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TRANSCRIPT OF PROCEEDINGS

O/N H-884958

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

9.40 AM, TUESDAY, 24 APRIL 2018

Continued from 23.4.18

DAY 17

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

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

**DR M. COLLINS QC appears with MS K. WILLIAMS SC and MS S. TAME for
ANZ**

MR A. WOODS appears for Henderson Maxwell

<CROSS-EXAMINATION BY MS ORR

5

THE COMMISSIONER: Yes, Ms Orr.

MS ORR: Mr Hagger?---Ms Orr.

10

I had asked you some questions yesterday about the conduct of Mr Meyn - - -?---Yes.

- - - one of your financial advisers, in October 2016?---Yes.

15

And I had tendered application forms completed by Mr Meyn and we had been through the process by which you acknowledge that Mr Meyn had not completed those forms in accordance with the requirements of the forms?---Yes.

20

And he had witnessed the clients' signatures himself, but had not had a second person present to witness the clients' signature at the same time?---Correct.

And you gave evidence at the end of yesterday about the potential impact of that conduct on the clients?---Yes.

25

And the potential impact of that conduct on whether the trustee would give effect to their estate planning wishes?---Yes.

Now, that conduct occurred in October 2016?---Yes.

30

And on 22 November 2016 Ms Mel Lawson, a Regional Wealth Executive, conducted a routine compliance check of Mr Meyn's files?---Yes.

And Ms Lawson noticed the irregularity with the initialling on the forms?---Yes.

35

And, by that irregularity, I mean she noticed the husband's form nominating his wife as the beneficiary had been initialled by the wife, rather than the husband?---Yes.

And the opposite had happened with the other form?---Yes.

40

And Ms Lawson raised those concerns with Mr Meyn?---Yes.

And he admitted to initialling the forms and asking his customer service officer to witness the forms, even though she wasn't present when the clients had signed?---Yes.

45

And later that day Ms Lawson sent Mr Meyn a letter?---Yes.

And you've annexed that letter to your witness statement. It's exhibit 31,
NAB.080.016.5585. If we could have 5585 and 5586 on the screen together, we will
5 have the entirety of the letter. Could we have 5586. Thank you. We see that the
clients' names are redacted in this letter on the screen, Mr Hagger?---Yes.

And we can see from the first page of the letter, while the second page is coming up,
that the letter sets out a series of allegations directed to Mr Meyn?---Yes.

10 And seeks a response from Mr Meyn?---Yes.

And at 5586 on the second page, we see at the top that Ms Lawson says to Mr Meyn:

15 *As you are aware, NAB is conducting further investigation in relation to
inappropriate conduct on this client file. While this investigation is being
completed, you are not required to attend work. You will remain on full pay
during this time and are to be available to attend the workplace as requested
during normal working hours.*

20 ?---Yes.

And:

25 *You are advised that whilst you are suspended you are not to conduct any work
for NAB and are not to make contact with NAB customers or employees.*

?---Yes.

30 And two days later, on 24 November 2016, Mr Meyn provided a written response to
this letter?---Yes, he did. I think that's what we - - -

That's right?--- - - - discussed last night.

35 The written response is the document that I have already taken you to - - -?---Yes.

- - - giving his account of these two meetings with the clients and his conduct in
connection with those two meetings?---Yes.

40 And then, having received that response, on 1 December 2016 NAB terminated Mr
Meyn's employment?---Yes.

Could I ask you to look at exhibit 33 in your witness statement, NAB.080.016.5593.
This is the termination letter, Mr Hagger. And, again, if we could have both pages,
45 5593 and 5594, on the screen. You see there, Mr Hagger, that there's reference to a
meeting with Mr Meyn on 22 November and the subsequent letter?---Yes.

And Ms Lawson tells Mr Meyn that, having considered all the relevant information, including his written response, she's satisfied that he failed to have two non-lapsing binding death benefit nomination forms correctly witnessed for the clients?---Yes.

5 And that in order to rectify his error he requested a colleague to sign as the second witness, despite acknowledging that the colleague was not present at the meeting with those clients?---Yes.

And Ms Lawson says to Mr Meyn:

10

You deliberately falsified details on the above forms at a later date and submitted the forms to MLC for processing on 9 November 2016. Specifically, you amended the portion of total benefit percentage fields on both forms for the above clients. These amendments were made without the clients' knowledge or consent.

15

That's all correct?---Yes.

Continuing:

20

Further, you forged the clients' initials in a deliberate attempt to falsely represent that the clients had considered and approved the amendments.

?---Yes.

25

Now, Ms Lawson goes on to say to Mr Meyn, at the bottom of that page:

30

Your actions have breached NAB's Code of Conduct (personal conduct, honesty and integrity and complying with legal and regulatory obligations, voluntary commitments and internal standards) and the licensee standards. In addition, they have placed our clients at significant financial risk and have placed NAB at financial and reputational risk.

?---Yes.

35

And, accordingly, Mr Meyn's employment with NAB is terminated with immediate effect. This decision has been made given the seriousness of his conduct?---Yes.

40

Do you know, Mr Hagger, if Mr Meyn was a member of a professional association, such as the Financial Planning Association of Australia or the Association of Financial Advisers?---I understand he joined the FPA. I think it was after the behaviour that we've just discussed that led to his termination, but it was between then and 1 December. I don't know the exact date, Ms Orr, but I think it was during November.

45

So whilst he was still employed with NAB?---Yes.

And so did NAB report Mr Meyn's conduct to the FPA?---No, we didn't.

Why not?---Because – well, I can give you a long answer to that, but I think the short – which I can, if you like. But the short answer to that is that our focus was on the
5 employment disciplinary procedure, which, of course, led to his termination. The longer answer, Ms Orr, goes into, if you like, the three limbs of discipline. There's the employment discipline, which is something we carry out; there's the regulatory discipline, which is something that ASIC carries out; and then there's, if you like, professional association discipline. And I think you're meeting the –CEO of the
10 FPA later today or perhaps tomorrow. And we've been in discussions with the FPA recently to say that we will, in future, report compliance cases to them. But there is a long history in terms of the FPA. You might be aware Professor Kingsford Smith, the independent customer advocate for Wealth at NAB, was the chair of the FPA determination panel through the Storm Financial situation. So this is the sort of
15 discussion I've had with Professor Kingsford Smith trying to understand more how the FPA would be of benefit in a situation like this. But the two key areas are the employment discipline and the regulatory discipline.

Why is the professional association discipline not a key area, as well, Mr Hagger?---I
20 think because the – the employment discipline, of course, is the most important one, because during that period we have the ability, through the disciplinary conversations, to get to the bottom of what has happened, as is evident, I think, in all four case studies that – that the Commission chose. And then that leads to a decision of disciplinary action. The regulator then, if it's a case that's relevant to the regulator
25 and the regulator chooses to, for example, ban an adviser, or take other regulatory action, that's – that's a kind of punishing mechanism. The financial – the FPA or the AFA, any professional body – I am a member of the chartered accountants body – professional discipline – it doesn't have the same powers of compulsion. The FPA is established, I think, through common law kind of mechanisms. I'm not a lawyer, Ms
30 Orr, but as it has been explained to me, there's not the same levels of power in those mechanisms. And, of course, the – the adviser himself or herself can simply choose to exit that association and join another one. We don't have a single body. So I'm – I've reached the point that I have agreed that we should report cases to the FPA, but I think I'm trying to put in perspective employment discipline, regulatory discipline,
35 and financial professional association discipline. They're three separate things.

So the FPA has the power, does it not, to expel members from its association?---Yes, but then they can go down the road to another association.

40 Well, what if you contractually require your financial advisers to be members of the FPA?---Yes, well, that would have an impact. We require our advisers to be a member of a professional association. We don't choose between the AFA and the FPA.

45 Why is that?---Because we think both organisations are valid professional organisations.

But is the impact of that that if there is expulsion of a financial adviser by one of those associations, as you've conceded, they can then just become a member of the other association? So why not require them to be a member of a single association?---I see. Well, the – the core relationship is between the member and the association itself. So we have advisers who believe they get a lot of value out of the AFA. We have, I think, nearly 1000 members of the FPA. So we, you know, highly value both associations.

Do you value the disciplinary processes that they have?---Yes, we do. As I mentioned, Professor Kingsford Smith, I think, played a very important role for Australia through the Storm Financial situation working with Matthew Rowe and the FPA team, working through that matter. But the point I'm making, Ms Orr, is the – the professional association discipline is really on a different plane to the employment discipline and the regulatory discipline.

What I'm putting to you, Mr Hagger, is that it's a very important plane, because your internal disciplinary measures relate to whether or not the adviser is of satisfactory competence and professionalism to work with you at NAB. And if you decide they're not and you terminate that adviser, they can go off and work for another licensee. And something that would prevent them from doing that is if you have referred their conduct to the FPA and the FPA has expelled them from membership and licensees require members to be – employees to be members of that association?---I understand what you're saying, Ms Orr. I think the way we have approached that across the industry is really through the ASIC Financial Adviser Register, so that whereas with, at least, two professional associations an adviser could move from one to the other, the – in terms of ASIC's Financial Adviser Register, if ASIC decides to ban an adviser, then that adviser is recorded as such on the register.

So that makes a notification to ASIC of extreme importance, doesn't it, if that's what you're relying on?---Yes, for the – for the kind of advisers that ASIC needs to know about, yes.

And just before I leave this topic of the disciplinary regime, why has it taken until now for you to reach a position where you have decided that advisers who have engaged in misconduct will be reported by NAB to the disciplinary body?---Well, when you say the disciplinary body, we're in conversations with the FPA. And I don't think we're at the same stage yet with the AFA.

Yes. You mentioned the FPA before?---Yes. So this is a conversation we have had recently with the FPA. So our focus has been on (1) the employment discipline, which is something we've been operating for, you know, a long period of time, and on regulatory discipline, which has been an evolving process of which advisers to report to ASIC. That's where our focus has been. Now we're also looking at professional association discipline. We're – we're very much open to this, Ms Orr, but our focus has been on the other two.

I'm just trying to understand why the change, why now you are focusing on the professional associations?---Because I think we have reached a stage of evolution with our understanding of ASIC's requirements, the Financial Advice Register is in place. So employment discipline is something that is a very mature process for us.
5 We've had this evolving process with ASIC. Now we're looking at professional associations.

10 All right. Does NAB notify ASIC of advisers whose conduct gives rise to compliance concerns or serious compliance concerns?---Yes.

All right. Could I ask you to look at exhibit 37 to your statement, which is NAB.005.164.0004. And if we could have 0006 brought up on the screen with 0004. You can see from 0004, Mr Hagger, that this is minutes of a meeting of the breach review committee on 25 January 2017?---Yes.

15 And if we could have 0006 on the screen, we can see that one of the agenda items for this meeting was Mr Meyn's conduct?---Yes.

20 And we see there, starting with Mr Smith. Do you see that entry on - - -?---Yes.
- - - 0006?---Yes.

In relation to Mr Meyn?---Yes.

25 Mr Smith updated the committee. Only two incidents have so far been identified. All clients have been passed to new advisers. So that's two incidents of the conduct that we've been discussing - - -?---Yes.

30 - - - involving Mr Meyn?---Yes.

So one other person by this time had been found to have been engaging in the same conduct?---Yes. We covered – actually, we didn't go to the paragraph, but in the attachment yesterday, the meeting – sorry – the document that Mr Meyn described his – his behaviour, I think it refers to another client.

35 Two incidents by Mr Meyn?---Yes.

Yes. Thank you:

40 *Only two incidents have so far been identified. All clients have been passed to new advisers. No concerns have been found relating to advice issues. Mr Haworth-Booth noted that this adviser does not currently fit the serious compliance concern criteria. Accordingly, he has not, as yet, been reported to ASIC. The committee discussed the matter and, having regard to the lack of*
45 *fraudulent activity and the appropriate operation of compliance measures on the part of the licensee, determined that the event is not a breach and, hence, not reportable to ASIC.*

?---Yes.

So that was the decision made by the Breach Review Committee on 25 January 2017?---Yes.

5

But NAB had terminated Mr Meyn's employment on the basis that he had deliberately falsified forms?---Yes.

His conduct was also misconduct that resulted in immediate termination?---Yes.

10

So Mr Meyn's conduct, I want to put to you, did meet the criteria for serious compliance concerns on the basis that he had engaged in dishonest misconduct on the basis that he had engaged in deceptive misconduct and on the basis that he had engaged in misconduct that would result in immediate termination?---Yes.

15

So why didn't this committee decide to notify ASIC that Mr Meyn's conduct constituted a serious compliance concern?---Well, at that time Mr Haworth-Booth did not believe it met the criteria. Ultimately, we believe it did meet the criteria and we reported Mr Meyn.

20

Was Mr Haworth-Booth correct in his assessment it did not meet the criteria?---No, not in my view. I told him that. I have discussed this with him. I understand where his point of view was coming from, because he – in these cases their forms were then dealt to. So there was no client exposure going forward. And his view was that the adviser had – had not provided inappropriate advice, and he was seeing the serious compliance criteria definition through that zone. But, to cut things short, Ms Orr, I think he was wrong and we reported him to – we reported Mr Meyn to ASIC.

25

So you accept, particularly given what you've said about the importance of that second disciplinary framework, the regulatory framework, you accept that NAB ought to have reported Mr Meyn's conduct to ASIC at this time, but did not?---Yes. That – that is correct. If I can be precise for a moment?

30

Yes?---There are two forms of reporting to ASIC. One is a section 912D, which, as you're aware – and we may get to – we issued later. And then there is this voluntary reporting to ASIC, which, as I say, has been an evolving process. So during this period there was some confusion during those months, but we ironed out that confusion with ASIC and we then reported Mr Meyn.

35

Do you mean confusion on the part of NAB, not on the part of ASIC?---Well, as I say, it has been an evolving process, so probably – it actually began with a letter I wrote Mr Medcraft back in February 2015. And then we went through a period, Ms Orr, where we would notify ASIC when advisers of concern departed. But then ASIC didn't need to know about all advisers, they said, but what they wanted to know about, which is what they clarified in a meeting with me on 1 May, was that they wanted to know about misconduct situations. And so we adjusted our processes accordingly and Mr Meyn was reported through.

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45

But Mr Meyn fell through the cracks at this time. He ought to have been reported at this time?---Yes. Knowing what I know now, and really knowing what I knew on 1 May from ASIC, he – he should have been reported at that time.

5 Thank you. Could I ask you to look, then, at exhibit 43 to your statement, Mr Hagger, which is NAB.020.009.9493?---Yes.

You can see from this document that this is four months later in May 2017?---Yes.

10 And Mr Tim Steele, the General Manager of NAB Financial Planning, prepares a memo to the Breach Review Committee?---Yes.

And at 9494, over the page, we see that Mr Steele provides an explanation of how this event was discovered?---Yes.

15

And on that same page Mr Steele notes that over February and March 2017 – this is towards the bottom of the page – NAB identified a number of other instances of employees incorrectly witnessing beneficiary nomination forms?---Yes.

20 So three events in February and six further events in March?---Yes.

And then we see at 9495 that in April 2017 a further eight events were identified via adviser self-reporting to their regional wealth executive?---Yes.

25 And at 9495 to 9496, if we could have both of those pages on the screen, we see what Mr Steele describes as the details of the event under the heading Event Details?---Yes.

Do you see there towards the bottom of the page that Mr Steele records that:

30

Common statements made by employees who have been interviewed about engaging in the invalid witnessing of binding nomination documents are that, first, they understood that they were not following the instructions as set out on the application form, but they believed that this was common practice and was acceptable.

35

?---Yes.

The second:

40

They had experienced this as common practice when working for previous (non-NAB) licensees.

?---Yes.

45

And, third:

The rationale for engaging in this practice was for the convenience of the client and to help carry out the client's instructions quickly, particularly where client appointments were held outside of the office with no second witness available during the appointment. There was no intent to cause harm to the client.

5

?---Yes.

Fourth:

10

They did not understand the seriousness of their actions, particularly given that at least one person had followed correct procedure and witnessed the client's signature, and that in many cases the second witness knew the client and was familiar with the client's file records.

15

?---Yes.

And, finally:

20

They did not appreciate that their actions could affect the validity of the nomination, or the effect this could have on the client's estate planning wishes.

?---Yes.

25

So we see there that, having now discovered that this was not an issue that was restricted to Mr Meyn - - -?---Yes.

- - - more and more people were being identified as also engaging in this practice - - -?---Yes.

30

- - - NAB's employees who were engaging in this practice are telling NAB that they regard this as common practice?---Yes.

35

Does it concern you that NAB employees believed it was common practice to sign a document indicating that they had witnessed a signature when in fact they hadn't?---Yes, it concerned me very much.

40

And, if this was the common practice, what does it say, Mr Hagger, about the ethical standards of NAB employees?---Well, I think it says that – I won't sort of – I think your question goes across all employees. I won't bring all employees into this, but I think what it says is that, in relation to the financial advice area, there was a failure of discipline. And that's what I told the board. And behind this, I think your question goes squarely to ethics. And I was reading last week the book of Dennis Gentilin, who's a writer on ethics and a former NAB employee, and he talks about social norms. And, from all my interaction with this particular issue, I believe that the client service officers and the advisers concerned thought they were taking a short-cut in the interests of the client, and yet it's very stark on the form that you either witness the form when you're present or you don't. So I think a social norm had

45

crept in and become entrenched. We know that now. We didn't know that back in November 2016. But this is the sort of thing I want to see. We could have closed the books on this case study in December by terminating the adviser. We did get the forms re-signed. We could have stopped there, but we investigated further. We
5 began to realise that it was more common and then we acted upon that, because we want to do the right thing by customers. And, as we mentioned last night, this is very important.

10 You described it in that answer, Mr Hagger, as a failure of discipline?---Yes.

I want to put to you that it's more than that. It's a failure of culture at NAB. And it's a failure of education of NAB's advisers and client service officers?---If I can just break that down. You've said three things. The first one you said is the failure of discipline. I agree. The second one you said is it's a cultural matter and I agree. I
15 said exactly those words to the Board Risk Committee on 7 June. And the third one you said was it's a matter of education. Our view was – well, it actually says on the form quite squarely that the forms are to be witnessed in the presence of the client. And so the fact that they – that wasn't happening, you don't normally believe that you need to do training for something that's very self-evident on the form. Be that as
20 it may, there is no doubt across our network today, from all the consequences that have occurred from this, that forms are there for a reason, signatures are incredibly important, and we need to express in all our actions our clients' wishes.

25 I want to put to you, Mr Hagger, that what you've just said about it being very clear from the form, what was - - -?---Yes.

- - - required by the advisers, makes their conduct even more serious, because the advisers and the client service officers were circumventing the requirement that was plain on the face of the form for the benefit of the client?---Yes. Yes. I'm not
30 walking away from the seriousness of this at all, Ms Orr. And, in fact, we have gone out to clients and said can you please have these forms re-witnessed. And that has, obviously, occurred on a large scale. We may get to that. Our staff were – I think the final dot point here is the key one; it says they did not appreciate that their actions could affect the validity of the nomination. We took that as no excuse.
35 There were consequences. And the lesson has been learnt.

Is that a failure of education, though, amongst your advisers, Mr Hagger, that they didn't appreciate that this conduct could affect the validity of the clients' nominations?---Well, as I say, we have now adopted education, but we didn't think it
40 was necessary, because I think, as you pointed out last night, the – the form is straightforward.

Were you concerned that what your people were telling you was that they didn't understand the seriousness of their actions?---Well, I was concerned about the entire
45 matter. In terms of – so I think yesterday we didn't have the suburb redacted, did we?

No?---So this particular situation occurred in Muswellbrook. Muswellbrook is a town with, I think, something like 12,000 people in Australia. Mr Meyn has gone out and met with the client in Muswellbrook. And then he has got back to his office 130 kilometres away. And he's a new adviser, as we discussed yesterday. And he
5 has realised he hasn't got the second signature. What he should have done is gone back to Muswellbrook or posted the client or – there's a number of actions he could have taken at that moment and he didn't. And that concerns me.

10 But you know, Mr Hagger, that this wasn't restricted to Mr Meyn in Muswellbrook?---No.

By this point, it had been – it had become clear to NAB that - - -?---Yes.

15 - - - this was a more widespread practice?---Yes.

Okay. Do you think that NAB employees at this time had an adequate understanding of their ethical and legal obligations?---Yes.

20 And they did this despite that adequate understanding - - -?---Yes.

- - - of their legal and ethical obligations?---Yes.

Does that concern you, that if they - - -?---Yes.

25 - - - knew that this was wrong legally and ethically, they went ahead and did it anyway?---Yes, they didn't have a full understanding of the – as I say, I've spoken to a number of people involved. They – they didn't know it was, you know, sloppy, unprofessional. And I'm saying they didn't have full understanding. But the forms are very clear and we have no tolerance for forms not being followed. It's – it's very
30 – forms are all there for a reason. Bank processes are there for a reason, and they're there to help customers and protect customers.

35 Could I ask you to look at a document, Mr Hagger, which is NAB.005.217.0360. It's not annexed to your statement, but I am sure a copy will be provided to you. You can see the opening page on the screen there. So this is a report dated 27 November 2015?---Yes.

40 And this was a report that NAB received at that time following a review that it had commissioned into conflicts of interest within ThreeSixty Research and between ThreeSixty Research and its internal stakeholders?---Yes, I see that.

And can you explain what ThreeSixty Research is?---ThreeSixty Research is a part of National Australia Bank group which does research into products.

45 And in the course of conducting this review into the relationship between NAB, its aligned licensees, and ThreeSixty, the reviewer looked into the culture of each of

those organisations?---I – I have read this report, so, yes, but I’ve only read it in the last few days.

Yes. Well, could I direct you to a particular part of it at 0367?---Yes.

5

Do you see there that the reviewer made some findings under the line Typical Interviewee Response. And can I ask you to look to the third sentence in that paragraph:

10 *There was an absence of contextually tailored training in conflicts of interest,*
the code of conduct or expected standards of behaviours. The research
recorded little specific knowledge of these essential protocols. There is a
prevailing assumption that employees are driven by their own sense of what is
15 *right and wrong, rather than being guided by how the organisation has defined*
appropriate conduct. There is a widespread absence of knowledge of the Code
of Conduct and expected behaviour standards.

And, further down:

20 *The research identified that raising issues of concern about advisers was seen*
as risky, because they may be seen as valuable to the firm. Interviewees said
they had rarely seen anyone fired for breach of ethical standards or a
department sanctioned where poor behaviour had been exposed. This lack of
25 *visibility about personal consequences inhibits, removes an effective risk*
deterrent.

This was less than a year before Mr Meyn’s false witnessing of the binding nominations forms was uncovered?---Yes.

30 Was Mr Meyn’s case and the other cases of false witnessing that you subsequently discovered caused by NAB’s failure to ensure that its employees understood their ethical obligations?---No, I don’t think so.

35 What do you say to these findings of your external researcher in this document, Mr Hagger?---I – well, firstly, I understand this report interviewed 21 staff members of NAB. So, having had a look at this report last week, that was the first time I had seen this report, Ms Orr.

40 I see?---This was commissioned by the Chief Risk - - -

Yes?--- - - - Officer for his purposes, which – which I admire. He’s an independent operative inside NAB. So - - -

45 The Chief Risk Officer didn’t share these results with you, Mr Hagger?---No, he didn’t.

Would you have appreciated receiving the results of this research?---Yes, I would. I have spoken to him about that, but it's up – he's independent. He commissioned this report for his own insights. He then, with those insights was – that assisted his commentary on a range of reports which I produced and others produced during the
5 period. And he has high regard – I haven't met Dr Attracta Lagan – I am not even sure how to pronounce the doctor's name. But your question gets to, I think, does this have specific relevance to Mr Meyn's situation? I am saying no, because the – Mr Meyn did two things. He initialled a form as if he was the client. Well, that crosses a line that all advisers know about, and led to his termination. And he said in
10 his own statement that he knew it was a mistake when he did it.

And I want to bring this back not just to Mr Meyn, Mr Hagger. I want to bring it back to the fact that multiple employees were engaging in this practice and were describing it to NAB - - -?---Not in initialling as if they are the client, but I
15 assume - - -

The witnessing?--- - - - you're referring to the witnessing, yes.

The witnessing practice?---Yes.
20

Which had the potential to invalidate - - -?---Yes.

- - - the nomination?---Yes.

25 So they were telling NAB that they were doing that and that it was common practice and that they didn't understand the seriousness of the consequences of that?---Yes, that's what they were saying.

30 And I'm asking you to consider those events, in light of these findings a short time before within NAB?---Yes. And I'm saying, from our perspective, we had to make our view on what had led to this situation and what a proportionate response would be. And the decision that we made was that the forms are straightforward, and if you witness something saying you are there, when you're not, then you have done the wrong thing.

35 I tender this document, Commissioner.

40 THE COMMISSIONER: Exhibit 2.184 will be Managing Values Report, 27 November 2015, NAB.005.217.0360.

**EXHIBIT #2.184 MANAGING VALUES REPORT DATED 27/11/2015
(NAB.005.217.0360)**

45 MS ORR: Could I take you back to Mr Steele's memorandum - - -

THE COMMISSIONER: Before we depart - - -

MS ORR: Yes.

5 THE COMMISSIONER: - - - from this report while it remains on the screen, can I
just explore a moment with you, Mr Hagger, some more general points that might be
raised by it. There seems to be a contrast drawn in the paragraph we see on the
screen under Self-interest Enabled by Inadequate Face-to-Face Training. There
10 seems to be a contrast drawn between an organisation depending on individual
employees' moral compasses and showing individual employees how the moral
compass is to be applied in commonly encountered circumstances. First, do you
accept that there is a distinction of that kind being - - -?--- yes, Commissioner, I
accept that.

15 And, just to follow it out a bit further, in understanding the culture of an
organisation, is it relevant to know whether the organisation positively shows its
employees how commonly accepted moral standards apply and are to be given effect
in commonly encountered circumstances?---Yes. I believe it is, Commissioner.

20 Is that particularly relevant in circumstances where the employees are engaged to
give advice to third parties?---Yes.

Not least because of the issue of conflicts of interest?---Yes.

25 But also in connection with the giving of advice to take important financial and legal
steps directed towards future economic wellbeing?---Yes.

I was struck by your answer that the CRO did not share what this report revealed.
Do I understand that to be the case?---Well, just a couple of clarifying comments,
30 Commissioner, that may help. Firstly, the CRO didn't share the report with me. He
did share it with the Advice and Licences Board and with the financial adviser team.
So sometimes, remembering my role inside the bank covers a broader ambit - - -

35 You don't see every bit of paper - - -?---So I don't see every bit of paper.

- - - that is generated within the bank. You astonish me?---But I was surprised he
didn't share this with me. I asked him about it. Because we talk three times a week,
the CRO and myself. And he has enormous influence inside the bank, as he should.
His answer to me was that, actually, this helped him keep watch of the progress that
40 we were making in our cultural development, from being an adviser-centric culture
to a customer-centric culture. The second clarification I would make, Commissioner,
is that we give very substantial training and guidance to advisers, backed up by a
compliance and checklists and all sorts of things, for the key areas of an adviser
carrying out his or her work. It had not occurred to us that this sort of practice of
45 witnessing would be going on, so we did not have it in our checklists, we did not
have it in our training, because we believed, on the face of it, the document is clear in
what it's asking for and should be carried out professionally.

Implicit in that answer seems to me to be a proposition that you didn't tell advisers, "Look, forms matter"?---Yes.

"Follow them"?---Yes.

5

Simple advice like that not given, apparently. Is that right?---Well, it's certainly advice given now. And that's not just in advice; it's across the – across the bank. And I think in – in terms of forms, I – I think the bank believes it has been clear, and I believe the bank has been clear. But on this specific practice we had not given
10 specific training to advisers about the filling in of this form. And, actually, these forms don't even need to be signed by advisers; they just need to be signed by two adults. So it had not occurred to us that this would not be carried out until the Meyn situation occurred. We had a sort of – we had a first signal of it in the [redacted] case, with – in relation to a different adviser. But this was the – this was a clear
15 signal to us that we needed to address it, and that's why we did, Commissioner.

Yes, Ms Orr.

MS ORR: I just want to make sure that your answer to a question of the
20 Commissioner was correctly recorded in the transcript, Mr Hagger. The transcript records you saying:

I am not surprised he didn't share this with me.

25 ?---No, sorry.

I think that is an error?---Yes.

I just want to make sure that the transcript - - -?---I was surprised. My first reaction
30 was both surprise and admiration, actually. I thought he's independent, he can do this, but – sorry – I meant to say I was surprised.

I think you did. I think the transcript did not pick that up correctly and I
35 wanted - - -?---Thank you. Thank you, Ms Orr.

- - - to make sure we had an accurate account of your evidence, Mr Hagger.

THE COMMISSIONER: A slight difference.

40 MS ORR: Yes. I said, Mr Hagger, that I wanted to take you back to Mr Steele's report - - -?---Yes.

- - - which is tab 43 to your statement, NAB.020.009.9493. Mr Steele's
45 report - - -?---Yes.

- - - to the Breach Review Committee in May 2017?---Yes.

If I could ask you to look at 9496 in that document. We see that by this time, May 2017:

5 *To date we have identified this issue with 19 practitioners. However, the NAB Financial Planning network has been given until the 31st of May to self-report, and we believe this issue will be widespread. As yet, there is no known client impact. However, if a nomination is found to be invalid, this could impact on the death benefits being distributed in accordance with the client's wishes.*

10 So, having identified 19 practitioners engaged in this practice, Mr Steele believed that the issue would be widespread?---Yes, by this date. Yes.

15 And I want to suggest to you that that doesn't show much faith by Mr Steele in the ethical standards of the NAB practitioners in the financial planning network?---I think it best to clarify the train of – of events. So Mr Meyn has engaged in this conduct.

Yes?---Mr Steele then put it up as a case study - - -

20 Yes?--- - - - across the NAB financial planning network.

Yes?---We then began to find other incidents, but also the sort of chatter - - -

25 Yes?--- - - - in Mr Steele's surrounds were this is a broader, more entrenched practice.

Yes?---That's what he was hearing.

30 You were being told that this is common practice?---Yes. So - - -

Yes?--- - - - the clarification I am giving is it's not that he saw 19 and decided he had no faith in everybody else; he saw 19 but was hearing chatter that, actually, were really all the dot points you mentioned on the page before. So - - -

35 Yes. So 19 was saying, "This is what we all do"?---So he realised it was a bigger practice.

40 And the day after this memorandum was created by Mr Steele for the Breach Review Committee, Mr Steele sent an email to all NAB Financial Planning employees?---Yes.

And could I take you to that email, which is exhibit 42 to your statement, NAB.005.137.0535?---Yes.

45 We see there that, to all employees of NAB Financial Planning, Mr Steele sent this email, which refers under the heading Next Steps to:

5 *Any NAB Financial Planning staff member who believes they may not have followed the correct process is asked to report this to their People Leader by 31 May 2017. Following this, you will be asked to provide a list of any clients whose forms may not have been correctly completed. Anyone on leave will have four weeks upon returning to work to advise their People Leader of any such instances. We will then work together to contact relevant clients to ensure their beneficiary nomination forms are completed correctly.*

10 ?---Yes. There's two things going on here, Ms Orr. I think, Commissioner, you raised the point about follow the forms. The first part of this is saying exactly that. This is the process; follow the forms. And then the second part deals with, well, what are we going to do about any forms that we have doubts about?

15 And Mr Steele goes on to explain on the next page of this email, 0536 - - -?---Yes.
- - - that:

20 *Financial advisers who self-report this conduct will be given an irreversible amber conduct gate.*

?---Yes.

Continuing:

25 *And support staff who self-report will be given a reversible amber conduct gate?---Yes.*

And we've heard evidence previously about NAB's conduct gate system?---Yes.

30 The consequences of an amber conduct gate is that the person is still eligible for their quarterly and annual incentive payments, but they're reduced by 25 per cent?---Yes.

35 Now, on 25 May 2017, two days later, the issue came back before the Breach Review Committee?---Yes.

And you've mentioned the minutes of that meeting as exhibit 44 to your statement?---Yes, I have.

40 NAB.061.005.4830?---Yes.

And if I could ask you to look at 4832 in that document, which is the discussion of the agenda item relating to invalid binding nomination witnessing?---Yes.

45 We will just wait till that comes on the screen. We have the first page and now we need 4832. We see that Ms Thompson, who is recorded in the middle of the page as senior legal counsel, advised the committee that:

5 *Any evidence of widespread misconduct on the part of employees may indicate that we should have done more as a licensee. While there is no current evidence as to previous similar events, there appear to be concerns around our compliance procedures in respect of the witnessing process. There may be an impact to members if it can be shown that their intentions were not properly being put into effect.*

?---Yes.

10 Continuing:

15 *The committee discussed the binding nature of the nomination forms, the potential consequences of forms not being effective, the role of and implications for trustees and the possibility of this issue impacting on other areas of the bank.*

?---Yes.

20 Continuing:

The committee determined that more information is required before it can make a decision as to whether a breach has occurred, and if so, its significance.

25 ?---Yes.

So that was the position on 25 May?---Yes.

30 And there was a further meeting of the Breach Review Committee on 31 May?---Yes.

And this time the committee decided that the breach was significant?---Yes.

35 Can I ask you to look at a document which is NAB.061.005.4860. And, while that document is coming up on to the screen, there was a reference by Mr Hagger earlier in his evidence, Commissioner, to a person whose name is the subject of a non-publication direction.

THE COMMISSIONER: Right.

40 THE WITNESS: I apologise, Ms Orr.

MS ORR: I can repeat the name again, but that might not be useful.

45 THE COMMISSIONER: It rather seems to defeat the object, doesn't it?

MS ORR: Yes. I am not sure, Commissioner, if you otherwise will know which part of the evidence... Mr Hagger was talking about the detection of this issue, and referred to having an earlier indication of an issue of this nature - - -

5 THE COMMISSIONER: Through another adviser.

MS ORR: - - - through another adviser.

10 THE COMMISSIONER: The name of that adviser is the subject of an NPD. Is that right?

MS ORR: That is.

15 THE COMMISSIONER: Well, I draw that to the attention of the media. I am sorry we should have created this difficulty for you, but there we are. The name is not to be published?---My apologies, Commissioner.

Mr Hagger, these things happen.

20 MS ORR: Now - - -

THE COMMISSIONER: We try not to and they happen.

25 MS ORR: This document which we have now, Mr Hagger, is the minutes of the Breach Review Committee meeting on 31 May 2017?---Yes.

And we see at 4861 that there's an update to the committee from Mr Steele. And we see, third paragraph down:

30 *The committee discussed the event and, having regard to the potential number of clients impacted, the potential for loss to nominated beneficiaries, lack of adequate compliance and control arrangements and the duration of the event, determined that the event is a significant breach by National Australia Bank Limited and hence reportable to ASIC.*

35

?---Yes.

The significant breach notification is also annexed to your statement, but first I tender the minutes of this meeting, Commissioner.

40

THE COMMISSIONER: Sorry, Ms Orr, minutes of meeting of?

MS ORR: 31 May 2017. It's the Breach Review Committee. NAB.061.005.4860.

45 THE COMMISSIONER: That document will become exhibit 2.185.

**EXHIBIT #2.185 MINUTES OF THE BREACH REVIEW COMMITTEE
DATED 31/05/2017 (NAB.061.005.4860)**

5 MS ORR: Now, the breach notification to ASIC is exhibit 45 to your statement, Mr Hagger?---Yes.

NAB.005.021.0488?---Yes.

10 And we see from that document that on 15 June 2017 NAB lodged a significant breach notification with ASIC in relation to the issue of invalid binding nomination witnessing?---Yes.

The date, if you are looking for it, Mr Hagger, is on 0492?---Sorry, I knew the date,
15 Ms Orr. I was just taking a sip of water while - - -

I'm sorry. Now, at 0491 we see that by this time, in June of 2017, the notification says that NAB has identified 325 staff who were involved in incorrectly witnessing beneficiary nomination forms?---Yes.

20 And 204 of them were financial advisers who operated as representatives of NAB?---Yes.

25 Were these all NAB employees?---Yes.

And at 0490 we see the description towards the bottom of the page of why in NAB's view the breach is significant?---Yes.

30 And we see there, if we could have this page and the subsequent page on the screen, that next to the reference to extent to which breach or likely breach indicates the licensees' compliance arrangements are inadequate, NAB said:

35 *This event does raise concerns about the adequacy of the licensee's supervision and monitoring process in relation to the completion of the form. Although the licensee has trained its staff and this type of conduct is difficult to anticipate and detect, the extent of this practice does give rise to the question whether it should have been anticipated and detected earlier.*

40 ?---Yes.

Now, I want to suggest to you that that's quite a narrow understanding of this problem which indicated a willingness of employees to attest to things that weren't true?---Sorry, can you please repeat the question, Ms Orr.

45 This description of the problem that NAB gave to ASIC reflects, I'm suggesting to you, a narrow understanding of the problem which we know showed a willingness on the part of NAB employees to attest to things that weren't true?---I see what you're

saying. Well, the – everything here is correct. You’re saying it’s narrow, Ms Orr. Is that what you’re saying? Well, if that’s so, I think it probably needs to be read in the context of the broad document and the discussions we were having with ASIC at that time. Our – our discussions with ASIC were aimed to be fulsome on the topic, not –
5 not narrow.

NAB identified for ASIC in this document the obligations breached by the licensee. We see that at 0491 to 0492?---Yes.

10 Do you see right down the bottom of 0491 the heading 2.8, Obligation Breached by Licensee?---Yes.

And then if we have 0492 there, you will see that sections of the Corporations Act are listed at the top of the next page?---Yes.

15 And those sections are section 1041H of the Corporations Act. And that’s a provision that prohibits conduct in relation to a financial product or a financial service that is misleading or deceptive or likely to mislead or deceive?---Yes.

20 And there was also a reference to a breach of section 912A subsection (1) subparagraph (a) of the Corporations Act, which contains the obligation on a financial services licensee to do all things necessary to ensure that the financial services covered by the licence are provided efficiently, honestly and fairly?---Yes.

25 So this was conduct that was acknowledged by NAB to be misleading and deceptive, or likely to mislead or deceive?---It was behaviour which was being acknowledged by NAB at – to be potentially misleading to the – to the trustee, and potentially to have an impact upon clients.

30 Yes. Well, NAB chose to identify these sections as obligations breached by the licensee by this conduct?---Yes.

It was conduct that revealed, didn’t it, that NAB had not done all things necessary to ensure that the financial services provided under its licence were provided honestly,
35 efficiently and fairly?---I think that’s what this section is saying.

Yes?---I think in the discussions, as well, I think – excuse me if I’ve got the wrong reference, but I think in Reg Guide 256 it talks about being honest, efficient and fair, gets to how you deal with customers once something happens that might impact
40 them. So it was sort of in the fullness of all of that that our discussions occurred with ASIC as to what was the right description of the event and the right remediation.

All right. Mr Hagger, following this document, this breach report to ASIC – or, I should say, slightly prior to it, because this document went in on 15 June 2017, but
45 on 5 June 2017 NAB included Mr Meyn in a list that it gave ASIC about advisers for which it had compliance concerns?---Yes.

That was about six months after NAB had terminated Mr Meyn's employment?---Yes.

5 Why did NAB wait so long before telling ASIC that this conduct of Mr Meyn was a compliance concern?---I think that's what we discussed earlier, that for the first three months there – we had some internal confusion about whether this is an adviser to report to ASIC. A wrong judgment was made during that process. We had a meeting with ASIC on 1 May where they clarified for us around breach reporting and adviser reporting of this nature. And that led to the 5 June submission that we made
10 – reporting we made to ASIC.

So the right decision, the decision to report this as a compliance concern to ASIC, was made in June 2017?---Correct. It – and – and, Ms Orr, it should have been made in March or, you know, knowing what we know now, it should have been quicker.
15 It's taking about – there's a period of time – in the evolution of our reporting protocols with ASIC, there's the balance to be struck between the timeliness of the report and the information ASIC wants to see in the report. So there is a period of time. I wouldn't want you to think that ASIC expects to – you know, this document on the day after termination, but they would expect to see it quicker than six months
20 and so they should.

What reporting protocols does NAB have with ASIC?---We don't have formal reporting protocols. I think that's something that we may look to do, but it began, as I say, with my letter to Mr Medcraft of February 2015 saying that we wanted to
25 report beyond the 912D report, so that they would become aware of more advisers. That was very acceptable to them, because they were beginning the Financial Adviser Register at that time. And since then, as I say, the process has been evolving. But there's no one document that says this is how it works. This is a voluntary reporting mechanism. We want to help ASIC to – because they oversee a
30 system that's clearly very important for all of us.

But you're aware of the statutory obligation that NAB has under 912D of the Corporations Act - - -?---Yes, we are.

35 - - - in relation to the reporting of significant breaches?---Correct, Ms Orr.

And you're aware that there's a 10 day - - -?---Yes.

40 A 10 day limit for making those reports?---Yes. That's a 10 business day requirement.

Yes. In March of this year NAB gave ASIC an update about this matter?---Yes.

45 And by that time, by last month, NAB had identified that 2520 clients were affected by this issue?---Yes.

Now, that indicates, does it not, that this was not attributable to misconduct by any one individual employee?---Yes.

5 You say in your statement that the conduct was attributable to three things. You deal with this in paragraph 30 of your statement:

10 *In respect of those advisers who engaged in incorrect witnessing of beneficiary nominations in the absence of the nominator, I consider the principal reasons were a belief that the system of policies, processes and controls enforced by NAB are too burdensome, related to (a), a lack of care in complying with NAB's internal policies, processes and controls due to indifference or a preference to maintain entrenched behaviours that were not permitted, and a desire to complete a process with minimum inconvenience to the adviser and the client or a desire to engage in a shortcut without questioning why such*
15 *conduct was impermissible.*

?---Yes.

20 What I want to suggest to you, Mr Hagger, is that each of those reasons that you've given indicate broader failings on the part of NAB?---Well, perhaps the – the best way to answer that, Ms Orr, is to say that in section 3 – question 3 from the Commission, I replied narrowly, deliberately, in terms of, as per the paragraph 28 – as per these are the things the employees told us.

25 Yes?--- - - - as to why they did it.

30 Yes?---Question 4 is a much broader question, what other things NAB has done. I think it's self-evident that there is a linkage between question 3 and 4, which I acknowledge. And actually, you know, this is a customer matter that emerged that demanded action, and we've taken actions. And a number of those are in our section 4. And, in fact, section 4 is quite expansive of the number of things that I've instigated in the financial advice space to improve processes and controls over recent years, including addressing this matter.

35 And I want to put to you that implicit in the fact that you've taken that action which you've dealt with in response to question 4 in your witness statement is an acceptance by NAB of the broader failings on the part of NAB that led to this conduct?---I see what you're – well, I know we're sort of circling an issue here where I'm saying the forms were self-evident. And so from the bank's perspective,
40 it's very clear – and I think would be clear to, you know, anyone reading that form that you must witness a form appropriately. I think what you're asking me is, well, does NAB have any role in the fact that it – that this behaviour occurred. And I think by us issuing a breach notice according to 912D, that NAB has said, yes, there are – there are failings from a NAB viewpoint which we will address, which we have.

45

What has NAB done to ensure that none of the 2520 affected customers suffered any detriment as a result of this conduct?---Well, that has been our prime focus through

this period. So several things, Ms Orr. Firstly, we had to work through, well, how many customers are potentially impacted - - -

5 Yes?--- - - - by this. And that's why we went through the process in May which saw the increase in customer numbers through what was, effectively, you could call it an amnesty period from a termination perspective, notwithstanding there were consequences. But we were bringing to the surface, because we wanted every customer to have peace of mind about their estate planning issues. So having then defined the set of customers where we had doubts – not certainty but doubts about
10 the validity of the forms – we then wrote to those customers, the 2520. I think there were 30 that we've had difficulty contacting, but the rest we've reached contact with. Those customers have been fantastic. They have addressed the issues in the vast majority of cases by simply resigning the forms with valid witnesses and sending them back to us. As things stand today, there are, I think, 250 customers who have
15 not yet returned those forms. Over time, we think that will whittle down to a much smaller number again. So that's the first thing we've done, writing to customers. And you've seen the documents on that. The second thing that we've done is had discussions with the trustee. Now, there were actually 27 or 28 trustees – different trustees involved in the 2520 customers. You know, they all – weren't all with one
20 fund. In all but one of those cases we have received all the forms back. So we're now down to just one trustee in relation to the outstanding forms. The outstanding trustee is NULIS which is a NAB – part of the NAB group. It oversees the MLC super fund. And so NAB Financial Planning has issued a letter of comfort to the trustee in relation to the – what might be the remote possibility, but the possibility,
25 that there is some kind of challenge in claim staking that occurs within those 250 customers. Now, the experience of the trustee, Ms Orr, is that one in 1000 forms get challenged, and, actually, a much smaller proportion get challenged successfully. So we're now down to, you know, well beyond that – well below that. And in circumstances where if the trustee – the trustee has said they will treat these forms as
30 valid. And then, through a claim staking process, if ultimately the trustee is in a situation where they've paid one beneficiary and there's a successful challenge and they have to pay another, NAB Financial Planning has issued a letter of comfort about that. So, therefore, we have dealt very comprehensively to the client issue. And that was our prime concern, that through our own sloppiness we had created this
35 situation which could affect the peace of mind of 2520 customers. And that's why we went through that process. And, as I say, those customers have been fantastic, returning forms and helping get that situation back in order.

40 And we saw earlier from documents we had on the screen that financial advisers who self-reported having been involved in incorrectly witnessing these forms received an amber conduct gate?---Yes.

Were there consequences further up the chain?---Yes.

45 Can I ask that you look at a document, which is NAB.005.346.0001. This is a document Entitled Wealth Advice Leadership Consequence Management?---Yes.

You've seen this document before, Mr Hagger?---Yes, I have. It's actually three documents packaged in one, but it's three different documents.

5 Perhaps we can make clear which are the different documents then. Is the first document a two-page document, which is 0001 and 0002?---Yes.

Do you know when that document was prepared?---Yes, it was prepared on 2 November through the human resources division of NAB.

10 And is the next document the document that commences at 0003 - - -?---Yes.

- - - and runs through to 0005?---No. The second document is the document at 0003.

15 The single page?---The single page.

Single page?---Correct.

20 And when was that document prepared, Mr Hagger?---I'm not sure when it was prepared. I'm not sure. It – I know when it was given to me, which was around 3 November.

And the final document is the document that commences at 0004 and finishes at 0005?---Correct.

25 That's a file note, Andrew Hagger - - -?---Yes.

- - - outcome and broader consequence discussion with Greg Miller?---Yes. And this document was authored by me on 30 October, I think it was, when I met with Greg Miller for his performance outcome conversation.

30 Thank you. Now, perhaps before I ask questions about these documents, Commissioner, given that we've just sorted out the division between the documents, I might tender each of them.

35 THE COMMISSIONER: Separately or as a bundle?

MS ORR: I think separately sounds as if it would be appropriate, unless the Commissioner would prefer to do them as a bundle.

40 THE COMMISSIONER: Who am I to say? Exhibit 2.186 will be Wealth Advice Leadership Consequence Management, 2 November '17, NAB.005.346.0001.

45 **EXHIBIT #2.186 WEALTH ADVICE LEADERSHIP CONSEQUENCE MANAGEMENT DATED 2/11/2017 (NAB.005.346.0001)**

THE COMMISSIONER: The second document should be described as what, Ms Orr?

5 MS ORR: The second document is the document entitled Specific Concerns for Tim Steele given to Mr Hagger on 3 November 2017.

THE COMMISSIONER: Document described in that fashion, being NAB.005.346.0003, becomes exhibit 2.187.

10

EXHIBIT #2.187 SPECIFIC CONCERNS FOR TIM STEELE GIVEN TO MR HAGGER ON 3 NOVEMBER 2017 (NAB.005.346.0003)

15 THE COMMISSIONER: And then exhibit 2.188 will be the file note of 30 October '17, NAB.005.346.0004.

20

EXHIBIT #2.188 FILE NOTE DATED 30/10/2017 (NAB.005.346.0004)

MS ORR: Now, could I start with the first of those documents - - -?---Yes.

25 - - - Mr Hagger, the two-page document prepared – I think you said by the HR division?---Yes. Yes.

This document starts with a background section which recognises that:

30

There have been a number of risk and reputation challenges for Wealth Advice in FY17 –

?---Yes.

35

Continuing –

including a complex legacy issues, customer remediation, advice service fees and witnessing beneficiary nomination forms. There are also identified deficiencies in monitoring and supervision standards and controls effectiveness.

40

?---Yes.

And we see that the HR team records that:

45

While the team has worked hard to identify, remediate and resolve the identified issues across the year, these have impacted the reputation of NAB

and customer trust. There is much further work required to improve the key controls, improve risk and repair reputation.

?---Yes.

5

Continuing:

Senior leaders within Wealth Advice are accountable for setting the tone and culture and it is clear that the culture failed to ensure that advisers and support staff upheld the high standards we expect of them, particularly relating to witnessing beneficiary nomination forms.

10

?---Yes.

15 Do you agree with that statement, Mr Hagger, that senior leaders are accountable for setting the tone and culture in an organisation?---Yes.

And how would you describe the culture of NAB's Wealth Advice business?---I'd describe it as having progressed from being an adviser-centric culture to a customer-centric culture. We have more work to do, but we – we are moving towards professionalism. I think that has been discussed in the Commission so far. And it – in – it revolves around the customer, as you've seen in the response to this issue.

20

The document has a separate heading, which is Approach to Applying Consequence as a Result of Issues Identified and records that:

25

A number of key senior stakeholders have been deeply involved in determining the appropriate consequence to be applied for People Leaders within Wealth Advice.

30

?---Yes.

And the stakeholders include you?---Yes.

35 And Mr Steele, whose name we've seen on other documents already?---Yes.

Now, can I ask you to turn to the second page, where we see a table setting out consequences that were to apply to different leadership groups?---Yes.

40 Can you explain that table to us, Mr Hagger?---Sure. This – do you mean the – sorry – there's two tables there, so - - -

I'm sorry. I'm talking about the one that appears first on the page?---Sure. Okay. So this is – if you look at the organisation structure within the Wealth Advice area, we start there with the Wealth Advice leadership team, which was Greg Miller's leadership team. Mr Miller reported to me at that time. Within that leadership team,

45

there's then the listing, the next four, relate to areas within the Wealth Advice team. So it's – it's the leadership teams of those leaders. And then - - -

5 To be clear, so that's advice partnerships?---Yes.

Advice services?---Yes.

Wealth Distribution?---Yes.

10 And NAB Financial Planning?---Yes.

Yes?---And then the – and sorry – if you just jump the next one and go to Direct Advice Leadership Team, that is also part of the leadership team of Wealth Advice.

15 Thank you?---So Wealth Advice had those five arms, if you will. And then the NAB Financial Planning regional wealth executives and national client manager, that's the RWEs that we've referred to through this case study so far, who report into NAB Financial Planning and play a leadership role in managing the advisers.

20 So that's the regional wealth executives?---Correct.

And we see that this table records a risk outcome for each of those categories of leaders?---Yes.

25 The only group that had an outcome of not achieved was the wealth distribution leadership team. Can you explain - - -?---Correct.

- - - that result?---The fact that it was not achieved or the fact that - - -

30 Yes?---Yes. So these are risk outcomes that are assessed by the chief risk officer and through the risk division. And they look at a range of risk indicators in the various areas, the actions that each leadership team undertook to take during the year, the effectiveness of the results of those, and through that arrives at a – an outcome decision. And their outcome decision in relation to wealth distribution was not
35 achieved.

What we want to see there is achieved, I assume?---Correct.

40 And then, the next one down, the next less satisfactory outcome is partially achieved?---Is partially achieved.

And - - -?---And I think partially achieved and partial are similar. I am not sure of the difference between partially achieved and partial. I think that's referring to one and the same thing.

45

We can see that where the group achieved the risk outcome, there was no consequence for their incentive payment?---Correct.

And where they only partially achieved the risk outcome, there was a reduction in their incentive payment of either 25 per cent or 10 per cent?---Correct.

But then we have the Wealth Distribution Leadership Team?---Yes.

5

Who have a not achieved rating for their risk outcome?---Yes.

Can you explain why they received that risk outcome and what the consequence of that outcome was?---I can't recall the exact reasons why the Wealth Distribution Leadership Team had a not achieved risk, Ms Orr, but the – yes. I'm – I don't recall in relation to that, Ms Orr. I'm - - -

10

Who was in the Wealth Distribution Leadership Team, Mr Hagger?---That team at that time was led by Mr Geoff Rogers. The reason why I'm struggling to remember a little is that that area does not form part of my division today. I can't remember the specifics around that particular division. It's quite a small division, and it's involved in the engagement with independent financial advisers outside our NAB Financial Planning and aligned network, but I can't recall the specifics of that rating.

15

All right. Could we move to the second document, which is the document headed Specific Concerns for Tim Steele?---Yes.

20

We've seen that Mr Steele was the general manager of NAB Financial Planning?---Yes.

25

And this document contains a note from Mr Steele to Greg Miller - - -?---Yes.

- - - and HR?---Yes.

And Greg Miller, I think you said, was within the Wealth Advice Leadership collective. Did he lead that group?---Yes. Greg Miller led Wealth Advice.

30

Yes?---And NAB Financial Planning is in that. And Tim Steele was reporting to Greg Miller at that time.

35

Okay. So this is Mr Steele reporting to his superior - - -?---Correct.

- - - Mr Miller?---Correct.

And we see that Mr Steele says to Mr Miller in the third paragraph down:

40

In terms of the broader leadership team. LT –

?---Yes.

45

What is - - -?---That's the NAB Financial Planning LT.

What's LT, Mr Hagger?---Sorry. Leadership team.

Leadership team and regional wealth executives?---Yes.

5 Continuing:

10 *I am concerned about the cultural impact to both overall engagement and the potential reluctance of team members to raise future issues which could contravene NAB's whistleblower policy, given the likely perceived unfairness of the consequences and corresponding lack of trust in senior leadership to support our people.*

?---Yes.

15 So this was Mr Steele expressing concern about consequences imposed at the leadership level in response to these incidents?---Yes.

And this is the nature of the concerns that he expressed?---Yes.

20 And Mr Miller expressed a similar view in his discussions with you, which we see from your file note - - -?---Yes.

- - - in the third document?---Yes.

25 And you record in your file note at 0004 under the heading 2, Shaving of Multiples for Wealth Advice leaders, second sentence, that:

30 *Mr Miller was very much opposed to any implications for Wealth Advice leadership team members and their direct reports.*

?---Yes.

Continuing:

35 *He said that this was an important cultural symbol and that what the organisation was really encouraging then was for ben noms –*

Beneficiary nominations –

40 *style issues to be swept under the carpet in future. He said we risked key departures and all at a time when there's a possibility we will look to sell the advisory business or parts of it in the coming year.*

?---Yes.

45

And what was your response to those views, Mr Hagger?---Well, my response to those views is there's an expression everything is leadership's fault. It's for leaders

to set the tone. So what we've done here is followed all the way through from Mr Meyn's situation through to finding a more entrenched practice which had occurred within the division. And that – we are actually delighted with Tim Steele's leadership through this process, because he didn't waver in going through the customer remediation, in going through the impacts and consequences for those individuals who had been involved in the practice, and in striking what we thought was a proportionate response to this situation and making clear to the employees that this was wrong behaviour and here is how it needs to be done. So – so the question then comes, which is really what Mr Miller was asking, well, why, then, are we shaving his performance multiple.

Bonus?---Bonus.

Yes?---And those of other people. And the answer is, well, it has happened on – in his case, he had been a leader for relatively short time. The broader leadership team, there were some members who had been there for quite a period of time. And – so my response here says, well, for example, on the executive leadership team, from time to time, I've experienced shavings of – of – of bonuses for things I've either not directly been involved with or involved in finding and fixing. And there's sort of, in some ways, an unreasonableness to it, but it's fair. It's what our customers would expect of us, that they often look to, well, what's happening at the management level and what's happening to the leadership level? Don't just penalise the people involved in the practice; look to the management and leadership layers and make an adjustment there. And so my response to Mr Miller on this matter and to Mr Steele when I met with him the following Monday, was to say I have – this is what I want to see. I want to see issues surfaced, customers protected, and consequences. And the fact that that may impact a multiple in one year, which I think is – is fair, even if it feels unreasonable, that actually sets up, I think, leaders for success going forward, because they've done the right thing. They might have a reduced multiple one year, but I would say Mr Steele's stocks rose in our organisation by his leadership of this matter. And that's probably self-evident by the fact that he now reports directly to me and is on my leadership team.

You said you were delighted with the way he had handled this, but - - -?---Yes.

- - - Mr Steele was not delighted with the consequence that was applied to him, which was a shaving of his bonus. But you maintain that that should occur?---Actually, he – sorry – I should add, he was accepting of the bonus – at the time that he wrote this, he – he thought that a bigger adjustment to his bonus was going to occur than what ultimately happened. So - - -

What was the size of the adjustment to his bonus ultimately, Mr Hagger?---Well, his short-term incentive multiple for last year was something like .76 or .77. It's 10 per cent less than .85, whatever that works out to be.

So his bonus was shaved by approximately 10 per cent - - -?---Correct.

- - - as a result of these events. All right. So you held your ground and - - -?---Yes.

- - - maintained that these leadership consequences should occur - - -?---Yes.

5 - - - in the face of opposition from Mr Steele and Mr Miller?---Yes. I sympathised, but I stood my ground.

You had to work to persuade your CEO, as well, didn't you, Mr Hagger?---Not really. He – so the first document was actually discussed with the CEO on – with Mr
10 Thorburn on the 2nd of – sorry – 3 November. And so his – he had – let me go back a step. He had been involved with me in the rating of Mr Miller. And then he would – in relation to the other leaders, he said to me I want to see the consequences and I want to approve them. So - - -

15 Just pausing there, what was the consequence for Mr Miller? You've explained for Mr Steele?---Mr Miller received no bonus.

Thank you. I'm sorry. Carry on?---So then Mr Thorburn – this first document at 0001 and 0002 was the subject of discussion between myself, Lynda Dean, who is
20 the head of performance and reward – or the executive general manager of performance and reward at NAB, and Mr Thorburn. And Mr Thorburn, on the Friday, which I think was 3 November, we had a meeting. And when you say I needed to persuade him, he was comfortable with everything in that table that we just went through, but with one question. He said have we reduced the incentives enough
25 for the regional Wealth executives? And so that was something that I reflected on. I spoke with Mr Steele and with the HR division. And I went back to Mr Thorburn on – it might have been that evening, actually – and said to him I think that's – I think we've struck the right balance there. And he agreed.

30 We have that email exchange - - -?---Okay.

- - - between you and Mr Thorburn. I can show you, Mr Hagger, which is NAB.005.309.0009?---Thank you. Yes, this looks like the exchange.

35 Yes. So we can see there there was an email sent by you at 9.24 pm on Friday 3 November?---Yes.

This chain doesn't record who it was sent to, but it appears to have been sent to Mr Thorburn and Ms Dean?---Yes.

40 And we see Mr Thorburn's response to your email on Monday morning?---Yes.

He says he's accepting of your review and the conclusions, particularly as people have had an additional 10 per cent reduction through the STI multiple, being 90 per
45 cent?---Yes.

And can you explain that first. Why was there already the 10 per cent reduction?---I see. So this – this will sound like a very sort of high – it’s an overall NAB short-term incentive so short-term incentives at NAB have two multipliers involved. So you have a target bonus. The first index or factor is the group multiple. And the
5 second index is the individual multiple. So if the target is 100 and the group multiple ends up being .9 and the individual multiple ends up being .9, then you get 100 times .9 times .9 which ends up at 80 or 81. 81, I think it is. So the NAB board, as reflected in the NAB annual financial report, in the remuneration report, made a determination for the year just past, finished 30 September 2017, that the group STI
10 multiple would be 90 per cent. And the reason why they did that, as outlined in the financial report, was mainly due to compliance factors inasmuch as – I mean, there’s a number of judgments involved to get to that – that point. But, you know, NAB had met a number of targets in relation to financial and risk – sorry – financial and people, engagement, customers, etcetera. I’m not familiar with all the algorithms.
15 But a key thing – a key message from the NAB board to management was the multiple will be 90 per cent, not 100 per cent, and, in particular, we have been concerned about compliance matters. And that included nominated beneficiaries, this matter. When I took to the Board Risk Committee this matter, which I did on 7 June – the board was meeting in Mildura – I – when I explained to the board the
20 matter, the failure of discipline, that it was a cultural matter, the board noted this is another issue in Wealth. And they took that into their determination at the end of the year.

25 Yes, I see. So that was a factor that Mr Thorburn was taking into account in his assessment of your recommendations?---Yes.

That the group STI multiple had already been reduced by 10 per cent - - -?---Yes.

30 - - - as a result of compliance issues?---Of this was one, yes.

And Mr Thorburn then says to you:

35 *I think this means we can say those who were involved in this issue have had somewhere between 20 per cent and 100 per cent of their bonuses reduced for this year.*

?---Yes, and that’s true.

40 And your email to him, which we see below on the Friday night, you say to him that, as promised, you’ve personally probed further into Mr Thorburn’s challenge regarding retail – I am sorry – regional Wealth executives’ consequence?---Yes.

45 And then you forwarded a note sent by Lynda in support of your recommendation to stick with what had already been suggested as the regional Wealth executives’ consequence?---Yes. Yes.

So the challenge by Mr Thorburn was the challenge you've described earlier - - -?---Yes.

- - - in relation to the regional Wealth executives' consequence?---Yes. Yes.

5

Thank you. I tender that document, Commissioner.

THE COMMISSIONER: Emails between Hagger and Thorburn of 3 and 6 November '17, NAB.005.309.0009, will be exhibit 2.189.

10

EXHIBIT #2.189 EMAILS BETWEEN HAGGER AND THORBURN OF 3 AND 6 NOVEMBER 2017 (NAB.005.309.0009)

15

MS ORR: Mr Hagger, did you also have a financial consequence imposed on you as a result of these events?---Yes.

Can I ask that you be shown NAB.092.001.1000. These are minutes of a meeting of the board on 4 October 2017?---The NAB board, yes.

20

The NAB board?--- board, yes.

Thank you. And at 1006 we see that the board approved financial year '17 performance outcomes for the group's CEOs direct reports?---Yes.

25

I will just wait till that comes on the screen, Mr Hagger. And it records in that table – we see the reference to you as one of the key management personnel on the left-hand side?---Yes.

30

It reports that you achieved your performance outcome?---Yes.

What does that mean, Mr Hagger?---It means, looking across the ambit of my responsibilities, the determination of Mr Thorburn and the board was that I had achieved the performance goals that I had set for me for the year.

35

And we see that the STI multiple – the multiple for your bonus is recorded as .8?---Yes.

Do we understand from that – so you, too, were starting from the .9 group multiplier?---Yes.

40

And we see from footnote 2 to this table that your individual multiple was adjusted by .5?---Yes. This – this is showing the net – sort of the net of the group and the individual, arriving at .8.

45

Yes. And the deduction of .5 is said to:

...balance continuing Wealth risk management issues against strong performance on other dimensions, including industry leadership on a number of matters.

5 ?---Yes.

So what reduction in bonus was applied to you as a result of these events?---The reduction was – I would have to do the maths, but point - - -

10 Yes. This is the aggregate, but there would have been a reduction to your individual multiplier. Is that right?---Correct. If it were not for these events – I probably need a calculator in front of me, but if it were not for these events, I would have received a higher incentive. And the way to calculate that would be .05 times 1.2 million. So I'm not sure what that – I think that might be \$60,000, Ms Orr.

15

Thank you. Which left you with the variable component – the bonus for that year – of \$960,000?---Correct.

I tender that document, Commissioner.

20

THE COMMISSIONER: Minutes of the board of NAB Limited, 4 October '17, NAB.092.001.1000, exhibit 2.190.

25 **EXHIBIT #2.190 MINUTES OF THE BOARD OF NAB LIMITED DATED 4/10/2017 (NAB.092.001.1000)**

30 MS ORR: Could I just ask you some more general questions now, Mr Hagger - - -?---Of course.

- - - about some other matters that you've dealt with in your statement in relation to NAB financial advice business?---Yes.

35 You have set out information in your statement about the number of financial advisers employed by NAB in each year since 2008?---Yes.

And we see that, if we start in 2008, there were 538 advisers?---Yes.

40 This is annexure A to your statement, if that assists?---Yes. I'm amongst it. I haven't – here we are. 538. Yes, Ms Orr.

And that went up. In 2013, we see, it was 600?---Yes.

45 And it continued going up in 2014 and '15?---Yes.

But then if we turn to the next page, we see that currently in 2018 there are only 383 - - -?---Yes.

5 - - - financial advisers. So why has NAB decreased the amount or the number of its financial advisers?---I think there's two key reasons. One is we've lifted education standards, so the pool to recruit has diminished. So we've had less advisers coming in. And then, secondly, we've had departures for a range of reasons, some of them of our making, in the sense that in lifting standards there are some financial planners that, for whatever reason, might decide they want to work elsewhere or exit the industry. In other cases, an adviser may simply choose to work somewhere else.

10 And we've seen references in at least one other document to consideration by NAB of divesting itself of its financial advice business?---Yes.

15 Is that something that NAB is considering?---Well, I think – I sometimes get asked that question because there has been some media speculation, and, obviously, NAB is continually looking at our overall portfolio, but, Ms Orr, there's no announcement to make here today in the Royal Commission.

20 A matter under consideration - - -

THE COMMISSIONER: It might be some market sensitive information which we're inquiring about. I think we might need to be a little - - -

25 MS ORR: The reason for my inquiry, Mr Hagger, is I'm interested in whether you think that it's desirable for the provision of financial advice to be separated from entities like the big banks or AMP which also issue financial products?---I see. Well, firstly, I agree that advice and product are two separate things. Inside NAB we have different areas that Mr Lawrance oversees - product. I oversee advice. So we understand the distinctions and we manage the inherent conflicts of interest that can occur. The flip side of that is that customers take, typically, a lot of comfort out of the fact that they're dealing with a big institution. We – we have seen that where, as a bank, we have got it wrong, we have compensated customers. If we have a determination in the customer's favour at the ombudsman, NAB pays up. If we lose a court case, if the matter has even got to that point – hardly any do, but if they do, you know, NAB pays up. So customers – and we have many – appreciate the fact that a big institution is standing behind the advice, that there are quality standards, and that in the event that things go wrong, which is actually rare, but when it does happen, as we saw in this case, that NAB will act to protect customers. So they're all the – there's those two factors, the managing the conflicts of interest, and the – also, the customer benefits of dealing with a big organisation. And those things are on our minds all the time, and, you know, have been for a long time.

45 You've referred in your statement to the customer response initiative?---Yes.

That was something that NAB established in 2015?---Yes.

And it's a program that aims to identify and remediate customers at risk of loss due to inappropriate advice?---Yes.

5 And, as part of that customer response initiative, in May 2015 NAB appointed an independent customer advocate?---Yes. That was Professor Kingsford Smith who I referred to earlier.

10 Who you referred to earlier in your evidence. And in late 2017 I want to take you to some recommendations that the independent customer advocate made about the customer response initiative?---Yes.

15 Could I ask you be shown NAB.005.217.0087. Are you familiar with this document, Mr Hagger?---Yes, I am. I was present when this document was presented to the NAB principal board.

Yes. And there is no date on this document, but we know that it was considered by the NAB principal board on 9 November 2017?---Yes.

20 Yes. So late last year. And we see at 0087, the first page - - -?---Yes.

- - - that the customer advocate in this memo to the board explains that the customer response initiative – this is the second paragraph under CRI insights?---Yes.

25 Continuing:

...has not progressed adequately since its commencement in mid-2015. Determining the number of advisers of concern and, therefore, customers at risk is ongoing. On 27 April 2017, the Advice and Licensee Board asked management to secure adequate funding and plan for the CRI to be completed by September 2020. That timing was based on the review of 33 advisers. However, there is no practical likelihood of this without a significant increase in resources. At end of October 2017, there were 24 advisers under CRI review, with a projection of this increasing to 48 at the end of November 2017. There remain in excess of 540 advisers waiting to be assessed as to whether they will be in-scope or not. At best, customer remediation is less than 10 per cent complete and this is largely for want of financial support to date. Management has been unable to determine or provide a whole or life cost or commit to funding which is plausible for a target end date.

40 Now, did the board, in response to this paper, accept that the customer response initiative was proceeding far too slowly?---Yes.

45 Now, I want to take you to the board's response, but, before I do that, can I just ask you to also direct your attention to a passage over the page at 0088. So the customer response initiative analysis that's referred to in the first full paragraph there reveals that:

5 *Years of poor conduct were tolerated with ineffective consequence management for advisers now under review. Poor record-keeping of client files continues to obstruct complaints, remediation, management assurance and risk controls, siloed and difficult to retrieve data about monitoring and supervision, events and consequence management have made it harder than it should be to make timely decisions about advisers of concern.*

?---Yes.

10 So these – I’ve taken you to two aspects of these concerns expressed by the independent customer advocate - - -?---Yes.

- - - to the NAB principal board?---Yes.

15 I will tender that document, Commissioner.

THE COMMISSIONER: Memorandum for the NAB principal board from customer advocate Wealth, NAB.005.217.0087, is exhibit 2.191.

20

EXHIBIT #2.191 MEMORANDUM FOR THE NAB PRINCIPAL BOARD FROM CUSTOMER ADVOCATE WEALTH (NAB.005.217.0087)

25 MS ORR: Can I now take you to management’s response which is NAB.005.218.0001, on 26 October 2017?---Thank you.

30 I’m sorry if I didn’t give the number for that. I did. Could I ask you to look, firstly, at the appendix, which is an appendix expressing views from the Chief Risk Officer, Mr Damian Murphy, which is 0003?---Yes.

And we see there that Mr Murphy refers to a number of matters. And the sixth of those matters is that – I will just wait for it to come on to the screen – is that:

35 *ASIC’s approach to financial advisers across the industry (and particularly across the big 5) has shifted over the last two years (including with NAB). This involves challenges to all revenue streams and services attached to financial advisers. In particular, the “conduct focus” involves ensuring no harm to any customer, with the reversal of onus of demonstrating appropriate advice and*
40 *service now required from the institution.*

Just pausing there, wasn’t NAB itself always required to demonstrate that its advisers were providing appropriate advice?---Yes.

45 There has been no reversal of onus, has there, Mr Hagger?---I think – well, firstly, these are – these are Mr Murphy’s words.

Your chief risk officer?---Our chief risk officer, who we referred to earlier.

5 Yes?---Yes. So I think what he's saying there is in the past with ASIC, whether it be through identifying advisers of concern or whether it be through a complaint and dispute resolution process, what would happen is that a customer issue would surface and that would be dealt with.

Yes?---And that would be overseen.

10 Yes?---What Mr Murphy is talking about here is actually saying, rather than matters surfacing and then - - -

15 Yes?--- - - - being governed, he's saying we're looking at everything, so prove that you provided appropriate advice, rather than prove that you're remediating inappropriate advice that you know about.

20 This is reflecting, isn't it, Mr Murphy's view that NAB's approach previously had been to assume nothing was wrong until a customer complained?---No, he's not saying that, because the – as you mentioned, Ms Orr, we instigated – and, actually, I instigated the customer response initiative in 2015. And that was – Mr Murphy – let me even go back a step further than that. In August 2014, I had brought Deloitte in to work with us on where our quality advice framework was up to. And that was us proactively looking at the Senate Economics Committee report, which I think was chaired by Mr Bishop, in relation to CBA. And, as a result of that, seeing that report in relation to another bank, we decided to put a mirror against our own activities, and through that we prepared a report. And in that report, Mr Murphy, in his Chief Risk Officer comments to that report, said we can't be sure that there isn't more inappropriate advice in our back book. I think you're familiar with the term back book.

30 Yes, I am?---So, therefore, we instigated the customer response initiative and we brought in Deloitte to – and worked with ASIC and worked with the independent customer advocate to scope that up. And that's the report that's being talked about here. So I think that, to help the Commission understand what this document is saying and what the discussion was about, is that, very deliberately, the Customer Response Initiative Program is tackling, first and foremost, issues of where – where we believe there may be customer detriment and going to the high risk adviser situations. And that's where we have targeted the work. And so when Professor Kingsford Smith talks about 10 per cent completion, possibly, she's referring to, potentially, the number of customers who may be remediated by the end if there's inappropriate advice. But she's not saying that the compensation that we have paid so far is only 10 per cent - - -

45 No?--- - - - complete. Quite – quite the contrary. So so far we have spent \$50 million on the customer response initiative to try to find areas of inappropriate advice. And I think you're across the statistics. So far we have found \$19 million of compensation that we have offered to clients. And so we will continue with that

process, but the core – Professor Kingsford Smith in her report speaks to a number of positive things about our Wealth division and the work done and the changes made, but her number one point to the board was this program needs to move faster. And in this document, I agreed and the board agreed, and so we added further funding to the program.

And that happened late last year?---Yes.

After the customer risk initiative was set up in the middle of 2015?---Yes.

Yes. I tender that document, Commissioner.

THE COMMISSIONER: Memorandum for the board of NAB Limited, management response to exhibit 2.191, NAB.005.218.0001, is exhibit 2.192.

EXHIBIT #2.192 MEMORANDUM FOR THE BOARD OF NAB LIMITED, MANAGEMENT RESPONSE TO EXHIBIT 2.191 (NAB.005.218.0001)

MS ORR: I have no further questions for Mr Hagger, Commissioner.

THE COMMISSIONER: Just before the document comes down, as it just has, Mr Hagger, can I direct your attention to the second page and paragraph 7. Do you see, paragraph 7, in the middle of that paragraph there is a sentence:

The business model associated with aligned advisers needs to be reviewed in the current environment.

Are you able to explain that to me, or amplify it in any respect?---Yes, Commissioner. So the aligned advice network consists of small businesses all around Australia which are advisory businesses. And through our licence, the licence of, for example GWMAS, which Ms Orr referred to yesterday, we stand behind the advice of those advisers. And we stand behind appropriate advice and we stand behind inappropriate advice. And, in return for that, we receive a licensee fee. And we provide training and various tools which help those practices to thrive. To the extent that there is inappropriate advice in the network, the risk reward equation – it's a bit like an insurance – risk reward equation looks different today to what it looked like in the pre-FOFA days, because in the pre-FOFA days – in fact, I probably have to go back even further than that. But in the days of product economics into the advice world, the risk return equation was quite different. Now we see a different return profile and a different risk profile. I think that's what Mr Murphy is referring to, Commissioner.

And a change in profiles that is working against NAB remaining in that kind of arrangement – pointing against remaining in?---Yes. And I don't want to be too specific about - - -

No?--- - - - NAB, but I think, yes, for big organisations – and I think this is something that ASIC is also turning its mind to and APRA. Because if you go back 20, 30 years, I think in Treasury and other arms of government, it would be said that it's good that big institutions are standing behind the small businesses. They're very
5 important around Australia. If that goes away, then there's a more fragmented environment for the regulators to oversee. And, also, it makes it harder, if – if ASIC lifts its standards currently in a particular area, as they did in November, we can then provide training right across a network. But if those small businesses were sort of
10 doing that themselves – the best ones will be able to do that, but you can see there's a fragmentation.

Yes. Is there anything arising out of that, Ms Orr?

15 MS ORR: No, thank you, Commissioner.

THE COMMISSIONER: Does any party other than NAB seek leave to examine Mr Hagger? Mr Young?

20 MR YOUNG: No questions.

THE COMMISSIONER: Thank you very much, Mr Hagger. You may step down and you are excused from further attendance, I think, Ms Orr.

25 MS ORR: Yes, thank you, Commissioner.

THE COMMISSIONER: Yes. Thank you, Mr Hagger?---Thank you.

30 <THE WITNESS WITHDREW [11.45 am]

MS ORR: Commissioner, the second entity through which we will examine improper conduct of financial advisers is ANZ. Perhaps we could have a moment to reset the bar table.

35 THE COMMISSIONER: If I come back at 10 to midday.

MS ORR: Thank you, Commissioner.

40 **ADJOURNED** [11.45 am]

45 **RESUMED** [11.50 am]

MS ORR: Commissioner, the next witness is Mr Kieran Forde, F-o-r-d-e.

THE COMMISSIONER: Yes. Mr Forde, would you come into the witness box, please.

5 <KIERAN FORDE, AFFIRMED

[11.50 am]

<EXAMINATION-IN-CHIEF BY MS WILLIAMS

10

THE COMMISSIONER: Do sit down, Mr Forde. Yes.

MS WILLIAMS: Thank you, Commissioner.

15 Would you state your full name, please?---Kieran Myles Forde.

And, Mr Forde, are you the head of Wealth Solutions and Partnerships at Australian and New Zealand Banking Group Limited?---Yes, I am.

20 Is your business address 833 Collins Street, Docklands?---Yes, it is.

Have you made a written statement in response to questions asked by the Royal Commission dated 12 April 2018?---I have.

25 And have you made a supplementary statement dated 23 April 2018?---Yes, I have.

Have you received a summons, Mr Forde, to appear before the Royal Commission to give evidence and to produce signed statements?---Yes, I have.

30 Do you have that summons with you, Mr Forde?---I do.

I tender the summons, Commissioner.

THE COMMISSIONER: Exhibit 2.193, the summons to Mr Forde.

35

EXHIBIT #2.193 THE SUMMONS TO MR FORDE

40 MS WILLIAMS: Thank you, Commissioner.

Mr Forde, do you have your statement there dated 12 April 2018?---Yes, I do.

Could you turn, please, to paragraph 77 at page 19?---Yes.

45

Mr Forde, do you see there the third sentence commencing:

No communications have been sent.

?---Yes, I do.

5 Was that position correct at the time you signed your statement on 12 April 2018?---It was at the time, yes.

10 Has there been a subsequent development?---Yes, so five of our customers, subject to the – the nomination of death form, five of those customers have been contacted and four of those documents have now been re-executed.

And, Mr Forde, the five customers that you refer to, are they the five customers referred to in paragraph 74(a) of your statement on page 18?---Yes, that's correct.

15 Thank you, Mr Forde. Subject to that matter are the contents of your statement dated April 2018 true and correct?---Yes, they are.

Commissioner, I tender that statement ,which is produced in response to the summons, together with the exhibits.

20

THE COMMISSIONER: The statement of 12 April '18 and exhibit is exhibit 2.194.

25 **EXHIBIT #2.194 STATEMENT AND EXHIBIT DATED 12/04/2018**

MS WILLIAMS: Thank you, Commissioner.

30 Mr Forde, do you have there your supplementary statement, dated 23 April 2018?---I do, yes.

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

35 Commissioner, that statement is also produced and I tender it, together with the exhibit.

THE COMMISSIONER: Supplementary statement of 23 April '18 and its exhibit will be exhibit 2.195.

40

EXHIBIT #2.195 SUPPLEMENTARY STATEMENT AND ITS EXHIBIT DATED 23/04/2018

45 MS WILLIAMS: If the Commission pleases.

THE COMMISSIONER: Ms Orr.

5 MS ORR: Mr Forde, you've been put forward by ANZ to give evidence about improper conduct by five financial advisers?---Yes, I have.

10 And that improper conduct includes forging customer signatures or initials, misappropriating customer funds and misleading or deceiving customers?---Yes, it does.

I want to ask you about the conduct of one of those advisers, who I will refer to as Mr A. I understand you know who I am referring to - - -?---I do, yes. Yes.

15 - - - when I refer to Mr A?---Mmm.

An order is in place that prevents us referring to him by name. Mr A became an authorised representative of millennium3 Financial Services in 2009?---That's correct.

20 And millennium3 is one of the ANZ aligned dealer groups?---Yes.

He was a director of a company which was a corporate authorised representative of millennium3?---That's right.

25 Okay. And in February 2011, millennium3 conducted an audit of Mr A's practice?---Yes, there was three audits, I think, in my documents.

30 Yes. Well, could I take you to the February 2011 audit, which is exhibit 7 to your statement, ANZ.800.267.4827?---Yes, I have that here.

We see from this letter, Mr Forde, which is dated 1 April 2011, that there was a review on 10 February 2011. Do you see that above the table?---Yes, that's right.

35 And five files of Mr A's were reviewed?---That's correct.

And for all five files that were included in the audit, Mr A received a rating of very poor advice?---That's right.

40 Was that the lowest possible rating?---I think it was, yes.

And the audit report notes underneath the table that as a consequence of this review of his advice and advice processes, he has been assessed as representing a higher risk?---Yes.

45 Did millennium3 take any steps to increase its supervision and monitoring of Mr A after this audit report?---I think a couple of things happened, the first being that these

particular files were remediated. And I understand throughout this time he was also on vetting for certain types of advice.

5 Was he placed on vetting for certain types of advice as a result of these audit results?---I believe so, but not 100 per cent sure.

Okay. Did Mr A face any disciplinary consequences as a result of these audit results?---Not that I've seen, no.

10 No. And in June and July 2011 following this audit, Mr A told a number of his clients about an investment opportunity?---That's right.

15 And could I take you to exhibit 31 in your statement, which is ANZ.800.401.0860. This is a lengthy email chain. But can I ask you to turn to 0869. And if we could have 0869 and 0870 on the page – on the screen together. This is an example of an email that Mr A sent to a number of his clients, his millennium3 clients?---Yes.

20 And you can see but we can't, because it has been redacted, that Mr A sent this email with a footer that showed he was sending it in his capacity as managing director of the corporate advice entity that was an authorised representative of millennium3?---Yes, he did.

25 He described himself as an authorised representative of millennium3 and provided his Australian Financial Services Licence number in that block that we have redacted?---Yes.

30 And at 0869 we see that the email related to a potential investment by Mr A's clients in a property. The location of the property has also been redacted. It was a property in a particular marina. Is that right?---Yes, correct.

And we see Mr A tells his clients in this email that the initial sale price for that property was over \$2 million, but he had negotiated a purchase price of \$1.655 million?---Yes.

35 And there was a 30 per cent cash deposit required plus stamp duty?---Yes.

And do you see the reference there to him needing 600,000 from investors?---Yes.

40 Representing the deposit and the stamp duty and a further sum?---Yes.

45 Now, can I take you to another page within this same exhibit, which is 0873. And we see a bit more of the proposal that Mr A made to his clients. This email, again, the signature block is removed, but it's another email sent by Mr A in his capacity as managing director of the advice entity that was an authorised representative of millennium3?---Yes, I just – sorry – can you give me - - -

0873?---0873. Yes, that's right.

Yes. So, again, the email footer describes Mr A as an authorised representative of millennium3 and his Australian Financial Services Licence number is displayed?---Yes, it does, yes.

5 Now, this is an earlier email, slightly earlier in time than the last email I took you to. This is dated 28 June 2011. But it's sent to the same clients who received the earlier email. Is that right?---That's right, yes.

10 Yes. And can you see here that what Mr A said to his clients was that there was a secure complex that was the marina. He provides information about a particular property available for sale in the marina. He explains that it has never been on the market. It was sold in 2007 for 2.25 million off the plan by the owner to his mate who couldn't end up settling. And Mr A says, "I know the developer of the project and the owner." And he explains that he has negotiated a sale price of \$1.655
15 million with settlement in 18 months:

It's generally time to buy when the market is down. And the deal will be to invest \$600,000 to pay for the deposit, the stamp duty, and to furnish it for sale. We would then put it on the market for 2.05 million to 2.099 million and accept as little as 1.9 after fees.

20

Do you see those references?---Yes.

25 So this is the information that Mr A was providing to his clients about this investment opportunity?---Yes.

Are financial advisers permitted to provide advice to customers to invest in particular properties?---No.

30 No?---No, not this – not under this authorisation, no.

THE COMMISSIONER: I'm sorry, Mr Forde, you dropped your voice. Do you mind speaking up a little?---Sorry. No, not under this authorisation.

35 Yes.

MS ORR: But Mr A convinced five of his clients to invest in this property through their self-managed superannuation funds?---Yes.

40 And they were self-managed superannuation funds established on his recommendation and with his assistance?---Yes, that's right.

And four of the clients invested \$100,000 each, and the fifth invested \$200,000?---Yes, that's right.

45

And Mr A told these clients that the way to structure this investment was to set up a unit trust?---That's certainly the way it was structured. I just can't recall the reference to that.

5 Well, the clients believed, didn't they, Mr Forde, that when they paid their 100,000 or their \$200,000, they were subscribing for units in a unit trust that would acquire this property?---That's – that's right, yes.

10 Okay. Could I ask you to turn to exhibit 12 of your statement, ANZ.800.401.0436, another email chain, Mr Forde. And could I ask you to turn within that exhibit to 0531. And we see that on 17 August 2011 Mr A emailed his clients to tell them that the purchase of the property had taken place. Do you see that?---Yes.

Continuing:

15

We now own an investment property.

?---Yes.

20 And Mr A said further down that:

The property would be completely furnished and ready for sale within six to eight weeks.

25 ?---Yes.

He also says in this email that he:

...looks forward to a sale somewhere around Christmas time.

30

Do you see that reference?---Yes.

35 Now, the clients who had invested this money on Mr A's recommendation heard very little from Mr A about this property for the next 18 months?---I think that's right, yes.

And in November 2011, millennium3 conducted another audit of Mr A?---Yes.

40 And you've annexed that audit report to your statement. It's exhibit 8, ANZ.800.267.4835. And this is the result of that audit. We see that the audit was conducted on 24 November 2011. And the report – the results were reported to Mr A on 7 December 2011?---Yes.

45 And of the five files that were reviewed, Mr A received a rating of "very poor advice" for four of them and "poor advice" for the fifth?---Correct, yes.

And this, again, resulted in millennium3 assessing Mr A as representing a higher risk to millennium3 than an average millennium3 adviser or practice?---Yes.

5 So this was now twice in one year that Mr A had received extremely poor audit results and had been identified by millennium3 as higher risk?---Yes, that's right.

10 Did millennium3 take any steps at this time to increase its level of supervision and monitoring of Mr A as a result of these audit results?---Not that I've been able to determine, apart from the remediation of the five files concerned, and – and some pre-vetting that was happening during this – during this period.

Did Mr A face any disciplinary consequences as a result of this second extremely poor audit result?---Not that I'm aware of.

15 Why not?---I don't know.

Then, in August 2012, millennium3 audited Mr A again. You've annexed that audit report as exhibit 9 to your statement, ANZ.800.267.4819?---Yes.

20 And in – this shows us that there was an audit on 2 August 2012 which was communicated – the results of which were communicated to Mr A on 15 August 2012?---Yes.

25 And we see, again, that five files were reviewed and two were rated “very poor advice”, one was rated “poor advice” and two were rated “sound advice”?---Yes.

30 Now, one of the issues raised in this audit was that Mr A had provided self-managed superannuation fund advice without submitting it for pre-vetting. Do you agree with that?---That's right, yes.

Okay. Could we then turn to your exhibit 10, ANZ.800.308.5037, an email chain from dates between 31 August and 5 September 2012?---Yes.

35 And could we start with 5040, the last email in the chain, the first in time?---Mmm.

40 On 31 August 2012, the date is above the millennium3 banner there, we see that Mr Jonathan Nguyen, the state development manager for WA for millennium3 Financial Services, sent an email noting that he had reviewed the August 2012 audit report and setting out his concerns?---Yes.

And he noted a number of options moving forward, including recommendation for termination of authority?---Yes.

45 And then, if we move through the email chain, at 05 – sorry – at 5037 to 5038, if we could have both of those on the screen, we see that a short time later on 5 September 2012, down the bottom of the first page, Mr Nguyen recommended that Mr A be let

go. Do you see that email that starts at the bottom of the first page and continues to the top of the second page?---Yes. Yes, that's right.

5 And, on the same day, we see on the left-hand side that the joint managing director, Mr Martin, agreed?---Yes.

Mr A was then suspended. Is that right?---Yes, he was.

10 He was given 28 days notice of millennium3's intention to terminate his authorised representative agreement?---That's right.

15 And did millennium3 at this time conduct an investigation into Mr A's client files to see whether any of his customers had been given inappropriate advice?---Not to my knowledge.

Why not?---I don't know.

20 Given Mr A's very poor audit results, wasn't it likely that there might have been clients who suffered some detriment because of his advice?---Yes, I think – I think we should have – the business should have reviewed a further number of files at – at the time of – of these reports. 121045

25 But, instead, what the business did was terminate Mr A and take no further action in relation to his client files?---That – that appears to be the case, yes.

And while this was going on, in June 2012, Mr A's clients who had been given the investment opportunity entered into a deed establishing a unit trust?---Yes.

30 And each of those clients who contributed money towards the purchase of the property in the marina received units in the trust matching their contribution?---I believe so, yes.

35 But what they didn't know was that Mr A had not purchased the property in the name of the trust?---That's right.

He used the money to purchase the property in the name of a company of which he was the sole director?---That's right.

40 Now, could I show you exhibit 33 to your witness statement, ANZ.800.401.0606. I am sorry. I will just make sure I have that. Yes, we need to move to the – move within that document to 0657. This is a lengthy exhibit, again, Mr Forde, but at 0657 we see the contract for sale. A number of parts of this are redacted, but I think you have an un-redacted version which shows that the buyer of the property was not the unit trust but the corporate entity associated with Mr A?---Yes, that's right.

45

And on – further down that page, we see that an amount of \$496,500 was payable at settlement, with the balance of the purchase price payable in February 2013. Do you see that?---Yes.

5 And it shows further down that Mr A, as the sole director of the corporate buyer, guaranteed payment of the initial \$496,500, which was funded by his clients?---That's – that's right.

Now, in September 2013 – so the – the deed establishing the unit trust is June 2012.
10 And we've just seen the contract of sale. In September 2013, millennium3 received a complaint from some former clients of Mr A?---Yes. I - - -

And you've annexed that complaint to your statement. It's exhibit 12, ANZ.800.401.0436. So if I could ask you to turn within that exhibit to 0437. We
15 see the complaint letter?---Yes.

Perhaps if we could have 0437 and 0438 on the screen at the same time. The identity of the complainants has been redacted but these are, you know, Mr Forde, different
20 clients to the clients who made the investment in the property. It may be that they were – I'm sorry, I may be wrong about that, Mr Forde. They may have also been clients who were one of the investors in the property. Are you able to say?---I'm almost certain they are.

Yes?---They are, yes.
25

Thank you. And we see that the complainants in this letter, which is written to millennium3, in the second paragraph down advise that:

30 *The purpose of the letter is to advise you that we have a complaint relating to the loss of \$100,000 withdrawn from the fund's account by way of a cheque made payable to a corporate entity associated with Mr A on or about 2 August 2011.*

?---Yes, that's right.
35

So this is one of the clients who invested \$100,000 in the marina purchase?---Yes.

Is that correct?---Correct, yes.

40 And the complainants make clear that the complaint relates to losses they have incurred directly arising from the conduct of Mr A's company and Mr A in their capacity as authorised representatives of millennium3?---Yes.

45 And on the following page, we see that the complainants advise that they have recent emails from Mr A advising that their \$100,000 has been lost, because after being on the market for the last two years, the apartment has not sold, and the apartment is now estimated to have a bank valuation of 1.2 million, around 1 million less than the

initial sale price, and 900,000 less than the asking price referred to in the email they received from Mr A?---Yes.

5 And the moneys due under the mortgage are now greater than the bank valuation?---That's right.

10 And they also note that, until recently, it was their understanding that the trustee of the unit trust had acquired the apartment, but recent searches of Landgate and ASIC solvency notices have revealed that the registered proprietor of the apartment is Mr A's corporate entity?---That's right, yes.

If we turn to 0439, we see that the clients advise millennium3 in the first full paragraph that:

15 *The rosy picture painted in the emails sent on 25 July 2011 and subsequent telephone call was that the apartment would be resold for a significantly higher price within a short timeframe. It is now clear that the suggestion to purchase the apartment was at best reckless and the probability of someone achieving the returns outlined by Mr A was very low (if not impossible).*

20

And, further down the page, at the bottom, there is a request by these clients for a payment from millennium3, being reimbursement of the amounts that they have expended, and a further amount as an allowance for interest that would have accrued if the funds had not been withdrawn?---Yes, that's right.

25

And, on 19 December, millennium3 formally responded to this complaint?---Yes, I am not sure about the date, but we can - - -

30

0574 within this exhibit is the formal response, Mr Forde?---Yes.

And if we could have 0576 and 0577 on the screen. First, before we do that, I will just direct your attention to the request for payment from the clients. You requested payment of 110,000 which comprises the 100,000 you used to purchase the units and 10,000 for interest.

35

Then if we could look at millennium3's response to that at 0576 and 0577, under your claim that you have suffered a loss, millennium3 pointed out that the complaint relates to losses which you alleged to have suffered as a result of investing \$100,000 in the unit trust for the purpose of purchasing an apartment. And then at 0577, under Conclusion:

40

45 *It is unclear to us whether a loss has been suffered by you at all in respect of Mr A's conduct. However, if you provide the information requested, we will review the matter again and subsequently provide you with a response to your complaint.*

Why was it unclear whether these clients had suffered a loss as a result of Mr A's conduct?---I'm not – I'm not sure why it was unclear at the time.

You have been put forward by ANZ to deal with these events, Mr Forde?---Yes.

5

But have you made inquiries to attempt to understand these events?---I have. I've – I've read right through the complaints material, and have – have made inquiries, but I haven't been able to, to my satisfaction, get a response to that question.

10 I see. So after millennium3 sent this letter, in December 2013 and January 2014, it identified four other self-managed super funds that were listed as being unitholders in the unit trust and who were also customers of Mr A when he was an authorised representative of millennium3?---That's right. It was derived from the material in the complaint, and then millennium3 saw that and – and went – went partway to
15 investigate or some of the way to investigate whether those customers were, in fact, customers of – of Mr A's.

Did millennium3 or ANZ attempt to contact those customers?---Not to my knowledge.

20

Did it investigate whether any of those customers had suffered any loss?---Not to my knowledge.

Why not, Mr Forde?---I don't know.

25

Why didn't ANZ – well, let me ask this first. Did ANZ have access to the customer files of Mr A?---No, they didn't. Millennium3, there is evidence here in my exhibits, tried very hard once they got the complaint from the customer – tried very hard through Mr A and through Mr A's new licensee and also through a liquidator, as well
30 – tried very hard to get the files to enable them to respond to the complaint fully. We weren't successful in getting those files back.

So why didn't ANZ, through millennium3, ensure that it retained copies of the customer files when it terminated Mr A's authorised representative status?---I don't
35 know.

Should it have done so?---It should have, yes.

40 Didn't the record of poor audit results indicate that there were likely to be clients in need of remediation?---In my view, yes.

And how could ANZ determine whether any of Mr A's customers suffered loss if it didn't have the files?---It – it would be very difficult, unless there was sufficient information on the electronic system.

45

You say in your statement that ANZ and millennium3 decided to continue dealing with the 2013 complaint and address any other matters as they arose?---That's right.

So ANZ left it to other customers, including the four it had identified as having self-managed super funds that had made investments – ANZ left it to each of them to make complaints?---Yes.

5 Should it have done that?---No, I don't believe so. It should have – based on the information provided in the complaint, it should have reached out to those four customers and found out what was going on.

10 So ANZ put the onus on the customers to come forward and prove that they had suffered a loss as a result of Mr A's conduct?---It appears so, yes.

15 Instead of using its own resources to work out whether any of those customers had received bad advice?---Yes. It – there was a couple of people within millennium3 that – that checked the XPLAN system to see whether they could find evidence of any communication or advice, but, apart from that, you're right.

And it didn't use any of its resources to work out whether any of Mr A's clients had been the victim of fraud?---No, not to my knowledge.

20 And in September 2014, remembering that this response to the clients' complaint was in December 2013 – in September 2014 millennium3 entered into a deed of release with the customers who had made the complaint?---Yes.

25 And that complaint was settled for \$50,000?---Yes.

And, after that, ANZ closed the matter?---Yes, it did.

30 Were you aware that in July 2015 there were articles in the media about Mr A?---No, I wasn't aware.

35 You weren't aware that there were articles reporting that another licensee, through – Mr A through another licensee had engaged in conduct that resulted in the payment of compensation of over \$1 million to his former customers?---No, I wasn't aware. I wasn't in the business and didn't know this particular adviser, but I wasn't aware of those things.

Do you know if anyone within millennium3 was aware of that at that time?---No, I don't know that.

40 Does ANZ have a system for identifying information like that in relation to its current or former advisers?---I don't know of the specific system, if we do.

45 You don't know if you have such a system?---No, not for media releases and the like. I'm not sure.

Do you accept that the media attention that was given to the payment of compensation to Mr A's clients through another licensee was another indication that

ANZ should have investigated the advice that Mr A gave to his clients when he was an authorised representative of millennium3?---I haven't seen the media release and I don't know the information that was provided through the media. But, assuming that gave the level of detail, then – then yes, that would be another trigger point that we should investigate further, yes.

In 2016 did ANZ receive two complaints from other former clients of Mr A?---Yes.

And one of them related to the same unit trust that I've asked you questions about?---It did, yes.

And between May and September 2017, ANZ received complaints from another eight former customers of Mr A?---That's right, yes.

And they related to unauthorised withdrawals or transfers from self-managed super funds and investments in the unit trust?---Yes.

And in August 2017 ANZ appointed an independent forensic accountant to conduct an investigation into Mr A's conduct?---Yes, it did.

That was McGrathNicol that provided a report?---Correct.

In December 2017?---Yes.

Can I take you briefly to their report, which you've exhibited to your statement as exhibit 49, ANZ.800.346.0828. And could I ask that you turn to 0840 in that report. So, having conducted its investigation, McGrathNicol set out its understanding of what had happened?---Yes.

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

All of the affected clients were self-managed superannuation funds that had been formed on the recommendation and with the active assistance of Mr A.

?---Yes.

Continuing:

The trustees of the SMSFs were variously individuals or family companies.

?---Yes.

And do you see there's a heading there that has been redacted but – which is the name of the unit trust. The first heading redacted on the left-hand side of the page?---Sorry? The first heading?

Yes. So perhaps if I just direct you to the un-redacted text:

During June and July 2011 - - -

?---Thank you, yes.

5 Continuing:

...Mr A approached several of the affected clients with the opportunity to invest in a property.

10 ?---Yes.

Continuing:

15 *Mr A represented to the parties that a purchaser of the property had been unable to complete the contract and the property was available to them for a song, putting a value of 2.2 million on the property. The stated investment concept, as we've already discussed, was to purchase the property with a cash payment of \$496,500 due in August 2011 with the balance of the purchase price being funded by an interest-free loan from the ANZ, secured by a mortgage*
20 *over the property repayable in 18 months. There was no mortgage registered by the ANZ Bank against the property. Rather, there was a mortgage registered by the vendor securing the balance of the purchase price.*

25 ?---Yes.

Now, if I could ask you to look at the following page, 0841. And, just before I do that – I'm sorry – I should have drawn your attention to a portion on the previous page. If we could just go back to 0840 briefly. I just want to draw your attention to another aspect of the misconduct, which is referred to on the right-hand side of the
30 page "in addition". Do you see that?---Yes.

Continuing:

35 *In addition, Mr A borrowed \$100,000 from –*
Certain clients –

40 *in their personal capacity, as distinct from their superannuation fund, which they understood was to assist with the settlement of the purchase and to cover for one of the investing parties who was unable to access funds within the required period. The clients advised that they expected these funds to be repaid quickly (within 10 to 14 days). These funds were ultimately repaid by Mr A using funds withdrawn by him without authorisation from another*
45 *superannuation fund bank account (unbeknownst to the clients).*

?---Yes, that's right.

Then if we go to 0841. I'm sorry, I want to take you to the paragraph:

5 *We're advised that Mr A ultimately came to the investors advising them of the external administrator's actions and proposed strategies to meet the obligation. We understand from a number of the affected clients that Mr A appeared to be quite panicked at that time. At no stage did Mr A advise the investors that the unit trust did not own the property or that the trust may not have been legally formed. These circumstances were discovered by the affected clients through their own later inquiries.*

10

?---That's right, yes.

And then on 0842, under Transfers Between Affected Clients:

15 *We have confirmed a number of fund transfers between affected clients. All transfers between affected clients, other than two small transfers between one superannuation and another, were found to be unauthorised and made without the knowledge of the parties.*

20 ?---Yes.

Now, having received this report, ANZ decided to have its advice review team review the advice given by Mr A to 103 customers during his time as an authorised representative of millennium3?---As an – as an initial phase, my understanding is that the remediation team is looking specifically at the complaints raised, priority 1. Priority 2 is to then look across Mr A's portfolio at customers with similar characteristics, so that – that were investing in self-managed super funds or had this Macquarie cash account. And that that equates to 103. And that is sort of phase 2, if you like, of the remediation. And that's because they're seen as the most likely customers to have been affected by this type of conduct. And then they are scoping how much further they need to go in respect of the entire portfolio.

30
35 So you say in your statement that the 103 customers were selected because they were associated with a self-managed super fund, a corporate entity, a corporate trustee or family trust, these being the customers that were thought to be at higher risk of being affected by the conduct of Mr A. Is that right?---Yes.

40 Does ANZ know how many customers were affected by Mr A's conduct?---Not – not yet.

You've identified at least eight?---At least eight, yes.

45 And do you not know how many customers were affected because the advice review team is still reviewing the customer files?---I understand that to be the case, yes. They're still going through the remediation process.

And ANZ has now notified the Western Australian police of allegations made by three of Mr A's customers, that between March 2011 and February 2012 Mr A withdrew funds from their accounts totalling \$234,590 without their authority?---Yes, I just haven't got that reference, but I'm - - -

5

That's at paragraph 44 of your statement, Mr Forde?---Thank you. I'm sure that's right. That's right.

That's right?---Yes. Yes.

10

Do you accept that Mr A's misconduct ought to have been identified by ANZ earlier, Mr Forde?---Yes. I accept that. I think there was enough information in the initial complaint in 2013 to warrant us – or millennium3 talking to those other – other customers at that time.

15

So ANZ elected not to undertake an investigation in 2013 or to contact any of the customers who were in the same position as the customers who had made the complaint?---That appears so, yes.

20

You can't say why ANZ didn't take those steps at that time?---No. I – I mean, the only logical reason is that, you know, there was some – it was the commercial interests of millennium3 that took precedent.

Over the interests of the clients?---Yes, I think that – I think that's fair.

25

Has ANZ changed any systems or processes in relation to the matters that we've touched on?---Yes. The – for the self-employed channels, there was a couple of changes that they – they brought in as a result of this situation and a – and another situation similar but different to it. And that requires that when the advice assurance officers are reviewing files that they keep a look out for associated authorised reps who might have other associated businesses or the like, the same as Mr A had here. And for the practice development managers, there's also a risk assessment that they do when they visit practices to ask questions about these sort of matters that might give rise to a conflict of interest.

30

In circumstances where an adviser has been terminated with extremely poor audit results and there are then complaints alleging that he has misled or deceived customers, do you accept that the community would expect that a licensee would conduct an investigation to see if other customers have suffered detriment?---Yes, I think that's reasonable.

35

But that did not occur in this case?---No.

And you can offer no explanation for why it did not occur, Mr Forde?---No, I can't.

40

No further questions, Commissioner.

THE COMMISSIONER: Thank you, Ms Orr. Any other party other than ANZ seek leave to cross-examine Mr Forde? Ms Williams.

5 MS WILLIAMS: There's nothing arising, Commissioner. Might Mr Forde be excused.

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

10

<THE WITNESS WITHDREW [12.38 pm]

15 MS ORR: Commissioner, we sought a statement from another entity in relation to the topic of improper conduct by financial advisers. That entity was CBA. Could I tender the statement of Marianne Perkovic, dated 13 April 2018, which is CBA.9000.0016.0001.

20 THE COMMISSIONER: That will be exhibit 2.196.

EXHIBIT #2.196 STATEMENT OF MARIANNE PERKOVIC DATED 13/04/2018

25

MS ORR: Commissioner, that concludes the evidence in relation to improper conduct by financial advisers. The next topic that we will turn to relates to the disciplinary regime in relation to financial advisers. And the first witness will be a consumer witness. Would the Commissioner give us a moment so that ANZ may leave the bar table.

30

THE COMMISSIONER: Yes. If I come back at quarter to one.

35 **ADJOURNED [12.39 pm]**

RESUMED [12.45 pm]

40

MS ORR: Commissioner, I call Ms Donna McKenna.

45 **<DONNA McKENNA, AFFIRMED [12.45 pm]**

<EXAMINATION-IN-CHIEF BY MS ORR

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

Yes, Ms Orr.

5

MS ORR: Ms McKenna, could you please state your full name?---Donna Sarah McKenna.

10 And you live at an address in New South Wales that's known to the Commission?---That's correct.

And you are a Commissioner with the Fair Work Commission?---That is correct.

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

Is that statement dated 17 April 2018?---It is.

I'm sorry. That's my mistake. It's dated - - -?---I beg your pardon.

20 It's dated 16 April 2018. Have you read that statement, Ms McKenna?---I have.

Are the contents of that statement true and correct?---To the best of my knowledge.

25 I tender that statement, Commissioner.

THE COMMISSIONER: Exhibit 2.197, the statement of Ms McKenna, dated 16 April '18.

30 **EXHIBIT #2.197 STATEMENT OF MS MCKENNA DATED 16/04/2018**

MS ORR: Did you receive a summons to attend at the Commission today, Ms McKenna?---I received it prior to today.

35

Yes. It's a summons requiring you to attend today?---Yes.

You have that summons there?---I do.

40 I tender that summons, Commissioner.

THE COMMISSIONER: Exhibit 2.198 is the summons to Ms McKenna.

45 **EXHIBIT #2.198 SUMMONS TO MS MCKENNA**

MS ORR: Ms McKenna, in late 2016 did you decide to seek financial advice?---I did.

5 And why did you decide to seek financial advice?---There were two principal reasons. First of all, there had been a lot of publicity about the impending changes from 1 July 2017. And, secondly, I had been liaising with a local loan broker in relation to securing a home equity loan over the value of my home. And I was thinking of potentially buying property and/or assisting my children with that loan.

10 And when you referred to the impending changes there, were you referring to impending taxation changes in relation to superannuation funds?---Among other matters, yes.

15 Yes. Thank you. And who did you decide to seek financial advice from?---Henderson Maxwell.

20 And why did you decide to approach Henderson Maxwell?---I had seen Sam Henderson on – on television. He has a program – he had a program on Sky Business Channel. I had also read pieces that he had written in publications such as the Australian Financial Review, as well as other publications such as Money Magazine and the like.

25 And, having decided to seek financial advice from Henderson Maxwell, did you contact that firm by phone on 3 November 2016?---Yes, I did.

And did you speak with a female employee of the firm?---Yes, I did.

30 And did you answer some questions put to you by the female employee about your financial situation and the reasons why you were seeking financial advice?---Yes, in shortform.

And later that day did you receive a telephone call from Mr Sam Henderson?---It was fairly shortly thereafter.

35 Yes. And did you tell Mr Henderson why you were seeking financial advice?---Yes. I went over some of the matters that I have alluded to in my evidence.

40 What did you tell him about why you were seeking financial advice?---That the changes were coming up from 1 July and that I had a substantial amount of money in superannuation. And so I considered I needed to seek some advice in relation to that matter. I also informed Mr Henderson, again, in shortform, that I had this – acquired this pre-approval for a loan and I was considering using it in relation to property.

45 Thank you. And did Mr Henderson tell you that you would receive an electronic questionnaire in which you could include some information about your financial position?---He said he would like me to complete an electronic questionnaire. I said I don't particularly like doing those sorts of things online. But, yes, then I was

informed that an electronic questionnaire would be sent. And I – I said I could only put in general information.

5 And what did Mr Henderson say in response to you saying that you could only put general information into that electronic questionnaire?---Well, in relation to the matter of expenses, for example, I said to Mr Henderson that I had been to see a Commonwealth financial planner some years earlier for a preliminary interview and that I had been given a questionnaire that had many pages of information being
10 sought in relation to the detail of expenditure on groceries, utilities and matters of that nature. I said I wasn't – I wasn't at a point in my life where I was budgeting for those types of matters or monitoring those types of expenses. And he said, well, you can just put in anything. And I thought what should I put in? And he said put in \$1000 a week.

15 And did Mr Henderson arrange in this telephone call for you to meet with him at his office a few days later?---We did make arrangements for a further meeting – for our first meeting.

20 And after that call, did you then receive an email with a link to the electronic questionnaire?---I did.

25 And did you complete the electronic questionnaire?---I did complete it. Well, that's not quite correct. I completed parts of it. It was one of those smart form-type questionnaires, and so I filled in the parts where an answer was required, mostly, and didn't provide information where it was not required.

30 And, having completed that questionnaire online, or the parts of the questionnaire online, did you then receive an email from Henderson Maxwell attaching a PDF copy of the questionnaire with your answers in it?---Yes.

35 And you have annexed that PDF document that you received from Henderson Maxwell as the first exhibit to your statement?---I have, but I should point out that the questionnaire as returned to me contained additional information, such as the charts.

40 Yes, I see. Perhaps we can – I can ask you some questions about that. So if we could bring up FPA.0011.0002.0077. This is the PDF form that you received from Henderson Maxwell?---This is - - -

45 Yes?--- - - - the PDF document that I received in return, yes.

And if we turn to 0081, we see that the document records your goals and objectives?---Yes.

45 And perhaps we can zoom in on that to see that what's recorded there is that you wanted to maximise use of assets, equity in home, superannuation saving and income through investments, and in a tax effective way pending retirement in – words appear

to be cut off. Can you remember what words you entered into the form there, Ms McKenna?---To the best of my recollection, it was pending retirement in approximately nine years.

5 Thank you. And a second goal that was listed was:

To assist my adult children –

Details of those children have been redacted:

10

To assist my adult children financially, for example, in property and investment.

?---Yes.

15

So these were the goals and objectives that you entered into the electronic questionnaire?---That's correct.

20

And if we turn to 0082, we see a heading for Expenses, and that there is a reference to current living expenses of \$1000. That's the figure that you entered in following your conversation with Mr Henderson about that matter?---882, did you – 0082, did you say?

25

Yes, towards the bottom of the page?---Thank you. Yes. Indeed.

Yes. So that's the \$1000 that you entered into the form following that conversation with Mr Henderson?---That is correct.

30

And then if we turn to 0084, we see that you've entered information in the electronic questionnaire about two superannuation funds?---That is correct.

35

And the amounts are redacted, but you included information about the account numbers and the balance of each of those superannuation funds?---Yes. The balances were drawn from my most recent statements for each fund.

Thank you. And the two superannuation funds were the SASS deferred superannuation fund and the PSSap superannuation fund?---Yes.

40

These were both public sector related super funds?---Public sector related.

Yes. And the SASS deferred superannuation fund was a fund you were no longer making contributions to?---That is correct.

45

And the PSSap fund is the fund you were currently making contributions to?---That is correct.

And at 0084 we see that you've also included information about your insurance situation?---Correct.

5 And that you entered information in the electronic questionnaire about private health insurance, life insurance, income insurance, income protection insurance and total and permanent disability insurance?---That is correct.

10 And the life income protection and TPD insurance were all part of your PSSap super fund?---Correct.

And, underneath that, you answered a question about whether you required more advice and assistance to secure your financial future for you and/or your family in the case of serious illness accident or death. And you answered that question no?---That's correct.

15 You were not seeking advice about insurance?---I was not.

20 Okay. And then, if we turn to 0087, we see that the answers that you gave throughout the form contributed to a risk profile that was calculated?---That is correct.

25 And, if we pan out slightly, we will see towards the bottom Risk Profile Summary. So your answers generated a risk profile score of 28 and a risk profile of conservative?---That is what is recorded.

Yes. So is this an example of a piece of information that was not part of the information that you put into the form, but which you understand was calculated by reference to the information you included in the form?---Yes.

30 Thank you. Now, having received this PDF of this questionnaire by email, did you then meet with Mr Henderson on 7 November 2016?---I did.

And that meeting was at his office?---At the Henderson Maxwell offices.

35 Yes. And in this meeting you told Mr Henderson that you intended to retire in about nine years?---Yes.

40 And you discussed your potential plan to purchase a property with the pre-approved loan that you've referred to?---That's correct.

45 Did you discuss what should be done with your superannuation prior to the impending changes in the laws that you've referred to?---Yes. Because of the superannuation amounts that I – that I had or were pending, I thought it particularly important to seek advice before those changes came into effect. I had some money on hand and I didn't know whether I should put that towards superannuation before the changes. And I also inquired as to transition to retirement arrangements and whether anything needed to be done before the changes from 1 July 2017.

And did you discuss your desire to assist your children financially?---Yes, that's very important to me.

5 And did you give Mr Henderson information about your remuneration package?---I did.

10 Did you give him information about the approximate balance you had in each of your two superannuation funds?---I did, based on the information in the most recent statements.

And did you also discuss with Mr Henderson the value of your home?---I did.

15 Did you tell him about shares that you had in Medibank and what they were worth?---I did, in approximate terms.

Yes. And you told him about the value of the pre-approved loan?---I did.

20 Did Mr Henderson ask you about insurance?---He said do you have insurance? And I indicated I did, that I had private health insurance, home and contents insurance, insurance with relation to income protection, TPD and death and disability.

Commissioner, I have a number of other questions about this meeting, if that's a convenient time.

25 THE COMMISSIONER: Yes. Can I ask you, please, Ms McKenna, if we can be back in time to begin again at 2?---Thank you.

We will adjourn until 2.

30 **ADJOURNED** [12.59 pm]

35 **RESUMED** [2.00 pm]

THE COMMISSIONER: Yes, Ms Orr.

40 MS ORR: Ms McKenna, I had been asking you some questions about your first meeting with Mr Henderson on 7 November 2016. In that meeting, did Mr Henderson ask you if you wanted to invest in shares?---Yes, he did.

45 And what did you say to that?---I said yes, I had been considering that I should look at some shares, because I – it would be good to have something liquid, rather than having everything tied up in property and – and superannuation. I said to Mr Henderson nothing exotic, please, no techies or plantations, and if you would be – I would be pleased to consider any recommendations concerning blue chips, if you

would like to make some recommendations in that regard. I said that if he had made those recommendations, I would then runny such recommendations past my brother, given my brother's occupational experience in relation to such matters. I went into what that is, but I won't say it now.

5

And did Mr Henderson also ask you if you were interested in investing in a managed investment fund?---Mr Henderson – after having asked me whether I was interested in shares, said what about managed funds? Would you be interested in them? And, unlike my affirmative response when I had indicated I would be interested in recommendations concerning blue chips, I said I would be potentially interested in a managed investment fund. I indicated – Mr Henderson said that Henderson Maxwell, the firm, had some and that they were doing very well and would I be interested in – in those. And I said is there any information on your website about how the Henderson Maxwell ones are doing – performing? He said there was no information on the websites – on the website, but I would receive a – a regular email or regular update. Mr Henderson indicated to me that the Henderson Maxwell managed investments were doing very well. He – he said that one of the planners had recently won an international investing award which was even more prestigious than the AFA award. I should interpose one of the reasons why I had gone to see Henderson Maxwell was because the firm had been the winner of the AFA financial planner of the year 2016, that is, the year that I went to see him. And so after – and I said yes, I see you have the plaque out there in the waiting room. That was the AFA planner of the year award. So after Mr Henderson had said that – these matters about the firm having recently won – or one of the planners having recently won an international financial planning award, I said words to the effect that sounds very impressive. And I said but, obviously, I would first want to see some comparative information about different funds. I would want to see a table with fund X, fund Y, fund Z; what the performance and costs and matters of that nature had been over the – over, say, the past year, past five years, the past 10 years. I indicated that I knew the mantra, that past performance cannot be an indicator for future performance, but, nonetheless, I would want to see some comparative information, and certainly before I would consider any Henderson Maxwell fund.

Did Mr Henderson ask you if you would consider establishing a self-managed superannuation fund?---Yes, he did.

And what did you say to that?---No. No. Not at all.

Did Mr Henderson raise the topic of a self-managed superannuation fund again?---Yes. It was to be one of the largest slabs of conversation that we actually had at the meeting. After I had indicated that I was not interested in a self-managed superannuation fund, Mr Henderson continued to promote the establishment of a self-managed superannuation fund, relevantly, involving Henderson Maxwell. I said I had no interest in a self-managed superannuation fund, because I had no interest in – in a self-managed superannuation fund. And he said we will look after it for you, or words to that effect, or we will look after it for you. I said I'm not interested. Mr Henderson persisted in promoting a self-managed superannuation fund with

Henderson Maxwell involvement. I can tell you some of the descriptors that he used, if you wish me to.

Of course, yes?---I recall that one of the first things that he said was that a self-
5 managed superannuation fund would give you – and I can remember his hands going
up saying control. And then there were matters such as openness, transparency,
visibility, online access. And, as to the merits of having these arrangements through
Henderson Maxwell, he said that there would be benefit of one-on-one meetings,
10 either with himself or with another planner, who I think he may have said at that
point was Mr Davison, although I do not remember exactly which name was being
used. I said I still wasn't interested. I said I had to – all the openness and
transparency that I wanted from my existing schemes. As to other matters, I said that
I liked the high degree of prudential and government – I withdraw that – prudential
15 and governance arrangements that applied through my existing schemes, and that I
regularly declined the offer of one-on-one meetings with my existing schemes,
because I'm quite content to leave those matters to large schemes, which, I added,
had whole departments of people analysing the markets in a way that I just wouldn't
have the time or the inclination to. Mr Henderson persisted in promoting a self-
20 managed superannuation fund. I was almost laughing at him at this stage. I said,
Sam, I probably would go bankrupt if I had a self-managed superannuation fund.
And then I wouldn't only be bankrupt, but I wouldn't have a job either. And I
explained some of the reasons, in brief form and in a self-deprecating way, that there
are only certain circumstances whereby a statutory office holder can be removed
25 from statutory office. And bankruptcy and breaching some – some law or other
concerning superannuation would fall into those categories. I thought, with that, that
would be the end of discussion about setting up a self-managed superannuation fund.
Mr Henderson persisted, yet again, in promoting a self-managed superannuation
fund, and the tone turned a bit at this point, and he said you can buy property in a
30 self-managed superannuation fund, but you can't do that with your existing funds.
And I said I know that. And I knew you could buy property within a self-managed
superannuation fund, but you could not do within my existing schemes. And then he
said, well, would you at least consider one? You know, there are many benefits
about having a self-managed superannuation fund. And I was a bit concerned about
35 the tone that I had responded to with – with his tone. And I just thought I will back
off a little bit; I am just here to get advice. And I said to him words to the effect,
look, Sam, if there is some secret financial planners business about having a self-
managed superannuation fund, you can put it in your advice and I will consider what
you have to say about it as a potential option. That was the – he said good. That was
40 the end of the discussion about self-managed superannuation funds. I was very
pleased at the time that that was the end of the discussion about self-managed
superannuation funds.

And you had various records with you about your finances in this meeting?---Yes, I
had brought along a folder which I had prepared. It was an A4 ring binder. And
45 within that I had tabulated all of my financial information that I thought might
potentially be relevant for the – for the purposes of the meeting.

And you offered to leave those records with Mr Henderson?---Yes. I offered him the folder of material, either to keep for the duration of the preparation of the advice or, alternatively, for photocopying.

5 And Mr Henderson took copies of two documents from that folder. They were the annual statements from your two superannuation funds?---Yes, they were the only two documents that he wished to have copied.

10 And you've annexed copies of those annual statements that were copied by Mr Henderson to your statement as exhibits 2 and 3?---That is correct.

And could I ask you to look at exhibit 2, in particular, which relates to your SASS deferred superannuation fund, WIT.0900.0002.0001?---Yes.

15 So we see from this document two figures have been redacted on the first page. One of those figures, the top figure, is referred to as an immediate lump sum benefit after debts?---That is correct.

20 And the other figure that has been redacted relates to a deferred retirement benefit after debts?---That is correct.

25 And whilst those figures have been redacted, I think you have an un-redacted version. And can you see from that that the difference between the immediate lump sum benefit and the deferred retirement benefit is approximately \$500,000?---That is correct.

So the immediate lump sum benefit at this date, on 30 June 2016, was approximately \$500,000 less than the deferred retirement benefit?---That is correct.

30 And could I ask you to turn to page 0004 in this document, so we can see how these benefits worked. Do you see, Ms McKenna, on this page a reference to your retirement benefit. The immediate lump sum benefit shown is payable to you if you decide to cash out or roll over your benefit before reaching your scheme earliest retirement age. If you access your immediate lump sum before reaching your
35 scheme earliest retirement age, you will forfeit your right to the deferred lump sum benefit?---That is what the text reads.

40 And do we see from 0002, a couple of pages back, that the scheme earliest retirement age was 58?---That is correct.

45 So if you accessed your benefit in this scheme before the age of 58, you would forfeit your rights to the entire deferred lump sum benefit?---The – yes, the difference between the immediate sum and the deferred benefit sum as at – at least as of that date.

So at this stage, when you went to meet with Mr Henderson, you were a couple of years short of the earliest retirement age - - ?---Yes.

- - - 58. And if you had accessed these benefits at that time, you would have forfeited 500 – approximately \$500,000?---Just like that.

5 Yes. Now, this is a document that you said Mr Henderson copied and kept. Is that right?---That is correct.

10 And what did Mr Henderson say to you about when he would be in a position to provide you with financial advice and recommendations for your situation?---Before I was leaving – I withdraw that. Mr Henderson said words to the effect it's going to take a lot of time to do the research for this advice. It might be the case that the advice won't be ready until the new year. And I can recall being quite pleased about that, because it suggested to me that the statement of advice – or the advice was going to be properly researched. And I said words to the effect no problems or that's fine, Sam. The superannuation changes don't come into effect until 1 July, and I
15 don't expect I will be buying property – a property between now and the new year.

Mr Henderson gave you a letter of engagement in this meeting, which you signed?---Yes, he did.

20 And under that letter of engagement you agreed to pay Henderson Maxwell \$4500 to prepare a statement of advice?---4950, I believe.

4950. You've annexed the letter of engagement to your statement at exhibit
25 4?---Four. If you will just give me a moment to locate that, please.

Yes. I see. It's exhibit 4, FPA.0011.0002.0118?---Thank you. Yes.

When that's brought up on the screen, we will see that the plan preparation fee was
30 4500 plus GST, which gave rise to a total fee of 4950?---Yes, that's correct.

Now, this meeting you've given evidence in your statement, Ms McKenna, was on 7
November 2016?---That is correct.

35 At any time on that day did you make a phone call to the SASS superannuation fund?---I'm sorry? Could you repeat that?

At any time on that day, on 7 November 2016, did you make a phone call to the
SASS superannuation fund?---No.

40 And at any time on that day did you make a phone call to the PSSap superannuation fund?---No.

All right. Now, you arranged to meet with Mr Henderson again in this meeting on
45 12 December?---That is correct.

And did you then receive an electronic calendar invitation from Henderson Maxwell inviting you to attend a meeting on that date that was described in the calendar invitation as a statement of advice presentation?---SOA presentation.

5 An SOA presentation. Did you understand that to mean a statement of advice presentation?---I did.

And you've annexed that calendar invitation to your statement?---Yes.

10 As exhibit 5?---That was the first of – of two identifying it as – I should just explain that the meeting was rescheduled and the further invitation also used a descriptor of SOA presentation.

So the meeting was later changed to 14 December, rather than 12
15 December?---That's correct.

And on 14 December did you, again, meet with Mr Henderson?---I did meet with Mr Henderson on 14 December.

20 And you took your son with you to this meeting?---That is correct, as I had on the – with the first meeting.

And had Mr Henderson prepared a statement of advice for you?---I – when I went into the meeting, he first of all fiddled with a computer or a laptop for a moment and
25 then projected something on to the – on to an overhead screen. I didn't actually have an advice at that stage.

And was the projection on the screen a projection of a statement of advice?---That's what I came to understand it to be.

30 And did he also give you a hardcopy of the statement of advice in that meeting?---Yes, he did.

And you've annexed a copy of that statement of advice to your statement as exhibit
35 6?---Subject to certain provisos. There were – exhibit 6 to my statement doesn't indicate the sign here tags.

Yes. So how was – how was – so that is the document that was – it's a copy of the document that was presented to you in that meeting. How did it differ in
40 presentation – physical presentation from what you have in your statement?---I have the copy of the original statement of advice. And what I could – which I obtained recently from – from another organisation. And I don't know how best to explain it, but perhaps if it was shown.

45 You're demonstrating, Ms McKenna, that there were sign here tabs within the document?---There were, which aren't reflected in the version which is in my - - -

Yes?--- - - - evidence before the Commission. And, also, in the original statement of advice provided to me by Mr Henderson, there was also – there are various tabs in it. And one of the tabs was titled Newsletter. And the two-page Henderson Maxwell newsletter which was in the original advice is not, for reasons which are later
5 addressed, contained in annexure 6.

What were the recommendations that Mr Henderson made in the statement of advice, Ms McKenna?---The principal recommendation that was made was that I should establish a self-managed superannuation fund through rolling out my SASS
10 superannuation as the principal source of the establishment of that self-managed superannuation fund. The advice also recommended that I – should I go to at this point what other – what the other key planks of the financial advices?

Yes?---All right.
15

The key recommendations in the statement of advice. You have mentioned one, which was the establishment of the self-managed superannuation fund with your SASS?---With money drawn from SASS – rolled out from SASS.

Yes?---The second was that any spare money, any – well, I can tell you now. He said that I should direct \$3000 a month, plus any other spare cash that I had, to the – to Henderson Maxwell portfolio. Mr Henderson recommended that, to the extent that I held some shares in Medibank – you mentioned that earlier – that I should make an in specie transfer of those to Henderson Maxwell. I had a managed account
25 with another organisation. Mr Henderson recommended that I should sell down that account and transfer the money – the funds from the sale of the transfer to Henderson Maxwell. I might interpose to say that that particular investment, obviously, had not been examined, because it was in the nature of a term deposit which could not, in fact, be sold down for – at that point – point of time. So they were the key planks:
30 establishment of a self-managed superannuation fund using my SASS super, which would have resulted in an immediate forfeiture of half a million dollars; deposit my cash to Henderson Maxwell; transfer – make an in specie transfer of shares that I held to Henderson Maxwell; sell down another investment that I have, which couldn't be sold, and give the money to – to Henderson Maxwell. I think they were
35 the key planks of it.

And what was your reaction to those recommendations?---I thought they were risible.

What did you say to Mr Henderson?---Well, in the first instance, when – when I had been given the statement of advice, I'd – I'd had a quick skim read of it when I went home. And I can remember saying to my son words to the effect I can't believe this. I've been to see the financial planner of the year and this is what you get. I said to my son I thought that if I went to an independently owned financial planning firm
45 that I wouldn't be subjected to product flogging of the type associated with the big banks and, yet, all I'm being flogged is Henderson Maxwell's own products and services. The – my initial skim reading of the statement of advice suggested that it

was so poor – the advice was so poor that I all but – I all but threw the advice in the bin at that stage. In any event - - -

5 Could I ask you just to pause there, Ms McKenna, because I want to understand, firstly, what you said to Mr Henderson in the meeting. We can move to the events after - - -?---I beg your pardon.

- - - after the meeting?---Sorry. I'm confusing. I am with the other. What - - -

10 Yes. So, having formed an immediate reaction, which you described, to the advice recommendations, what did you say in the meeting to Mr Henderson about those recommendations?---No. I'm sorry. We are on a different timeline here. It was after I had initially been provided with the advice that that was my initial reaction, that I didn't think much of it. But I didn't look at it closely. I just put it away. On
15 the eve of when I was next supposed to go back and see Mr Henderson - - -

We will come to that. I just want to finish discussing the meeting. Was there any discussion between you or you and your son with Mr Henderson about the statement of advice in the meeting?---At the second meeting of - - -

20 Yes?---I beg your pardon. Yes. After Mr Henderson had got the overhead projection working, he said to me words to the effect we've had a good look at this and we've recommended you should set up a self-managed superannuation fund and use – and that you buy property using a limited recourse loan, and that you should
25 have Henderson Maxwell investments – we will be looking after it for you.

And did you or your son say anything to Mr Henderson about that?---I said why would I do that? Putting aside everything else, I would be most concerned about all of the fees and – sorry – I would be most concerned about setting up a self-managed
30 superannuation fund. And Mr Henderson said they only cost about four grand to set up. And I said there would be your fees and other costs. And Mr Henderson said words to the effect of, look, I can see – see – I'm sorry, I have missed out a bit. I said why would I do that when I'm in secure low cost industry-type funds? And that's when he said they only cost about four grand to set up, as best I recall. And
35 then Mr Henderson said, look, I don't have much time. I've got a Christmas cocktail reception that I've got to go to. I'm sorry about this, I have to go.

And how long did this meeting last?---10 – 10 to 15 minutes. There was some further discussion later about the – other matters.

40 Did you arrange in this meeting to meet again in January?---Yes, but – yes, we did.

And prior to that January meeting, you've already said, you reviewed the statement of advice. You took a copy away with you from that - - -?---I did.

45 - - - meeting?---I beg your pardon, and we are on a – we were on a different timeline before.

And I think you had given evidence about your reaction once you read the statement of advice carefully?---No, I skim read it after – after we had been – after I had received it that same day.

5 And did you read it carefully before the January meeting?---I did. On the – the eve of the meeting I decided to have a better look at it on – it would have been the 9th – on the night of the 9th and then going into the morning of 10 January 2017.

10 And did you send an email to Henderson Maxwell containing some comments about the statement of advice prior to the meeting, articulating your concerns about the statement of advice, including the fact that implementation of the advice would cause you to immediately lose about half a million dollars?---Yes, I did.

15 And you've annexed as exhibit 7 to your statement the email that you sent and, as exhibit 8, the comments to the statement of advice that you sent to Mr Henderson?---Yes. Seven is the covering email and 8 is the annotated copy of the statement of advice. It was very rough and ready. I was doing it into the wee small hours of the morning.

20 And did you then meet with Mr Henderson on the scheduled date of 10 January 2017?---Yes, we did.

25 And did Mr Henderson indicate that he had received your comments about the statement of advice?---Yes.

And what was his response to your comments?---Well, the – the conversation unfolded something like this. After we had said hello, Mr Henderson said I've got to say this upfront. There's no way around it. You're absolutely right about most of what you've said. I said how can – how can this be? I came to you to seek advice about what should be done before 1 July, and what should be done with the [REDACTED] loan. And Mr Henderson's voice sort of trailed away and he said yes, the [REDACTED] loan. I said if I had followed your advice, I would have lost a half a million dollars in superannuation. I should – I came away with advice that I said – that I should set up a self-managed superannuation fund. If I had followed your advice, I would have lost a half a million dollars. You're supposed to be the expert. I don't profess to be an expert in superannuation and retirement planning, or words to that effect. I said but even I can read what's written in a members' statement. So I said how could this have happened? Mr Henderson said it was the paraplanners. I should interpose to say I didn't know what paraplanners were. I thought they might be akin to paralegals. And I said what are paraplanners? And he said – Mr Henderson said they do the preliminary research for the advice. I said who are the paraplanners for my advice? And he named two persons. And Mr Henderson said, look, it's only a draft. Remember, I had mentioned something about this at the last meeting when your son had raised a query about the amount – the amount recorded as superannuation. And I said to him this isn't a draft. And I was – I was touching the sign here tags with – with my fingers. And Mr Henderson said, well, Donna, what do you want to do? And I said, Sam, well, what do you propose? And there

was a bit of a delay. And then in an upbeat tone he said to me we can do it all when you turn 58. We've checked. I've checked with your superannuation fund today. And I said let me get this straight, just so I'm not misunderstanding anything here. If I had – the effect of your advice is that (1) I should set up a self-managed
5 superannuation fund and direct my super to it to be run by Henderson Maxwell; (2) I should sell my shares – or transfer them to you and give any other cash that I have to Henderson – Henderson Maxwell. And he said yes, once we get a better handle on the cashflow. And I said so you're saying I should, essentially, give all my money to Henderson Maxwell? And it was so disarming. He said yes. And Mr Henderson –
10 there was just a silence. I was gobsmacked. It was so disarming. And he said I've got another client, a single woman a bit like you, Donna. And he said she has got about \$6 million with us and she's happy – very happy with how things are going with us. I should interpose to say I don't have anything approaching that. And I said really? in a sort of good for you and your other sort of client kind of tone. And why
15 would I trust my money with Henderson Maxwell? And Mr Henderson just didn't seem to be – to me, to be understanding matters, and - - -

Did Mr Henderson offer to make a refund of the fees that you had paid for the advice?---He did. After he had told me this happy news about himself and the other
20 client, and I had commented words to the effect, well, why would I – why would I trust Henderson Maxwell with my money? I would have lost a half a million dollars if I had used Henderson Maxwell, and that would have been just for starters. He said I'm prepared to offer you a full refund. What's your BSB number. I will arrange to have – the effect of it was immediate payment. I said I will consider that. Put it in
25 writing. And Mr Henderson said words to the effect what's there to consider? I'm offering you a refund. And I said I'm a lawyer. We like things in writing. Mr Henderson then said All right. I will put it in writing, but it will be short – very short.

30 And - - -?---I said short is fine. I just want it confirmed in writing.

And after you left that meeting, did you receive, within a short time, an email from Mr Henderson offering you that full refund?---Yes. The email was timecoded at 4.27
35 pm.

Later that day?---No. No. Within minutes of leaving the meeting.

On the same day?---On that same day.

40 Thank you. And at any time on that day, 10 January 2017, did you make a phone call to your SASS superannuation fund?---No.

And approximately a week later did you make a written complaint to Henderson Maxwell?---I made the written complaint on 17 January 2017, I believe.
45

And did you subsequently provide Henderson Maxwell with bank details for the purpose of a refund of your fees?---I did.

And did you receive a written response from Mr Henderson in response to your complaint?---I did. I believe that was received on 7 February.

5 And Mr Henderson apologised for the advice that he had provided in that letter to you?---Among other matters.

And he described the advice that you had received as clearly templated, rushed, inaccurate, and imperfect?---He did.

10 And he referred to the fact that he had now provided you with a refund for the advice fee?---Yes.

15 Did his response to your complaint also include a reference to your entitlement to take the matter to the Financial Ombudsman Service or an industry body like the Financial Planning Association?---It did.

And did you subsequently make a complaint to the Financial Planning Association?---I did.

20 And you've annexed the written complaint that you made to your statement. And in the course of making that complaint did you provide the FPA with a draft briefing note explaining what had occurred?---The briefing note occurred much later.

25 And did you make a formal witness statement to the FPA about these events?---I did on 29 September, I believe.

And were you told that Mr Henderson had made a written response to the FPA?---I was at some point.

30 And did you ask to see a copy of that response?---I did.

Were you permitted to see a copy of that response?---No, I was not.

35 Have you today seen a copy of that response?---No, I haven't

Were you told in the course of the FPAs investigation that the matter had been referred to their Conduct Review Commission?---I was.

40 And were you subsequently told that the matter had been set down for a hearing?---I was.

Were you given an opportunity to participate in the process of the Conduct Review Commission?---None at all.

45 And in February 2018, having made your complaint to the FPA in March 2017, were you given some information about the status of your complaint?---Could you refresh

my memory about what – no. N. Could you re-ask the question as to what date that was, please.

5 In February of this year, Ms McKenna, having made your complaint almost a year earlier, March 2017, were you given some information by the FPA about the status of your complaint?---Yes, I was.

10 What were you told?---I was told that, in effect, discussions were underway, and that Mr – discussions had been commenced in December and that by then, February 2018, it appeared that those discussions were quite fruitful and that priorities were close to reaching a – a resolution to the matter, among other matters.

15 In connection with your complaint to the FPA, did you seek audio recordings of telephone calls that were made to your two superannuation funds about your superannuation accounts?---I made one application, however, that application resulted in audio recordings from each of the two different funds.

20 You received those audio recordings? Did you receive the audio recordings - - -?---I did.

- - - in response to your request?---I did.

And have you listened to those audio recordings?---I have.

25 And do you know between November 2016 and January 2017 approximately how many calls were made to the SASS and PSSap funds about your superannuation accounts?---Six, I believe. Half a dozen or so.

30 And how many of those calls did you make?---None of them.

35 And I have one final question, Ms McKenna. Why have you decided to tell this story to the Royal Commission?---If I could just preface that by saying I hold a statutory office and I'm a semi-public person in that sense. And what has been set out in my material discloses a lot about my private life and matters of that nature which I would rather not have had aired. However, I considered it was my public duty to provide assistance to the Royal Commission in relation to the particular circumstances that I have encountered in relation to the financial advice that I received, and then my unhappy experiences, also, with the FPA. If I could say this. If someone with my educational and occupational background hits a wall when you
40 endeavour to engage proper disciplinary processes, what hope would someone who does not have those type of occupational background and skills – what hope are other people – people going to have? It seems that it is going to take a Royal Commission so that I can find out what happened to my complaint before the FPA.

45 Thank you, Ms McKenna. I have no further questions.

THE COMMISSIONER: Thank you, Ms Orr. Apart from you, Mr Woods, for Henderson Maxwell, does any other party seek leave to examine Ms McKenna? No, Mr Woods.

5 MR WOODS: I don't have any questions either.

THE COMMISSIONER: Yes. Ms Orr. Ms McKenna, thank you for your evidence. You may step down. You're excused?---Thank you. If you just give me a moment to gather my materials together.

10 Yes. Of course. Thank you very much.

15 <THE WITNESS WITHDREW [2.44 pm]

MS ORR: Commissioner, the next witness is Mr Sam Henderson.

20 THE COMMISSIONER: Yes. Is Mr Henderson in the courtroom?

<SAM HENDERSON, SWORN [2.44 pm]

25 <EXAMINATION-IN-CHIEF BY MR WOODS

30 THE COMMISSIONER: Thank you very much, Mr Henderson. Do sit down. Yes, Mr Woods.

MR WOODS: Thank you, Commissioner.

Your full name is Sam Maxwell Henderson?---Yes.

35 And your professional address is 12 O'Connell Street, Sydney, New South Wales?---Yes.

And your occupation is that of a financial planner?---Yes.

40 You've appeared today under summons from the Commission dated 12 April 2018. Is that correct?---Yes.

I tender that summons, Commissioner.

45 THE COMMISSIONER: The summons to Mr Henderson of 12 April '18 will be exhibit 2.199.

EXHIBIT #2.199 SUMMONS TO MR HENDERSON DATED 12/04/2018

MR WOODS: And in answer to two items of correspondence from the solicitors
5 assisting the Commission, you've provided two statements. Is that correct?---Yes.

The first of those statements is a statement dated 29 March 2018, together with
exhibits SH1 to SH9. Is that correct?---Yes.

10 Commissioner, there are some corrections that I will take the witness through after
I've identified those documents, but I will just quickly identify them now, if it's
convenient.

THE COMMISSIONER: Yes. Go through the corrections and have him make the
15 corrections, and initial them and then - - -

MR WOODS: I will do so.

THE COMMISSIONER: - - - we will get to the point of tendering.
20

MR WOODS: Yes.

THE COMMISSIONER: But has he got the statement in front of him? He may
25 need it in front of him.

MR WOODS: Yes. I believe he has both statements in front of him. Is that
correct?---I don't have them here.

Sorry, there were some further redactions.
30

THE COMMISSIONER: It is amazing what you can see from up here, Mr Woods.

MR WOODS: There were further redactions this morning, and I think we were at
35 pains to make sure the redactions are the same on Mr Henderson's statement as they
are on - - -

THE COMMISSIONER: Can those instructing you give him the original of his
statement or can someone - - -

40 MR WOODS: We will do so.

Just while that's occurring, that was the first of those statements dated 29 March
2018. And the second statement is a 5 April 2018 statement. Is that correct?---Yes.

45 And together with exhibits SH10 to SH18. Is that correct?---Yes.

Now, the solicitor to the Commission has been provided with a document entitled Sam Henderson Corrections that I believe is on the system which indicates what – some data needs to be corrected in both of those statements. Is that correct?---Yes.

5 Now, that's a document that's on the screen. It should be on the screen in front of
you. Commissioner, because there are a number – unfortunately, the mark-ups
haven't come through in the Commission's version that was sent to the Commission
on the one on the screen, but, essentially, what this document does is to show the
provisions that are in the original statements and the changes that are made to them.
10 And, because there are a number of them, we saw that it was efficient to provide it in
this manner. We might get that updated to the marked-up version. They seem to
have just been corrected in the way they've been received.

15 THE COMMISSIONER: Well, if I deal with it by marking separately as exhibits
each of the statements and then as the next succeeding exhibit the correction to the
two statements - - -

MR WOODS: Yes.

20 THE COMMISSIONER: - - - that will solve the mechanical side of it. But Mr
Henderson, perhaps, needs to be led through the point of whether he affirms the truth
of the statements as corrected in accordance with this document.

25 MR WOODS: Yes. And I'm going to provide him with a copy. And I do have
other copies here of the marked-up version, I should say. Mr Henderson, I'm
handing you a document containing a list of corrections that is marked up to a
number of paragraphs: firstly, a change to paragraph 46 of your first statement and,
secondly, some changes to paragraphs 38 to 41 of your second statement. Do you
see that in front of you?---I do, yes.

30 And are those corrections to your statements true and correct?---I believe so, yes.

35 And, other than that, with – just with two items, one is at paragraph 15 of your first
statement. Is it correct that you are no longer a member of the FPA, so those initials
shouldn't be in that table?---That's correct.

40 And, secondly, in your second statement, at paragraph 23 there's a typographical
error where 12 January should say 16 January in the second line of that
statement?---Yes, correct.

Now - - -

THE COMMISSIONER: If we just mark that change - - -

45 MR WOODS: Yes.

THE COMMISSIONER: - - - on the original statement and initial that.

MR WOODS: Yes, we will do so. Do you have a pen with you?

THE COMMISSIONER: Someone will give you a pen to make the necessary amendment.

5

MR WOODS: So that's paragraph 15 of your first statement, which is a line through the initials FPA, as I understand your evidence?---And an initial - - -

10 And an initial next to it. And, once you've done that, paragraph 23 of your second statement, second line, "12" becomes "16" and initialled, as well, after that's changed. Thank you. Mr Henderson, now with those changes that you've indicated, are the two statements true and correct?---Yes, I believe so.

15 Commissioner, I tender the two. The first is 29 March. The second is 5 April of this year.

THE COMMISSIONER: Statement of 29 March '18 and its exhibits becomes exhibit 2.200.

20

EXHIBIT #2.200 STATEMENT AND EXHIBITS DATED 29/03/2018

25 THE COMMISSIONER: Statement of 5 April '18 and exhibits becomes exhibit 2.201.

30

THE COMMISSIONER: Corrections to statements exhibit 2.200 and 2.201 becomes exhibit 2.202.

35 **EXHIBIT #2.202 CORRECTIONS TO STATEMENTS EXHIBIT 2.200 AND 2.201**

40 MR WOODS: Thank you.

THE COMMISSIONER: Yes. Ms Orr.

45 **<CROSS-EXAMINATION BY MS ORR** **[2.51 pm]**

MS ORR: Mr Henderson, you're a financial adviser?---Yes.

And you provide financial advice as an authorised representative of a company called Henderson Maxwell Proprietary Limited?---Yes.

Which holds an Australian Financial Services Licence?---Yes.

5

You're the chief executive officer of Henderson Maxwell Proprietary Limited?---Yes.

10 And you're also the chief executive officer of Henderson Maxwell Financial Planning Proprietary Limited?---Yes.

Now, I would like to ask you some questions, first, about your business generally. For how long have you been a financial adviser?---I started around 2002, 2003, I think.

15

And - - -?---I don't recall the exact date.

20 And for how many of those years that you've been a financial adviser have you operated under the Henderson Maxwell brand?---I started Henderson Maxwell on 1 March 2004.

Where did you work before you started Henderson Maxwell?---I worked for a company called Tynan Mackenzie.

25 Called?---Tynan Mackenzie.

Thank you. You host a television show, Mr Henderson?---Yes.

30 A show called Your Money, Your Call Super Thursday on Sky News Business?---I used to. That show and All Your Money, Your Call has now changed. I have been hosting a show called Money Manager on Friday night, 6.30.

You also regularly appear as a finance expert on network 10s The Project and on 9s The Today Show?---Occasionally, yes.

35

And you provide general financial advice articles in a number of publications, including the Australian Financial Review, the Sydney Morning Herald, The Age and Money Magazine?---I have, yes.

40 How many financial advisers does Henderson Maxwell currently employ?---Officially, we have two financial advisers and we have one other authorised representative, who is not necessarily giving advice.

45 And how many support staff does Henderson Maxwell employ?---The financial planning firm has six staff in total, including the two financial advisers. The other authorised representative that I referred to is part of our accounting business.

And roughly how many clients does Henderson Maxwell have?---About 700 in total. Of those, about 200 are what we call active clients.

5 Roughly how many new clients does it have each year?---In terms of statements of advice, sometimes between – or somewhere between, say, 40 and 50 statements of advice are produced. And ongoing clients, probably about half of that, I suppose.

10 What kinds of clients come to Henderson Maxwell for financial advice?---We have a variety of clients from all walks of life. I think probably a majority are – or close to half would have a self-managed super fund. We have executives, we have employed entrepreneurial-style clients, we have public servants, we have all walks of life, really.

15 And where you're dealing with the half of your clients who don't already have a self-managed superannuation fund, is that something that you often recommend that they set up?---It depends on the situation of the client. We have a process that we go through to try to ascertain whether – what type of fund they might want, what sort of ideas they have in their head before they come to see us. And then, I suppose, we look at their circumstances and then make some recommendations around that.

20 Some of them already have their minds made up, some of them are looking for a discussion point to – looking to us to help them make that decision, you know, essentially making better decisions around their – their finances.

25 In one of your statements you refer to 58 clients who got a statement of advice from Henderson Maxwell since 1 January 2016?---Mmm.

30 And that – those 58 clients, you tell us in your statement, that 40 of them either had a self-managed superannuation fund or were advised by your firm to set one up?---Correct.

35 Now, you've said in your first statement that the self-managed superannuation funds recommended by Henderson Maxwell are established by a related company, which is Henderson Maxwell Accounting Proprietary Limited?---Some are, yes. We usually give the client choice. If – if they do decide to go ahead with a self-managed super fund we would say would you like to use our services or do you have a trusted accountant that you use? In many cases, they already have an accountant. And in that case we would work with that accountant. But, yes, to answer the question, we do have an accounting firm. Essentially, we have merged those now and they are capable and they do set up self-managed super funds for clients.

40 And does Henderson Maxwell accounting charge fees for clients to establish a self-managed superannuation fund?---Yes, they do.

45 And roughly how much?---It depends on the nature of the style of the super fund. So for individual trustees, for example, it might be \$880. For a corporate trustee, which we generally recommend these days for either individuals or even for couples, you're looking at twice that, so around 1760. And for a limited recourse borrowing

arrangement, because you need a trust structure or bare trust in place, that would be around about three and a half thousand.

5 And are there ongoing fees once a client has established a self-managed superannuation fund?---There is. Typically, a self-managed super fund trustee would pay around two to \$3,000 a year. Again, it depends on the nature of the investments, how many transactions they do, the complexity of the fund, number of members and the like.

10 And does Henderson Maxwell also provide investment management services?---Yes, we do.

15 And what kinds of investment management services does Henderson Maxwell provide?---We provide a variety of investment services, be it through a – what we call a Henderson Maxwell-managed account, which has been set up through a company called managedaccounts.com.au, also called Investment Administration Services. That’s probably our chief form of investing our clients’ funds. We also use a number of other platforms. We’re not tried to that particular platform. And with the innovation that has occurred in the industry, that is, the provision of a
20 superannuation trust structure, we’re now using companies like Net Wealth and HUB24, BT, Macquarie. We use a host of different providers.

25 Does Henderson Maxwell provide both a discretionary investment service and a non-discretionary investment service?---Yes, we do.

30 And can you explain how a managed discretionary account works?---Sure. Many years ago when we were operating under another dealer group structure, we used a company called Asgard to manage our client funds. And the problem that we had with that, when we typically didn’t use a lot of managed funds – we still don’t use a lot of managed funds. We were trying to manage direct share portfolios, cash and fixed interest portfolios in a disparate fashion. For example, if I wanted to sell Commonwealth Bank shares and buy NAB shares – that might be controversial today. But if I wanted to do that, I would have to go in to meet with every single individual client, provide an individual piece of advice, have that advice sent back to
35 us. And then by the time we get to trade it could well be many weeks or potentially months, if the clients are away – many of our clients are retired. So sometimes the advice would not be returned. It created a very disparate way to manage portfolios. So what we wanted to do was create an aggregated way to manage our client portfolios that was transparent, that is, investing into direct assets that didn’t pay
40 commissions to financial advisers, and a way that we could move quickly in a share market, particularly after the GFC, if we wanted to trade a particular security.

45 So are you referring there to the managed discretionary - - -?---I’m referring to the managed discretionary account, yes, essentially having discretion over the – the clients’ funds, but within certain boundaries. And we also operate under a managed discretionary account contract with the MDA provider. And that provides us the framework under which we can operate. There is a compliance regime around that,

having an investment philosophy, for example, or an investment charter, as we call it officially; having an executive committee with paid external members; having a portfolio manager research and undertake transactions, etcetera. So that's pretty much how we operate the – the – what we call the MDA service. The other option
5 would be more of an IDPS service, which would be usually under a superannuation trustee structure, such as Asgard, Macquarie, HUB24, Net Wealth, those sorts of platforms.

10 So Henderson Maxwell doesn't operate the MDA, the managed discretionary account, itself then?---We have a – an agreement to manage those funds under the structure provided by Managed Accounts, the company.

15 But do you recommend services provided by a third party which are branded as Henderson Maxwell managed accounts?---Yes, we do.

And who provides the managed account service?---The company Managed Accounts. It's a generic - - -

20 So what does Investment Administration Services Proprietary Limited do?---It's the same company. They changed their name when they listed.

25 Okay. So the two names of that company, so I'm clear, are - - -?---I use them interchangeably. So I have been familiar with the company Investment Administration Services. These days they're listed on the ASX under managed accounts.

Okay?---MGP, I think, is the code.

30 So Investment Administration Services, which is how you refer to this entity in your statements, provides the managed account service?---Yes.

What does Henderson Maxwell do?---We manage the funds. So we undertake the transactions, we set up the client accounts and we manage the portfolios.

35 So you have an investment committee?---Yes, we do.

And who is on the investment committee?---Myself and two other employees at Henderson Maxwell. And then we have three external members of that committee.

40 And does the investment committee have an ongoing role in relation to the managed account service?---They do. We meet on a monthly basis.

45 All right. Could we turn to your first statement at paragraph 43. So these are the fees that Henderson Maxwell pays to Investment Administration Services each year for the managed account service?---Yes.

There's a fee calculated as a percentage of the funds under management?---Correct.

And it differs for investment accounts on the left-hand side and superannuation on the right-hand side?---Yes.

But does Investment Administration Services provide both services?---Yes.

5

And the fee decreases as the amount of funds under management increases?---That's right.

But it ranges from .11 per cent to .22 per cent?---Yes.

10

And there's also a transaction fee of \$4.72 per trade?---Yes.

And then if we could have paragraph 44 brought up at the same time on the other side of the screen. This shows us the fees that Henderson Maxwell charges to its clients who put their funds in the Henderson Maxwell managed account for ongoing advice services?---Yes.

15

Again, there's a fee calculated as a percentage of the funds under management?---Yes.

20

And it's 1.1 per cent to 1.8 per cent of the funds under management?---Yes, in a general sense. There are clients that pay less than that.

But the Investment Administration Services fee is only .11 per cent to .22 per cent of the funds under management?---That's correct.

25

So what value do clients receive for the difference between those two fees?---We provide two levels of service. One is the strategic overlays. So that is around the superannuation advice, tax minimisation strategies, investment strategies, superannuation contribution, those sorts of things, insurance, as well. And on the investment management side we have an active portfolio management role for clients.

30

And we see that Henderson Maxwell also charges transaction fees, in addition to the Investment Administration Services fees. There's a transaction fee charged by Henderson Maxwell of \$10.50 or \$21?---Yes.

35

Depending on the portfolio?---Yes.

40

But the transaction fee that Investment Administration Services charges is less than \$5?---Yes.

And, on top of that, Henderson Maxwell charges .525 per cent in brokerage?---Yes.

45

So what value does the client receive for the difference between those fees?---This is purely around the value of asset selection, so buying and selling of shares, asset allocation, as well. Asset allocation is, obviously, very important when it comes to

risk profile. And when there's market movements, volatility in the share market or the like, transactions need to take place quite quickly. So we feel we're adding value in that area.

5 In your second statement you say that since 1 January 2016 from 58 clients Henderson Maxwell recommended that 31 – more than half of them – invest in the Henderson Maxwell managed account?---Yes.

10 And you say that approximately 60 to 70 per cent of your clients and 84 per cent of your funds under advice are managed through the Henderson Maxwell managed account service?---Yes.

15 That's a very high proportion of clients to have their investments in one product, isn't it, Mr Henderson?---I don't believe so.

You don't accept it's a high proportion?---I accept it's a high proportion, yes. Sorry, I thought you said it's a high risk.

20 No. No. No. What I am putting to you is it's a very high proportion of your clients who have their investments in one product?---I think we need to distinguish between what's considered a product and what's considered a service. We consider the managed account service as a service. That's – that's the name of it. So it's very much around managing a client's portfolio. It's not like a unitised trust. I think there's a misnomer with the term managed account being like a – a unitised trust.
25 It's not that. It's a little bit like a managed fund, where you can raise the bonnet and see what's in the engine. The client's own individual assets within that and having been in this industry for 15-odd years, the – the – the problem we've had is managing disparate portfolios. So looking for an aggregation service has been fundamental to managing the client's money in the best way possible and the best way we see fit.
30 And that was certainly the case during the GFC, where we could hold substantial amounts of cash and move fairly quickly when the market was turning by two, five, 10 per cent within a number of days. So we – we felt that was an appropriate structure to manage our client funds.

35 Do you take steps to consider whether there might be other managed account services that offer clients a better return or lower fees?---Yes. This is a really good question, because the – we were one of the first businesses to start using managed accounts. And what we've seen over the past few years is significant innovation in this industry. And probably two years ago, three years ago, perhaps, we did start
40 using alternatives. And we've started to use those more and more as the industry has innovated. I don't know whether I should name companies, but HUB24, for example, we are moving a lot of money into HUB24, because of the reporting, the transparency, the client experience is far more positive. And we can also – we have been closing down a number of self-managed super funds over the years. And for
45 those people who are, for example, ageing or not in a position to continue managing their funds, these other platforms provide an ideal scenario for managing those funds without having to be tied into any of the major bank platforms.

But, nonetheless, 84 per cent of your funds under advice are managed through the Henderson Maxwell managed account service?---Correct.

5 Do you present clients with a comparison of other managed account services?---We discuss it, yes.

Do you present them with a comparison, Mr Henderson?---No, we don't.

10 How do you ensure that the advice that you give your clients is in their best interests, if you don't give them a comparison to consider comparing your products with other products?---I suppose we base that on our extensive industry experience. We look at what is available out there for the clients and we're constantly assessing other products. As I commented earlier, we are looking – we are using far more extensively now that those products have come to market. So I would imagine that 15 that 84 per cent would continue to drop. And that's certainly something we're – we're implementing at the moment.

I've asked you a number of questions about Investment Administration Services. Do you have an interest in Investment Administration Services?---No, not today. But I 20 must qualify that. I did. When they floated, I was offered shares in the company, which I took those up. It did come up in the financial – the FPA complaint. And I sold them immediately. I didn't even think about it being a material holding. We don't believe it was a material holding. I certainly didn't need to own those shares in such a way that I was looking for a financial advantage, so I sold them immediately 25 when it was pointed out.

Right. When it was pointed out to you, you sold them. But prior to that point your self-managed superannuation fund owned shares in Investment Administration Services?---Yes, it did.

30 Did you disclose that interest to your clients?---I did.

Can I show you a document, which is FPA.0018.0002.0408. This is the Henderson Maxwell Financial Services guide, version 3, as at 20 January 2016. As at this date, 35 20 January 2016, did you have an interest in investment administration services?---I believe so.

You did, didn't you, Mr Henderson?---Yes.

40 And is that interest disclosed in this document?---I would have thought so.

Well, perhaps we can do this most quickly by me handing you a copy of that document, because I would like you to direct us to where in this document that interest is disclosed?---You will have to excuse me. It has been a long time since 45 I've looked at this document, but I can't find it, so perhaps it wasn't. I stand corrected, if it's not here.

I am going to put to you that your interest in Investment Administration Services is not disclosed in your financial services guide as at 20 January 2016?---I would accept that, if it's not there, yes.

5 Why not?---We didn't believe it was a material interest.

This financial services guide records at 0410 that you have a Masters of Commerce, Mr Henderson?---That is correct. I saw that comment.

10 Was that correct at 20 January 2016, did you have a Masters of Commerce?---I did not. I studied a Masters of Commerce. I think this was taken over from a previous bio and we've since removed that in the next iteration of the financial services guide.

15 You say it was taken over by a previous bio, but you did not at any point prior to this document have a Masters of Commerce, did you?---No.

Thank you. So that's inaccurate in this financial services guide?---It is, yes, and I apologise for that.

20 All right. I tender that document, Commissioner.

THE COMMISSIONER: Henderson Maxwell Financial Services Guide as at 20 January 2016, FPA.0018.0002.0408, becomes exhibit 2.203.

25

**EXHIBIT #2.203 HENDERSON MAXWELL FINANCIAL SERVICES GUIDE
DATED 20/01/2016**

30 MS ORR: Could I now ask you some questions about the advice that you gave Ms McKenna, Mr Henderson, and the complaint that she made. You've heard the evidence that Ms McKenna gave today?---Yes.

And you've read her statement?---I have.

35

And you agree that you first spoke to Ms McKenna on the phone on 3 November 2016?---Yes.

And then you met with her on 7 November 2016?---Yes.

40

And she sought advice from you about potentially buying an investment property and about changes to superannuation taxation laws ahead of 1 July 2017?---Yes.

45 She also wanted advice about a plan for transitioning to retirement?---Not specifically. She asked me a question about transitioning to retirement, but not that she sought a plan around transition to retirement.

She provided you with details about her current financial situation?---She did.

And that included details about her two superannuation funds?---Yes.

5 And you asked Ms McKenna at that meeting if she would be interested in managed investments through a Henderson Maxwell managed account?---Not as specific as that. I asked her if she was looking for ongoing advice, and – or whether she wanted just one-off strategic advice, which we often do.

10 And what do you say Ms McKenna said to that?---She was looking for an ongoing – my understanding was she was looking for an ongoing relationship.

And you've heard Ms McKenna's evidence that you asked her whether she would consider establishing a self-managed superannuation fund?---I have.

15

And what do you say to Ms McKenna's evidence about the discussion that she had with you on that topic in this meeting?---Respectfully, I would probably offer a different line of thinking around the discussion that took place. I think it's important to point out that it's – it's neither in my character or in my practice to push anything.

20

When a client comes to you with a pre-approved loan of [REDACTED] she's looking to invest into property, she's 56 years of age, she ticks a box to say she's interested in a tailored portfolio, she's interested in shares, it would not be unreasonable, given the fact that I write for the Financial Review, specifically, wholly and exclusively on the topic of self-managed super funds and probably 50 to 25 80 per cent of our discussion on Sky News is around self-managed super funds, that that would be a topic of discussion. I feel that I did qualify that. And – and to me that did seem like a natural progression for someone in her position, notwithstanding the error that I made on her superannuation fund and the nature of the superannuation fund. I'm sure you're going to address that in another question, but I'm happy to 30 discuss that. But I felt we had a reasonable discussion around having a self-managed super fund. And this was supported in both my contemporaneous notes and also her annotated notes on the statement of advice that she sent back to me on 9 January 2017. She said she didn't recall having a discussion around it, but she would consider it.

35

After the meeting, what steps did you take to decide what recommendations you were going to make to Ms McKenna?---I usually write out a strategy in the form of a paraplanning request form. So I wrote that out in detail. I do believe that has been provided as evidence. And I spend some time in formulating that.

40

How much time did you spend in formulating that, Mr Henderson?---Probably two to three hours.

This is two to three hours in formulating the instructions to the paraplanner. Is that 45 right?---Yes.

And you were, I assume, when formulating those instructions, considering Ms McKenna's existing superannuation products?---Yes, I did. That being said, unfortunately, we were making those decisions on flawed research. I was of the belief that her superannuation fund was, despite the fact she referred to it as deferred in the fact find and certainly in our discussions, that it was a defined benefit fund, where you have a member balance and a defined benefit portion. So my recommendations and statement of advice was based upon that understanding of her superannuation fund. I apologise that that research was incorrect. My understanding of the product was incorrect. It was my – my strategy, essentially, was based on – on flawed – my flawed understanding of the situation.

What led you to believe that it was a defined benefit, Mr Henderson, when it was described, as you've just acknowledged, in the initial electronic questionnaire as a deferred benefit fund, and the other information you had was the member statement, which clearly described it as a deferred benefit fund?---Yes. I – that's a good question. Certainly in hindsight I look back and I've been asking that question for the last 12 months or 18 months, with great frustration. The – the – I think the core reason was really around the fact finder – what we call the fact finder, the client questionnaire. It did present a figure in SASS of the full amount available at maturity. Our researcher, my client services manager, made inquiry and they said that the amount available was X, and the difference between X and Y in my mind was the defined benefit portion, which we would always leave. We invariably never recommend clients take out a defined benefit portion. And my belief was there was a member portion in the fund that was, essentially, available for rollover.

You say that your researcher made inquiries about Ms McKenna's superannuation position. How did your researcher do that?---There was a – authority signed by Ms McKenna in our first meeting. And there's a file note to suggest that was sent off on 7 November 2016.

I don't think you've quite answered my question, Mr Henderson. How did the researcher – what inquiries did the researcher make?---They rang SASS.

All right. Could I ask that we now play an audio recording, which is FPA.0006.0001.0476, which has been edited, Mr Henderson, to remove some personal information. But I would ask that we play that recording now.

RECORDED : NOT TRANSCRIBED

MS ORR: So, Mr Henderson, that's an audio recording of a call made to a representative of the SASS superannuation fund on 7 November 2016, the day of your first meeting with Ms McKenna?---Yes.

And that's a call from someone purporting to be Ms McKenna?---Yes.

Now, was that Ms McKenna calling?---No.

Was that your customer service officer impersonating Ms McKenna?---Yes.

5 And the woman from SASS on the call explains to the person that she believes is Ms McKenna that the normal retirement age under this superannuation fund is 58?---Yes.

10 And you heard the references throughout that conversation to this as a deferred benefit scheme?---Yes.

15 And the representative of SASS told the person that she understood to be Ms McKenna that if she was to access the funds earlier than age 58, there would be a particular estimated lump sum, and if she were to wait until age 58 and be permanently retired, the lump sum would be a different figure?---Yes.

And your customer service officer asked what could be rolled over immediately?---Yes.

20 And the representative of SASS explained the amount less a surcharge. And your customer service officer then asked what would be available if she waited until 58?---Yes.

25 And the SASS representative explained that it was a higher figure, less the surcharge?---Yes.

And we heard the SASS representative describe the fees?---Yes.

30 Did you know that your employee was impersonating Ms McKenna, Mr Henderson?---No, I didn't.

35 Did you hear her say at the beginning she had been given some questions to ask?---We have standard questions for the client services managers to ask for all research undertaken. It's their job to, invariably, undertake all the research.

Is it standard for your employees to impersonate your clients and seek information about their superannuation accounts?---No, absolutely not.

40 At one point we heard there that your customer service officer put the call on hold. We heard the hold music. And then she returned and said, "Now, in the event I want to roll this out, I've been advised to roll it out, what is the amount I can roll over"?---Yes, I did hear that.

45 Do you know who she spoke to when she put this call on hold and came back with those questions?---No, I am not sure.

Were you in the office that day, Mr Henderson?---I think I was in the office on that day, yes.

Was she speaking to you?---I am not sure. I have no idea.

5

Ms McKenna was your client, Mr Henderson. Was she speaking to you about these matters?---Potentially, but I can't answer with any certainty.

10 You don't recall?---I don't recall. I can say, though, for the record, that I was not aware of the impersonation. I was quite disappointed and I certainly apologise for that behaviour of my staff member. I was incredibly disappointed. It was inexcusable and - - -

15 What was your reaction when you found out that your employee had been impersonating clients?---I was horrified.

20 Did you terminate their employment?---I wanted to terminate her employment. I took counsel with my general manager at work. He convinced me not to terminate her employment. Instead, we gave her a warning. It was borderline. In hindsight, I should have persisted with my gut reaction, which was to terminate her. I feel that I would have – and should have done that. We are a small team. It is like a family situation in there on a day-to-day basis, and we felt that the impact would be significant on – on the business and on the rest of the staff.

25 So you didn't want people to know that you had employees who were impersonating your clients?---I would not hide that at all. I – I would openly say that she impersonated the client. It was most definitely the wrong thing to do. And I was bitterly disappointed that someone would do that under my responsibility.

30 But you did not terminate her employment?---Correct.

It was pretty clear from that call, wasn't it, Mr Henderson, that Ms McKenna had to wait until the age of 58 to access the full amount of her benefit?---Yes.

35 And it was very clear from that call that if she tried to roll over her superannuation balance before then she would forfeit her entitlement to her deferred benefit?---Yes, and when I heard the recordings – I've heard all of them – I came to the same conclusion. Absolutely. It was clear as daylight.

40 And did your employee convey that to you as the person who is responsible for Ms McKenna? She was your client?---No. I – I maybe it was my questioning around her or the verbiage around that, but, again, my consistent understanding was it was a deferred benefit. Again, that has been the language throughout the statement of advice, the paraplanning request form. And we also say that we would never roll
45 over and did not roll over the defined benefit portion. But I admit that mistake. And, listening to those audios, it – it's clear as daylight. I remember the first time I

listened to them with the – when the FPA provided them to me. I must say, I was openly shocked.

So - - -

5

THE COMMISSIONER: Ms Orr, there's a couple of non-publication issues that apparently have emerged. Both the amount of the value of the loan and the lender have now been - - -

10 MS ORR: Yes.

THE COMMISSIONER: - - - twice mentioned, I think. Certainly value once, lender twice. Both the identity of the lender and the value of the loan have been made the subject of non-publication directions. There is no occasion, is there – or is there an occasion to revisit those directions?

15

MS ORR: No. No, Commissioner.

THE COMMISSIONER: No. Then I am afraid both the amount of the loan and the lender should not be reported.

20

MS ORR: So is it your evidence, Mr Henderson, that, having received this information by impersonating Ms McKenna, your employee did not pass on that information to you?---Not in that fashion, no. It was not clear to me the type of product. I still believed – until I rang SASS myself on the morning – sorry – on the afternoon before our third meeting that I did not understand the nature of the product. I did make a call myself. Ms McKenna's son made a comment in our second meeting that the figures didn't look quite right. And I said it wasn't quite gelling with me either and that I would make an inquiry myself. That night on the 14th I did have a client cocktail night. I did go on holidays. I returned from holidays on the 9th, and on the 10th – not ideal timing – I did ring SASS. And I do believe there is a recording of that.

25

30

We will come to that?---Yes.

35

We will come to that, Mr Henderson?---And until that point I believed that it was a defined benefit.

What do you say your employee did with the information that she obtained through this process of impersonating Ms McKenna?---I can't speak for my employee, because to me it sounded – it sounded fairly clear.

40

Yes, but – the information was very clear, Mr Henderson. But is your evidence that your employee did nothing with it?---Well, it was conveyed to me as though it was a defined benefit still.

45

I see. I see. So the next thing you did after that was to send instructions to your paraplanner?---Yes, I did.

5 And when did you send those?---I'm not sure what date the paraplanner request form was sent.

10 Can I show you the document containing those instructions, which is HEN.0002.0001.0017. It's exhibit 12 to your statement. These are the paraplanning instructions that you gave evidence earlier you took two to three hours in putting together?---Yes.

This is the - - ?---Well, it didn't take me two to three hours to write it, but just thinking about it and putting it together, yes.

15 Yes. Well, it consists of four-odd paragraphs, doesn't it, Mr Henderson?---Yes.

Now, we see there that the instructions you sent to the paraplanner were, firstly, to:

20 *Establish a self-managed superannuation fund with a corporate trustee.*

And, secondly, to:

25 *Roll over all "member balances" of-*

Particular figure:

30 *Check this figure, please, leaving defined benefit amounts in super.*

?---Yes.

And the third instruction was to:

35 *Invest the balance into a Henderson Maxwell managed account in a balanced portfolio.*

?---Yes.

40 So the only strategy that you considered for Ms McKenna was the establishment of a self-managed superannuation fund, rolling over the super into the self-managed superannuation fund and setting up a Henderson Maxwell managed account?---Yes.

Did you do any research into any other superannuation products?---No.

45 Did you do any research into other managed accounts that Ms McKenna could invest in?---We have variously done research into all the managed accounts available. In specific relation to her matter, no, but in relation to managed accounts as a whole, we

understand that – well, we’ve been using the HMMA for many years and we’re quite satisfied with its operation.

5 Are you familiar with the best interests obligation in the Corporations Act, Mr Henderson?---Yes.

What does that obligation require you to do as a financial adviser?---Essentially, act in the best interests of our clients.

10 And are you - - -?---Taking - - -

I’m sorry?---Sorry, I was going to go on.

15 Yes, please do?---Making sure that any product that we recommend is fit for the purpose of the client, and that those recommendations are free of conflict.

Are you familiar with the safe harbour provision?---I’ve heard of it, yes.

20 What’s that provision about, Mr Henderson?---I’ve heard of it, but I don’t know the details.

Okay. So you’re not familiar with the steps you have to take to satisfy the safe harbour provision?---I have read them, but I can’t recall them at the moment.

25 Well, perhaps if we could have that provision brought up. It’s RCD.0022.0003.0001. And if we could have 0002 on the screen at the same time. I’m sorry – 0002 and 3 we need on the screen. You can see this is an extract from the Corporations Act. You can see that we have 961B, which contains the obligation to act in the best interests of the client?---Yes.

30 And you can see that subsection (2) says that:

35 *The financial adviser will satisfy the duty to act in the best interests of the client. If the financial adviser proves that he or she has done each of the following.*

And one of those things in subparagraph (e) – this is the safe harbour provision – in subparagraph (e), the best interests test can be satisfied if the financial adviser proves that:

40 *If, in considering the subject matter of the advice sought, it would be reasonable to consider recommending a financial product, conducted a reasonable investigation into the financial products that might achieve those of the objectives and meet those of the needs of the client that would reasonably*
45 *be considered as relevant to advice on that subject matter; and assessed the information gathered in that investigation.*

Now, do you consider, Mr Henderson, that you conducted a reasonable investigation into the financial products that might achieve Ms McKenna's objectives and meet her needs?---Yes, I do, actually.

5 You do. Even though your evidence was that you didn't consider any other
superannuation products and you didn't specifically consider any other managed
accounts?---Well, I did consider other managed accounts. We've been looking at
other managed accounts, which I talked about earlier. So we do consider all options
10 we had collectively come to the agreement that a self-managed super fund was
suitable for Ms McKenna.

The paraplanner prepared a statement of advice in accordance with your instructions,
Mr Henderson?---Yes.

15 And you've exhibited that statement of advice to your statement. It's
HEN.0002.0001.0018. And if we turn to 0022 in that document, we see the
summary of your recommendations?---Yes.

20 And the superannuation recommendations were to establish a self-managed
superannuation fund with a corporate trustee and roll over the available funds from
the SASS account into the self-managed super fund?---Yes.

25 Now, was there, in fact, a defined benefit portion of Ms McKenna's superannuation
account?---No, there wasn't.

And what would have happened if Ms McKenna implemented this advice?---Had it
been implemented, yes, she would have lost near on half a million dollars.

30 Was the advice to Ms McKenna to establish an SMSF and roll over the balance of
her SASS account in her best interests?---In the light of the erroneous nature of the
research, absolutely not.

35 And for this advice you charged an upfront plan preparation fee of \$4950?---I did,
yes.

And an establishment fee to set up the Henderson Maxwell managed account of
\$1980?---It was proposed to charge that fee. Yes. It wasn't charged.

40 If the advice had been implemented, that fee would have been charged?---Yes.

As would brokerage fees of \$4105?---Yes.

45 And you were going to charge an ongoing fee of \$14,642 for investment
management services?---Yes.

And how did that fee for investment management compare to the fees that Ms McKenna was paying on her existing superannuation accounts?---It was materially higher.

5 And did you point out to Ms McKenna that the fees for the product you were recommending were significantly higher?---It's pointed out in the statement of advice that we went through, yes. And in our statement of advice presentation I did go through the fees with her.

10 Was the advice to open a Henderson Maxwell managed account in Ms McKenna's best interests?---Notwithstanding the error made on research, then yes, I'm confident of the advice and I still look back at it now and think that it's – it's satisfactory. What is not satisfactory, obviously, was the error around the research.

15 You also included an insurance review in the statement of advice?---Yes.

Why did you do that?---We spoke about insurance in the first meeting. That was noted in my contemporaneous notes taken on the day. She asked me the question whether she should maintain her insurance.

20

Have you heard Ms McKenna's evidence that she didn't want an insurance review?---I have.

25 Did you propose any alternative income protection insurance to Ms McKenna?---I suggested she consider cancelling her income protection. She made a comment that she had unlimited sick leave. So if that was the case, then it would be worth considering.

30 Do you say that the advice to Ms McKenna to cancel her income protection insurance was in her best interests?---I think, given the circumstances, if she had unlimited sick leave, then there's no point in having income protection insurance, so yes.

35 You say it was in her best interests?---If she had unlimited sick leave, yes. That's what - - -

Did she have unlimited sick leave? Are you sure about that, Mr Henderson?---I am not sure that she had it, but that's what she told me at the time.

40 One of the main reasons that Ms McKenna came to you for advice was to find out about any changes she could make to the contributions to her current superannuation account with PSSap in light of the upcoming changes to the taxation laws. Did you provide advice to Ms McKenna about her contributions to her PSSap account?---No, I didn't. I didn't think that account needed to be altered. And my understanding was
45 she was contributing to that account. And she had higher than normal contribution rates that were permitted, so I didn't see a reason for making any changes.

So you said nothing in the statement of advice about that matter?---No, and I acknowledge that I probably should have.

5 You met with Ms McKenna again on 14 December 2016, and you presented this statement of advice?---Yes, sorry, what was that date?

14 December - - -?---Yes.

10 - - - 2016. It was either the 14th or the 12th?---The 14th. Yes. It was changed from the 12th.

15 Yes, there was a change. I think it was changed from the 12th to the 14th. And you say in your second statement that the statement of advice may have appeared to have been presented to Ms McKenna for her approval and signature?---Yes. I did mention it was a draft, but it was presented in a state which we went through a debate with the FPA around whether it was presented in a – in a non-draft executable format which we agreed, yes, it was.

20 Do you accept that it was presented to her as your recommendations?---I do.

And at this meeting you scheduled another meeting with Ms McKenna?---Yes, we did.

25 And you've heard her evidence that before that meeting she sent you an annotated version of the statement of advice with a number of comments?---Yes.

30 And those comments included pointing out to you that implementing your advice would have resulted in her losing about half a million dollars?---Yes. At that meeting I was on the phone. I was a little bit late to that meeting. I was on the phone to SASS. And that's when I discovered that it was, in fact, very clearly a deferred benefit product. I walked straight into the boardroom and I just said I'm so sorry. We've messed it up. What would you like to do? Essentially, offering her a refund. I really just wanted to neutralise the situation after realising I had made such a terrible mistake.

35 I want to play you another audio recording from that date, Mr Henderson, 10 January 2017. It's a brief audio recording, which is FPA.0006.0001.0471.

40 **RECORDED : NOT TRANSCRIBED**

45 MS ORR: So, Mr Henderson, that's another call from someone purporting to be Ms McKenna to SASS Super, made in the morning of the day of your appointment with Ms McKenna on 10 January 2017. Was that your customer service officer impersonating Ms McKenna again?---Yes, it was.

Did you instruct her to make that call?---I don't recall, but most likely.

And how many times did your employee make phone calls where she impersonated Ms McKenna?---Four or six. I think it might have been six. I was only aware of – I
5 was aware of four. I'm not quite sure about the PSSap phone calls, but it would be consistent with the other four calls.

So you say you instructed your employee to make this call. And did you do that because you had received Ms McKenna's comments which raised with you the
10 potential loss of the deferred benefit?---Yes. That – that had come up twice by her son in the second meeting and also by her annotated notes. I still didn't feel like I fully understood the product when I was asking [REDACTED] about the product. I was just getting an ambiguous response. Having heard those conversations, you know, it's quite clear to me what the product was. And that's why I called SASS
15 myself.

Mr Hosking believes – I didn't hear it myself that Mr Henderson may have just used the name of the employee. And if that is the case, that is also the subject of a non-
20 publication order.

THE COMMISSIONER: Yes. That's subject of a non-publication order and subject - - -?---My apologies.

- - - non-publication order for an evident reason, Mr Henderson?---Sorry.
25

MS ORR: So you instructed this person to make the call, but is it your evidence that you did not know that the person was going to impersonate Ms McKenna - - -?---No.

- - - when making the call?---No, absolutely not.
30

So, having received this information confirming that this was a deferred benefit scheme, again, did this employee convey that information to you prior to your meeting with Ms McKenna?---No. My meeting I think was at 4 o'clock, officially. It still wasn't making sense to me, so I – I made the phone call myself at that point in
35 time.

Having instructed your employee to make this call?---Yes.

Did you not inquire with your employee about the results of that call?---Yes. I was getting the same answer each time. It was consistently incorrect.
40

What was consistently incorrect, Mr Henderson?---My – her explanation of the product as a defined benefit, versus Ms McKenna's comments and her son's comments around it being a deferred benefit.
45

So you then made your own call to the SASS super fund. And did you do that identifying yourself as yourself?---Yes, I think I did.

Yes. And were you told in that call directly by the superannuation fund that this was a deferred benefit scheme and that withdrawing an amount at this time would result in a loss of approximately half a million dollars?---Yes.

5 And did that lead you in the meeting that occurred later that afternoon to offer Ms McKenna a full refund of her advice fees?---Yes.

Now, I had thought, but I may be wrong, that I had tendered the first recording. I have not. So I need to tender - - -

10

THE COMMISSIONER: I don't think so, Ms Orr.

MS ORR: - - - both of those recordings.

15 THE COMMISSIONER: So can you give me the - - -

MS ORR: The doc IDs.

THE COMMISSIONER: - - - ID numbers.

20

MS ORR: Yes, I can, Commissioner. If I could give you – the first one was FPA.0006.0001.0476, and that was a telephone call on 7 November 2016.

THE COMMISSIONER: That will become exhibit 2.204.

25

**EXHIBIT #2.204 TELEPHONE RECORDING DATED 7/11/2016
(FPA.0006.0001.0476)**

30

MS ORR: And the second recording was FPA.0006.0001.0471, a telephone recording from 10 January 2017.

THE COMMISSIONER: That becomes exhibit 2.205.

35

**EXHIBIT #2.205 TELEPHONE RECORDING DATED 10/01/2017
(FPA.0006.0001.0471)**

40

MS ORR: Now, Ms McKenna made a written complaint. You responded to that – I am sorry – you will just need to - - -?---Yes.

Yes. And you responded to that complaint in writing?---I did.

45

And in that written response you drew Ms McKenna's attention to her entitlement to make a complaint to the Financial Planning Association of Australia?---I did.

At that time, you were a member of the FPA?---I was.

You've given evidence today that you are no longer a member of FPA. When did you cease to be a member of the FPA?---I think it was 30 June '17.

5

And why?---I didn't feel heard through the complaints process. I felt like I wanted to express my side of the story. And I suppose it was a protest to not being heard. Nevertheless, I still submitted and continue to submit myself to that complaints process. And I do intend on becoming a member on its completion.

10

So you don't want to be a member while the complaint is working its way through the process, but once it's resolved you intend to be a member again?---Yes.

Why?---I really want to make sure that the systems and processes of the business are covered off. And I felt that the – that the structure and code of ethics around the FPA can assist us in fulfilling that objective. This has been one heck of a learning process for us at Henderson Maxwell. We're only a small firm. And we do look to our associations for direction. So I would like to become a member again, and I would – I would like the support of the FPA as well. And – and I'm quite happy to take the – the outcome of the Conduct Review Commission on the chin and implement the changes to make sure that we have the best possible business that we can have.

15

20

25

You know, don't you, Mr Henderson, that the objects of the FPA include acting in the public interest so that clients of financial advisers can receive fair and competent advice, and also promoting and ensuring compliance with standards of professional and ethical conduct?---Yes.

30

You agree with those objects, they are worthy objects for the FPA to pursue?---Yes, they are.

Now, Ms McKenna made a complaint about you, we've heard, to the FPA. And you first heard that a complaint had been made, it seems, on 3 April 2017?---I believe so, yes.

35

Yes. Could I just show you a document which is FPA.0017.0001.1004. And we see there that you received, at 1010 to 1011, an email from Mr Mark Murphy, the Professional Accountability Manager of the FPA, notifying you of this complaint?---Yes.

40

And do you see above that email on the left-hand side that on 10 April Mr Murphy explained that the FPA would be giving you a copy of the complaint and any additional material, as well as pointing to any areas of concern that the FPA had in the context of the FPAs code?---Yes.

45

What do you know about the FPA code, Mr Henderson?---I've read the code. And I understand that code to provide us with a framework under which to provide best practice advice to clients.

And Mr Murphy went on to tell you that you would have the opportunity to make a submission?---Yes.

And then you arranged to meet with Mr Murphy on 26 April?---Yes.

5

What did you discuss with Mr Murphy at that meeting?---It was really just a factual discussion that the complaint had been received.

10 After the meeting, we can see at .1007 that Mr Murphy sent you an email thanking you for your time. If we could have 007 and 8 on the screen – and confirming that the next step would be for the FPA to provide you with a written notice about the complaint?---Yes.

And we see your response to that email on 1007. You said:

15

Thanks for the contact, Mark. I will await your letter and respond accordingly. I do request that this matter remains confidential, given my media presence and potential financial loss as a consequence of FPA publicising the investigation in any way.

20

?---Yes.

Did you expect that the FPA would keep this confidential?---I suppose I needed to understand the nature and effects of the complaint and how serious those allegations were.

25

Did you expect that the FPA would keep this confidential, even if it resulted in an adverse disciplinary finding against you?---No, I actually didn't expect them. I thought they would have published.

30

All right. Could I tender that email chain, Commissioner.

THE COMMISSIONER: Emails between Murphy of FPA and Henderson, April 2017, FPA.0017.0001.1004, exhibit 2.206.

35

EXHIBIT #2.206 EMAILS BETWEEN MURPHY OF FPA AND HENDERSON, APRIL 2017 (FPA.0017.0001.1004)

40

MS ORR: And could I take you to another email and letter, which is FPA.0018.0001.0045. We see that on 28 April Mr Murphy sent you a letter, which commences on the following page, notifying you of the complaint in writing, along with supporting material?---Yes.

45

And we see from the first page of the letter, which is 0046, that you were advised that an investigation had been initiated and that Mr Murphy was the FPAs investigating officer for the purposes of the complaint?---Yes.

5 And could I ask you to look to 0049. It's a lengthy letter, but one of the things that Mr Murphy points out to you is that – in the final paragraph:

10 *In the FPAs view, quite a lot turns on the extent to which you assert the statement of advice presented to Ms McKenna was a draft. And in the circumstances we are of the view that there is no utility in the FPA being any more specific, at this stage, until this aspect has been investigated. We are also confident that you are suitably equipped to address any of the other conduct alleged in the complaint at this time, should you wish to do so.*

15 And we see from the following page that Mr Murphy asked for a response from you by 12 May 2017?---Yes. Yes.

I tender that email and attachment, Commissioner.

20 THE COMMISSIONER: Email and letter, Murphy to Henderson, 28 April '17, FPA.0018.0001.0045, exhibit 2.207.

25 **EXHIBIT #2.207 EMAIL AND LETTER, MURPHY TO HENDERSON
DATED 28/04/2017 (FPA.0018.0001.0045)**

30 MS ORR: Now, could I be asked that you be shown FPA.0017.0001.0995. This is the response that you provided to Mr Murphy. There is an email with an attached letter. And if we could have the first page of the letter on the screen, 0047. Sorry. So we should have the – the doc IDs are not sequential. 0995 is the covering email. And then 0006.0001.0047 is the attached letter. Do we see there – I'm sorry – we don't see there. There. There we have it. So that's the first page of the letter that you sent in response, in which you describe Ms McKenna and her barrage of
35 aggressive and presumptive accusations. Do you see that in the second paragraph?---Yes, I do.

And in the fourth paragraph down you say:

40 *I feel I've made every effort to attempt to assist Ms McKenna in finding an amicable solution to her issues by reaching out on multiple occasions and making multiple offers without financial or other return to myself or my business.*

45 ?---Yes.

And in the bottom paragraph you say:

Her written response was dismissive, comprehensive to the extreme and highly disconnected from any personal relationship.

5 And you then refer to things that you have read in the press about Ms McKenna's role as a Fair Work Commissioner in a highly critical way?---Yes.

And at 0048 you tell Mr Murphy that:

10 *Ms McKenna has approached this situation with extreme hostility and treated me with her utmost disdain. I concede, though, that an error was made on her research, on her deferred benefit scheme, an extremely rare super scheme, of which only 1.2 per cent of state employees have, that could have quickly and painlessly addressed given the opportunity.*

15 Do you see that?---I do, yes. I was frustrated. I think I was reaching out to Ms McKenna on a number of occasions. And I totally understand why she didn't respond. And I certainly apologise for conveying those sentiments at the time.

20 Was it constructive for you, Mr Henderson, to write to the FPAs investigating officer describing Ms McKenna as aggressive and nit-picking and having treated you with the utmost disdain?---No, on reflection, that was – that was unfair.

I tender that letter and covering email, Commissioner.

25 THE COMMISSIONER: Email Henderson to Murphy, 12 May '17, FPA.0017.0001.0995 and letter Henderson to Murphy, 12 May '17, FPA.0006.0001.0047, together become exhibit 2.208.

30 **EXHIBIT #2.208 TWO EMAILS, HENDERSON TO MURPHY DATED 12/05/2017 (FPA.0017.0001.0995, FPA.0006.0001.0047)**

35 MS ORR: And could I then show you FPA.0017.0001.0922, an email chain from May 2017 between you and Mr Murphy, the investigating officer. And could I ask that you look in that email chain at 0925 and 0926. And can I ask you to direct your attention to what you said to Mr Murphy at the top of the right page:

40 *I think you have everything you need in terms of my position, opinion and statement. I won't be signing the stat dec at this stage. Although I have no formal issue in signing it, if needed for a court process, should the matter proceed in any form, given Donna is a lawyer and an aggressive one at that, I don't want to unnecessarily expose myself to any inadvertent technicalities at this stage. And, frankly, I think this is a storm in a teacup, but I suppose that's*
45 *out of my hands with regards FPAs opinion.*

And, further down:

5 *My response before I went on holidays was exclusively for the FPA benefit and not Donna McKenna. So I would appreciate if you didn't share my response in its entirety with her. Clearly, she would find being labelled nit-picking, inflammatory, despite it being true and publicly exclaimed. Needless to say, it wouldn't do my situation any good if you share that knowledge. I would like confirmation around that from you, please.*

10 Mr Henderson, is it really nit-picking for Ms McKenna to make a complaint after receiving advice that, if implemented, would have cost her half a million dollars?---No.

If you didn't want your views about Ms McKenna to be shared with her, why did you put them in your formal response to the FPA?---That was a mistake.

15 I tender that email and – the email chain, Commissioner.

THE COMMISSIONER: Emails between Murphy and Henderson, May 2017, FPA.0017.0001.0922, exhibit 2.209.

20

EXHIBIT #2.209 EMAILS BETWEEN MURPHY AND HENDERSON, MAY 2017 (FPA.0017.0001.0922)

25 MS ORR: Now, Commissioner, I think I have about half an hour left with this witness. I can finish now and we can have Mr Henderson return on Thursday morning, or I can carry on. I am in the Commissioner's hands.

30 THE COMMISSIONER: (1) how are we travelling for time, generally?

MS ORR: We have time to finish this witness on Thursday morning, Commissioner.

35 THE COMMISSIONER: Mr Henderson, how does that place you? Would you prefer to get it over and done with now or come back on Thursday? What do you prefer?---I would prefer to get it over and done with now, if that's a possibility and open to me.

40 Well, let's - - -?---I do have responsibilities with family.

Let's go on and see how far we get. Ms Orr, I don't guarantee I'm going to sit until we finish, but let's just see how far we get - - -

45 MS ORR: Thank you, Commissioner.

THE COMMISSIONER: - - - as we go.

MS ORR: Mr Henderson, are you familiar with the FPAs code of ethics?---Yes, I am.

5 Can I ask that you look at that document, which is FPA.0001.0001.0098. And we see from 0105 to 0106, if they could both be brought on the screen, that the FPAs code of ethics consists of 10 principles – eight principles, I’m sorry. Eight principles of the code of ethics. And the first principle is client first, requiring you to place the client’s interests first?---Yes.

10 Do you consider that you did that when recommending that Ms McKenna rolled over her superannuation into a self-managed superannuation fund?---Notwithstanding the error, yes, I do believe that that was the intention, and my actions, yes.

15 It was the intention, but I think your evidence earlier, Mr Henderson, was that that advice was not in her best interests?---In regards to the deferred benefit product, absolutely not.

20 And the second principle of the FPAs code of ethics is integrity, which requires you to provide professional services with integrity. Do you consider that you did that when your employees were impersonating Ms McKenna on the phone?---On a personal level, yes, I believe I acted with integrity. I do not believe my employees acted with integrity. And I do take responsibility for those employees. So that would be questionable, yes.

25 And the fifth principle is professionalism, which requires you to act in a manner that demonstrates exemplary professional conduct. And do you consider that you did that when you responded to Ms McKenna’s complaint by describing her as nit-picking and dismissing her complaint as a storm in a teacup?---I believe that was a personal conversation and I think in a more general sense, yes, I act professionally, but that
30 was clearly not a professional email.

I tender that document, Commissioner.

35 THE COMMISSIONER: Exhibit 2.210, FPA Code of Professional Practice, FPA.0001.0001.0098.

**EXHIBIT #2.210 FPA CODE OF PROFESSIONAL PRACTICE
(FPA.0001.0001.0098)**

40

MS ORR: And could I ask that you now be shown FPA.0017.0001.0013. The communications that we’ve looked at just previously were in May 2017 between you and Mr Murphy, the investigating officer. But in June 2017 we see here you
45 contacted Mr Dante De Gori. He is the CEO of the FPA?---Yes.

And we see on the first page in this email at 0013 that you said to Mr De Gori:

This is a very disappointing process after my many years of support for the FPA, but whilst I've tried being open and honest about the situation, I'm afraid my support for the FPA is at a conclusion. Mark –

5 Who is the investigating officer –

appears to have his own agenda and there is zero support for members. I am very disappointed with this process and the FPAs treatment of members over a seemingly minor matter that was dealt with prior to the FPAs involvement by returning the client to their original position by fully refunding the statement of advice fee. No funds were invested.

10
15 So you considered Ms McKenna's complaint to be a minor matter?---I did at the time, and I think in hindsight that was poor judgment. I felt if I had put the word "draft" across the statement of advice, and I discussed that with her, that could have been a simple solution to the whole issue. I acknowledge now that that was poor judgment.

20 I'm interested in what you say in the next line of this email, Mr Henderson. You say to Mr De Gori:

My peers would be interested in the workings of this process and what it means to be a member of the FPA.

25 Was this a threat to complain to other FPA members about the handling of this complaint?---No, not at all. This was – that comment was directly in relation to my experience with the AFA, who had just offered a counselling service to financial advisers. I just wanted to be heard. I wanted to be able to verbally express my side of the story. And I – I never got to do that, apart from through submissions. And I
30 communicate much better – I felt like I could communicate better orally. I just wanted to talk to someone about it, really. It was really in regards to what support and counselling do the FPA provide in respect to understanding the process and – and a general sort of mental support around going through the complaints process. It was extremely stressful.

35 Were you hoping to influence Mr De Gori to intervene in the investigation of Ms McKenna's complaint?---No. No.

40 Why did you write to the CEO about this outstanding complaint against you?---I was reaching out in a state of desperation, because I felt I just wanted to be heard.

45 Well, you were being heard all over the place with respect, Mr Henderson. You were writing emails to Mr Murphy, and I've taken you to a number of them. And it appears from the first line of this email – you say to Mr De Gori:

Your talk with Mark appears to have aggravated the situation, rather than assist.

So had you suggested to Mr De Gori that he communicate with the investigating officer in an attempt to intervene in this handling of this complaint?---I wasn't attempting to do that. I just wanted to talk to Mark face-to-face. I wanted him to interview me over the process so I could express what happened from my side orally.

5

I tender this email, Commissioner.

THE COMMISSIONER: Emails between Henderson and De Gori of FPA of June '17, FPA.0017.0001.0013, exhibit 2.211.

10

EXHIBIT #2.211 EMAILS BETWEEN HENDERSON AND DE GORI OF FPA, JUNE 2017 (FPA.0017.0001.0013)

15

MS ORR: Mr Murphy finalised his report of his investigation in October 2017?---Yes.

20

And that report is at FPA.0019.0001.0537. And Mr Murphy made a number of findings as part of his investigation. If we turn to 0541, we see that one of his findings was that when you presented the statement of advice to Ms McKenna, you intended her to rely on it?---Yes.

25

And at 0543 Mr Murphy said:

30

I am of the view that the member has not been as helpful as he could or should have been in response to the FPA investigation. He has not conveyed a sense of transparency, genuine reflection and engagement as a professional, despite me and fellow investigating officer, Miss Finnegan, meeting with the member on 26 April 2017 to pre-emptively address this aspect.

And then Mr Murphy gives examples to support that view. Do you see that?---Yes, I can see that, yes.

35

And, also on that page, Mr Murphy says that after concluding his investigation into the matter, at the bottom of the page:

40

I am of the view that the member has a case to answer in respect to a number of breaches. In identifying particular breaches, I have endeavoured to address causes, rather than symptoms, in order to achieve the most practical professional regulatory outcome.

45

And in the following pages Mr Murphy identifies a list of possible breaches in which he considers that you have a case to answer, breaches of the FPA code of ethics, and practice standards. You know that? And, finally, at 0559, Mr Murphy says:

5 *In all of the circumstances, I contend there is a strong and reasonable inference that the member's conduct stemmed from a lack of objectivity or a conscious decision to place his own interests before those of the client when the client trusted otherwise. It is not apparent that the member would not have made the same recommendations if not for his conflicts. It is not apparent that the member based all judgments on the complainant's relevant circumstances.*

Do you see that, Mr Henderson?---I can see that, yes.

10 I tender the investigator's report, Commissioner.

THE COMMISSIONER: Report, Conduct Review Commission, FPA.0019.0001.0537, exhibit 2.212.

15

EXHIBIT #2.212 REPORT, CONDUCT REVIEW COMMISSION (FPA.0019.0001.0537)

20 MS ORR: And you provided a response to the investigator's report, Mr Henderson?---I did, yes.

25 And that document is FPA.0006.0001.0681. Were you assisted by a lawyer in preparing that response, Mr Henderson?---I was, and I would probably suggest that the comments made by Mr Murphy about not being helpful were probably a result of having the wrong lawyer on board. I did choose a different lawyer after reading those comments. It was not my intention to not be transparent. I wanted to be transparent and open throughout the process. I then switched lawyers and I was represented by somebody different at that point.

30

So you blame your lawyer for that?---No. No.

- - - Mr Henderson?---I don't blame my lawyer for any of this.

35 Good?---I'm to blame for this.

There's a significant change in tone, I want to suggest to you, in this submission to any of your previous communications with the FPA?---Mmm.

40 And why do you say we see that change of tone in your response?---I truly wanted to be transparent and take responsibility for the – for what had happened. I, too, was frustrated at the response. The first response, there were certain documents I tendered to – to my lawyer at that time. They were not provided, and I – I then made some changes to my legal representation at that point, to make sure that we were open in admitting where I had made mistakes. And I wanted to be transparent and take ownership and accountability for what had happened with Ms McKenna.

45

So with your lawyer's assistance you make a number of acknowledgements and apologies in this document. Is that right?---Yes. I've – I've apologised a lot throughout this process, and I highly regret what had happened.

5 And, having acknowledged a number of issues in this document, you address the different breaches that Mr Murphy had said you had a case to answer for. And for each one in this document you submitted either that it should be dismissed completely on the basis that it didn't constitute a breach, or that you did not have a case to answer, or it should be characterised as a minor instance of unsatisfactory
10 conduct and your case should be summarily disposed of?---Yes, I had to seek advice around that.

Okay. I tender that document, Commissioner.

15 THE COMMISSIONER: Henderson response to investigator's report FPA.0006.0001.0681, exhibit 2.213.

20 **EXHIBIT #2.213 HENDERSON RESPONSE TO INVESTIGATOR'S REPORT (FPA.0006.0001.0681)**

MS ORR: And in November 2017, following on from Mr Murphy's investigation report and your response, the FPA issued you with a notice of disciplinary
25 proceedings?---Yes.

And after that your lawyers negotiated an outcome to those disciplinary proceedings with the FPA?---Yes.

30 Could I take you to FPA.0005.0001.0001. This is an email which attaches an agreed proposal to resolve the disciplinary proceedings. If we could turn to 0002, we will see the first page of that proposal. And at 0003 we see that as part of this proposal you agreed to a finding that you had failed to take due care in delivering professional services, in that you failed to adequately ascertain the nature of Ms McKenna's
35 SASS account?---Yes.

And at 0004 you agreed to a finding that you failed to consider whether Ms McKenna's current superannuation strategy could have met her objectives, needs and priorities?---Yes.
40

And at 0007 you agreed to a finding that your recommendations were not adequately tied to Ms McKenna's objectives, needs, priorities and personal circumstances?---Yes.

45 And at 0008, you agreed to a finding that your recommendations did not identify why the Henderson Maxwell managed account service was suitable for Ms McKenna?---Yes.

And at 0010 you agreed to a series of sanctions, including that you would train your staff and review your current practices, and appoint an independent expert to review those changes?---Yes.

5 And we see at 0011 that it was agreed that, in consideration of you complying with undertakings and warranties set out in the sanctions, that the FPA would be restrained from publication of your name in connection with the disciplinary proceedings and the outcome of the matter, including the agreed sanctions?---Yes.

10 And in March this year this proposal was submitted to the Conduct Review Commission?---Yes.

That's an independent body connected with the FPA?---Yes.

15 I want to just take you to that, but first I tender that document, Commissioner.

THE COMMISSIONER: Email and attachment concerning agreed disposal of CRC disciplinary proceedings, FPA.0005.0001.0001, exhibit 2.214.

20

EXHIBIT #2.214 EMAIL AND ATTACHMENT CONCERNING AGREED DISPOSAL OF CRC DISCIPLINARY PROCEEDINGS (FPA.0005.0001.0001)

25 MS ORR: The chair of the Conduct Review Commission wouldn't accept this proposal, would he, Mr Henderson?---No.

He thought that you needed to have some further sanctions imposed?---Yes.

30 And, in particular, he thought that it wasn't consistent with the outcome of the disciplinary proceeding for you to engage in public media appearances for 12 months following the imposition of the sanctions?---Yes.

35 And what was your reaction to that proposed additional sanction?---We asked – I can't remember the specific verbiage around that, but we did ask for some modification around that.

You weren't prepared for the matter to be dealt with on that basis, were you, Mr Henderson?---We did ask for some modification on it, yes.

40

Has the disciplinary proceeding now been resolved, Mr Henderson?---I – not definitively, no.

45 Why not?---I think there's still a matter or two outstanding of final sign-off. I would have to ask my legal representative as to where that's at.

Well, can I assist by showing you a final document, which is FPA.0019.0001.0013. This is an email dated 13 April this year, with an attachment. It's an email sent by your lawyer to the FPA about 10 days ago?---Mmm.

5 And on the first page we see that your lawyer says to Mr Bacon at the FPA:

Mr Henderson proposes that the matter be summarily disposed of on the basis that the FPA expresses concerns regarding Mr Henderson's conduct, and that he acknowledges those concerns and agrees to certain sanctions.

10

?---Yes.

And, in the page that follows, we see that your lawyer has provided a revised version of the agreed proposal that we saw previously. And we can see, as we look through that revised document, that you no longer accept any of the findings that I took you to earlier. All of those have been reframed on the basis that you acknowledge that the FPA has some concerns about those matters?---Yes. I think we're going to rely on the independent report.

20 So have you resiled from your earlier acceptance that you breached those FPA standards, Mr Henderson?---We accept that there's concerns around those, yes.

But you've resiled from your proposal to accept findings about those matters?---I would have to seek legal advice to answer that one accurately, but we did seek to alter the final outcome of that, yes.

25

We see, don't we, in this document that the agreed findings have been replaced with agreed outcomes which acknowledge FPA's concerns?---Yes.

30 You gave instructions to adopt this course?---I will say yes.

Yes. And so all this time later, following Ms McKenna's complaint to the FPA in March 2017, the complaint remains unresolved?---My understanding was that – was it verbally resolved and it was just waiting on the stamp.

35

There is no formal resolution of that complaint, is there?---There is no formal resolution as of today, no.

Thank you. I have no further questions, Commissioner.

40

THE COMMISSIONER: Do you tender that last document, Ms Orr?

MS ORR: I'm sorry. I do. Thank you, Commissioner.

45 THE COMMISSIONER: Email of 13 April '18 and attached revised summary disposal agreement, FPA.0019.0001.0013, becomes exhibit 2.215.

**EXHIBIT #2.215 EMAIL OF 13 APRIL 2018 AND REVISED SUMMARY
DISPOSAL AGREEMENT (FPA.0019.0001.0013)**

5 <RE-EXAMINATION BY MR WOODS [4.27 pm]

THE COMMISSIONER: Mr Woods.

10 MR WOODS: A mere handful of questions, I believe, Commissioner.

Mr Henderson, I want to ask you a couple of questions about some documents that have been provided to the Commissioner and are on the Commission system, but have not yet been tendered. Can I ask that, firstly, the document that's identified as
15 LOA signed in its file name be brought up on the screen. Could you identify that document, please, Mr Henderson?---That is a letter of authority signed by Donna McKenna to enable staff members of Henderson Maxwell to inquire on her behalf.

Yes. And it indicates it was signed on 7.11.2016. And that was your first meeting
20 with Ms McKenna. Is that correct?---Yes.

And what was your understanding of – sorry – secondly, I want to bring up on the screen – I tender that document, firstly, sorry, Commissioner.

25 THE COMMISSIONER: Yes.

MR WOODS: And secondly, a letter called research - - -

THE COMMISSIONER: Just before we go on, it was not, I think, put to Ms
30 McKenna, was it? Does anything turn on that? No? Well.

MR WOODS: I don't believe so.

THE COMMISSIONER: Exhibit 2.216 will be document described as letter of
35 authority, McKenna to Henderson Maxwell, bearing date 7 November '16.

**EXHIBIT #2.216 DOCUMENT DESCRIBED AS LETTER OF AUTHORITY,
MCKENNA TO HENDERSON MAXWELL DATED 7/11/2016**
40

MS ORR: I don't want to be seen to say nothing turns on it, Commissioner. I have
no idea whether anything turns on it. What I do know is it was not put to Ms
45 McKenna.

MR WOODS: Yes. That's correct, it wasn't.

MR WOODS: And secondly, the document that's – that has the file name Research – now, can you identify what that document is, please, Mr Henderson?---That's a file note just to say that the letter of authority was sent to PSSa and SASS on 7 November.

5

Where is that file note taken from?---That's our client management system.

All right. I tender that document, as well, Commissioner. And that's the last one to tender.

10

THE COMMISSIONER: Exhibit 2.217 – just one moment – will be file note concerning Ms McKenna, 7 November '16.

15 **EXHIBIT #2.217 FILE NOTE CONCERNING MS MCKENNA DATED 7/11/2016**

MR WOODS: Now, Mr Henderson, are you aware whether or not that letter of authority was received by State Super?---I don't believe it was. In my phone conversation on 10 January, I did make a comment that they should have it on file and she said she couldn't find it.

20

This was in a telephone conversation with State Super?---Correct.

25

All right. And I now want to ask you a couple of questions about the implementation and whether or not the meeting on 14 December – you have made some comments to the Commission earlier about your – the nature of this advice that was provided and that it had the tabs on it to be signed. Was there another meeting to come after this meeting on 14 December 2016?---Yes, there was.

30

All right. And what's your evidence in relation to whether or not this would have been implemented had it not been – the error pointed out to you by Ms McKenna?---I did say to Ms McKenna's son that I would follow it up myself. I did, in fact, follow it up myself on 10 January. And part of the process, as Ms McKenna stated, also, is that the client does take away the statement of advice, and we do rely on a – a discussion with the client. And I also said that I would follow up on that State Super product, which I did.

35

All right. You – just another issue. You have made a comment a little bit earlier about the apologies and the refund. I won't put each of them to you, but there were a number of occasions that Ms McKenna gave evidence about on which she was apologised to you by you. Do you accept that those were times where you apologised for this error?---Yes.

40

And refunded the money within – refunded the fee within days?---Absolutely, yes.

45

And just finally, I think, in relation to your FPA membership. You – what was the date on which you ceased being a member of the FPA?---I think it was 30 June '17, but I would probably need clarification on - - -

5 And - - -?---On that.

All right. Was it around that date?---I think it's financial year to financial year.

Yes?---I can't be certain.

10

So did you just let it lapse, did you?---Yes.

And what's your understanding about whether you have obligations to engage in the ongoing processes of the FPA, given that you're not a member?---My advice has
15 been that I do not need to continue to engage with the FPA.

Why are you doing so?---I would like this to be dealt with. I would like it to be brought to a close. And, if that means disciplinary proceedings, then I'm willing to accept that. I would also like to continue to be a member of the FPA. I do see it as
20 the – you know, one of the two main associations. And I want to be associated with, having not only a membership, but using this experience as an opportunity to improve the business.

Thank you, Mr Henderson. Nothing further, Commissioner.
25

THE COMMISSIONER: Thank you, Mr Woods. Mr Henderson, you told me earlier in your evidence that you had considered terminating the employment of the employee who impersonated Ms McKenna. Is that right?---Yes.

30 We've heard the recording of the conversation that employee had with the relevant fund. Is that right?---Yes.

Now, it seems to me that the employee who had impersonated Ms McKenna either told you what she had found out or she did not. Is there any other available outcome,
35 other than that she told you what she found out or she did not?---I don't believe so.

If she did not tell you what she had found out, would you consider that to be a serious failure in performance of her duty?---Yes.

40 If she told you what she had found out, does it follow that you did not act on what she told you?---I think her explanation of the product continued to confirm my understanding of the product.

Yes?---That's where I got lost.
45

Mr Woods, is there anything arising out of that? Ms Orr?

MS ORR: No, thank you, Commissioner.

THE COMMISSIONER: Very well. Thank you, Mr Henderson. You may step down. You're excused further attendance.

5

<THE WITNESS WITHDREW

[4.35 pm]

10 THE COMMISSIONER: And we will stand over until 9.45 on Thursday next.

MATTER ADJOURNED at 4.35 pm UNTIL THURSDAY, 26 APRIL 2018

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