



**AUSCRIPT AUSTRALASIA PTY LIMITED**

ACN 110 028 825

**T:** 1800 AUSCRIPT (1800 287 274)

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

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

**TRANSCRIPT OF PROCEEDINGS**

---

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**

**9.45 AM, THURSDAY, 26 APRIL 2018**

**Continued from 24.4.18**

**DAY 18**

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

**MR S.R. MEEHAN appears for the Financial Planning Association of Australia**

**MR A. WOODS appears for Henderson Maxwell**

**MS C. WIVELL PLATER appears for the Association of Financial Advisers**

THE COMMISSIONER: Ms Orr.

MS ORR: Commissioner, the next witness is Mr Dante De Gori, the chief executive officer of the Financial Planning Association of Australia.

5

<DANTE DE GORI, AFFIRMED

[9.45 am]

10 <EXAMINATION-IN-CHIEF BY MR MEEHAN

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

15 MR MEEHAN: May it please the Commission.

Can you state your full name?---Dante Giuseppe De Gori.

And your business address?---75 Castlereagh Street, Sydney.

20

Are you the chief executive officer of Financial Planning Association of Australia Limited?---I am.

25 And have you received a summons to appear before the Commission to give evidence?---I have.

Do you have a copy with you in the witness box?---I do.

I tender that, Commissioner.

30

THE COMMISSIONER: Exhibit 2.218 will be the summons to Mr De Gori.

**EXHIBIT #2.218 SUMMONS TO MR DE GORI**

35

MR MEEHAN: Mr De Gori, have you made a witness statement dated 20 April 2018 for the purpose of this Royal Commission hearing?---I have.

40 And is that statement in answer to Rubric 2-22?---It is.

Do you have a copy of that witness statement with you in the witness box?---I do.

Do you say the contents of that witness statement are true and correct?---I do.

45

I tender the witness statement of Mr De Gori, dated 20 April 2018, Commissioner.

THE COMMISSIONER: That statement will be exhibit 2.219.

5 **EXHIBIT #2.219 WITNESS STATEMENT OF MR DE GORI DATED  
20/04/2018**

MR MEEHAN: May it please the Commission.

10 THE COMMISSIONER: Thank you. Yes, Ms Orr.

**<CROSS-EXAMINATION BY MS ORR**

**[9.47 am]**

15

MS ORR: Mr De Gori, you've been the CEO of the FPA since March 2016?---That's correct.

20

And before you were the CEO you were the general manager, policy and conduct and the general manager, policy and government relations - - -?---That's correct.

25

- - - of the FPA. What did those roles involve?---Those roles involved running the policy and government relations area of the association, developing submissions, advocacy work on behalf of the FPA, as well as overseeing the teams responsible for managing the professional standards conduct process of the FPA.

30

Were you a financial adviser before you commenced with the FPA, Mr De Gori?---I've held an authorised rep status and representative status with organisations prior, yes.

And which organisations were they?---ClearView Retirement Solutions and through guardian at Astron Limited.

35

Did you hear the evidence of Ms McKenna and Mr Henderson, Mr De Gori?---I did.

And I want to start by asking you some questions about the way the FPA handled Ms McKenna's complaint. Did you know Mr Henderson before the FPA received Ms McKenna's complaint?---Yes.

40

How did you know him?---My first encounter with Mr Henderson was actually an appearance Sky to appear on a show. He was a guest panel member with me. That would have been about 10 years ago. And he's, obviously, a member of the FPA, and so I've also appeared on his show that he hosted on Sky Business. And he also attended our congress in 2016 and was a MC at that congress.

45

He was an MC at your congress and you've appeared on his television show over the last 10 years?---Not over the last 10 years. We first met about 10 years ago.

I'm sorry, 2010 you said. So over the last eight years. You said you first met him when you were both panel members on a television show?---Yes. Sorry. 10 years ago before 2010, before I worked at the FPA, was the first time I met him. Since then I have appeared on his show perhaps maybe half a dozen times.

5

Would it be fair to say that Mr Henderson is quite a prominent member of the FPA?---I wouldn't say he's a prominent member. He is, obviously, a high profile member, in that he's known, but he's not a prominent member in respect that he has engaged with the FPA on a regular basis.

10

But he has been the MC at your Congress?---Yes, he has.

And Ms McKenna first contacted the FPA with a complaint about Mr Henderson in March 2017?---Correct.

15

And she made a written complaint to the FPA about Mr Henderson's conduct?---Yes.

So that was over a year ago?---Yes.

20

Has that complaint been resolved?---Not concluded, no.

Has the FPA imposed any disciplinary consequences on Mr Henderson?---Not at this stage.

25

Why not?---Because the matter has not concluded.

Why has it taken so long for the complaint to resolve?---Matters like this do take time, unfortunately. There are a number of elements to the process. Specifically, since the turn of the year, the matter has stalled to some extent, specifically because of the following reasons: (1) our investigation officer, Mr Mark Murphy, who was noted in the evidence and was conducting the investigation, has left the organisation just before Christmas. And we have, obviously, in terms of resourcing, replaced Mr Murphy since then. But that, itself, has also stalled, the – the procedure. And there also has been the – the hearing that took place in March in respect to the matter around Mr Henderson hasn't concluded. So there has – since March, there has been ongoing discussion between the FPA and Mr Henderson in respect to the particulars of that – of that matter.

30

35

Ongoing discussion as to the particulars of the matter. Do you mean ongoing discussion as to a mutually agreeable resolution to the complaint?---To the extent that the matter needs to have both parties in agreement in order for it to be submitted to the Conduct Review Commissioner, yes, that's correct.

40

The matter has been submitted to the Conduct Review Commissioner, though, hasn't it?---It has. That's correct.

45

So what is the ongoing discussion about, then?---The chair of the Conduct Review Commission was not – was not happy with the proposed agreement, and has, effectively, instructed the parties to come to a – a revised position, based on his amendments to that.

5

Why do you say the matter has stalled, because Mr Murphy left before Christmas. Mr Murphy had finalised his investigation report before he left and made his recommendations, hadn't he?---Yes, he has.

10 So what impact has Mr Murphy's departure had on - - -?---The impact is just in terms of resourcing and able to continue the matter without an investigation officer in that role. And that matter has had to be taken up by head of professionalism in addition to, obviously, his other roles. And it was just a matter of, obviously, replacing Mr Murphy, which we have now, as of March.

15

Why is it necessary, Mr De Gori, for there to be some agreement or consensus with your member about the resolution of their complaint?---There isn't a need. However, the – there is an availability through the disciplinary regulations for – through the investigation officer, through the FPA, to approach the member in respect to a summary disposal of the matter, which allows for the opportunity, subject to agreement of both parties, to present that option to the Conduct Review Commission chair as a way of settling the matter without potentially having to go through the process of a full hearing. So that option's available and that option was – was taken.

25

That option was taken, despite Mr Murphy recommending to the contrary?---Mr Murphy had recommended that – at that point in time when he conducted the report that it was unlikely. And that was a lot to do with the fact that Mr Henderson was uncooperative with the process. Obviously, subsequent to that, Mr Henderson's response to that investigation report provided an opportunity, potentially, for Mr Henderson to agree for the fact that there were sanctions – sorry – agree that there were breaches. And, as a result of that, the opportunity for the FPA to consider how we could better or improve – correct Mr Henderson's conduct was – was seen as an opportunity to – seen as an opportunity to use the summary disposal option within disciplinary regulations.

30

35

So, now that Mr Henderson has become cooperative, you're trying to reach an agreement with him. Why not just impose some sanctions on Mr Henderson, Mr De Gori?---According to the disciplinary regulations, that process, including the sanctions, is done through the summarily disposal process, which includes confirmation and agreement to breaches, as well as appropriate sanctions.

40

Well the summary disposal is one of the ways with dealing with your complaints. It's not the only way, is it?---No, it's not. When - - -

45

Sanctions can be imposed?---Sanctions can be imposed. That's an option available to us, but that would be something that would be done through the Conduct Review Commission panel.

5 Yes. So why has the Conduct Review Commission panel not imposed sanctions on Mr Henderson?---It may still. At the moment, the agreed terms have not been – well, the terms have not been agreed.

Yes. And that's what I'm trying to understand?---Yes.

10

Why do you need agreed terms? Why can you not ask the panel to impose sanctions on Mr Henderson?---We – the option in terms of the summary disposal requires that there's at least the opportunity of agreed terms that can be presented to the Conduct Review Commission chair. The chair may disagree with those and then it would

15

proceed to a panel where they would determine the breaches and – and sanctions.

Why are you so focused on summary disposal of this complaint?---I'm not focused on summary disposal in this case.

20

Why is the FPA so focused on summary disposal of this complaint?---It's an avenue that was taken and we're exploring that option. We're not confined to having to do that only; it's just the option that we've explored since February. And if it doesn't conclude to our satisfaction, then it will go through to a panel hearing.

25

How much longer will you explore that option before going to a panel hearing, Mr De Gori?---I think it's very imminent that that decision will be made in respect to those – in respect to what's in front of us at the moment. So we have revised terms from Mr Henderson and his party. And the decision about whether or not to accept them has not yet been made.

30

Are you aware that those revised terms resile from acknowledgements of findings that had previously been proposed by Mr Henderson?---Sorry? Could you repeat that?

35

Are you aware that the proposed findings put forward by Mr Henderson now resile or retract acknowledgements that Mr Henderson was previously prepared to make about findings on the part of the FPA against him?---Yes, I'm aware of that.

40

And does that suggest to you that those – the revised proposed terms will be or won't be accepted?---If you're asking for my opinion of that, I mean, it's very hard to see how we could accept those, but that's – again, that process hasn't concluded.

45

How long will it take you to decide whether to accept those?---The professional standards team will have to decide that and it will be imminent, yes.

All right. Could I ask you some questions about the way the handling of this complaint has unfolded. We've – I've gone to the end of the process but can I – -?---Yes.

5 - - - take you back to earlier in the process now. We know that Mr Murphy was assigned by the FPA to investigate the complaint. And we know that Mr Murphy gave details of the complaint to Mr Henderson early in the piece. Is that right?---That's right.

10 And we know that Mr Henderson provided a written response to the complaint?---Yes.

And he did that in May last year?---Yes.

15 Have you read the written response to the complaint that was provided by Mr Henderson?---Not in complete detail, no.

All right. Could I ask you to look at that document, which is FPA.0006.0001.0047. This is a letter that I took Mr Henderson to in his evidence, Mr De Gori, a letter  
20 dated 12 May from Mr Henderson to Mr Murphy?---Yes.

Do you say you have read this letter?---I have seen this letter. I have not read it completely.

25 You have not read – you have not read this letter?---No.

Did you hear what I said to Mr Henderson about the contents of this letter on Friday?---Yes. I – yes, I did.

30 You heard what I said to Mr Henderson about his description of Ms McKenna in this letter as being aggressive and nit-picking?---Yes. Yes, I did.

Is that how you would expect a member of the FPA to respond to a complaint by a client?---Absolutely not.

35 Do you know if anyone within the FPA indicated to Mr Henderson, following receipt of this letter, that his response was inappropriate?---No, I'm not aware.

40 Not aware that anyone did?---No. I would imagine Mr Murphy would have, but I – I'm not aware of that. I can't confirm that.

And, having sent this letter to the FPA on 12 May last year, Mr Henderson emailed you directly?---Yes.

45 Can I ask that you be shown FPA.0017.0001.0013.

THE COMMISSIONER: That one is exhibit 2.211. The earlier document you referred to is exhibit 2.208.

MS ORR: Thank you, Commissioner.

5

And we see there the email from Mr Henderson to you on 20 June, Mr De Gori, which starts:

10 *Dante, your talk with Mark appears to have aggravated the situation, rather than assist.*

Did you speak to Mr Murphy about Ms McKenna's complaint prior to receiving this email?---I had, yes.

15 Why did you do that?---Mr Henderson had contacted me and indicated that he was frustrated with the process. And I had a conversation with Mr Murphy, which was around just ensuring that if there are any processes or procedures that he needed to inform Sam of, that he would do that to keep him abreast of the process and timelines.

20

What frustrations with the process did Mr Henderson express, Mr De Gori?---He wasn't aware of what was happening and what the next steps were.

25 And what wasn't he aware of? We've seen that he had provided a written response to - - -?---Yes.

30 - - - Ms McKenna's complaint?---Yes. I mean, that's what he had said to me. The - in terms of what he - what he wasn't aware of or what he didn't know, he didn't express them in detail to me. I informed him that I could not interfere with the matter and the only thing that I - that I can do is ensure that if we promise to deliver something to a member, that we ensure that we keep that promise.

35 The FPA is very concerned to ensure that it keeps its promises to its members, isn't it, Mr De Gori?---Yes, we do.

I suggest to you that the FPA is more concerned with that than with administering a rigorous disciplinary system in relation to its members?---I don't agree with that at all. I think the process does need to be rigorous. It does need to ensure procedural fairness for all parties. And this is just a matter of ensuring that if the member is informed about a process in the step and is promised something in terms of a deliverable, then that should be met.

I want to be very clear?---Yes.

45 What did you say to Mr Murphy in your talk with him which is referred to in this email?---That he was to continue the investigation as he sees fit and that if there was

anything in terms of timelines and – and processes that could be explained to Mr Henderson, that, obviously, that he does that.

5 So as the CEO of the FPA, you had that discussion with the investigating officer of Ms McKenna's complaint?---Yes.

Do you understand that that could be seen by others, Mr De Gori, as interfering with the investigation of that complaint?---It could be seen that way, yes.

10 Did you consider that before you consulted with the investigating officer about Ms McKenna's complaint against Mr Henderson?---Yes. I was very careful that it was not about the particulars of the matter. And as I – as I said, it was to ensure that Mr Murphy was to continue his investigation as he sees fit, but, yes, in respect to ensuring that deliverables were met in terms of whatever they may be.

15

Mr Henderson says to you in this email:

*My peers would be interested in the workings of this process and what it means to be a member of the FPA.*

20

What did you understand Mr Henderson to be referring to there?---I'm not too sure what to – to have made of that. It – it wasn't – I did not respond to this email. And I took that to be a response in itself. I was not happy with, obviously, the tone of that email and what Mr Henderson was potentially insinuating in that email.

25

What did you think he was insinuating by that sentence I've just read to you?---That he would – that he would likely go and inform others of his dissatisfaction with the FPA, or something along those lines.

30 And Mr Henderson goes on to say in this email to you:

*I just hoped everyone would get a fair go. And dealing with the FPA has been more difficult than ASIC and FOS. And you're a member organisation.*

35 ?---Yes.

So how did you react to that comment from Mr Henderson?---Well, as I said, I didn't respond to Mr Henderson. And if – if that's his opinion, that's his opinion. I mean, I take a lot of pride in the fact that we do have rigorous processes. And it's not meant to be a – an easy process in terms of going through the disciplinary process. It is, obviously, confronting, there is a complaint against you. And members may feel defensive as a result of that. So if it is a difficult process, well, then that's actually a good thing.

45 Did you convey any dissatisfaction to Mr Henderson, as one of your members, with the content of this email?---No. As I said, I did not respond, which in itself sent the message, in that I felt that it wasn't – it wasn't appropriate to respond in any way.

What message did you think that you were sending by not responding to this email, Mr De Gori?---That I wasn't acknowledging his – his accusations, if you like, about the way we're conducting the process.

5 But you didn't say anything to that effect to Mr Henderson?---No.

Could I ask you to look at FPA.0017.0001.0004. Now, this is a set of emails on 3 July 2017. The last email that I took you to was 20 June 2017. So we can see here on the second page that on 3 July 2017 Mr Henderson wrote again to you:

10

*Dante, another two weeks have passed since speaking with John Bacon and I've had no letter from Mark Murphy as promised outlining the issues as they relate to the Code and no offer of a further meeting date. This entire experience and complaints process continues to be stressful, painful, drawn out and without resolution.*

15

Now, who is Mr Bacon, firstly, Mr De Gori?---He is the head of professionalism. He is Mark Murphy's manager.

20 So he's Mr Murphy's manager and the head of professionalism at the FPA?---Yes.

And Mr Henderson and Mr Bacon had been speaking?---Yes.

25 What was the purpose of them speaking?---I believe it – it may be in relation to Mr Bacon explaining to Mr Henderson the process of the complaint.

Well, is it usual for the subject of a complaint to speak with the FPAs head of professionalism while the investigation into the complaint is ongoing?---It may from time to time, yes.

30

Why?---If there's a question of process that may be needed to be explained or a question about the investigation officer himself, then it is possible sometimes for the head of professionalism to at least offer an explanation as to what the process may be.

35

Do you not see a danger, Mr De Gori, in the subject of a complaint communicating directly with the investigating officer and your head of professionalism while the investigation into that complaint is ongoing?---But they are the ones investigating the complaint.

40

And that's precisely the problem, Mr De Gori. Do you not see a problem? Do you not think that a member of the public looking at this from outside would be concerned about the subject of the complaint having these direct discussions with those who are investigating him?---As I said, the investigation officer and the professionalism team are the ones investigating the complaint and must, obviously, speak with the member and the complaint as a result of the investigation.

45

We're not talking about any formal discussions, any formal interview about the subject matter of the complaint. Instead, it seems that Mr Henderson is just calling the investigating officer and your head of professionalism?---And he may be inquiring about the – about the next step in the process or – I'm not sure what the inquiry was about.

Well, your response to this email that you receive from Mr Henderson on 3 July about this was to apologise to him:

10           *Sorry. This is very disappointing. We will follow this up immediately.*

?---Yes.

15           What were you apologising to Mr Henderson for, Mr De Gori?---If he had been – allegedly, he had promised to receive something two weeks ago and had not received it. So, as I've mentioned earlier, in terms of at least ensuring that if there was a – a promise for deliverable on a service or – and this goes across the whole organisation – then I think it's important that we keep to that promise.

20           Were you aware that by this time, on 3 July, Mr Henderson had left the FPA, he was no longer a member?---No. I was not aware at that point, no.

25           In your view, does a member who ceases their membership but is the subject of a complaint about something that happened while they were a member have a continuing obligation to participate in the FPAs disciplinary process?---Yes, they do. And in this case, from what I know now, Mr Henderson, I understand, did not renew his membership or pay his membership. Under the disciplinary regulations and the constitution, a member is – remains a member whilst subject to a conduct matter, investigation or a complaint, irrespective of whether he or she chooses to pay their membership. So, for all intents and purposes, he is still a member.

Well, he was not still a member, was he?---No, he was. He still is a member today.

35           I'm sorry, could you explain that?---According to - - -

So he had ceased to renew his membership, you said?---Yes, he did not renew his membership.

40           Yes?---Did not pay.

Yes?---But the constitutional allows the FPA to continue to treat the individual as if he is a member for the purposes of our disciplinary processes.

45           Okay. All right. I tender that document, Commissioner.

THE COMMISSIONER: Emails between Henderson and De Gori 3 July '17, FPA.0017.0001.0004, exhibit 2.220.

**EXHIBIT #2.220 EMAILS BETWEEN HENDERSON AND DE GORI DATED 03/07/2017 (FPA.0017.0001.0004)**

5 MS ORR: So you have these email communications with Mr Henderson in July 2017. And it's not until October 2017 that Mr Murphy delivers his report into Ms McKenna's complaint?---That's correct.

10 Why did it take so long for Mr Murphy to deliver that report?---I'm not sure the complete details, but, obviously, the process does require Mr Murphy to complete his – his investigation and then produce the report.

15 Would you agree that Mr Murphy's report was quite damning of Mr Henderson's conduct?---Yes.

Can I ask you to look at that report, which is FPA.0019.0001.0537.

THE COMMISSIONER: And exhibit 2.212.

20 MS ORR: Thank you.

Could I ask that you be shown within that 0559. You've read this report, I assume - - -?---Yes, I have.

25 - - - Mr De Gori? And we see at the bottom of 0559 that, among other things, Mr Murphy concluded that:

30 *In all of the circumstances, 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 apparent that the member based all judgments on the complainant's relevant circumstances.*

35 And at 0561, we see Mr Murphy expressing his view about summary disposal. Mr Murphy concluded that:

40 *As the matter currently stands, the FPA is of the view that it is unlikely the alleged breaches will be suitable for summary disposal. The FPA does not believe that any of the alleged breaches, if proven, would constitute a minor instance of unsatisfactory conduct and be capable of being dealt with summarily.*

45 And Mr Murphy, therefore, made a recommendation, pursuant to clause 57 of your disciplinary regulation, that the FPA be directed to commence disciplinary proceedings under part 7 by issuing a notice of disciplinary proceedings against Mr

Henderson on the basis that he had a case to answer in respect to more than one allegation of breach. And he had referred to those breaches in the report?---Yes

Do you see that, Mr De Gori?---Yes.

5

So the references within Mr Murphy's recommendations to section 7.3 and 7.4 are references to the FPAs disciplinary regulation?---That's correct.

Can I ask that you be shown that disciplinary regulation, which is  
10 FPA.0001.0001.0046. It's exhibit 6 to your statement. Now, this is the version of the disciplinary regulation that was in force at that time?---Yes, that's correct.

And it's also the version that's currently in force?---That's correct.

15 And it deals with disciplinary proceedings against members of the FPA?---That's correct.

And those disciplinary proceedings usually begin with the making of a complaint by a client?---That's correct.

20

But they can also begin with a complaint by the FPA itself?---That's correct.

Now, at 0055, we see in clause 25 that the FPA is required to investigate every complaint?---That's correct.

25

And one of the purposes of the investigation is to determine whether the conduct complained of is capable of constituting a breach?---Yes.

And we see from 0050 that a breach means a breach of the FPAs codes and policies or its constitution or regulations?---That's correct.

30

And at 0059, we see that a member of the FPA is required under clause 47 – here we have it – to provide reasonable assistance to the investigating officer in connection with a complaint or investigation?---Yes.

35

Do you think Mr Henderson complied with that duty, Mr De Gori?---No.

Were there any consequences for him as a result of failing to comply with that duty?---There – there currently – obviously, disciplinary proceedings have commenced, so there will be an outcome of consequence.

40

Well, that outcome will be referable to the complaint made by Ms McKenna, won't it?---Yes.

45 What will happen in respect of Mr Henderson's failure to comply with this duty imposed on your members?---Well, that would be part of the outcome.

I see?---Yes.

And at 0060, the investigating officer's report is given to the chair of the Conduct Review Commission?---Yes.

5

What's the Conduct Review Commission, Mr De Gori?---Effectively, it's our private tribunal established to implement the disciplinary regulations.

10 And how is it constituted?---Through the – the FPA board, through the constitution. So the constitution empowers the board to establish the regulations and the establishment of the Conduct Review Commission to oversee them.

15 Who sits on the Conduct Review Commission?---The Conduct Review Commission is made up of a chair and a deputy chair. And there's a selection of panel members, 15 of which have been selected by the board, who are chosen from time to time to appear when panels are required or when hearings have been called.

20 And we see from 0061, the following page, in clause 53, that after reading the investigating officer's report the chair can decide to summarily dismiss a complaint or decide to commence disciplinary proceedings?---That's correct.

And Mr Murphy's report recommended the latter course, that disciplinary proceedings be commenced?---That's correct.

25 And we see from 0064 that, once disciplinary proceedings are commenced, one way that they can be dealt with is by summary disposal under section 7.3?---That's correct.

30 And that involves the member discussing the complaint with the investigating officer and agreeing to propose a particular course of action to the Conduct Review Commission for approval?---That's correct.

35 And at 0065, we see that another way that disciplinary proceedings can be dealt with is by a summary finding of a minor instance of unsatisfactory conduct under section 7.4?---That's correct.

And that can only happen if the FPA and the member apply to the Conduct Review Commission for the matter to be dealt with in that way?---That's correct.

40 And, finally, at 0066, we see that a disciplinary proceeding can be dealt with by proceeding to a hearing before a disciplinary panel?---Yes.

And if that happens, the disciplinary panel will make findings?---That's correct.

45 And we see from 0071, that the disciplinary panel imposes sanctions?---That's correct.

So that's the course that has not been taken in relation to Mr Henderson?---It can still be taken.

And to date has not been?---Correct.

5

So on 17 November last year, the Conduct Review Commission directed the FPA to commence disciplinary proceedings against Mr Henderson?---That's correct.

10 And if we turn to FPA.0020.0001.2822, we see an email dated 20 December last year from Mr Murphy to Ms McKenna, copied to Mr Bacon, your head of professionalism. And in this email, Mr Murphy tells Ms McKenna that disciplinary proceedings arising from her complaint have been set down for hearing on 8 March?---Yes.

15 The reference is to the 8 March 2017, but I understand it to be a reference to 8 March this year?---Correct.

20 Now, was this the first time that the FPA told Ms McKenna about the outcome of the investigation into her complaint?---I'm not aware of any other correspondence that Mr Murphy may have had with Ms McKenna, but I'm aware of this.

Okay?---Yes.

25 And why did it take over a month after the decision to institute disciplinary proceedings to tell Ms McKenna?---I'm not aware of the reason why.

And in this email, Mr Murphy tells Ms McKenna that he won't be working at the FPA beyond 21 December - - -?---Yes.

30 - - - 2017. Why did Mr Murphy leave the FPA?---He moved to another organisation, yes.

35 We saw earlier that Mr Murphy had expressed the view that the matter was not suitable for summary disposal under section 7.3 or 7.4?---That's correct.

But that was precisely what the FPA went on to attempt to do?---I – I believe that that was in response to Mr Henderson's response to the investigation report. And that was the course of action that the professional standards team took.

40 I tender that email, Commissioner.

THE COMMISSIONER: Email Murphy to McKenna, 20 December '17, FPA.0020.0001.2822, exhibit 2.221.

45

**EXHIBIT #2.221 EMAIL MURPHY TO McKENNA DATED 20/12/2017  
(FPA.0020.0001.2822)**

MS ORR: Could I ask that you now look at FPA.0019.0001.0061, which is an email from Mr Bacon to Claire Plater, Mr Henderson's lawyer, on 21 December last year, towards the bottom of the page. Do you see that, Me De Gori?---At the bottom of the page?

5

Yes?---Yes.

And Mr Bacon says:

10 *Hi, Claire. Further to our conference on Tuesday and directions conference yesterday, please find attached for your review on a without prejudice basis our draft proposed application to the Commission pursuant to section 7.3 of the FPA disciplinary regulation.*

15 ?---Yes.

And we've seen that that's the provision providing for summary disposal?---Correct.

20 So why was the FPA so keen, in the face of Mr Murphy's recommendation, to negotiate an outcome with Mr Henderson?---I think the option that I understand the process took from here is there is a directions hearing with the Conduct Review Commission chair - - -

25 Yes?--- - - - to consider appropriate next steps under the disciplinary proceedings.

Yes?---And it was put to the Conduct Review Commission chair the option of a summary disposal, which he has, obviously, permitted for that process to - to be undertaken, and to allow for discussions to occur - - -

30 Yes?--- - - - as an option.

35 My question to you was about why the FPA was so keen, in the face of Mr Murphy's recommendation to the contrary, to negotiate an outcome on this complaint?---I wouldn't say it was - we - the FPA was keen. I think the FPA looks at all opportunities to see where we can not only discipline the member, but how we can rectify the member's behaviour. This is still within the bounds of disciplinary proceedings. And it is all subject to the agreement of the Conduct Review Commission chair. And if there's an opportunity to consider an outcome that not only sanctions the member in respect to the breaches of the Code, but also considers significant sanctions around changes to the member's behaviour and conduct to address or correct, then the FPA does want to consider ways in which we can change conduct and behaviour, as well. And summary disposal is one of those options.

45 An option that requires negotiation and agreement?---Agreement to the breaches.

Agreement by the member?---Correct. Agreement to the breaches and agreement to the sanctions.

Thank you. I tender this document, Commissioner.

THE COMMISSIONER: Email Bacon to Plater, 22 December '17, FPA.0019.0001.0061, is exhibit 2.222.

5

**EXHIBIT #2.222 EMAIL BACON TO PLATER DATED 22/12/2017  
(FPA.0019.0001.0061)**

10

MS ORR: The negotiations with Mr Henderson about summary disposal of the discipline proceeding continued into the new year?---Correct. That's my understanding.

15 And could I ask that you be shown FPA.0019.0001.0756. This is an email on 5 February at page 0757 from Mr Bacon to Ms McKenna?---Yes.

Updating her on her complaint?---Yes.

20 And so by this time it's approaching a year since Ms McKenna has made her complaint?---Yes.

And Mr Bacon tells Ms McKenna that the FPA is trying to reach an agreed outcome with Mr Henderson for summary disposal under section 7.3?---I'm sorry, I can't see that. Are you referring to the bottom email?

25

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

30 And we see that Ms McKenna responded to this email at 0756 and 0757. If we could have both of those pages on the screen. And Ms McKenna noted that there had been considerable delay in dealing with her complaint. Do you see that down the bottom of the first page, Mr De Gori?---I am just trying to find it, I'm sorry.

35

THE COMMISSIONER: Second-last line on the first page?---It is off the screen.

MS ORR: Down the bottom of the first page, Mr De Gori?---First page, bottom. Yes.

40 And do you see on the second page that Ms McKenna expresses concerns about the lack of information that's being provided to her, and she requests copies of Mr Henderson's response to her complaint and Mr Murphy's investigation report?---Yes.

45 Did the FPA provide Ms McKenna with a copy of Mr Henderson's response to her complaint?---I believe we have not.

Why not?---Again, that's the discretion – I'm not sure of what has occurred with Mr Murphy when he was investigation officer in terms of any of the information he may have provided to her or not provided, but it is the discretion of the investigation officer to determine what information is provided to the complainant. Obviously, 5 keeping them informed of the process is important, but in terms of the information that is shared, it is at the discretion. And the reason for that is that once disciplinary proceedings have actually been enacted, the matter is actually a matter between the FPA and the member. And – and the complainant is potentially, obviously, a witness to the proceedings. And I know in some cases the investigation officer may decide 10 not to issue some of this information, because the complainant may be used as a witness in – in a potential hearing, which is still possible in this particular matter.

But Mr Henderson's response to Ms McKenna's complaint was provided to the FPA well before any disciplinary proceedings were enacted?---That's correct. But on the 15 potential – there's always possibility that the matter will go to a hearing. So once the investigation officer decides that he is not – he or she is not going to dismiss the matter, which, obviously, in this case we have not, and, therefore, it's going to the Conduct Review Commission for disciplinary proceedings to commence, one of those options is very much a hearing. As a result of that, the investigation officer 20 needs to use their discretion as to what information the – the complainant has in respect to their appearance – or potential appearance at the hearing.

What you're describing is all in relation to general practice, Mr De Gori?---Yes.

25 Did you see the email that I showed Mr Henderson on Friday in which Mr Henderson specifically requested that the FPA not provide Ms McKenna with a copy of his response?---I did see that, yes.

30 Is that why it was not provided to Ms McKenna?---Absolutely not, no.

I see. Do you think it's important for a complainant to be kept up to date about the status of their complaint?---Absolutely.

35 It's required by the FPAs disciplinary regulation, isn't it?---That's correct.

And the disciplinary regulation also requires the complainant to keep confidential any matter that you provide in connection with the handling of the complaint?---That's correct.

40 So why couldn't you provide material to Ms McKenna on a confidential basis?---Again, that's an option available to the investigation officer. But as – my understanding, as – as I mentioned, that if the proceedings would go to a hearing, there are some information that is, obviously, our evidence for the purposes of 45 running the complaint against the member that may not be beneficial for the complainant to be aware of for the purposes of them presenting as a witness to that hearing. It – it's – it is absolutely at the discretion of the investigation officer as to how they see the matter proceeding.

Ms McKenna in this email asked for an opportunity to be heard before the Conduct Review Commission, didn't she?---I'm aware of that, yes.

And we see Mr Bacon's response to that request within this email chain at 0756.

5 There we have the email from Mr Bacon in response on 7 February. And Mr Bacon told Ms McKenna just under halfway through that email that she did not have a right to be heard in the proceedings, because she was not a party to the proceedings brought by the FPA against Mr Henderson?---Yes.

10 Is that generally the FPAs position, that a complainant has no right to be heard in relation to the disciplinary proceedings arising from their complaint?---The complainant is heard. The complainant has been involved in the preparation of the complaint and the matter that the FPA will run against the member. On my understanding of this particular request by the complainant was to be heard orally at  
15 a hearing.

Yes?---And that is subject to the Conduct Review Commission panel as to whether or not they wish to hear from the witness or any witnesses. So that's a decision that has to be made by the panel members themselves and the Conduct Review  
20 Commission chair. It's not a decision of the FPA. So what Mr Bacon's comments there expressing are in context of the fact that she doesn't have a – she's not automatically going to be appearing and giving oral evidence. That will be subject to whether or not the – the panel and the CRC chair want to hear further evidence from her. Her written statement and – and evidence that she has produced are, obviously,  
25 produced as part of our matter against the member. So she is heard in that context. I believe this is in relation to being heard – her being heard orally.

Yes?---Which is not necessarily the right, going – in terms of it occurring in all instances.  
30

Yes. And it's not the practice of the Conduct Review Commission to permit that to occur, is it?---My – my understanding is that witnesses have been called during hearings.

35 I am not talking about the process of giving evidence; I'm talking - - -?---Sorry.

- - - about the process of making oral submissions at the hearing. Is it the FPAs practice to permit a complainant to address the Conduct Review Commission?---Not to address, but to appear as a witness, but yes.  
40

And we see that Mr Bacon tells Ms McKenna in this email that it's not the CRCs practice in these matters to formally hear complainants on the question of summary dismissal – I'm sorry – summary disposal?---That's correct.

45 Why is that?---It just not been my experience – the experience of that has occurred. I'm not sure why. That's a matter for the Conduct Review Commission.

Do you think a complainant should have an entitlement to be heard on whether or not their complaint is going to be summarily disposed of?---I believe that the complainant is informed of that approach and is asked for their input or feedback in respect to that, at least in writing. So my understanding is that the Conduct Review Commission would, potentially – well – sorry – let me rephrase that. The Conduct Review Commission would ask about whether or not the complainant would be satisfied with that or if they have any concerns with that.

Well?--- - - - approach.

- - - that's not what Ms McKenna was told. Ms McKenna was told that it wasn't the CRCs practice to formally hear complainants on the question of summary disposal?---Formally appear and give evidence, yes. But in terms of their feedback or input in terms of the fact that the matter is being summarily disposed, I believe, yes. So I believe Ms McKenna has been asked for her feedback on that.

Yes?---Yes.

We see a reference in this email to the FPA being interested in her views?---Correct.

I tender that email chain, Commissioner.

THE COMMISSIONER: Emails between Bacon and McKenna, 5 to 7 February '18, FPA.0019.0001.0756, exhibit 2.223.

**EXHIBIT #2.223 EMAILS BETWEEN BACON AND McKENNA, 05/02/2018 TO 07/02/2018 (FPA.0019.0001.0756)**

MS ORR: And by a few days after this email, on 12 February this year, the FPA and Mr Henderson had agreed on proposed terms of summary disposal of the complaint?---That's my understanding. I'm not sure of the exact date, but yes.

Yes. That was in February this year?---Right. Okay.

And there was an agreement between the FPA and Mr Henderson on proposed sanctions for Mr Henderson?---I would imagine that would be part of that process, yes.

And before I show you a document about those agreed sanctions, I just want to ask you about the different types of sanctions that the FPA has the power to impose?---Right.

If we just go back to the disciplinary regulation at exhibit 6 to your statement, FPA.0001.0001.0046, we see at 0088 that the sanctions that are available are set out

in schedule B to the disciplinary regulation. The member can receive a reprimand?---Yes.

5 The member can receive an apology – I'm sorry. I'm sorry. The complainant can receive an apology. I apologise. The member can have their membership suspended?---Yes.

The member can be required to undertake remedial education?---Yes.

10 The member can be required to pay a fine of up to \$20,000 per breach?---Yes.

The member can be required to make an undertaking?---Yes.

15 The member can be expelled from the membership?---Yes.

Or the member can be required to undertake a period of supervised practice?---Yes.

20 And there has then a reference to disciplining in some other way, having regard to the nature of the breach?---Yes.

So which of those possible sanctions do you regard as being the most serious?---Expulsion.

25 And what kinds of breaches might warrant expulsion from membership?---Well, in particular, any major harm caused to a – to a consumer, a client; deliberate harm, fraud, systemic breaches of the code. So very serious cases of conduct that – that the member has which would mean that the member should not be fit to practise.

30 And since 1 January 2013 – so over the last, approximately, five years – how many members have been expelled from membership as a result of disciplinary proceedings against them?---I believe there has been about six, according to my – it's in my witness statement. Sorry.

35 You tell us in your witness statement that there were five?---Five, sorry. Yes.

40 Are you aware of any licensee that requires its employees or authorised representatives to be members of the FPA?--- I'm only aware of one directly that I have knowledge of, who's the chairman of the FPA, who runs his own licence. But, otherwise, I'm aware that there are licensees that – that may require membership of a professional body as a requirement of membership – sorry – as a requirement of employment with them, but, whether it is the FPA directly, I am not aware of any that exclusively of the FPA.

45 So if a financial adviser is expelled from the FPA, the most serious sanction that - - -?---Yes.

- - - you can impose, they can still practise as a financial adviser?---Expulsion from the FPA does not remove their authorisation or licence, but it could lead to their removal of authorisation or – or employment, depending on conditions of their licensee or employer.

5

Yes. But you've just said that you're not aware of any licensees, other than the one run by your chair, that requires its members to be – I'm sorry – requires its employees - - -?---Mandates.

10 - - - or authorised representatives to be members of your association?---That's correct. However, we have licensees who have signed a memorandum of understanding with the FPA which part of that memorandum of understanding is you will not employ or authorise an individual who has been disciplined or banned – sorry – banned or expelled by the FPA.

15

So that relates to new engagements by licensees, does it, of people that you've already expelled?---Yes, it does. Yes. Yes.

20 But there's nothing that requires a licensee to take any action in relation to an employee or authorised representative that you have expelled from membership?---Not directly, no. No.

25 So do you accept my proposition to you that if a financial adviser is expelled from the FPA, they can still practise as a financial adviser?---Absolutely, yes. Yes.

25

And if a member fails to abide by the sanctions that the FPA imposes, what can the FPA do to enforce them?---If the member does not abide by the sanctions, then they can be expelled.

30 So it's still the only thing you can do is expel them from your membership?---Yes.

And when a member is subject to disciplinary proceedings by your association, are the findings and sanctions made public?---Yes, they are.

35 You say in your statement that the FPA is required by your constitution to keep confidential all complaints and disciplinary matters concerning its members, unless the matter becomes subject to the publication provisions in part 13 of your disciplinary regulation?---That's correct.

40 Can I take you to part 13, back in this same document, at 0073. So part 13 begins by saying that the FPA shall publish the outcome of complaints, investigations, disciplinary proceedings and reviews?---Yes.

45 And then at clause 130, down the bottom of that page and over to the following page, clause 130 deals with publication following a disciplinary panel determination?---Yes.

And it requires the name of the member to be published?---That's correct.

Is there any requirement for the name of the member to be published where the matter is summarily disposed of under section 7.3?---There isn't a requirement, but  
5 it's an option available to the CRC chair to have the member's name published, yes.

So no requirement, but it's an available option?---Correct.

And what about where the matter is disposed of under section 7.4?---I would need to  
10 check that, but I don't believe it's – it would be published. I don't believe it could be published.

So that's where there's a summary finding of a minor instance of unsatisfactory  
15 conduct?---Correct.

That's not published?---Not the name of the member, no. Correct.

Now, could I take you to a document which is RCD.9999.0019.0001. Now, this is  
20 the document that's published on the FPAs website showing the outcome of complaints, investigations and disciplinary proceedings?---Yes, that's correct.

And on the first page we see that, since 2009, there have been, on my count, 18  
determinations by the Conduct Review Commission?---That's correct.

25 And in seven of those cases the identity of the adviser has been kept confidential?---That's correct.

And on the second page, 0002 - - -?---Sorry –can I just clarify why.

30 Yes?---Would you allow me to do that.

Yes?---That is a result of the way the disciplinary regulations were at the time. So  
we've had a number of versions of the disciplinary regulations. Up until 2011, the  
35 disciplinary regulations did not permit the Conduct Review Commission chair and the FPA to publish the names. That has now been reversed. So it is automatic that a finding made by the CRC panel hearing is automatically published. So there is no discretion around that.

40 So when do you say that position changed, Mr De Gori?---I believe it was as a result of the disciplinary regulations issued in 2011.

Yet we see in this document that there are still advisers whose names have been kept  
confidential in 2012 and 2014?---That's correct. I am aware on one occasion the –  
45 the CRC chair made a decision not to - - -

I'm sorry. I didn't realise that we had the following page on the screen when I asked  
you that question - - -?---Right.

- - - which will have made it difficult to answer. I apologise, Mr De Gori. If we could go back to 0001. I was asking about the - - -?---Yes. Sorry.

5 - - - 18 determinations and sanctions. And I was pointing out to you that we can see from that table that in 2012 and - - -?---Yes.

10 - - - 2014 the advisers are still kept confidential?---Yes. I'm not – I'm not aware of why those other ones have been – have not been published. I'm sorry. I don't know the answer – the reason for that.

15 So it can't be the case that since 2011 you've automatically published the identity of advisers that are the subject of your CRC determinations and sanctions?---Well, obviously not, according to that table, but it was my understanding that disciplinary regulations have been changed, so that they are to be published as a result of – as a result of a disciplinary matter being concluded.

All right. So you're unable to explain these references in this document?---No.

20 THE COMMISSIONER: One of them is someone who is expelled. Is that right?---Sorry?

Fifth down, CRC\_2013.1, effective date 4 January '14. Somebody was expelled?---That's correct.

25 The name is "blinded"?---Yes, that's correct.

30 MS ORR: So you can see at the bottom of this page, Mr De Gori, that this document shows it was updated in February 2018. So as at February 2018, the FRC – the FPA, I'm sorry, had not identified the adviser that was expelled in 2014 that the Commissioner has just referred to?---In 2014 or the – yes, that's correct. That's correct.

35 Now can we turn to the second page, 0002, where there's a table reflecting that eight advisers have been the subject of summary disposal - - -?---Yes.

- - - since 2010?---Yes.

And sanctions were imposed in each of those cases, including fines?---Yes.

40 And, in all of those cases, the identity of the adviser has been kept confidential by the FPA?---That's correct.

45 Yet, the page on your website, on which these matters are published, is headed Professional Accountability. Do you see that, Mr De Gori?---Yes, I do.

And how is it possible to hold members accountable for their misconduct if their identity is kept confidential when they are found to have breached the FPAs codes

and policies?---The – the professional accountability looks at a number of measures to try and ensure that conduct can be corrected, as well as, obviously, sanctioned accordingly. And the FPA, for – for points that you’ve already mentioned in terms of our ability to stop people practising, we don’t have that right to take away  
5 someone’s licence, but we do have the opportunity to educate and to change and influence conduct and behaviour. Obviously, one of those things we can do is – is to expel a member. And that person then is no longer with the FPA and is able to then go and continue practising without any education and/or professional standards to adhere to at all. So one of the measures, obviously, with a – with this type of  
10 approach is to engage the member to improve and change their conduct in order to enable them to actually adhere to professional standards and provide high quality advice, rather than not. And part of that engagement or motivation is that their names are not published as a result of that. And that has been the approach taken with the FPA.

15 You talked about your opportunity to educate. You have an opportunity to protect the public as well, don’t you, Mr De Gori?---Absolutely. Absolutely.

20 And isn’t the ultimate purpose of your disciplinary process to protect members of the public who seek financial advice?---Yes, absolutely.

25 And can a disciplinary process really achieve that purpose if the FPA keeps the results of so many disciplinary matters that involve findings of breaches by your members - - -?---Yes.

30 - - - confidential from the public?---We can in – in the respect that those are confidential on the basis that the member does change their behaviour and address those issues and concerns, either through education or through supervision or whatever it may be. So – and if they don’t, then the threat of publication and expulsion is still there.

35 But isn’t a member of the public entitled to know that they have already breached your policies, codes and procedures? You might have views about what they’re going to do in the future, but isn’t a member of the public entitled to see who these people are that you have imposed sanctions on for those breaches?---Again, the disciplinary regulations enable a number of options in terms of trying to address poor conduct and misbehaviour. And the FPA is here trying to measure, in terms of the appropriate – through the Conduct Review Commission, the appropriate process forward in managing that conduct and behaviour. And where that individual is a  
40 threat to the public, then, yes, absolutely. They should be not only banned and expelled but named. But, again, we can’t stop that individual continuing to practise. So we have not changed that individual’s behaviour. This publication is there, but it doesn’t mean that the – the licensee – or it doesn’t mean that the member of public is necessarily looking at this publication to determine whether or not they will seek  
45 advice from the individual.

What use is this page to a member of the public, Mr De Gori?---Well, it's available and is there – it is a public knowledge and we would hope that they would use that.

5 But what does it tell them?---Well, obviously, those members that are banned. It has given the names of those members.

10 But what does it tell them about all the other members that you've taken action against on the first table on this page?---Well, they can – well, it doesn't tell them about the individual member, obviously, no. But it does provide information about the – the matters that – that took place. And, as I said, these individuals here can still be expelled if they don't actually address their conduct.

And you expel people for the most serious forms of misconduct?---Yes.

15 And you do that to protect the public?---And the – yes, we do. Yes.

And, yet, we saw on the previous page that the public can't see who you expelled in 2014?---No.

20 I tender that document, Commissioner.

THE COMMISSIONER: FPA professional accountability actions and outcomes at February 2018, RCD.9999.0019.0001, is exhibit 2.224.

25

**EXHIBIT #2.224 FPA PROFESSIONAL ACCOUNTABILITY ACTIONS AND OUTCOMES AT FEBRUARY 2018 (RCD.9999.0019.0001)**

30 MS ORR: Can I come back, Mr De Gori, to Mr Henderson, and the document containing the proposed terms for summary disposal of the disciplinary proceeding against him, which is FPA.0005.0001.0001. If there are difficulties locating that document, which is an email, could we try FPA.0005.0001.0002, which is the document attached to the email.

35

THE COMMISSIONER: All forming part of exhibit 2.214.

MS ORR: That's right.

40 We now have the email. And could I ask that Mr De Gori be shown the following page, 0002, which is the first page of the annexure. And then I would like to take you to two pages within that annexure, Mr De Gori, which is 0010 and 0011. If they could both be brought up. We see the proposed terms for summary disposal of Mr Henderson's disciplinary proceeding. So these are terms, that we could see from the  
45 email which came up on the screen before, were put forward by Mr Bacon, your head of professionalism, to the Conduct Review Commission?---Yes.

And the agreed sanctions put forward to the Conduct Review Commission, we see, starting on 0010, the first was that Mr Henderson be admonished for breaches of your Code of Practice?---Yes.

5 The second was that Mr Henderson undertake that within seven days he pay all outstanding fees, subscription and levies due to the FPA for the 2017 and 2018 membership year?---Yes.

10 What sort of sanction is that, Mr De Gori?---It's in relation to his membership fees.

Is it appropriate for Ms McKenna's complaint to be dealt with by a sanction which requires him to pay you his outstanding membership fees?---It – for the – in terms of the member, that's an obligation of the member according to the constitution. So I would imagine that's a direct result of that obligation.

15 It's nothing to do with Ms McKenna's complaint, is it, Mr De Gori?---Not directly, no.

20 No?---But the – the matters – this matter is a matter between the FPA bringing the matter against Mr Henderson, and – and, therefore, the FPA does – or can look at conduct or issues outside of the original complaint, as well.

I see. So Mr Henderson was to undertake to pay his outstanding membership dues. He was to undertake to continue to do all acts and things necessary to continue to meet the eligibility criteria and general obligations for membership?---That's correct.

25 He was to warrant that he has taken corrective action to train his staff?---That's correct.

30 And the training was in relation to the particular superannuation products and adverse consequences of rolling out deferred benefits under superannuation schemes?---That's correct.

35 He was to undertake that he would review and modify his current practices and process to ensure that he complies with various FPA rules?---That's correct.

And then he was, in clause 5, to undertake to appoint an independent expert satisfactory to the FPA to conduct certain reviews?---That's correct.

40 And, finally, he was to undertake that he would report to the FPA in the following periods from the date of summary dismissal within three months the findings of any review or gap analysis from the independent expert, an action plan and a timetable to implement the action plan and, within nine months, confirmation of the implementation of the action plan?---That's correct.

45 And then we see, under the heading Other Matters, that the parties, this being the FPA and Mr Henderson, agreed that:

*In consideration of Mr Henderson complying with those undertakings and warranties, the FPA agreed to be restrained from publication of the member's name in connection with the disciplinary proceedings and the outcome of the matter, including the agreed sanctions*

5

?---That's correct, provided that he does comply with those sanctions.

10 So the FPA offered to keep Mr Henderson's name confidential?---I'm not aware as to how that particular component got into – into the final terms. It could be quite possible that Mr Henderson requested that. I'm not aware of how that - - -

Well, whether the FPA offered it or Mr Henderson required it, the FPA agreed - - -?---That's correct.

15 - - - that it would keep Mr Henderson's name confidential?---Subject to complying with those sanctions, that's correct.

20 Yes. And is that – is that the only mechanism that you have to ensure that your members comply with their sanctions, that you can reveal their identity?---It's our strongest. It is our strongest, yes.

25 Thank you. Can I turn then to RCD.9999.0018.0001. And this is a letter that your head of professionalism, Mr Bacon, wrote to the Royal Commission on 18 April this year?---Yes.

And at page 3 of that letter, 0003, we see at the bottom that:

30 *The FPA reconfirms that the subsequent disciplinary proceedings against Mr Henderson resulting from Ms McKenna's complaint have not yet been determined or summarily disposed of. It is an ongoing matter. And, again, the FPA asks that the matter be treated confidentially, as any publication by the Royal Commission identifying Mr Henderson would render the CRC process worthless to Mr Henderson and cause significant damage to the reputation of Mr Henderson, undermine the process of the CRC, and damage the FPAs*  
35 *relationship with other members.*

?---Yes.

40 What did Mr Bacon mean when he said that:

*...publication by the Royal Commission would render the CRC process worthless to Mr Henderson.*

45 ?---I believe that that would be in relation to the fact that in order for – in order for the disciplinary process to have a conclusion – and any participation of Mr Henderson in that process would, obviously, not – would not be forthcoming as a result of any publication of his name.

The purpose of the CRC process isn't to create value for Mr Henderson, is it?---No, it's not. No.

5 And what was the FPA concerned that Mr Henderson might do if he was identified in connection with this CRC process?---Not do anything. Not comply with any of the sanctions or proceed – proceed with the – with the process at all.

10 What do you think Mr Bacon meant when he said that identifying Mr Henderson would damage the FPAs relationship with its other members?---I am not exactly sure, except that he may be referring to the fact that members – members do expect that, until the matter is concluded, that their details and the matter of the complaint are remained confidential until its conclusion.

15 Well, they expect that it remain confidential after its conclusion, don't they, Mr De Gori?---They may wish that, but that's, obviously, not always going to be the case.

But we've seen it often is the case?---It can be the case, yes.

20 Is the FPA concerned that members might leave the FPA and go to another professional association if they find out that their name might be published in connection with a summary dismissal?---No.

25 Why should members who have been the subject of adverse findings by your organisation have an entitlement to confidentiality?---They shouldn't. There isn't an entitlement to confidentiality. But it is our biggest leverage in terms of actually impacting on change and conduct – or change to conduct.

It's your only leverage, isn't it, Mr De Gori?---It is our main leverage, yes. Yes.

30 I tender that document, Commissioner.

THE COMMISSIONER: Letter Bacon to solicitors assisting the Commissioner, 18 April '18, RCD.9999.0018.0001, exhibit 2.225.

35

**EXHIBIT #2.225 LETTER BACON TO SOLICITORS ASSISTING THE COMMISSIONER DATED 18/04/2018 (RCD.9999.0018.0001)**

40 MS ORR: In March this year, those agreed summary disposal summary and sanctions that I took you to were submitted to the Conduct Review Commission?---Yes.

45 And the Conduct Review Commission refused to accept them?---Correct.

And when do you expect Ms McKenna's complaint to be resolved?---I can't give you a deadline, but it's imminent. It has got to be imminent. In the sense that if the

decision about whether the FPA will accept the – the current revised terms – and, also, we need to determine whether or not the CRC will accept those.

5 If I could just have a moment. Could I ask that you be shown FPA.0019.0001.0145. This is a transcript, Mr De Gori, of a directions conference before the chair of the Conduct Review Commission on 6 March this year?---Yes.

10 And can I direct your attention to 0155. And at the bottom of the page there, we see that the chair of the Conduct Review Commission at this directions conference said:

*I understand from the complainant's statement that she was attracted to approach you as a result, in part, of the media profile that you have developed. In my view, it is not consistent with the outcomes of this proceeding, having regard to the sanctions, for you to engage in public media appearances during the 12-month period contemplated in item 6 of the sanctions. Now, if you accept what I'm saying, you, as an additional sanction, will need to provide a letter to the FPA that you undertake to suspend or take leave from giving any public media appearances over the next 12 months.*

20 Did Mr Henderson, to your knowledge, provide such a letter?---No.

I tender this document, Commissioner.

25 THE COMMISSIONER: Transcript CRC directions conference, 6 March '18, FPA.0019.0001.0145, exhibit 2.226.

30 **EXHIBIT #2.226 TRANSCRIPT CRC DIRECTIONS CONFERENCE DATED 6/03/2018 (FPA.0019.0001.0145)**

MS ORR: Could I turn, Mr De Gori, to some more general questions about the FPA. You've set out in your statement the number of members of the FPA since 1 January 2013?---Yes.

35 And, since that time, you say that about 40 per cent of the financial advisers in Australia have been members of the FPA?---That's correct.

40 And the number of your members has increased from just under 8000 members to just over 11,000 members?---Yes. And – and – sorry – just to clarify, they are the practitioner members or voting members of the association.

45 Yes. What are the reasons that you think financial advisers choose to become members of professional associations like the FPA?---There are a number of reasons. In particular, with the FPA, we also have the certified financial planner designation that many members aspire to. We also, obviously, set standards, we have a code of ethics, we have education standards. And I think, as a mark of professionalism,

many individuals want to be part of a professional body to demonstrate that they are part of a profession.

5 Do you see financial advisers as being part of a profession or part of an emerging profession?---Yes, absolutely, I do.

Which of those?---Sorry. As an emerging profession.

10 An emerging profession?---Absolutely

What do you think defines a profession?---Well, individual accountability and responsibility around that. And individuals want and – to exercise their professional judgment, to be held accountable to high entry standards, to maintain their education on a very high standard basis and to, obviously, be held accountable to those  
15 standards.

Accountable to who, Mr De Gori?---Well, like, firstly, they – they’ve got to be accountable to themselves and they’ve got to be accountable to their – to their clients, but accountable to the profession.  
20

And how are they accountable to the profession?---Well, in meeting those standards and, if not meeting those standards, then to be disciplined accordingly.

25 Are they accountable to the public?---Yes, they are. Yes.

And do you accept from the documents I’ve shown you that your processes do not make financial advisers against whom you make adverse findings accountable to the public?---No, I don’t. I think there – it’s, obviously, not an perfect system, but one of the obligations of the FPA, in my view, is that we need to – as I said, it’s an  
30 emerging profession. We have to play a role in educating members about their obligations, as well. Individual financial planners have to have a sense of – or have to be individually accountable for their actions, and they have to understand what those obligations actually are. And I think that’s part of the journey that we’re on, that many financial planners actually aren’t acutely aware of what their obligations  
35 are, they don’t actually really understand the law, let alone the – the code of ethics, as an example. And so part of our role is to educate, train, and to show them that, as well, as well as holding them accountable to that.

Well, is it consistent withholding them accountable to enter into negotiations with  
40 them that result in confidential resolutions of complaints made against them?---It can be, in respect to the fact that they do change their conduct and improve their advice and learn from the outcome. I mean, I don’t want to speak about this particular matter directly, but I think it’s important that we work with those financial planners that actually want to progress, want to actually evolve, want to actually do the right  
45 thing. I think it’s our role to try and help them with that, to show them how to do that and to hold them accountable to that. But, obviously, if that’s not a willing

participation by the individual, then, yes, they should be banned and expelled and not practise.

5 Your disciplinary processes are reliant on cooperation from the member, are they not?---They can in parts, yes.

Yes?---Yes.

10 And, but for the threat of identifying the member publicly, you rely entirely on your members to agree to the outcomes that you come up with?---To – to engage in the outcomes, yes. Yes – in the process.

15 Do you think that the public places their trust in financial advisers in the same way that they place their trust in other professionals like doctors or lawyers?---Generally speaking, not in the same way, no.

20 Why not in the same way?---Well, I think there's a couple of things. One is the – just history and time. I mean, those other professions have been around for centuries, whereas financial planning is very much a young, emerging profession. So there's, obviously, a lot of that. There's still an unfamiliarity as to what financial planning is and how it can actually help and benefit. And – and so that's an evolving transition.

25 Does the FPA actively seek to grow its membership?---I think as a membership organisation we have to always consider the membership and looking at getting members who fit the right profile to be members of the association. Only to the extent of the number of planners in the – in the country, yes.

30 But do you actively seek to grow your membership?---What do you mean by that, exactly?

Do you try and get more people to join up to become members of the FPA?---Through the website, through – yes – yes, we do.

35 Yes, you do?---Yes. Yes.

And membership fees are the chief source of the FPAs revenue?---Yes, they are. Yes.

40 Could I ask that you be shown FPA.0012.0001.1112. This is the FPAs budget for 2017 to '18?---Yes.

45 And we see from that first page – and we will need to blow it up a bit to see the figures next to Membership Revenues. But we see that you make about \$8 million a year through your membership fees?---Yes. Well, that's the budget. That's the expected revenue, yes.

That's what you expect - - -?---That's correct.

- - - to make from membership fees?---Yes.

And if we turn to 1115, we see that you expect to spend about 1 million of that on professional standards?---That's correct.

5

And you expect to spend about 1 million of that on the CEO?---No, that is not the CEO – that's the department of the CEO - - -

10 Yes?--- - - - which includes – it includes a number of things in there, including other staff of my department.

Yes?---As well as – yes.

15 But that's you and your staff?---And my staff, yes.

How many staff are there?---There's one staff in that, as well – sorry – it also includes there the bonus pool available for staff.

20 The what pool?---The bonus pool that's available for staff.

How does the bonus pool work for staff?---Well, there's a pool of money that gets set aside that is then used to discretionally provide to staff based on their performance.

25 What are the criteria for receiving a bonus?---Each staff has key performance indicators in terms of their own roles that they need to adhere to.

30 And do any of those key performance indicators relate to bringing in new members?---For some staff it does, yes. Yes.

35 All right. So we see that the office of the CEO, the budget is about \$1 million of your \$8 million and professional standards are also about a million dollars of your \$8 million. What does the professional standards budget include?---It includes the members of the professional standards team, and ,obviously, the support function of the Conduct Review Commission.

How many members are there of that team?---There are currently three members in that team, with a fourth member – a fourth member is included in that budget.

40 I want to - - -

THE COMMISSIONER: I'm sorry. I didn't hear that. A fourth member?---A fourth member is included in that budget, yes.

45 Yes.

MS ORR: I want to put to you, Mr De Gori, that investigating complaints and conducting disciplinary proceedings isn't one of the primary objects or purposes of the FPA?---It is. It is one of the objects of the FPA.

5 Do you say it's one of your primary objects and purposes?---It's equal in terms of the objects of the FPA.

Equal with what?---Well, equal with education, training and providing services and resources to members.

10

What about your marketing and communication budget - - -?---Yes.

- - - Mr De Gori? Much more than your professional standards budget?---Yes.

15 Nearly \$1.7 million. What's that directed to?---So much of that is directed to our consumer advocacy. So we run a consumer website called Money and Life that is part of one of our objects in the constitution is to promote the profession to the public. As I mentioned to you earlier, the profession of financial planning isn't as well understood by the Australian public as other professions. And we seek to, obviously – one of our core roles and one of the reasons why individuals join the FPA, of course, is that we promote the profession and educate the public about what financial planning can do. And so much of that is – is expensed to awareness with consumers.

25 So how is that role of promoting the financial advice industry or emerging profession consistent with your role as a disciplinary body in relation to the conduct of that profession?---Well, I think our role is dual purpose. It's – we are not just a disciplinary body. We have disciplinary procedures against our members, but, as a professional body, we also have to promote and educate – so we have to educate the profession, we have to promote the profession, as well as discipline the profession. They are equally important.

30 But it doesn't assist with promoting the profession to at the same time be imposing disciplinary sanctions on the profession, does it?---I – sorry – don't understand what you mean.

Well, the two things are difficult to reconcile, is what I'm putting to you, Mr De Gori, that on the one hand you're wanting to promote financial advisers?---Yes.

40 And I'm putting to you that it's difficult to do that at the same time as imposing disciplinary sanctions on financial advisers for misconduct?---I don't believe so.

You don't see any inconsistency or - - -?---Inconsistency.

45 - - - difficulty in achieving both of those objectives?---Well, it's a challenge, obviously, but we are – we do need to do both as a professional body.

Well, since 1 January 2013, your disciplinary panel has made only six determinations. Is that right?---That's correct.

5 You set out in your statement the main ways that professional conduct issues come to the attention of the FPA. And the primary method seems to be self-declarations by applicants for membership and at membership renewal. Is that right?---That is one of the ways. Media, the professional standards team, keeps a watch of the alerts from the regulators in respect to that, but, yes, self-reporting is a big component of the professional body, yes.

10 And there's also complaints, I assume?---Of course, yes.

Does ASIC ever refer matters to the FPA?---I'm not 100 per cent aware of any formal referrals, but we do have informal engagements with the – with ASIC.

15 Do they ever refer matters to you for consideration of disciplinary consequences?---I'm not aware, no.

They don't?---I'm not aware of any, no.

20 I'm sorry. When you say you're not aware - - -?---I am not aware of any - - -

- - - has that ever happened, to your knowledge?---To my knowledge, I am not aware of it happening, no.

25 Thank you. And does the FPA take any steps to seek information from ASIC about its members?---Not directly, no.

30 Why not?---I – we have – we have regular meetings with ASIC and we do talk about matters in general. And on an informal basis there may be discussions about individuals, but we don't have a formal process of requesting information about every member of the organisation.

35 But why not is my question to you, Mr De Gori?---I don't know.

40 Wouldn't you want to know if the regulator is regulating or imposing sanctions on your member?---Absolutely. And, in fact, in some cases where we know or been aware that there are proceedings or reports issued by the regulator, we have asked if they could share information on those individuals, if they are members of the FPA. We understand, obviously, ASIC are subject to their own confidential and privacy issues, but we have asked for that on occasions when there have been reports issued by ASIC - - -

45 Yes?--- - - - ..... those individuals. Yes.

So you wait until there's a public announcement by ASIC and then you follow up with some requests for information at that point?---Yes. That's correct. And many

times that's when we're first aware that there is – that that investigation has occurred, yes.

5 Do licensees ever refer matters to the FPA or notify the FPA when they've taken action against one of your members?---It is very rare for that to occur, but it has happened, I believe, on occasion, but it is very rare.

10 Over the course of these hearings we've heard evidence about a number of advisers whose employment or authorised representative status was terminated by the licensee for misconduct, or who resigned after allegations of misconduct were made against them. And they included Mr Andrew Smith, Mr John Doyle, Mr Chris Harris, Mr Bradley Meyn and Mr Adam Palmer. Are all of those people members of the FPA?---I'm not – I don't believe they are all members. They may have all been members. So some may be still members and some may have previously,.

15 So they have all been members at one point. Is that right?---I am not 100 per cent sure on all of them, but most of those names you read out, yes.

20 Did the licensees of any of those people report their concerns about them to the FPA?---No.

Does it concern you that the FPA has members whose employment has ended in those circumstances and the FPA does not know about it?---Yes, it does.

25 Do you think that the public think that the FPA is the appropriate body to make a complaint to if they have a problem with a financial adviser?---The consumer is informed about the complaint processes and in most cases that process has a number of steps. And the FPA is one of the avenues, but in many cases it's not the first avenue that consumers will take, because of the internal dispute resolution process that it needs to go through first. And then, of course, in most matters for complaints, consumers are looking for compensation as a result of loss. And that's primarily targeted to the Financial Ombudsman Service. And then in some case – some of these cases, individuals of the public will come to the FPA to seek – to determine whether or not the member – the individual is a member and, if so, lodge a  
30 complaint.  
35

But that's not generally what occurs?---In terms of the number of complaints that go to FOS, versus the FPA, absolutely not, yes. Yes.

40 Okay. All right. There's one more document I want to take you to, Mr De Gori, but before I do that, I tender the budget, Commissioner.

45 THE COMMISSIONER: FPA budget 2017/2018, FPA.0012.0001.1112, exhibit 2.227.

**EXHIBIT #2.227 FPA BUDGET 2017/2018 (FPA.0012.0001.1112)**

MS ORR: The last document is FPA.0002.0001.2515. This is the FPA Professional Ongoing Fees Code, Mr De Gori?---Yes.

5 Could you explain how this code works?---Yes. So this – this is, effectively, a standard within the complete FPA Professional Standards Code. It is a code that has been approved by the regulator, ASIC, in respect – as it says there, in respect to the Corporations Act as an option available to financial planners in – as an alternative to the opt-in provisions. And it is only enacted on members for those who register to comply with that code, the ongoing fees code. So it’s purely in relation to the  
10 ongoing service relationship that an individual has with the adviser. And the terms and conditions of this code replace that of the legal requirement under opt-in.

So it relates to ongoing fees arrangements - - -?---Correct.

15 Fees for ongoing service?---That’s correct.

And do I understand correctly that the effect of this code is that it means that a member of the FPA who registers for this code - - -?---Yes.

20 - - - which any member can do - - -?---That’s correct.

- - - does not have to comply with the requirement in the Corporations Act in section 962K of the Corporations Act - - -?---Yes.

25 - - - to give a client who is in an ongoing fee arrangement an opt-in renewal notice at the end of each two-year period?---It replaces that obligation. That’s correct.

30 And it replaces it with a ability to have a conversation with a client to clarify whether it remains suitable to provide ongoing services once every three years?---That’s part of it. The ongoing fees code actually is more broader than the opt-in requirements.

Yes?---It does also need to require that the ongoing relationship entered into is actually appropriate in the first place - - -

35 Yes, I see?--- - - - as well. And then that needs to be constantly reviewed, that the ongoing arrangement is actually appropriate and continues to remain appropriate.

And, having received that level of satisfaction, do - - -?---Yes.

40 - - - we see from 2521 that the renewal interval in clause 7.2 for the ongoing fee arrangement then becomes every three years – no less than - - -?---No less than.

- - - every three years?---That’s correct.

45 And, in terms of what needs to be done in replacement of the opt-in notice that the Corporations Act requires a client to receive - - -?---Yes.

- - - we see in clause 8.1 that the participating member is required to clarify with the client whether it remains suitable to provide ongoing services under the arrangement?---Yes, that's correct.

5 So this replaces a system under the Corporations Act which means that, having received an opt-in notice every two years, if a client does not return that opt-in notice, then the ongoing fees arrangement terminates?---Yes.

10 So that is not the situation for people who register for this code?---It doesn't operate exactly the same way, but if they – obviously, the – under this scenario, the – the outcomes are the same, in that the arrangement would have to terminate if they don't get the arrangement renewed with the – with the – with the client. But, also, on an annual basis, the members will have to submit to the FPA evidence that the ongoing fee arrangement is still appropriate.

15 Yes?---And we can then determine whether or not it's not appropriate and to cease the arrangement .....

20 But, to be clear, the advisers don't have to serve an opt-in notice?---That's correct, yes. That's correct.

They just need to have a conversation every three years about whether the ongoing fees arrangement remains suitable?---With the client?

25 Yes?---Yes. And they also still have to abide by the fee disclosure statement obligations annually.

And is this a selling point for your membership?---It hasn't been, no.

30 How many of your members register for the code?---We have 18.

18 - - -?---Yes.

35 - - - have registered for the code?---That's correct.

I tender this document, Commissioner.

40 THE COMMISSIONER: FPA Professional Ongoing Fees Code,  
FPA.0002.0001.2515, exhibit 2.228.

**EXHIBIT #2.228 FPA PROFESSIONAL ONGOING FEES CODE  
(FPA.0002.0001.2515)**

45 MS ORR: No further questions for Mr De Gori, Commissioner.

THE COMMISSIONER: One matter that I take up, Mr De Gori. You mentioned FOS and awards by FOS. Is it a requirement of your organisation that members comply with awards made by FOS?---It is a requirement that they're members of FOS, and it would be a professional requirement that they comply with those orders, but there isn't – there isn't a direct requirement, if you like, that I could turn to any of our documents to say that.

Would it be misconduct on the part of a member not to comply with an award made by FOS?---In my opinion, yes.

Have you had any proceeding or complaint which has raised an issue of that kind?---No, we haven't, Commissioner. But, just to provide some context with that, most of those individuals – or most of those non-compliance of the FOS determinations are licensees, licence holders. In our case, it's the individual practitioner, so that is the member. So that may be the reason why we haven't received a complaint.

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

MS ORR: No, thank you, Commissioner.

THE COMMISSIONER: Before I turn to the two parties who are represented at the bar table, is there any other party who seeks leave to cross-examine this witness? No. Mr Woods, do you have any questions?

MR WOODS: No.

THE COMMISSIONER: Mr Meehan?

MR MEEHAN: No questions, Commissioner.

THE COMMISSIONER: Yes. Thank you very much for your evidence, Mr De Gori. You may step down. You're excused - - -?---Thank you, Commissioner.

- - - from further attendance.

**<THE WITNESS WITHDREW**

**[11.31 am]**

MS ORR: Commissioner, the next witness is Philip Kewin, the chief executive officer of the Association of Financial Advisers. But perhaps we could have a brief break to reset the bar table.

THE COMMISSIONER: Yes. I will come back at 25 to midday.

MS ORR: Thank you, Commissioner.

**ADJOURNED**

[11.31 am]

**RESUMED**

[11.36 am]

5

MS ORR: Commissioner, as I said, the next witness is Mr Philip Kewin, K-e-w-i-n.

10 <**PHILIP MICHAEL HOUSTON KEWIN, SWORN**

[11.36 am]

<**EXAMINATION-IN-CHIEF BY MS WIVELL PLATER**

15

THE COMMISSIONER: Thank you, Mr Kewin. Do sit down. Yes.

MS WIVELL PLATER: May it please your Honour, I appear for Mr Kewin.

20 Mr Kewin, could you state your full name?---Philip Michael Houston Kewin.

And are you the chief executive officer for the Australian Financial Advisers Limited?---Yes I am.

25 And have you produced a summon and produced a signed statement today?---Yes, I have.

I tender that document.

30 THE COMMISSIONER: The summons to Mr Kewin will be exhibit 2.229.

**EXHIBIT #2.229 SUMMONS TO MR KEWIN**

35

THE COMMISSIONER: And then the statement – perhaps if he would be good enough to affirm its truth.

MS WIVELL PLATER: Yes, your Honour.

40

Is your business address 255 Clarence Street, Sydney?---257.

257. Sorry, Mr Kewin. And have you – do you have – have you prepared a witness statement in answer to questions asked by the Royal Commission - - -?---Yes, I have.

45

- - - in Rubric 2-23. And do you have your witness statement with you?---Yes, I do.

And do you affirm – swear the truth of that statement?---I do.

I tender that statement, together with the exhibits, your Honour.

5 THE COMMISSIONER: Exhibit 2.230 will be the witness statement of Mr Kewin and its exhibits.

10 **EXHIBIT #2.230 WITNESS STATEMENT OF MR KEWIN AND ITS EXHIBITS**

THE COMMISSIONER: Yes.

15 MS WIVELL PLATER: Yes. That's all, your Honour.

THE COMMISSIONER: Yes. Thank you very much. Yes, Ms Orr.

20 **<CROSS-EXAMINATION BY MS ORR** [11.38 am]

MS ORR: Mr Kewin, you've been the CEO of the Association of Financial Advisers or the AFA since March last year?---That's right.

25 And what was your role before you became the CEO of the AFA?---Before that I was general manager, life ..... investments at Zurich Financial Services.

30 You say in your statement that the AFA originated as the Life Underwriters Association of Australia and New Zealand in 1946?---Yes.

So at that time its members were all life insurance salesmen?---Basically, yes.

35 And the Life Underwriters Association of Australia and New Zealand then changed its name to the AFA in 1994?---Yes, that's right.

40 Because by that time, you tell us in your statement, its members were providing advice not just – they were not just selling life insurance, but they were providing advice about insurance, trauma, superannuation, savings and investments?---Yes. Well, our membership base changed, so that we have advisers who provide holistic advice and still had members who were advisers providing specialist advice in some or all of those areas.

45 And does that change reflect the evolution of the financial advice industry more generally, beginning as an industry concerned with the sale of insurance products and expanding to cover advice about other products?---Absolutely.

And do you think that the origins of the financial advice industry and the sale of insurance products contributed to the industry having a strong sales culture in the past?---Yes, I do.

5 And do you think the industry still has a strong sales culture?---It depends what you view as sales.

Well, what do you view as sales, Mr Kewin?---I view – I view as sales as analysing a customer’s needs and providing a solution for those needs.

10

And selling a product in the process?---There may be a product in the process.

So do you accept that the industry still has a sales culture?---I believe there is an element of sales culture in the industry, yes.

15

Do you see financial advisers as being part of a profession or an emerging profession, Mr Kewin?---I think the majority of customers who have advisers would see their advisers as professionals. I think it is a profession. I don’t think it’s perceived as a profession, but I do believe it’s a profession.

20

Sorry. I think you said that customers would see the advisers as professionals?---Yes.

25 And then you said you don’t think it’s perceived as a profession. Who is it not perceived as a profession by?---I think there’s a lot of people who don’t have financial advisers, who don’t seek financial advice, and so, unfortunately, based on things like we’ve seen over the past couple of weeks, have a perception that all advisers are not professionals, whereas I don’t believe that.

30 So you think some financial advisers are professionals?---I believe the majority of financial advisers are professionals.

35 And what makes them professionals?---I believe that they act in the interests of their clients, they act with integrity and professionalism. They analyse the needs of their clients, they provide solutions for them, they provide financial security and they provide emotional security. And I know emotional security is hard to measure in terms of professionalism, but that’s what a financial adviser does.

40 You heard me ask this question, I suspect, of Mr De Gori, but do you think people trust financial advisers in the same way that they trust other professions like doctors or lawyers?---I believe the majority of people who have – who have financial advisers trust them in the same way as they do doctors and lawyers.

45 So they place that same sort of trust in financial advisers?---Yes. I believe so. That’s people who have financial advisers.

I'm sorry?---That is people who have financial advisers place that trust in financial advisers.

5 And do you think financial advisers discharge that obligation of trust?---No, I don't believe so. I am not sure if I understand your question.

Do they act in a trusted way?---Yes.

10 When the Commission asked you to provide a witness statement, Mr Kewin, you were asked what the AFA sees as being its key functions and purposes. And in response to that question you provided the full list of the functions of the AFA as set out in its constitution?---Yes.

15 From that full list of functions, what do you see as being the key functions of the AFA?---There are – there are a number of key functions of the AFA. I mean, the primary function of the AFA is to promote the value of financial advice. The output of that is in doing so in the best interests of the customer, in the public interest. So in providing – in promoting the value of financial advice, that can be done so through many of the other objects, including increasing education standards, professionalism, integrity, and providing a community for advisers to learn from others, learn ethical  
20 behaviour and learn best practice.

One of the functions you've identified in your witness statement is to:

25 *Promote ethical practice, exercise oversight over professional standards of members and support and protect the character, status and interest of the financial advice profession generally, and the professional standing of members.*

30 ?---Yes.

How long has that function been in your constitution?---I think we added that to the constitution in October last year.

35 Why was it added?---We reviewed our constitution, because it was time to look at the constitution, what the objects and what the objects of the AFA were and make sure it was satisfying what we believe were the needs of – of the profession and the needs of the – the customer and the general public.

40 Another of the functions that you identify is acting as a co-regulator with regulatory authorities and statutory bodies in relation to your members, and engaging in regulating and promoting activities to support this role?---That was added into the objects to enable us to facilitate the journey to becoming a code monitoring scheme under the Financial Advisers Standards and Ethics Authority.

45 To facilitate the journey to you becoming a?---Code monitoring body, code monitoring scheme.

So that's another one that was added in October last year?---That's right.

Do you think that the AFA currently performs the role of a co-regulator in the financial advice industry?---No.

5

It's more of an aspirational statement, is it, that function?---It is a statement to enable us to move down that path, yes.

10 What role would you like to see the AFA play in the regulation of the financial advice industry?---Well, as is currently proposed on the professional standards, the Financial Advisers Standards and Ethics Authority will – will appoint code monitoring schemes and code monitoring bodies. And it is our intention to be a code monitoring scheme.

15 Do you think it's important for industry associations to play a role in the regulation of the financial advice industry?---To the extent that they are able to, yes.

Why?---I think it's important that we collaborate to ensure that – that the consumer interests are looked after.

20

25 So what role can industry associations like the AFA perform that ASIC and financial services licensees can't?---In terms of regulation at the moment, there's not a lot. In terms of regulation in terms of the complaints procedure, the standard complaints procedure goes to a licensee. And if – or to the adviser first, then to the licensee and, if they're not satisfied with that, then to Financial Ombudsman Service, or ..... complaints tribunal. So there isn't – you know, in terms of the statutory requirement, you've got ASIC sitting separately as a regulator. So we don't play a huge role, which is why we don't have a huge number of complaints, except around the ethical standards of advisers.

30

So what is the role you think you can play?---So at the moment we play a role in terms of the ethical and behavioural standards of advisers.

35 Yes. But what's the role that you're moving towards?---To – to continue that, but more formally through a code monitoring scheme.

Do you see this co-regulatory function as becoming one of your key functions?---Definitely.

40 And you said earlier, when I asked you about key functions, that your primary function was to promote the value of financial advice?---Mmm.

45 Do you think it's possible for an organisation to exist both for the purpose of promoting the value of financial advice and for the purpose of regulating those who provide financial advice?---Yes, I think so.

How?---I think that if you're looking – I don't see it as a separation. You can promote the value of financial advice to the community. You can still enforce upon the participants in the advice. So you can still regulate the advisers themselves.

5 But doesn't it damage the promotion of your financial advice industry if at the same time you're imposing sanctions on people in a regulatory - - -?---No, I think it enhances it, because you are the ones making the decision. You are the ones ensuring that those advisers who are out there representing financial advisers or representing the AFA or representing their peers are professionals and are doing the right thing by their clients.  
10

Do you think that members of the public would have reason to doubt whether you are the appropriate body to do that when your primary function is to promote financial advisers?---I don't think the public can expect us to be the primary body responsible for financial advisers in the current environment, no. I do expect that the public would see that we are a professional association that does advocate for advice, that does advocate for appropriate changes to help – help people and to help people in their financial need.  
15

20 So do you see a tension between those two roles, the role of promoting financial advice and financial advisers and regulating financial advisers?---I think we've already seen that there can be tension in those relationships, yes.

Yes. You accept that there is a tension?---Yes.  
25

Which will make it difficult for you to act as a co-regulator of financial advisers?---I think it will change the – I think it will change the role and the perception and I guess the way that – that the association is perceived.

30 You've told us in your statement about the number of members that the AFA has had in each year since 2013?---Yes.

That has increased from 1925 members in 2013 - - -?---Yes.

35 - - - to 4291 members in 2018. That's right?---What was that last number?

4291. These figures are - - -?---Yes.

- - - from page 4 of your statement?---Yes. Yes.  
40

And the number of members who are practising financial advisers has increased from 1405 in 2013 to 3576 - - -?---Yes.

- - - in 2018?---Mmm.  
45

Not all of your members are financial advisers?---Correct.

At the moment, about 700 of your 4291 members are not practising financial advisers?---Correct.

So that's about a sixth of your membership?---Yes.

5

So who are those other members?---They could be participants in the financial advice community that are planning to be advisers, as in, they're studying to be advisers. It could be participants who work for financial services organisation, licensees, product providers, anyone who has an interest in financial advice. But the practitioner members are the ones identified as those qualified to provide advice.

10

We see from the tables on the screen that the number of practising financial advisers who are your members has increased from about 6.4 per cent of the total population of financial advisers - - -?---Yes.

15

- - - in 2013 to about 14 per cent - - -?---Yes.

- - - in 2018. What has brought about that growth in membership?---I think we've seen a growth in membership across the board. I think we've seen a growth – obviously, growth in advisers. But, also, it comes back to what you referred to earlier in the AFAs seen increasingly to be a broader association that advisers of all types would – would like to join.

20

Has the AFA actively promoted membership over that period?---I think we always promote membership.

25

And you're looking to continue to grow your membership into the future?---Yes, we are.

30

And what do you think are the key reasons that financial advisers might choose to become members of the AFA?---I think it's – there's a number of reasons. There's, obviously, being a member of a professional association; that's deemed important. I think we also need to recognise a lot of financial advisers are small business operators, so a financial profession like the AFA gives them a community – gives them a community to participate in to learn, which is why we place a lot of focus on our conference and our roadshows, where we provide professional development, but they also come together and learn from their peers.

35

Does the AFA compete with other industry organisations for its members?---When you say compete, we have members who are members of other associations, and we have members who are simply members of the AFA, as there would be members of the FPA that are not members of the AFA.

40

But do you accept that you compete with the FPA for members? Sometimes a choice is made by a financial adviser as to whether to be your member or an FPA member?---Correct. And, as I say, sometimes they join both, because they find value

45

– different value in different associations. Probably both with the same core of professionalism and ethics and the rest is around that community.

5 Can the AFA operate effectively as a co-regulator of the financial advice industry if it's in competition with other industry bodies for membership?---I believe so.

How?---I'm not sure how not.

10 How can an organisation that is seeking to make itself attractive to potential members in comparison with other industry bodies also, at the same time as seeking to make itself attractive, regulate the conduct of those members? Isn't there an inherent conflict in those two propositions?---I don't think so.

15 Mr Kewin, do you think it's more desirable for a regulator or a co-regulator to be independent of the industry that it regulates?---I guess I'm looking at it through the lens of what we know in terms of the professional standards and what's proposed under the Professional Advisers and Ethics Authority. And the fact that you can have multiple code schemes and bodies issued. And so I'm looking at it through that lens. And from the moment I walked in the door of the AFA one of the objectives  
20 was that, if it's in the best interests of our members, we become a code monitoring scheme and code monitoring body.

25 Do you agree that an important aspect of the regulation of any profession is a strong system of professional discipline?---Yes.

I want to ask you some questions about your disciplinary systems at the AFA. You set out in your statement the main ways that professional conduct issues come to the attention of - - -?---Yes.

30 - - - the AFA. And you have pointed out in your statement at the moment neither ASIC nor licensees report conduct issues involving members of the AFA to the AFA?---Correct.

35 To your knowledge, do any licensees require their financial advisers to be members of the AFA?---Not exclusively the AFA, no.

40 And you say in your statement that the AFA only finds out information about misconduct by a financial adviser who is one of your members from ASIC after it has made a public announcement, like a media release?---Correct.

And you typically learn of misconduct issues with your members as a result of reviewing media articles and public announcements by ASIC?---That's right. Yes.

45 Sometimes you get complaints?---Yes.

Has the AFA asked ASIC to notify it when ASIC receives a report of compliance concerns about one of its members?---We've had discussions with ASIC about this,

and the response is that they cannot under confidentiality, because the investigation is ongoing.

5 So does the AFA want to know about compliance concerns about its members at the earliest opportunity?---I think it would be advantageous, but I also recognise due process. If there's an ongoing investigation – and this is why, obviously, ASIC can't tell us at the moment, because it ..... investigation, and unless something is found, it is – it's quite difficult.

10 Has the AFA asked any licensees to notify it when the licensee suspends or terminates an AFA member as a result of compliance concerns?---We have one formal agreement in place.

15 I am sorry? You have - - -?---We have one formal agreement in place.  
- - - one formal agreement. And who is that agreement with?---CBA.

20 Why do you not have formal agreements with other licensees, Mr Kewin?---I don't know. I can't answer that.

And how did that formal agreement with CBA come to be?---That was before my time. So I'm sorry, I can't answer that.

25 Since 2013, how many complaints has the AFA received about the conduct of its members?---Well, we've received 15 complaints.

15 complaints over the last five years?---Yes.

30 Why do you think that number is so low?---I think it comes – a lot of it comes back to what I said earlier, insofar that the standard complaints process – and if you – if you look at the ASIC website, the ASIC website will direct customers through the process of talking to adviser first, then their licensee, and, if they're not satisfied, then through one of the dispute resolutions. So it's not embedded that talking to a financial – an adviser association is the first port of call.

35 So most people aren't aware of the disciplinary function of the AFA?---Unless they go to the AFA website, that's right.

40 Could I take you to exhibit 2 of your statement, which is AFA.0001.0002.0029, which is the by-laws of the AFA. And could I ask you to turn to 0038 and 0039. Clause 49 onwards sets out the AFAs disciplinary procedures?---Yes.

45 And we see at 0038 that some disciplinary matters are dealt with by the board?---Mmm.

And some are dealt with by the disciplinary committee?---Correct.

And we see from clause 49 that where the board becomes aware that a member has been convicted of certain sorts of offences or disqualified from managing corporations, or banned from providing financial services, or expelled from membership of another professional association - - -?---Yes.

5

- - - the board can seek written evidence about that matter?---Yes.

And if the board is satisfied that the member falls into one of those categories, it can terminate membership, suspend membership, or reprimand the member?---Correct.

10

Would you agree that the kinds of misconduct that might result in a criminal conviction or a disqualification from managing corporations or banning from providing financial services are very serious?---Yes.

15 So why doesn't the AFA just automatically terminate the membership of someone who has engaged in that sort of misconduct?---That would be more dealt with through a disciplinary committee.

20 Well, why can the board, given you've empowered the board to exercise those powers, not exercise them immediately?---The board delegates authority to a member of review committee and the member of review committee is able to then swiftly take action if necessary.

25 All right. Well, let's look, then, at the way the AFA has dealt with one of its members. Could I ask that you be shown AFA.0001.0003.0069. I'm sorry. We have that now. Now, this is a summary of issues that relates to one of your members whose name is Mr Tindall?---Yes.

30 And we see on this page, in the first paragraph, that on 13 January last year another AFA member alerted the AFA office to Mr Tindall having been banned by ASIC and expelled from the FPA for alleged misleading conduct regarding life insurance policies he had advised on several years earlier when he was in his early years advising and while he was under Securitort's AFSL. Mr Tindall is recorded as now being with Synchron.

35

So, pausing there, firstly, the AFA found out about the banning of one of its members from another member contacting the AFA office. Is that right?---Yes.

40 So the AFA didn't identify for itself that a banning order had been made by ASIC in relation to one of its members?---That seems to be the case, yes.

Does the AFA have processes in place to identify when its members are banned by ASIC?---Normally we do, yes.

45 What are those processes, Mr Kewin?---Well, we have at least three people who are on the ASIC – the ASIC reporting register, so they should receive those normally.

So, having been informed of this by one of your other members, on 24 January the AFA contacted Mr Tindall over the phone and he confirmed the banning:

5           *He advised at that time he was seeking a stay, a temporary delay of the banning, until the AAT was able to hear a full appeal. He did not elaborate on the issues that led to the ASIC investigation, other than to say that he felt that the process had been unfair.*

10          Do you see that?---Yes.

            And then on 10 February 2017:

15           *Mr Tindall initiated contact to advise that the AAT had just declined his application for a stay, and he had implemented measures in the meantime to ensure his clients remained serviced.*

            ?---Yes.

20          Now, if we could turn to 0070, the following page, we see that, despite the fact that Mr Tindall had been banned by ASIC, the corporate regulator and expelled from the FPA, the AFA seemed unsure about what to do with Mr Tindall?---The AFA – my understanding – again, I wasn't there at the time, but my understanding was that Mr Tindall had indicated that he was appealing and that that was still underway.

25          Well, one of the issues presented in this issues paper was whether the AFA should conduct its own investigation into the alleged conduct that formed the basis for the banning order?---Yes.

30          So why did the AFA consider that it might need to conduct its own investigation, if Mr Tindall had been banned by ASIC?---I think that was just one consideration.

            Well, an investigation was conducted, wasn't it?---Yes.

35          Yes. I tender this document, Commissioner.

            THE COMMISSIONER: AFA summary of issues re Tindall, AFA.0001.0003.0069, is exhibit 2.231.

40          **EXHIBIT #2.231 AFA SUMMARY OF ISSUES RE TINDALL  
(AFA.0001.0003.0069)**

45          MS ORR: The investigator's report is AFA.0001.0003.0079. Have you seen this document before, Mr Kewin?---Yes.

            It's coming up. Yes?---Well, the first one I did.

Have you seen this document before with the investigating officer's recommendation? Perhaps if we could have 0080 on the screen, as well. What I want to put to you is that the investigator's report relies very heavily on ASICs banning order and the FPAs determination?---Yes.

5

And we see that the investigating officer's recommendations are at the bottom of that second page:

10 *In ASICs view, there appears to have been several instances of misleading conduct designed to get clients to switch their superannuation. ASICs conclusions of misrepresenting a person's medical history are quite compelling. The FPA determination indicates that he did not provide the FPA with a consistent or fully frank reason why evidence presented by the client suggested he had actually been in her account when he said he wasn't. As compelling as it is to rely upon a clearly detailed FPA investigation and a likely detailed ASIC investigation that Mr Tindall should have his AFA membership terminated and that he be removed from the register, making such a conclusion on the say-so of other parties without forming an independent view from the same evidence can be likened to accepting hearsay, as it relies upon second-hand evidence. At this point in time, I do not recommend Mr Tindall's membership be terminated. Instead, I would recommend that the committee recommend to the board that his practitioner membership be suspended until he becomes authorised by another licensee, on the basis that he does not currently meet the criteria for his practitioner membership.*

25

And we see at the top of the next page, 0081, that the investigating officer notes that:

30 *The banning order doesn't just prohibit him from providing advice, but any financial service for five years. I recommend that we can make approval of any future membership application or lifting of suspension conditional on him providing further details about why the FPA expelled him and why ASIC banned him. We may also wish to consider contacting the FPA and ASIC in the meantime or at that later date to ask for other information about their investigations, but they may be unwilling or unable to provide anything. This may take some stakeholder management at a higher management level to convince either organisation on the merits of releasing information to us.*

35

40 Now, if Mr Tindall wasn't eligible for practitioner membership and had been banned from providing financial services, why would the AFA retain him as a member?---His membership was suspended.

45 The investigator talked about "the stakeholder management that would be required at a higher level to convince either organisation on the merits of releasing information to us." Do you think that ASIC doesn't see merit in sharing information with the AFA?---I'm not sure. There's – there's two aspects there. I'm not sure what that actually means. But I do think there's merit in sharing – ASIC sharing information with the AFA, yes.

Do you think ASIC sees merit in sharing information with the AFA?---Yes.

Does the FPA share information with the AFA?---Not that I'm aware of.

5 Why not?---I believe not while there's an ongoing investigation.

All right. So these are the investigating officer's recommendations. I want to take you to the result, but I tender that document.

10 THE COMMISSIONER: AFA investigating officer's recommendation re Tindall, FPA.0001.0003.0079, exhibit 2.232.

15 **EXHIBIT #2.232 AFA INVESTIGATING OFFICER'S RECOMMENDATION RE TINDALL (AFA.0001.0003.0079)**

MS ORR: If we turn to AFA 000 - - -

20 THE COMMISSIONER: AFA should have been the designation of the doc ID, AFA.0001.0003.0079. Sorry, Ms Orr.

MS ORR: No, I am sorry, Commissioner.

25 If we turn to AFA.0001.0003.0071, we see the report of the Membership Review Committee that considered this recommendation. While that's coming up, Mr Kewin, the Membership Review Committee is established by the board to provide reports and advice to the board. Is that right?---It has delegated authority to the board to act on its behalf.

30 And if you could look at 0077 in this document, we see there is reference in the middle of the page to Mr Tindall and the fact he has been expelled from the FPA and banned by ASIC for five years from providing financial services, recorded here as from providing financial advice?---Yes.

35 And above that we see a reference to another member whose name has been redacted, who had also been expelled by the FPA for alleged academic misconduct while completing the CFP4 exam?---Yes.

40 See that? And that adviser had been terminated by their licensee, which was NAB Financial Planning?---Mmm.

45 Now, the committee considered what to do about both of those members. And the committee's view was that it was open to the board to terminate, suspend, reprimand or take no action in relation to those advisers?---Yes.

Do you see that reference to the options there?---Yes.

And, having gone through those options, if we could have 0078 on the screen at the same time, we see the consideration by the committee of the risks associated with those actions:

5            *Taking no action or anything less than suspension or termination represents a significant reputational risk to the AFA, because both members have attracted substantial media attention following the FPA reporting their expulsions in the trade press. As both have not objected to suspension of their memberships, there is little risk in suspending their memberships. As both members have*  
10           *indicated they have legal representation, terminating their memberships could result in lengthy and costly reviews of those decisions, both within the AFA and possibly through court. Board action requested for decision. Approve the recommendations to suspend the memberships of Mr Tindall and the other*  
15           *member.*

So it seems, Mr Kewin, that the board was being asked to make its decision about disciplinary sanctions for these two members on the basis of what would create the least reputational risk to the AFA?---I see what's written there. I don't think the board would – would make the decision based on that, but I can see what's written there.

Well, that's what this document records as what was put to them?---Yes.

Do you have any reason to believe that they made their decision on some different basis?---I guess I am only thinking through the way I would look at it.

The point of a disciplinary procedure is to enforce standards of conduct, isn't it, Mr Kewin?---Yes.

And how can the AFA hope to be an effective co-regulator of the financial advice industry if it makes its disciplinary decisions based on what will cause the least risk to the AFAs reputation?---I don't think all decisions are based on that. I think these two decisions were based on the fact that the important thing was to suspend the members. So the members were no longer considered to be active members of the AFA.

Well, the important thing was to terminate the members, to expel them, wasn't it, Mr Kewin?---In both cases, I believe the – the essence was to also try and follow due process, the Darren Tindall AAT - - -

Sorry? To try a what process?---Due process in terms of Darren Tindall's appeal is still – is still reserved. And the other member, as I say, was suspended.

So if an ASIC banning order isn't enough, what does it take to get expelled from the AFA?---In this case, as I say, because there's an appeal pending, rather than undertaking an additional investigation, the – in terms of risk, the risk is the fact that if you suspend the member, they're no longer an active member. And so termination

might have had longer – longer term consequences. So in this case, the decision was to suspend the member.

I tender that document, Commissioner.

5

THE COMMISSIONER: AFA Membership Review Committee report re Tindall and other matters, AFA.0001.0003.0071, exhibit 2.233.

10 **EXHIBIT #2.233 AFA MEMBERSHIP REVIEW COMMITTEE REPORT RE TINDALL AND OTHER MATTERS (AFA.0001.0003.0071)**

15 MS ORR: Could I take you back to the by-laws, Mr Kewin, which are exhibit 2 to your statement. And if we can return to 0038 and 0039 again. As you said earlier, these are the provisions that set out the AFAs disciplinary procedures?---Yes.

20 And we have already seen that some disciplinary matters are dealt with by the board. And where the board becomes aware that a member may have engaged in conduct that doesn't meet one of the criteria in clause 49, but, instead, breaches the AFAs constitution or code of conduct or the member has engaged in conduct that's discreditable to the AFA or may not be a fit and proper person to be a member of the AFA, the board can appoint an investigating officer?---Yes.

25 And, after conducting an investigation, the investigating officer can request the board to convene a disciplinary committee and the matter can then be referred to the disciplinary committee?---Yes.

30 The disciplinary committee is appointed by the board?---Yes.

And who sits on that disciplinary committee?---The disciplinary committee is made up of three people, one of which has to be a – a AFA director.

35 So the disciplinary committee is not independent of the AFA?---It's usually comprising of AFA members.

Has the AFA considered setting up a disciplinary body that is independent of the AFA?---Yes, we have.

40 And why haven't you done that?---Predominantly because we haven't had a huge amount of complaints. That is something that we are aspiring to. We have looked at that journey to professional standards. And this is another area. But, as I say, we haven't had that many complaints. We've only had two disciplinary actions in the last five years.

45

Yes. So over the last five years you've had two complaints or other professional conduct matters that were referred to the disciplinary committee?---Correct.

And both of those matters led to a hearing and a determination by the disciplinary committee?---Yes.

5 And you've given some details about those matters on page 15 of your statement. And if we turn to page 15, we see that one of them involved an inaccurate representation of a professional designation and a specialist qualification?---Yes.

10 What does that mean, Mr Kewin?---That person was representing themselves to have a qualification they didn't have.

And the other involved inappropriate use of language in a communication with another member?---Yes.

15 And, in both cases, the penalty was a reprimand?---Yes.

So does the disciplinary committee of the AFA have any experience in dealing with disciplinary matters arising from the provision of financial advice?---Other than understanding the requirements of providing financial advice and adhering to everything that they need to adhere to - - -

20 But they have no experience with dealing with any disciplinary matter connected with the provision of financial advice?---No formal experience, no.

25 All right. Mr Kewin, can I take you to the AFAs most recent annual report for the year ended 30 June 2017, which is exhibit 16 to your statement, AFA.0001.0003.0831. I'm sorry. I will get the correct document ID for that. I'm sorry. I had the document ID correct. It's not exhibit 16 to your statement. Is this a document that you did exhibit to your statement, Mr Kewin?---Yes.

30 Yes. I think I had the exhibit number wrong. But, in any event, we have the document here. And at 0850 you set out the AFAs income and expenses?---Yes.

35 And we see there that the AFAs revenue for the year ended 30 June 2017 was about \$4.8 million?---Yes.

And if we turn to note 2 in the statement at 0858, we can see that just under \$2 million of that figure came from membership subscriptions. And just over \$2 million came from income from conferences and functions?---Yes.

40 And if we go back to 0850, we see that the main expense for the AFA is staff employment, which is about \$1.8 million?---Which includes profession – plus professional service fees, yes.

45 So professional service fees are a separate line item there, Mr Kewin?---Yes.

So staff employment expenses are the biggest expense at 1.8 million. And the next biggest expense after that is your conferences, roadshows and events?---Yes.

So what part of these expenses represents the AFAs spending on its disciplinary function?---The majority of the professional services fees pays for the – what was at times – at the time, we had contractors in the professional services area that oversaw that operation.

5

So you say that's the majority of the 790-odd thousand dollar line item?---Yes.

10 So does the AFA make any significant investment in its disciplinary function, Mr Kewin?---Other than the spending on the professional services and any legal costs outside of that. Plus the fact whatever we spend on the conference income, the conference revenue, those sorts of things, that all includes professional development, it all includes content on ethics, all includes, you know, other professional development activities.

15 Yes. But that's not your disciplinary function - - -?---No.

- - - is it, Mr Kewin?---No.

20 Over the course of these hearings, we've heard evidence about a number of advisers who have engaged in conduct that has led to their employment or authorised representative status being terminated - - -?---Yes.

25 - - - by licensees, or they've resigned after allegations of misconduct. And they included Mr John Doyle, Mr Chris Harris, and Ms Jennifer Coleman?---Mmm.

Are each of those individuals members of the AFA?---I think – I don't think Jennifer Coleman is.

30 Jennifer Coleman was previously a member - - -?---Yes.

- - - of the AFA. And Mr Doyle and Mr Harris are current?---Yes.

And are members at the time of the AFA?---Correct.

35 And did the licensees of any of those financial advisers report their concerns about them to the AFA?---No, not to my knowledge. No.

40 And what do you think, Mr Kewin, about the fact that the AFA has members whose employment has ended as a result of misconduct and the AFA is not aware of that?---I'm not that comfortable with it.

45 And do you think the public regard the AFA as an appropriate body to make a complaint to if they have an issue with a financial adviser?---I would like to think they would, yes.

Do you think they do?---I don't think the public know that – most – a lot of the public wouldn't know that the association exists.

Thank you. We're still trying to clarify whether that annual report, Mr Kewin, was an annexure to your exhibit. I thought it was. You think it is. Mr Hosking thinks it's not. So, out of an abundance of caution, I am going to tender that document, Commissioner.

5

THE COMMISSIONER: AFA annual report year ended 30 June '17, AFA.0001.0003.0831, becomes exhibit 2.234.

10 **EXHIBIT #2.234 AFA ANNUAL REPORT YEAR ENDED 30/06/2017  
(AFA.0001.0003.0831)**

MS ORR: I have no further questions, Commissioner.

15

THE COMMISSIONER: Thank you. Does any party other than AFA seek leave to examine this witness? Very well. Have you anything that you wish to - - -

20 **<RE-EXAMINATION BY MS WIVELL PLATER** [12.24 pm]

MS WIVELL PLATER: Just a few questions, your Honour.

25 THE COMMISSIONER: Yes.

MS WIVELL PLATER: Mr Kewin what's your understanding of the proposed role of the code monitoring body under the proposals which have been put forward by the CR?---To oversee the ..... code and to monitor and discipline accordingly.

30

And that code addresses what issues? That code will address what issues?---Well, it depends on the finalise – finalisation of the code. It's only a draft at the moment.

35 Yes. And there was – the second member, the one that was unnamed, were there any mitigating reasons why you decided to suspend him, rather than terminate his membership?---My understanding is – I don't – my understanding is he was a young member, he was very keen. He disputed the – the report from the FPA on the basis that he was supposedly colluding with another student, and that student hadn't been reprimanded.

40

Thank you. Nothing further, your Honour.

THE COMMISSIONER: Yes. Thank you. Ms Orr is there anything arising out of that?

45

MS ORR: No, thank you, Commissioner.

THE COMMISSIONER: Well, thank you, Mr Kewin, for your evidence. You may step down. You are excused from further attendance.

5 <THE WITNESS WITHDREW [12.25 pm]

MS ORR: Commissioner, the next witness is Mr McMaster. Would the Commissioner allow us a moment, again, to rearrange at the bar table.

10

THE COMMISSIONER: Yes, of course. If I come back at half past midday.

MS ORR: Thank you, Commissioner.

15

ADJOURNED [12.26 pm]

RESUMED [12.30 pm]

20

THE COMMISSIONER: Yes, Mr Costello.

MR COSTELLO: Commissioner, the next witness is Terrence Paul McMaster.

25

<TERRENCE PAUL McMASTER, AFFIRMED [12.30 pm]

30 <EXAMINATION-IN-CHIEF BY MR COSTELLO

THE COMMISSIONER: Thank you very much, Mr McMaster. Do sit down. Yes, Mr Costello.

35

MR COSTELLO: Your name is Terrence Paul McMaster?---That is correct.

And you are the sole owner and responsible manager of Dover Financial Advisers Proprietary Limited?---That is not correct. There are three responsible managers. I am just one of them.

40

You are the sole owner and one of three responsible managers - - -?---Correct.

- - - of Dover Financial Advisers?---Correct.

45

Thank you. And your business address is 71 Tulip Street, Cheltenham in Victoria?---That is correct.

You attend today pursuant to a summons issued by the Commissioner?---That's correct.

You have that summons with you?---I do.

5

I tender that summons.

THE COMMISSIONER: Exhibit 2.235, summons to Mr McMaster.

10

**EXHIBIT #2.235 SUMMONS TO MR McMASTER**

MR COSTELLO: Mr McMaster you have made a witness statement dated 10 April this year?---That is correct.

15

Do you have that witness statement with you?---I do.

I tender that witness statement.

20

THE COMMISSIONER: The witness statement of Mr McMaster of 10 April '18 is exhibit 2.236.

25 **EXHIBIT #2.236 WITNESS STATEMENT OF MR McMASTER DATED 10/04/2018**

MR COSTELLO: Mr McMaster, you, aside from your work at Dover, also practise as a financial adviser?---I do.

30

And as an accountant?---I do.

And do you do that in your capacity as a director of the firm McMasters?---I do.

35

Do you also practise as a solicitor?---I do.

And do you do that in your capacity as a director of McMasters?---No, in my own capacity.

40

In your own capacity. There's a law firm known as McMaster Lo Andrawis. Are you a member of that firm?---No I am not.

Do you practise as a sole practitioner?---Yes, I do.

45

I see. And, McMasters, that's an accounting and financial planning firm?---That is correct.

And that's co-located with Dover at Cheltenham?---That's correct.

And is your law office co-located with Dover at Cheltenham?---Yes, it is.

5 And is the office of McMaster Lo Andrawis also co-located - - -?---Yes, it is.

Am I pronouncing the last name in that - - -?---Andrawis.

10 Andrawis. Thank you. How much of your time is taken up with running Dover, as compared to performing your other professional duties?---At least 90 per cent.

90 per cent of your time is taken up - - -?---Correct, increasingly so.

15 - - - running Dover. I see. At the time of your statement Dover had 408 authorised representative, which makes it one of the largest licensees in the country?---That is correct.

20 Well within the top 20 licensees by number?---I believe – well, I am not certain. I believe at the moment it would be in the top 10 by number of advisers.

Did you say in the top 10?---I believe it's in the top 10 by the number of advisers.

25 In which states does Dover have authorised representatives?---Each of the states and territories.

All states and all territories?---Yes.

30 Thank you. Now, as I understand it, Dover's model is considerably different from that of other licensees in some material respects that I want to take you to. The first is the way Dover charges its authorised representatives?---Yes.

35 What – before I come to what Dover's practice is, what do you understand to be the industry practice, if there is one, in respect of the charging of authorised representatives by licensees?---Almost always, the volume of product will be a variable in the fee computation.

I see. And Dover doesn't adopt that practice. It, instead, charges a flat fee?---That is correct.

40 What is that fee?---20,000 a year, including professional indemnity insurance.

45 Is it \$20,000 a year including professional indemnity insurance per authorised representative?---Per authorised representative. In the case of a second or subsequent representative in the same organisation, it's – it's reduced to 12,000 per second and subsequent. 20,000 for the first, 12 thousand for each after.

I see. And is that the only fee charged to authorised representatives by Dover?---Almost so. Some advisers will use paraplanning service we provide. And they pay a relatively nominal fee for each SOA that the way the paraplanning service provides. It's normally \$300. It can increase for more complex statements of advice.

5

This is a paraplanning service provided by Dover?---Correct.

And does it have its own name?---Yes and no. I'm not being evasive. There is an entity called Simple Paraplanning. And I had 70 per cent ownership – or, actually, 85 per cent ownership of that. And one of my colleagues at a time had 15 per cent. But now I'm 100 per cent of that. And, as a practical matter, the two entities are interchangeable. Simple Paraplanning does not have a significant income stream. And it's – the staff of Simple Paraplanning are actually our compliance staff.

15 Dover's compliance staff?---Correct.

So Dover's compliance staff, aside from doing their ordinary compliance activities, also will draft statements of advice on request for Dover authorised representatives?---That is correct.

20

And they do that as officers, agents or employees of Simple Paraplanning, a separate entity. Is that how it works?---Because it's the same beneficial ownership, it's quite blurred. The answer is yes.

25 So it is a separate legal entity?---Yes, it is.

And I might come back to Simple Paraplanning a little bit later, but, staying with the fees Dover charges for now, why did Dover decide to structure its fee arrangements with authorised representatives in the way you've described?---To avoid Dover having financial interest in the outcome of an advice.

30

In the outcome of an advice?---Correct.

You mean by reason of a fee related to a product?---Correct.

35

I see. And could you explain to the Commissioner what Dover 365 is?---Dover 365 is favourable payment terms introduced in 2015 where the – there is a 12 month lag in the payment.

40 Sorry. I couldn't quite hear that?---There is a 12 month lag in payment, so that an invoice rendered in, say, July 2018 won't need to be paid until July 2019.

That is an invoice rendered by Dover to an authorised representative?---Yes.

45 Say the \$20,000 fee?---Well, it's monthly. 20,000 divided by 12 per month.

Per month. But it's deferred for 12 months?---Payment is deferred by 12 months.

I see. And is that the case in respect of all authorised representatives?---Yes, it is.

I see. Another difference in Dover's business model is that it doesn't require its authorised representatives to use any particular software. Is that right?---That is  
5 correct, but we have our own in-house software which accounts for about 75 per cent of the statements of advice.

This is software developed by Dover?---Correct.

10 And authorised representatives can use that software if they would like?---Yes, if they prefer.

Right?---We encourage it, because it's – it makes the review process simpler and faster.

15 What's that software called?---In our jargon, we call it RODO.

Call it what?---RODO.

20 How do you spell that?---R-O-D-O.

And when was RODO first developed?---It was evolutionary steps. It probably came into its current form about two years ago.

25 And, before that, authorised representatives used whichever particular software they chose to use to generate statements of advice?---That's correct. My preference was Word.

I see. And does RODO use Word?---It produces a Word document at the end of the  
30 process.

Does it require the completion of specific fields that then generate a Word document?---Correct.

35 I see. And, in terms of the submission of statements of advice to Dover from an authorised representative, does RODO have any function in that or are they provided by email?---It – the RODO software produces a Word document. It has been designed so that is actually sufficient draft for most of the content of – of the statements of advice. But we allow the advisers to go further, if they feel that adding  
40 in extra information is relevant. It makes the SOA work better. Well, they've got a Word document that they can use as a first draft for that exercise. The comforter is that the first draft is intact and compliant at that point. So they're making a good thing better if they start adding to it.

45 And when they – we will come to the statement of advice review process a little later, but just so I can understand - - -?---Certainly.

- - - the function of how it works now. When an authorised representative prepares a statement of advice using RODO, do they – and they want to submit it to Dover, do they submit it by email or is it submitted through RODO?---They submit it by email - - -

5

Yes. I see?--- - - - whatever email system they are using.

Thank you. Is RODO used for fact finds?---No, I don't believe it is. There may be some functionality there, but the fact finding has to be done separate. And I think there is some capacity for the fact finding data to lead directly into the RODO program.

10

Do you use RODO when you're completing statements of advice?---Yes, I do, for the first draft.

15

And in return for the flat fee that Dover charges its authorised representatives, it supervises their compliance?---Yes, it does.

And Dover's head office is in Cheltenham?---Correct.

20

But it has another office in Vietnam. Is that correct?---That is correct.

How many Dover staff, as opposed to McMasters staff or McMaster Lo Andrawis staff, are in the Melbourne office?---About 22, I believe.

25

And does it share staff with the other firms?---These days no, except for, say, Simple Paraplanning. There's some secondment of Dover's solicitors to MLA from time to time.

30

Dover has its own internal solicitors?---Yes, a lot of the staff are practising solicitors.

All right. How many staff are in Dover's Vietnam office?---28.

35

And what do the staff in the – what functions do the staff in the Vietnam office perform?---In general terms, functions that they can perform – so if they're – they have the capability to do it, we would prefer to do it there, because of the obvious cost advantage. There are perhaps three main groups. One is the administration of the commission account. We treat the commission account, in effect, as a trust account. It's not strictly a trust account, but we treat it as if it is. And there are six staff who monitor the commission account daily, and reconciling payments out of the commission account to statements of advice and other relevant documents as those payments occur, fee disclosure statements, in particular.

40

Do they perform any other functions apart from monitoring the commission account?---No. No. Those staff are very busy on that task.

45

On the commission account?---It's a big task.

I see. I thought your evidence was there are six people that monitor the commission account. Is that what you just said?---Correct.

5 And I thought that you told me earlier that there were 25 staff in the Vietnam office?---Yes. The commission account function is the first of the three main functions.

10 What are the other two?---The second main function is 12 staff, all university qualified, well experienced, well trained, good at their work, who perform, if you like, file management tasks in respect of the draft – the SOA submitted for review. There they will receive the SOAs in, they will log it into our file management system. They will do preliminary ..... checks, such as making sure the fact finder is correct, making sure we have extra documents to do with the best interests duty, to make sure that the best interests duty is, if you like, able to be proven, and certain  
15 other mandatory data, such as identity checks and things like that. So they – they do that, if you like, clerical task. And then they perform a further task where they do a preliminary review of the statement of advice. Now, that includes literally checking that schedule on page 3 to make sure it adds up.

20 I see?---It's more of a quantitative testing. But, because over time they got good at what they do, I am delighted to say they frequently flag issue. And they bring the issues to the attention of the Australian staff at the next phase of the review process.

25 Is what you've just been describing there, is that the third of the three tasks performed in Vietnam?---No, that was the second.

That was the second, as well,. All right. And what's the third?---The third is just general administration. Yes.

30 When was that office established?---It was established, in effect, about 10 years ago. And then about, I think, three years ago we – we split – the original office was McMasters, an entity set up under the Vietnamese law. And about three years ago, because of growth issues and space issues, we decided to physically move the Dover staff in that office out of that function into its own office with its own Vietnamese  
35 licence and legal presence under Vietnamese law.

What is that entity called?---Probably something like Dover Vietnam.

40 I see?---I don't know exactly. I'm not being evasive.

No. And it's licensed under Vietnamese law, you say?---Under Vietnam law.

Not under Australian law?---Correct.

45 It's not a licensee for the purposes of the Corporations Act?---It's – remembering, they don't have a system that parallels ours. The closest I can call it is an agency.

I see?---Given a western equivalent.

But it's not an entity that is - - -?---No. It's - - -

5 - - - licensed under the Corporations Act?---I don't know. No. Not – in fact, interestingly, under the Vietnamese law, it is not allowed to make a profit, so – and it is only allowed to provide services to us. So it bills us every month and we pay it. And the amount paid is equal to its costs for that month plus a small cash float, obviously. So it is not allowed to make a profit in Vietnam.

10

And was that office established for cost reasons?---Yes.

Mr McMaster, on 15 February this year, the Commissioner wrote to Dover inviting it to assist the Commission by identifying instances of misconduct by Dover or any of its authorised representative. Are you aware of that letter?---Yes, I am.

15

And Dover chose not to take up that invitation?---Yes.

Why was that?---It was phrased in terms of an invitation, which we took as not being in any way mandatory. You know, an invitation doesn't require a response. And for no real reason other than that.

20

Are you aware that Dover is the only large scale financial advice licensee that declined that invitation?---The word decline is strong. A better word is didn't respond. We just didn't realise that something greater was expected.

25

Well, I - - -?---It was phrased in terms of an invitation.

I won't take it to you now, but I can later if you like?---Sure.

30

There was a response from your office that declined to participate?---Okay. Fine.

Was that given at your direction?---I can't recall.

I see. We've spoken already a little of the Dover statement of advice review process. And I would like to understand that process a little bit more. But, at a general level, am I right to say that Dover's method of advice supervision is unique in the Australian market, in that it reviews every statement of advice prepared by each of its authorised representatives?---It does review each statement of advice and similar document prepared by each of its authorised representatives. I believe it's unique.

40

When you say or a similar document, do you mean an ROA?---Yes, I do.

And could you explain what an ROA is?---The little brother of an SOA, subject to certain conditions. If – if there's no significant change to the original advice, rather than having to go to the trouble, cost and time of a full second SOA, you can do a shorter document called record of advice, which functionally achieves the same

45

purpose. So an example might be in the original SOA a particular cash management trust was recommended, as an example. For some reason, that one wasn't implemented but a very similar one was, say, three months later. That change can be communicated to the client in a record of advice. You don't need to do the full statement of advice once again.

But Dover reviews those records of advice, as well as that?---Yes, it does.

Thank you. Now, as I understand it, there have been some modifications to the process of statement of advice - - -?---Yes.

Statement of advice review over the years. But I want to begin by taking you to some compliance committee minutes - - -?---Sure.

- - - that describe the process - - -?---Sure.

- - - because it might be a convenient way into the topic. Could I show you this document, please. It's DOV.0002.0001.0224. You can see there, Mr McMaster, on the screen, these are minutes of a compliance committee meeting of Dover held on 10 April 2013 and signed on 9 May 2013?---Yes.

And you are a member of the compliance committee?---That's correct.

And, if we move forward two pages to .226, you can see there there's a heading Dover Pricing Policy, and it says under that what the fee then was, and the 50 per cent discount. And then, under that, there's a heading New Insurance Arrangements?---Correct.

And it says:

*Terry advised the meeting that Dover continued to engage McMasters Legal to review all SOAs and similar matters on a retainer of \$3000 per month.*

Just pausing there, what's McMasters' Legal?---That's, basically me. And I think there was a corporate entity called McMasters Legal.

I see?---Or there is one.

I see. And that was you as a sole practitioner?---In effect, yes. There were some employees.

What type of employees?---Solicitors.

I see. And why was McMasters Legal engaged to review statements of advice?---To add a third level of review to the review process and to help the overall presentation of the statement of advice.

The overall presentation?---Yes.

Do you mean the formatting?---Well, if you like, the gravitas, the traction of this statement of advice, the fact it has actually been reviewed by legally qualified people  
5 and a third check by solicitors - - -

I see?--- - - - as part of it.

You can see the next paragraph it says:  
10

*The goal was to access the compliance, skills and expertise of McMasters Legal and its indemnity professional insurance policy.*

?---Correct.  
15

And if we can just quickly go to 0241, which is in the same document. You can see at the second half of the page there there's a list of factors that caused the compliance committee to form the view that the current professional indemnity arrangements were appropriate?---Correct.

20

And you can see the sixth line in that list is McMasters Legal PI, professional indemnity, insurance cost agreements and payments for SOA compliance review in place.

25 And it then says below the numbered list:

*Terry noted that all SOAs were being reviewed by McMasters Legal for compliance and that this, effectively, brought McMasters Legal PI insurance cover into play for Dover Advisers. The meeting considered this strategy and resolved to continue it for the foreseeable future, but to monitor it as part of an ongoing risk identification and management strategy. Terry advised the meeting that a submission would be put to ASIC in August 2013 to reduce the amount of PI cover*  
30

35 Is part of the reason that is behind these statements that legal professional indemnity insurance is cheaper than professional indemnity insurance for financial advisers?---Yes.

40 And the statement of advice review process by having McMasters Legal do it, that is you, in your capacity as a solicitor, engage the – your compulsory professional indemnity insurance that you're obliged to hold as a solicitor?---Correct.

I see?---Can I add to that, please.

45 Yes?---The ..... regulatory guidelines which deals with adequacy of compensation arrangements specifically refers to additional arrangements such as directors insurance. It doesn't refer to solicitors insurance. And says that that is one of the

matters which should be considered when you're determining the overall adequacy of your compensation arrangements.

5 Thank you. Could I take you back to page 0226. And you can see a little further down the page there's a heading Adviser SOAs. Perhaps we can make that a little larger. Thank you. And it says there that:

10 *Simon reported that he or another staff member had reviewed almost all adviser SOAs over the preceding five months. He was happy with the quality and believed they complied with the law and with Dover's specific requirements.*

Pausing there, Simon is Simon Lo?---That is correct.

15 And is Mr Lo a financial planner?---No.

What - - ?---He's a solicitor.

20 He's a solicitor. And who is Mr Lo's employer?---He was probably working, effectively, for Dover at that time.

I see?---It is five years ago.

25 Yes. And is Mr Lo still with you?---Yes, he is.

He is still employed by Dover?---No, he's not.

30 Where is - - ?---He's now a 50 per cent owner of the law firm McMasters Lo Andrawis.

35 Thank you. And it says there that Simon reported that he or another staff member had reviewed almost all adviser SOAs. Can you recall who the staff members could have been at that time?---It would be, for example, Yin, who – looking at the compliance – at the top of page 1 there's a list of persons who attended the meeting.

Yes?---and, for example, there you will see Yin. Yin is currently our compliance manager.

40 I see?---So she would have been involved in that process, too. And there would have been other staff, as well, who weren't attending the compliance meeting – the compliance committee meeting, because they weren't on the committee.

Is Yin a financial planner?---Yes, she is.

45 Thank you. At this point in time, Dover had 127 advisers?---Correct.

The retainer to McMasters Legal was stated on that page I took you to earlier a little higher up the page as being \$3000 a month?---Correct.

That's \$36,000 per annum?---Correct.

5

And if each of the 127 advisers prepared a statement of advice – adopt a conservative figure – once a month, that would be 127 statements of advice a month that required review by McMasters Legal. That's 1524 statements of advice in the course of the year?---Correct.

10

Now, on my maths, 36,000 divided by 1524 gives an average cost per review of the statement of advice of \$23 per statement of advice. Would you agree that \$23 is not a lot of solicitors time?---Yes. May I add to that?

15

Yes?---I was paying myself, so there's no need for it to be an arm's length payment that I'm aware of.

20

You may have misunderstood the intent of my question. It's simply that, on what I would have thought is a highly conservative estimate of each authorised representative producing only one statement of advice per month, then for your time and the time of your staff in reviewing those statements of advice - - -?---May I clarify. This is the third review, not the first or the second review. And the payment from Dover to, say, in that – at that time McMasters Legal is a payment from 100 per cent owned company to another 100 per cent owned company - - -

25

Yes?--- - - - and it's not an arm's length payment.

30

Well, I think, also, there was another conservative assumption that I didn't state, and that was that if you counted solicitors time at \$150 an hour, say, then you would have to review the statement of advice in less than 10 minutes, wouldn't you?---That is actually quite possible to do, because the statement of advice is expressed – the solicitors are reviewing it for best interests duty and appropriateness of advice. The average length - - -

35

They're quite long documents, aren't they?---Ours are around five pages.

You couldn't assess the best interests duty without assessing the fact find, could you?---If the SOA is prepared correctly, I believe you can.

40

Because the information in fact find is set out in the statement of advice?---Correct. And we also have a number of series in – remember, that SOAs have evolved over time, but the current form of the SOA requires the author to specify why the advice is in the client's best interests.

45

And it's your evidence, is it, that a solicitor could review a statement of advice and form a considered view on whether or not it is compliant with the various chapter 7 obligations that you've mentioned in less than 10 minutes?---I think you – it's a little

bit of words in my mouth there. It is possible in some cases to do that. And, certainly, being quite experienced, if I'm asked to do it, I can look at the statement of advice very quickly and make a decision like that. The – the best interests duty – the appropriateness of the advice should be manifest from the document, not something  
5 hidden away in a work shed somewhere.

I see. Is there still a retainer agreement in place with you as the sole practitioner - - -?---No.

10 - - - to review the statements of advice?---No.

What's the process now for what you've called third – I think you call it third level - - -?---The third – the third review.

15 THE COMMISSIONER: If we're going into a discussion of the current system, we may take that up after lunch, I think, Mr Costello.

MR COSTELLO: Thank you, Commissioner.

20 THE COMMISSIONER: Can I ask you to be good enough to be back in time to begin at 2, Mr McMaster?---Certainly.

2 pm.

25

**ADJOURNED**

**[1.01 pm]**

30

**RESUMED**

**[2.00 pm]**

THE COMMISSIONER: Yes, Mr Costello.

35 MR .....: I have sworn evidence of a bank protection racket, involving NAB, its lying lawyers and its shareholders and presiding judges and the patriarchal legal services for - - -

THE COMMISSIONER: I think we have had this discussion before, have we not, sir? I'm sorry. Would you be good enough to be quiet.

40

MR .....: The Tax Commissioner needs to know 75 million will get to the bottom of all the corrupt, unconscionable conduct.

THE COMMISSIONER: Would you be good enough to be quiet and to sit down.

45

MR .....: You and I have a prime public duty - - -

MS .....: You need to leave now.

MR .....: Thank you.

5 THE COMMISSIONER: Please sit down.

MR .....: I have a couple of statements for Ms Orr and for the Commissioner.

10 THE COMMISSIONER: Thank you. By all means, send those email to us and we will read them. Yes, Mr Costello.

MR COSTELLO: Thank you, Commissioner.

15 Mr McMaster, we were discussing the compliance committee minutes of 10 April 2013. The document ID is DOV.0002.0001.0224. And if we could go to 0227, please. Before we come back to this document, I just want to close off on what we were discussing before, Mr McMaster, about the retainer that then existed with McMasters Legal. I think your answer to one of the last questions I asked you was that there is no retainer arrangement in place now. Is that correct?---With me?

20

Yes?---That's correct.

Is there a retainer arrangement in place with another firm?---Yes.

25 Which firm is that?---MLA Lawyers.

And what's the nature of the retainer?---There's a payment every month.

30 Yes?---The payment depends on a number of things, including the salaries of staff seconded. So there's a reimbursement of their costs element in the computation. And I remember that we've actually got 50 or so staff. We have a CFO lady. And I'm not aware of the exact amount each month.

35 Is it volume-based or time-based in any way?---It's time-based - - -

Time of?--- - - - plus a retainer amount on top of that.

Retainer amount plus the amount of the solicitor's time - - -

40 Yes?--- - - - taken in reviewing the statement of advice?---Yes. Yes.

And that is an arrangement with a firm that you're not a member of?---I have no interest in any form, shape with MLA Lawyers.

45 Thank you. On the page that's in front of you there is a heading New SOA Review Processes. And you can see in the second paragraph under the heading it says:

*Advisers could send the SOA of the client without Dover pre-approval if they answer “yes” to each question in part 1 of the checklist. The SOA still had to be sent to Dover for retention. If the adviser answered “no”, Terry has to look at the advice before it goes to the client.*

5

Terry is a reference to you, obviously?---Correct.

And why would you have to check the advice, and not Mr Lo, if there was a “no” answer to one of the questions in the table?---So that I’m checking it as the  
10 responsible manager.

You’re checking it there as the responsible manager, not in your capacity as a sole practitioner?---Correct. The reason is that those – that table there identifies statements of advice which we believe are more complex, for the reasons stated, and,  
15 therefore, we were giving them a higher level of review. And, basically, as the responsible manager I needed to approve each one of them on top of the normal review processes.

Thank you. Perhaps, then, we can quickly look at the table. So the heading reads  
20 Part 1:

*If the answer is any of these questions is “no”, the SOA must be submitted to Dover for approval before it is sent to the client.*

25 And the first question is:

*Does the advice involve less than \$400,000?*

?---Correct.  
30

Does that mean \$400,000 worth of assets?---It means – most advices have a risk insurance component. Then many will have an investment component, as well. Of course, you could have an SOA just for investment, too. We drew a line in the sand and said, well, 400,000 – if the amount is above 400,000, the figures are bigger. The  
35 matter is more grave. As a responsible manager, I had to see that SOA. It meant we were classifying the statement of advice as complex. I think in those days we called it contentious.

I see. I just want to put the question to you again, because I am not sure I’ve properly understood your answer. The reference there to \$400,000, is that a  
40 reference to assets being dealt with in the advice? Is it a reference to the amount that may be going invested following the advice or is it a different amount?---The second.

The second. The amount that may be invested?---Yes.  
45

\$400,000?---So the client may have a home and superannuation worth, say, in total 1 million, then they might be investing \$401,000.

Yes?---Because they – separately. Because they were investing 401,000, that SOA would have to be reviewed by me, as well.

5 If they had \$500,000 each in superannuation, that question could still be answered yes, if they didn't have any other investments. Is that right?---Yes.

Thank you. The next question is:

*Is the client conservative?*

10

What does that mean?---We – we have a criteria for it. Basically, we assume conservatism in – in attitude of the investor. And that means that the recommended investments, as a starting point, have to be conservative. We then ask the adviser to discuss the concept of risk and return with the client. And then in the statement of  
15 advice set out in a paragraph, having regard to factors such as age, income, wealth, education, training, prior investment experience, whether we believe a reasonable financial planner would say that they should not be invested conservatively, but, rather, should be invested more towards growth, at the other end of the risk spectrum in the classical analysis. And the client has to agree, as well. So we're not treating  
20 the client conservatively, if they're not conservative investments at that point in time – this is five years ago – they had to be reviewed by me, as well.

If a client came to a Dover authorised representative and said, "I want to make an investment in a managed fund. I want a high growth option", could that client be  
25 classified as conservative insofar as this table is concerned?---It would depend on the facts. If that client's critical criteria – I just enumerated them – suggested that a reasonable financial planner would agree that that client should be investing in high growth, we would treat the client as not being conservative. But if, for example, that client was a 62 year old retiring bus driver with no previous experience in investing,  
30 without adequate education and training in the field, even if they said they wanted to invest high growth, our advice would be no, you shouldn't do that.

Are you encapsulating within the question "is the client conservative?" the statutory best interest duty?---A bit more than that, actually. It's, basically, we don't like risk  
35 analysis questionnaires. The reason is simple. I went to an ASIC seminar and the presenter said that ASIC doesn't like them, and prefers people to use other criteria as well as, if not in place of, a risk analysis questionnaire. So we require the adviser to consider the objective facts of the client's background, as I say, age, income, wealth, prior investment experience, education, training, so on, when they're assessing the  
40 risk profile. And only if those factors on balance – different circumstances, different weight will be given to each of them, but only if on balance those circumstances say that a reasonable financial planner would agree that it's high growth can the advice be high growth. It's a reasonable professional test.

45 And it's a reasonable professional test that is self-assessed by the adviser who has written the advice?---Yes.

So the adviser who has written the advice forms a judgment about whether or not their own advice accords, on your evidence, not only with the statutory best interest duty, but with a higher obligation than that?---And then we read it and the adviser has to be right.

5

Yes, but you read it after the advice has gone to the client?---No. I know that sentence is there, but we actually check them before they go to the client. And that's 2013.

10 Well, these are the minutes of compliance committee that you sat on. They were signed on 9 May after the meeting. Is your evidence now that the minutes are inaccurate in that respect?---Allow me to read it. In that time – I confess to be a certain amount of uncertainty, because, to the best of my recollection, they've always been checked before they go, but I agree that sentence there indicates that if they  
15 were conservative, they could go earlier.

There's then a more – what I might describe as a more subjective question, the third question:

20 *If the client is not assumed to be conservative, have the reasons been adequately explained in the SOA?*

Again, this is an assessment made by the adviser who has written the statement of advice?---The adviser has to explain why they've chosen or suggested that the client  
25 has a particular risk return profile. And they have to explain in a paragraph or so why they've formed that opinion. Then we test that opinion at the review stage, to make sure a reasonable financial planner would agree.

That's not what this says. This says that the adviser, that is, the authorised  
30 representative who has prepared the statement of advice, determines for him or herself whether or not the – whether or not the reasons have been adequately explained. And if the adviser forms a view that they have been, and answers “yes” to each of the other questions, including the two I've spoken to you about, the advice can be sent to the client with – before it is sent to Dover?---This is 2013.

35

Yes?---And I will say, nevertheless, despite reading that, to the best of my recollection, they were checked before they went, even then.

Well, how would you know?---As I said, to the best of my recollection.

40

But how would you know if they were sent to you before they had been sent to the client?---We have a whole lot of checking processes in place for that. May I expand?

Yes?---The commission team – most of the SOAs will have an insurance component,  
45 which means there will be a commission. When the commission amounts come in from the insurers, the payment due to the adviser is reconciled against the statement of advice. And if there's no statement of advice, the commission is not paid on to the

adviser. So we – we can – an adviser will not do what you're suggesting, that is, send a – an SOA to a client without us checking it, because at the time comes to be paid the commission, we will literally catch them out.

5 Well, what about a client in an ongoing service relationship where they pay an ongoing service fee?---Those payments are reconciled to the fee disclosure statement.

10 Yes?---So we verify it that way. But I would be asking what would the motivation of that be?

15 But a client that has agreed to an ongoing service arrangement with an authorised representative of Dover might require multiple advices in the course of the year. It might be the very reason they've chosen to have an ongoing fee arrangement. Do you agree with that?---It would be unusual. Multiple statements of advice – it would be very unusual.

It would be a complex client?---It would still be very unusual.

20 It would be possible?---I can't think of one, actually.

You can't think of a circumstance where a client has received more than one advice in a 12 month period?---No. No. You said a series of complex SOAs in the year.

25 No, I said a client, who may be a complex client, might require multiple statements of advice in the course of a year and they may choose to have an ongoing fee relationship with a Dover authorised representative for that reason?---Well, it is theoretically possible.

30 And in those circumstances, if the statements of advice were not submitted to you, to Dover, that is, before they were sent to the client or at all, you wouldn't know?---That is correct.

35 You will see at the foot of the page there is a repetition of the statement that you've cast some doubt on, that in the case of non-contentious SOAs advisers can send the SOA to the client before it's reviewed by Dover. Seeing that for a second time, does it cause you to reflect on whether or not that is an accurate representation - - -?---Yes.

40 - - - of the process at that point in time?---Basically, at that time – I can see it there now – the review would happen, basically, as the advice goes to the client, if it was a simple statement of advice, not contentious.

45 Now, you've given some evidence earlier about statements of advice receiving review from lawyers?---Yes.

And at this point in time that was you, but now - - -?---And solicitors working for me.

5 And solicitors working for you. And now that is MLA?---MLA lawyers, McMaster Lo Andrawis.

Is that right?---Correct.

10 And that's an independent firm separate from you - - -?---Correct.

- - - you've told us. Does the assessment of financial advice require particular training in non-legal matters?---Well, yes.

15 Do you accept that reviewing statements of advice prepared by financial advisers is not legal work as that phrase is ordinarily understood?---Yes. Well, actually, it's interesting, because they're assessing – they're assessing the work with reference to whether it satisfies the rules in 961B(1).

20 And a lawyer is qualified to do that, in your opinion?---I believe so, particularly when they're also financial planners.

But they're not all financial planners, are they?---Mina is and the staff are.

25 All of them?---Maybe not at all times, but normally yes.

Well, your evidence earlier was that Simon Lo was not?---I said Mina – Mina is.

30 Yes, but I'm just saying to you that your evidence earlier was that Simon Lo was not a financial - - -?---Correct.

- - - planner and is not and he is listed in these minutes as one of the people that's reviewing the advices?---Correct.

35 And his firm – the firm of which he is a partner is the firm that is currently engaged to review the advice?---Correct.

I see.

40 THE COMMISSIONER: These minutes of the meeting of the Dover compliance committee, Mr Costello, are you tendering those?

MR COSTELLO: Yes, thank you, Commissioner.

45 THE COMMISSIONER: The minutes of the meeting of Dover compliance committee, 10 April 2013, DOV.0002.0001.0224, exhibit 2.237.

**EXHIBIT #2.237 MINUTES OF THE MEETING OF DOVER COMPLIANCE COMMITTEE DATED 10/04/2013 (DOV.0002.0001.0224)**

5 MR COSTELLO: Thank you, Commissioner.

Mr McMaster, I want to show you a different document. It's RCD.9999.0024.0018. This is an article that you wrote in 2016 and is on the website of Dover. Did you publish this article anywhere else, to your recollection?---No.

10

All right. If, perhaps, the last paragraph – actually, could the next page be brought up next to that one. Can you see the last paragraph on the first page. Perhaps that could be blown up a little bit. This is an article you wrote about the Financial Ombudsman Service where you had unflattering things to say about it. And we might come back to other elements of it later, but there's a part of it that's relevant to the line of questioning that I'm taking you on now. Do you see there you say:

15

*FOS is unique, in that inexperienced and unqualified non-professional employees form opinions on what experienced and qualified professionals should have done, with the benefits of plenty of time and hindsight. Could you imagine the outcry if this happened in other professions, say doctors or architects? Sure, the FOS junior may have a law degree. So what? How does a law degree equip you to judge what a qualified financial planner's standard of care should be?*

20

25

And over the page you say:

*Law degrees do not include training in medicine, architecture or financial planning.*

30

If that criticism was good as against FOS in January 2016, it was good against your process, wasn't it?---I think it is

35

So one of the vaunted benefits of Dover as a licensee is that there is a legal review, yet in your own public work you have said that lawyers are not properly qualified to assess financial advice?---Correct.

40

So why do you bother doing it at Dover?---I think you're taking a fairly restricted view of what we say and watering it down a lot. We actually have three levels of review. And, yes, the review team are predominantly legally qualified, who then work full-time in this space reviewing statements of advice. Quite a few of them are also qualified financial planners. And, of course, they become quite good at what they do.

45

I tender that document, Commissioner.

THE COMMISSIONER: Dover group website article concerning Financial Ombudsman Service – is it January 2016?

MR COSTELLO: Yes, Commissioner, 21 January 2016.

5

THE COMMISSIONER: 21 January 2016, RCD.9999.0024.0018, is exhibit 2.238.

10 **EXHIBIT #2.238 DOVER GROUP WEBSITE ARTICLE CONCERNING  
FINANCIAL OMBUDSMAN SERVICE DATED 21/01/2016  
(RCD.9999.0024.0018)**

MR COSTELLO: Mr McMaster, are the statements of advice that you prepared  
15 reviewed by others?---Yes, they are.

You submit them to Dover for review?---Yes, I do.

Who reviews your statements of advice?---The others do.

20

Who are the others?---The people who work for Dover.

Employees of yours?---Correct.

25 Do you think that an employee of yours might be reluctant to give your advice a poor grade?---On the contrary, they enjoy doing so.

Do you keep a record of the staff member that reviews your advice?---Yes.

30 And do you keep a record of the staff member that reviews each advice submitted?---Each advice submitted. What do you mean?

Each advice submitted by an authorised representative - - -?---Yes we do.

35 That's reviewed by someone at Dover?---Yes, we do.

All right. The Commission asked sent a notice to produce to Dover seeking a lot of statements of advice reviewed for various advisers. Can I take you to DOV.0003.0001.0001. This is a spreadsheet prepared in answer to that notice. And  
40 you can see that the particular one on the screen relates to Mr Adam Palmer, although I can say that in respect of each adviser that was named in the notice, including you, they're in similar form. And you're probably familiar with spreadsheets that look like this?---I do believe that was pretty much created for this  
45 purpose.

This log was created for the purpose of the Commission?---Well, we have – obviously, have the information. We reduced it to a spreadsheet to give it to you.

So this is not a log that is maintained in the ordinary course of Dover's work. This is a log that was prepared - - -?---We have a much more detailed and complex log maintained in the ordinary course of Dover's work.

5 Why didn't you produce that?---It would be too voluminous.

Too voluminous for who?---I think this request came in a day or two ago.

10 But if it exists, Mr McMaster, all you would need to do is provide it?---It's in the computer system, and to extract the information – we extracted the information out in a spreadsheet form and presented it to you.

15 I see. You didn't present the name of the person who had reviewed any of the advice?---Well, we apparently didn't.

But you – your evidence is, is it, that that information is available at Dover?---Definitely.

20 It has just not been provided to the Commission?---Correct.

I see. Now, as I understand it, Dover's system of advice review means that file audits of the ordinary kind are not conducted by Dover. Is that correct?---They're – they're infrequent. Some are done in what could be called conventional field audit.

25 Can I take you to what I understand to be the most recent version of Dover's combined compliance manual. It's DOV.0002.0001.0930. This document is entitled Dover Financial Advisers Combined Compliance Manual and Advisers Handbook. And it has got a date on it of 1 February 2018. Is that the most up to date version of this manual?---Yes, it is.

30 Thank you. Can I take you, please, to page 0967. You will see this deals with Dover's remote audit program. And it says:

35 *Dover's policy of reviewing SOAs before they are sent to clients and having MLA lawyers confirm that they are appropriate and in the client's best interests virtually eliminates the need for on-site audits. This was noted by Catalyst compliance some years ago and follows on from ASICs views as expressed in report 362, review of financial advice industry practice phase 2 at paragraph*  
40 *74, where ASIC notes advice audits are, in effect, adviser file reviews. Dover's 100 per cent SOA review policy is supported by its remote audit program. On site audits are not necessary and all references to audit are taken to mean Dover's 100 per cent SOA review program and its remote audit program.*  
45 *Besides the SOA review policy, Dover advisers are remotely audited once every half a year and/or otherwise as necessary by completing an audit program through the adviser portal. Remote auditing was introduced in 2016 as an addition to our adviser supervision system. The remote audit covers all or part of the adviser's activities and may include –*

A list of things there, including at 3:

*SOAs and ROAs and related fact finds.*

5 And it says, after the list:

*Using an online system allows Dover to analyse the data in various ways.  
Findings are shared with advisers as a way of improving ongoing compliance.*

10 Could you explain how the remote audit program works?---It's developed by our IT team. And every six months the advisers have to go online and answer the questions. And the questions – you get a feel for them, what they would be, from looking at the matters listed in that section there.

15 This is a questionnaire that is sent to - - -?---Well, it's – it's more than that. It's built into our management system. And every six months they log on and go through a series of questions, sort of some of the detail of compliance. Things like maintaining their conflict of interest register and so on.

20 Yes, I see. Can I take you to – I tender that document, Commissioner.

THE COMMISSIONER: Financial adviser combined compliance manual and adviser's handbook, 1 February 2018, DOV.0002.0001.0930, exhibit 2.239.

25

**EXHIBIT #2.239 FINANCIAL ADVISER COMBINED COMPLIANCE  
MANUAL AND ADVISER'S HANDBOOK DATED 01/02/2018  
(DOV.0002.0001.0930)**

30

MR COSTELLO: Thank you, Commissioner.

35 Can I take you to another document, Mr McMaster. It's DOV.0006.0001.0006. I can't show you that document, Mr McMaster, because it has not yet found its way into the court book. I just want to ask you a few more questions - - -?---Certainly.

- - - about the remote audit program?---Certainly.

40 Then I will move to a different topic. One of the questions that is asked of authorised representatives in the remote audit program is, "Have you sent in all SOAs, ROAs to Dover for review before presenting to your client? Do you agree with that?---Yes.

45 And the adviser answers that question. And that is one of the ways that Dover attains a level of assurance that its SOA review program has worked as intended. Is that correct?---One of the ways.

Thank you. There is another question, which is question 14, that I will read to you. It says:

5 *Does all advertising and promotional material, website, blogs, newsletters, ads, publications, social media accounts, stationary, contain –*

And there is a five items. The fifth is:

10 *No deceptive or misleading statements or prohibited words or expressions.*

?---Correct.

Are you familiar with that question?---Yes.

15 And the adviser is expected to self-assess whether or not any of the material used in its practice contains misleading or deceptive statements. Is that the intention of that question?---Correct.

20 And the 23<sup>rd</sup> question in the remote audit is:

*Have you made all reasonable inquiries to determine all relevant personal circumstances?*

25 Are you familiar with that question?---Correct.

Isn't that the very question or one of the very questions that an auditor would be obliged to determine if they were doing an ordinary file audit?---With respect to the first matter, the website and so on, we actually monitor the websites automatically - - -

30 No. No. No. My question was in respect of question 23, not question 14?---Sorry.

Question 23 was:

35 *Have you made all reasonable inquiries to determine all relevant personal circumstances?*

40 Perhaps I will ask you a preceding question and I will ask you the question I have already asked you again. When that question refers to "reasonable inquiries to determine all relevant personal circumstances", what is it referring to?---That's – it's a repetition of the question built in automatically to every SOA review we do, which is that you must consider the personal circumstances of the client. It doesn't displace the earlier numerous questions. It just repeats it.

45 My original question to you was isn't that the very type of inquiry that an auditor would ordinarily undertake in conducting a file audit of an adviser's file?---Yes.

And in your remote self-audit system, it's left to the adviser to make a personal determination as to their own conduct?---Yes, but can I complete the sentence?

5 Please?---We actually have 100 per cent real-time audit of files. And, obviously, that question is asked on each one of those file audits.

What does 100 per cent real-time audit of the files mean?---That we check every statement of advice as it's created and before it goes to the client.

10 As an adviser is sitting in their office in suburban South Australia, you can see what they're doing and check it in real-time. Is that what you're saying?---We check the FACT-Finder for consistency with the statement of advice. And that answers your question on that.

15 I am afraid it doesn't. Your evidence was that you can check in real-time. How do you do that?---By comparing the FACT-Finder and similar background documents with the content of the statement of advice.

20 What has that got to do with real time?---We may be talking about different things. As each statement of advice is prepared by the adviser, it's sent to Dover with all relevant background documents, and we check for consistency between those documents and the statement of advice.

25 Is your answer that you overreached and it has got nothing to do with real-time?---I am not sure why there's a confusion here.

I'm trying to understand in what sense do you use the phrase "real time"?---As it happens.

30 As what happens?---As the statement of advice is reviewed and prepared.

By Dover?---It's prepared by the client; it's reviewed by Dover.

35 Prepared by the authorised representative for - - -?---Sorry, forgive me. The authorised ..... obviously, sorry.

It's then submitted to Dover?---Yes.

40 And at some point in time, on your documents, usually promptly - - -?---Yes.

- - - it's reviewed?---Yes.

And that's what you meant when you said "in real time"?---Yes.

45 Thank you. I want to move on to a different topic and speak about appointment of authorised representatives. Dover has had very significant growth in authorised representative numbers over the last few years. Do you agree?---That's correct.

And you explain Dover's screening process of authorised representatives at paragraphs 20 to 24 of your statement. Do you have a copy of your statement there? Perhaps I will put it on the screen. It's WIT.0001.0031.0001. If we could move to paragraph – the page containing paragraph 20. I think it's two ahead. And perhaps  
5 if paragraphs – yes, thank you. That's probably fine. This is where you explain Dover's screening process. And, if I can summarise it in a general sense, your evidence is that Dover has policies in place for screening of applicants to become authorised representatives of Dover. It has applicants complete a number of forms before they can become a Dover authorised representative. And it invariably seeks  
10 reference checks. Is that a fair summary of your evidence?---There's actually a lot more to it than that.

All right. What else is there?---Well, there are, obviously, interviews to discuss the matter generally, find out where the applicant's coming from, what their story is, the  
15 reasons why they're leaving their current AFSL.

Yes?---And there's also – we check with insurers and we check with product manufacturers to get some – particularly on the insurance side, some reliable statistical information about the adviser.  
20

Yes?---We check third parties, we ask for statements of advice to review. And, if it's available to the applicant, we ask for their most recent compliance report from their current AFSL. We then have an induction test and an induction interview with a compliance officer.  
25

Thank you. So it's quite an elaborate process?---Yes.

Now, one of the advisers that there has been evidence in respect of in the course of the hearings over the last two weeks is Mr Adam Palmer. You undertook a reference  
30 check of Adam Palmer?---We did.

And you did so in the first instance – and I will come to dealings with Genesys in a moment. But you did so in the first instance by having Mr Palmer complete a form, which is a reference checking in the financial services industry form that was  
35 produced by Standards Australia?---Mmm.

And that was the form I think that Dover commonly used - - -?---At the time.

- - - at that point in time. And I will take you to that document. It's  
40 DOV.0005.0001.0515. And I will show you the first page of the form first, so you can be sure that we're looking at the right document. So it always has that same first page. And then if we could move to 0543, please. The page I'm taking you to is appendix D of that document, which is the reference check form. And Mr Palmer was required to complete this form by Dover. And you can see there that there's  
45 some details that have been completed, presumably by Mr Palmer. And he states that he joined the family business in 1996 and has been running business for 2003. Presumably, he meant been running his own business since 2003. And then if we

could go over the page, please. There's a request for work referees. And you can see that he has given three referees. Then if we move to the next page, Mr Palmer explains that he has listed three professionals in the financial services industry that he has a close working relationship with, and:

5

*...who we refer business to and receive referrals from.*

So there's three people identified who are not within his organisation. And then under Current Organisation it says:

10

*If applicable, please provide the name, title and contact details of your current supervisor or compliance professional.*

And the name has there been redacted, but you can see the title of the person is office manager. And the email address of that person, which has also been redacted, is an email address that is of the firm that Mr Palmer was at. So this is somebody that was at Mr Palmer's firm when he was seeking to become an authorised representative of Dover. Did you understand Mr Palmer to have completed the form in that way, because he was, in effect, a sole practitioner?---I have no such understanding, because I wasn't involved in the completion of that form at that time. It was done by the staff.

20

Right. Do you agree that it wasn't accurate for him to describe his own office manager as his current supervisor or compliance professional?---I think the difficulty is, when you own your own business, who would be your supervisor?

25

Well, presumably somebody within his licensee - - -?---Presumably. Well - - -

30

- - - would be his compliance professional, wouldn't it?---Well, possibly, yes.

Is that what you would ordinarily understand a sole practitioner's compliance professional to be somebody within their licensee?---I have not really thought about it too much. I would say yes. And we note that we asked for a reference from the previous AFSL.

35

Yes, we will come to that. Did you review this form before Mr Palmer became an authorised representative?---No.

40

Who did?---Our CEO and our adviser manager.

Have you discussed this form with either of them since Mr Palmer became an authorised representative?---No, I actually haven't.

All right. Thank you. Over the page at 0546, there are a number of questions that Mr Palmer had to complete. And if we move straight across to 0547, you can see the 12<sup>th</sup> question there is:

45

*Are you aware of any current inquiry or investigation that is ongoing and relates to issues of your character, competence or conduct?*

5 And Mr Palmer has ticked “yes”. And then, over the page, he has given a reasonably detailed explanation of his answer to question 12. And he says:

10 *At the most recent AMP audit, AMP are currently reviewing files and coming back to me with outcome. The issues identified were around the statement of advice not being up to the standard that they require. They also required me to complete updated courses with regards to SMSF, direct equities and margin lending. As discussed with Peter and Terry, we joined Genesys around May 2013 and there was no induction or training provided when we joined. By November I requested that somebody come and check if we were doing the advice the way they wanted. It was around March '14 that an advice manager started working with us. Shortly after this, our files were audited.*

20 Dover was aware of these circumstances – sorry – you were aware of these circumstances before Mr Palmer submitted this form. That’s correct?---I’m not sure I was aware of it before he submitted the form. I did certainly become aware of issues after he submitted the form.

You had a discussion with Mr Palmer before he completed this form?---I don’t recall.

25 Does it help you to recall when you see the line there:

*...as discussed with Peter and Terry.*

30 ?---Yes. But I can’t recall.

Would it surprise you if you had spoken with Mr Palmer before he completed this form?---Normally, I’m not involved at that stage.

35 At the recruitment stage, if I can call it that?---At that point, yes.

All right. Who would have reviewed this form within Dover at that time?---It would have been Peter and Flo.

40 Who is Peter?---Peter Thompson.

And, sitting there now, would the admissions that Mr Palmer has made, quite frankly in that form, have caused you concern had they been brought to your attention at that time?---They were.

45 They were brought to your attention at that time?---Yes.

When were they brought to your attention?---Soon after.

I see. And did they cause you concern?---Yes, they did.

All right. At the time Mr Palmer completed this form, which was 14 October 2014,  
He had already been told that he could become a Dover authorised representative,  
5 hadn't he?---I'm not sure.

Can I take you to another – I might tender that document first, Commissioner.

10 THE COMMISSIONER: Reference checking financial industry form re Palmer,  
DOV.0005.0001.0515, exhibit 2.240.

15 **EXHIBIT #2.240 REFERENCE CHECKING FINANCIAL INDUSTRY FORM  
RE PALMER (DOV.0005.0001.0515)**

MR COSTELLO: Can I take you, please – we will come back to this document, but  
can I take you to DOV.0004.0001.0055. You can see this is an email chain from Mr  
Palmer's email account. And at the foot of the page he informs his then licensee,  
20 Genesys, in the fourth line:

*We are moving to Dover Financial Advisers, and that's on 25 September 2014.*

25 And then if you look at the top of the page, you can see that he has forwarded that  
email to Mr Palmer on the same day, one minute after sending it to Genesys and said  
"FYI."

30 Would Mr Palmer told at a meeting – the meeting with you and Mr Thompson that  
he could become an authorised representative?---Mr Palmer was originally told he  
couldn't become an authorised representative.

When was he told that?---Sometime before then.

35 By?---By Peter Thompson, if you like, on my instruction.

And why was he told that?---Because he had disclosed to us the circumstances of  
AMP and we were – we were concerned by it.

40 So why, then, on 25 September, do you think, he felt sufficiently comfortable not  
only to tell Genesys that he was moving to Dover, but to forward the email to Mr  
Thompson?---Because we had a series of discussions after that and I can recall – I  
wasn't involved in them, but Peter was coming back to me and reporting. And the –  
the details of the AMP Genesys situation unfolded. And when it was properly  
45 explained to us, we were happy to take him on.

Did Mr Thompson meet with Mr Palmer in the first instance?---Yes.

And then you and Mr Thompson together met with Mr Palmer?---I actually can't recall meeting with him.

5 Yes?---But Peter was keeping me posted on the conversation. Because I originally said no, and it was – and then umming and ahhing. And we then we eventually said yes - - -

Well, what information – pardon me?--- - - - when we had all the information.

10 What information were you acting on when you said no?---The base principle that there had been a problem with the AMP Group.

And did you know what the problem was?---Well, we're very sensitive to property, for a number of reasons. We have an absolute rule against off the plan apartments.  
15 And we have an absolute rule against the adviser being paid by anyone other than the client in a property advice situation. And we're – we have a nil tolerance of breaches of either of those two. So we at first were concerned that this was an apartment sale-type situation. And we said no. When the full information came to light, we – we discovered it was genuine buyers advocacy, where Mr Palmer, through a related  
20 entity, was providing help to his clients to buy homes, to help them with upgrades, downsizes, homes for children, that sort of thing. Now, we actually encourage that sort of advice, on the basis that to omit the most valuable asset from a financial plan is probably negligent. So we found that there was a commonality there. And our earlier concerns that it was involved in something improper, what we feel is  
25 improper, fell away. We're also very alert to subtexts. If I could put it delicately, if a client invests in direct property, such as their home or a – an investment property, they don't have any money to invest in funds under management. So the institutional AFSLs don't like direct property. They discourage it, if not ban it, as an investment possibility. So, knowing that and feeling and writing that financial planners should  
30 be moving to a fee for service model, where the most valuable asset that people own, their home and, you know, obviously, rental properties, investment properties and similar, can be the object of advice and should be the object of advice on a fee for service basis, we then proceeded.

35 Well, can I ask you something arising from that. What did direct property have to do with this?---The issue why he was leaving AMP was to do with recommending direct property to his clients - - -

40 Well, that's not what he said to you in this form?---I's what he was telling us in meetings.

That's not what he say in this form, he said to you, at the meeting before he completed this form?---It was what he was telling us in the meetings.

45 Do you now have a recollection of meeting with him?---Peter was telling me of the issue and I was deliberately staying a distance away from it.

Did Mr Palmer discuss this with you?---I don't recall discussing with him at all.

5 So what do you recall?---I recall being told of the problem at AMP, initially saying no, then over a period further discussions were held between Peter and Adam when, if you like, the correct picture of what had happened emerged. And when we knew what the correct picture was we agreed to take him on, subject to the conditions, obviously, that the direct property activity be in his financial services guide, be disclosed in statements of advice when he's recommending that, be on his conflict of interest register and he follow our additional rules, that there be no off the plan, because of the commissions problem, and that he not be paid by anyone other than the client.

15 Did Mr Palmer – did Mr Thompson tell you that he was concerned that Mr Palmer had completed a reference checking form and made what appeared at first glance, at least, to be reasonably frank disclosure about the problems he had at AMP, but hadn't mentioned anything about direct property that you appear to have been so concerned by?---He actually – it had been told to us. It had been told to us.

20 My question was did Mr Thompson express any concern to you that in the written document he submitted to you he didn't say that?---No.

He presents the problem at AMP rather differently. He doesn't mention anything about direct property and he says:

25 *...as discussed with Peter and Terry.*

30 And the problems he identifies in the written document that he submitted to you were a current ongoing audit, statements of advice not being up to the standard they require, and the requirement for further training in SMSF, direct equities and margin lending?---Fine, that's what he wrote there.

35 Wouldn't Mr Thompson have been concerned that the explanation being given in this document is different to the explanation that he had given – that Mr Palmer had given to him previously, and that you were so concerned about that you had said Mr Palmer could not become an authorised representative of Dover?---Look, the discussions regarding property occurred. The fact that the application doesn't marry up with those discussions perfectly is, by the looks of it, just a historical fact.

40 Can I take you, please, to exhibit 17 of your statement. It's DOV.0005 - - -

THE COMMISSIONER: Before we do that, are those emails to be tendered, Mr Costello, or are they already part of the record?

45 MR COSTELLO: No, they are not. I should tender them. Thank you, Commissioner.

THE COMMISSIONER: Emails between Palmer and Thompson and others, 25 September '14, DOV.0004.0001.0055, exhibit 2.241.

5 **EXHIBIT #2.241 EMAILS BETWEEN PALMER AND THOMPSON AND OTHERS DATED 25/09/2014 (DOV.0004.0001.0055)**

10 MR COSTELLO: Now, you've said that Dover seeks reference checks - - -?---Yes.  
- - - from prior licensees. Is that correct?---Correct.

And you did in respect of Mr Palmer?---We did.

15 And do you recall when you did that?---From memory, it was in October.

Is it the ordinary practice of Dover to do reference checks before taking on a new authorised representative?---It's – the contemporaneousness of the matter, these things tend to happen in a chicken and egg situation, where you might agree in principle, then do a reference check. It doesn't all happen perfectly according to the textbook.

20 What's the ordinary practice?---You would ordinarily do it before the person was appointed, but not necessarily before you said yes, subject to due diligence, it's okay, you can come on board.

25 All right. Do you know if that's what you did in the case of Mr Palmer?---I don't. I've looked at the file since then and seen the – the reference check going to Genesys on a date in October.

30 In October?---I think it was in October, yes, from memory.

Well, I will come back to that in a moment. Would Dover's practice have been not to have made Mr Palmer an authorised representative until it had obtained the reference check?---Yes. Ordinarily, you would expect that to be the case.

35 You would ordinarily expect that until you had heard from the prior licensee, you wouldn't authorise somebody?---There will be exceptions, because responses from prior licensees often aren't forthcoming, when you have a problem with continuity of cover, if you like, and responsibility for the clients. So it is quite possible that you could take on someone, for example, subject to reference checks and other due diligence turning out okay, which it normally does.

40 Would you be surprised if it was the case that Dover didn't seek a reference check of Mr Palmer until Boxing Day?---Yes, I would be.

And if the reference check came back and AMP had expressed the same types of concerns that Mr Palmer had alluded to in the document that he'd completed, would that have been sufficient reason for you not to have not authorised or deauthorise Mr Palmer?---No, it would not have been.

5

Why?---Because, if you like, for want of a better word, a poor reference check is actually quite normal in this situation. We rarely see, if you like, a positive reference check coming from an institutional AFSL. There's either no response or a poor response. That's normal.

10

Is that a function of the type of applicants – the type of applications being received by Dover?---I don't believe so.

15 What is it a function of?---I think it's a function of ..... when a person leaves an institutional AFSL, it's a stressful situation, it's even a distressful situation. The adviser will be very concerned about their income, the capital value of their practice. The old institutional AFSL will be equally concerned about their funds under management and premiums under advice, and they will be interested in doing things to preserve those values. And it is, in that environment, that conflict situation, you  
20 see all sorts of things happen. And a poor reference check is the least of them.

Can I show you another part of the bundle I've already taken you to that commences with DOV.0005.0001.0515?---Certainly.

25 And if we could go to 0568, which is the last page of the bundle. See, this is an email from an address that's described as fees admin, but it's somebody in the Dover team to mail@genesyswealth.com.au. Do you understand Genesys Wealth to have been Mr Palmer's prior licensee?---Yes, I do.

30 Do you see the date is 26 December at 7.10 pm?---Yes, I do.

Do you know this staff member at Dover?---Gwen, yes.

35 Is this somebody in the Cheltenham or is this somebody in the Vietnam office?---Vietnam office. And I believe – I could check the file, I guess, but I believe they're sending a copy of this – the letter which went previously.

40 There's no indication that that's what they're doing on the face of this document?---Well, I – there is actually a letter on the file in the court book, I believe, from memory, with an earlier date in letter form.

Well, this letter says:

45 *Dear sir/madam, please find attached a compliance check for Adam Palmer, who was previously licensed through your organisation. Please reply to Florence Tee or Peter Thompson. Thanks for your assistance in this matter.*

?---I believe there was an earlier letter.

All right. And then if we go back one page to 0567, you see at the foot of the page there, 3 February now, another email to Genesys:

5

*Hi, team. Just a kind reminder relating to our email below. Could you please get back to us?*

Could that be - - -?---Could we go back a page, please.

10

Yes?---There's a name there on one of those forms. And the name - - -

Sorry?--- - - - of the person is the – she's actually the national adviser manager at AMP.

15

Yes. Yes. We will come to that. I just want to get the sequence right. If we go to the last page in that bundle, 0568, there's the Boxing Day email from Dover's Vietnam office. If we then move to 0567, the foot of the page there is an email of 3 February from the same Dover staff member chasing up Genesys?---Yes.

20

And then, above that, there is an email from Genesys that copies in the fees admin address of Dover where somebody within Genesys called Alana is forwarding the email on to Claudia in the hope that Claudia might be the right person?---Yes.

25

And then if we move to the next page, 1 April now, there's an email from Dover, again, to Genesys:

30

*Hi, Claudia. Just a kind reminder with regards to the below email. Could you please get back to us or pass on to the responsible one. Adam advised us his main contact in Genesys was Grant Scott. I also attach the consent form for your reference.*

So, so far as I can ascertain, a reference was first sought from Genesys on Boxing Day 2014?---Mmm.

35

There was then a very considerable delay on the part of Genesys in coming back to Dover. And that, you say, is consistent with other experience you've had with large licensees?---Yes.

40

And do you recall if you ever got a reference check from Dover – sorry – from Genesys?---I – I believe we did not get one.

Did not get one?---Mmm.

45

Why, in circumstances where Mr Palmer had confessed to at least some of his problems in writing and other of his problems orally to Mr Thompson, was it important for Dover to seek a reference check?---Because it's form.

Because it's form?---And we're expected and required to do that.

Did you say you're expected?---Yes.

5 By?---Well, in – ultimately, ASIC in terms of observing – you know, in the spirit of section 912A.

There's an expectation that you will - - -?---Yes.

10 - - - seek to properly reference check incoming applicants?---I think so, yes.

Is there anything that AMP could have said to you that would have caused you not to have appointed Mr Palmer?---Yes.

15 What?---Fraud. A detailed list of significant errors, particularly if, when we looked at those errors, it would be likely that they would recur in the future.

What about if they told you that he had received the lowest possible audit rating in his last audit? Would that have concerned you?---Not necessarily.

20

Why?---Because we've learnt that what happens in a situation of an unsupervised adviser who is subject to volume quota KPIs doesn't happen in our environment where we have close supervision and support for the adviser. And, indeed, that's the situation that has unfolded here. It's also unfolded in many other similar situations.

25

When you say it has unfolded here?---With Mr Palmer.

You haven't had any difficulties with Mr Palmer's advice?---We have not had any difficulties with Mr Palmer's advice.

30

Thank you. Do you accept, though, that Dover didn't seek a reference check of Mr Palmer until two months after he had become an authorised representative and three months after you've - - -?---No. Actually - - -

35 - - - told him he could become one?---Relying on memory, I believe the letter was dated in October.

All right. Can I take you to a different document about a different adviser now?---Certainly.

40

Another of Dover's authorised representatives is Julie Hamilton?---Correct.

And you say in your statement at paragraph 44 that she was appointed an authorised representative of Dover on 17 November 2014?---Correct.

45

And it appears from the documents in your statement that Ms Hamilton was formally appointed on or about 27 November, but with an effective date of 17 November?---Mmm.

5 Is that a common practice?---Sorry? Say that again, please?

She was formally appointed on or about 27 November?---Mmm.

Formally authorised?---Mmm.

10

But with an effective date of 17 November?---Yes, it is. You've got 10 days to put people up on the register.

15 Right?---And normally, as a practical matter, you're trying to avoid an overlap, so you have continuity of responsibility.

I see. Can I take you to exhibit 35 of your statement. It's DOV.0005.0001.1055. Can I take you first, please, to 1062. And if that could be made bigger, the bottom half of the page. This is an email from Ishta Ramphul at Dover to Ms Hamilton on 20 17 November. It says:

*I am currently working with Peter and Florence on your application with Dover. I have received your documents today and have already sent it to the relevant department. However, the RCTI form was not filled.*

25

What's an RCTI form?---It's, basically, I think, a recipient-initiated tax invoice.

30 Thank you. Then if we can go back one page to 1061. There are some further correspondence about the RCTI form. And at the – in the last line of the email at the foot of the page there's a question:

*Please also do let me know when you wish to be appointed by us.*

35 And up the page Ms Hamilton says:

*My resignation finalised today, so I am good to start straightaway.*

Which is responded to with:

40 *Okay. I shall work on it as soon as I get your signed and filled RCTI.*

Do you see that?---Yes.

45 Then if we go over the page again to 1059. There's an email from Ms Hamilton. This is 18 November 2014. She says:

*Good morning, Terry. When you have time can I come to the office to see you, please.*

5 Did you know Ms Hamilton before this?---I don't have perfect recollection of her.  
She came on board with a group, actually.

All right. Then if we go over the page to 1058. You responded:

10 *I am out of the office today, but Amy will contact you to make an appointment.  
Can you fill me in? Has a problem popped up?*

?---Yes.

15 See that? And that generates a long response from Ms Hamilton which starts at  
1057. Can we blow up the email at the bottom of 1057. And see there Ms Hamilton  
writes:

20 *Hi, Terry. On Monday my world imploded. I wanted to come and speak with  
you face-to-face, but here goes. I had a teleconference with head of  
compliance and the state manager for Fin Wis –*

that's Financial Wisdom:

25 *CBA Financial Planning has been under immense scrutiny over the past few  
months. And, as you know, Financial Wisdom is owned by the CBA. In my last  
audit there were issues noted in that particular audit that I had had in my  
process all through my files in the time with Financial Wisdom. I asked myself  
at the time, "Why are they doing this?"*

30 And on she goes. Then says, further down:

35 *A few weeks ago, compliance wanted to look at some more files, so I sent them  
through. Then I got a month's suspension while this was happening. I really  
didn't think it would come to anything. I wanted to resign a month ago, but our  
BDM said I should wait and, "Oh, Julie, we will assist you with your transition  
to Dover and I will support you. It only takes about six weeks." Everything  
seemed to be falling into place until Monday, and I was told that Financial  
Wisdom had or will report me to ASIC with a significant breach. I was stunned  
and upset and eventually I asked how long it would take before my files to be  
40 released before I can move to a new licensee.*

And then she says, further down:

45 *I am not sure where this leaves me, Terry, or even if I can get a licence again.  
I sent a witnessed letter to her former employer telling her I would honour any  
cost up to \$20,000.*

I will come back to that last part of the email later. This email was on 19 November. If we can then move to 1056, we see your response. And you say there:

*Hi, Julie. I am not unduly troubled by this.*

5

Why were you not unduly troubled by the fact that Ms Hamilton's licensee had told her they were going to report her to ASIC for serious compliance concerns?---Because the two events that were notified to me are events that would be automatically picked up in our review processes. And I see them as being more supervision problems, which reflect poorly on the institution, than I do on the individual.

10

That's similar to what you say in the next line:

15

*Could not have happened at Dover, because we read every SOA twice, and we would have picked up any compliance concerns early in the piece.*

And then you say that it reflects poorly on financial wisdom and its compliance team. And then you say in the third paragraph:

20

*Dover will take you on. We are happy to do so with immediate effect, ie, today or tomorrow, if that helps, and allows you to achieve a continuum of service with your clients.*

25

?---Correct.

You hadn't sought a reference check for Ms Hamilton at this point?---We had been in discussions with the group she was in for quite a while and we were very aware that they were in dispute with Financial Wisdom. And these – as they announced progressively their departure from Financial Wisdom, these issues became live. They popped up.

30

You were so unconcerned by a licensee of the size of Financial Wisdom reporting Ms Hamilton for a serious compliance concern that, without further investigation, upon being told of that for the first time, you immediately agreed to take her on as an authorised representative?---The particular issues in concern were expensive premiums, and also a loss of continuity of insurance benefits on transfer to – of clients' moneys to Colonial First State. Now, under our review processes, it's extremely unlikely that those two events could occur. So what was described to me as being the problem I saw more as a supervisory problem, reflecting on the institution, than on the individual.

40

You were content to take Ms Hamilton at her word?---Yes, I was.

45

Why?---Because in the past I've done so, and events have normally proven that that's a good way to go.

Well, perhaps I'm mistaken, Mr McMaster, but I thought your evidence earlier was that you ordinarily wouldn't authorise somebody until you had completed a reference check?---Ordinarily, but here - - -

5 But in this case, where you had been told that an authorised representative was to be reported to ASIC with serious compliance concerns, you were quite content to forego the entirety of Dover's processes and immediately appoint this lady the very day she told you that?---No. With respect, she was a member of a group, and I think others had come on board already. There was a small group of three or four.

10 There's no obligation to take them all, is there?---We were very aware of the circumstances.

What circumstances?---A commercial dispute.

15 Well, a commercial dispute doesn't generate a report to ASIC for a serious compliance concern, does it?---Very often it does.

That's your experience?---Yes.

20 I want to put it to you, Mr McMaster, that you are trivialising reporting of serious compliance concerns to ASIC?---I would reject that proposition.

25 You have just said that, oftentimes, serious compliance concerns are reported to ASIC for commercial reasons?---I have seen that happen before, yes.

And you were content to presume that was what was happening here?---It had all the hallmarks of that transaction.

30 What were the hallmarks?---A prior dispute between the parties, then, towards the end, sudden compliance concerns, which – which really hadn't been there earlier.

35 So you were content to assume that Ms Hamilton was an authorised representative – authorised representative that was capable of giving financial advice in a compliant way and was being unfairly targeted by her then licensee?---Yes, particularly under our supervise and support program, where we literally check every statement of advice two, then three times. So the – the errant behaviour, or perhaps incident that occurred, is very unlikely to occur again.

40 You say in your witness statement at paragraph 45 that none of Julie's clients have complained about inappropriate advice or any other matter?---Correct.

45 I want to show you an extract of another document. It's RCD.0006.0002.0290. This is an extract from ASIC's register of financial advisers. You can see at the top of the page it relates to Ms Hamilton?---Yes.

And it says in the top right-hand corner “ceased”. And if we move down the page, you can see a red box:

*Disciplinary actions: 29 November 2017, AFS ban/disqualification.*

5

And that banning order lasts until 28 November 2020. Were you aware of that?---I’m very aware of it.

10 You didn’t think that that was relevant information to present to the Commission?---I think the sentence was there’s no complaint. This is a difficult territory. I actually represented Julie in the hearing at ASIC. And I’m actually still to this day quite comfortable her – her advice was in her client’s best interest and prioritised their interest over hers.

15 Well, Mr McMaster, I want to stop you there. My question to you was you didn’t think it was relevant to present this information to the Commission?---I agree that that does not look good, and I think on reflection it is. There was no - - -

20 Did you deliberately decide not to present this information to the Commission?---No. There was no intention to deliberately exclude it.

25 I put it to you, Mr McMaster, that it was misleading for a man of your qualifications to use the present tense in your statement when speaking of Ms Hamilton’s clients in circumstances where she is now banned?---I agree there should have been more clarity around those words.

30 It was misleading, wasn’t it, to say that you have not had any complaints about inappropriate advice or any other matter from any of Julie’s clients?---No, I don’t believe it is. That is correct.

Julie doesn’t have clients any more, does she?---Well, I take your point. Clearly, it was meant at the time.

35 At what time?---At – at the time that she was banned. I take your point.

It wasn’t meant at the time you signed your statement?---I wish I could explain.

40 Or at the time you made your affirmation when you got into the witness box today?---With respect, there’s no intention to mislead. The statement that there were no complaints about Julie is correct. And if there’s a wording error there which implies the present tense, rather than the past tense, it was not meant to mislead.

45 Well, it’s not just a wording error, is it, because it’s a complete omission of the fact that Ms Hamilton suffered the most serious consequence that can become an authorised representative and was banned by the regulator?---That’s correct.

In your statement you give evidence about – I tender that document, Commissioner.

THE COMMISSIONER: ASIC register of financial advisers record concerning Hamilton, RCD.0006.0002.0290, becomes exhibit 2.242.

5 **EXHIBIT #2.242 ASIC REGISTER OF FINANCIAL ADVISERS RECORD CONCERNING HAMILTON (RCD.0006.0002.0290)**

10 THE WITNESS: With respect, is it possible that I could explain what happened?

THE COMMISSIONER: If you wish to make some statement, go ahead?---I represented Julie in the ASIC hearing, and it was very sad. After Julie left CBA, a CBA representative visited her clients and told her that – or told the clients that there may be compliance issues with the advice they had been given and that they would  
15 pay a small amount, say \$1000 or so, provided the client signed a complete indemnity and release and transferred to another Financial Wisdom adviser. Julie only had a very small practice. It was best described as a micropractice out in Gippsland. The – more than half of the advisers accepted the money and transferred to another - - -

20 You said more than half the advisers. I think you - - -?---Half the clients, my apologies.

- - - meant half the clients?---Some time afterwards, Colonial First State wrote to  
25 Julie and said they were going to deny her access to their platform and also stop the payments that her clients had authorised would be made to her. And she contacted us and told us what had happened, and we said to her, look, we don't think you have any choice but to change platforms, because you can't satisfy your duty of care to your clients, you can't continue to act in your clients' best interests. And she did.  
30 She transferred all of the clients to Macquarie's platform. I understand from the ASIC hearing that Colonial First State complained and said they believe that was prioritising Julie's interests over her own interests. And, in summary, that was the main argument accepted by ASIC when they banned her. So, obviously, I believe that the transfer was in her clients' best interests and prioritised their interests over  
35 hers, but, obviously, ASIC disagreed. But it's – I think you need perspective on to what the banning actually was based on.

MR COSTELLO: Do you agree that a banning order is a very serious matter?---I do.

40 And do you agree that they are not taken lightly by ASIC?---I do.

There's an elaborate process before a banning order is made, isn't there?---Yes, there is.

45 And matters are thoroughly investigated?---I believe so.

Didn't you say that you acted for Ms Hamilton - - -?---Yes.

- - - in the process?---Yes.

5 Well, do you know so?---Well, I know so.

And there is significant opportunity for the person subject of the possibility of a banning order to put their case forward, isn't there?---There is an opportunity.

10 And was that done here?---I did it for her.

And it was not accepted?---It was not accepted.

15 And I'm going to put it to you again, just as you were content to proceed to authorise Ms Hamilton in circumstances where you knew she was being reported to ASIC for serious compliance concerns, you are trivialising the seriousness of this banning order by the statement that you have just made?---I reject that. I'm noting what actually happened in the process.

20 You just have a different view to the regulator?---Yes.

And is that because you're a soft touch?---I don't believe so.

25 All right. Another one of the advisers that you give evidence about in your witness statement at Dover is Koresh Houghton?---Mmm.

30 At the time that you authorised Mr Houghton, his previous licensee told you that they had concerns with his advice. Is that correct?---He was in the same group as Julie Hamilton.

Thank you. And those concerns didn't stop you from authorising Mr Houghton as - - -?---No, because in the meeting process we had been fully apprised of the commercial conflict that was happening.

35 Yes. And, again, you say that none of Mr Houghton's clients have complained about inappropriate advice?---Correct.

40 Is there anything else that you would like to tell the Commission about Mr Horton?---Obviously, he was banned, too, but I do - - -

Well, just wait there, Mr McMaster?---I take your point. It should be in there.

How long was Mr Houghton banned for?---Three years, I believe.

45 Can I take you to another document, RCD.0006.0002.0291. Could that be made a little larger, please. See, it relates to Koresh Daniel Houghton. The status is ceased. In the red box it says "28 September 2017, permanent"?---Correct.

Mr Houghton was permanently banned, wasn't he?---My apologies. I thought it was three years. Forgive me.

5 Is a permanent ban the most serious action ASIC can take against an authorised representative, in your opinion?---Yes, it is.

And what's your view of the banning order made against Mr Houghton?---I made the contravention report. If I could explain what happened, I think it's necessary.

10 No, I would like you to attend to my question?---I think - - -

What is your view of the banning order made against Mr Houghton?---I think it's excessive in the circumstances, sir.

15 Does the fact that two of the advisers that you were content to authorise on the assumption that it was a commercial dispute with Financial Wisdom were banned by ASIC, one for three years and one permanently, give you cause for reflection about the way you recruit financial advisers?---It does.

20 Do you concede that you got it wrong in both of these cases?---Mr Koresh – the events which gave rise to the banning were quite separate and different from anything which happened at Financial Wisdom.

25 But you knew they had concerns about him?---Yes.

You knew that before you authorised him?---Yes, and - - -

30 You were content to authorise him notwithstanding those concerns without properly investigating them?---No we did. We were aware of it.

You were aware of the fact of concerns?---Yes, we were.

35 But you dismissed them?---No, we looked at other evidence, and other experiences we've had. Can I explain what happened?

No, Mr McMaster, because all I'm interested in understanding at this point in the examination is whether you are prepared to accept that in the case of two authorised representatives who have had banning orders made against them, you got it wrong?---I think we – I got it wrong.

40 Thank you.

THE COMMISSIONER: Is this document to be tendered, Mr Costello?

45 MR COSTELLO: Thank you, Commissioner.

THE COMMISSIONER: ASIC register of financial advisers record concerning Houghton, RCD.0006.0002.0291, exhibit 2.243.

5 **EXHIBIT #2.243 ASIC REGISTER OF FINANCIAL ADVISERS RECORD CONCERNING HOUGHTON (RCD.0006.0002.0291)**

10 MR COSTELLO: Mr McMaster, I would like to take you back to the email exchange that you and Ms Hamilton had that I took you to earlier. It's DOV.005.001.1055. Could we please move to 1058. Do you recall that I read, rather too longly, this exchange out earlier?---Yes.

15 And I paused before I got to the end. You can see, about the fifth-last line, a sentence commences:

*I sent a witness letter to –*

20 and there is a redacted name there. It's the name of her former employer?---Yes.

Continuing:

25 *...telling the former employer that I would honour any cost up to \$20,000 per claim if there was any litigation connected with any of my clients while he had them on his register.*

?---Correct.

30 And then, if we could move back one page to 1057. In fact, could we go one further back to 1056, perhaps. This is your response – and, again, I took you to this earlier, but I will take you to a different part now. At the bottom of the page, the last three paragraphs, perhaps they could be popped out. You say – this is you to Ms Hamilton:

35 *Don't offer to indemnify anyone. You should formally withdraw any offer you have made and state that the offer was made under duress*

40 In what capacity are you acting when send this email?---A mixed one, really, because I was concerned that she had given a carte blanche indemnity and that the other party would just automatically hand out lots of \$20,000 on the strength of it.

45 Are you giving her advice here in your capacity as a lawyer or in your capacity as the responsible manager of Dover?---Sometimes it's hard to know which cap you are wearing.

I imagine it must be. The next paragraph reads:

5           *The whole question of loadings or exclusions is complicated, and quite a few people are involved in each client transaction, and you are a long way off having to pay any money. First, a client has to complain. Then, if one does, they have to make out quite a few evidentiary points, including validating damages, proving causation, and showing that your actions were not actions of a reasonable financial planner. It's a big task and hard to do. Certainly, you should not just conclude the worse just because some compliance guy says there is a compliance problem. As you rightly observe, if there was a compliance problem, why did Financial Wisdom not say so before?*

10           On what basis did you advise Ms Hamilton that she should state the offer was made under duress?---The fact that it was an offer made under duress in a state of stress, distress, not understanding all the implications of what she was doing, and virtually in a state of panic.

15           Dover was previously a member of the Financial Ombudsman Service?---Yes.

20           More recently, it has left that scheme and become a member of the credit investment ombudsman?---Correct.

25           Why did Dover move from the Financial Ombudsman Service to the credit investment ombudsman?---Because in a particular matter I was very upset that a case of elder abuse and a case of criminality wasn't reported to the appropriate authorities.

30           I want to show you some correspondence from the Financial Ombudsman Service to ASIC. It's FOS.0006.0001.2866. You can see this is a letter of 8 December 2016, and it's from the Financial Ombudsman Service to ASIC. And under the heading – under the heading there Dispute it says:

35           *This information has been provided following the resolution of a dispute. FOS is concerned about the conduct of Dover during that dispute.*

A short summary of the dispute follows:

40           *The applicant complained to FOS about the advice provided by an authorised representative of Dover. The applicant claimed that the advice provided was not appropriate nor in our best interests and was incorrect regarding capital gains tax. During the course of the dispute Dover, in a letter addressed to the applicant dated 10 August 2015, outlined that making false complaints about financial advisers can give rise to defamation actions and similar proceedings. Allegedly, issued correspondence on 10 August 2015 in relation to the applicant's dispute to her mailing address addressed to the occupant. Issued correspondence to a party not privy to the dispute (a third party) on 14 August 2015 identifying details of the dispute. Provided FOS with a letter addressed to Centrelink identifying the applicant and the third party making allegations of fraud. It is unclear if this letter was subsequently sent by Dover to Centrelink.*

Are you aware of this matter, Mr McMaster?---Yes. I am.

Why was the letter of 10 August that threatened that making false complaints about financial advisers can give rise to defamation actions and similar proceedings sent?---I don't recall the actual letter itself. I remember saying that statement, because I was mistaken.

Did you draft the letter?---I would have.

Did you sign it?---I would have.

Is it your common practice to make threats of that kind?---No, it's not.

If we could move to 2867 in the document.

15

THE COMMISSIONER: Just interrupting you there, so this was an unusual threat to make, was it?---Yes.

You can't recall what it was that brought about the making of that threat?---Yes, I can.

20

I thought you told counsel that you could not?---No, my apologies. I know the facts of the case, obviously.

Go on, Mr Costello.

25

MR COSTELLO: Under the heading Possible Systemic Issue, it says:

*As Dover is the holder of an ASFL, it has an obligation to provide financial services efficiently, honestly and fairly. It is our view that for a financial services provider to meet this obligation, it needs to also comply with relevant laws associated to the provision of a financial service, including the Privacy Act 1988.*

30

Does Dover agree with that view of the law?---I think you will find in the matter there was no breach of the Privacy Act.

35

No. My question was does Dover agree that is an accurate statement of the law?---Yes.

40

The letter goes on to state that:

*The conduct of Dover in dispute by releasing information to a third party is arguably a breach of privacy. FOS systemic issues has approached Dover in relation to the conduct. Dover has responded to FOS outlining that it does not agree with our view.*

45

?---Correct.

Was the view you were not agreeing with the view of the law or the view there had been a breach or both?---The issue was reporting the Centrelink fraud to Centrelink.

5

My question was did Dover dispute FOSs view of the law, did it dispute there had been a breach or did it dispute both?---It disputed there had been a breach.

Thank you. Then, under the heading Serious Misconduct, the letter states:

10

*Clause 11.3 of the FOS terms of reference requires FOS to report all serious misconduct to ASIC. Serious misconduct is defined as conduct which may be fraudulent, grossly negligent or involve wilful breaches of applicable laws or obligations under the terms of reference.*

15

Then specifically notes paragraph 13.3, outlines that:

*A financial services provider shall not instigate defamation action of any kind against an applicant in respect of allegations made to FOS by the applicant about the financial services provider.*

20

It then says in the next paragraph that:

*It is critical, for the effective working of an EDR scheme, that the applicant is not made to feel threatened or coerced into withdrawing complaints lodged against financial services providers.*

25

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

30

Is this conduct consistent with a culture within Dover that client complaints are to be fought?---It's actually a very exceptional case, a complete one-off ,with very unusual circumstances.

35

It would have to be an exceptional case to have warranted you to threaten defamation proceedings against somebody, notwithstanding the terms of reference of FOS of which you're a member, expressly prohibit it, wouldn't it?---And I agree. And that was an error on my part.

40

Yes. Is this why Dover left FOS?---Yes, it is.

Because of this dispute?---Well, general lack of confidence in the process that was engaged in that matter.

45

Did Dover take any steps to apologise for this conduct?---No.

Why?---The matter was a conflict. The – the matter went through FOS, the determination came out and the amount was paid, compensation of the claimant.

Do you accept that somebody reading this letter and reading your email to Ms Hamilton might reasonably form the view that you believe client complaints are to be fought and fought in any way possible?---I think that would be completely unreasonable, actually.

5

I tender that document, Commissioner.

THE COMMISSIONER: Letter FOS to ASIC, re Dover 8.12.2016, FOS.0006.0001.2866, exhibit 2.244.

10

**EXHIBIT #2.244 LETTER FOS TO ASIC, RE DOVER DATED 8/12/2016 (FOS.0006.0001.2866)**

15

MR COSTELLO: Could I please call up RCD.9999.0025.0001.

Mr McMaster, this is an extract of the Corporations Act. And if we move to the next page, please. You will see here that this extract is particularly of division 6 of chapter 7. And it commences at 917A. Are you familiar with this provision?---917A, yes, I am.

20

Thank you. Can we move to the next page, please. And could we please blow up 917B and the text beneath it. Are you familiar with this provision, Mr McMaster?---I have not had reason to look at it specifically, but I've read it before.

25

You've not had reason to look at 917B specifically?---Not specifically that I'm aware of, yes.

All right. Reading it now, does it seem familiar?---Yes.

30

This is a very important provision for licensees. Do you accept that?---That's correct.

This is a provision that foists licensees with liability for the acts of their authorised representatives?---In certain circumstances, subject to other rules.

35

Yes, that's right. But this is the provision – this is the default rule that applies. Do you accept that?---I wouldn't call it the default rule.

40

What would you call it?---Well, I think section 917B is one of a series of sections which interlink.

Quite?---And, to understand the legislative intention, you have to look at the series of interlinks.

45

All right. Do you accept that 917B, operating of its own force, imposes liability upon licensees for the acts of authorised representatives?---Yes.

And that there are other circumstances in which that liability will not attach?---Yes.

5

Notwithstanding 917B?---Okay. Yes.

You accept that? Thank you. Can I take you to another document. In fairness, Mr McMaster, I will take you to another provision which is, perhaps, one of the exceptions you had in mind. Could we move to the next page, please. You will see there 917D, exception if lack of authority is disclosed to client. And that's one of the exceptions, perhaps, that you had in mind - - -?---Yes, definitely.

10

- - - that operates to – in some circumstances, to reduce the scope of the liability imposed by 917B?---That's correct, yes.

15

And are you aware of any other provisions that limit the scope of 917B?---No, I'm not, actually.

Thank you. Can I take you to another document. It's ASIC.0022.0001.1127. This is Dover's Client Protection Policy which has existed or did exist in various forms at various times - - -?---Correct.

20

- - - but I think I'm right to say – and you will correct me if I'm wrong me if I'm not – the provisions I take you to were in identical or very similar form at all relevant times that this policy was - - -?---I expect that will be the case.

25

Thank you. Could we please blow up the first paragraph, (i). This is the paragraph that sets out the intention of the document:

30

*Dover's Client Protection Policy sets out a number of important client protections designed to ensure every Dover client gets the best possible advice and the maximum protection available under the law. You should read each section of Dover's Client Protection Policy carefully and make sure you understand it and agree with it before you decide to accept our advice and instruct us to implement the advice.*

35

This was a document that formed part of the contract between every Dover authorised representative and their client?---That's correct.

40

Thank you. Can I then take you further down the page. And could 1.3 be blown up, please. See 1.3 reads:

45

*Under the Corporations Act, Dover is not responsible for anything done by your adviser which is not within the authority provided by Dover in these circumstances.*

?---Correct.

Is that accurate?---I haven't got the whole document there, but I believe in the context of the other paragraphs, it is.

5

You maintain that that's an accurate paragraph?---Yes, when you read the whole series of paragraphs.

Thank you. Could 1.4 be blown up, please:

10

*Your adviser is only authorised to provide advice that complies with the Corporations Act and the related regulations and regulatory guidelines. Your adviser cannot provide advice or do anything else which breaches a law or an ASIC regulation –*

15

Is that statement accurate?---Correct. Yes, it is.

You maintain that's an accurate statement of the law?---Yes, it is.

20 Thank you. Could we move to the next page, please, 1.5. You will see here there is a carve-out at the top of the page:

*Your adviser's authority does not include*

25 And you will see, for example, paragraph (e):

*Failing to adequately research a recommended financial product.*

(f):

30

*Failing to consider your circumstances when recommending a financial or service –*

presumably that's meant to say "financial product or service"?---Correct.

35

Continuing:

*Failing to provide personal advice in the form required under the Corporations Act.*

40

(j):

*Recommending a financial service that a reasonable financial planner would not recommend.*

45

?---Correct.

(l):

*Failing to advise you of a negative consequence of a recommended action.*

5 ?---Correct.

(m):

10 *Any act that breaches a law of Australia or a state of Australia, including the law of negligence, the criminal law, and the Corporations Law or any ASIC regulation or regulatory guideline.*

You see that?---Correct.

15 The entire intention of this document is to minimise Dover's liability for the work of its authorised representatives. That's correct, isn't it?---As a sentence, that is correct.

Can I return to the first page, please. When it says in (i):

20 *Dover's Client Protection Policy sets out a number of important client protections designed to ensure every Dover client gets the best possible advice and the maximum protection available to the law –*

25 that is a lie, isn't it?---No, it's not, because that – that clause, if you like, comes out of the Corporations Act, and persons – the advisers are still liable. And we actually discuss this with the advisers, so that if they act outside the authority, they understand that they're responsible for that action.

30 Mr McMaster, the effect of the provisions I have just taken you to is that a Dover authorised representative has authority to provide compliant advice only?---Correct.

And it completely sets at naught the statutory protection erected by 917B, the purpose of which is to foist liability upon the licensee?---No, I believe you have got to read section 917D, as well.

35

And you think you can properly read section 917D to exclude all liability a licensee may have?---The origin of this rule came from a FOS determination where – it was – that was actually said to us, that they couldn't see evidence that we had warned the client that we weren't liable for fraud, therefore, 917D didn't apply, and, therefore, we were liable under section 917B.

40

What, as you understand it, could Dover possibly be liable for if this document was given legal effect?---Inappropriate advice, advice not in the clients' best interests.

45 No, Mr McMaster. I have just taken you specifically to paragraphs in paragraph 1.5 where you state that the adviser's authority does not include failing to research recommended financial product, failing to consider circumstances when

recommending a financial product or service, failing to provide personal advice in the form required under the Corporations Act, any act or breach of any Australian law of a state, territory or the Commonwealth, including negligence and the criminal law?---Criminal law, definitely.

5

Why do you fasten on the criminal law? Your evidence that you have just given is that you would be liable for advice not given in the best interests. You have an express exclusion for any breach of the law. You understand the best interests duty is a statutory provision?---Yes, I do.

10

It is a requirement imposed by the Corporations Act?---Yes. Yes, it is.

And you maintain, do you, that Dover would accept liability for such a breach, notwithstanding the client protection policy?---We – we – with respect, we actually have. This clause has not been relied on.

15

Well, Mr McMaster, you're a lawyer. Is your evidence this clause could be relied on?---It couldn't be relied on now, no.

20

Why?---It has been withdrawn.

But while it was on foot?---I actually don't know.

You don't know?---No. I don't, because we – we – the genesis is the FOS determination which, basically, said we wouldn't have to pay out money if we had given a notice like that.

25

And you take legal advice from FOS?---No, we took an idea from what they wrote to us.

30

I see. Can I take you to page 1133 of that document, paragraph 4.13:

*You agree that Dover is not responsible for any losses incurred by you for any reason after six months from the date of our most recent statement of advice*

35

And (b):

*For any reason connected with the misuse of your bank account and investment account, details by any person and any failure by any person to keep your account details, passwords, PINs and similar information confidential.*

40

?---Correct.

And if we go over the page, please. Could 4.16, please, be blown up:

45

*You are responsible for ensuring our advice to you is implemented on a timely basis, notwithstanding you may have engaged us to implement it for you. You*

indemnify and release us from any claim for costs or losses connected with any delays in implementing the advice, no matter what caused the delay or who is responsible for the delay. This includes an indemnity and release from any claim connected to insured event occurring before an insurer has accepted liability under an application for insurance, and any claim connected to asset prices moving before a sale or buy instruction is implemented.

?---Yes. Yes.

10 Can I take you to paragraph 8.1 on 1137, Minimum Holding Period on Investments:

*All investments recommended in your SOA should be held for a minimum holding period of at least 10 years. This is notwithstanding any statement made by the product issuer or any other person in a product disclosure statement or similar document or elsewhere wherein this statement of advice.*

?---Correct.

20 Could you explain how that clause is intended to work?---Because investments are intended to be held for long-term period. And what you sometimes have is in the short term, if there's an adverse price movement, everyone goes crazy and starts making claims, not understanding that the whole idea is to invest in the very long term.

25 By this paragraph you would seek to exclude Dover from liability for a client acting on an advice that an investment should be held for two years, say?---We actually don't allow advices like that. They have to be for 10 years or more.

30 Irrespective of - - ?---It's consistent with the structure of the SOAs we create.

You say financial advice is only ever in accordance with the best interests duty if it's a recommendation to hold for 10 years?---Yes. Growth assets – I would be of that view, yes.

35 Paragraph 8.2:

*You agree that the performance of the investment will not be known and will not be able to be measured until the end of the minimum holding period and that no claim or complaint will be made regarding investment performance until the end of the minimum holding period.*

That's 10 years?---Correct.

45 Mr McMaster, I put it to you it is Orwellian to describe this as a client protection policy?---I agree with that. And this, of course, has been changed.

It is entirely misleading, isn't it?---Yes.

Entirely misleading to call this a client protection policy?---It actually wasn't intended to be misleading. It sort of evolved - - -

Well, I am asking you?--- - - - without thought of the word protection.

5

Objectively, do you accept this was misleading to describe this as a client protection policy?---I think, when you look at the totality of the document and what it was trying to achieve, that it actually increased the protection to clients by focusing attention on these issues and ensuring that the client was actively engaged in the process and understanding of the base principles underpinning it.

10

Is that an honest answer?---Yes, it is, actually.

This document is nothing more than an elaborate attempt to exclude Dover's liability for the acts of its authorised representatives. Do you agree with that?---It has an exclusionary effect under the section 917D, but my concern is that that's a consequence and a situation contemplated by the law.

15

And what protection does this possibly give to a client?---I agree – that's my – I agree with that. It's a misnomer.

20

This is a Dover protection policy?---Yes, but it also – there's other clauses in there you're not looking at which actually increase the liability. For example, we – we acknowledge damages if there's a breach of the compliance processes. There's about five clauses - - -

25

How could you not?--- - - - which go against the clients.

How could you not?---There's a lot of others which go very much in favour of the client. There's a huge amount of information brought into the equation.

30

Mr McMaster, I'm going to put to you that the way you have just described the policy is simply untrue?---Well, I reject that. In that rejection, I've certainly understood and regretted the use of the word protection. That has, obviously, been changed.

35

Do you accept that this document, or at least many aspects of it, were unenforceable?---I think that could be the case now, yes.

40

How long - - -

THE COMMISSIONER: Well, Mr McMaster, does it not then follow that the document itself is misleading or deceptive?---The - - -

45

Before you answer that – before you answer that, I should, perhaps, say that if it were misleading or deceptive, that might draw attention to relevant provisions of the ASIC Act about making misleading or deceptive statements?---I – it's particularly likely to

be ineffective in FOS, but we were reasonably comfortable that the actual intent of section 917D would be looked at. And you're putting it – and we were aware that some of the subclauses could be struck down, but there would be other circumstances where, in certain situations, there wouldn't be a striking down.

5

MR COSTELLO: And Dover's attitude was to seek the maximum protection it possibly could?---Yes.

10 And if it turned out that some of the provisions in the contract were unlawful, then so be it, it was worth trying?---I think that's, you know, part of it, yes.

And I am going to put to you again. This is completely consistent with a culture within Dover that client complaints are to be fought at all cost?---I don't think that's correct.

15

When did you become aware – well, can I take you back to paragraph 1.3 on the first page of that document first. 1.3 is the first substantive provision I took you to where it says:

20 *Under the Corporations Act Dover is not responsible for anything done by your advisers which is not –*

Commissioner, could we adjourn.

25 THE COMMISSIONER: Yes. Adjourn.

<THE WITNESS WITHDREW

[3.54 pm]

30

**MATTER ADJOURNED at 3.54 pm UNTIL FRIDAY, 27 APRIL 2018**

## **Index of Witness Events**

DANTE DE GORI, AFFIRMED	P-1787
EXAMINATION-IN-CHIEF BY MR MEEHAN	P-1787
CROSS-EXAMINATION BY MS ORR	P-1788
THE WITNESS WITHDREW	P-1824
PHILIP MICHAEL HOUSTON KEWIN, SWORN	P-1825
EXAMINATION-IN-CHIEF BY MS WIVELL PLATER	P-1825
CROSS-EXAMINATION BY MS ORR	P-1826
RE-EXAMINATION BY MS WIVELL PLATER	P-1842
THE WITNESS WITHDREW	P-1843
TERRENCE PAUL McMASTER, AFFIRMED	P-1843
EXAMINATION-IN-CHIEF BY MR COSTELLO	P-1843
THE WITNESS WITHDREW	P-1897

## **Index of Exhibits and MFIs**

EXHIBIT #2.218 SUMMONS TO MR DE GORI	P-1787
EXHIBIT #2.219 WITNESS STATEMENT OF MR DE GORI DATED 20/04/2018	P-1788
EXHIBIT #2.220 EMAILS BETWEEN HENDERSON AND DE GORI DATED 03/07/2017 (FPA.0017.0001.0004)	P-1797
EXHIBIT #2.221 EMAIL MURPHY TO McKENNA DATED 20/12/2017 (FPA.0020.0001.2822)	P-1800
EXHIBIT #2.222 EMAIL BACON TO PLATER DATED 22/12/2017 (FPA.0019.0001.0061)	P-1802
EXHIBIT #2.223 EMAILS BETWEEN BACON AND McKENNA, 05/02/2018 TO 07/02/2018 (FPA.0019.0001.0756)	P-1805
EXHIBIT #2.224 FPA PROFESSIONAL ACCOUNTABILITY ACTIONS AND OUTCOMES AT FEBRUARY 2018 (RCD.9999.0019.0001)	P-1811
EXHIBIT #2.225 LETTER BACON TO SOLICITORS ASSISTING THE COMMISSIONER DATED 18/04/2018 (RCD.9999.0018.0001)	P-1814
EXHIBIT #2.226 TRANSCRIPT CRC DIRECTIONS CONFERENCE DATED 6/03/2018 (FPA.0019.0001.0145)	P-1815

EXHIBIT #2.227 FPA BUDGET 2017/2018 (FPA.0012.0001.1112)	P-1821
EXHIBIT #2.228 FPA PROFESSIONAL ONGOING FEES CODE (FPA.0002.0001.2515)	P-1823
EXHIBIT #2.229 SUMMONS TO MR KEWIN	P-1825
EXHIBIT #2.230 WITNESS STATEMENT OF MR KEWIN AND ITS EXHIBITS	P-1826
EXHIBIT #2.231 AFA SUMMARY OF ISSUES RE TINDALL (AFA.0001.0003.0069)	P-1835
EXHIBIT #2.232 AFA INVESTIGATING OFFICER'S RECOMMENDATION RE TINDALL (AFA.0001.0003.0079)	P-1837
EXHIBIT #2.233 AFA MEMBERSHIP REVIEW COMMITTEE REPORT RE TINDALL AND OTHER MATTERS (AFA.0001.0003.0071)	P-1839
EXHIBIT #2.234 AFA ANNUAL REPORT YEAR ENDED 30/06/2017 (AFA.0001.0003.0831)	P-1842
EXHIBIT #2.235 SUMMONS TO MR McMASTER	P-1844
EXHIBIT #2.236 WITNESS STATEMENT OF MR McMASTER DATED 10/04/2018	P-1844
EXHIBIT #2.237 MINUTES OF THE MEETING OF DOVER COMPLIANCE COMMITTEE DATED 10/04/2013 (DOV.0002.0001.0224)	P-1862
EXHIBIT #2.238 DOVER GROUP WEBSITE ARTICLE CONCERNING FINANCIAL OMBUDSMAN SERVICE DATED 21/01/2016 (RCD.9999.0024.0018)	P-1863
EXHIBIT #2.239 FINANCIAL ADVISER COMBINED COMPLIANCE MANUAL AND ADVISER'S HANDBOOK DATED 01/02/2018 (DOV.0002.0001.0930)	P-1865
EXHIBIT #2.240 REFERENCE CHECKING FINANCIAL INDUSTRY FORM RE PALMER (DOV.0005.0001.0515)	P-1871
EXHIBIT #2.241 EMAILS BETWEEN PALMER AND THOMPSON AND OTHERS DATED 25/09/2014 (DOV.0004.0001.0055)	P-1874

EXHIBIT #2.242 ASIC REGISTER OF FINANCIAL ADVISERS RECORD CONCERNING HAMILTON (RCD.0006.0002.0290)	P-1883
EXHIBIT #2.243 ASIC REGISTER OF FINANCIAL ADVISERS RECORD CONCERNING HOUGHTON (RCD.0006.0002.0291)	P-1886
EXHIBIT #2.244 LETTER FOS TO ASIC, RE DOVER DATED 8/12/2016 (FOS.0006.0001.2866)	P-1890