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TRANSCRIPT OF PROCEEDINGS

O/N H-884957

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

9.46 AM, MONDAY, 23 APRIL 2018

Continued from 20.4.18

DAY 16

**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 S. GRAY for
ANZ**

MR R. HOLLO SC appears with MS K. DOVEY for AMP

MR N. YOUNG QC appears with MR D. THOMAS and MS M. ELLICOTT for NAB

THE COMMISSIONER: Yes, Ms Orr.

MS ORR: Commissioner, we are continuing with our ANZ case study for the purposes of the inappropriate advice topic. The next witness is Ms Kylie Rixon.

5

<KYLIE RIXON, AFFIRMED

[9.46 am]

10 <EXAMINATION-IN-CHIEF BY MS WILLIAMS

THE COMMISSIONER: Thank you, Ms Rixon. Do sit down. Ms Williams.

15 MS WILLIAMS: Thank you, Commissioner.

Would you state your full name, please?---Kylie Elizabeth Rixon.

20 Are you the chief risk officer for Digital and Wealth Australia for Australia and New Zealand Banking Group?---Yes, I am.

Is your business address Pitt Street, Sydney?---Yes, it is.

25 Ms Rixon, have you prepared two witness statements in answer to questions asked by the Royal Commission?---Yes, I have.

And have you received a summons to appear to give evidence and produce signed witness statements today?---Yes, I have.

30 Do you have the summons with you, Ms Rixon?---Yes, I do.

I tender the summons, Commissioner.

35 THE COMMISSIONER: Exhibit 2.150 will be summons to Ms Rixon.

EXHIBIT #2.150 SUMMONS TO MS RIXON

40 MS WILLIAMS: Ms Rixon is your first witness statement dated 9 April 2018?---Yes, it is.

Do you have that statement with you?---Yes, I do.

45 Is there a correction you wish to make on page 43 of the statement?---Yes.

Does the correction relate to the row of the table which in the left-hand column reads 2013?---Yes, it does.

5 Is the correction that the date in the right-hand column of that row should also read 2013 and not 2012?---Yes, that's right.

Thank you, Ms Rixon.

10 THE COMMISSIONER: Do you mind making the amendment and just initialling it for us, Ms Rixon.

MS WILLIAMS: Commissioner, I've mentioned to my learned friend a matter I wish to address in-chief with Ms Rixon briefly in relation to paragraph 128 to - - -

15 THE COMMISSIONER: Sorry, which paragraph?

MS WILLIAMS: Paragraph 128 to 133 of the statement, Commissioner.

20 Ms Rixon, could you turn to paragraph 128 at page 63 of the statement, please?---Yes.

Were paragraphs 128 to 133 correct at the time you signed the statement?---Yes, they were.

25 Has there been a further development that has occurred in relation to the balanced scorecards since you signed the statement?---Yes, there has.

30 Could you explain to the Commission, please, the key aspects of that further development?---The balance scorecard for the ANZ financial planning business, financial planner role, has been amended. The key amendments are the removal of a – the two revenue measures that make up 15 per cent of the scorecard and a redistribution of – of those percentages to other parts of the scorecard. And the increase in the prime access service delivery completion from 95 per cent to 100 per cent.

35 Thank you, Ms Rixon. I'm going to ask that you be shown a document on the screen. Commissioner, this document has been emailed to the solicitors assisting the Commission. I'm told it can be displayed on the screen although there is no number attached to it as yet.

40 THE COMMISSIONER: Yes.

MS WILLIAMS: Ms Rixon, do you recognise that document?---Yes, I do.

45 Could you – does that document describe the key aspects of the changes to which you just referred?---Yes, it does.

Thank you. And can I direct your attention, in particular, to page 4 of the document. Does that page, in particular, summarise the key matters to which you just referred?---I – I believe it's the next page, actually.

5 I'm sorry, if we could go to page 5, please?---Yes, it does.

Thank you, Ms Rixon. Commissioner, I tender that document.

10 THE COMMISSIONER: Exhibit 2.151 will be updates to 2018 Performance Assessment Framework ANZ Financial Planning. Is the only date on it April 2018, Ms Rixon? Is there a more precise date or is it just April 2018?---I'm sorry, the young lady there was talking to me and I didn't hear the question, I'm sorry.

15 Can we give a more precise date than just the month of April 2018?---For?

For the document?---Well, I believe that the scorecard was approved on 12 April. I ascertained that this morning.

20 Thank you. Exhibit 2.151 will be updates to 2018 Performance Assessment Framework, ANZ Financial Planning, April 2018.

25 **EXHIBIT #2.151 2018 PERFORMANCE ASSESSMENT FRAMEWORK ANZ FINANCIAL PLANNING DATED 12/04/2018**

THE COMMISSIONER: Yes.

30 MS WILLIAMS: Thank you, Commissioner.

Now, Ms Rixon, subject to those further developments you've described and to the correction you made at page 43, and to the matters referred to in your supplementary statement to which I will come in a moment, are the contents of your statement dated 9 April 2018 true and correct?---Yes, they are.

35 I tender that statement, Commissioner, together with the exhibits.

40 THE COMMISSIONER: Witness statement and exhibits of Ms Rixon of 9 April 2018 is exhibit 2.152.

EXHIBIT #2.152 WITNESS STATEMENT OF MS RIXON DATED 05/04/2018 (AND ATTACHED EXHIBITS)

45 MS WILLIAMS: Ms Rixon, you have made a supplementary statement dated 18 April 2018. Is that correct?---Yes, I have.

And are the contents of that statement true and correct?---Yes, they are.

Commissioner, that statement is also produced and I tender that supplementary statement.

5

THE COMMISSIONER: Exhibit 2.153 will be supplementary statement of Ms Rixon dated 18 April 2018.

10 **EXHIBIT #2.153 SUPPLEMENTARY STATEMENT OF MS RIXON DATED 18/04/2018**

MS WILLIAMS: Thank you, Commissioner.

15

THE COMMISSIONER: Yes. Ms Orr.

20 **<CROSS-EXAMINATION BY MS ORR**

[9.53 am]

20

MS ORR: Ms Rixon, you've been put forward by ANZ to give evidence about ANZs financial advice business?---Yes, in relation to the witness statements that have just been described.

25

Yes. You tell us in your witness statement that you're the chief risk officer for Digital and Wealth Australia at ANZ?---Yes, that's correct.

30

What is Digital and Wealth Australia?---Wealth Australia – they're two separate divisions. So Wealth Australia is the division that includes the advice businesses that are the subject of my witness statement, and – and other businesses, and the digital business is a separate division of ANZ.

35

And for how long have you been the chief risk officer for Wealth Australia?---Since April 2014.

40

And what are your main responsibilities in that role?---I am the head – or the executive of the risk function for the wealth division. So my main responsibilities are to oversight the risk framework and control environment for the wealth division.

45

We heard from Mr Whereat on Friday that ANZ operates its financial advice business through four entities, ANZ Financial Planning, RI Advice Group, millennium3 Financial Services, and Financial Services Partners. In your role as chief risk officer, are you responsible for risk across all of those entities?---Yes, I'm responsibility for the oversight of the risk and control environment.

Across each of those entities?---Yes, that's correct.

Now, you heard the evidence of Mr Whereat on Friday, I assume?---No, I did not.

Have you read the transcript of Mr Whereat's evidence on Friday?---No, I have not.

5 Right. You're not aware what evidence he gave on Friday?---No.

Okay. Mr Whereat told us on Friday about the relationship between the aligned dealer groups, RI Advice Group, millennium3, and Financial Services Partners, and their authorised representatives. That's something you're familiar with as well?---Yes, I am.

Now, ANZ also operates its financial advice business through ANZ Financial Planning?---Yes, that's correct.

15 And what are the main differences between ANZ Financial Planning and the aligned dealer groups?---ANZ Financial Planning is a – what's known as a salaried financial planning business. So the advisers in that business are employees of ANZ. The aligned dealer groups operate under an authorised representative model where each of the either corporate authorised representatives or principal authorised
20 representatives enter into a contractual relationship with the licensee – one of the three licensees.

And what kind of remuneration do employed financial planners receive?---Employed financial planners receive a salary and then they are eligible to receive an incentive based on a – what's called a balanced scorecard, which we referred to earlier.

25 And how often is that incentive payment or bonus – that's what it is, it's a bonus?---Yes.

30 How often is the bonus paid?---Six monthly.

Okay. And prior to the changes that we've seen in the document we've been provided this morning, the update, the 2018 update, prior to that document what determined whether a financial planner was entitled to receive a bonus?---The financial planner would be entitled to be eligible for a bonus if they crossed certain
35 hurdles, if you like, and they are things such as having to pass their audits, deliver 100 per cent of their annual reviews for ongoing service, meet certain ANZ values and behaviours, complete mandatory compliance training, and then they would – they would pass into eligibility for a bonus which would be determined by reference
40 to a weighted balanced scorecard.

So prior to these changes, was the bonus calculated by reference to the amount of revenue brought in by the financial planner?---Prior to the changes, there was 15 per cent of the scorecard that was associated with either new revenue or total revenue.

45 And how long had that scorecard approach with 15 per cent assigned to that factor been in place?---I don't know.

Was it in place prior to the FOFA reforms?---My recollection is that a balance scorecard was introduced some time after the – as the FOFA reforms came in. I – I’m – my role came in in April 2014 and there was a balance scorecard in place at that time, to my recollection.

5

Well, you tell us in paragraph 129 of your statement that the balance scorecard approach came in in October 2015; is that correct?---Can I turn to my witness statement?

10 Yes. Yes, you can. It will come on to the screen as well. It’s page 63 of your statement, paragraph 129?---Yes, that’s correct.

So this balance scorecard approach came in in October 2015. And how were bonus payments determined before the balance scorecard approach?---I – I don’t know the answer to that, I’m sorry.

15

Well, could I take you again to another paragraph in your statement, to paragraph 47, on page 53. You will see there that prior to the introduction of FOFA, you say that:

20 *ANZ Financial Planning had a culture of emphasising the growth of business more than the best interests of the client and this was reflected in the criteria considered by ANZ and the weighting applied to that criteria in its decisions to reward and recognise financial planners, and the less punitive consequences when inappropriate advice was identified.*

25

And you go on to say that:

30 *For example, prior to 1 July 2013, when ANZ determined the financial rewards to advisers it placed greater emphasis on how the financial adviser had grown business as opposed to the quality of the services provided to clients. Further incentives could be achieved on an adviser’s financial performance even if that adviser did not meet basic requirements in respect of matters such as training.*

And you then say:

35

That is no longer the case, with incentives now assessed against a range of new factors including client satisfaction, service delivery and participation in coaching and collaboration.

40 So why did ANZ decide to change its approach?---To the scorecard, do you mean?

Well, away from what you describe in your statement as the culture of emphasising the growth of business, more than the best interests of the client?---Well, my understanding was that from the time that FOFA was introduced, there was a growing realisation that there needed to be greater emphasis in the remuneration incentives based on other factors, and there were also regulatory impediments that were driving changes to the remuneration as well.

45

Why did ANZ need the FOFA reforms to tell it to emphasise the best interests of the client rather than the growth of the business?---I think the FOFA reforms was a trigger to look at remuneration more broadly, and if I think back, there has been – I also don't remember all of the changes, I do recollect that there has been – there has
5 been a continual evolution or changing to that scorecard to create a greater emphasis on other measures, such as risk and compliance, and customer measures over the – over the period since then.

I see. But up until the document that we've been provided today, the April 2018
10 document, that scorecard still included revenue measures to determine the amount of a bonus that a financial planner would receive?---Yes, that's true.

And is it still the case that the scorecard for management, managers of financial
15 planners, include a revenue component?---Yes, it is.

And what component of the management scorecard relates to revenue?---It is in my
exhibits. I believe my recollection is it is 15 per cent.

And why has that not been removed?---I – I don't know. I'm not sure.
20

Right. Why were the changes made to the scorecards for financial planners? Why
was revenue removed from those?---I don't know all of the factors. It's very recent.
I haven't had a chance to understand them all, but I understand one of them – one
25 factor was the January '18 changes to the life insurance reforms, and a understanding that the – there would be greater complexity in – in those types of revenue measures being applied to the scorecard for financial planners.

I see. Could I just ask you to look at a couple of pages of the document we've
received this morning. We don't have a document ID for that, but the last exhibit.
30 And could I ask that you turn to the fourth page of that document. Do I understand this heading, the change for 1H18 to be a reference to a change to the first half of 2018; is that what that - - -?---Yes, that's correct.

Okay. And we see on the left-hand side what's not changing. And in the second half
35 of the page what's changing?---Yes, that's correct.

So one of the what's not changing, the third tick there:

*Revenue remains an important measure of the financial health of the business.
40 The BUIP incentive payment pool remains dependent on overall advice and distribution business performance.*

What is the BUIP incentive payment pool?---That – BUIP stands for business unit
incentive plan, and that's referring to the overall amount of money referred to as the
45 bonus pool or BUIP. That is available for distribution as an incentive for the pool of advisers in UNZIP.

So the system is still related to revenue, then, because the amount of money that is available for distribution as a bonus to a financial planner is dependent on the revenue that all financial planners have brought into the business?---Yes, it is dependent on the financial performance of the business, that's true.

5

Well, it's dependent on the performance of the financial planners in the advice and distribution part of the business?---Yes, that's true, yes.

10 And in the second half of the document, What's Changing, the second matter there is:

Leaderboards no longer published.

15 What leaderboards were published prior to this document?---I have a general understanding of the leadership boards, but not a detailed one. So I can explain that. I believe that they are a type of measure which ranks advisers on certain criteria, of which I'm not aware of all of the detail. So from high – high to low.

20 Yes. And we would assume, would we not, that it was the criteria that applied in the scorecard prior to this time. So it would have included reference to revenue brought in?---Yes, I presume it would have included that.

25 So there were leaderboards that reflected the amount of revenue that financial planners were bringing into the ANZ Financial Planning business?---Yes, that would have been a factor that drove – that drove the – the performance of a – of a planner, up to 15 per cent.

30 And what does that say, Ms Rixon, about the culture within ANZ Financial Planning for financial planners when there are leaderboards on which the amount of revenue that they have generated for the business is displayed in comparison with other ANZ Financial Planning planners?---Well, revenue is just one of the factors within that leaderboard. It makes up 15 per cent of the scorecard. Other measures, such as customer satisfaction and risk and process measures also drive whether someone is higher or lower on the leaderboard.

35

40 Yes. But my question to you is about the inclusion of revenue generation as a component of the leaderboard, and I would like you to consider what that means for the culture that is created by ANZ Financial Planning that these matters are published on leaderboards which compare financial planners according to the revenue they've generated?---Well, yes, I think it can – where – where revenue is one of the drivers, I think it can provide, you know, an impression that is something that we would like not to be there. And so we have taken those leaderboards away, despite the fact that they include other measures, not just revenue, they can be interpreted that way.

45 Do you think it's possible to create a remuneration system for your financial advisers in ANZ Financial Planning that incentivises quality advice? Have you considered leaderboards that rank financial advisers according to the provision of quality

advice?---I'm not aware of what other options or considerations we might have made into leaderboards but, yes, I do consider it's possible to do that.

5 And what would that system look like?---Well, I haven't turned my mind to that, but I could think of measures, such as net promoter score, which is a measure of customer satisfaction. So people who had outperformed on those scores. As well as people who have scored very highly in their audits. There may well be others, I'm sorry, I just haven't turned my mind to that question before.

10 THE COMMISSIONER: Can you explain to me a little more what you mean by – I think you said net promoter score. Is that right? Can you tell me what it's measuring, how it works? It is not something I know about?---Yes, Commissioner, it's a – it's a common industry standard measure of customer advocacy. And so surveys are completed by customers, often – often very soon after an experience with
15 an adviser, often at later dates, I understand, and it asks questions that go to whether the customer feels that they would recommend that experience and that adviser to somebody else. And so it can be – 100 is very high and in some areas is considered world class, and it can also be negative. So that is where a customer was a detractor. In other words, they said, "Not only am I neutral, but I wouldn't recommend this
20 experience or this adviser."

Yes. Thank you.

25 MS ORR: How would this hypothetical system of rewarding and incentivising quality advice reflect situations where quality advice is telling the customer to do nothing, to keep their situation as it is?---Well, our – our balance scorecard already has a measure of some of those things that go towards that. So, for example, the measure in the scorecard of qualified referrals is a measure which – where – where a
30 – a customer can come into an adviser and sit down with the adviser, and the adviser does not believe that the person needs that advice, for example, because of the circumstances, or they don't need personal advice that will obviously cost them more money for a much more simple need. So in that measure, the measure isn't – isn't the outcome being a plan or, you know, a piece of personal advice, the measure is has the customer actually sat down and had a conversation with that customer and
35 they get rewarded for that as well.

Does your revised balance scorecard, dealt with in this document, apply to financial planners within ANZs aligned dealer groups?---No, it does not. It only applies to the
40 salaried planners.

So all of the financial planners in the aligned dealer groups still have bonuses calculated by reference to revenue brought in?---Well, no, in the sense that they are authorised representatives or corporate authorised representatives and they are effectively small business owners that are aligned to, through a contractual
45 relationship to our licensee, which means that they receive the revenue, like another small business owner would, for the business that they write – the advices that they

give, which could be fee for services, it could also be, you know, allowable commissions, for example.

5 But this scorecard, with its non-revenue measures, has no application to them?---That – that’s correct.

Yes?---Yes.

10 And do you accept my proposition to you that their bonuses within their groups are calculated by reference to their generation of revenue?---Yes. They – they may well be.

15 What are the benefits of having employed financial advisers as opposed to authorised representatives?---Well, in my role as a chief risk officer, I would say that one of the benefits of having an employed adviser network is that it is easier to create uniformity across a pool of people or across that business, because you can create uniformity through creating central services, for example, it could be an ongoing service contract or other measures, scorecards that must apply to all of those advisers.

20 So what does that mean the main challenges are that are associated with using authorised representatives instead of employees to provide financial advice?---I – I think there can be greater diversity in – or there is greater diversity in the practices and processes that they apply, but that’s not always the case. So, for example, some
25 licensees, like FSP, one of their value propositions is to have very standardised uniform advice processes, and everyone using the same system across their network. And so that, you know, attracts advisers who come in and then apply that kind of systems and processes. For other licensees, there may be more variability in terms of – in fact, there is more variability in terms of things like the ongoing service
30 contracts that they apply, the systems that they use, and the related advice processes.

You’ve referred a few times in your answers, the last couple of answers, to uniformity. Why is uniformity important? Why is that an objective here?---Well – well, its – its importance, in my view, stems from the ability to do two things. One is
35 to provide investing and provide guide rails, if you like, or support for the adviser to move through the advice process in the most efficient and effective manner that lowers the risk of them making mistakes or something going wrong. The second reason that uniformity is important, in my view, is that it increases the ability to monitor the control environment.

40 Is it more difficult to implement effective compliance systems in the aligned dealer groups than it is for your own financial planning business?---Yes, in some part. It depends on what type of control that we’re talking about.

45 Is it generally more difficult?---That’s a difficult question because there’s – there’s lots of controls in a control environment. I could give you an example - - -

Let me put it another way: what are the controls that are more difficult to implement in the aligned dealer group framework than they are with your employed financial advisers?---So where – so one example is the use of a single, centralised advice system. So we – we now have almost all advisers in the aligned dealer groups on a
5 central advice system but they’re not all using it uniformly. And that creates more difficulties in terms of monitoring – the monitoring that we would do over that system, and – and also the guide rails and assistance that, you know, we – that might be provided through a – a system where we can uniformly role out things like little wizards that sort of help them through the advice process. So someone who is in
10 another type of practice that isn’t on a centralised advice system may well have all of that in place but it is not connected up to our central system and it makes it harder for us to see that.

So why aren’t the authorised representatives under each of your aligned dealer
15 groups all on that centralised advice system?---Well, I think historically there has been – and this is sort of prior to 18 months ago when we started a program of work to encourage and incentivise. I think there was a lot of focus that was put on other parts of the control environment, post-FOFA, and we were conscious – the business was conscious of the fact that there was no contractual obligation for these practices
20 to use XPLAN. Since that time, I think we have recognised – it has been a growing recognition of how important that is and have used other measures to if not legally mandate, strongly encourage and incentivise advice practices to move on to that plan or to essentially part ways with us.

25 All right. In your statement, Ms Rixon, you’ve set out the number of employed financial advisers of ANZ, and the number of individual authorised representatives of the various aligned dealer groups in each year from 2008. You’ve given us those figures?---Yes, I have.

30 And what we see from that is in 2008 there were 514 employed financial advisers and 865 individual authorised representatives coming to a total of 1379 advisers. Do you want the reference to the part in your - - -?---Yes, could I, please.

- - - statement that deals with this? It’s a table at paragraph 22 of your statement. Do
35 you see that there on page 5 of your statement? It’s on the screen as well, Ms Rixon?---Yes, I do.

So 1379 advisers in total in 2008. As I said, 514 employed and 865 were authorised
40 representatives. Then if we move through to 2013, we see that you had 406 employed financial advisers. So those numbers had gone down and 736 individual authorised representatives, a total of 1145, on my maths. So the total number of financial advisers had decreased from 2008?---Yes, yes.

45 And at the moment, if we go over the page to page 6, to look at the current figures, ANZ in 2018 has 277 employed financial advisers – that’s the first column – and in total 602 authorised representatives. That’s the addition of those second, third and

fourth columns which on my maths takes us to a total in this year of 879 financial advisers?---Yes.

5 So across your wealth entities, ANZ currently has about 500 fewer financial advisers than it did 10 years ago in 2008?---Yes, that's correct.

10 And why has ANZ decreased the number of financial advisers that it employs or authorises so significantly?---Well, I think I will talk about the aligned dealer groups first as ANZFP separately if that's okay because they're separate.

15 Yes, of course?---So in relation to ANZFP there has – I don't know all the factors but I know one – or two of the factors has been that we have exited or performance managed a number of advisers out of the business who have not met the ANZ standards. So, for example, we have performance managed 71 advisers in ANZFP
20 just in the last 12 months. And over half of them have exited the business through resignation or termination. The other reason is it is becoming harder and harder to recruit the right people who we think have the right standards and qualifications. In the aligned dealer groups, once again, I don't know all of the factors for why it has decreased. I think – so my understanding is that the same holds true from a practice
25 perspective in terms of it being more difficult to find practices who meet the required ANZ standards, if you like, and the second thing is that we had an active, over the last – I think it would be 18 months, I'm not sure of the exact period – of tail – what's called tail management, and so that, effectively, involved parting ways, through one way or another, with practices that the – the business felt were not of
value or of higher risk to the organisation.

A few things that you've said there that I just want to follow up with you?---Sure.

30 Firstly, is it the case that ANZs standards of its financial advisers have changed over this 10 year period?---Yes, in the sense – in a couple of ways. I think that the – the standards in general have, you know, so in terms of qualifications, and so on, we have raised those standards, and we have also, I guess, tightened up, if you like, the on-boarding processes in terms of what may well have come through as an exception to our on-boarding processes in previous years for particular advisers that now we
35 would not accept.

40 So why have the standards changed?---I think that has been a growing understanding and response to the – the onerous – a growing response to the environment, the increasingly onerous requirements of both our own ANZ standards and the growing regulatory prescription, and our own desire to create a culture where the client is at the centre of it and that has not always been the case in the past.

45 What's the growing regulatory prescription?---Well, if I turn, I guess, my mind back a few years, what I can see as I've sort of had the opportunity to look back through and absorb information since the introduction of FOFA, what I can see is that whilst the regulations and the Act set out what the requirements are, in my view, there has been a growing level of understanding – well, not understanding but prescription of

those – of what those requirements might translate to in relation to parts of the advice process. So, for example, ANZ standards in relation to not just there needs to be file notes and they need to contain certain things, but the – the quality of those file notes, what we accept in terms of the format, etcetera. ASIC has released regulatory
5 guidance like 413 on insurance, which has given the industry, since FOFA, I think there has been a sort of those sorts of reports where the industry has started to get more information and understanding of what the requirements are and the level of prescription has changed through those advice processes.

10 Is this part of the move away from what we saw you described in another part of your statement as the previous culture which was a culture of prioritising the growth of the business over the best interests of the clients?---Sorry, could you just repeat the question? I didn't quite understand that.

15 I wanted to understand if these changes in standards in response to what you described as growing regulatory prescription were part of the cultural change that you've referred to in your statement away from a culture of prioritising the growth of the business over the best interests of the client?---I mean, yes, in the sense that they
20 have focused the business and the advisers on the importance of having – demonstrating that – not only – not only going through the advice steps in a manner that is prescribed, but being able to demonstrate in a lot of detail after the fact how they actually reached those conclusions. So yes, in the sense of focusing on the – you know, a growing importance, if you like, of that evidentiary trail.

25 But do you accept my linking of that to the reference in your statement to the past culture which prioritised growth of the ANZ business over the best interests of the client?---I mean, yes, I think they're linked.

30 Okay. You said that you had exited or performance managed 71 advisers out of ANZ Financial Planning; is that right?---Yes.

Over the last 12 months?---Sorry, performance managed not exited all of them. Exited over half of them.

35 Exited over half of them?---Yes.

And performance managed?---Performance managed - - -

40 The rest?--- - - - 71. So they were all performance managed.

I see?---I can explain that if you would like me to.

45 The difference between performance managed and exiting?---No. The performance management process.

I am not so concerned about the process. I want to understand what sort of conduct on the part of those financial advisers led to them being performance managed?---So

I don't – I don't know the detail of – of those cases. I have a general understanding of what some of them might be.

5 Could you tell us about that?---Sure. So some of those people are planners who may have been, you know, on vetting, and so – you know, a new adviser or an adviser with new accreditation who was on vetting, vetting and goes into phase 2 of vetting or phase 3 of vetting, in other words, can't – doesn't show an ability to be able to meet the standards that are required, so they could be new advisers, they could be
10 advisers where the supervisor has recognised that in some way or other it could be behaviours, it could be the – the way that they're applying certain processes, that there is an issue there, and the process involves strategies to either help them to meet the standard or to terminate them. And many of them resign if – if they're – if they're in the – that process, many of them also resign during that time as well.

15 Has there been a conscious decision to reduce the number of financial advisers providing advice for ANZ Financial Planning?---Not that I'm aware of.

Do you think that large numbers of financial advisers present difficulties for ensuring compliance?---It really does depend on the – the kind of systems and processes and
20 how technologically enabled they are.

Do you think that in the past ANZs compliance systems have been adequate to ensure that large numbers of financial advisers were complying with their legal obligations?---No. In some instances, and for some periods, our systems and
25 processes have had deficiencies in them.

Has there been a lack of investment by ANZ in the systems and processes that are needed to ensure compliance?---Yes, in some cases and no in some cases.

30 Yes in which cases?---So I would – so in my view, I would say that, on reflection, ANZ could have commenced the program to move to encourage and incentivise the aligned dealer groups onto XPLAN – onto the centralised version of XPLAN earlier than it did. That would have also enabled the – what's referred to in my witness
35 statement as the adviser hub, which is the consolidation – or the consolidation of all of the information from different systems into one easily accessible database could also have been commenced earlier.

And how much earlier should those two things have happened?---That – that's a
40 really difficult question. I - - -

Is it years earlier? Should they have happened years earlier than they have?---I don't – I mean, so – so certainly, I don't know whether that was possible years earlier. It was certainly possible a significant amount of time earlier than what we did, but - - -

45 What are you referring to when you refer to a significant amount of time?---Well, so it – it could have been as part of all of – when we transitioned to centralisation in 2013, through that FOFA period.

Thank you. Has ANZ considered divesting its financial advice business?---Well, we have already sold the majority of our – the businesses that make up our wealth division to – to purchasers.

5 Why?---Well, I haven't been a party to the board or executive committee discussions on why the businesses were sold. My understanding, from what has been communicated to me, is that it was – it is part of the strategy for ANZ return – to return to its core business of banking, and to improve its capital efficiency, and ANZ no longer felt it wanted to be in the business of product manufacturing, in terms of
10 wealth, such as life and – and superannuation.

And do you know why ANZ didn't want to be in the business of product manufacturing?---Well, as I said, it's – it's – it was part – my understanding is that it was part of the core strategy to – to focus on the core products and services, the core
15 banking products and services, and it also is not a very capital efficient business, life insurance, for example, as compared to banking.

You also - - -

20 THE COMMISSIONER: Sorry, as compared to?---Banking.

Thank you.

MS ORR: You also set out in your statement the number of employees that you
25 have involved in monitoring and supervising financial advisers. You deal with that in paragraph 33 of your statement, Ms Rixon. It's page 45?---Yes.

And what types of things are the employees that you've referred to there, the employees involved in monitoring and supervising advisers, what types of things are
30 they responsible for?---Well, in the first – so the columns that relate to each licensed entity, those roles refer to mostly roles such as what we would call practice managers, state managers, practice development managers, and they are, in effect, in ANZFP line supervisors. So they're who the advisers report to and who supervise them on a day-to-day basis. In the aligned dealer groups, they are – there are
35 practice development managers who also have a supervisory role and take care of – or are responsible for a certain region or number of practices within the aligned dealer groups.

So we see from the figures in your table here that in 2008 there were, on my maths,
40 88 and a half full-time employees across ANZ Financial Planning and the three aligned dealer group companies who were responsible for supervising and monitoring the figure that we saw before, which is 1379 advisers?---Yes.

So on my maths that's about one monitoring or supervising officer for every 15
45 advisers?---I haven't done the maths but I will assume that's correct.

And we also know that those employees worked for particular entities so that there were more monitors or supervisors in some entities than there were in others. We can see that from your table?---Yes.

5 So for millennium3, for example, there were only 17 employees involved in monitoring and supervising, and we know from your other table that there were 479 millennium3 advisers, so that's about one supervisor for every 28 advisers?---Yes.

10 And you tell us in your statement that in 2012, ANZ centralised part of its compliance function so that there were some employees who then provided services across all four entities and others that worked in the particular entities?---Yes, that's correct.

15 Then if we move beyond that, in 2013, again, on my maths there are 66 and a half people involved in the supervision and monitoring of financial advisers across the four entities, and they're responsible for 1145 advisers which is about one for every 17 advisers?---Yes.

20 So between 2008 and 2013, the ratio of supervising employees to advisers declined. It got worse?---Yes. Yes.

25 And at the moment, in 2018, if we go to the following page, on my maths again, there are 82.9 supervisors or monitors across the four entities and they're responsible for 879 advisers. We know that from your other table. So that's about one for every 10 advisers?---Yes.

Do you think that's an adequate ratio to ensure that customers receive good quality advice from ANZ financial advisers?---Yes, I do, in 2018, yes.

30 And why is it only in 2018 that ANZ has achieved that ratio?---Well, I think it has been sufficient in some of the earlier years as well. The focus that we have had in – since 2015 has been the activities that those supervisors are focused on as well, the ones in the individual licensed entities.

35 You've also given us a table in your statement showing the number of identified instances of inappropriate advice provided to customers at ANZ and the authorised representatives in each calendar year from 2008. And you deal with that in paragraph 34 of your statement. It's in the second half of this page?---Yes.

40 And you tell us in your statement that the information in this table includes cases where there just wasn't enough information on the file to identify whether or not the advice was appropriate?---Yes, that's right.

45 How can it be that you don't have enough information on client files to determine whether the advice that was given was appropriate?---Well, I believe that's referring to cases that are under investigation that are going through remediation. And during that process, what sometimes happens is that there needs to be a – as part of the

remediation process, a case assessor has to reconstruct, if you like, some of the evidence to determine whether, in fact, the – what the advice outcome should have been or ought to have been to put the customer back into the situation that they should have been in. So for some of those cases there – there isn't evidence but we
5 have – if we know – if we have constructed – done that construction, we have – and done the case assessment and found it to be an inappropriate outcome, we've included that as an instance.

10 So does that mean that you've restricted the information in this table to instances where the advice of the adviser has been called into question in some way and there is an investigation or a reconstruction, as you described it, underway to work out whether the advice is inappropriate?---No, it also includes audit results as well.

15 So audit results and instances where the advice has been called into question?---Yes, and incidents and complaints and cases that have gone to our customer advocacy in some years, but not all. And, sorry, that's the only ones I could recollect. There may be others I've mentioned in my statement.

20 Have you identified every instance of inappropriate advice given to customers over this period by an ANZ Financial Planning adviser or one of the authorised representatives of these three groups?---No, in the sense that if the question is have we identified any possible instance that there could be, we don't know how many possible instances there could be in the whole of the – of the business. That is how many that have been detected and we've taken a cautious approach to how we've
25 answered that question through the process that I've described in my witness statement.

So it's only the instances you're aware of?---That's correct.

30 And then you've excluded things from this table. You tell us in your statement that you've excluded advice that's currently under investigation as potentially inappropriate?---Yes. So that was what I referred to earlier where a case officer might be reviewing the files or that there is files in the queue to be reviewed.

35 So that suggests that these figures will understate the ultimate figures; is that right?---In some cases, but there's also double counting in those numbers as well.

You've also excluded from the table analysis of records filed electronically in electronic systems of your aligned dealer groups?---For certain earlier periods, yes.
40

And you've excluded analysis of hardcopy records held by your aligned dealer groups prior to July 2014 because you tell us it's not practicable to interrogate that source of data?---Yes, in the time that we had available, that's correct.

45 So shouldn't those records have been kept in a way that allows ANZ to review them in a timely fashion to decide whether the advice that has been given is appropriate?---Well, in this case we're referring to audit results that were in

hardcopy. We don't track the – so we've been responsive to this – this question and taken a cautious approach but we don't track inappropriate advice in the way that is responsive to this question.

5 Do you mean by that that it's not possible to identify every instance of inappropriate advice?---Yes, as I said before, that's correct, but we do track – we do track instances of inappropriate advice in a number of different ways.

10 Through the audit process, you said, through customer complaints, through your customer advocate?---Yes. So – well, we track inappropriate advice through advisers. So advisers where their conduct has found to warrant further investigation, so we track it through those advisers. Then we track the potential impacted customers from – in relation to those advisers. We track the results of the case assessments for those cases for each of those advisers, what the themes of the
15 detriment have been, whether there has been financial detriment or non-financial detriment offers that – of compensation that have been made. We track audit results and themes from different audit questions that may show trends relating to inappropriate advice and they're discussed at the risk forums. We track complaints and trends in complaints. We track incidents and – and also theme those and look at
20 trends in incidents as well. So advice – adviser audit failures, for example, and other incidents that may not arise as a result of audits are also tracked through the incident management systems. They're the ones I can recollect at the moment.

25 So with all the caveats and exclusions that you've identified in your statement about this table, we can see that your table identifies that the total number of identified instances of inappropriate advice in 2008 was 60?---Yes, that's – that's correct.

Then if we go to 2013, the total number of instances, on my maths, is 191?---Yes.

30 And then in 2014, it goes up again to 1041?---Yes. I'm – I'm going to assume your maths is correct.

Yes. Sorry, because we don't have a total column in your table - - -?---Yes, I understand. I'm sorry for that.

35 No, no, that's all right. But what I want to suggest to you is that there is an escalation in the total number of instances of inappropriate advice that are identified. As I said, in 2014 it was – I'm sorry, 1401. And then in 2015, it goes up to 2810. In
40 2016, it's 2499, a slight dip, but what I want to ask you about is why there's such a steep increase in the number of instances of inappropriate advice in your table in those years?---So that's years 2014?

Yes, so - - -?---'15 – sorry, can you just - - -

45 Yes, so 2013 was 191?---Yes.

2014, 1401?---Yes.

Then 2810, then 2499 - - -?---Yes.

- - - in 2016?---Yes. Well, as I said before, there is – there’s a number of caveats in relation to that information. So prior to 2014 there would be instances of
5 inappropriate advice that are recorded but not recorded centrally that we’ve not been able to analyse in – in the time that we had. Since 2014 and – and certainly more prevalently since 2016, we have included all instances of not just when an adviser fails an audit as one, but we’ve actually looked through the audit questions and – and identified those questions that we believed went to the response of 2(i)2. And
10 recorded each of those question failures as a failure. So while that has contributed to, you know, a lot of the escalation, I would also say we are detecting many more instances now. We’re detecting many more instances because our control environment has improved and because we’ve also done look-backs over years as well and identified other instances.

15 So you say you’re detecting more instances, and the control environment has improved, and we’ve also seen from the evidence in your statement I took you to earlier that the number of advisers across the wealth entities has reduced?---Yes, that’s correct.

20 And the ratio of monitoring and supervision has generally improved?---Yes.

All right. So do those changes suggest that there’s likely to be at least a similar number of instances of inappropriate advice in the earlier period, but you haven’t
25 been able to identify them because you had so many more advisers, you had inferior compliance systems and processes, and you had inferior monitoring and supervision?---I can’t say for sure what the number of inappropriate instances should be, and as I said before, there are instances that have been identified but that are not included in these numbers. It is certainly the case that our – not all but many of our
30 controls have improved over the – over the – that period, and our supervision numbers have increased.

Well, could I just take you to some documents from the period prior to 2015?---Yes.

35 That’s the period when your table suggests that there were far fewer instances of inappropriate advice. And the first is ANZ.800.225.1484. And we see that this is a report to the risk and compliance board committee prepared for its meeting on 17 August 2015. Do you see that, Ms Rixon? You have it on the screen. It’s not part of your statement. It was part of Mr Whereat’s statement?---Right. Okay.

40 Can you see that’s a report to the risk and compliance board committee, 17 August 2015?---Yes.

45 Can I ask that you look at page 1507 which will come up on the screen. And this is a table that summarises the results of advice quality reviews. That’s a compliance audit. Is that right?---Yes, it is.

Conducted across ANZ Financial Planning, RI Advice, millennium3 and Financial Services Partners in the period from 1 June 2013 to 30 June 2015. Do you see that date range in the heading?---Yes.

5 So at this time and now advisers were audited at least annually?---Yes, that's correct.

And if an audit identified an issue, it was rated as high, medium or low, depending on how significant it was?---Yes, that's correct.

10 And what this table shows us is the top high rated issues identified in audits over this period?---Yes, I think that's right. Sorry, I haven't seen this document before.

We see from this document that the top high rated issue from audits in this period is a failure to comply with the requirement that the advice is likely to be in the best interests of the client?---Yes, I can see that.

15

And in ANZ Financial Planning, five per cent of files didn't comply with that requirement?---Yes.

20 And the result is roughly the same in RI Advice and millennium3?---Yes, that – that's right.

And we know from your statement that those three companies consistently account for the majority of ANZs employed financial advisers and authorised representatives?---Yes, that's correct.

25

So across those three companies, five per cent or one in every 20 pieces of advice given to customers failed to meet the requirement that the advice was likely to be in the best interests of the client?---Of the sample selected, yes, that's correct.

30

Okay. And if we turn to the following page, 1508, this is a similar table that shows the top rated medium – medium rated issues from the audits in this period?---Yes, that's correct.

35 And we see that the top medium rated requirement that was not met was:

The advice document discusses the expected advantages and implications of the recommended strategy.

40 ?---Yes, that's right.

And in ANZ Financial Planning, 10 per cent of the audited files failed to meet that requirement?---Yes, that's right.

45 And in millennium3 it was over 15 per cent?---Yes, that's correct.

And the fourth most common issue flagged as a medium rated issue here was:

A failure to comply with the requirement that the adviser has taken appropriate steps to conduct relevant product research.

?---Yes, that's correct.

5

And in ANZ Financial Planning, almost seven per cent of the files failed that requirement?---Yes, that's correct.

And in millennium3 it was almost 10 per cent?---Yes, that's correct.

10

How can advice be in the best interests of the client if the adviser has not taken appropriate steps to conduct relevant product research?---Well, clearly, the adviser hasn't gone through the steps that are required to – or there is no evidence, one or the other, that the adviser has not gone through the steps required to do the product research. They may or may not have done that, and that may or may not have resulted in a detriment to the customer.

15

But what these audits are showing us is that the files do not establish that these things were done?---Yes, I agree with that.

20

And the audits are meant to be representative – what's sampled in an audit is meant to be representative of what's occurring across the business?---Yes, that's true.

Yes. And then if we then turn to 1510, we see there that at this time in millennium3, 11 per cent of the advisers were providing advice to customers that were rated as high risk advisers?---Yes, that's right.

25

And six per cent of ANZ Financial Planning advisers were high risk advisers providing advice to customers?---Yes, that's correct.

30

Do you think these results are acceptable?---No, I think they're very regrettable.

And these results indicate, don't they, that at least in this period prior to 2015, ANZs systems and processes weren't adequate to ensure that customers were given appropriate advice?---Yes, in the sense that many of them had deficiencies in them.

35

Yes. Would you agree that ANZ has been aware for many years that there was a high risk that its customers would receive inappropriate advice?---No, I don't agree with that.

40

All right. Could I show you some documents. The first is ANZ.800.038.3565. Do you see, Ms Rixon, that this is a presentation to the business risk and compliance committee by Mr Stephen Blood the head Of Risk & Compliance Solutions in January 2014.

45

MS WILLIAMS: Commissioner, I'm sorry to interrupt, I indicated to my learned friend that this witness prefers to have documents in hardcopy if possible. We have a hardcopy of this particular document, if that's convenient.

5 THE COMMISSIONER: Yes, thank you.

MS ORR: Ms Rixon, what was the role of the Business Risk and Compliance Committee?---The role of the Business Risk and Compliance Committee is the divisional risk committee that is responsible for the oversight of the risk management framework for the wealth division.

10 Thank you. Could I ask you to turn to 3566 in this document, the second page, and we see there that the purpose of this paper is to seek committee approval of global advice and distribution's residual high risk until 30 June 2014?---Yes, I do.

15 And the background is that:

20 *On 11 December 2013, Advice and Distribution's residual high risk of "delivery of non-compliant advice and financial services" –*

had been submitted to the committee for acceptance?---Yes, I do see that.

25 What does it mean to "accept risk"?---The risk acceptance under the ANZ framework is an acceptance of the – so first of all, the business does an assessment of the risks using a probability and consequence methodology, and the role of the business risk and compliance committee is to review the proposed treatments for that risk to lower that risk down to a – a lower level, and to accept or not those treatments and the timeframes in which they are required to be completed, and then to oversight the progress of that.

30 So this document is January 2014, and we see on this page that at the December 2013 committee meeting:

35 *The committee had decided not to accept the risk at that time and had asked for a more detailed description of the risk associated controls and rationale as to why the treatments would reduce the risk to minimum.*

?---Yes, I see that.

40 And then:

At this meeting, a risk treatment acceptance plan was submitted.

?---Yes, that's correct.

45 And we see at – on this same page that the recommendation of the committee at this meeting was to:

Approve the risk treatment acceptance plan for the high residual risk of delivery of non-compliant advice and financial services until 30 June 2014.

?---Yes, that's correct.

5

So the risk is accepted at this meeting?---The risk treatment plan is accepted, yes.

And if we turn to 3568, we see appendix A?---Sorry, what number was it?

10 3568, this is the risk treatment plan acceptance?---Yes.

We see the risk description there is the delivery of non-compliant advice and financial services which is described as:

15 *The risk of significant reportable breaches of the legal requirements relating to the provision of financial advice and services to clients.*

?---Yes, that's correct.

20 And:

The key scenario for the risk is the failure to provide advice that is in the best interests of the client.

25 ?---That's correct.

And further down in that row:

30 *ANZ is exposed to this risk in the context of four separate licensee businesses, each of which have different value propositions, operating models and systems; 1300 geographically dispersed advisers providing personal financial advice to clients in accordance with principles-based legislation which is both complex and onerous; and formulation, production and implementation of advice is largely conducted by advisers without preventative oversight.*

35

Why no preventative oversight, Ms Rixon?---I'm – I'm not certain what the author of this document was referring to then with that comment. There's certainly – as I understand it, I wasn't in my role then, but there certainly were preventative controls such as on-boarding and due diligence, etcetera, in place. So I don't know what that is exactly referring to. Sorry.

40

We then see in the next row the impact of acceptance of this risk. And we see that that's divided into four different impacts. A compliance impact:

45 *These events would be breaches of key regulatory requirements contained in the Corporations Act, ASIC Act and AFSL conditions. We would expect a number of insignificant instances each year that are not systemic. Some*

breaches could result in regulatory reporting action. However, ANZ would generally be left to manage its own rectification activities.

And this is described as:

5

A moderate consequence.

?---Yes, that's correct.

10 And then there's recognition that:

The compliance breaches would also lead to the following financial and reputation impacts: financial loss is equated to an expectation that there would be up to –

15

and, Commissioner, there are redactions in this document that I've discussed with my friend this morning. They have been made in error and I will read the figures that have been redacted and this document will be replaced in the online court book.

20

MS WILLIAMS: Commissioner, can I just indicate, I apologise to my learned friend, I did indicate that the redactions were in error. It has subsequently been checked they were not in error but ANZ does consent to the information being read out and the redactions will be removed, as my learned friend indicated.

25

THE COMMISSIONER: Thank you.

MS ORR: So:

30

The compliance breaches would also lead to the following financial and reputation impacts: financial loss is equated to an expectation that there would be up to \$10 million in client complaint losses and \$10 million in remediation, \$20 million in total. This would equate to a moderate loss.

35

?---Yes, I see that.

So you see there the committee is being told that it's a moderate loss to ANZ to have \$10 million in client complaint losses and \$10 million in additional remediation?---Yes, I see that.

40

There's also a reference to reputation:

These events –

45

and the events we're referring to are delivery of non-compliant advice and financial services:

...could bring about a moderate consequence (to reputation) with limited national media coverage and/or some customer loss.

?---Yes, I see that.

5

And the residual risk assessment is that:

The residual risk has been assessed as a high risk based on a moderate consequence and probability of moderately likely.

10

?---Yes, I see that.

And the committee is asked to accept the high residual risk until 30 June 2014 and approve the associated treatment plans and time lines?---Yes, I see that.

15

And then we come to the – a summary of what is said to justify that acceptance of risk. There are 10 key controls in place and they're detailed on subsequent pages, and the acceptance period provides sufficient time for advice and distribution to complete the treatment of five of the controls assessed to be ineffective and conduct operational effectiveness testing of those controls which have been treated and are now perceived to be effective.

20

?---Yes, that's right.

25 Can I just take you to the discussion of those controls at 3570. You see there the reference to Controls Testing Outcome and number of ineffective controls: five ineffective controls have been identified?---Yes, I see that.

30

And we see from the next row down that those five ineffective controls are identified as relating to:

Advice assurance, consequence management of advisers approved product list, governance process, licensee standards and advice document management.

35 ?---Yes, I see that.

And if we turn to 3572, we see a reference to one of those ineffective controls which was the licensee standards?---Yes, I see that.

40

They were rated as not effective?---Yes, I see that.

Because there were gaps that existed in a number of existing licensee standards that are overdue for review and update?---Yes, there were a number of licensee standards that were overdue for review. I agree with that.

45

And at 3573, another of the ineffective controls was advice assurance. That's audits and pre-vetting?---Yes, I see that.

And a further control that was rated as ineffective at 3574 was the Consequence Management Framework?---Sorry, which one are you on to now?

5 Row 7 on page 3574?---Yes, although I do note on page 3573 there seems to be an inconsistency in the rating there. I'm not sure why that was. As I said, I – I'm – I was only looking at this document historically but it does say although it rates the advice assurance control as not effective, over in the description it then says that the existing advice assurance and pre-vetting controls are perceived to be operating effectively. I think this actually is talking about other surrounding controls.

10 You accept that this was advice assurance and pre-vetting of advice was identified as an ineffective control?---Well, it – it seems to be inconsistent in that it's rated as not effective but then the description says it is effective.

15 And refers at the same time to management investigating improvements?---It does. It talks – and it also talks then in the control gap around - - -

All right?--- - - - the scope of the control being expanded.

20 Can I take you to one last page in this document, which is 3581, which is a residual risk heat map?---Yes, I have that.

25 And we see there that the risk of delivery of non-compliant advice and financial services, which is risk number 3, is identified as being moderately likely with moderate consequences?---Yes, I see that.

30 And based on this document, the business risk and compliance committee decided to accept the high risk of delivery of non-compliant advice and financial services until 30 June 2014?---It accepted the risk treatment plan, yes.

And by doing that, accepted the risk?---Well, the risk has been assessed. It's – it is – it was assessed as high and the role of the business risk committee was to review the treatment plan and either accept that treatment plan or not.

35 Yes, but I just want to be clear because the language in this document at 3566 is language of seeking approval of the residual high risk?---Yes. I can see the language but the risk management framework is actually about accepting the treatment plan.

40 But sitting behind that is acceptance by the business of this ongoing risk which the business is attempting to deal with through the treatment plan; is that right?---Yes, it's the oversight and monitoring of that treatment plan, and an acknowledgement that a high risk of those consequences exist.

45 Yes. Could I tender that document, Commissioner.

THE COMMISSIONER: Business risk and compliance committee report January 2014, ANZ.800.038.3565 will be exhibit 2.154.

**EXHIBIT #2.154 BUSINESS RISK AND COMPLIANCE COMMITTEE
REPORT JANUARY 2014 (ANZ.800.038.3565)**

5 MS ORR: Could I ask that you now look, Ms Rixon, at ANZ.800.052.4780. There may be a hardcopy that can be provided to you. This is – you can see from the screen for now – the agenda for a meeting on 26 August 2014?---Yes, I do see that.

10 And it's a meeting of the global wealth business risk and compliance committee?---Yes, that's right.

And you were the chair of that committee?---Yes, I was.

15 And acceptance of risk for the delivery of non-compliant advice and financial services is discussed in this meeting at 4799?---Yes, that's correct.

And at 4798, we see that the committee approves the residual high risk for a further period until 30 June 2015?---Yes, that's correct.

20 But for this meeting, the risk is split into two. We see this on 4798. That risk of delivery of non-compliant advice and the risk of breach of financial services licence obligations?---Yes, I see that.

25 If we turn to 4799, which is the risk treatment plan that accompanied the acceptance of this risk, we see the treatment of one of those risks, which is the breach of AFSL obligations?---Yes.

30 And this is the risk of significant reportable breaches of the legal requirements relating to the obligations and conditions arising from the holding of a licence?---Yes, that's right.

And you see further down in that row:

35 *ANZ is exposed to this risk in the context of monitoring and supervision controls are weighted towards detective controls with some preventative controls in place.*

?---Yes.

40 And there's a reference to the 1300 advisers again:

Investment in technology to enhance the advice process, provide preventative oversight of advice is lacking.

45 ?---Yes, I see that.

Do you agree with that proposition, Ms Rixon?---Yes, I – and I – I think I spoke of that before and in my witness statement, in part, yes.

There is also a reference to:

5

Increased surveillance expectations in a heightened regulatory environment.

What's that referring to, Ms Rixon?---I – I'm not sure. I – I can – I don't have a strong recollection of that, but at the time that would have been around when
10 potentially the CBA Financial Planning issue was out in – into the – was being talked about externally, and it may have been a reference to the heightened environment. I'm not sure.

And we see there again a discussion of the impact of acceptance of the risk, which
15 refers to financial loss, still put at \$10 million in client complaint losses and \$10 million in remediation, and the risk of reputation damage as a moderate consequence as well?---Yes, I see that.

Do you accept that this document shows in the Risk Description row an acceptance
20 by ANZ that there wasn't a sufficient emphasis on preventative controls to ensure that customers weren't being provided with inappropriate advice?---I accept that it says that we're exposed to the risk in that context, yes, that more preventative controls – sorry, preventative oversight of advice is lacking.

25 Yes?---It certainly says that.

And that controls were weighted towards detective controls which identified
inappropriate advice after it had been given?---Yes. I – I agree with that, in the sense
30 that the detective controls that were in place were direct. So in other words, like the audit process, they picked up something that either was or wasn't there. There were and have been a number of preventative controls in place in the business for long periods of time, but I – in my witness statement I describe them as not directly preventing instances of inappropriate advice because they create an environment that helps to lower the risk. So, for example, on-boarding processes, but they don't
35 necessarily directly prevent instances of inappropriate advice.

But this document tells us that there wasn't enough weighting towards those
measures at this time?---Yes. And I believe that is reflecting that environment that
40 I've just described.

And at 4801 of this document, we see again the reference to the controls testing
outcome. And this time there are six ineffective controls identified. Four of them
identified as ineffective and two identified as perceived ineffective?---Yes, I see that.

45 And those controls we see from this final row that were ineffective, again, related to the audit process and the pre-vet process and incident management?---Do you mind if I look at the later context?

No, not at all?---Yes. Yes, I see that.

Yes. And could we just go to the heat map again for this document which is at 4817.
And by this time, the risk of delivery of non-compliant advice has been increased
5 from moderately likely to likely?---Yes, I see that.

So the risk treatment plan has not reduced the risk, the risk has increased?---Yes.
That's what it shows.

10 But, nonetheless, the business risk and compliance committee decided to accept that
high risk again until 30 June 2015 with another risk treatment plan?---Yes, that's
correct.

Thank you. I tender this document, Commissioner.

15

THE COMMISSIONER: Global wealth business risk and compliance committee
meeting papers 26 August 2014, ANZ.800.052.4780 is exhibit 2.155.

20 **EXHIBIT #2.155 GLOBAL WEALTH BUSINESS RISK AND COMPLIANCE
COMMITTEE MEETING PAPERS DATED 26/08/2014 (ANZ.800.052.4780)**

MS ORR: Then on 1 July 2015, the same committee, the business risk and
25 compliance committee decided to continue to accept the high risk until 30 June
2016?---Yes, there were additional treatment plans that were approved, and
oversighted, and the risk was accepted.

Again?---The risk treatment plan was accepted.

30

Until 30 June 2016. And then there was a meeting of the same committee again on
26 June 2016. And could I ask you to look at ANZ.800.053.6550. Again, discussion
of acceptance of the risk of delivery of non-compliant advice and breach of ANZs
Australian financial services licence. And this time we see from 6573 that the
35 committee is asked to extend the risk acceptance again until 30 June 2017?---Yes,
that's correct.

And at 6572 we see that, again, deficiencies in the systems for monitoring and
oversight of advisers are identified. I will just wait till these pages come up on the
40 screen. We have that page now. I wanted to direct your attention to a paragraph in
the middle of the page, Ms Rixon, which relates to this risk of delivery of non-
compliant advice:

The key purpose of monitoring and supervision activities, governed through
45 ORMMF –

what is ORMMF?---That's the operational risk framework of ANZ.

Continuing:

5 *The key purpose is to identify individual and systemic situations where advisers fail to provide quality advice. Many key controls remain reactive with a strong desire (through investment outlined below) to move to a more preventative control environment to identify emerging risks around quality of advice prior to customers being detrimentally impacted. Improving the effectiveness of current monitoring and supervision activities while investing in the development of preventative measures will be core to reducing residual risk within Wealth Australia's risk appetite.*

10

?---Yes, I see that.

15 So still, in June 2016, ANZ has not fixed the need to wait towards preventative measures rather than detective measures, and there is still inadequate investment in the development of preventative measures?---No, I don't agree with that, in the sense that there were – there was considerable strengthening in the control environment. That paragraph is making reference to the fact that ANZ had at that time been investing in the development of preventative measures, but that they had not come to

20 fruition yet.

Let's look further at that, Ms Rixon. I will tender this document and I will then take you to the minutes of the meeting that considered it?---Yes.

25 THE COMMISSIONER: Business risk and compliance committee meeting papers 23 June 2016, ANZ.800.053.6650 exhibit 2.156.

30 **EXHIBIT #2.156 BUSINESS RISK AND COMPLIANCE COMMITTEE MEETING PAPERS DATED 23/06/2016 (ANZ.800.053.6650)**

35 MS ORR: Could I ask you to look at ANZ.800.052.8401 which is the minutes of the committee meeting held on 23 June 2016?---Yes, I have that, thank you.

You were present at the meeting, Ms Rixon, as the chair?---Yes. Yes, I was.

40 And we see from 8403 that the committee then in this meeting, in June 2016, again approved the extension of the risk acceptance in relation to delivery of noncompliant advice and breach of financial services licence obligations, extended it to 30 June 2017?---Yes, I see that.

45 And do you see there that will the committee noted in the third paragraph down, second sentence:

This risk acceptance has been extended four times, acknowledging one of the root causes of the continual delay is the inability to get the appropriate technology in place to enhance the control environment.

5 ?---Yes, I see that.

As the chair of this meeting, did it concern you that this was now the fourth time that the committee had been asked to accept that there was a high risk that customers of ANZ would not be provided with quality advice?---I was certainly concerned that the risk had been extended. The risk is not a high likelihood that customers won't be provided with high quality advice. The risk is the likelihood of consequences – of those consequences occurring, which is systemic instances of systemic reportable breaches that require reporting, and those other things that were – that were read out in the risk acceptance. It's - - -

15 And just pausing there, it is that risk that was identified as high. That systemic risk and which had been - - -?---It – it's the risk that systemic instances of systemic financial advice may result in reportable breaches to the regulator, regulator having intervention by investigations by regulators, the consequences that were mentioned in relation to financial loss and customer loss. It isn't the probability or likelihood of an instance of inappropriate advice.

No, it's the probability or - - -?---It's - - -

25 - - - likelihood of systemic provision of noncompliant advice and breach of AFSL obligations?---It's – it's the probability of systemic instances that may lead to a reportable – to reportable breaches.

30 Yes. Well, that's a matter of significant concern, isn't it, that your business, ANZ, recognised that that was a high systemic risk and extended the risk under treatment plans that did not reduce the risk over four consecutive years?---Yes, that's very regrettable. It has reduced the risk but the risk has – has not come down to where we would like it to be.

35 Well, did it concern you at this time, when you were chairing this meeting last year, that it was taking so long to implement changes that had been identified by this committee as necessary, back in 2014? Sorry, I referred to this as the 2017 meeting. The 2016 meeting?---Yes, I was concerned that the technology advancements that we were making were not in place now. Of course I was concerned.

40 Why did it take so long to get the technology in place?---Well, there was a number of technology initiatives that were going to help us to create a more preventative environment. One of those was advanced data analytics. A version of that was put in place between 2014 and 2015. And then another vendor was looked at around 45 2015/16, I believe, but it wasn't until mid-2016 that we found a solution that we did a proof of concept on that we thought would work. So the reality is in relation to advanced data analytics, it's a very embryonic area for this industry and, in fact, for

operational risk. And so it has taken us a long time, too long, I accept, much longer than we would like it to, to build a system which we're about to launch the first indicators next month that will ingest whole systems and be able to give us a much more predictive environment. Another significant technology advancement in the preventative controls is a system called Grow For Advice for an ANZ financial planner that I referred to in my statement. Once again, that – we did do a number of searches. We started with another vendor in late 2013, early 2014 that didn't deliver results, and we started to – we decided that we – the only option was to build that platform ourselves. We commenced that in mid-2014. It has been a very, very complex project that involves over 180 algorithms to provide a much more guide rail based preventative way of providing insurance advice and we're scaling that out to superannuation and retirement planning. In relation to other technology initiatives, I've earlier referred to the more comprehensive use of XPLAN and adviser hub. Regrettably we should have started those earlier.

15

I tender this document, Commissioner.

20

THE COMMISSIONER: Minutes of the business risk and compliance committee meeting of 23 June '16, ANZ.800.052.8401 is exhibit 2.157.

EXHIBIT #2.157 MINUTES OF THE BUSINESS RISK AND COMPLIANCE COMMITTEE MEETING DATED 23/06/2016 (ANZ.800.052.8401)

25

MS ORR: That was June 2016, Ms Rixon. Can I take you to a document from November 2016 which is ANZ.800.165.0819. So this is a few months after the last meeting and it's an internal audit update for the aligned dealer groups for the risk and compliance board committee meeting that was scheduled to take place on 21 November 2016?---Yes, I see that.

30

Do you see there at the executive summary, that:

35

The audit of the aligned dealer groups was self-disclosed adverse, with a finalised 3B rating.

40

Could you explain what that means?---The rating of an audit is split into the numbered rating, which is one to four, I believe at that time, and a management awareness rating of A, B and C. So a rating 3 self-disclosed means that management has disclosed that it has some deficiencies in its control environment and a rating 3 means that there are issues within – within a number of controls in its business that have – that may have a – may relate to a material deficiency in the control, and – and the management awareness rating is a rating A, B or C, which relates to how aware management is of the control environment and the state of that control environment.

45

So a rating B means that management has an awareness of the – of the state of its control environment.

We see that the document records that:

5 *A number of significant issues were identified by management and by internal
audit. The adverse rating on the control framework is not a reflection of the
levels of effort and engagement by management to date, but is rather an
10 indication of the level of residual risk in the ADGs business given the increased
regulatory expectations across the industry. A quantum shift in investment is
required to enable the ADGs, the aligned dealer groups, to meet these
expectations, manage change to address regulatory reform, deliver on
15 customer remediation programs, improve the control environment and deliver
on the long-term strategic objectives of the business.*

So what I want to put to you is that this shows that even in late 2016, ANZ still
hadn't made the required investment to create an adequate control environment to
15 ensure that customers received adequate advice?---I have recently read this
document, and I – I don't – I don't know why that says what it says. I don't agree
that at that point in time there needed to be a quantum shift in investment, and I – and
I – I have that view because as I was – as I was discussing, there was, at that time, a
20 considerable amount of investment that was happening in – across various
technology initiatives. I accept that they hadn't completed at that time. I don't know
exactly what else that might have been referring to.

This was a paper that went to your committee?---No. It – that's not a paper that went
25 to my committee. That went to the aligned dealer group risk and compliance board
committee.

I see, so a different risk and compliance committee?---Yes.

I want to put to you that instead of making the investment in an effective way to
30 ensure these preventative systems were in place promptly, ANZ continued to accept
the high risk that customers would receive non-compliant advice and that there
would be breaches of ANZs financial services licence?---No, I don't accept that. As
I've said before, there were some cases on reflection where ANZ could and should
have commenced some technology initiatives earlier. Other technology initiatives, I
35 don't – my view is I don't really believe we could have started them any earlier,
because there wasn't those kinds of solutions in the market.

We know - - -

40 THE COMMISSIONER: Can I interrupt and just – the premise for your answer is
that the only solution is technological. Can you explain to me why that seems to be
the premise for the answer? Do you see the problem that I'm trying to explore or do
I need to explain it better than I have?---I think I understand, Commissioner.

45 Yes?---I – I'm certainly not saying that technology is the only answer. What I am
saying, though, is that many of the controls in the industry today are either controls
that are preventative only in the sense of they broadly create an environment, such as

making sure that you on-board appropriately qualified people. So they broadly create an environment that lowers – tries to lower the risk. But they don't directly prevent an adviser from making a mistake or from doing something – some sort of dishonest conduct. My – and so whilst we have an industry and environment where the detective controls we rely on, so those that detect the advice, are after the fact, like an audit, and only create – only look at a sample. There will be limitations on how – how much you can mitigate the risk or lower the risk. The – what technology gives us the opportunity to do is to, on the one hand, have more predictive data analytics where we can work out what are the – what's the data or the indicators that can actually tell us or give us an indication where an adviser might – or an – or an experience might be at risk of a customer receiving inappropriate advice, and for a platform like Grow For Advice, what are the systems we can put in place that guide the adviser through the process with the customer, in a lot of cases, that make it much, much easier for them to get it right and to pick up where they get it wrong very quickly. And in many cases before the advice is implemented. And that was what I meant by those statements, Commissioner.

Why is that a problem – I'm not saying the answer is one way or the other but why is that a problem that cannot be addressed by different supervisory, different management real life human beings supervising and managing what advisers are doing?---I think it can be to an extent but, like I said, it – and you can see we've improved our – our requirements for supervision and how we – what we require of our supervisors, and that certainly, I think, does make a significant difference. But they – you know, there is no one sort of checking everything that goes – every piece of advice that goes out the door. And so while – while we have that environment, what we're trying to do is look at all the different ways in which we can lower the risk that a customer receives a bad outcome to as low as we possibly can, and I believe that technology is – I don't want to use this kind of language, but it's colloquial but it's a game-changer, if you like.

Ms Orr.

MS ORR: We know, don't we, Ms Rixon on 14 June last year, the issue of acceptance of this risk for non-compliant advice and breaches of ANZs financial services licence came back before the committee with you as chair again?---Yes, it did.

And the committee was asked to grant another extension, this time until 30 June this year?---Yes, that's correct.

And the committee granted that extension until 30 June this year, didn't it?---Yes, it did.

And doesn't the continued need for ANZ to accept a high risk that its customers will be provided with non-compliant advice in a systemic way, as you point out, leading to breaches of your financial services licence, indicate that for many years the systems and processes at ANZ have been inadequate?---No, I don't accept that our

systems and process have been inadequate in whole. I do accept that there have been certain controls that have had deficiencies in them over the past periods that you are looking at.

5 What do you think, Ms Rixon, is an acceptable level of risk that customers will be provided with non-compliant advice?---Well, I would like there to be no customers that are provided with non-compliant advice. And I – I would certainly like it to be very, very low.

10 THE COMMISSIONER: But it's a human system. People make mistakes. People do wrong things. What should be the target? The target should, no doubt, be zero, and we should always be trying to get to zero, but we've got to recognise it's a human system. What sort of number should be accepted in the real world rather than the ideal world?---That's a very difficult question, Commissioner.

15 It is, isn't it?---I – I – I mean, I can – what I can say is that we do examine these things and turn our mind to them from time to time in a risk management framework because, as you say, it's – it's impossible to reduce it to zero because humans and technology will make mistake. But we do look at things like what is a tolerance
20 threshold for a reportable event, if you like. So in other words, a reportable breach which is an instance of – of systemic financial advice, and we do look at that being something very low which could be in the order of two per six months or – and then we can also look at things like how quickly they close, because when things go wrong how quickly does the organisation then address – investigate, address and
25 remediate that. So there's a number of different measures that you can have tolerance thresholds for that's – that is – that's looked at from the perspective of historical versus what you might want it to be forward-looking.

30 And for the client the only acceptable outcome is that the advice is sound and proper advice. Do you accept that?---Indeed. I do.

35 But from the business point of view where you are dealing with the overall mass of the business, are you able to put any numerical value – and it may be you can't – but are you able to put any numerical value on what you think a realistically attainable level of – whether you put it acceptable advice or unacceptable advice should be in today's circumstances?---Well, I think you can look at, as I've said, how many instances that you have that are reportable due to a systemic issue. I think you can look at what are the adviser audit pass rates and what is a tolerance threshold for – for those. I think you could look at how quickly, when something goes wrong, that
40 you remediate that.

Find it and fix it?---Yes.

45 Yes. Yes.

MS ORR: I have no further questions, Commissioner. I need to tender the last document that I referred to, which was the - - -

THE COMMISSIONER: That's the internal audit update align dealer groups risk and compliance board committee, 21 November '16, ANZ.800.165.0819 is exhibit 2.158.

5

EXHIBIT #2.158 INTERNAL AUDIT UPDATE ALIGN DEALER GROUPS RISK AND COMPLIANCE BOARD COMMITTEE DATED 21/11/2016 (ANZ.800.165.0819)

10

THE COMMISSIONER: Now, does any party other than ANZ seek leave to cross-examine Ms Rixon? No. Ms Williams.

MS WILLIAMS: There's nothing arising, Commissioner.

15

THE COMMISSIONER: Thank you.

MS WILLIAMS: Might Ms Rixon be excused?

20

THE COMMISSIONER: Yes, Ms Rixon, thank you for giving your evidence. You are – you may step down and you are excused?---Thank you, Commissioner.

<THE WITNESS WITHDREW

[11.55 am]

25

MS WILLIAMS: I am sorry, just pardon me one moment, Commissioner.

30

MS ORR: Before we complete the ANZ case study within that topic, Ms Williams wishes to tender a document, Commissioner. And we have no objection to that.

THE COMMISSIONER: Yes.

35

MS WILLIAMS: I'm grateful to my learned friend. There is one document relating to the recruitment of Mr Doyle, the subject matter dealt with in Mr Whereat's evidence. I have shown the document to my learned friend. It's ANZ.800.511.1854.

THE COMMISSIONER: Yes.

40

MS WILLIAMS: I tender that document, Commissioner.

THE COMMISSIONER: Emails between Warner and McKinnon re Doyle, 22 and 23 April 2013 ANZ.800.511.1854 exhibit 2.159.

45

EXHIBIT #2.159 EMAILS BETWEEN WARNER AND MCKINNON RE DOYLE DATED 22/04/2013 AND 23/04/2013 (ANZ.800.511.1854)

THE COMMISSIONER: Yes.

MS ORR: Commissioner, the third and final entity with which we will examine the provision of inappropriate advice is AMP. Would the Commissioner give us a
5 moment to reset the bar table?

THE COMMISSIONER: How long do you need?

MS ORR: Just two minutes.
10

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

MS ORR: Thank you, Commissioner.

15 THE COMMISSIONER: Yes.

ADJOURNED [11.57 am]

20 **RESUMED** [12.04 pm]

THE COMMISSIONER: Yes, Ms Orr.
25

MS ORR: Commissioner, I call Ms Sarah Britt, B-r-i-t-t.

THE COMMISSIONER: Ms Britt.

30 **<SARAH BRITT, AFFIRMED** [12.05 pm]

<EXAMINATION-IN-CHIEF BY MR HOLLO
35

THE COMMISSIONER: Do sit down, Ms Britt. Yes, Mr Hollo.

MR HOLLO: Your full name is Sarah Caroline Britt?---Correct.
40

And you're head of advice compliance at AMP?---Correct.

Your business address is 33 Alfred Street, Sydney?---Correct.

45 You have received a summons, Ms Britt, from the Royal Commission to give evidence?---Correct.

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

I tender the summons.

5 THE COMMISSIONER: Exhibit 2.160, summons to Ms Britt.

EXHIBIT #2.160 SUMMONS TO MS BRITT

10

MR HOLLO: Ms Britt, you've prepared a statement in response to some questions asked by the Commission?---Yes, I have.

And you prepared a statement under Rubric 2.27, dated 10 April 2018?---Correct.

15

And you have that statement with you?---Yes, I do.

Do you wish to make a clarification in relation to your statement?---Yes, I do.

20 Does the clarification concern the timing of the revocation of authorisations of one of the advisers who is the subject of your statement?---Correct.

Could you please go to paragraph 34(d) on page 10 of your statement, Ms Britt?---Yes.

25

You there refer to a letter of 23 June 2016 sent by charter to Ms Coleman terminating her agreement and authorisations on 90 days notice?---Correct.

30 Can you tell the Commissioner, please, when Ms Coleman's authorisations were revoked?---Yes. Ms Coleman's corporate authorisation was in fact revoked on 23 June 2016. Her personal authorisation was revoked on 90 days. So that was on 30 September 2016.

35 How did you become aware of those matters?---Subsequent to finalising my statement and submitting my statement, I – I actually undertook an ASIC search and had a look at the ASIC register, and – and realised at that point that actually the – the – that the date for revoking the corporate authorisation was earlier.

40 Thank you. Having addressed the timing of the revocations of those authorities, are you satisfied that the contents of your statement are true and correct?---Yes, I am.

I tender the statement and the exhibits, Commissioner.

45 THE COMMISSIONER: Witness statement of Ms Britt concerning Rubric 2.27, 10 April '18 is exhibit 2.161.

**EXHIBIT #2.161 WITNESS STATEMENT OF MS BRITT CONCERNING
RUBRICK 2.27 DATED 10/04/2018 (AND ATTACHED EXHIBITS)**

5 MR HOLLO: Thank you, Commissioner.

THE COMMISSIONER: Ms Orr.

10 <CROSS-EXAMINATION BY MS ORR [12.08 pm]

MS ORR: Ms Britt, in your position as head of compliance at AMP, you're responsible for the advice compliance team?---Correct.

15

And one of the responsibilities of that team is to escalate and make reports of issues and incidents to the breach committee?---Correct.

20

And immediately before your current role you were the team leader, senior legal counsel, litigation and dispute resolution - - -?---Correct.

- - - at AMP?---Correct.

25

You've worked in the financial services industry since 2004?---Correct.

And you've been put forward by AMP to give evidence about advice given by three financial advisers?---Correct.

30

And the first of those – the name of that adviser has been anonymised in your statement and I am going to refer to him as Mr E. The second is Ms Jennifer Coleman who you have just referred to?---Correct.

And the third is Mr Andrew Palmer?---Correct.

35

And each of those people was an authorised representative of a subsidiary of AMP at the time they provided financial advice?---That's correct.

40

And AMP operates its financial advice business through several entities, including AMP Financial Planning and Charter Financial Planning?---Correct.

Charter Financial Planning has its own financial services licence?---Yes, it does.

45

And AMP also previously had a subsidiary called Genesys Wealth Advisers?---That's correct.

Is that right?---Yes.

It too had its own financial services licence?---Yes.

And it has now ceased operation?---Yes. I think – I think the AFSL still exists but we – there’s no – there’s no active advisers within Genesys. I’m just not sure
5 whether we’ve actually wound up the AFSL yet.

And why are there no active advisers within Genesys?---The intention is that Genesys will cease. I’m just not sure that that has actually happened yet. It’s quite a – can be quite a productive process.
10

And why is the intention that Genesys will cease?---I’m not actually aware what the decision was around that. I – I just know that we no longer have active advisers in Genesys.

15 And the great majority of financial advisers authorised by an AMP licensee are not employed by an AMP entity, are they?---That’s correct.

And about 90 per cent operate as authorised representatives - - -?---That’s correct.

20 - - - of an AMP licensee?---Correct.

Now, the first adviser you deal with in your statement is the person I said I would refer to as Mr E?---Yes.

25 Mr E became an authorised representative of AMP Financial Planning in December 2015?---Correct.

And he was an employed financial planner of a firm that was also authorised as a representative of AMP?---Correct.
30

Now, your witness statement deals with two clients of Mr E, a married couple who were given inappropriate advice by Mr E in November 2016, approximately a year after he commenced as an authorised representative of AMP Financial Planning?---Correct.
35

Can I take you to – first to the statement of advice provided by Mr E to those clients on 17 November 2016, which is at tab 3 of your statement, AMP.6000.0037.1463?--- Yes, I have that document.

40 Now, could I ask that you turn to 1466. And we see there what Mr E has recorded as what the clients told him they wanted to achieve. Do you see that at the top of the page?---Yes, I do.

And although the names of the clients have been redacted, we can see that the husband and wife are recorded as wanting to make sure that their funds are performing better to meet their goal of accumulating more wealth in the long term?---Yes.
45

And I think you have a copy that is unredacted. Is that right, Ms Britt?---That's correct.

5 Yes. You can see that the second goal that's listed there relates to the husband?---Yes.

You want to make sure that you were adequately insured to protect you and your family during misfortunes?---Yes.

10 Further down the page we see Mr E has recorded, in particular after discussing your preferences and goals:

15 *We interpret your advice needs to be in the following areas: reviewing and rolling over your existing super fund to another super fund, and putting in place a binding death benefit nomination on your recommended super fund.*

?---Yes.

20 Could we then turn to 1469 where we see a summary of the advice given by Mr E?---Yes.

And you can see that the strategy 1 relates to the husband?---Yes.

25 And we see that the summary of the advice given to the husband is that he roll over and consolidate his superannuation benefits from two existing funds, TAL Super and MLC master key superannuation into one fund which is MyNorth super?---Yes.

Is TAL super owned by AMP?---No.

30 And MLC is a NAB subsidiary?---Yes.

35 So the recommendation was that the husband roll over the \$68,000 he had in TAL super and the \$73,000 he had in MLC super, and put both of those – a balance of \$125,000 – into MyNorth super?---Yes.

Who's the product manufacturer of MyNorth super?---Well, it's an AMP product.

40 Thank you. And you can see that the second strategy, strategy 2, related to the wife?---Yes.

And the wife had her superannuation in Vision Super Saver?---Yes.

Is that owned by AMP?---No.

45 And the recommendation to her was to roll over the \$46,000 she had in that super fund also into MyNorth super, the AMP product?---Yes, that's right.

So the recommendation was to move from three funds, none of which were owned by AMP, into one fund which was owned by AMP?---Correct.

5 And we can see in the box that relates to the husband's TAL super balance, the reference:

Deduct the exit fee of \$16,189.05.

?---Yes.

10

And the balance, as I have said, was approximately \$68,000 in that account?---Yes.

So the advice to the husband from Mr E was to sacrifice close to 25 per cent of the balance of the fund so it could be transferred to MyNorth super?---Yes.

15

And would you agree that unless the TAL funds returns had been or were likely to remain very significantly lower than the likely MyNorth super returns, it could not have been in this client's interest to lose a quarter of their superannuation fund?---Yes, that's right. So unless there was significant benefits which would outweigh the exit fee, then, yes, correct.

20

And were there significant benefits that outweighed the exit fee?---Well, so based on the documents I've seen, reviewing – and reviewing the SOA, I couldn't identify what those benefits were, and – and I think similarly the – the auditor who conducted an audit of the SOA similarly was concerned that – that if there were such benefits it hadn't been demonstrated what they were.

25

So there was no evidence on the client's file to demonstrate any benefits to them that outweighed the loss of the \$16,000 exit fee?---Not – not that I have seen. There – there – there is somewhere in the statement of advice a fairly general comment around that the expectation was that – that on retirement the MyNorth super balance would be higher, but – but certainly I haven't seen anything to demonstrate that in the SOA.

30

35 And if we move further into the advice at page 1474, we see Mr E's comments about this recommendation and can I direct your attention down the bottom of the page to the trade-offs of our recommendations?---Yes.

Continuing:

40

You need to take into consideration the following trade-offs when considering our advice

And there is a reference to the husband:

45

In your case specifically, rolling over your existing TAL super will incur \$16,000 of exit fees since you haven't met their certain conditions which will

decrease your superannuation benefits. However, your super benefits will be invested in Zenith model portfolio inside MyNorth super which will provide you better performance so that you could earn more.

5 ?---Yes, I see that.

And there's no attempt to compare the likely returns from remaining in the current funds with the likely returns from moving to MyNorth super?---No, there isn't.

10 And there's no recommendation of any superannuation fund other than MyNorth super?---No, there isn't.

There is, however, consideration of one other possible superannuation fund at 1506. Can you see there the reference to an alternative strategy?---Yes, I do.

15

I'm sorry – I'm sorry, you have the hardcopy page but we have the incorrect page on the screen. We need 1506. There we go. Alternative strategy:

20 *You could roll over your superannuation benefits into another product AMP flexible super and consider other insurance policy one path.*

?---Yes.

25 And then four reasons are given for not recommending that strategy; do you see that?---Yes, I do.

One path is more expensive. That's the insurance policy; is that right?---Correct.

30 Secondly, MyNorth super has more investment options, 364 portfolios than AMP flexible super?---Yes.

35 So that's an explanation of investment options between the products but for an investor with a superannuation balance of about \$125,000 or about \$46,000, which was what the wife had, is the number of investment portfolios available through a fund a sufficient reason to switch?---No. There – no, there was nothing to indicate that that would have been a sufficient reason.

And the third reason is that:

40 *MyNorth super offers the ability to invest in listed shares, term deposits, specialised investments, etcetera, whereas AMP flexible super does not.*

45 Again, that would be an insufficient reason to warrant switching?---Yes, unless they were listed as specific goals of this client which they weren't, then that would not be a sufficient reason.

So, Ms Britt, this was inappropriate advice provided by Mr E?---Yes. Yes, based on – well, based on what I have seen, I’m only looking at the SOA. I haven’t seen – I haven’t reviewed the whole file and looked at the fact find, but based on what we see in this SOA, yes, it appears that it would be inappropriate advice.

5

Why haven’t you looked at the whole file, Ms Britt. You were asked questions about this adviser and these clients. Did you restrict your consideration to certain documents on the file?---Well, my – my team’s role is not to – we don’t review the whole file. We rely on audit, the audit function. They review the file. We rely on the findings of that audit report. So I’m confident that the relevant auditor has looked at – at the entire file. My team won’t have a copy of that and we don’t review that.

10

But AMP has put you forward, not an auditor, to explain the conduct of this adviser?---Yes, and my response is based on what I’m seeing in this SOA and based on the auditor’s report, that I would agree it appears to be inappropriate advice.

15

It was inappropriate advice that resulted in financial detriment to the clients, wasn’t it, Ms Britt?---That appears to be the case.

20

And the husband incurred an immediate loss of almost a quarter of his superannuation fund as a result of the implementation of this advice?---Yes, he has incurred that exit fee, yes.

25

Mr E was first audited by - - -

THE COMMISSIONER: Do we know the comparative performances of TAL and the MyNorth funds in the succeeding periods?---So, Commissioner, I personally have not – have not seen that but when – when AMP looks to remediate these customers, that – that is the process they will undertake. They will construct the counterfactual looking at what the comparative performance would have been.

30

MS ORR: You said, Ms Britt, when AMP looks to remediate these customers – and I want to come in a bit of detail to remediation shortly – but this advice was given in November 2016. ANZ has not remediated - - -

35

THE COMMISSIONER: AMP.

MS ORR: I’m sorry. AMP has not remediated these clients?---No, we have not yet.

40

I will return to that. But first, I was asking you about Mr E’s auditing. He was first audited by AMP in September 2016 which was about two months before this advice was given?---Correct.

45

And if we look at AMP.6000.0043.2829, we will see the results of that audit?---I’m sorry, is there – is there a tab number?

No, you have not annexed this document to your statement, Ms Britt?---Thank you.

5 It's on the screen now. And you see there that the audit that was conducted two months prior to these clients receiving this advice resulted in a C rating?---Yes, I can see that.

And that meant that Mr E had met all of the major quality advice principles but specific areas for improvement were identified?---That's right.

10 And this audit – have you seen this document before, Ms Britt?---Yes, I have.

So you know then that the audit identified a number of medium weighted issues well as a high rated issue?---Yes.

15 And the high rated issue related to concerns about whether there was compliance with the best interests duty in recommending a roll over of superannuation funds to another client?---Yes.

20 We see from these documents that, based on audit results, a decision was made to audit Mr E again six months later in March 2017?---Correct.

And that was because he got the C rating which resulted in an audit being scheduled six months later?---Correct.

25 I tender that document, Commissioner.

THE COMMISSIONER: Quality review and statement of actions dated 22 September '16, AMP.6000.0043.2829 is exhibit 2.162.

30 **EXHIBIT #2.162 QUALITY REVIEW AND STATEMENT OF ACTIONS
DATED 22/09/2016 (AMP.6000.0043.2829)**

35 MS ORR: And Mr E was audited again in March 2017?---Correct.

And a number of his files were selected for review, including the file of the two clients that I've referred to?---Yes.

40 And you've annexed the audit report for that audit to your statement. It's tab 2. AMP.6000.0028.0440?---Yes.

We have that document on the screen now, Ms Britt, and we see that the result of the audit of Mr E in March 2017 was that he was given an E rating?---Yes.

45 Which meant that he had failed to meet the minimum standards required when providing advice?---Correct.

Was this the worst available rating in an audit?---Yes, that's right.

And you've read this document?---Yes, I have.

5 You know that there were eight high weighted issues identified as a result of this audit as well as 11 medium rated issues?---Yes, that's right.

10 Can I take you to a part of this audit report that concerns the super switching advice that was given to the two clients we've discussed. That's at 0446?---Yes.

So you see there that the person conducting the audit has recorded that when replacing existing products there is a need to demonstrate that there is a clear net benefit to the client from making the switch?---Yes.

15 And there is a reference, two paragraphs down to the \$16,000 exit fee incurred by the husband?---Yes.

20 And also for the wife in the final paragraph on the page, the auditor detected that she was going to be charged a higher ongoing fee as a result of her rollover?---Yes.

And over the page at 0447, we see the auditor's conclusion that:

25 *It is insufficient to use more investment options as a basis for rollover without adequately considering investment options available in the existing products.*
?---Yes.

Continuing:

30 *The client file did not contain confirmation of the clients being willing to pay the additional cost for increased investment options.*

?---Yes.

35 Now, this wasn't the only file audited in this audit?---No.

And it wasn't the only file audited in this audit that demonstrated inappropriate advice?---No.

40 It wasn't even the only file of Mr E's audited in this audit that demonstrated inappropriate advice in connection with switching the client to another high cost product?---No, it wasn't.

45 And it wasn't even the only file in this audit that demonstrated inappropriate advice to a client from switching from an existing superannuation fund into the MyNorth superannuation fund despite an exit fee being incurred?---That's right.

And as a result of this audit, there were remedial actions in regards to Mr E?---Yes.

And he failed to comply with those actions?---That's right.

5 He was issued with a show cause notice?---He would have been issued with a show cause notice regardless of whether he completed the remedial action, because having received an E rating the consequence of that is that we issue a show cause.

10 Thank you. The matter was also escalated to advice governance; is that right?---Correct. So advice governance we now call advice compliance. It's the same team.

I see?---It's my team.

15 So what is or was advice governance? Why would this have been escalated to them?---So we have a consequence management framework which says that once an adviser receives an E rating in an audit, then they are immediately referred to the – what is now the advice compliance team for my team to apply the relevant consequence. So for an E rating, the adviser will immediately be issued a show
20 cause letter effectively asking them to demonstrate why they shouldn't be terminated.

And the matter was then brought to the attention of the AMP issues panel. Is that right?---Correct.

25 And that panel met on 28 June chaired by you?---Correct.

And at that meeting of the issues panel, the issues panel decided not to terminate Mr E?---That's right.

30 But instead to put him on conditions that he wasn't to service any clients until mandatory vetting and paraplanning measures were taken?---No, I don't think that's quite correct. He – he was not to – you are right that he wasn't to provide any advice. We did put mandatory vetting and paraplanning in place, but it – it was
35 pending the outcome of a broader review of files through the remediation team which is – it's called sampling. It's having a look at a broader cross-section of files.

And until that process had been completed he was not to provide advice?---That's right.

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

Can I take you to the materials that were considered at that meeting of the issues panel, which are at tab 12 of your statement, AMP.6000.0005.5973?---Yes.

45 I will just wait until we have those on the screen, Ms Britt. Yes. So these are the materials for the meeting of the AMP issues panel on 28 June 2017?---Yes.

Could I ask you to look at 6007, which is the start of an issue assessment document in relation to Mr E?---Yes.

There we have it?---Yes.

5

And then I want to turn to a page within that issue assessment document which is 6009?---Yes.

10 And we see there the recommendation made by advice governance to the issues panel?---Yes.

Continuing:

15 *It is advice governance's recommendation that the adviser's personal authorisation be revoked and the agreement with AMP Financial Planning be terminated with immediate effect. The panel should consider whether the adviser's conduct amounts to a serious compliance concern and warrants reporting to the regulator. The panel should consider whether the matter warrants referral to the licensee incident panel for the purposes of conducting a licensee breach assessment.*

20

Then we see in response to that, the stakeholder view:

25 *The licensee does not support the recommendation by advice governance to terminate the adviser.*

?---Yes.

30 What were the licensee's reasons for not supporting that recommendation?---So I think there were several factors that they asked us to take into account. One was that the response to the show cause letter had been provided by the practice principal of the adviser's practice. He was an employed adviser within that practice. That practice principal had offered to put in place certain things to – in relation to – to – additional sort of supervision of that adviser. And – so there were discussions

35 around whether or not there were – there was additional training and controls that could be put in place such that this adviser could be kept on. He was relatively new and relatively junior and there was discussion around whether, in fact, with additional training and supervision, that he would, in fact, be able to improve such that we would be comfortable to keep him on. At that time the – we had requested a

40 further file review from the remediation team. So the suggestion was pending the outcome of that review that the adviser be left in place but with those restrictions we talked about.

45 Was that the right decision, in your view, Ms Britt?---So there was certainly some discomfort around that decision. We do have fairly – some fairly robust conversations at these – these panels and it is a balance with the risk to the clients, the risk to the licensees versus what kind of controls can be put in place and whether

the issues are such we think there – there will be tangible improvement with – with training and additional supervision. In this case, as I said, there was a level of discomfort, but the decision was given that we had already requested this additional file review take place, that that would better inform us as to whether or not we
5 wanted to keep him on.

So a scoping report was produced from that - - -?---Correct.

- - - sampling process?---Correct.
10

Is that right? And that resulted from a review of 20 of Mr E's files?---That's right.

And eight of those files were deemed to contain inappropriate advice?---That's right.

15 And the scoping report contained a recommendation that all of Mr E's client files be reviewed for his 67 clients?---That's right.

And the report revealed a new piece of information in respect of the advice given to the clients that I asked you questions about earlier. Mr E had cancelled the
20 husband's insurance before new policies were entered into?---That's right.

The result being that he was uninsured for a period of three months?---That's correct.

And AMP was then told at the end of August that Mr E's employer had decided to
25 terminate him?---Correct.

And can I take you to the communication from Mr E's employer which is at tab 15 of your statement, AMP.6000.0044.3914?---Yes.

30 If we could have 3914 and 3915 on the screen at the same time we will see the entirety of the email, which was sent on 31 August 2017 to a representative of AMP. And do you see there that the employer told AMP:

35 *As per today's call and our recent discussions over the last two weeks, we have internally and independently come to the view that we will be terminating the adviser as we believe he represents a heightened risk to our business which is beyond our or his ability to remedy, and that he is unable to provide our clients management or the licensee with sufficient confidence that he can perform the tasks required by his role as an authorised representative.*

40

?---Yes, I see that.

So the employer formed the view that Mr E needed to be terminated?---Yes.

45 Did AMP, after receiving this piece of information, terminate Mr E as its authorised representative?---Well, he had – at that stage he had already been terminated as a – as an AR of [REDACTED] so we would then need to revoke his personal AR.

And did you?---I believe we did.

Well, there was another meeting of the issues panel, the AMP issues panel, on 25 September which you, again, chaired?---Yes.

5

And can I take you to the minutes of that meeting which is at tab 16 of your statement, AMP.6000.0005.8555?---Yes.

Could I ask you to look at 8567?---Yes.

10

Again, another issue assessment document in relation to this particular adviser?---Yes.

And if you turn to 8569?---Yes.

15

We see again the recommendation of advise governance, number 3:

Advice compliance recommendation.

20

?---Yes.

Continuing:

25

Based on the evidence gathered, it is advice governance's recommendation that the panel should consider whether the adviser's conduct amounts to a serious compliance concern and warrants reporting to the regulator.

?---Yes.

30

Continuing:

The panel should consider whether the matter warrants referral to the licensee incident panel for the purposes of conducting a licensee breach assessment.

35

?---Yes.

Now, Mr E's conduct was not regarded by AMP to be a reportable breach under section 912D of the Corporations Act?---Well, it was – his conduct was determined to be a serious compliance concern.

40

Yes?---And he was reported to ASIC as a serious compliance concern. We then separately look at whether or not there has been a licensee breach.

45

Yes?---And the decision was in this case that there hadn't been a separate reportable licensee breach in relation to the adviser's conduct.

And this is despite the fact that this document shows that the issues panel identified, under the heading Relevant Considerations, and over the page, a large number of provisions of the Corporations Act that may have been breached by Mr E?---That – that’s correct, but the fact that the adviser may have breached obligations under the Corporations Act doesn’t necessarily follow that that’s a licensee breach.

Was there consideration of whether this was a significant breach that needed to be reported under section 912D?---Yes. So every time we terminate an adviser, we consider both is – is that adviser an FCC that needs to be reported and is there anything to indicate that separately there was a licensee breach. And – and we obtain legal advice at the time to inform us, and the panel then makes a separate decision on the licensee position.

In your statement you give an explanation of why Mr E provided inappropriate advice?---Yes.

You blame him and his employer?---Yes.

You blame him on the basis that he was a relatively new financial adviser who had a lack of experience and a lack of competency?---Yes, that’s right.

And you blame his employer for failing to adequately supervise and coach him?---Yes.

Does AMP accept any responsibility for the provision of inappropriate advice by Mr E, its authorised representative?---Well, we – we would say – and the investigations we undertake at the time, we look at was there any breakdown in our monitoring and supervision, did – did our controls and processes work. So this was an adviser who was picked up on audit. He was as a new adviser subject to mandatory vetting for a time. He – he was someone that we then referred to our sampling team to have a – a broader look at files. So in that – in that sense, we would say that we’ve discharged our obligation – our monitoring and supervision obligations with respect to – to this adviser.

Do you maintain that, Ms Britt, in circumstances where AMP picked up on an audit two months prior to the advice provided to the two clients I’ve referred to, two months prior to that advice it was picked up in audit that Mr E was delivering inappropriate advice of precisely the same sort of advice that he gave those two clients?---I’m sorry, I lost the thread of what the question was.

That’s my fault. The chronology is that two months prior to the advice being given - - -?---Correct.

- - - that I’ve spent some time - - -?---Yes, yes.

- - - discussing with you there was an audit?---Yes, correct.

And that audit revealed deficiencies in Mr E's provision of advice of the same style as the deficiencies that pervaded the advice given to the two clients?---It – it – the audit – he received a C rating on that audit and based on the fact that it was a C rating, there are some additional training controls, remedial action which will arise
5 out of an audit like that, but it was – he had received a C rating and a C rating is considered to be a pass.

My point to you is that the remedial action that resulted from that - - -?---Yes.

10 - - - did not prevent him from providing inappropriate advice to these two clients?---Well, that appears to be the case, given that he did go on and receive an E rating and – and provide this advice.

15 So do you maintain that there was no failing in AMPs systems and processes?---So we – we would maintain that we – we have a robust system of detecting and, if necessary, terminating advisers who are providing deficient advice.

20 And that system operated in this case, we see, so that detection of inappropriate advice by Mr E did not prevent him from continuing to provide inappropriate advice to clients thereafter?---Yes, yes, that's the case here.

25 And do you maintain that there are no inadequacies or deficiencies in your systems and processes when that can occur?---So I – I don't think AMPs position is ever that there are no inadequacies in our systems and processes. We – we would accept that it's constantly subject to – to scrutiny and to improvement, and we have a number of – of programs at the moment that are looking at this very thing, including our audit function, including our training of advisers, including our policies around best interest duty, insurance advice. So my position isn't that our system is beyond reproach. We are constantly looking to improve it, and – and when there are
30 circumstances like this, we do reflect on – as part of our breach assessment, we reflect on were there – are there any improvements that could be made in the system to try to prevent this type of thing happening in the future.

35 And you made no changes to your practices or procedures as a result of Mr E's conduct?---Not that I'm aware. Not directly as a result of Mr E's conduct.

40 Notwithstanding that AMP has been aware since March 2017 that Mr E provided inappropriate advice to the clients we discussed earlier, causing them financial detriment, AMP hasn't contacted those clients?---No, I don't believe they have – I don't believe we have.

AMP hasn't offered any compensation to them for the inappropriate advice that they received?---Not to date, no.

45 Why not?---The – the clients of Mr E and, indeed, Mr E's entire book, has been moved into our remediation program, and we will now need to do a file review of every single file of Mr E's to ascertain whether there was inappropriate advice and if

there was inappropriate advice we then need to go through the exercise of ascertaining whether or not that inappropriate advice has resulted in financial loss to – to the client.

5 So the scoping report that was produced in August 2017 recommended that all of Mr E's client files be reviewed?---Correct.

Did that happen?---That will now happen as a result of the book being placed into remediation.

10

Why has it not happened, given that that was determined to be a necessary step in August of last year?---So that is a function of the highs and scale of our remediation program. So we have a – a standalone BAU stream who looks at the books of terminated advisers, and Mr E's book will be part of that pool of files that the remediation team will be looking at.

15

So the size and scale of your remediation program at AMP is such that you cannot dedicate resources to remediating clients whose detriment has been apparent to AMP since March of last year?---I don't – I don't think it's so much that we can't dedicate resources to it. It's that there are a number of advisers that are in that remediation program, and that certainly the – the – his clients will be looked at and – and the customers will be remediated if they've suffered financial loss, but unfortunately - - -

20

They have suffered financial - - -?--- - - - that hasn't happened yet.

25

They have suffered financial loss, haven't they?---Well, that – that is a process that we need to go through. So - - -

No, I want - - -?--- - - - we need to – we need to look at the file in its totality. We speak with the clients and obtain testimony and we construct a counterfactual to see where the client is today versus where they would have been, and so, yes, on the face of it, it appears these clients will have suffered financial loss from the exit fee, and – and they will be compensated. But until we've gone through that process, we – we can't know what that amount will be.

30

35

Well, Ms Britt, with respect, you haven't started that process. These two clients don't know that they've received inappropriate advice because AMP has not told them?---That's correct. That's correct. And – and it's not acceptable. It's not acceptable.

40

How many - - -?---That is the position.

How many advisers are subject to your remediation program?---I'm afraid I don't – I don't have that number. Remediation doesn't actually report into me so I don't have that number. I do know that we have completed the remediation of 14 adviser books. I am not sure how many more are still in the pool.

45

Have any of Mr E's other clients been contacted about inappropriate advice provided by Mr E?---Not as far as I'm aware. The – the process is that that – we will look at the entire book together and – and write out to all clients at the same time.

5 AMP has got an advice remediation compensation policy, don't they?---We do, yes.

And you've annexed a version of that policy to your statement at tab 41, which is AMP.6000.0047.0070?---Yes.

10 And we see from 0072, Ms Britt, that you signed off on this document?---Yes.

And if we turn to 0073, we see that at the top:

15 *AMP has developed the advice remediation program to enable fair and transparent remediation to clients who have been identified as potentially affected by noncompliant advice. The role of the advice remediation program is to develop and manage an approach that will inform the client of any potential impact, and seek to engage the client to participate in the review of their circumstances.*

20

?---Correct.

Continuing:

25 *The advise remediation program does not apply to client claims or complaints and is strictly limited to financial advice remediation within scope of the advice remediation program.*

?---Yes.

30

And if we look at the guiding principles for your client remediation program in the bottom part of the page, we can see that the remediation principles include: restoring the client's position?---Yes.

35 A client centric approach?---Yes.

Timeliness?---Yes.

And transparency?---Yes.

40

Have these principles been complied with in the case of Mr E's clients?---No, I – no. I don't think we can argue that we've been timely, given we still haven't contacted them.

45 And these matters are not just the subject of internal AMP policies, they're the subject of ASIC regulatory guidance, aren't they?---Correct.

Are you familiar with ASIC regulatory guide 256, Ms Britt?---I am. Yes.

Which relates to client review and remediation conducted by advice licensees?---Yes.

5

That document is RCD.0021.0002.7080. And if we could go to 7121. Do you see there at paragraph 256.169 that the regulatory guidance from ASIC is that:

10 *It is important that you proactively contact clients who have potentially been affected by the misconduct or other compliance failure. You should consider the appropriate way to do this taking into account the nature of your client base, the methods of communication available to your clients, and any preferences previously expressed by your clients.*

15 ?---Yes, I see that.

Does AMP consider it important to proactively contact clients who have received inappropriate advice?---So AMP does consider that to be important. The consideration is that where we are not in a position yet to review that client's file, we
20 – we – we don't contact them to alarm them when we're not in a position to review their file. So we contact them when, essentially, we have the resources to consider that particular book, we will contact the clients at that point because that is when we're engaging them to say, "We are actively looking at your advice now and we will be contacting you to talk to you about the review we're doing", to obtain their
25 testimony and then to reach conclusions.

Are you saying that AMP is not in a position to consider the client file of the two clients I've asked you to give evidence about?---So obviously we could consider these clients in isolation of Mr E's book of clients. We're not in a position to look at
30 Mr E's entire book of clients currently, which is why we haven't, in isolation, looked to contact - - -

And is that - - -?--- - - - these two.

35 I just want to make sure I understand this: is that because you have too many other advisers who have provided inappropriate advice that you are dealing with ahead of Mr E?---Well, it's – it's a for a number of reasons. We – we have not scaled up our remediation program as quickly as we should have.

40 Why not?---I think – well, I think, as a whole, the industry got caught by surprise by the scale and complexity of some of these remediation issues. We have a – essentially, a self-employed network, and it is a network of advisers, and it is an extremely time consuming process, and – and – and time intensive process to go through and review each and every one of these files to speak to every single
45 customer, to construct the relevant counterfactual, and even by nature of the fact that it is the self-employed network, there are documentation issues with trying to reconstruct client files, to understand exactly what – what happened. And so it – it is

a – an extremely time-consuming process, and – and we, as an organisation, I think, underestimated just how big that task was. And as a result, we’re just not as far forward as we should be, and – and – and we accept that, as an organisation, it is one of our key strategic priorities for the advice business this year, is to – is to – to stand up a more efficient remediation program, and we’ve done a lot to resource it up to restructure it, to – we’re looking at and have begun a lot of outsourcing to third party providers. So it – you know, we have to accept that we shouldn’t be where we are. It isn’t acceptable that these clients still haven’t been looked at, still haven’t been contacted. We accept that. And that is why it is one of our strategic priorities this year to make sure that that gets fixed going forward.

When will these clients be contacted?---I – I can’t – I can’t – I can’t categorically say when that might happen. As I said, we would be in a position to remediate these clients in isolation, but we want to look at Mr E’s entire book at the same time.

But you don’t know when they will be told that they were provided with inappropriate advice by Mr E?---I – I can’t say that.

I tender - - -

THE COMMISSIONER: Well, there’s a matter that has been drawn to my attention that I need to deal with promptly. It is that the name of the entity I think for which Mr E worked was mentioned in the course of evidence. We have – I’ve made a non-publication direction about the name of Mr E, and a non-publication direction about the entity for which he worked because, of course, the two clients whose case we have been considering are unaware of these circumstances, and I do not think it right that they should learn of these things or deduce these things as a result of evidence being led in the Commission. The name of the entity for which Mr E works will be redacted from the transcript. It is subject to a non-publication direction. I simply draw it to the attention of the media in case they were interested in or even perhaps contemplating publishing the name of that entity. There is a direction. That’s why the direction is in place and it’s why we have been referring rather elliptically to Mr E. Ms Orr, I was anxious to deal with that before we rose. But shall we say - - -

MS ORR: Thank you, Commissioner. Could I tender the last document and - - -

THE COMMISSIONER: If I could recall what it was. It’s this - - -

MS ORR: ASIC regulatory guide.

THE COMMISSIONER: - - - RCD.0021.0002.7080 ASIC regulatory guide RG256 becomes exhibit 2.163, I think.

EXHIBIT #2.163 ASIC REGULATORY GUIDE RG256 (RCD.0021.0002.7080)

MS ORR: Yes.

THE COMMISSIONER: And shall we say 2 pm?

5 MS ORR: Thank you, Commissioner.

ADJOURNED [1.03 pm]

10 **RESUMED** [2.00 pm]

15 THE COMMISSIONER: Yes, Ms Orr.

MS ORR: Ms Britt, the second adviser that you deal with in your statement is Ms Jennifer Coleman?---Yes.

20 And Ms Coleman, through her corporate entity, became an authorised representative of Charter Financial Planning in October 2009?---Yes, that's right.

And Ms Coleman had entered into a representative services agreement with Charter in August 2009?---Yes.

25 Again through her corporate entity?---Yes.

Could I ask you just to look at that document, which is AMP.6000.0052.1731. It's not annexed to your statement. It will come up on the screen?---Yes.

30 And if we turn to 1734. We see that the parties are Charter Planning Limited and Jennifer Coleman Proprietary Limited trading as Symbion Financial Services?---Yes.

And at 1757 we see that the representative for the purposes of this agreement is Jennifer Coleman, the individual?---Yes.

35 And at 1735, if I could ask you to look at clause 1.4?---Yes.

Ms Coleman agreed through her corporate entity by clause 1.4 to:

40 *Attain annual minimum sales targets of \$100,000 of new annual risk premium sales.*

?---Yes, I see that.

45 And at 1736 we see that her remuneration was calculated in clause 2.1:

In accordance with terms and conditions advised by the relevant product manufacturer.

?---Yes.

5

I tender that document, Commissioner.

THE COMMISSIONER: Representative services agreement Charter Financial Planning Limited and Coleman AMP.6000.0052.1731 will be exhibit 2.164.

10

EXHIBIT #2.164 REPRESENTATIVE SERVICES AGREEMENT CHARTER FINANCIAL PLANNING LIMITED AND COLEMAN (AMP.6000.0052.1731)

15

MS ORR: We've seen from that document, Ms Britt, that Ms Coleman agreed to bring in \$100,000 annually of new risk premium sales, that's insurance; is that right?---Yes.

20 And Ms Coleman was predominantly an insurance only adviser?---That's correct.

And in your statement you provide details of insurance advice given by Ms Coleman to a de facto couple in 2016?---Yes.

25 Could I take you to the statement of advice for that advice, which is your tab 5, AMP.6000.0037.0118?---Yes.

It's an insurance plan. If we turn to – and you will see it's styled as a statement of advice as well towards the bottom of the page?---Yes.

30

If we turn to 0119, we see that Ms Coleman has had a meeting with this couple, and when they met, the couple told her that they were organising a review meeting to bring her up to date with the changes in their life?---Yes.

35 And the female partner was enjoying her role as a full-time mother?---Yes.

And you can see, although it's redacted in the version of the document that's in the online system, you can see at 0121 the date of birth of the child of this couple. And you can see that the child was about one year old?---Yes.

40

And this, it seems, was the change in the life of this couple that they were discussing with Ms Coleman?---Yes, it appears so.

And then if we return to 0119, we see about a third of the way down the page:

45

With these goals in mind we went through a process of discussions, education, challenges and prioritisation to arrive at your final goals.

And I should have taken you to the dot point above that which was that they had told Ms Coleman that they wanted to make sure their family was secure:

...should anything unplanned happen to either of us.

5

?---Yes.

And the outcome of the discussions is summarised by Ms Coleman as follows:

10

You make sure you have adequate levels of insurance cover now you have a new daughter as you want to ensure your family is supported financially if either of you were to suffer an unfortunate event. As a result, we will review your current insurance needs and ensure you have appropriate levels of cover through a competitive insurance provider.

15

?---Yes.

And then at 0121, the page I took you to earlier with the date of birth of the child, there's some information about the two clients there which was redacted out of the personal details box but you have that information in front of you?---Yes.

20

And we can see that the clients were a young couple. The male was a tradesperson?---Yes.

25

And the female had listed her occupation as home duties?---Yes.

And you can see that the combined net income of the couple – I see that has not been redacted out – is \$73,000 towards the bottom of the page?---Yes, I can see that.

30

And at 0133, we come to the Recommendations, and there is a recommendation next to Super Ownership on the left-hand side? Do you see that?---Yes, I can see that.

Continuing:

35

We recommend your life, TPD and income protection insurance be owned by the trustee of the AIA Master Trust and paid for with annual rollovers.

?---Yes.

40

And at the table at the foot of the page we can see Ms Coleman's advice in respect of the male client?---Yes.

We will just wait for that table to come up onto the screen. Ms Coleman recommended that the male client replace each of his existing insurances but with policies with the same level of cover?---Well, it's actually – this table is – can be somewhat confusing. What has actually happened is earlier in the document the adviser has set out current level of cover - - -

45

Yes?--- - - - with – with TAL. The – what this table is purporting to do is to say if you had the level of cover that I am now recommending, column 1, this is what it would cost if you were with TAL, column 2 - - -

5 I see?--- - - - this is what it would cost if you adopted my recommendation to go to AIA.

And we can see that the recommended insurance is said to be cheaper by just under \$1000 per annum?---That's correct.

10

Now, someone in the position of these clients presented with this sort of advice would be entitled to feel comfortable that they had made the right decision by seeking advice because it appears that they're saving \$1000 in their insurance premiums?---Correct. On the face of it, yes, that appears to be what it is saying.

15

But it was inappropriate advice, wasn't it, Ms Britt?---It – potentially, yes.

Well, AMP knows that there were deficiencies in this advice, doesn't it?---There are deficiencies in the advice document, absolutely, and those deficiencies were picked up on audit. The – the fact – the fact that there were deficiencies with the way the advice was presented doesn't necessarily lead to the conclusion the advice itself was inappropriate.

20

Why is that? I'm not talking about client detriment, necessarily, here. I am talking about the appropriateness of the advice?---The advice can still be appropriate, even if, for example, a client – one of the things that might get picked up in audit is that they haven't – the adviser, sorry, has not, for example, followed the replacement of product guidelines and policy. So they may not have set out the table correctly, but that doesn't necessarily mean the advice itself was inappropriate.

25

30

But the premiums for each of these policies were, in fact, higher than what was recorded here, weren't they?---I'm sorry, which – which policies are you talking about? Are you talking about the existing insurance side or the recommended insurance side?

35

No, I'm talking about the recommended insurance?---Yes. So – so I – yes. My understanding is what had happened is that she has misquoted the insurance policy, because - - -

Yes, so the clients were misled about the amount of money that they would have to pay in premiums if they replaced their existing insurance policies with the recommended new insurance policies?---Yes, that appears to be the case.

40

Yes. Thank you. And that's inappropriate advice, isn't it, Ms Britt?---Well, I think what she has done has just got it wrong.

45

Why are you resisting my characterisation of this as inappropriate advice when the clients have been misled into thinking that the premiums of the new insurance policies were lower than they actually were?---I accept that the clients have been misled. I accept that.

5

Thank you. AMP knows about the deficiencies in this advice because a few months after it was given, there was an audit of Ms Coleman's files, including this file. That's right?---Correct. Correct.

10 And Ms Coleman received a D rating?---That's - - -

Which meant - - -?---That's correct.

- - - that she failed to meet the minimum standards required in providing
15 advice?---That's correct.

You've annexed the audit report to your statement at tab 4. It's AMP.6000.0028.0686?---Yes.

20 You've read through that audit report, Ms Britt?---Yes, I have. Yes, I have.

And you know that the audit identified five high rated issues and 10 medium rated issues across the files that were audited?---Yes, correct.

25 And if we turn to the review of the file for the two clients we've just been discussing, we see that that commences at 0690?---Yes.

And across the following pages, we see that the auditor discovered that Ms Coleman had misled the clients about the cost of the insurance premiums under the new
30 policies?---Yes.

And these premiums were going to be paid out of the clients' superannuation funds, weren't they?---Correct. Yes, that's correct.

35 So they may not have learnt that the premiums they were paying were higher than they had been told by the adviser because the premiums were coming straight out of their superannuation funds?---Potentially, yes.

40 This audit picked up numerous errors by Ms Coleman across both this file and a number of other files?---It did, yes.

And just in relation to this file for this couple, the auditor found that Ms Coleman had also failed to disclose the exit fees that applied to the clients' superannuation funds?---Yes, that's correct.

45

She had failed to disclose that she might receive an activation payment in respect of one of the products that she recommended?---Correct.

She had failed to document the scope of the advice?---Correct.

She had failed to document the clients' needs and circumstances?---Correct.

5 And that meant that she couldn't demonstrate that the advice was in the best interests of the clients?---That's correct, yes.

The audit showed, didn't it, that Ms Coleman had provided inappropriate advice in respect of another two customers?---I believe that's correct, yes.

10

And this wasn't Ms Coleman's first D rating in an audit, was it?---No, it wasn't.

This was her third consecutive D rating?---That's correct.

15 And Ms Coleman had been told before this audit that if she received a third D rating, her authorisations would be revoked?---That's correct, yes.

And in June following this third D audit result, the AMP issues panel decided to revoke Ms Coleman's authorisations?---That's correct, yes.

20

And you referred in your evidence earlier to a correction about the date on which - - -?---Yes.

25 - - - those authorisations were terminated, but the corporate authority was terminated first in June 2016?---That's correct, yes.

And then Ms Coleman resigned as an authorised representative of Charter in July 2016?---I would just have to check that date but yes, she did – she did resign.

30 Yes, it's in paragraph 34, subparagraph (e) of your statement?---Thank you. Yes, I see that, yes.

She resigned in July 2016 and she told Charter that by September she would have sold her business to another financial advice entity?---Correct, yes.

35

And Charter revoked Ms Coleman's personal authority on 30 September - - -?---That's correct.

- - - 2016?---Yes.

40

In your statement you give an explanation of why Ms Coleman provided inappropriate advice?---Yes.

45 And you say that Ms Coleman was heavily reliant on support staff for undertaking a number of tasks?---Yes.

That she failed to take overall accountability for processes and procedures?---Yes.

And that she failed to take seriously the gravity of having two and then three D audit ratings?---Yes, that's correct.

5 So I want to ask you again, as I did with Mr E, whether AMP takes any responsibility for the provision of inappropriate advice by Ms Coleman, its authorised representative, in circumstances where it permitted Ms Coleman to continue providing financial advice following multiple failed audits?---Well, again, I would respond to that by saying that we had a system of monitoring and supervision in place. This adviser and – and – and the advice was picked up on audit. We did put 10 both remedial actions in place and – and – and very targeted coaching. So – as well as following the second D, she was placed back on to mandatory vetting as a – as a control over that advice. My own feeling, looking at – at this adviser, in – in totality and looking at – when one looks at all the audits lined up against each other, it is – it is a concern. There was a pattern of conduct and – and ultimately, it – it is apparent 15 that – that she wasn't – you know, she wasn't capable of providing good quality advice. But AMP had the appropriate systems and processes in place to – to detect her and ultimately to terminate her.

20 Well, AMP detected her inappropriate advice but then permitted her to continue providing inappropriate advice?---Well, we permitted her to continue providing advice and, as I said, put controls in place and it was – it was – you know, obviously, I wasn't in – in my role at that time but it was obviously felt that those controls were – were going to be appropriate to mitigate that risk. Ultimately when they weren't, AMP acted to terminate her.

25 Neither AMP nor Charter has changed any of its practices or procedures as a result of the misconduct by Ms Coleman?---So I can't – I can't point to anything specifically that AMP has done off the back of this particular case, but as I mentioned earlier, there are a lot of – of improvements that – that AMP is putting in place revising its 30 audit and vetting being one of them, and – and obviously a matter like this would inform those kind of programs but I can't point to anything specifically that AMP has done off the back of Ms Coleman's case.

35 You say in your statement that on 6 July 2016, the matter of Ms Coleman was passed to the AMP advice and remediation program for review?---Yes.

So that was nearly two years ago?---Yes.

40 Has any compensation been paid to the clients I referred to?---No, it hasn't.

Have those clients been contacted about the provision of inappropriate advice by Ms Coleman?---Not – not as far as I'm aware, no.

45 So, again, they don't know that the advice that they received from Ms Coleman was inappropriate?---Not as far as I'm aware, no.

And if the insurance policies that were taken out were renewable annually, a renewal period would have passed by now?---If they are renewable annually, yes, that's correct. That would be correct.

5 And if they are renewable annually, which insurance policies generally are, the clients have missed an opportunity to elect not to renew those insurance policies?---If – if that is the way that these policies worked, then yes, I would agree potentially, and that would be something that would be taken into account when any financial compensation is worked out.

10 Isn't it better to take it into account now, Ms Britt, and to arm these clients with information about the inappropriate advice that they received so that they can make decisions about whether or not to renew these policies now?---Well, yes, I would have to agree. Ideally, yes, we would be compensating these clients now.

15 Well, you say you're going to be compensating them but I just want you to consider my question about whether a better way of doing this is to arm them with the information they need now to make decisions about whether or not to renew these insurance policies?---Yes, I would respond as – as I did with the other clients, which
20 is that we look at the pool of clients as a whole when we are able to remediate that entire book.

I don't think you've answered my question, though, Ms Britt, about whether it would be better for AMP to do this differently by telling these clients now so that they can
25 arm themselves with the information they need to make decisions not to renew the insurance policies?---Yes, potentially, yes. I would agree.

Why potentially, Ms Britt?---Because I don't – I don't accept the – the – I don't
30 accept that these are actually being renewed annually, in which case – so I would – I would need to understand more about the facts. So I am agreeing with you that, yes, if they are policies that are renewed annually, then yes.

Okay. Did the AMP Review and Remediation Program decide to review Ms
35 Coleman's files?---I'm sorry, can you repeat that question?

Did the program, to which Ms Coleman's matter was referred, was there a decision
40 made to review the files of Ms Coleman?---Well, so if – if the issues panel determines that the remediation program should review them, then they will review them.

And have they reviewed them?---Not as yet, as far as I'm aware.

So the issues panel referred it to the advice and remediation program in July
45 2016?---Yes, that's right.

Have any of Ms Coleman's files been reviewed to date?---No, they have not.

Why not?---The – the same – the same reason, that that – that due to the size and scale of the program, we have not – this – these files have not yet been reviewed, but that we are currently resourcing the remediation program so that this can be expedited.

5

I will just give you an opportunity to consider that answer again, Ms Britt, because in paragraph 72 of your statement you refer to 15 files having been reviewed?---I apologise, I – I did – I did specifically ask that question of the remediation team this morning and received a different answer.

10

I see. So this – this is incorrect? Paragraph 72 is incorrect where you state that there has been a review of 15 of those files?---No, the – the inquiries we undertook at the time that I did my statement, if that’s – if that is what they indicated then that is what is correct.

15

I’m sorry, so the - - -?---I would - - -

The information you received this morning is not correct?---That would seem to be the case.

20

The information in your statement is correct, which is that 15 files have been reviewed?---That is correct.

And is it, therefore, also correct, as you say in that paragraph of your statement, that:

25

Conduct similar to Ms Coleman’s conduct in relation to the two clients I’ve drawn your attention to was identified in eight of those 15 files.

?---Yes, that’s correct.

30

And you estimate in your statement that the process of review in relation to Ms Coleman’s files may require up to 100 of Ms Coleman’s clients to be remediated?---That – that is the estimate we have at this stage, yes.

35 But no one has been remediated to date?---No.

Has any provision been made for the remediation of those clients?---No – no – as far as I am aware, no, no specific provision has been made in relation to Ms Coleman or her clients.

40

THE COMMISSIONER: Are any of those clients parties to ongoing service arrangements?---I – I can’t answer that question without undertaking further inquiries, sorry, Commissioner.

45 Because if they were subject to ongoing service arrangements, it would be interesting to observe what the consequence of the provision of those annual reviews was?---If

they were subject to ongoing service arrangements, those – arrangements would have ceased at the time of – of her termination.

Yes.

5

MS ORR: In your opinion, Ms Britt, has AMP allocated adequate resources to its review and remediation program?---I think going forward, yes. I think historically we have – we underestimated the task ahead of us. And I think as an organisation we have to – we have to own that, and there has been a – a huge effort to restructure and reset the program going forward so that it is – so that it is adequately resourced, and that includes, I think, a concession that we will need to be retaining third parties to assist us going forward.

10

Has that happened? Has AMP retained third parties to assist?---Yes, we have.

15

And will you retain further third party assistance?---We – well, we have retained a third party, and – and with the flex to expand or contract according to the need.

20

And when did that happen?---So I'm aware that started to happen at the end of last year, and that it's a process that has been ongoing, and I know has been the subject of many discussions at DLT and – and board level.

Ms Britt, I want to turn to the third - - -

25

THE COMMISSIONER: Before you do, Ms Orr, the two cases we've looked at so far were found on audit; is that right?---That's correct, yes.

In the first case, one of the audits gave a compliance rating of C?---Correct.

30

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

I think I'm right in recalling that you said that that was a pass?---Yes, that's correct.

35

Was one of the deficiencies identified in that audit, the audit resulting in a rating of C, a deficiency that constituted a failure to be able to at least demonstrate compliance with the best interests duty?---My – my recollection of the – the first audit, the C audit, was that there was a best interests duty issue. That would ordinarily attract a high weighting under our audit standards but there is a materiality provision, and it appears that the auditor has exercised his or hers – I can't remember – discretion, and – and formed a view that while it is high weighted, it was not material based on the – on an assessment that it would not have impacted the advice. And on that basis, it wasn't scored as a high weighted issue.

40

45

Is the more general question that seems to me possibly to emerge from what you've said is what significance AMP gives to compliance with the best interests duty in its audit process? Now, it's a very generalised question, so can I pose it at that level and ask you what response you would make to it?---So are – generally a failure on audit

picked up on audit to comply with the best interests duty would attract a high weighting. So AMP does consider that to be a high weighted, meaning high risk, issue. And it would be scored accordingly when – when working out what rating would be allocated to that particular adviser.

5

But the bare fact that it is accorded a high rating is not in and of itself sufficient to consider the future engagement of the representative?---The – so receiving a high – a high – a high weighted issue will go to the rating, and – and that rating is what we use to consider the future of that representative.

10

Yes. Yes.

MS ORR: Perhaps it's of assistance just in relation to those questions to bring back up AMP.6000.0043.2829, which is the audit you've been speaking of, Ms Britt?---Yes.

15

And bring up page 2834, which is where we see the high rating that was accorded to the best interests duty component of this audit?---Yes.

20

So this failure was accorded a high rating?---Correct.

But your evidence is that the auditor regarded it as not being a material high rated issue?---That's correct. If it – if it – if it was considered to be material, you would see next to the heading Best Interests Duty, it would have the words scoring impact in brackets after it. The fact that it doesn't indicates that the auditor in this case has made a decision that while it is high weighted issue, it's not material.

25

And that was the reason the C rating was given because if it was a material high rating, a C result could not have been attained?---Yes, I believe that's right. I believe once you have a high weighted issue, it tips it over to a D weighted – a D rating, sorry.

30

Thank you. So what is the auditor entitled to consider in exercising their discretion as to whether or not to rate a high rated issue material or not material?---So there are guidelines set out in the audit standard. I have to say that I personally struggle to reconcile when I looked at this audit - - -

35

Yes?--- - - - the decision that it was not a material issue, but all I can say is that that is what the auditor decided at the time and that – that is how it ended up a – a C rating. I can't – I can't necessarily justify that – that decision.

40

Yes.

THE COMMISSIONER: Well, lest there be any doubt about it then, Ms Britt, does that give some cause for concern about the efficacy of the audit process? If you're not able to explain how it is that this was not high rated?---So, Commissioner, yes. Look, I think we are currently, as I mentioned, revisiting large parts of the audit

45

process. So we accept that there are always improvements that could be made in that regard. I would say in relation to this particular case that if – if it had have been scored, this adviser would have received a D, the result of that would have been to bring forward his next audit instead of six months’ time, it would have been three
5 months’ time. But it would not, in any event, have resulted in – in his termination. What it would have done is brought forward the next audit. But in terms of your overall question, yes, that – that is one of the issues that we’re looking at, in terms of the efficacy of our – of our audit process.

10 Thank you?---And we’re doing a lot of work around that as a result of Report 515.

Yes, thank you.

15 MS ORR: Ms Britt, I want to turn to the third adviser that you deal with in your statement. That’s Mr Adam Palmer?---Yes.

He became an authorised representative of Genesys Wealth advisers in 2013?---Yes.

20 And Mr Palmer was interviewed by Genesys with a view to becoming an authorised representative in 2012? Perhaps I can show you a document - - -?---Yes, sorry.

- - - to assist you in - - -?---Could you just – yes.

25 - - - answering that question, Ms Britt?---Thank you.

Which is AMP.6000.0053.0051. Have you seen this document before, Ms Britt?---I’m sorry, yes, I think I have, yes.

30 It’s a form completed by a Genesys employee. We see his name at the bottom, Mr Peter Hillis?---Yes.

It seems to have been completed based on an interview by Mr Hillis of Mr Palmer; is that right?---Yes.

35 Do you see the reference to the:

I have interviewed the adviser.?---

40 ?---I do, yes. Yes, I do.

And we see at the top, if we could pan back out to the top of the page, that this is a questionnaire that forms part of the FAN. What is FAN?---I believe FAN is Financial Advice Network.

45 Continuing:

The Financial Advice Network due diligence assessment of potential new advisers, it must be completed for all new recruits.

?---Yes.

5

And the advice assessment comprises four parts: practice procedures?---Yes.

Which relates to completing parts of this document. And adviser assessment which, again, relates to completing part of this document?---Yes.

10

And advice profile and a client files review?---Yes.

And there are also reference checks with the previous licensee?---Yes.

15

Now, in this document at 0052, we see that Mr Palmer told Genesys that he was coming from another licensee, and that licensee was Australian Financial Services?---Yes.

20

Did you hear any of the evidence last week about Australian Financial Services, Ms Britt?---I am afraid I didn't.

25

What I want to put to you is that at this time, in 2013, it was well known in the industry that ASIC had imposed conditions on the licence of Australian Financial Services in 2011 as a result of misconduct by its advisers?---I'm sorry, I just can't answer that question. I don't know if that was well known in the industry or not.

I'm sorry?---I can't answer that question. I don't know if that was known at the time or not.

30

Well, I will just show you, for completeness, a media release about that action, which is RCD.0021.0001.0398. This is exhibit 2.131. And I will just direct your attention there to this media release on 7 November 2011 about ASIC's action against Australian Financial Services following a six month surveillance which resulted in additional conditions being imposed on their licence as a result of the concerns listed in this document?---Yes. Yes, I see that.

35

And what I want to put to you is that the fact that Mr Palmer was coming to Genesys in 2013, having been at Australian Financial Services in the period covered by this action, would have been a matter of concern to Genesys?---I – I just don't feel qualified to – I wasn't in the business at that time. For some of this time I was living overseas. I – if this were well known in the industry, yes, it would have been a concern to Genesys. I just don't feel qualified to answer that question.

40

Yes. You are the person I have to ask, Ms Britt, because AMP has put - - -?---I accept that.

45

- - - you forward to give evidence - - -?---I accept that.

- - - about Mr Palmer. All right. Could we go back to the interview assessment document and can I ask you to look at 0053. You will see that this is the adviser assessment part of the document?---Yes, yes.

5 We see there:

How long have you been a financial planner?

And the reference again to Australian Financial Services?---Yes.

10

We see down the bottom:

Have you completed specialist accreditation with a registered training organisation?

15

?---Yes, I see that.

Continuing:

20 *Self-managed super fund (Australian Financial Services course).*

?---Yes.

25 Do you understand Australian Financial Services to be a registered training organisation?---No, I – no, I don't understand that.

No. Thank you. And if we could turn to the next page, 0054, we see that Mr Palmer describes his present role at Australian Financial Services as:

30 *Insurance investments superannuation including self-managed superannuation funds adviser. What is your expected role? Same. Consolidating into complete wealth.*

And do you see further down:

35

Do you specialise in a particular area of advice?

And the form has been completed to record that he specialises in those aspects of advice recorded above?---Could I just see the rest of that document?

40

The rest of the page?---Yes. Yes. Thank you. Yes, I see that.

And do you see all of the strategies and products?---Yes.

45 Including restricted strategies and restricted products?---Yes.

That it's indicated that Mr Palmer will be involved with?---Yes.

And in answer to the question:

Considering the issues raised, are there training needs that should be addressed in the induction training?

5

?---Yes.

What is recorded is:

10

None urgent. Advice process course recommended.

?---Yes.

15 Can I then take you to 0055, the following page, and we see that Mr Hillis has recorded that Mr Palmer has been the subject of a complaint in - - -?---Yes.

- - - 2009 and '10?---Yes, I see that.

20 Relating to 10 per cent of a portfolio being in basis capital, and that the complaint was settled in 2012?---Yes.

And we see further down that it went to FOS, then settled by remediation?---Yes.

25 And a professional indemnity claim was lodged and Mr Palmer paid the excess?---Yes, I see that.

And then finally, on the last page, 0056, we see that:

30 *The person completing this form is to obtain and attach a copy of the adviser's previous audit report less than 12 months old.*

?---Yes.

And then:

35

Summarise the findings as follows: with the date of audit and audit rating achieved.

?---Yes.

40

What Mr Hillis has written is:

Six monthly with previous Australian Financial Services licensee –

45 which is Australian Financial Services Limited:

...audit rating not provided to adviser, email with minor points for action may be available.

?---Yes, I see that.

5

In your experience, would it be unusual for an adviser not to be provided with an audit rating following an audit?---Yes. Yes, based on my experience, yes.

So this should have been cause for alarm as well?---Yes. Yes.

10

But we see, if we go back to the first page, the recommendation made by Mr Hillis about Mr Palmer?---Yes.

Down the bottom of the page:

15

The following aspects are noted: ADFS not held at this point.

What do you understand ADFS to be?---I'm sorry, I'm not sure

20 THE COMMISSIONER: Advanced Diploma of Financial Services.

MS ORR: Of financial services. So that appears to relate to his qualifications?---Yes, sorry. Yes. Yes.

25 And the fact that he does not hold an advanced Diploma of Financial Services:

Future requirements have been discussed with the adviser.

?---Yes.

30

Number 2:

Past advice has included agribusiness, property funds now frozen and exposure to Basis Capital.

35

?---Yes.

Number 3:

40 *Past complaint by 1 was resolved with FOS remediation in late 2011 with PII excess paid.*

?---Yes.

45 Continuing:

None of these issues is expected to prove prohibitive to appointment and I recommend that the adviser proceed to application stage.

?---Yes.

5

I tender that document, Commissioner.

THE COMMISSIONER: Advice assessment re Palmer 10 December 2012
AMP.6000.0053.0051 exhibit 2.165.

10

**EXHIBIT #2.165 ADVICE ASSESSMENT RE PALMER DATED 10/12/2012
(AMP.6000.0053.0051)**

15

MS ORR: That was December 2012?---Yes.

Ms Britt?---Yes.

20

And a short time later Mr Palmer completed an authorised representative application form - - -?---Yes, correct.

- - - Which I will show you - - -?---Yes.

25

- - - in January 2013. That document is AMP.6000.0053.0101. If we turn to the second page – perhaps we could have the second and the third pages on the screen. You will see that this relates to Mr Palmer?---Yes.

And on the right-hand side, section 2, the question in the application form is:

30

Which areas of advice do you wish to appear on your financial services guide?

?---Yes.

35

And we see that Mr Palmer has ticked every strategy and every product?---Yes.

Except agribusiness?---Correct.

Including self-managed super funds?---Correct.

40

And there is a notation next to self-managed super funds – do you see the asterisk there? We might need to - - -?---I'm sorry, no, I don't. Yes, I do.

45

We might need to zoom in on self-managed super funds. You will see an asterisk?---Yes.

And then the asterisk says:

Relevant specialist qualifications must accompany your application for these areas of advice

?---Yes, I see that. Yes.

5

Did Mr Palmer provide any specialist qualifications for self-managed superannuation funds advice?---Not that I have seen in the documents.

Well, he didn't have any, did he, Ms Britt?---No, it doesn't appear he did.

10

Then in section 3, Adviser and Employment History, the question that Mr Palmer is asked to address is:

Do you currently hold an authority to act as an authorised representative?

15

?---Yes.

And we see that he did?---Yes.

20

The licensee was Australian Financial Services?---Yes.

And you've been with them since 2003?---Yes.

In answer to the question:

25

Do you have clients to transfer to Genesys?

?---Yes.

30

We see that he has ticked "yes"?---Yes.

And he has provided approximate values attributable to his client base. Risk – is that insurance?---Yes.

35

Of 150?---Yes.

What do you interpret that to be? 150?---I – I don't know whether it's referring to the values of policies that – that his clients have got.

40

And we then see a reference to FUM, which is funds under management?---Fund under management, yes.

He had \$30 million worth of funds under management?---Correct. Correct.

45

And a turnover, do you – can you read what is after turnover there?---It looks to me like 650K, but - - -

Yes. \$650,000?---Yes.

So Mr Palmer had a significant and valuable client base that he was willing to transfer to Genesys?---It appears so, yes.

5

Yes. And then if we turn to 0105, we see his response to the question in section 6:

Do you have industry qualifications?

10 ?---Yes.

Continuing:

Yes.

15

But nothing is listed in financial planning industry qualifications, just an advanced Diploma in Applied Science under other tertiary qualifications?---Yes. Sorry, I see that, yes

20 Could I ask you then to look at 0107, section 8, and we see the areas of advice ticked by Mr Palmer?---Yes.

These are all the things he is going to do: personal insurance; business insurance; corporate superannuation; estate planning?---Yes.

25

These are all ticked by him on the basis that these are areas in which he is advising on under authority?---Yes.

30 And at 0108, as that section continues, we see that Mr Palmer has ticked that he is advising under authority in relation to self-managed superannuation funds; do you see that towards - - -?---Yes, I can see that, yes.

And also in relation to direct property?---Yes.

35 And also in relation to gearing?---Yes.

I tender that document, Commissioner.

40 THE COMMISSIONER: Authorised representative application by Palmer AMP.6000.0053.0101 is exhibit 2.166.

EXHIBIT #2.166 AUTHORISED REPRESENTATIVE APPLICATION BY PALMER (AMP.6000.0053.0101)

45

MS ORR: So having been through the interview process in December 2012 - - -?---Yes.

5 - - - and having completed this application form in January 2013, Mr Palmer, through his corporate entity, was appointed an authorised representative of Genesys?---Yes, he was.

10 And Mr - - -?---Sorry, I'm not – I'm not sure it was his corporate entity in the first instance but I think he subsequent – I think he was with a different member firm, and then it became later it was his corporate entity, is my memory.

Yes. So through an entity?---Yes.

15 Of some sort?---That's correct.

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

20 Yes. And Mr Palmer and Genesys executed various documents to give effect to that authorised - - -?---Correct.

- - - representative arrangement?---Correct.

25 And the effect of those documents was that Mr Palmer's remuneration was determined by reference to the income that he brought into Genesys from product issuers and from the fee income he brought into Genesys?---Yes.

30 Thank you. Was the assessment of Mr Palmer that was done prior to him being appointed as an authorised representative of Genesys adequate?---No. Well, based – based on the documents I've seen, it appears that it was a deficient process.

Could I ask you to look at AMP.6000.0053.0012?---Yes.

35 This is an email dated 22 July 2014 attaching an issue notification form, which is at 0013?---Yes.

And we see there towards the bottom of the page that on 18 July 2014 – this is over a year after Mr Palmer has commenced as an authorised representative with Genesys - - -?---Yes.

40 - - - the view is expressed in this issue notification form that the appropriate training and induction had not taken place and the assessment made by Peter Hillis should have been more thorough?---Yes.

45 It was inadequate, wasn't it, Ms Britt, to accept Mr Palmer's training in self-managed superannuation fund advice when it didn't come from a registered training organisation?---Yes.

Particularly where the advice assessment document indicated that he intended to continue providing self-managed - - -?---Yes.

- - - superannuation fund advice?---Yes.

5

It was inadequate, wasn't it, to take Mr Palmer on his word that he didn't know what his last audit rating was?---Yes, it was.

10 And it was inadequate to not exercise greater care in circumstances where Mr Palmer was coming from Australian Financial Services Limited?---Yes.

15 And in circumstances where he was coming with a previous complaint that had been resolved by FOS remediation?---Yes. I mean, I – I don't think the fact that an adviser has one complaint is – is necessarily, but I would agree with the first three propositions certainly, and in relation to the complaint generally we would investigate that further.

20 What about the complaint in the context of all the other matters that I've listed, Ms Britt?---In the context of everything else, yes, yes.

Thank you?---I would accept that it was a deficient process.

25 Thank you. Commissioner, could I tender the email attaching the issue notification form.

THE COMMISSIONER: Email issue notification form July 2014
AMP.6000.0053.0012 exhibit 2.167.

30 **EXHIBIT #2.167 EMAIL ISSUE NOTIFICATION FORM JULY 2014
(AMP.6000.0053.0012)**

35 MS ORR: Ms Britt, the requirement that we saw in the earlier documents for an assessment of three client files to be done during the interview - - -?---Yes.

- - - or soon after joining wasn't adhered to for Mr Palmer, was it?---I haven't seen evidence that it was.

40 Mr Palmer didn't submit anything for assessment until February 2014, approximately 10 months after he had – he had commenced working as an authorised representative of Genesys, did he?---Not that I have seen.

45 Could I ask you to turn to tab 38 of your statement, which is AMP.6000.0037.2351?---Yes.

This is a memorandum that you've annexed from Tim Steele, the managing director of Genesys and ipac regarding Mr Palmer - - -?---No - - -

5 I'm sorry?---I'm sorry, I think it is to Tim Steele.

You are right. My mistake?---Yes.

It's from Claudia Firmansjah?---Firmansjah. Yes.

10 Firmansjah?---Yes, yes.

To people including Mr Steel?---That's correct, yes.

15 Regarding Mr Palmer on 20 August 2014?---Yes.

And we see a reference there on the following page, 2352 at the top of the page - - -?---Yes.

20 - - - to Mr Palmer sending through five statements of advice to AMP vetting on 7 February 2014?---Correct.

And nothing had previously been provided to vetting for approval?---Yes, I see that.

25 And the statements of advice we see were dated May '13, August '13, October '13 and two from November '13?---Yes.

And they convey – contain various advice strategies?---Yes.

30 And we see below the table that:

AMP vetting emailed Mr Palmer on 11 February 2014 requesting Fact Finds to be submitted.

35 Because all he had given you was the statements of advice?---That's correct, yes. That's correct.

So AMP vetting asked for the fact find so the advice could be vetted and Mr Palmer didn't provide those?---That's correct.

40 And there was no follow-up by AMP vetting?---I – there is – there is certainly a policy whereby that should have occurred. I haven't seen in this particular case where it was followed up by vetting.

45 There's no evidence that it did occur, is there?---There's no evidence. That's correct.

In fact, not one of Mr Palmer's files was reviewed until July 2014, more than a year after he had commenced as an authorised representative, and the only reason that

occurred in July 2014 was because Mr Palmer made a decision to transition from providing advice as part of one member firm to a single adviser firm?---That's correct, yes. That appears to be correct.

5 Yes. You haven't annexed any documents to your statement connected with that review that happened in connection with that transition, but I want to show you some of them. Can I ask that you be shown AMP.6000.0053.0047. Now, this is an email chain from July 2014. And if we start at 0048 we see an email from – perhaps if we could have both pages on the screen – we see an email from Bronwyn Carter at AMP
10 to Learning?---Yes.

Another part of AMP?---Yes.

Continuing:

15

Hi Liz, as discussed I am in the process of reviewing an FSG –

a financial services guide:

20

...for a Genesys adviser, Adam Palmer

Now, that review would have been in the context of his decision to transition from a member firm to a single adviser firm, which would have necessitated changes to his financial services guide?---I would assume so, given the dates, yes.

25

And part of the process for this is to look at AEE? That's an internal AMP system of some sort, is it?---Yes. Yes.

30

To - - -?---And I'm afraid I've forgotten what the acronym is, but yes.

That's all right:

35

To confirm the adviser has the relevant qualifications and accreditation to support the areas of advice that the FSG discloses in the adviser profile. For this particular adviser his profile in the internal system is listed as prospective.

?---Yes.

Continuing:

40

He has been appointed according to the ASIC register and has an active sales force account. There are also a number of accreditation areas that seem to be missing such as north guarantee, margin lending and self-managed superannuation funds. I will be informing Adam Palmer that his records need to be updated to address a number of the accreditation areas prior to providing the FSG to clients. Would you please look into why the internal record for this particular adviser is still showing as prospective.

45

Now, prospective was some sort of record in the system that indicated that the person was to become an adviser - - -?---Correct.

- - - but had not yet - - -?---Correct.

5

- - - commenced operating as an adviser?---Correct.

And this is July 2014, more than a year after Mr Palmer has been acting as an adviser - - -?---Correct.

10

- - - on behalf of Genesys?---Correct.

And if we look at the response to that email later that day, we see that Elizabeta, a systems consultant, responds to Ms Carter, and explains that there is no record of Mr Palmer having completed either an external self-managed superannuation fund accreditation or the in-house introduction to SMSF training?---Yes.

15

The next paragraph down:

20

Until the supporting documentation has been provided, he can't provide advice in self-managed superannuation funds.

?---Yes, I see that, yes.

25

And she also explains that she has updated his role on the internal systems to comprehensive so it no longer reflects prospective?---Yes.

I tender that document, Commissioner.

30

THE COMMISSIONER: Emails of July 2014 between Carter Learning and others concerning Palmer AMP.6000.0053.0047 exhibit 2.168.

35

EXHIBIT #2.168 EMAILS OF JULY 2014 BETWEEN CARTER LEARNING AND OTHERS CONCERNING PALMER (AMP.6000.0053.0047)

MS ORR: Were any steps taken at this time to prevent Mr Palmer from providing self-managed superannuation fund advice?---I – I haven't seen anything in the documents.

40

There's no evidence to suggest that any step was taken to prevent him from providing that advice, is there?---I – I don't believe I've seen any evidence.

45

Now, as part of this review that was triggered by his transition between firms, further issues with Mr Palmer emerged, didn't they?---Yes.

And if we could go to AMP.6000.0053.0099. And if we could bring up 0100 on the other side of the page. This is an email attaching a second issue notification form?---Yes.

5 Dated – the email is dated 22 July 2014, and the issue notification form dated 18 July?---Yes.

And we see that the issue that's identified in this form is that:

10 *Upon the review of his financial services guide and subsequent discussions, it was discovered that Adam Palmer has an interest in a property advocacy business called Property Saint which has not been disclosed or approved by the licensee.*

15 ?---Yes, I see that, yes.

Continuing:

20 *Has the issue been rectified? No.*

And then further down:

25 *Please provide details of all affected clients. I would suggest that all SMSF clients who hold property from 3 May 2013 –*

that's when Mr Palmer commenced?---Yes

Continuing:

30 *Would be affected.*

?---Yes.

I tender that document, Commissioner.

35

THE COMMISSIONER: Email issue notification form re Palmer 18 July '14 AMP.6000.0053.0099 exhibit 2.169.

40 **EXHIBIT #2.169 EMAIL ISSUE NOTIFICATION FORM RE PALMER DATED 18/07/2014 (AMP.6000.0053.0099)**

45 MS ORR: That wasn't the end of the issues identified in this review. There were also issues identified with failures by Mr Palmer to adhere to the best interests duty in the provision of advice?---That's right, yes.

And, as a result of all of these concerns, a decision was made to subject Mr Palmer to an audit?---Correct.

For the first time?---Yes. That was the first audit, yes.

5

On 23 July 2014?---Yes.

And you've exhibited the audit report to your statement at tab 25A, which is AMP.6000.0028.0841. And we see there that the result of this first audit conducted for Mr Palmer was an E rating?---Yes, that's right.

10

And as I think you've already said, that's the lowest possible rating?---Correct, yes.

In an audit?---Yes, that's right.

15

And an E rating is given where six or more high risk issues - - -?---That's correct, yes.

- - - with material impact - - -?---Correct, yes.

20

- - - are identified?---Yes.

And we see from this letter to Mr Palmer that he is told he has:

25 *Failed to meet minimum standards required when providing advice, and that serious deficiencies have been identified which require immediate and focused attention.*

?---Yes.

30

You've read this audit report, Ms Britt?---Yes, I have.

So you would know that within the five files that were reviewed, there were 27 high risk issues identified, 55 medium risk issues identified?---Yes.

35

And 11 low risk issues identified?---Yes.

Could I ask you to look at 0843. Within the files reviewed, there was a particular file which is dealt with on this page. This was for a couple who were wanting to renovate their home - - -?---Yes.

40

- - - establish a self-managed superannuation fund - - -?---Yes.

- - - roll over their super into the self-managed fund and purchase an investment property?---Yes.

45

And the audit identified a raft of problems with the advice given to this couple?---Yes.

And these are dealt with over the following pages, 0843 through to 0845?---Yes.

5

Perhaps if we could have 0844 and 0845 on the screen. The problems that were identified with the advice that this couple received included there being no evidence of their risk tolerance being assessed?---Correct.

10 The advice fell outside the scope of Mr Palmer's accreditations?---Correct.

Because he didn't have self-managed - - -?---That's right.

- - - superannuation fund or gearing accreditations?---That's right.

15

And he was also providing advice that could be deemed as property advice?---Yes, that's correct.

20 All right. And if we turn to 0848, you will see the heading Further Investigation (Scoring Impact)?---Yes.

And this is where we see that Adam has a direct interest, 60 per cent ownership in a property business, property Sanct?---Yes.

25 Continuing:

All SMSF LRBA clients are referred to an in this business, who is a buyers advocate or agent, and he sources the property on behalf of the clients or trustees.

30

?---Yes.

Continuing:

35 *And as a result of the above I could not determine in any of the files reviewed that the clients legitimately sought advice on buying property in a self-managed superannuation fund.*

?---Yes.

40

Continuing:

45 *The files do not demonstrate that the adviser has either adequately disclosed this conflict of interest, documented any fees received from the property business or profit split, or adequately managed the conflict of interest by placing the clients' interests ahead of his.*

?---Yes.

The provision of advice in circumstances where the adviser has an undisclosed or insufficiently disclosed conflict of interest is a very serious matter, isn't it, Ms
5 Britt?---It is, yes.

Advice of that nature is tainted, isn't it, because it may not have been given in the clients' best interests but to advance the interest of the adviser?---Yes, that's
10 certainly the risk, yes.

And if we continue in this document to point 4, we see that:

*The knowledge of the adviser with respect to SMSF and SIS legislation is
15 questionable.*

?---Yes.

Continuing:

20 *One file that was not reviewed in this audit due to advice being provided under
the authorisation of Australian Financial Services, the previous licensee –*

?---Yes.

25 Continuing:

*...showed email communication between the adviser and clients regarding
30 architect reports and demolition works to a dentist industry property held in the
self-managed superannuation fund. The adviser had commented that the self-
managed super fund could pay for these two bills. When I raised that capital
improvements were not allowed for property held in self-managed super funds
with borrowing, the adviser seemed genuinely surprised.*

?---Yes, I see that.
35

So that finding demonstrates, doesn't it, Ms Britt, what could have happened if Genesys had followed adequate procedures and reviewed files of Mr Palmer before or immediately after he was authorised as a representative of Genesys?---Yes, I – I
40 accept that's true.

It's an example of a file that, had it been reviewed at that time, would have rung
alarm bells?---Yes, I imagine, yes.

And this audit identified that Mr Palmer had engaged in similar conduct in respect of
45 nine other clients?---Yes, that's correct.

Do you accept that Mr Palmer's conduct was dishonest?---I – I did consider this long and hard because I know it was one of the questions asked. My – my – my response at the time was based on the fact there was no evidence of actual dishonesty. But I accept - - -

5

What are you referring to when you refer to your response at the time, Ms Britt?---Sorry, the response I provided as part of my statement - - -

10 Yes?--- - - - was – was based on the fact I hadn't seen any evidence of actual dishonesty but I accept, obviously, that it's a matter of grave concern that the adviser hasn't – hasn't disclosed his interest in this property business, and – and I – I'm aware that – that – I was – I was basing my opinion on the document review that I undertook. I know that when we subsequently did report this adviser to ASIC as an SCC, I have seen that we did, I think, when we broadly categorised his conduct I
15 think we did use the word – possibly did use the word "dishonest" when we – when we made that notification subsequently.

20

Do you accept that it was dishonest?---I – I accept that it could be interpreted as dishonest. I accept that.

25 Are you aware that AMP, in its submission to the Commissioner in response to the Commissioner's letters about misconduct, described the conduct of Adam Palmer as dishonest or illegal conduct?---Yes, so I think that was, as I said, based on how we categorised it when we reported him as an SCC to ASIC and I think that was the basis on which we provided that information to the Commission.

30

And was that characterisation for the purposes of the report to ASIC correct?---Well, I think – that report was made by people who were – who were intimately involved with the matter. So I would accept, if that is the categorisation they made, I made an assessment based on what I had seen, on the documents that I had reviewed.

So following this audit in July 2014, the matter went to the AMP issues panel?---Correct.

35

And there was a decision made by AMP to terminate Mr Palmer's authority?---That's correct.

But Mr Palmer resigned before he was terminated?---Correct.

40

Could I ask you to look at AMP.6000.0029.0892. It's tab 27 to your statement, Ms Britt?---Yes. Yes.

45

This is an email chain on 24 and 25 December – I'm sorry, of September 2014?---Yes.

Could I ask you to start at 0895. We see there an email sent by Mr Palmer - - -?---Yes.

- - - to AMP on 25 September 2014?---Yes.

5 *Hi Grant and Sharon we have made the decision to move across to another dealership which better suits our requirements. We would like this to be effective of 24 October 2014. We are moving to Dover Financial Advisers.*

?---Yes, I see that.

Continuing:

10

Could you please send transfer deed as well as draft copy of letter that needs to be sent to our clients.

It's just at the bottom of page 4 of that email chain?---Sorry, I see that, yes.

15

And that resignation was accepted by AMP?---Yes.

And Mr Palmer's authorisation was terminated with immediate effect?---Yes.

20 There was then some internal discussion at AMP, wasn't there, about what to tell Dover Financial Advisers?---Yes, I've seen that.

25 So if we return to the email chain and go to 0892. And if we could have 0892 and 0893 on the screen, we will see that on 25 September Mr Fogarty of AMP said to Sharon Dzodzadinov of AMP:

Hi Sharon, as per Claudia's email, we will still be writing to his clients. We want copies of his files and we are happy for him to go immediately

30 Over the page?---Yes.

Could I also ask that if Dover, new licensee, call to ask for a reference check that we don't provide any information please.

35 ?---Yes, I can see that.

And then Ms Firmansjah responds to this email also on 0892?---Yes.

She was one of the people copied on the original email?---Yes.

40

And she tells Mr Scott:

45 *I can change the termination letter slightly to accommodate this. Please let me know once we speak to Adam. Re reference request from Dover, we still have an obligation to provide factual information to Dover. Dover is a small licensee who took on board another Charter adviser we terminated in July this year and they didn't ask for any references. If anyone from Dover ask for a*

reference, please ask them to put their questions in writing and forward their request to me.

?---Yes, I've seen that.

5

Did Dover ask for a reference in relation to Mr Palmer?---So I'm – I'm not aware of whether they did, and – and in the searches that we did prior to me completing my statement, we were unable to locate any – any documents. So I – I can't say whether or not they did, only that we haven't been able to locate any. I haven't seen any.

10

You found no reference to any - - -?---I haven't seen any.

- - - request by Dover for - - -?---I haven't - - -

15

- - - information about Mr Palmer?---I haven't seen any.

Did Charter reach out to Dover to let them know that it had decided to terminate Mr Palmer has an authorised representative and why it had made that decision? I'm sorry, I said Charter, I should have said Genesys?---Genesys.

20

I'm sorry?---No, that's all right. I understood the question. I've seen nothing to indicate that that – that that happened.

25

And if that did not happen, which appears to be the case, why didn't it happen?---So my understanding is that the process is that – that we wait for a reference check from the new licensee. And – and once they are contacted – once we are contacted by the new licensee, then we would hand that information over.

30

Does that remain the policy today, that you wait for a reference check from the licensee?---Well, things are slightly different now with the ABA protocol. And I think as an industry, we're much more careful about reference checking with advisers. So I would anticipate that we would receive a request through that process, and – and we then respond accordingly. There's a – a pro forma – a template form that would be submitted and we would provide that information in response.

35

And what if you don't receive such a request? Is the practice today to reach out to licensees that you know your terminated advisers are going to, to explain the basis for the termination?---So in most cases we won't actually be aware necessarily where they're going, which licensee they're going to - - -

40

Let's restrict it to situations like this where you are aware?---So I'm not – I'm not aware that we reach out proactively and provide that information, but we certainly do provide details when the reference checking process is invoked.

45

Do you think you should proactively reach out to other licensees to provide that information, Ms Britt, given that there is a basis for a concern that this terminated adviser will engage in the same sort of conduct towards other clients in the

future?---I think – I think our experience is now that – that incoming licensees would – would always undertake those – that reference checking, and so, as an industry, we’re now alive to these issues and we’re alive to the risk of – of noncompliant advisers that are bouncing around the industry. And so there is – there is this – a
5 protocol and – and a dialogue in place between licensees to – to try to prevent this happening.

So that’s as a result of the ABA reference checking protocol but that wasn’t the situation before that time?---That’s correct, yes.
10

And are you aware that after Mr Palmer moved to Dover, ASIC conducted a review of his files at Dover and identified multiple potential breaches of the Corporations Act in connection with his files?---So I am aware that after he left AMP – after he left Genesys, we reported him to ASIC, and – and I’m aware that on the – I’m
15 assuming, sorry, that it was off the back of that notification, we received some ASIC notices which we responded to, and we handed over client files in response to those notices. I’m aware that ASIC reviewed those files and – and I did receive some correspondence from ASIC off the back of that review. I hope that answered your question, sorry.
20

Well, I was interested in whether you’re aware that after he went to Dover, ASIC conducted a review of his files at Dover and found multiple breaches of the Corporations Act in those files?---No, I think I was talking about the section 33 notice from ASIC which was files in which he provided advice while he was still
25 under the Genesys licence.

The breach assessment that you’ve mentioned - - -?---Yes.

- - - in October 2014 that breach assessment was done within AMP. This is an
30 assessment of whether or not to report this as a breach to ASIC?---Yes.

And a decision was made in that breach assessment that the breach was not significant and reportable - - -?---Yes.

- - - albeit there was a suggestion that details of the adviser should be provided to
35 ASIC?---That’s correct, yes.

You accept, don’t you, that Mr Palmer’s conduct demonstrated significant compliance issues?---Yes.
40

And was the decision not to report Mr Palmer’s conduct to ASIC at that time the correct decision?---So I think there’s – again, there’s two separate things. I think the decision not to report it as a licensee breach, based on what I have seen, was a correct decision. The decision separately not to report Mr Palmer as an SCC, I think I’ve
45 said in my statement that that’s – that’s not a decision that I would take today, based on everything I have seen, it – he falls within – fairly squarely within the SCC

category. And I note that subsequently we did report him as an SCC. So in relation to that decision, I – I would – I would question whether that was the right decision.

5 So that was a decision in October 2014, not to refer him to ASIC on the basis of a serious compliance concern?---Yes – yes, I just want to make sure we’re talking about the right decision. I – I thought it was 6 November when we - - -

No, I haven’t come to that yet?---Sorry.

10 There’s an assessment done on 7 October 2014, and if you have a look at tab 30 of your statement - - -?---Yes.

15 - - - you will see a document you’ve annexed about that?---Yes. So that – that is in relation to a potential licensee breach, not the decision to report him as an SCC adviser.

So the decision that you say would lead to a different approach today - - -?---Yes.

20 - - - in your statement which you’re referring to in 39(g) of your statement, is the decision made in November 2014; is that right?---That’s correct.

And that’s the decision not to report Mr Palmer’s conduct - - -?---That’s correct.

25 - - - to ASIC, not a licensee breach but - - -?---That’s correct.

- - - his conduct?---That’s correct, so - - -

30 I understand?---Yes. So the decision – breach assessment decision which you’ve taken me to at tab 30.

Yes?---I’m comfortable based on what I have seen that was the right decision.

35 Yes?---The decision in November not to report him personally, I – I’m not comfortable that actually was the right decision, and based on what I have seen today, we would – we would – we would be reporting him as a serious compliance concern. And, indeed, we did. Some time later we did.

40 Well, you didn’t tell ASIC anything about Mr Palmer’s conduct until about nine months later on the – in July 2015 when AMP named Mr Palmer in response to a request for information - - -?---That’s correct.

- - - from ASIC - - -?---Yes, that’s correct.

45 - - - about advisers that Genesys had identified serious compliance concerns for?---That’s correct. That’s correct.

So when you say there was a notification, there was an answer to a request by ASIC for information; is that right?---I'm sorry, yes, I didn't mean to mislead you. Yes. It was in response to an ASIC notice, we told them about Mr Palmer at that stage, and, yes, it was July 2015. Yes.

5

In your statement you explain the reasons why you think Mr Palmer provided inappropriate advice, and you say that the principal reason was his lack of understanding of his legal and policy obligations?---Yes.

10 Specifically as they related to the best interests duty and related obligations?---Yes.

But Mr Palmer didn't receive adequate training after he started with Genesys, did he?---No, he didn't.

15 He never received best interests training, did he?---No, he didn't.

And that was because he had been entered in the system as a prospective adviser - - -?---That's right.

20 - - - rather than an adviser, and, therefore, no one ever followed up the need for him to receive best interest duty training?---That's correct, yes.

So that was a failing on the part of Genesys, was it not?---It was.

25 And the process for conducting due diligence on Mr Palmer when he joined Genesys also failed?---Yes, I accept that seems to be the case.

And Genesys also failed to ensure that Mr Palmer was only providing advice within areas in which he was accredited to provide advice?---Yes.

30

And yet you tell us in your statement that Genesys has made no changes to its practices and procedures as a result of the events involving Mr Palmer?---Well, again, I think I was – I was seeking to answer that very specifically, that there has been a lot of changes in our on-boarding policy, a lot of changes in our reference checking policy. We now have a very robust harmonised policy in that regard. What I – what I was specifically saying is that this particular case did not trigger that. Nonetheless, we now have a very robust reference checking policy whereby I'm satisfied this wouldn't – this wouldn't occur. And, sorry, if I can also add, you know, we no longer have Genesys as a licensee.

40

After the decision was made in November 2014 not to report Mr Palmer's conduct - - -?---Yes.

45 - - - to ASIC, there was a meeting about potential remediation of Mr Palmer's clients?---Yes, there was.

And could I ask you to look at your tab 32, which is AMP.6000.0037.2085?---Yes.

And this is a letter that was to be sent to clients of Mr Palmer's?---Yes.

5 It's a letter that was to go to the very clients that received the advice that I raised with you earlier, the couple who wanted to establish the self-managed superannuation fund?---Yes.

To buy an investment property. And by this letter, Genesys offered them a free advice review?---Yes.

10 But Genesys didn't offer them any remediation?---I think the intention was to review that advice to see whether or not they should be remediated.

And how does the client know that that is the intention, Ms Britt?---I think it is intended by words such as:

15

It is imperative that your situation is reviewed so we can ensure that you've received appropriate advice.

20 But I accept that nowhere in this letter is it spelt out that you may be entitled to compensation.

No. Genesys became aware that Mr Palmer had provided inappropriate advice that potentially required customer remediation in July 2014, nearly four years ago?---That's correct, yes.

25

And Genesys terminated Mr Palmer's status as an authorised representative in September 2014, about three and a-half years ago?---Correct, yes.

30 Has any client of Mr Palmer's received any remediation for the receipt of inappropriate advice from Mr Palmer?---No, not as far as I'm aware.

And a number of files of Mr Palmer's clients are yet to be reviewed?---That's correct.

35 When will AMP conclude its assessment of those files?---I – I don't have a date for when that will be complete.

And do you know by when AMP will have determined whether to make any offer of remediation?---No, I don't.

40

And has AMP made any specific provision for compensation for any of Mr Palmer's clients?---No, I'm advised we haven't specifically provisioned in relation to this adviser.

45 So, Ms Britt, each of the three advisers that I've asked you questions about failed audits, didn't they?---Correct.

And do you agree that the file audit process is a critical part of AMPs monitoring of its advisers?---Yes, I would accept that.

5 File audits are the principal method of ensuring that appropriate advice is being given by AMPs authorised representatives?---Yes. Yes, there are other methods, you know, such as mandatory parapanning, mandatory vetting, but I would accept that – that auditing plays a critical role.

10 And in November last year, PwC conducted a review of AMPs advice control framework?---Yes. Correct.

15 Could I ask that you be shown AMP.6000.0006.5018. This is not an annexure to your statement, Ms Britt. Right. So are you familiar with this document, Ms Britt?---I've – I've seen this document, yes.

So it's a PwC document – perhaps we could pan out so we can see the bottom of the document – a PwC document dated November 2017 containing a piece of work done by PwC about your advice control framework operational effectiveness?---Yes.

20 And it follows an earlier review of the advice control framework that was conducted by PwC in 2015?---That's correct, yes.

But this is the most recent comprehensive review?---Yes.

25 So if we turn to 5032 and 5033. If we could have both of them on the page at the same time. We will see that – 5032 and we will just bring up 5033:

The review identified two high priority areas for improvement.

30 And we see that from the table on the left-hand side. Those two matters are 3.1 and 3.2?---Yes.

And from the page to the right we see that 3.1 and 3.2 related to file audits and vetting?---Yes.

35 And could we go to the findings about file audits at 5047. And we see there the findings of PwC in relation to file audits, which is identified as a high importance issue with a gap?---Yes.

40 And the priority is a colour, which we don't see on this copy, but it aligns with the high risk colour in the table we just looked at?---Yes.

45 And we see that PwC re-performed a sample of file audits which focused on risk-based attributes and identified a number of potential issues. They included that in 3 of 12 audit cases selected:

The auditor awarded the adviser a result that was inconsistent with the outcome we reached.

And there is then a reference to three key types of discrepancies?---Yes.

5

Continuing:

In one case we scored a D rating where the ASC –

10 that's the auditor, is it?---Yes, it is.

Continuing:

15 *...scored an A rating. In one case we scored an A result down to a C result. In one case we scored a C result down to a D rating. The scoring method should be enhanced for the following: the approach remains very sensitive and the difference between A, B and C can be quite subjective. For example, an audit of four files that has a specific medium risk issue occurring within all files. Deciding whether this issue is material or immaterial will determine whether*
20 *the adviser receives an audit rating of A or C. In other words, a small discrepancy in interpretation can lead to a vastly different audit outcome.*

This is what we saw in relation to Mr E's C audit, isn't it, Ms Britt?---Yes, yes, that's right, and that was – I had expressed my discomfort.

25

Yes, and PwC expresses their concern about this as well?---Yes.

And we see that:

30 *The omission of a fee disclosure statement is classified as a medium risk issue. As it is a regulatory requirement that a fee disclosure service is provided to the customer, this should be classified as a high risk issue.*

?---Yes, I see that.

35

And under the heading Implication, PwC tells us that:

40 *The file audit process is critical to AMPs monitoring activity and if its consistency and quality varies, then it has the potential to undermine a significant portion of AMPs monitoring and supervision activity.*

And there are then a series of recommendations made by PwC in response. There are six recommendations there. Have each of those recommendations been implemented?---So as – as I mentioned, we have – AMP has undertaken a process of reviewing its entire audit and vetting process, and we have outsourced some of that. We're doing it in conjunction with discussions we're having with ASIC in Relation to Report 515. So it is something that we are absolutely aware of, absolutely

45

working towards, and – and have a fairly robust timeframe for – for achieving. So I can't categorically say that we have implemented each one of these recommendations, but what I can say is that Audit 2.0, which is the program, the new audit program, will be considering and picking up each one of those.

5

And when will Audit 2.0, when will that program of works be operational, Ms Britt?---So the date that – that we're working towards with ASIC is – is middle of the year, and there will then be a process of – of QAing the process to ensure its robustness after that.

10

That's quality assurance?---Sorry, quality assuring, yes.

So you accept in the current audit system there are significant deficiencies that AMP needs to address?---I'm not sure I would necessarily concede significant deficiencies. It's certainly an imperfect system and it's certainly something that it is critical to our overall monitoring and supervision. We absolutely accept that. And – so it is something that is constantly evolving and we're constantly looking to improve.

15

And your external consultant has told you that the need to improve is high, and that this is one of the two high rated risk issues resulting from their review of your advice control framework?---Yes.

20

Thank you. I won't tender that document, Commissioner. It's annex to another statement that I will tender shortly. I have no further questions for the witness.

25

THE COMMISSIONER: Does any party other than AMP seek leave to cross-examine Ms Britt? Very well. Mr Hollo.

30

<RE-EXAMINATION BY MR HOLLO

[3.36 pm]

MR HOLLO: Ms Britt, you were asked some questions concerning recruitment and the checking process of Genesys in 2012?---Yes.

35

Can I ask you has AMP changed its process to recruitment and reference checking since 2012?---Yes, it has. It – yes, it has.

And it has signed the Australian Bankers Association reference Checking and Information Sharing Protocol; is that correct?---Yes, it has.

40

Do you know when it did so?---September 2016, my understanding is we were the first organisation to do so, but it came into effect, I believe, March 2017.

45

Thank you. Could I try to bring up a document. We will see how this goes. AMP.6000.0041.1849. Miraculous. Can you identify that document for the

Commission?---Yes, I can. That – that is the current recruitment and reference checking policy that is applied across all AMP licensees.

5 I think you referred to this policy in giving your answers to Ms Orr; is that right?---Yes, that’s correct. So there’s – this policy and then there’s a set of guidelines that sit behind this policy, and together they form our reference checking and background and recruitment policy.

10 Thank you. You will see from the face of the document that it’s referred to as a Final Draft (Pending Final Approval From Legal). Are you able to say what the status of this document is today?---Yes, so I am aware that this – this policy has been rolled out and is in operation, and has been for a couple of months – yes, notwithstanding what it says on the – on the first page.

15 I tender the document.

THE COMMISSIONER: AMP advice recruitment background and reference checking policy, version 2.0, 25/11/17 AMP.6000.0041.1849 exhibit 2.170.

20

EXHIBIT #2.170 AMP ADVICE RECRUITMENT BACKGROUND AND REFERENCE CHECKING POLICY VERSION 2.0 DATED 25/11/2017 (AMP.6000.0041.1849)

25

MR HOLLO: Ms Britt, still on the topic of recruitment and reference checking, do you know what process takes place at AMP when requests are made from entities who are not signatories or who have not subscribed to the ABA protocol?---Yes. So as I was mentioning there, there is effectively a template form – template ABA form that – that gets submitted, and AMP as an organisation has taken the view that whether or not the incoming licensee is – is a subscriber or not, that – that is the information that we will provide to – to the new licensee.

30 Thank you. Mr Commissioner, I have no further questions. Could I add one matter, however: there were some questions about the PwC 2017 report towards the end of the examination of Ms Britt. Could I just reserve my position in terms of a tender of a management response. I don’t have it at hand. I wasn’t anticipating - - -

40 THE COMMISSIONER: I don’t think I quite follow what you’re telling me, Mr Hollo.

MR HOLLO: Yes.

45 THE COMMISSIONER: I’m being a bit slow or slower than normal, anyway.

MR HOLLO: I'm just reserving my position in respect of a tender of a further document on that topic which I do not have at hand at the moment. That's all I'm saying.

5 THE COMMISSIONER: We will cross that bridge - - -

MR HOLLO: Yes.

10 THE COMMISSIONER: - - - when the timber is cut down and it is built, Mr Hollo. Anything arising out of that, Ms Orr?

MS ORR: No, Commissioner.

15 THE COMMISSIONER: Thank you very much, Ms Britt?---Thank you.
You may step down.

20 <THE WITNESS WITHDREW [3.41 pm]

MS ORR: Commissioner, Ms Britt is the last witness that we will call in the inappropriate advice part of this hearing block, but I have a number of statements that we obtained from other entities in relation to the provision of inappropriate advice that I wish to tender.

THE COMMISSIONER: Yes.

30 MS ORR: The first of those is a statement from another AMP witness, Mr Anthony Regan, dated 11 April 2018. Would the Commissioner like the document IDs for these statements as well?

35 THE COMMISSIONER: If you read them out, we can then track them with the – as part of the exhibit note.

MS ORR: Thank you. The doc ID for that one is AMP.6000.0063.2957.

THE COMMISSIONER: That will be exhibit 2.171.

40 **EXHIBIT #2.171 STATEMENT OF ANTHONY REGAN DATED 11/04/2018
(AMP.6000.0063.2957)**

45 MS ORR: We also obtained a statement from Marianne Perkovic of CBA dated 13 April 2018, CBA.9000.0015.0001.

THE COMMISSIONER: That will be exhibit 2.172.

5 **EXHIBIT #2.172 STATEMENT OF MARIANNE PERKOVIC DATED
13/04/2018 (CBA.9000.0015.0001)**

MS ORR: We obtained a statement from Mr Renato Mota from ROOF.
IFL.9999.0001.0038.

10

THE COMMISSIONER: That will be exhibit 2.173.

15

EXHIBIT #2.173 STATEMENT OF RENATO MOTA (IFL.9999.0001.0038)

MS ORR: We obtained two statements from Macquarie, the first of Michelle Weber
dated 13 April 2018, MGL.0006.0002.0142.

20

THE COMMISSIONER: That can be exhibit 2.174.

25

**EXHIBIT #2.174 FIRST STATEMENT OF MICHELLE WEBER DATED
13/04/2018 (MGL.0006.0002.0142)**

MS ORR: Now, Ms Weber provided a second statement of the same date. The doc
ID for that one is MGL.0006.0002.0130.

30

THE COMMISSIONER: That becomes exhibit 2.175.

35

**EXHIBIT #2.175 SECOND STATEMENT OF MICHELLE WEBER DATED
13/04/2018 (MGL.0006.0002.0130)**

MS ORR: And we obtained a statement from Mr Marti Carne of Centrepont
WIT.0030.0001.0001.

40

THE COMMISSIONER: That will become exhibit 2.176.

45

EXHIBIT #2.176 STATEMENT OF MARTI CARNE (WIT.0030.0001.0001)

MS ORR: The other entity who provided a statement in relation to the provision of
inappropriate advice was NAB. That statement was provided by Mr Andrew Hagger

and that will be tendered when Mr Hagger gives evidence on another topic as our next witness.

5 THE COMMISSIONER: Yes. Do we need to have a changing of the guard at the bar table?

MS ORR: We do, Commissioner.

10 THE COMMISSIONER: If I come back shortly before 10 to 4.

MS ORR: Thank you, Commissioner.

15 **ADJOURNED** [3.43 pm]

RESUMED [3.49 pm]

20 MS ORR: Commissioner, we move now to a new topic in these hearings, which is a topic about improper conduct on the part of financial advisers, and the first witness is Mr Andrew Hagger from NAB.

25 THE COMMISSIONER: Yes. Yes, Mr Young. Is Mr Hagger in court?

MR YOUNG: He is.

THE COMMISSIONER: Mr Hagger, would you come into the witness box.

30 **<ANDREW HAGGER, SWORN** [3.50 pm]

35 **<EXAMINATION-IN-CHIEF BY MR YOUNG**

THE COMMISSIONER: Thank you very much, Mr Hagger. Do sit down. Yes, Mr Young.

40 MR YOUNG: Is your full name Andrew Paul Hagger?---Yes.

And your business address is 700 Burke Street, Melbourne in Victoria?---Yes.

45 Your current position is Chief Customer Officer in the Consumer Banking and Wealth Management Division of the National Australia Bank Limited?---Yes.

Have you received a summons to appear and give evidence before the Commission,

being a summons dated 20 April 2018?---Yes, I have.

And do you have the summons with you?---I believe so.

5 I tender the summons, Commissioner.

THE COMMISSIONER: Exhibit 2.177 is the summons to Mr Hagger.

10 **EXHIBIT #2.177 SUMMONS TO MR HAGGER**

MR YOUNG: Now, Mr Hagger, have you prepared two witness statements?---Yes, I have.

15

Yes. Is the first of those a witness statement dated 5 April with respect to Rubric 2-9?---Yes, it is.

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

20

Now, I will ask you next about the second statement before I tender it. Have you also prepared a statement dated 13 April 2018 in response to Rubric 2-21?---Yes, I have.

25 And do you also have a copy of that statement with you?---Yes, I do.

In respect of each statement, do you have a clean copy and a redacted version of the copy to accord with confidentiality rulings?---I do for 2.9.

30 Yes?---In relation to 2-21, I have – I am not exactly sure. I've got two folders called originals.

All right. I think you have a clean copy of 2.21, have you, the second of the two statements?---Yes, but both say unredacted.

35

That's all right?---Yes.

Thank you. Now, can I ask you about the first statement of 5 April?---Yes.

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

Commissioner, I tender that statement which includes exhibit AH1 which is a bundle of tabulated documents.

45 THE COMMISSIONER: Witness statement of Mr Hagger dated 5 April '18 and exhibit concerning Rubric 2-9 exhibit 2.178.

**EXHIBIT #2.178 STATEMENT OF ANDREW HAGGER DATED 05/04/2018
(AND ATTACHED EXHIBITS)**

5 MR YOUNG: As to the second statement, Mr Hagger, dated 13 April 2018, are the contents of that statement true and correct?---Yes, they are.

I likewise tender that statement, Commissioner, and it includes, in this case, exhibit AH2.

10

THE COMMISSIONER: Witness statement of Mr Hagger and exhibit – witness statement of Mr Hagger dated 13 April '18 concerning Rubric 2-21 and its exhibit is exhibit 2.179.

15

**EXHIBIT #2.179 STATEMENT OF ANDREW HAGGER DATED 13/04/2018
(AND ATTACHED EXHIBITS)**

20 THE COMMISSIONER: Thank you. Yes, Ms Orr.

<CROSS-EXAMINATION BY MS ORR

[3.53 pm]

25

MS ORR: Mr Hagger, you were appointed to the role of Chief Customer Officer in the Consumer Banking and Wealth Management Division at NAB in August 2016?---Yes, I was. By the way, can I just say upfront I apologise for my croaky voice, Commissioner, and Ms Orr.

30

THE COMMISSIONER: That's fine, Mr Hagger. It's a question of whether you survive with your croaky voice. Yes.

35 MS ORR: In that role, Mr Hagger, you lead approximately 7000 NAB staff in the Consumer Banking and Wealth Management Division?---Yes, I do.

Is and you're part of NABs 11 person group executive leadership team?---Yes, I am.

40 And you've been put forward by NAB to give evidence about a number of topics, but relevantly about NABs financial advice business?---Yes.

45 And apart from financial advice, what else is the Consumer Banking and Wealth Management Division responsible for?---It's responsible for the branches of NAB, the mortgage brokers, the contact centres or the call centres, the digital bank of Ubank, our digital bank. So it covers both banking and wealth.

And as Chief Customer Officer, what are your main responsibilities?---Well, we overall have 5 million customers, Ms Orr, in the consumer arena in Australia, and so my role is to serve those customers through the activities that I just mentioned, the branches and the brokers, and the financial advisers and the contact centres and our digital bank. So my – my role is to serve customers through those channels.

NAB operates its financial advice business through NAB Financial Planning, and through other entities that are wholly owned by NAB?---Yes.

10 Which each have their own financial services licence?---Yes.

And the two largest parts of the financial advice business are NAB Financial Planning and GWM Adviser Services?---Yes.

15 All right. NAB currently has about 400 financial advisers?---In NAB Financial Planning, yes.

Yes?---Correct..

20 You are also, you tell us in your statement, a director of JBWere?---Yes, I am the chair of JBWere.

And you are a director of MLC limited in which NAB has a 20 per cent interest?---Yes, I am.

25

Has NAB always had a 20 per cent interest in MLC limited?---Well, NAB acquired MLC limited in around 2000, and then around October 2016 NAB completed a transaction with Nippon Life in which Nippon Life owns 80 per cent and NAB owns 20 per cent.

30

How many NAB officers or employees are on the board of MLC Limited?---One. I'm the NAB representative on the board and I have an alternate director, Mr Simon Moore.

35 Thank you. Now, one of the statements you've provided to the Royal Commission deals with improper or dishonest conduct - - -?---Yes.

- - - by NAB financial advisers?---Yes.

40 Such as by forging customer signatures, impersonating customers and making unauthorised withdrawals from customer accounts?---Yes.

So in your statement you deal with the conduct of four financial advisers?---Yes.

45 One of those is a financial adviser called Bradley Meyn?---Yes.

And Mr Meyn commenced with NAB in December 2014 as an associate?---Yes.

What is an associate, Mr Hagger?---He began in our business banking division. So he wasn't an adviser at that time. He was part of our banking staff.

5 What role did he have as a – in the business banking area?---I think he was an associate. So he was inside business banking centres serving business bank customers, and there's naturally a hierarchy of service within our business banking and an associate level is a – is a reasonable level but it's – there are more senior business bankers than – than Mr Meyn was.

10 What would his responsibilities have been in that position as an associate?---He would have assisted the business bankers in serving the business bank customers in that region. Typically, entrepreneurs, small medium enterprises.

15 So having commenced in 2014 as an associate, in February 2016 Mr Meyn became a financial adviser with NAB?---Yes, yes.

20 Is it common for NAB employees to move from being something like an associate to being a financial adviser?---I don't know the numbers, Ms Orr, but it's one of the career paths that bank staff members can take.

And did Mr Meyn complete any additional training before he commenced as a financial adviser?---Yes, he – he completed the training required to become an adviser and be issued with a letter of authority.

25 All right. Now, I want to ask you some questions about Mr Meyn's interactions with two customers, a married couple?---Yes.

Who had previously been customers of another NAB adviser?---Yes.

30 And who Mr Meyn met with on 7 September 2016?---Yes, and I'm right, Ms Orr, that those customer names are redacted; is that correct?

They are?---Yes. Thank you.

35 They are, Mr Hagger, and I won't refer to them?---Thank you.

Could I ask you to turn to exhibit 32 of your statement dealing with Mr Meyn. That document is NAB.080.016.5587?---Yes.

40 We will just have that brought up on the screen, Mr Hagger. Have you seen this document? It's annexed to your statement?---Yes, I have.

I assume you have read it and you are familiar with it, Mr Hagger?---Yes, I am.

45 And it's a document that was prepared by Mr Meyn on 24 November 2016?---Yes.

And we see from this first page that it sets out Mr Meyn's recollection of the events that took place in relation to his provision of financial advice to the husband and wife I referred to?---Yes.

5 And at 5588 we see Mr Meyn's account of the first appointment meeting with this couple on 7 September 2016?---Yes. And, Ms Orr, am I right that the location is not redacted, is that correct?

The location is not redacted?---Yes, thank you.

10 That's correct, Mr Hagger. We have that on the screen now. And we can see from this document on this page that the couple discussed with Mr Meyn their reasons for seeking financial advice?---Yes.

15 And they identified that wanting to make sure their money would last through to retirement was a core goal for them. Do you see that in the second paragraph down?---Yes.

20 And at 5589, the following page, we see down the bottom of the page there that the customers agreed that one of the things that Mr Meyn would provide them with advice about was reviewing their superannuation?---Yes.

25 Another thing that he would provide them with advice about was changing their existing life insurance cover with MLC and having them fund some of that cover from superannuation accounts?---Yes.

And over the page at 5590, we see that Mr Meyn met with the clients again on 26 October 2016?---Yes.

30 And this was described by Mr Meyn in this document as a statement of advice presentation meeting?---Yes.

35 And we see from this document that Mr Meyn proceeded to present the statement of advice in this meeting, and that one of the recommendations that he made in the statement of advice was for the customers to reduce their level of life insurance cover with MLC to \$200,000, and switch to paying the premiums for that cover through their super?---Yes.

40 At 5591 we see that the customers completed an authority to proceed?---Yes.

And we also see on that page that in relation to insurance:

Although the customers –

45 I will just find the reference for this for you, Mr Hagger. It's the paragraph under the dot points. It's the final dot point:

Although the customers were not applying for new insurance because we were changing the payment method to external rollover from their existing funds, we had to complete application forms excluding the personal statement.

5 ?---Yes, I see that.

And can I take you to the application forms completed by these clients. The first is NAB.080.016.5643?---Ms Orr, do you know the tab – we don't have the tab. That's not in my witness statement, is it?

10

It's not in your witness statement, but I think we will have – I think your counsel will hand to you a hardcopy?---Thank you.

I understand you prefer to use a hardcopy?---Yes, I do, please.

15

So we see that this is the application form completed by the husband. I will let you look through that but I want to take you to 5672?---Yes.

I think you should have there, Mr Hagger, an unredacted version of this document, but on the screen the document will be partially redacted. We see there the reference on that page to life insurance cover decreasing to \$200,000?---Yes.

20

An existing MLC insurance policy being replaced with a new MLC insurance superannuation policy?---Yes.

25

Now, could I ask that you turn to 5657 in this document, which is a page headed section 6 Beneficiary Information?---Yes.

Now, the beneficiary is the person who receives the benefit of the life insurance policy if the insured person dies?---Yes.

30

Yes?---It's binding upon the trustee if it's a binding beneficiary nomination.

Yes, we will come to the different types - - -?---Thank you.

35

- - - of nominations. If we turn to 5658, you will see a page headed Beneficiary Information Continued. And there, there are two options for – I'm sorry, we still don't – there we have it, 5658:

40

Two options for a nomination of beneficiary must be nominated by the life to be insured.

The two options, one of which needs to be ticked, are a non-binding death benefit nomination and a non-lapsing binding death benefit nomination?---Yes.

45

And here we see that the husband has ticked the box for non-lapsing binding death benefit nomination?---Yes.

What's the difference between these two death benefit nominations, Mr Hagger?---The difference is really spelled out in the first sentence to each description there. So for a non-binding death benefit nomination, the trustee is aware of the preference of the insured but makes the ultimate decision about where the benefits will go and in what proportions and there's certain processes around that. In a non-lapsing binding death benefit nomination, a – this is binding upon the trustee. So it says to the trustee, "This is where you must pay in the event of death and the claim coming through to super."

10 So the insured person nominates a beneficiary?---Yes.

And if they tick the box for non-binding death benefit nomination - - -?---Yes.

- - - their nomination is taken into account, but is not binding on the trustee?---Correct.

And if they tick the box non-lapsing binding death benefit nomination, their nomination of the beneficiary binds the trustee?---Yes.

20 Now, you can see in the box underneath that has been redacted for name and address of beneficiary that the wife's details are listed for the beneficiary of the husband's life insurance policy?---Yes, I can.

25 And over to the right, you can see that there's a space for portion of total benefit, a percentage - - -?---Yes.

- - - is to be provided?---Yes.

30 And it's blank?---Yes.

And if we could have the next page brought on the screen next to this, 5659, we can see that the next page is the signing page?---Yes. I see that here, but I understand it's not on the screen yet.

35 Not quite. And we see there at the top of the page Application Agreement and Declaration:

This is required when making a non-lapsing binding beneficiary nomination.

40 ?---Yes.

And we see the husband has signed there for the life to be insured?---Yes.

45 We also see witness declaration only required when making a non-lapsing binding death benefit nomination. Must be signed and dated by two adult witnesses?---Yes.

So the husband had made a non-lapsing binding benefit nomination so there was a need for his signature to be witnessed by two adult witnesses who made the declaration that follows there?---Yes.

5 The declaration that they're over 18 years of age, they're not a nominated beneficiary of the life to be insured and that they've signed and dated. It was signed and dated by the life to be insured in their presence?---Yes.

10 And we can see there that the first witness to the husband's signature is Mr Meyn?---Yes.

The financial adviser?---Yes.

15 And the information for the second witness is redacted, but you can see the name of the second witness, and can you see that that person is a customer service officer who worked with Mr Meyn?---Yes.

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

20 THE COMMISSIONER: MLC application form NAB.080.016.5643 will be exhibit 2.180.

25 **EXHIBIT #2.180 MLC APPLICATION FORM (NAB.080.016.5643)**

MS ORR: And could I show you the equivalent form completed by the wife, which is NAB.080.016.5603?---Do I have a copy of that document, please? Thank you.

30 So you can see that this is the wife's application form?---Yes.

And at 5618 – if we could have 5618 and 5619 on the screen?---Yes.

35 You can see that the wife has also made a non-lapsing binding death benefit nomination and has nominated the husband as the beneficiary?---Yes.

And, again, the portion of the total benefit is left blank?---Yes.

40 And you can see that the wife has signed the document?---Yes.

And there is again, as we will have it on the screen in a minute, a signature from the first witness, being Mr Meyn, the financial adviser?---Yes.

45 And the customer service officer is listed as the second witness?---Yes.

I tender that document, Commissioner.

THE COMMISSIONER: MLC application form, NAB.080.016.5603, exhibit 2.181.

5 **EXHIBIT #2.181 MLC APPLICATION FORM (NAB.080.016.5603)**

MS ORR: And could we return to Mr Meyn's account of events in the document that you've annexed at tab 32 to your statement at NAB.080.016.5591?---Yes.

10

And I had read to you from the part about needing to complete application forms, the final dot point on that page?---Yes.

15 I will just wait for the document to come up on to the screen, I'm sorry, Mr Hagger?---Sorry.

We see that Mr Meyn goes on to say in that dot point:

20

We discussed the nominations briefly, both husband and wife wanted each other to be the sole beneficiary via non-lapsing binding nomination. I also signed the witness spot during the meeting to these nominations. At the time of completing these forms, I did not remember that I needed a second person to witness the nominations. I also did not realise that the customers had missed the actual percentage they wanted to nominate going to each other.

25

And we see Mr Meyn, in this document, describes in the bottom paragraph:

30

Driving back to Charlestown after the meeting and beginning to process the documentation uploading it to the CSO pool and to be sent to XPLAN I cannot remember when it was brought to my attention I missed the second witness signature. Client service officer was the one who brought it to my attention and I asked her to witness, which she did. She also brought to my attention that the clients had missed the percentage in relation to their nominations. I recalled that the clients did want each other as their sole beneficiaries. I said I would confirm with them again. I completed the percentage signifying the benefits were solely to go to –

35

the husband or the wife and vice versa:

40

I used their initials. The documents were taken and resubmitted to MLC. I knew at the time what I had done was wrong. Although from prior conversations, I knew how the couple wanted their money delegated (and from them putting each other solely on the form) it was a mistake to complete and initial on their behalf. It was also a mistake to have (the client service officer) witness their signatures knowing that she was not present for the meeting.

45

Now, could I take you, Mr Hagger, to the initialled beneficiary forms which are NAB.080.016.5569. Again, we have redactions in the document, Mr Hagger. But you can see that this is the same part of the husband's form that we saw earlier where the husband had nominated the wife as his beneficiary?---Yes.

5

But now the percentage figure has been filled in, and the amount has been initialled?---Yes.

But you can see that it is the wife's initials that appear on this form which should have been initialled by the husband?---Yes.

10

I tender that document, Commissioner.

THE COMMISSIONER: MLC application form as amended NAB.080.016.5569 exhibit 2.182.

15

**EXHIBIT #2.182 MLC APPLICATION FORM AS AMENDED
(NAB.080.016.5569)**

20

MS ORR: And at 5679, which I think you also have there, Mr Hagger, this is the same part of the wife's form that we saw earlier where the wife nominates the husband as her beneficiary, but, again, the percentage figure has now been filled in and the amount has been initialled?---Yes.

25

But, again, it's the husband's initials that appear on this form which should have been initialled by the wife as it was the wife's form?---Yes. If I can just be a little pedantic for a moment, Ms Orr, actually the initials weren't needed on either form if it was filled out validly by the person who was meant to be filling it out.

30

Of course. Of course. So what this adviser has done is enter these total benefit amounts later - - -?---Yes.

- - - and decided to initial that change - - -?---Yes.

35

- - - but made the mistake of using the wrong initials - - -?---Yes.

- - - in each form?---Yes.

40

So in both cases, the initials were not put there by the customers, nor was the total benefit put there by the customers, it was put there by Mr Meyn?---Yes.

I tender that document.

45

THE COMMISSIONER: MLC application form as amended NAB.080.016.5679 exhibit 2.183.

**EXHIBIT #2.183 MLC APPLICATION FORM AS AMENDED
(NAB.080.016.5679)**

5 MS ORR: What are the potential consequences for a client of a failure by their
financial adviser to comply with the witnessing requirements for a non-lapsing
binding death nomination?---It creates the potential for the beneficiary nomination
form to be invalid, and for the trustee to then make a determination in the event of
10 death, and in doing so, there is then the possibility that the trustee would allocate
funds differently to the initial wishes expressed by the client.

So this conduct had the potential to affect these clients' estate planning
wishes?---Yes.

15 Yes. Thank you. Commissioner, I see the time. I won't finish Mr Hagger today. If
that's a convenient time, I could continue tomorrow morning.

THE COMMISSIONER: Yes. Can I ask you, Mr Hagger, if you would be good
enough to be back here in time to kick off at 9.45 tomorrow morning?---Yes,
20 Commissioner.

<THE WITNESS WITHDREW

[4.17 pm]

25

THE COMMISSIONER: Yes. 9.45 tomorrow.

MATTER ADJOURNED at 4.17 pm UNTIL TUESDAY, 24 APRIL 2018

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