permitting him to recommend the Macquarie Flexi 100 products in 2013?---That's correct.

45 And this time, he was given approval to recommend those products under certain circumstances for an 18-month period?---That's right, the waiver was for the period that you have mentioned, with some added restrictions around the amount of exposure that certain clients and their risk profile could have.

So why was that waiver granted?---The – the structured products are suitable to some clients. Clearly, if they have got those needs and objectives and the product actually matches up to them.

5 Okay. I mentioned earlier that the advice review team reviewed 21 of Mr Doyle's files for clients who had invested in the Instreet products. Could I ask you to look at exhibit 12 to your statement, which is ANZ.100.008.0931_0001, which is a report of the review conducted by the advice review team. And on the first page there, 0001, we see that in June 2013, second paragraph:

10

Soon after Carrington was licensed, the CIO –

who are the CIO?---The chief investment office.

15 So the chief investment office:

... refused the waiver for Instreet on the basis of complexity and inherent risk. Despite this, a new series of this investment commencing in June 2014 was recommended by Carrington to a number of clients. These investments were not authorised and not appropriate.

20

?---That's correct.

25 So at the time of this report in April 2016, Mr Doyle's clients had the option to walk away from the Instreet investments because they could give notice before a particular time. They had approximately one month to give notice at this time. Do you agree with that?---I agree.

30 And that's why this document records, on the second page, that the Instreet investments require swift action; is that right?---Yes, they were time bound to give that advice.

35 Yes. And following this report in April 2016, there was a meeting between the acting CEO of RI Advice Group and Mr Doyle?---Yes.

35

Yes. Can I show you an email. The acting CEO was Mr Ornsby; is that right?---Correct, yes.

40 An email which is ANZ.800.450.0039, so do you see there that there has been a meeting last Thursday between the acting CEO and Mr Doyle, and the acting CEO tells Mr Doyle that his clients who held investments in the Instreet products would have all the fees they had paid in connection with those investments refunded. Do you see that reference?---Yes.

45 It's number 2 in the document?---Paragraph 2.

Yes. Then the acting CEO later says to Mr Doyle, in this email:

Please do not discuss RI's reimbursement intentions with any impacted client.

Do you see that? It's in the same paragraph, Mr Whereat?---I do, yes.

5 Why not?---I'm unsure of the – the motivation for that commentary in there at that time.

Why would the CEO of RI Advice Group be telling the adviser not to let the clients know that they were going to receive refunds?---I'm – I'm unaware as to why that approach was taken.

10 Okay. And also in this email we see in paragraph 3, the acting CEO telling Mr Doyle that his business is going to be required to indemnify RI Advice Group for any customer remediation?---That's correct.

15 Okay. So in this same month, in the month when Mr Doyle's clients could get out of the Instreet products, Mr Doyle contacted all 21 of his clients who had an investment in an Instreet product and told them to remain invested?---Yes, he did.

20 Was this advice that was submitted for pre-vetting?---No, it was not.

It was advice for clients to remain invested in a product that RI Advice Group had decided should not be included on the approved product list, and for which RI Advice Group had decided all fees paid by customers should be refunded?---That's correct.

25 This was further inappropriate advice by Mr Doyle, wasn't it?---Yes, it was.

30 So the measures that RI Advice Group put in place to protect Mr Doyle's clients from inappropriate advice while he was suspended were inadequate, weren't they?---Yes, they were.

35 And when did RI Advice Group first form the view that it was necessary to remediate Mr Doyle's clients?---The remediation for Mr Doyle's – all his clients, as you can see from the audits, there's – there's often remediation that needs to be done. I think it's fair to say that by that third review, the one that we referred to a little bit earlier, conducted by Adrian Caspar, that we would need to review all of Mr Doyle's advice to determine whether the clients needed to be remediated.

40 You're talking about the third audit?---Yes.

Yes. In July, was it, 2015?---I think it was a little bit later in the year. If I can just check my timeline?

45 Yes, please, thank you?---July 2015. You are exactly right.

Thank you. And in July 2016, Mr Doyle sold the business. He sold Carrington to a new owner?---With effect from 1 July '16.

5 Yes. And after Mr Doyle sold Carrington, RI Advice Group and the new owner commenced a remediation plan?---Yes. We have been working with the new owner to systematically go through each of the clients to review the suitability of the advice and determine whether there is remediation required.

10 So have you been working with the new owner on remediation for Mr Doyle's clients since that time, since July 2016?---Yes.

15 And you have been reporting to ASIC about your progress since then?---My investigations tell me that, each quarter, we have been providing ASIC with an update in regards to the remediation activities for Carrington.

I want to put to you that in August 2016, you told ASIC that you were still in the identification and scoping phase of the remediation project?---Within the remediation project, yes.

20 And as late as April 2017, you were still telling ASIC that you were in the identification and scoping phase of the project?---Yes.

25 And in June 2017, almost a year after the sale of the business, the advice review team produced an internal status update? You have annexed this to your statement, Mr Whereat, at exhibit 14?---Yes. Thank you.

It's ANZ.800.221.4305?---Yes, on 5 June 2017, that's correct.

30 Yes. So this was an update for ASIC, and it identified on this page four main categories of concern in relation to Mr Doyle's advice. We can see the first three and the fourth is on the following page?---Yes.

35 Do you see that? And we see at – that second page, 4306, that the review and remediation program was given a low priority. Do you see under the heading Prioritisation?---Yes.

Continuing:

40 *Potential client detriment low due to the type of investments and the market movements over the years, J. Doyle with RI. The one area of expected detriment is Instreet, lower priority. Vulnerability: the client base is broadly retired schoolteachers. This group is generally financially literate and there do not appear to be clients who were considered to be vulnerable, lower priority.*

45 *Increasing detriment: as the clients are being reviewed by the practice, an end date for remediation is being formulated and, thus, if there were detriment, it is less likely to increase, lower priority. ASIC interest: evident. Increases priority.*

We see that there, Mr Whereat?---Yes, I do.

Could we just have 4307, the following page, on the screen as well. We see the continuation of that list:

5

There are approximately 200 clients which puts it into a medium category for this factor.

10 Could we perhaps have both these pages on the screen at the one time so you can see the list:

Age –

15 age of the event or the incident, I assume –

reported in September 2015. This increases the priority. Reputation: there is nothing to suggest that the Carrington practice is high profile, lower priority. Fraud: there is no evidence of fraud, lower priority.

20 So this was the assessment made by ANZ and RI Advice Group of the level of priority to be given to remediation of Mr Doyle's clients?---So this report and the prioritisation, the audience was the – the RGF, so the internal governance framework for remediation. What this is showing is relative to other events that were in the advice review team at the time.

25

Yes?---We have a – a matrix to obviously prioritise those events that we need to work towards, and this is a report done within the review team, substantiating the position of Carrington relative to other events at the time.

30 So relative to other misconduct by financial advisers, the remediation of Mr Doyle's clients was a low priority?---Lower priority. In that document, it references a number of those categories that we mentioned before. The sampling had covered, in both the self-managed super fund exposure, and the defined benefit exposure, that there was unlikely to be client detriment, but we do recognise, as does the report, that

35 both – that the Instreet needed to be remediated at the maturity date which was called June 2017. So relative – with that information being able to, at this stage, satisfy ourselves that the likelihood of client detriment in those higher risk categories, being defined benefit and self-managed super funds, was mitigated. We said it was lower priority relative to other events.

40

And had you contacted clients in order to find out whether there had been detriment at this stage?---So my understanding, in reading the file, is that in a number of cases where the file didn't provide enough information, that our representative from the advice review team had spoken to a number of clients. I believe it was a small

45 number - - -

A very small number, wasn't it, Mr Whereat?--- - - - of clients. Very small number of clients.

5 And then in your statement, you also annex an internal report, a report to Carrington, actually, on 23 June 2017 around the same time. And that's exhibit 15 to your statement, ANZ.800.385.0033. And what we see from that document, I want to put to you, Mr Whereat, is that in June 2017, there is still a lot of discussion about contacting Mr Doyle's clients, some two years after these problems have first emerged, but very few clients have been contacted at all at this point?---Contacted by
10 ourselves?

Yes?---Yes. The – however, in – in the background, working with the acquirers of the business, they were actively reviewing each of the clients - - -

15 Well, were they?--- - - - and the suitability of advice.

Were they, Mr Whereat? This document says in the second paragraph:

20 *Having observed at an earlier stage that the advice process for Carrington was deficient and that demonstration of best interest was often lacking, it was agreed that client contact was required in order to establish if their interests were well served by the advice of John Doyle.*

25 You're still talking about contacting the clients at this point, two years after the events, aren't you?---We are.

Yes?---And it's – it's too long. It's absolutely too long.

30 It's not until September and - - -

THE COMMISSIONER: When did that realisation come to you as CEO?---Commissioner, by this stage, I was outside of the – the RI business. I wasn't the CEO at the time. In preparing this statement and looking at the files, even with the best of intentions to try and make sure the clients did get advice, it's clear that we
35 could have moved much earlier than June 2017.

MS ORR: But you didn't move in June 2017, did you, Mr Whereat?---No, we didn't.

40 It wasn't until September and November of 2017, which is well over a year after Mr Doyle sold Carrington, more like 18 months after he sold Carrington, that ANZ started preparing client loss assessments in relation to the clients who had invested in some of the products?---In terms of Instreet and Macquarie 100?

45 Yes?---Yes.

And it was in September last year that RI Advice Group provisioned for \$766,000 in compensation to 222 clients of Mr Doyle that it believed may have suffered detriment as a result of his inappropriate advice?---Yes, that is – that is certainly the amount that was provisioned.

5

Yes. And that was based on an estimate of the average compensation that would need to be provided to each client of approximately \$18,000?---That's correct.

10 Can I take you to one of the loss assessments that was prepared, Mr Whereat, at your exhibit 17, ANZ.800.163.3325?---3325?

3325, yes. This is a loss assessment prepared by the advice review team in respect of one of Mr Doyle's clients from November 2017. Do you see that?---Yes, I do.

15 And at 3325, on this page, we see that in June 2015 – do you see the second paragraph down:

20 *The client invested, via an undocumented transaction, in a new Macquarie Flexi 100 investment in June 2015 a structured investment with leveraged exposure of \$100,000 to a basket of Australian shares. The investment was not covered by the waiver issued by the CIO in 2013 which allowed for Macquarie Flexi investment series until April 2015. The investment was not appropriate for the client due to its complexity and lack of verifiable disclosure.*

25 ?---Yes.

And at 3328, we see that the client was contacted on 28 August 2017. Do you see under the heading Was Advice Provided?---Yes, I do.

30 *He stated he received an email about the investment which primarily said that it was a good pick for them and asked them to sign the attached application form. The investment was never discussed in detail. No formal advice document was issued. Additionally, the adviser received an entry fee as well as an ongoing fee on the product, the product was therefore assessed as having*
35 *been recommended by the adviser.*

And further down the page under the heading - - -

40 THE COMMISSIONER: Just before you leave that, Ms Orr, is the client's name meant to be redacted there? I would have thought it was.

MS ORR: Yes.

45 THE COMMISSIONER: It's a shame it wasn't. There will be – the non-publication direction has been given in respect of the client's name. It is regrettable that it has gone up with the name there. Yes.

MS ORR: I apologise for that, Commissioner.

THE COMMISSIONER: I don't think the apology lies there, Ms Orr.

5 MS WILLIAMS: The apology lies with me, Commissioner. I do apologise.

THE COMMISSIONER: Yes.

10 MS ORR: You have that hardcopy document in front of you, Mr Whereat?---I do.

I just wanted to take you to one other part of it under the heading Advice Was Not Appropriate. There was no advice document that could be relied on and the recommendation was made by email. So we see from this client loss assessment that Mr Doyle recommended this product to this client in June 2015?---That's correct.

15 That was after the 1 February 2015 audit?---Yes.

And it was after the second audit in May 2015?---That's right.

20 It was during the period when Mr Doyle was on pre-vetting?---Yes, it was.

And the pre-vetting failed to stop him from providing this inappropriate advice?---That is correct.

25 And the advice review team assessed that this client should receive compensation of \$15,000 for this inappropriate advice, didn't they? I think I can take you to a page that is - - -?---Yes. 14,725.

30 Yes. 3332 is the reference, but we won't bring it up in case the redactions are not in place?---Sure.

35 So about three years after the February 2015 audit identified issues with Mr Doyle's advice, ANZ is making this payment of just short of \$15,000 to this client, and it's almost two years after the report from the February 2016 investigation?---That's correct.

And that was the report that identified that clients had been inappropriately placed into structured products like this product?---Yes.

40 Do you think that the community expects that it will take less than two or three years to remediate people where it has been found that they have been given inappropriate advice?---No, I don't.

45 I'm sorry?---No, I don't think it's acceptable.

You don't think it's acceptable?---Absolutely not.

You think - - -?---Not acceptable for our clients, not acceptable to community standards, not acceptable to our own standards.

5 And in December 2017, RI Advice Group told ASIC that it had reviewed 35 of the 222 clients of Mr Doyle who it had identified as potentially affected by his inappropriate advice?---Again, if I can just refresh my memory to get those numbers correct.

10 Yes, of course. It's exhibit 30 to your witness statement. It's an email to ASIC dated 16 January 2018 which refers to information provided in December 2017. I will get the doc ID for it?---That's - - -

ANZ.800.382.0362. You have got the table there in front of you - - -?---Okay.

15 - - - that is annexed to that communication with ASIC?---Yes.

And can you see there a reference to having reviewed 35 of 222 clients? You will need to look for the entry for Mr Doyle?---Yes, I can. Yes.

20 So how many of those 222 clients has ANZ now reviewed?---So we – in working with the acquirer of the business, I was last informed that out of the entire book of John's, which we were talking – which was nearly the 700-odd clients that I mentioned earlier, they have reviewed about 400 of those files.

25 And so far you have only paid compensation to 29 clients; is that right?---That's right. The – the detriment at this stage, in terms of what we found as we review the files, is limited to those recommendations that were off the APL, being the Instreet and the Macquarie 100 investments.

30 So you have paid the 29 clients so far a total of \$415,000 in compensation for the inappropriate advice?---Yes.

35 And that's significantly eroded the provision that you made of 766,000 that was originally set aside for those 222 clients?---Yes, it's taken a fair portion of that, yes.

40 Yes. Will there be a further provision?---Again, in terms of how the accounting provisions are being made, our first and foremost aim for the remediation team is to make sure that the clients are remediated. The accounting work that happens behind the scenes to ensure that the provision is there – obviously, the ANZ is a big organisation. It wants to make sure that the money's in the clients' accounts and/or hands as soon as we can possibly do that.

45 You were asked in your statement to address why you think Mr Doyle engaged in this conduct. And the explanation that you gave in your statement is that:

Mr Doyle was a stubborn man who was convinced that he was acting in his clients' best interests and who resolved to act on his views even if it meant exceeding his authority or disobeying an instruction given to him by RI.

5 And you also said that:

Mr Doyle's advice business practices were sloppy, in that, he did not consistently do the things required by the Corporations Act to be done.

10 That's correct?---That is correct.

Does RI Advice Group take any responsibility for the fact that Mr Doyle engaged in this conduct?---Yes, we do. We - - -

15 And do you take any responsibility as the CEO of the organisation through the bulk of this period?---Yes, I do.

In what way do you take responsibility? What do you concede were the failings of RI Advice Group?---The – the entire experience, from the on-boarding process, up
20 until we satisfied ourselves at the third audit for mine took too long. I obviously would like to – to improve and learn from this case study, such that the processes that you talked about in terms of vetting are – are addressed. For – for mine, we just took too long to – to act, and then when we did act, whilst we had the best intentions of our clients to ensure that we had continuity of advice between John and the new
25 owner, who we are actively working with, there are instances where, in hindsight, and with the benefit of that, that we should have made some different decisions.

Can I put a series of propositions to you and see if you accept them, Mr Whereat. The first is that you should not have permitted Mr Doyle to provide advice in
30 circumstances where he had failed his competency test at the start of his time with RI Advice Group?---I acknowledge that should have been acted upon, yes.

When Mr Doyle received the audit results that he received, too late, as it turns out, because I should say, before I get to that, he wasn't audited for two years after he
35 started. That was another failing?---Yes.

When he was audited, the results that he received should have resulted in stronger action from RI Advice Group; do you accept that?---I do accept that.

40 You should have suspended him and not permitted him to continue providing advice to any of his clients; do you accept that?---I accept that we should have suspended, rather than issued that first termination letter, yes.

Yes. And when you did suspend him, do you accept that you should have stopped
45 him from providing advice as your contractual documents required you to do?---Yes, I acknowledge that.

Do you accept that pre-vetting was an inadequate way of trying to ensure that he provided appropriate advice?---I – I acknowledge that the vetting processes at the time certainly enabled Carrington to operate outside what we believed to be an effective control.

5

And - - -?---We have since adjusted those processes, but certainly the file, I can't do anything other than acknowledge that – that John did give advice outside of that vetting control.

10 Yes. And that was never going to be a suitable control mechanism for him, was it?---Well, at the time, we thought it – it was, but, clearly, it hasn't proven to be.

15 And you took far too long to identify clients who required remediation and to remediate them?---It certainly took a long period of time. We absolutely would acknowledge that. We would also have liked to have moved a lot faster, but the reality of the situation is, even though we have remediated those clients right up to the day that the moneys were drawn, the length of time that expired is too long.

20 And it was because you placed remediation of Mr Doyle's clients as a lower priority than remediation of other clients of other advisers?---That's right.

Yes. All right.

25 THE COMMISSIONER: Before you leave that topic, Ms Orr.

30 Can I understand what you say the consequences were for the clients of Mr Doyle? We heard the description of events; we have spoken of the fact that there has been or is to be remediation, but what was the consequence for the clients?---Commissioner, as the number of clients that we had contacted indicate – and the very small number of clients we contacted had indicated that they were comfortable with John's advice. In the reviews that we are working with the new owner of the business, the file reviews that they are conducting in conjunction with us is showing very few instances – in fact, I'm not aware of any of – of advice needing to be unwound. But, certainly, the Instreet product and the Macquarie 100 product, that client experience
35 is nowhere near what it should be.

That is, the client was put into an inappropriate investment; is that right?---That's right.

40 The client was given poor advice in that respect?---Yes.

45 The client may have been happy with the advice or unhappy with the advice. The fact is, objectively, the advice was poor; is that right?---Poor for those individuals circumstances, yes.

Yes. And the measure of remediation is what?---The – the remediation framework that we have been working with both the regulator and an external firm gives a – a

set of steps and series of steps that needs to be calculated, and it puts – the aim is to put the client back into the same situation they would be financially, had they not have received that advice.

5 Had they not the received the advice or had they been given proper advice; which?---Had they not received the advice.

10 So the client pays for advice, gets poor advice and is put in the position the client would have been in had no advice been given; is that right?---That’s right. With an adjustment for – with an adjustment for – for interest returns, etcetera.

The time, value of money is taken - - -?---Yes.

15 - - - into account, I understand that. But the client is not put in the position that the client would have been in had he or she been given proper advice; do I understand this?---Yes.

Yes, I see.

20 MS ORR: Do you accept also, Mr Whereat, that there was a need for increased vigilance right from the start with Mr Doyle because you had recruited him from Australian Financial Services, an advice body that had been subject to ASIC intervention on the basis of adviser misconduct?---Yes, I would accept that.

25 And there was no increased vigilance, was there?---No.

30 And we saw in those early documents, which I referred to at the very start of your evidence, that there were descriptions in those documents of enhanced due diligence that was going to be applied to advisers that came across from Australian Financial Services, where was the enhanced due diligence?---Having Stephen Blood as the head of compliance review the – or come up with an assessment prior to the authorised reps or the businesses coming on was a – is not a normal step. However, I will acknowledge that once they had passed that gate, if you like, that the – they were subjected to our normal supervision, but I certainly wouldn’t say it was enhanced
35 supervision.

Thank you. And the enhanced due diligence doesn’t sit well with Mr Doyle failing his competency test at the outset, does it?---No, it does not.

40 No. Thank you. I want to turn to the second adviser you deal with in your statement, Mr Whereat, and his name is Christopher Harris. But before I do that, I have neglected to tender one of the documents that I have referred to, which is the email from Peter Ornsby to Mr Doyle on 19 May 2016, ANZ - - -

45 THE COMMISSIONER: Which was ANZ.800.450.0039 will be exhibit 2.141.

EXHIBIT #2.141 EMAIL FROM PETER ORNSBY TO MR DOYLE DATED 19/05/2016 (ANZ.800.450.0039)

5 MS ORR: Yes. Thank you, Commissioner.

Now, Mr Harris became an authorised representative of a different aligned dealer group, millennium3 Financial Services on 1 October 2008?---Yes.

10 And we have the authorised representative deed for Mr Harris, which is ANZ.800.451.1826. Can I show you from 1827 that this is between millennium3 and the representative, and the authorised representative at 1839 is Mr Harris. I'm sorry, 1839 will come up on the screen, but I am told that Mr Harris' name has been redacted out of the document.

15

MS WILLIAMS: I apologise, Commissioner. That's also in error.

MS ORR: I would like you to accept from me - - -

20 THE COMMISSIONER: I would be happier if the clients were redacted, than the subject was, but there we are. These things happen, I suppose. Yes.

MS WILLIAMS: I do apologise, Commissioner.

25 MS ORR: I would like you to accept from me that this is the authorised representative deed for Mr Harris, Mr Whereat?---I will accept that.

Thank you, and I will tender that document, Commissioner.

30 THE COMMISSIONER: Exhibit 2.142, authorised representative deed, millennium3 and Harris, ANZ.800.451.1826.

35 **EXHIBIT #2.142 AUTHORISED REPRESENTATIVE DEED, MILLENNIUM3 AND HARRIS (ANZ.800.451.1826)**

MS ORR: Could I ask you to look at ANZ.800.451.1845, and this is a letter dated 4 June 2008 from millennium3 to Mr Harris?---Yes.

40

Yes. Perhaps if we could have the second page brought up on the screen as well. The deed that I just took you to was dated 1 October 2008. So this is a letter several months before that, and do you see at 1845, the second paragraph:

45

Following consultations with a number of FLS advisers, we were encouraged to review the original financial arrangements with a view of sweetening our offer by providing a larger upfront payment.

?---Yes, I can see that.

And we see references on the following page to a sign-on payment that is to be paid to Mr Harris' practice on various dates?---Correct.

5

And his entitlement to the sign-on payment is conditional on remaining with millennium3 for three years. Do you see that?---Yes, I do.

10 Why did millennium3 offer Mr Harris a sign-on payment?---Again, this predates me by a long time. However, in making some investigations, my understanding was that the acquisition of the entire licence wasn't just for Mr Harris. He was part of a larger licence. Commercially, money was put aside to, if you like, ensure that the majority of those advisers moved and stayed with millennium3.

15 I see. I tender that document, Commissioner.

THE COMMISSIONER: Exhibit 2.143, letter 4 June '08, millennium3 to Harris, ANZ.800.451.1845.

20

EXHIBIT #2.143 LETTER MILLENNIUM3 TO HARRIS DATED 04/06/2008 (ANZ.800.451.1845)

25 MS ORR: Now, so this is 2008 when Mr Harris starts as an authorised representative of millennium3. I want to move forward in time to 2013 when millennium3 conducted an audit of Mr Harris' files on 17 July 2013, and you have annexed to your statement a letter sent to Mr Harris with the outcome of that audit which is exhibit 35, ANZ.800.366.1846. And we see from that that, like Mr Doyle,
30 Mr Harris received an advice quality rating of 5?---That's correct.

And does a rating of 5 from millennium3 mean the same thing as a rating of 5 from RI Advice Group?---It does.

35 So it's the lowest available outcome?---It is.

And in this audit, we see from 1848, that Mr Harris had nine high rated issues, two medium rated issues, and two low rated issues?---That's correct.

40 And at 1856, a series of mandatory remedial actions, and they included submitting advice for pre-vetting?---That's correct.

And at 1858, there are a series of recommendations made to Mr Harris, and they included that he should:

45

Consider using the Chant West software to assist in research and product replacement activities.

What is the Chant West software?---Chant West is an independent from our organisation business that researches and rates products within the market. It also lists the features and benefits within the program. So you can do your to and from responsibilities in terms of comparing the fund that you're in to the fund that you want to go from.

I see. Another recommendation here is that Mr Harris:

Consider using XPLAN for financial modelling purposes

Could you explain what XPLAN is?---XPLAN is a – again, a piece of software independently owned by the IRESS organisation. Quite – very prevalent within the advice industry. It's both the CRM and also a software that produces advice documentation. It also, for the licensees, offers the advisers the ability to store their information within the software as well.

Having had this audit report, there was then a meeting of the Aligned Dealer Group Consequence Management Committee that followed on 27 August 2013?---Yes.

Yes. And you've attached the minutes of that meeting to your statement at exhibit 35(a), which is ANZ.800.166.5078?---5078, yes.

And you were present at that meeting?---I was in my capacity for RI, yes.

And one of the matters that was discussed at that meeting was Mr Harris; we see that from 5079?---That's correct.

And we see there a record of Barry Martin mentioning that:

The adviser has been difficult over the years and is currently in the middle of buying another book of business. The committee agreed that a targeted review should be conducted. Stephen Blood is to liaise with Barry to ensure that the review covers both old and any new themes and to provide an update at the next meeting. Once the targeted review has been completed, Barry Martin and/or Richard Klipin is to meet with the adviser to determine what additional support may be required to effectively manage the additional book of business which has been acquired.

?---Yes.

If I could take you to the next exhibit in your statement which is 35(b) at ANZ.800.166.5092. This is a meeting of the same committee on 1 October 2013?---That's correct.

And we see that you attended by telephone?---Yes.

And Mr Harris is also discussed at this meeting at 5093, and Stephen Blood advises that:

5 *He's obtained vetting clearance for super and investment advice, but is still on vetting for life risk and retirement planning advice. Targeted review has been scheduled for October.*

?---That's correct.

10 Millennium3 then conducted a targeted audit of another 10 of Mr Harris' client files on 7 November 2013?---That's right.

And we see the results of that audit at your exhibit 37 which is ANZ.800.366.1860?---Yes.

15

And, again, with this document, we see an advice quality rating of not applicable. That's because this was a targeted review, rather than a routine audit?---That's correct.

20 But we see from – I will just wait till it comes up on the screen, ANZ.800.385.0013. At 0014, we see that Mr Harris had six high rated issues and one medium rated issue. And, again, that there was a series of mandatory remedial actions at 1864 which is, I'm sorry, we've got two different document IDs for this document. At 0017?---Sorry, 0017?

25

Yes. See the mandatory remedial actions there?---Yes, I do.

Then the next event is another consequence management committee discussing Mr Harris on 4 December 2013 at ANZ.800.219.0329. Your exhibit 37(b).

30

MS WILLIAMS: Commissioner, I apologise for interrupting. I've just noticed that the page - - -

THE COMMISSIONER: The clients, again, haven't we?

35

MS WILLIAMS: Yes. Might an order be made. I do apologise again.

THE COMMISSIONER: Yes.

40 MS WILLIAMS: That was on page 0017.

MS ORR: I'm sorry, in the document I was moving on from, yes.

THE COMMISSIONER: Yes.

45

MS ORR: So I was taking you to exhibit 37(b), ANZ.800.219.0329?---Yes.

To point out that there's another discussion about Mr Harris at the consequence management committee meeting on 4 December 2013. We see that from 0330?---Yes.

5 Then on 4 March 2014, the consequence management committee is told that Mr Harris has failed vetting for super and investments and he has been placed on extended pre-vetting. You deal with that in your statement?---Yes.

Is that right?---That's right.

10

And there's a meeting at which Richard Klipin, who is the CEO of millennium3 at that time, says that he has had a conversation with Mr Harris and strongly suggested that he outsource his paraplanning; is that right?---That is correct.

15 And then on 10 April 2014, there's another discussion of Mr Harris at the consequence management committee, and it's said that he has passed the second stage of vetting and he has now outsourced his paraplanning service?---That's right.

20 And the committee then resolved that he be cleared from pre-vetting and be reviewed again by July 2014?---That's right.

And there's an audit conducted in July 2014 of five of his files?---Yes.

25 And we see the results of that audit at exhibit 38, ANZ.800.366.1866?---1866, yes.

And this time, Mr Harris receives an advice quality rating of 2. What does that mean?---On a scale of – it's a passed audit.

30 And we see at 1867 that he has one high rated issue and two medium rated issues?---That's correct.

And on 8 August 2014, the consequence management committee decides to close the incident in relation to Mr Harris?---With the – with the – yes, that's correct.

35 Now, your statement deals with two clients of Mr Harris. Mr Harris gave financial advice to both of those clients following the July 2014 audit and prior to the next audit which was in June 2015?---That's correct.

40 And he met with the first of those clients on 13 April 2015?---Yes.

Now, could I take you to exhibit 120 of your statement, which is ANZ.800.366.0458. And this is the financial – I am relieved to see that the customer's name is redacted, Commissioner.

45 This is the financial needs analysis provided for that client by Mr Harris at that meeting. And we see from 0460, we see that – I'm trying to work with the redactions, Commissioner.

We see that the client is a widow, and you can see, but we can't see, the date of birth of the client. I am going to put to you that based on that date of birth, this client is an elderly widow?---That's correct.

5 Okay?---I can't see the date, but - - -

And her only income is an aged pension?---Yes.

Of \$840 per fortnight?---Correct.

10

And at 0469, we see why she came to see Mr Harris. She had a term deposit in the amount of \$32,000. I will find the reference to the \$32,000 for you. And she wanted to invest to earn an income of \$2000 per annum. Have you seen those references in this document, Mr Whereat?---I have, yes.

15

And if you look at 0462 – we will put them up for the benefit of others – we see there, her \$32,000 term deposit, and you have seen the references in the document to her goal being to invest to earn an income of \$2000 per annum?---That's right.

20 And on 27 April 2015, Mr Harris gave this client a statement of advice?---Yes, that is correct.

And we see that at exhibit 122 to your statement, which is ANZ.800.366.0427.

25 Could I ask you to turn to 0441. And we see there that Mr Harris recommended that this client invest her term deposit proceeds in an AssetChoice Investment Wrap?---Yes, that's correct.

And for the advice, he charged \$1650?---Yes.

30 The account had an upfront transaction fee of \$161? Do you see that towards the top of the page, Mr Whereat?--- transaction fees of – yes, I do, yes.

35 And there were ongoing fees of \$1152.88 per annum. Do you see that at the bottom of the page?---Yes. So that's a combination of – of that and the – the platform fee and the advice fee, yes.

Yes. So Mr Harris told the client that she could draw an income stream of \$2000 per annum, but there was no analysis, I want to put to you, in this statement of advice of how that could be done?---Yes, that's right. The cash flow analysis was not done.

40

And on 1 May 2015, this elderly widow gave Mr Harris authority to proceed with this transaction?---That's true.

45 And do you think the advice that Mr Harris gave to this client was appropriate?---No, I don't.

Why not?---My experience, in and around the industry, and having reviewed this file plus a number of others, somebody with a \$30,000 lump sum to invest generally at that age should not be put in a wrap account, for one, incurring those costs. Second of all, I believe the right advice for the client at this stage was to not actually give the
5 advice and, certainly, not incur that upfront fee.

So you say in your statement that these were high upfront and ongoing costs associated with this investment wrap account with no distinguishable
10 benefits - - -?---That's right.

- - - for the client?---Yes.

Thank you. Now, the second client you deal with in your statement, Mr Harris met with on 26 May 2015?---Yes.
15

And during this meeting, Mr Harris told that client that she could save three to \$400 per year by rolling her super into a new account?---That's correct. That's the file notes, yes.

20 And on 11 June 2015, Mr Harris gave this client a statement of advice?---Yes.

Which you've annexed to your statement at exhibit 115, ANZ.800.370.4828, and we see at 4828 that Mr Harris told this client that rolling over the super could save the client around \$238 a year. Do you see that towards the bottom of the page?---Yes, I
25 can.

And at 4843, we see that Mr Harris charged the client \$3300 for this advice. Do you see that figure under the total next to SOA Preparation Administration and Research Fee?---Yes, I can.
30

What are the figures beneath that figure, Mr Whereat? So there was another \$3790?---So that is referencing an ongoing ASF or advice service fee - - -

35 Right?--- - - - of .95 per cent. And on the math with the opening account balance, that's the information in regards to the cost of \$3790.

So for the advice that she could roll her super over and save \$238 a year, this client paid a \$3300 upfront fee and signed up to \$3790 as an annual ongoing service fee?---That's correct.
40

This client gave Mr Harris authority to proceed with this advice?---Yes, they did.

Do you think the advice that Mr Harris gave to his client was appropriate?---No, I don't.
45

You say in your statement, Mr Harris, that this advice with the fees charged meant that it would take the client 14 years to break even after her funds were rolled over into her new superannuation product?---That's right.

5 Thank you. On 8 May 2015, a different customer made a complaint about Mr Harris; that's right?---That is correct.

And this client felt that the advice that she had received from Mr Harris didn't address her needs?---Yes.

10

And she questioned the fee that she had been charged which was \$2700?---That's correct.

15 And she wanted to stop the transfer of those funds because she didn't think the advice that she had got was appropriate for what she had gone to see the adviser about?---Yes.

And in June 2015, after receiving this complaint, Mr Harris' state development manager met with Mr Harris; is that right?---That is right, yes.

20

And that is part of a standard practice management meeting?---Yes.

25 And can I ask you to look at the email chain that you've annexed to your statement which is at exhibit 41, ANZ.800.382.0918. We see at 918 there that the customer wishes – I'm sorry. Yes, I'm sorry. We see at 918 there in the email from Ms Nolan at the bottom of the page, Ms Nolan from millennium3, that she wishes to put on the record the nature of the meeting and some concerning statements made by Chris. Do you see she says over the page at 0919:

30 *It was very clear to me that Chris had little to no understanding of his opt-in obligations.*

?---Yes. That's - - -

35 The opt-in obligations - - -?---That's what the note is calling out, yes.

Yes. And also on this page:

40 *I explained to Chris that he has an obligation to ensure his practice can adhere to the obligations and a personal obligation of self-management regarding the newest obligation. I explained to Chris the consequences if he is in breach including ASIC investigation. Chris responded with, "Well, the ASIC investigation will happen then."*

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

And she goes on to say two paragraphs down:

This is not the first time I have raised my concerns regarding Chris. The most recent past notification was made on 15 March 2015 via the PSA.

5 What's the PSA, Mr Whereat?---That's a practice risk assessment for the state development managers or the practice development managers to – to indicate the risk that they believe is in the business.

And Ms Nolan concludes by saying:

10 *I believe Chris Harris poses too much risk to M3 and – nor should be associated with our licence moving forward.*

Do you see that?---I do.

15 So these are the views expressed by the state development manager at millennium3 in June 2015. In your experience, how common is it for a statement development manager to raise such strong concerns about the conduct of an adviser?---In reading the language, it's very strong language. It is unusual, in my experience.

20 And this email was forwarded to the CEO, wasn't it?---It went to the CEO via Mark Stubbings, yes.

25 So it went to Mr Klipin, the CEO, and Darryl Foster, on 19 June. A few days later. Mr Klipin, we know, was the CEO and Mr Foster was the chief operations officer of millennium3?---That's right.

30 Did Mr Klipin or Mr Foster respond to this email?---In terms of actions or in writing? Certainly, the – Mr Klipin did go back to Lauren asking for some clarity around certain points.

All right. So in the time between Ms Nolan writing this email and it being forwarded on to the CEO and the chief operations officer, there was a further audit of Mr Harris' files on 17 June; is that right?---Yes, that is correct.

35 And it was on 24 June that Mr Harris had a letter with the outcome of that audit, and that's exhibit 42 to your statement?---Thank you.

ANZ.800.382.0336?---Yes.

40 And we see there that Mr Harris in that audit received an advice quality rating of 4?---That's correct.

That's the second lowest rating?---It is.

45 And following this audit, he was, again, required to submit all advice for vetting?---That's correct.

Then a few weeks after this audit on 17 July 2015, Ms Nolan sent another email to the CEO, Mr Klipin. And you've annexed that at exhibit 45 to your statement, ANZ.800.366.0173. And we see – I will wait for that to come up. We will try again at ANZ.800.386.0176. Thank you. Sorry. And I want to take you to the second
5 page. Perhaps we could have 0177. We're looking for 0177. Thank you very much. 0177. And we see this is another email – you can't see, I'm sorry. Hopefully, you can see from the version you have there that this is another email from Ms Nolan – you can see it at the bottom. Her name has been redacted from the top, but you can see from the bottom that this is another email from Ms Nolan. What you can't see
10 here is that it's also an email to Mr Klipin, the CEO?---I can see that on my copies, yes.

Thank you. So we see here that in this email, Ms Nolan is saying:

15 *I refer you back to the PSA that was submitted in March of this current year and the corresponding notes. I did not receive a formal response on either.*

And she goes on to say:

20 *In summary, I believe Chris is a high risk to the organisation and I believe we should cease his authority with M3.*

Do you see that towards the bottom?---I can.

25 And if we turn to 0176, which is on the opposite side of the screen, we see Mr Klipin's response to Ms Nolan's email. We see that he preferred to manage, supervise, risk control, and ensure the business is in solid shape. Do you see that reference?---Yes. Yes, I do.

30 At number 3?---Yes.

And could I ask you to look at another document which is not annexed to your statement. ANZ.800.450.0003. And we see that on 23 July, that's three days after Mr Klipin's response that I just took you to, Ms Nolan responds to Mr Klipin's
35 email, and she says that it would be appropriate to put Mr Harris on a two to three month performance plan, but also notes that he has not completed earlier remediation requirements in a satisfactory manner. Do you see that's on 0004 – I apologise, you have had the wrong page on the screen. Number 3, down the bottom?---This is in response to Richard's reply?

40 This is in response to the CEO's reference to how to handle this matter?---Thank you. Yes, I - - -

45 And then back to the page we were on before, 0003, we see a response from Mr Hare who was the risk and compliance adviser?---Yes, from Ms Hare, yes, Dale. Yes. Yes.

I'm sorry, Ms Hare. And Ms Hare says in the final paragraph there:

5 *Over a number of years, millennium3 has provided training and coaching to
Chris where there is improvement for a short time and then he slips back into
old habits. Believe we need to terminate once issues are remediated.*

?---Yes.

10 I tender that document, Commissioner.

THE COMMISSIONER: Email Nolan to Klipin and others of 9 August 2015,
ANZ.800.450.0003 will be exhibit 2.144.

15 **EXHIBIT #2.144 EMAIL NOLAN TO KLIPIN AND OTHERS DATED
09/08/2015 (ANZ.800.450.0003)**

20 MS ORR: This email is dated 9 August, and the following day, on 10 August 2015,
Ms Nolan and Mr Klipin met with Ms Harris. You tell us that in your
statement?---Yes.

25 Did I say Ms Harris? Mr Harris, I'm sorry. And as a result of that meeting, it was
decided that millennium3 needed to send Mr Harris a letter of Censure?---That's
right.

30 In what kinds of circumstances do ANZ and millennium3 send letters of censure to
advisers?---When you are giving them clear instructions as to what behaviour is
being called out, what behaviour is expected, and the consequences of that
behaviour. It's generally quite a severe outcome in terms of a consequence.

Do you think that was an appropriate outcome given the concerns that had been
raised by the state development manager?---No, I don't.

35 Thank you. And the letter of censure wasn't sent for some time. It wasn't sent until
the end of September 2015?---That's correct.

40 And you've given us that letter of censure which is exhibit 51 to your statement,
ANZ.800.370.0440?---Sorry, I will just – Darryl Foster, yes.

ANZ.800.300.0440. So this letter refers to the meeting between Ms Nolan, Mr
Klipin and Mr Harris on 10 August 2015?---That's correct.

45 It says that by mutual agreement Mr Harris will ensure all relevant client files are
sent to pre-vet for review prior to issuing to clients, and uphold his professional
obligations, advice quality standard, compliance and legislative
requirements?---That's correct.

And I had taken you to documents earlier today, Mr Whereat, that showed that by August 2015 ANZ knew that prevetting was not an effective control mechanism?---That's correct.

5 And other than prevetting and a requirement that he attend a training course, there were no consequences imposed on Mr Harris, were there?---Considerations for, again, paraplanning, but back to your – no, that is correct.

10 Did Mr Harris comply with the requirement to submit his files for prevetting?---I don't believe in all instances, no.

15 Thank you. And then on 26 February the following year, 2016, Ms Helen Ruano, a millennium3 practice development coach, went to visit Mr Harris' practice to provide training to two of his employees. Is that right?---Right.

And during that training she identified that some of Mr Harris' customers didn't look like they were receiving ongoing services that they had been paying fees for?---Yes, that is correct.

20 And millennium3 decided to investigate that?---Yes.

25 And in order to investigate whether an adviser failed to provide ongoing services, you need to see what the advisers promised to provide the client, don't you?---Yes. The process is they're looking at the adviser agreements and whether there was a promise to deliver a service or an offer to receive a service, but the starting point for any assessment has to be those agreements.

30 Yes. So you have to see the agreements and then you have to see the records of the services provided?---Certainly evidence, yes.

To see both of those things you need to review the client files?---Yes.

35 And was millennium3 able to access Mr Harris' client files to conduct that investigation?---As the statement indicates, over a period of time attempts were made to access that information, get it either into Xplan or physically sight the files but, again, I acknowledge that far too long in terms of a time line happened.

It took over a year, didn't it - - ?---It did.

40 - - - to access Mr Harris' client files?---To conduct that assessment from when it was first called out as possibly an issue, yes.

45 Well, it wasn't until March 2017 that anyone was able to collect those files from Mr Harris' practice?---That's right.

Are you aware that ASIC has warned the industry several years ago about the obligation to have access at all times to client records?---Yes, I am aware of that.

Can I take you to ASIC report 251 which is RCD.0003.0057.0001. Are you familiar with exhibit Report 251, Mr Whereat?---I understand – I have – I am aware of our requirements from an AFSL aspect in terms of having access to client files. I haven't read the report cover to cover.

5

So this is a report from ASIC?---Yes.

Reviewing financial advice industry practice. If I could ask you to look at – before we turn to it you will see it's dated September 2011. Can I ask you to look at 0022.

10 You see there:

The reminder from ASIC on licensees of their obligation to have access at all times to client records so that they can respond to client complaints or disputes and can review adviser conduct whenever they need to do so. We are concerned that many licensees do not retain copies of client records but leave record retention to the discretion of their advisers. Contractual obligations between the adviser and licensee were often relied upon to ensure that a licensee could access client information. However, if an adviser leaves the licensee and does not cooperate in providing client information, it can be difficult for licensees to respond to future inquiries or complaints about advice provided. Most licensees are moving towards storing their records electronically, which is a positive step forward in terms of fulfilling their record retention obligation.

15

20

25

This obligation was not complied with in respect of Mr Harris' files?---So certainly the length of time that it took to get the files and information from Mr Harris. The responsibility of the licence, the files were there but they were stored again, going back to the report, in Mr Harris' office. So I would acknowledge that it took far too long for us to get our hands on those client files.

30

And that is, I want to suggest to you, in breach of the obligation referred to here to have access at all times to client records?---So I believe what the file shows me is – going back – is that the files were at Mr Harris' office but certainly the extent and the process that we went through to gain access to that, clearly, I don't believe was strong enough.

35

Yes. And you didn't have access to them, did you, because it took a year to extract them from Mr Harris' office?---It took a long time to get them out, yes.

40

It took over a year, didn't it?---Right.

Thank you. I tender this document, Commissioner.

THE COMMISSIONER: Exhibit 2.145, ASIC Report 251, RCD.0003.0057.0001.

45

EXHIBIT #2.145 ASIC REPORT 251, RCD.0003.0057.0001

MS ORR: And can I ask you to look at ASIC report 362, which was a subsequent report to this report, Mr Whereat, which is RCD.0003.0045.0001. This is phase 2 of that report, July 2013. Are you familiar with this document?---Again, I understand the content but haven't read it cover to cover.

5

Okay. Could I ask you just to look briefly at 0010. And we will bring up – I will just direct your attention to recommendation 8 for licensees and advisers in this table?---Yes.

10 Which, again, emphasises that:

15 *Rather than relying solely on contractual agreements, licensees should retain access to client records in a more proactive way, such as by using electronic storage platforms. This will allow the licensee to respond to regulators auditors clients and product issuers, whenever they need to do so, in a timely and efficient manner.*

20 Do you accept that you were not retaining access to Mr Harris' client records in accordance with this recommendation?---I – I accept the recommendation says that licences should be moving towards electronic storage of that information. We have embarked on a substantial program of work to move all of our licences on to Xplan. We have, out of 400 businesses, now less than 10 businesses that are not on Xplan and we have plans for those. That is the first step for us to enable the advisers to store that information electronically into Xplan.

25

30 Is it compulsory for authorised representatives to use Xplan?---It is now, yes. The only businesses – as I mentioned, we have less than 10 out of 400. Our view – our considered view over the last 18 months was we want all of our businesses on Xplan. Those that fundamentally stated that they wouldn't move to Xplan we've parted companies with in terms of licensee support. And by 30 June this year, we will only have Xplan as our documentation storage system for – sorry, for the production of advice. So it won't be until 30 June this year where it will be mandated completely.

35 I see. I see. So it's not currently compulsory for authorised representatives to use Xplan?---So that – as I said, out of the 400 businesses, all but less than 10 must and are using Xplan.

Currently?---Currently.

40 Well, I just want to understand that in light of a document I'm going to show you, Mr Whereat, which is ANZ.800.165.1331, which is a document I think authored by you. Before we go to that, Commissioner, could I tender the ASIC report that we've just looked at.

45 THE COMMISSIONER: ASIC report 362, RCD.0003.0045.0001 will be exhibit 2.146.

EXHIBIT #2.146 ASIC REPORT 362, RCD.0003.0045.0001

5 MS ORR: This is a document presented by you as the general manager of Aligned Licensees and Advice Standards for a meeting on 12 December last year?---That's right.

10 And could we turn to 1338 in this document. And do you see there under the heading Project Beer second paragraph:

However, advisers in the aligned dealer group businesses in particular FSP and M3 do not have to use Xplan (financial planning software).

15 ?---That is a historical context that that has been written in.

20 Well, this is December last year?---No, but you will notice on the right-hand side, the Project Beer is a Building Efficiency Eliminating Risk. What that is about is we recognised that not having all our businesses on the Xplan particularly in those two groups that are mentioned there, we started off with about 78-ish businesses not on Xplan out of those 400. You can see here, as a – as a progress report we've moved that down to 31 businesses. And then a subsequent report down to 15. And, as I said, the latest number is 10. So I recognise that the old model NFSP and M3, RI we have mandated Xplan, every single business is already on Xplan. The old model allowed them to pick whichever software they want. Today's model, it's Xplan.

25 I see. I tender this document, Commissioner.

THE COMMISSIONER: What shall I describe it as, Ms Orr?

30 MS ORR: It is - - -

35 THE COMMISSIONER: I have CPS 510 remuneration compliance, which seemed an odd title given the subject matter, but it seems to be the title of it. ANZ.800.165.1311, exhibit 2.147. And the date of the document, Ms Orr, December '17?

MS ORR: 12 December 2017, Commissioner.

40 THE COMMISSIONER: Thank you.

**EXHIBIT #2.147 CPS 510 REMUNERATION COMPLIANCE,
ANZ.800.165.1311 DATED 12/12/2017**

45 MS ORR: I just want to ask you some questions about what was going on in that one year when you were trying to extract Mr Harris' files from his practice, Mr

Whereat. At the beginning of that period in May 2016, Mr Harris had already been on millennium3's watch list for two or three years. Is that right?---That is correct.

5 It had at least two audits where he had received a 4 or a 5, the lowest ratings?---Correct.

10 And his state development manager, Ms Nolan, had raised serious concerns about his attitude towards compliance and his understanding of his legal obligations?---Correct.

15 But during that whole time when you are trying to extract these files from Mr Harris' practice, Mr Harris was permitted to continue providing advice to clients?---That's correct.

20 Millennium3 didn't suspend him?---Not at that period, no.

25 Didn't terminate his authority?---No.

30 I want to put to you what happened in that period was a lot of meetings at which Mr Harris' conduct was discussed?---I would absolutely accept that there was a lot of meetings during that period of time, and a lot of discussions.

35 And was there any action taken in relation to Mr Harris in that period?---Other than the vetting and the suggestion of paraplanning and the other things in terms of the documentation the file around Lauren's visits, certainly not – the appropriate action certainly in my eyes wasn't taken.

40 In September 2016 all the meetings eventually resulted in a decision to send a second censure letter, didn't it?---It did.

45 Yes. And that letter of censure was going to be in almost the same terms as the earlier censure letter?---That is my understanding, yes.

50 And was that letter actually sent?---No, the letter of censure was not sent.

55 Yes. And that was because Mr Harris was told in January 2017 that there was going to be a targeted review. Is that right?---Yes, we – there was going to be a targeted review of his business. My understanding is – in doing some investigations to prepare this statement, my understanding is that the letter of censure was an oversight in terms of it not being sent.

60 Yes. But there were multiple internal forums and bodies all talking about Mr Harris during this one year period when he was continuing to provide advice?---Yes, I have acknowledged that.

65

Yes. And then when the decision was made to conduct the targeted review, in January 2017 Mr Harris was told which of his files would be reviewed?---For the targeted review?

5 Yes?---Yes, they were selected, yes.

Isn't it against your audit policy to tell an adviser which of their files are going to be reviewed?---For – for my understanding, for the targeted review process we called for a number of files.

10

I see. I see. And then in March 2017, Ms Nolan and Ms Ruano visit Mr Harris' practice?---That's correct.

15 And there's some email correspondence after that in which Ms Nolan expresses her continued serious concerns about Chris' capacity both in an advice role and as a business owner of a financial planning practice, and Ms Nolan says that due to the severity of issues that have been raised, she forwards, again, her recommendations for immediate suspension with a view to terminating his authority?---That's correct.

20 And in response to that email communication, which you've annexed to your statement, the result was scheduling a meeting to discuss what should be done?---That's correct.

25 And in around April of 2017 you say that you had a telephone conversation with Mr Blackford who was millennium3's national manager?---Yes, prior to that the targeted review draft, I believe, came across my desk. I made a phone call to Ms Blackford at the time inquiring as to why, based upon the information I could see end to end in the report we were having – there was another meeting. I didn't think that was appropriate and I communicated that.

30

Yes. You tell us in your statement that you said to Ms Blackford words to the effect of, "Why are we having a meeting, just terminate?"?---That's right.

35 And this was a good question, wasn't it, Mr Whereat? Why was there a need for yet another meeting to discuss Mr Harris?---I have no idea.

40 And what was Ms Blackford's response to that?---So she agreed. The – I believe the meeting was – was already scheduled. And then the decision is recorded in my statement as to the outcome of that meeting.

40

Yes. So the meeting went ahead?---Yes.

45 And a couple of days before that meeting, the draft report of the targeted review was provided?---That's right.

45

And this was a targeted review that had been requested six months earlier on 4 November 2016?---That's right.

Now, that targeted review report is annexed to your statement at exhibit 86, ANZ.800.382.0765. And at 0766, Mr Whereat - - -?---Yes.

5 - - - we see the list of issues that were identified as a result of that targeted review?---That's correct.

10 Which included non-delivery of ongoing service, non-issuance of fee disclosure statements, late issuance of fee disclosure statements, under disclosed, ongoing service fees, inappropriate advice and advice outside authorisation?---That's correct.

And then at the meeting on 6 April 2017, a decision was made to terminate Mr Harris' status as an authorised representative?---That's correct.

15 Do you think it's acceptable that it took so long for millennium3 to terminate Mr Harris' status as an authorised representative?---Absolutely not.

20 And why wasn't the decision made sooner, Mr Whereat?---I – I don't know. I have been looking at the file from end to end, and I can't find a reason as to why swifter action wasn't taken.

Would you agree that a key aspect of ensuring that appropriate advice is provided to customers is ensuring that there are consequences for advisers who fail to comply with their obligations?---I do.

25 And to be effective, those consequences have to apply soon after the adviser's conduct?---My view is – is consequences need to change behaviour, yes.

30 And it was in June 2017 that millennium3 sent a letter to ASIC about Mr Harris' conduct?---That's correct.

And was that letter a notification of a significant breach under section 912D of the Corporations Act?---That's – no, I don't – I don't believe it was. I believe - - -

35 And why not?---I don't know. I believe at that time, post the – the review, we have issued to let ASIC know of our concerns with Mr Harris' files. Upon reflection and looking at it all, a – a breach notice could have been sent.

40 Okay. And do you know if Mr Harris was a member of a professional association?---I don't personally, no.

No. And you don't know whether any report was made about his conduct to a professional association?---I don't know, but I can find no evidence of that in the file.

45 And it was in June last year that moves were made to discuss potential remediation of Mr Harris' clients; is that right?---That is correct.

And the remediation governance forum gave endorsement to referring Mr Harris' clients for remediation in July 2017?---That is correct.

5 And by the end of October 2017, these matters had been referred to the advice review team, but they still hadn't been scoped or formalised?---That's right.

10 We talked earlier about two clients of Mr Harris who were given inappropriate advice in May and June 2015. Have either of those clients been remediated for that inappropriate advice?---In – in preparing for this statement and having a look at it, I acknowledge upfront that I have asked for one of those files to be prioritised and have escalated that. As at today, the financial remediation hasn't been completed for both clients.

15 Well, have either of them been remediated for the inappropriate advice?---No.

No. Have any of Mr Harris' clients been remediated for inappropriate advice that he gave, or for fees that he charged without providing services?---No.

20 Why not?---Again, we would like to move faster relative to some of the other issues that we have in the advice remediation team. We are working on events with a higher priority. I think everything's important. We would like to go quick. It's very competitive market in terms of finding these specialised resources to – to actually respond and recreate the file such that we can do the detriment calculations. It's not good enough that we're not going fast enough, but certainly we're – we are – we are
25 improving the way that we are doing it, but I think Mr Harris' is a set of circumstances where it's taken us far too long.

Well, it's nearly - - ?---I absolutely apologise for that.

30 It's nearly three years since the two clients that I used as examples received their inappropriate advice, isn't it, Mr Whereat?---It is and it's not good enough.

35 Yes. I have one final topic to deal with, Commissioner. I'm very sorry that we have gone so far over, but I have just a few final questions on one last topic which is whether or not you know whether Mr Harris is still working as a financial adviser, Mr Whereat?---I am aware that he is still operating as a financial adviser.

40 Do you know which licensee he currently provides financial services on behalf of?---I do.

And which financial – which licensee is that?---Dover.

45 And did Dover contact millennium3 for a reference in relation to Mr Harris in May 2017?---They did.

Could I ask that you be shown DOV.0001.0001.1606. This is a letter from Dover Financial Advisers to millennium3 on 24 May last year?---Yes.

And can you see here that Dover is asking millennium3 if they're aware of any circumstance or action that may affect Mr Harris' ability to provide financial advice honestly and fairly. They're asking whether millennium3 is aware of any client complaints and whether Mr Harris has been subject to any action, investigation, inquiry or audit concerning character, competence or conduct?---Yes.

See that?---I can.

I tender that letter, Commissioner.

10

THE COMMISSIONER: Exhibit 2.148 letter Dover Financial Advisers to millennium3 Financial Services 24 May '17, DOV.0001.0001.1606, exhibit 2.148.

15 **EXHIBIT #2.148 LETTER FROM DOVER FINANCIAL ADVISERS TO MILLENNIUM3 FINANCIAL SERVICES DATED 24/05/2017 (DOV.0001.0001.1606)**

20 MS ORR: Can I take you to the response to this letter, Mr Whereat, which is DOV.0001.0001.1608. Now, you see this information provided by Ms Blackford to Dover in relation to Mr Harris. Ms Blackford tells Dover that:

25 *ANZ has identified that Mr Harris has various ongoing services agreements in place for which he charges clients an ongoing adviser service fee. Those agreements require Mr Harris to offer or provide periodic reviews to clients, and ANZ has identified a number of instances in which Mr Harris has charged clients an additional record of advice fee for the advice provided to them at periodic reviews to which an ongoing services agreement relates.*

30

?---That's right.

And there is a reference to four client complaints which have resulted in payment of compensation and two unresolved complaints, and a review down the bottom of a sample of Mr Harris' client files during which various issues have been detected?---That's correct.

35

Do you think this disclosure was adequate, Mr Whereat?---I think it could have been more forthcoming.

40

Well, we know, don't we, that by this time, Mr Harris had had three audits with the lowest possible ratings, there had been a targeted review of 28 client files which found that there was potential client detriment in relation to 25 of those files, and only a couple of weeks prior to sending this letter, millennium3 had made a notification to ASIC in relation to Mr Harris?---I – I acknowledge all that.

45

But none of those matters were mentioned in this letter?---No, they're not.

Why not?---I'm unsure as to what the – why they were omitted. I'm just thinking how I would react to receiving a reference like that in today, 2018, whether that would be sufficient for us to accept. I think there is enough information raised in there for serious questions to be asked.

5

But why hold back the other information, Mr Whereat?---I'm unsure as to why.

This isn't a long time ago. This letter was sent in the middle of last year?---I acknowledge.

10

And I just want to correct something I said. The notification to ASIC was a couple of weeks after - - -?---After.

- - - this letter?---That's right.

15

So you were, it seems, in the process of working out whether to notify ASIC at this time?---Yes.

20

But I just want to understand whether you accept that in a situation like this where millennium3 had extensive concerns about Mr Harris, the community would expect millennium3 to communicate those concerns to the new licensee?---I – I – I would accept that. I think this is an indication where the ABA protocol – that is a great step forward for the industry. I would like to see everybody being a participant in the ABA protocol for that exact purpose. I will acknowledge that it was more information that should have been put in here. It's something I need to look at in terms of our references that we're giving to people that operate outside of the ABA protocol, and that's something that I will be doing.

25

You are a subscriber to the protocol - - -?---We are.

30

- - - at ANZ. Millennium3 is a subscriber?---Yes.

But, nonetheless, you provided inadequate information to Dover in response to their inquiries about Mr Harris?---That's right.

35

Thank you. I have no further questions, Commissioner.

THE COMMISSIONER: Do you want to tender that reply?

40

MS ORR: I'm sorry. I do wish to tender that. Thank you, Commissioner.

THE COMMISSIONER: The letter from millennium3 to Dover in reply to exhibit 2.148, DOV.0001.0001.1608 becomes exhibit 2.149.

45

EXHIBIT #2.149 LETTER FROM MILLENNIUM3 TO DOVER IN REPLY (DOV.0001.0001.1608)

THE COMMISSIONER: Now, does any party other than ANZ seek leave to cross-examine this witness? Dare I ask, Ms Williams, how long you will be?

5 MS WILLIAMS: I would only be a couple of minutes in my summation, Commissioner. There is just one matter - - -

THE COMMISSIONER: Let's get on and do it then, Ms Williams.

10 MS WILLIAMS: I'm obliged to the Commission.

<RE-EXAMINATION BY MS WILLIAMS

[4.31 pm]

15 MS WILLIAMS: Mr Whereat, could you turn please to paragraph 4.63 of your statement at page 20?---It's up on the screen, sorry. Yes.

Yes. You do have it on the screen there?---Yes.

20 Mr Whereat, I just wanted to ask you about your reference in paragraphs (b) and (c) there to the client's risk profile and the rate of return on a portfolio reflecting the client's risk profile. How, if at all, does that rate of return differ from the time cost of money?---Well, it doesn't. It's – you're asking me the calculation?

25 I'm asking if you could explain for the Commission the manner in which a rate of return on a portfolio reflecting the client's risk profile is arrived at?---Yes. So part C is we're looking for a similar portfolio or a relevant portfolio as a benchmark to calculate the interest that would otherwise have been on that investable sum.

30 THE COMMISSIONER: Let me just see if I understand it. So for every \$100 that's been invested in an ill-advised product - - -?---Yes.

35 - - - you take that \$100 and apply to it the return that would have been achieved had it been invested in the kind of risk profile that the client wanted?---That's exactly right.

So it's more than time value of money. It's return. Yes.

40 MS WILLIAMS: And – I'm sorry, Commissioner, just one further question, if I may.

45 Mr Whereat, you referred to the remediation framework in answer to one of the Commissioner's questions earlier. Has that framework been approved or agreed to by ASIC, to the best of your knowledge?---It has. Yes.

Yes. Thank you?---We're in ongoing discussions with ASIC in terms of the framework. We have got an external assurance company – that professional services

firm that we're working with. ASIC has been actively involved in the evolution of the – of the program, so, yes, they are aware of the framework and the way that we calculate moneys.

5 Thank you, Mr Whereat. Commissioner, there is nothing further. Might Mr Whereat be excused.

THE COMMISSIONER: Thank you. Nothing arising Ms Orr?

10 Thank you very much, Mr Whereat. I am sorry we have put you under route march conditions today, but I suspect you will thank us for that on Monday morning, not having to return. You can step down and you are excused from further attendance.

15

<THE WITNESS WITHDREW

[4.34 pm]

20

THE COMMISSIONER: 9.45 on Monday, Ms Orr.

MS ORR: Yes. Thank you, and I'm grateful to the Commissioner for sitting on today. Thank you.

25

THE COMMISSIONER: 9.45 on Monday next.

MATTER ADJOURNED at 4.34 pm UNTIL MONDAY, 23 APRIL 2018

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