

NOTICE OF FILING

Details of Filing

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File Title: R AND N HUNTER PTY LTD ATF THE HUNTER FAMILY
SUPERANNUATION FUND v COUNT FINANCIAL LIMITED
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



Sia Lagos

Registrar

Important Information

This Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date of the filing of the document is determined pursuant to the Court's Rules.



Defence to Second Further Amended Statement of Claim

Federal Court of Australia
District Registry: Victoria
Division: General

No. VID 565 of 2020

R and N Hunter Pty Ltd (ACN 105 163 522) atf the Hunter Family Superannuation Fund (ACN 105 163 522)

Applicant

Count Financial Limited (ACN 001 974 625)

Respondent

The Respondent (**Count**) has adopted the headings and subheadings as appear in the Further Amended Statement of Claim (**Claim**), however in doing so Count does not thereby make any admissions.

Nature of Proceedings

A. In answer to paragraph A of the Claim, Count:

- (a) admits that the Applicant purports to bring the proceeding on behalf of those persons identified in the paragraph;
- (b) refers to and repeats paragraph 2 below;
- (c) refers to and repeats paragraph 9 below;
- (d) says that any cause of action by a purported Group Member is time barred to the extent that it accrued more than six years prior to the date on which this proceeding was commenced; and

Particulars

Section 1041I(2) of the *Corporations Act 2001* (Cth)
(Corporations Act);

L\352825936.1

| | |
|--|---|
| Filed on behalf of (name & role of party) | Count Financial Limited (Respondent) |
| Prepared by (name of person/lawyer) | Ross David McInnes |
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Section 12GF(2) or 12GM(5) of the *Australian Securities and Investments Commission Act 2001* (**ASIC Act**);

Section 237(3) of the Australian Consumer Law (**ACL**),
Schedule 2, *Competition and Consumer Act 2010* (Cth);

Section 14(1) of the *Limitation Act 1969* (NSW).

Those limitation periods referred to in subparagraph (d) above applied by analogy and/or by reason of the doctrine of laches.

(e) otherwise admits the allegation in the paragraph.

B Count does not plead to paragraph B of the Claim as it contains no allegations against it.

C. Count does not plead to paragraph C of the Claim as it contains no allegations against it.

A. The Applicant

1. Count admits the allegations in paragraph 1 of the Claim.

B. Background facts - relevant to financial adviser and licensee claims

2. In answer to paragraph 2 of the Claim, Count:

(a) says that, during the Relevant Period, pursuant to the terms of franchise agreements and authorised representative agreements, Count:

(i) allowed financial planning practices, whether sole traders, partnerships, trusts or corporate entities (**Member Firms**), to carry on the business of providing financial services to clients under Count's trademark and Count's Australian financial services licence; and

(ii) appointed as "Authorised Representatives" of Count (as defined in section 916A of the Corporations Act):

A. Member Firms (where they were either a sole trader or corporate entity); and

B. individuals from Member Firms, subject to the individual and the Member Firm entering into an Authorised Representative Agreement with Count;

(iii) had a relationship with Member Firms, and Authorised Representatives, whereby the Member Firms and Authorised Representatives were independent contractors, not employees;

- (b) says further that:
 - (i) at all material times Count had the sole discretion to appoint persons from Member Firms as Authorised Representatives of Count and did not allow Member Firms to sub-authorise any individuals (whether a director, officer, principal, partner, employee or contractor) of the Member Firm;
 - (ii) Count does not employ any financial advisers;
 - (c) in relation to subparagraph 2.3, refers to subparagraph 2(a)(i) above, denies the allegations and says further that Count did not provide any financial services to clients; and
 - (d) otherwise admits the allegations in the paragraph.
3. In answer to paragraph 3 of the Claim, Count:
- (a) refers to and repeats paragraph 2 above; and
 - (b) otherwise admits the allegations in the paragraph.
4. In answer to paragraph 4 of the Claim, Count:
- (a) in respect of the Applicant, admits that the Representatives provided advice to the Applicant including about acquiring financial products and otherwise denies the paragraph; and
 - (b) in respect of the Group Members, does not know and therefore cannot admit the allegations in the paragraph.
5. In answer to paragraph 5 of the Claim, Count:
- (a) refers to and repeats paragraph 2(a) and 2(b) above; and
 - (b) otherwise admits the allegations in the paragraph.
6. Count admits the allegation in paragraph 6 of the Claim.
7. In answer to paragraph 7 of the Claim, Count:
- (a) admits that during the Relevant Period, Count had in place agreements with various providers of policies of insurance and some other financial products which, amongst other things, outlined the circumstances in which any remuneration, including commissions (whether initial and/or trail) in relation to those products would be paid to Count;
 - (b) admits that the products acquired by the Applicant that are identified at paragraph 8 of the Claim (**Applicant's Products**) were each a financial product within the meaning of section 764A(1) of the Corporations Act;

- (c) admits that some Relevant Products (which is defined in paragraph 7 of the Claim) were financial products within the meaning of section 764A(1) of the Corporations Act; and
 - (d) otherwise denies the allegations in the paragraph.
8. In answer to paragraph 8 of the Claim, Count says:
- (a) in relation to subparagraph 8.1, Count:
 - (i) does not know and therefore cannot admit that the Applicant acquired a Macquarie Cash Management Account issued by Macquarie Bank Limited in or around June 2003;
 - (ii) admits that, in or around April 2009:
 - A. the Applicant held a Macquarie Cash Management Trust account with the account number 120961321;
 - B. applied to replicate that existing account to a Macquarie Cash Management Account; and

Particulars

Application to replicate existing CMT account signed by Applicant and dated 22 April 2009: COU.0015.0001.0392

- (iii) admits that, from at least 30 April 2009, the Applicant held a Macquarie Cash Management Account issued by Macquarie Bank Limited and continued to hold that product during part of the Relevant Period;
- (b) in relation to subparagraph 8.2, Count admits that on 1 May 2009 the Applicant became the owner of a Total Care Plan with policy number 01385978 nominating Roslyn Hunter as the insured, and has renewed or continued to hold that product until at least 1 May 2020;
- (c) in relation to subparagraph 8.3, Count admits that on 30 July 2009 the Applicant became the owner of a Total Care Plan with policy number 1385467 nominating Neal Hunter as the insured and has renewed or continued to hold that product until at least 30 July 2020;
- (d) in relation to subparagraph 8.4, Count:
 - (i) admits that on 1 March 2018 the Applicant became the owner of an AMP Elevate Life Insurance Policy with policy no. P811402855;
 - (ii) admits that the Applicant has renewed or continued to hold the AMP Elevate Life Insurance Policy no. P811402855 nominating Shaun Hunter as the insured until at least 19 February 2019; and

(e) otherwise does not know and therefore cannot admit the allegations in the paragraph.

9. In answer to paragraph 9 of the Claim, Count:

(a) refers to and repeats paragraph 7(a) above;

(b) says that:

(i) those agreements were commonly known as 'distribution agreements' or 'dealer agreements', but were also known by other names, depending on the product provider and/or the product; and

(ii) the terms of the agreements, including with respect to commissions, were updated by the product providers from time to time, and could, in some cases, be unilaterally varied by the product provider; and

(c) otherwise denies the allegations in the paragraph.

9A. In answer to paragraph 9A of the Claim, Count says that:

(a) it entered into the following agreements:

(i) Distributor Agreement with Colonial Mutual Life Assurance Society (**Commlnsure**) dated 3 June 2003;

(ii) Relationship Agreement with Commlnsure dated 15 September 2011;

(iii) Cash Products Distribution Agreement with Macquarie Bank Limited dated 30 June 2012;

(iv) Preferred Relationship Agreement dated 24 April 2013; and

(v) Licensee Agreement with NMMT Limited, The National Mutual Life Association of Australasia Limited, Australian Casualty & Life Limited, National Mutual Funds Management Limited and N.M. Superannuation Pty Limited dated 3 June 2003.

(b) it will rely on the terms of those agreements for their full force and effect; and

(c) it otherwise denies the sub-paragraph.

9AA. In answer to paragraph 9A of the Claim, Count:

(a) says that insofar as the paragraph relates to the Applicant Products Distribution Agreements it refers to and repeats paragraph 9A above;

(b) says that the terms of the contractual arrangements between Count and issuers of the Relevant Products varied;

(c) says that, as at the time of filing this defence, it has not been able to locate and review all of the Distribution Agreements; and

(d) as a result of the circumstance paragraph 9AA(c) above, otherwise does not know and therefore cannot admit the allegations in this paragraph.

10. In answer to paragraph 10 of the Claim, Count:

(a) refers to and repeats subparagraphs 9(b) and 9(c) above;

(b) denies paragraphs 10.1 and 10.2; and

(c) otherwise does not know and therefore cannot admit the allegations in sub-subparagraphs 10.3 and 10.4.

11. In answer to paragraph 11 of the Claim, Count:

(a) says that Relevant Products is defined in paragraph 7.1 of the Claim as consisting of insurance and other financial products pursuant to which product issuers(s) agreed to pay Count initial and/or trail Commissions in relation to each of those products;

(b) admits that Count received Commissions in respect of the Applicant's Products; and

(c) otherwise does not know and therefore cannot admit the allegations in the paragraph.

12. In answer to paragraph 12 of the Claim, Count:

(a) says that paragraph 12 is vague and embarrassing insofar as it alleges Count's revenue and business model was 'heavily reliant' on the forms of revenue specified;

(b) under cover of that objection says it received Commissions, Rebates and third party payments from platform and product providers; and

(c) otherwise denies the allegations in the paragraph.

13. In answer to paragraph 13 of the Claim, Count:

(a) says that during the Relevant Period the Approved Product List (**APL**) contained life and risk insurance products, financial products and platforms;

(b) says further that Authorised Representatives were authorised to recommend to clients those products on the APL that were 'approved', subject to meeting relevant accreditation requirements, authorisations and the product relating to the specific needs and objectives of the client; and

Particulars

See various versions of the APL Licensee Standard:
 COU.0031.0010.0006, CBA.0015.0005.7242,
 CBA.0015.0005.7276 and CBA.0015.0005.7295.

- (c) otherwise denies the allegations in the paragraph.

Count's Remuneration Model

14. In answer to paragraph 14 of the Claim, Count:

- (a) refers to and repeats subparagraphs 2(a) above and 15(b) below;
- (b) admits that the payment of commissions in respect of policies of life risk insurance and Grandfathered Commissions by product providers to Count, which Count then paid to Member Firms was a component of the Member Firms' remuneration;

Particulars

References in this defence to Grandfathered Commissions are to those benefits that were grandfathered pursuant to transitional provisions in the Corporations Act and the *Corporations Regulations 2001* (Cth), and not subject to the ban on conflicted remuneration for advice in Division 4 of Part 7.7A of the Corporations Act.

- (c) in relation to the Applicant's Products:
- (i) says that, in addition to the payment of a commission (where legally permissible), the Applicant's Representatives were able to be remunerated through charging the client a fee for the provision of initial advice and services, a fee for review services, and/or a placement fee (including where no advice or recommendation was made but assistance was provided to effect a financial transaction);
- (ii) says that, during the Relevant Period, pursuant to contractual agreements between Count and the Authorised Representative, being the Count Authorised Representative Agreement and Count Member Franchise Agreement, Centenary agreed that Count (as the AFSL holder) would receive all fees and commissions that were payable with respect to advice and services provided by its Authorised Representatives, and:
- A. from those fees and commissions, Count would deduct relevant licensee fees or other charges, and then pay the remainder of the fees and commissions to Centenary;
- B. commissions were paid by Count at a practice level to Centenary;

- C. denies that commissions were paid by Count to any Centenary Authorised Representative;
 - D. the remuneration of the Centenary Authorised Representatives was a matter to be determined between each Authorised Representative and Centenary;
- (iii) admits that the payment of commissions by product providers to Count, and the resulting commissions which Count then paid to Centenary, was a component of Centenary's remuneration;
- (iv) says that during the Relevant Period, Mr Williams and Mr Hohnen were remunerated by Centenary by way of:
- A. a salary;
 - B. a variable quarterly bonus;
- (v) says in respect of the variable quarterly bonus component of Mr Williams and Mr Hohnen's remuneration that:
- A. prior to July 2016, neither Mr Williams nor Mr Hohnen were eligible to receive a variable quarterly bonus;
 - B. Mr Williams and Mr Hohnen were eligible for a variable quarterly bonus between July 2016 and July 2019;
 - C. the variable quarterly bonus was paid to eligible employees from a bonus pool, consisting of 30% of any up-front commissions that had been written across superannuation and insurance products by Centenary and paid to Centenary in the previous quarter excluding GST and dealer splits;
 - D. any trail commissions paid by Count to Centenary were not included in the bonus pool;
 - E. between July 2016 and July 2019, the variable quarterly bonus which Mr Williams and Mr Hohnen were each entitled to receive was one third of the quarterly bonus pool;
 - F. says that, as a result of the methodology described above, Mr Williams and Mr Hohnen were each entitled to receive a bonus of approximately 10% of \$88,779.29 for FY2016/2017, \$93,428.44 for FY2017/2018 and \$66,006.20 for FY2018/2019; neither Mr Williams nor Mr Hohnen received a variable quarterly bonus after July 2019; and
- (d) otherwise denies the allegation in the paragraph.

15. In answer to paragraph 15 of the Claim, Count:

- (a) refers to and repeats paragraph 14 above;
- (b) says that:
 - (i) from 1 July 2013 the remuneration of the Applicant's Representatives was subject to the prohibition in section 963J of the Corporations Act against conflicted remuneration;
 - (ii) Count did not set the remuneration or revenue model of the Applicant's Representatives (but did impose an upper limit on the amount of the fee that could be charged on behalf of Count for initial advice and services);
 - (iii) admits that commissions paid to Centenary were a material component of its remuneration; and
- (c) otherwise denies the allegation in the paragraph.

16. In answer to paragraph 16 of the Claim, Count:

- (a) says that:
 - (i) only Member Firms who were authorised by Count before 1 July 2013 were eligible for the Contribution to Count program (**CTC Program**);
 - (ii) Count did not provide the benefits under the CTC Program to new Member Firms after 1 July 2013;
 - (iii) the CTC Program ceased in or about June 2019;
 - (iv) benefits and remuneration under the CTC Program were awarded at a practice level to Member Firms including Centenary, rather than to sub-authorised Count Authorised Representatives, including Mr Williams, Mr Duffield or Mr Hohnen;
 - (v) the CTC Program was performance based, and a Member Firm's entitlement to benefits (including annual fee waivers and rebates) was based on specific criteria and could be reduced or withheld for compliance issues, or as a consequence management triggered by various instances including but not limited to a failure by Authorised Representatives to fulfil ongoing education/CPD requirements and poor customer service or poor advice quality by Authorised Representatives;
 - (vi) participation in the CTC Program was authorised by legislation that grandfathered benefits under existing arrangements;

Particulars

Sections 761A and 1528 of the Corporations Act and regulation 7.7A.16 of the *Corporations Regulations 2001* (Cth).

- (vii) Count required Authorised Representatives to disclose the possibility of their receipt of benefits through the CTC Program to clients, including through the provision of Count Financial Services Guides;

Particulars

For example, see Financial Services Guide (Part Two) dated 16 June 2014 COU.0010.0002.2947 and later versions, including CBA.0022.0007.2822, COU.0010.0001.2088, CBA.0022.0002.0009.

- (b) admits that where a Count Authorised Representative, including Centenary, received benefits through the CTC Program it was through a points based rewards system calculated primarily by reference to revenue contributed to Count by the Authorised Representatives; and
 - (c) otherwise denies the allegations in the paragraph.
17. In answer to paragraph 17 of the Claim, Count:
- (a) says that from the start of the Relevant Period until around 1 July 2017 Grandfathered Member Firms and New Member Firms had different remuneration policies;
 - (b) says further that until around June 2019, Grandfathered Member Firms could participate in the CTC Program; and
 - (c) otherwise denies the allegation in the paragraph.
18. In answer to paragraph 18 of the Claim, Count:
- (a) says that:
 - (i) components of remuneration were based on a ranking system with different tiers;
 - (ii) until 1 July 2017, for Grandfathered Member Firms that were Member Firms, rankings depended on points earned through the CTC Program;
 - (iii) from 1 July 2017, rankings depended on a Gross Business Earnings (**GBE**) calculation based on adviser fees and commissions;

- (iv) it deducted a specified percentage of Commissions and adviser service fees before passing them through to the Grandfathered Member Firm (**Splits**) and when calculating the Splits:
 - A. from the start of the Relevant Period until 1 July 2017 it generally took a Split of 12.5% - 30% on fees for products recommended that were not on the APL and 12.5% - 30% of Commissions; and
 - B. from 1 July 2017 until the end of the Relevant Period, it generally took a Split of 5% - 15% of fees and Commissions;
- (v) only Grandfathered Member Firms that were member firms (and not authorised representatives that were not member firms) were entitled to participate in the CTC Program; and

(b) otherwise denies the allegations in the paragraph.

19. In answer to paragraph 19 of the Claim, Count:

- (a) denies that it would retain Commissions deemed to be conflicted remuneration for itself; and
- (b) otherwise admits the allegations in the paragraph.

20. In answer to paragraph 20 of the Claim, Count:

- (a) says that on or around 1 July 2017 it amended its remuneration policies for Grandfathered Member Firms and New Member Firms, that were Member Firms by:
 - (i) adjusting the Splits calculated on GBE, subject to transitional exceptions;
 - (ii) changing the fees and charges attributed to Member Firms;
 - (iii) adjusting the scoring system for the CTC Program; and
- (b) otherwise denies the allegations in the paragraph.

21. Count denies the allegations in paragraph 21 of the Claim.

C. Facts relevant to adviser claims

22. In answer to paragraph 22 of the Claim, Count:

- (a) in respect of the Applicant, admits that Count Authorised Representatives gave personal advice to the Applicant, as set out at paragraph 25 below;

- (b) in respect of Group Members, admits that, from time to time, Count Authorised Representatives gave personal advice to some Group Members in relation to some Relevant Products; and
 - (c) otherwise denies the allegations in the paragraph.
23. In answer to paragraph 23 of the Claim, Count:
- (a) admits that the Applicant and some Group Members were retail clients within the meaning of section 761G(1) of the Corporations Act; and
 - (b) otherwise denies the allegations in the paragraph.
24. In answer to paragraph 24 of the Claim, Count:
- (a) says that advice given to the Applicant between 20 May 2008 and 30 June 2013 was given before the introduction and application of:
 - (i) the statutory obligations under sections 961B and 961J of the Corporations Act; and
 - (ii) the prohibition on conflicted remuneration under sections 963E to 963L of the Corporations Act;
 - (b) will rely on Statements of Advice (**SOAs**) and Records of Advice (**ROAs**) issued to the Applicant throughout the period between 20 May 2008 and 18 December 2013, including those aspects of the SOAs and ROAs which:
 - (i) disclosed fees, commissions and other benefits and incentives;
 - (ii) identified the scope of the advice and limitations or exclusions from the scope of the advice that was the subject of the SOA or ROA as applicable;
 - (iii) identified recommendations provided to the Applicant;
 - (iv) confirmed the Applicant's decisions with respect to recommendations;
 - (c) says that the advice pleaded in paragraph 24 of the Claim was given before the Relevant Period; and
 - (d) otherwise admits the allegation in the paragraph.
25. In answer to paragraph 25 of the Claim:
- (a) in relation to subparagraph 25.1, Count:
 - (i) will rely on the Review Questionnaire and file note from Michael Williams both dated 31 July 2015;

- (ii) says that Michael Williams attended a meeting with the Applicant and Neal Hunter on 31 July 2015 during which matters were discussed which became the subject of the Record of Advice dated 4 August 2015;
 - (iii) says that:
 - A. the Review Questionnaire dated 31 July 2015 records that the Applicant and Neal Hunter wanted to review insurance given increases in premiums at that time;
 - B. the file note dated 31 July 2015 records that insurance was discussed and that the Applicant indicated there was no need for change;
 - (iv) otherwise denies the file note and Review Questionnaire conveyed or contained personal advice within the meaning of section 766B of the Corporations Act;
- (b) in relation to subparagraph 25.2, Count:
- (i) will rely on the ROA dated 4 August 2015 issued to the Applicant;
 - (ii) says that the advice covered in the ROA was limited in scope, and:
 - A. confirmed that there had been no significant changes to the circumstances recorded in the Review Questionnaire dated 31 July 2015;
 - B. confirmed that the Applicant had decided to retain their current levels of insurance and the same structure of cover;
 - C. included various investment and other recommendations, including with respect to retirement and estate planning; and
 - D. included, in addition to previous disclosures of fees and commissions, a disclosure of an ongoing advice fee that would be charged; and
 - (iii) otherwise admits the allegation in the subparagraph;
- (c) in relation to subparagraph 25.3, Count:
- (i) will rely on the ROA dated 19 November 2015 issued to the Applicant;
 - (ii) says that the advice covered in the ROA was limited in scope, and concerned a recommendation that the Applicant accept a Retail Entitlement Offer by Santos Ltd and purchase 706 new shares at \$3.85, requiring \$2,717.65 in cash;
 - (iii) otherwise admits the allegation in the subparagraph;

- (d) Count denies the allegation in subparagraph 25.4;
- (e) in relation to subparagraph 25.5, Count:
 - (i) will rely on the ROA dated 19 July 2017 issued to the Applicant;
 - (ii) says that the advice covered in the ROA was limited in scope, and:
 - A. did not include any request by the Applicant to review the appropriateness of the life risk insurance policies already held by the Applicant;
 - B. included the following statement regarding the goals and objectives of the Applicant: *"Neal and Ros, you have recently purchased a property within your SMSF with the settlement date being brought forward from mid August to July. In order that you have sufficient funds available for settlement you have requested that we sell your shares held through your Count Online Broking account for an approximate amount of \$284,458..."*

Particulars

ROA dated 19 July 2017 COU.0001.0001.3019 p 3 of 9.

- C. included investment recommendations;
- D. included a disclosure of the ongoing advice fees that would be invoiced to the Applicant; and
- (iii) otherwise admits the allegation in the subparagraph;
- (f) in relation to subparagraph 25.6, Count:
 - (i) will rely on the SOA dated 5 March 2018 issued to the Applicant;
 - (ii) says that:
 - A. the advice covered in the SOA was limited in scope to requested advice to urgently put in place life risk insurance cover on the life of Shaun Hunter in the amount of \$550,000; and
 - B. included disclosures about the insurance costs and commissions associated with the recommended product, being the AMP Elevate Life insurance policy; and
 - (iii) otherwise admits the allegation in the subparagraph.

26. In answer to paragraph 26 of the Claim, Count:

- (a) says that the matters referred to at subparagraphs 26.1 to 26.11~~9~~ of the Claim were not required to be included in the personal advice referred to in paragraph 25 of the Claim;
- (b) says further that:
 - (i) subject to subsections (2) and (3) of section 1528 of the Corporations Act, Division 4 of Part 7.7A, as inserted by item 24 of Schedule 1 of the *Corporations Amendments (Further Future of Financial Advice Measures) Act 2012*) did not apply to a benefit given to a financial services licensee, or a representative of a financial services licensee, if:
 - A. the benefit is given under an arrangement entered into before 1 July 2013; and
 - B. the benefit is not given by a platform operator.
 - (ii) the payment of Grandfathered Commissions (as defined in paragraph 14 above) was:
 - A. pursuant to contractual arrangements that existed before the Future of Financial Advice (**FOFA**) reforms;
 - B. expressly authorised by law;

Particulars

Subdivision 5 of Division 4 of Part 7.7A of the
Corporations Regulations 2001 (Cth).

- C. disclosed and agreed to by the Applicant at the time that the Applicant agreed to the remuneration to be paid to Centenary Financial Pty Ltd;

Particulars

For example, see the SOA dated 20 May 2008:
COU.0009.0001.0057

- (iii) commissions formed part of the way in which financial advisers, including Count Authorised Representatives, were remunerated for the provision of personal advice, and, further, was a significant factor contributing to, and ensuring, the availability of personal advice and relevant financial products to persons in the position of Group Members;
- (iv) before 1 January 2018 the payment of commissions in respect of life risk insurance products (not being group life policies or policies of members of default

superannuation funds) was not subject to the ban on conflicted remuneration introduced by the FOFA reforms;

Particulars

Section 963B(1)(b) of the Corporations Act

- (v) since 1 January 2018 a monetary benefit relating to a life risk insurance product is not conflicted remuneration if it is a level commission within the applicable cap and provides a clawback arrangement if the policy is cancelled, not continued, or the policy cost is reduced in the first two years of the policy;

Particulars

Sections 963B(b) and 963BA of the Corporations Act;
Regulation 7.7A.11D(1)(b)(ii) of the *Corporations Regulations 2001* (Cth); ASIC Corporations (Life Insurance Commissions) Instrument 2017/510, 31 May 2017 (Cth)
Parts 2 and 3.

Explanatory Memorandum to the Corporations Amendment (Future of Financial Advice) Bill;

Explanatory Memorandum to the Corporations Amendment (Further Future of Financial Advice Measures) Bill 2001;

(c) says that the Applicant was told about and consented to the fact the Applicant's Representatives would receive Commissions;

~~(e)~~(d) says that the Applicant did not pay Commissions, and further says that Commissions were generally paid by product issuers; and

~~(d)~~(e) otherwise denies the allegations in the paragraph.

27. In answer to paragraph 27 of the Claim, Count:

- (a) refers to and repeats paragraph 26 above; and
(b) otherwise denies the allegation in the paragraph.

28. In answer to paragraph 28 of the Claim, Count

- (a) denies that the matters referred to at subparagraphs 28.1 to 28.32 were contained in the personal advice referred to in paragraph 25 of the Claim; and

- (b) otherwise in relation to the Group Members, does not know and therefore cannot admit the allegations in the paragraph.

29. In relation to paragraph 29 of the Claim, Count:

- (a) admits that Count issued during the Relevant Period various documents from time to time that included, inter alia:
 - (i) policies;
 - (ii) documents styled as "Licensee Standards";
 - (iii) corporate guidance documents;
 - (iv) training;
- (b) says that Representatives were contractually obliged to comply with a sub-set of the documents referred to in paragraph 29(a) above on or shortly after the date on which they were issued (**Sub-Set of Compliance Documents**); and

Particulars

Of the 225 documents described as Count Licensee Standards identified in Piper Alderman's letter dated 17 July 2023, the Representatives were required to comply with the following documents;

- (i) Advice Process Licensee Standard (Step 1) dated 1 July 2014
COU.0001.0001.2398;
- (ii) Advice Process Licensee Standard (Step 2) dated 1 July 2014
COU.0001.0001.2503, CBA.0022.0003.0506;
- (iii) Advice Process Licensee Standard (Step 3) dated 1 July 2014
COU.0001.0001.2147;
- (iv) Advice Process Licensee Standard (Step 4) dated 1 July 2014
CBA.0022.0003.0097, CBA.0022.0003.0111;
- (v) Advice Process Licensee Standard (Step 5) dated 1 July 2014
COU.0031.0014.0001;
- (vi) Advice Process Licensee Standard (Step 6) dated 1 July 2014
CBA.0022.0003.0141;

- (vii) Adviser Education and Professional Development Licensee Standard dated 1 December 2014 CBA.0001.0073.4787;
- (viii) Appropriate Advice Licensee Standard dated 22 October 2018 COU.0013.0001.0022, COU.0005.0001.1333;
- (ix) Approved Product List (APL) dated July 2013 and later versions; CBA.0015.0005.7295; CBA.0015.0005.7276; CBA.0015.0005.7242; COU.0031.0010.0006;
- (x) Basic Deposit Products and CMTs dated July 2013 and later versions; COU.0008.0001.2475; CBA.0001.0082.8579; COU.0008.0001.2480; COU.0008.0001.2485; CBA.0001.0082.8576; COU.0008.0001.2460; COU.0008.0001.2465; COU.0008.0001.2470; COU.0008.0001.2442; COU.0008.0001.2448; COU.0008.0001.2454;
- (xi) Best Interest Duty dated 22 October 2018 [COU.0013.0001.0180];
- (xii) Business Insurance dated December 2015 and later versions; COU.0008.0001.2639; COU.0008.0001.2655; COU.0008.0001.2663;
- (xiii) Conflicts of Interest (Including Alternative Remuneration) Licensee Standard dated July 2014 and later versions; COU.0013.0001.0010; COU.0001.0001.2564; CBA.0015.0005.7561; CBA.0015.0005.7574; CBA.0015.0005.7479; CBA.0015.0005.7516; CBA.0002.6454.5585; COU.2000.0454.5801; CBA.0001.0082.6650; CBA.0001.0082.6640; COU.0005.0001.1341;
- (xiv) Creating a Statement of Advice Licensee Standard dated 1 July 2014 COU.0031.0015.0001;
- (xv) Determining Advice Types dated 20 June 2013 COU.0031.0013.0051;
- (xvi) Education & Registrations dated October 2015 and later versions; CBA.0001.0082.6212; CBA.0001.0082.6218; CBA.0001.0082.6204; COU.0031.0021.0006; COU.0031.0026.0009; COU.0031.0024.0044;

- (xvii) Engagement dated December 2014 and later versions;
CBA.0015.0006.0673; CBA.0015.0006.0653;
CBA.0015.0006.0624;
- (xviii) Financial Product Advice and Best Interest Duty Licensee
Standard dated 1 June 2014 CBA.0022.0003.0346;
COU.0001.0001.2385;
- (xix) Gearing dated July 2013 and later versions; COU.0008.0001.2973;
COU.0008.0001.2982; COU.0008.0001.2951;
COU.0008.0001.2962;
- (xx) Implement Recommendations (Step 5) dated December 2014 and
later versions; CBA.0001.0082.6903; CBA.0001.0082.6896;
COU.0031.0017.0005;
- (xxi) Licensee Standard Education, Accreditations & Registrations
(Archived) dated 22 November 2019 COU.0031.0024.0001;
- (xxii) Listed Securities Advice dated July 2013 and later versions;
COU.0008.0001.3005; COU.0008.0001.3013;
COU.0008.0001.2993; COU.0008.0001.3033;
COU.0008.0001.3022; COU.0008.0001.3045;
- (xxiii) Mergers of Financial Planning and Acquisition of Client Registers
and Practice Mergers dated 18 December 2014
CBA.0015.0005.8778;
- (xxiv) Non-Count Approved Products Licensee Standard dated 20 June
2013 COU.0032.0010.8389,CBA.0022.0003.0876;
- (xxv) Ongoing Service, Fee Disclosure Statement & Opt In dated July
2014 and later versions; CBA.0022.0003.1095;
CBA.0006.0008.0943; CBA.0015.0005.8484;
CBA.0006.0008.0954; CBA.0006.0008.0965;
CBA.0015.0005.8472; CBA.0006.0008.0974;
CBA.0006.0008.0983; CBA.0006.0008.0992;
CBA.0015.0005.8421; CBA.0006.0008.1002;
CBA.0006.0008.1012; CBA.0015.0005.8395;
CBA.0006.0008.1022; CBA.0006.0008.1032;
CBA.0015.0005.8348; CBA.0006.0008.1043;
CBA.0006.0008.1054; CBA.0015.0005.8237;
CBA.0006.0008.1070; CBA.0006.0008.1086;
CBA.0006.0008.1102; CBA.0015.0005.8256;

CBA.0006.0008.1118; CBA.0006.0008.1134;
CBA.0006.0008.1150; COU.0005.0001.1353;

(xxvi) Personal Insurance dated July 2013 and later versions;

COU.0008.0001.3134; COU.0008.0001.3223;
COU.0008.0001.3179; COU.0008.0001.3193;
COU.0008.0001.3088; COU.0008.0001.3208;
COU.0008.0001.3119; COU.0008.0001.3056;
COU.0008.0001.3072; COU.0008.0001.3103;
COU.0008.0001.3147; COU.0008.0001.3163;
COU.0008.0001.3253; COU.0008.0001.3269;

(xxvii) Portfolio Construction Guidelines dated July 2013 and later

versions; CBA.0001.0082.7396; CBA.0001.0082.7387;
CBA.0015.0005.7120; CBA.0015.0005.7134;
CBA.0015.0005.7160; COU.0032.0016.0002;

(xxviii) Pre Advice dated 9 September 2013 CBA.0022.0003.0410;

(xxix) Prioritising Clients Interests dated 22 October 2018

COU.0005.0001.1369; COU.0013.0001.0080;

(xxx) Product Research & Replacement Licensee Standard dated

October 2018 and later versions COU.0013.0001.0101;
COU.0013.0001.0113; COU.0013.0001.0089;
COU.0005.0001.1374;

(xxxi) Professional Development Licensee Standard dated 24 June 2013

CBA.0001.0072.3267;

(xxxii) Prohibited Conduct dated April 2013 and later versions:

CBA.0015.0005.7661; CBA.0015.0005.7654;
CBA.0001.0082.6522;

(xxxiii) Prohibited Products and Services dated December 2014 and later

versions; CBA.0015.0005.7710; CBA.0015.0005.7689;
COU.0031.0010.0001;

(xxxiv) Record Keeping Licensee Standard dated October 2018 and

later versions; COU.0013.0001.0125; COU.0013.0001.0143;
CBA.0063.0426.4978; COU.0013.0001.0161;
COU.0013.0001.0028; COU.0005.0001.1389;

- (xxxv) Records of Advice dated August 2013 and later versions;
CBA.0022.0003.0941; CBA.0022.0003.0930;
CBA.0022.0003.0951; CBA.0015.0005.7899;
CBA.0015.0005.7857; COU.0031.0021.0014;
COU.0031.0026.0001;
- (xxxvi) Replacement of Product Advice Licensee Standard dated 1 July 2014 [CBA.0016.0179.0974];
- (xxxvii) Research & Replacement of Product Requirements dated July 2014 and later versions; CBA.0016.0179.0974;
CBA.0001.0082.7249; COU.0032.0011.2276;
CBA.0001.0082.7241;
- (xxxviii) Retail Research Process Licensee Standard dated June 2013 and later version; CBA.0001.0072.3258;
CBA.0001.0082.8951;
- (xxxix) Review the Client's Situation dated August 2013 and later versions; CBA.0022.0003.1210; CBA.0015.0005.8684;
CBA.0015.0005.8657; CBA.0015.0005.8677;
CBA.0015.0005.8691; CBA.0015.0005.8629;
COU.0031.0024.0023;
- (xl) Scaling of Advice Licensee Standard dated July 2013 and later versions; CBA.0022.0003.0375; COU.0001.0001.2393;
CBA.0022.0003.0380;
- (xli) Self Managed Super Funds dated March 2014 and later versions;
CBA.0022.0003.0710; COU.0001.0001.2309;
COU.0008.0001.3431; COU.0008.0001.3466;
COU.0008.0001.3512; COU.0008.0001.3402;
COU.0008.0001.3368; COU.0008.0001.3385;
COU.0008.0001.3330; COU.0008.0001.3349;
COU.0008.0001.3447; COU.0008.0001.3483;
- (xlii) Seven Safe Harbour Steps dated 22 October 2018
COU.0005.0001.1408;
- (xliii) SoA Incorporation By Reference Licensee Standard dated 20 June 2013 COU.0031.0020.0001;
- (xliv) Statements of Advice dated December 2014 and later versions;
CBA.0015.0005.8048; CBA.0015.0005.8013;

CBA.0015.0005.7971; CBA.0015.0005.7957;
COU.0031.0014.0011;

(xiv) Suitable Strategies and Recommendations (Step 4) dated 14
December 2015 CBA.0001.0082.6879;

(xvi) Super Rollover and Retirement Strategies dated July 2013 and
later versions; COU.0008.0001.3703; COU.0008.0001.3711;
COU.0008.0001.3733; COU.0008.0001.3680;
COU.0008.0001.3597; COU.0008.0001.3719;
COU.0008.0001.3689; COU.0008.0001.3529;
COU.0008.0001.3563; COU.0008.0001.3580;
COU.0008.0001.3612; COU.0008.0001.3629;
COU.0008.0001.3663; COU.0008.0001.3546;
COU.0031.0014.0022;

(xlvii) Types of Clients dated July 2013 and later versions;
CBA.0001.0082.7492; CBA.0001.0082.7482;
CBA.0001.0082.7471; COU.0031.0018.0001;
COU.0031.0016.0001;

(c) otherwise denies the allegations in the paragraph.

30. In answer to paragraph 30 of the Claim, Count:

- (a) relies on the terms of the Count Licensee Standards for their full force and effect; and
- (b) otherwise denies the allegations in the paragraph.

31. In answer to paragraph 31 of the Claim, Count:

- (a) refers to and repeats paragraphs 9 and 14 above;
- (b) says that commissions were paid to Centenary in relation to:
 - (i) the Applicant's Macquarie Cash Management Account in the amount of \$337.08 between 1 July 2012 and 1 September 2015;
 - (ii) the Applicant's Total Care Plan Policy no. 1385978 in the amount of \$3,591.67 between 1 May 2013 and 1 May 2020;
 - (iii) the Applicant's Total Care Plan Policy no. 1385467 in the amount of \$7,579.78 between 1 August 2012 and 1 August 2019;
 - (iv) the Applicant's AMP Elevate Life Insurance Policy no. P811402855 in the amount of \$790.27 on 1 April 2018; and

(c) otherwise denies the allegations in the paragraph.

32. In answer to paragraph 32 of the Claim, Count:

(a) refers to and repeats paragraph 7 above; and

(b) otherwise denies the allegation in the paragraph.

33. In answer to paragraph 33 of the Claim, Count:

(a) says that the PDS of the Applicant's product issued by AMP referred to the ability of a financial adviser to reduce their commissions which would in turn reduce the premium; and

(b) otherwise denies the allegations in the paragraph.

The Contract - Ongoing Service

34. In answer to paragraph 34 of the Claim, Count:

(a) in respect of the Applicant:

- (i) admits that the Total Financial Care Review Agreement provided to the Applicants by Centenary Financial Pty Ltd on or about 20 May 2008 included the offerings as described in subparagraphs 34.1 to 34.3 of the Claim;
- (ii) admits that the Applicants entered into TFCAs with Centenary Financial dated 20 May 2008 and 19 July 2017;
- (iii) says that the TFCA between the Applicant and Count was terminated on or about 13 November 2018;

Particulars

Letter from Centenary Financial to the Applicants dated 13
November 2018 COU.0015.0001.0337

(b) says in respect of Group Members that:

- (i) throughout the Relevant Period, Count provided its Authorised Representatives with template documents setting out an ongoing service offering that could be offered to clients by Authorised Representatives, known as the Total Financial Care Agreement (**TFCA**, until in or around March 2018) and the Ongoing Service Agreement (**OSA**, from around March 2018);

Particulars

For example, see TFCA template version 2013:

CBA.0006.0024.0070 and later versions:

CBA.0006.0024.0009, CBA.0006.0024.0013,

CBA.0008.0275.2874; and

OSA template version 2018: CBA.0007.0005.7610 and later

versions CBA.0007.0006.1094, CBA.0007.0005.7912,

COU.0007.0001.0392.

Further particulars will be provided following evidence.

- (ii) Count Authorised Representatives had the flexibility to customise their ongoing service offerings to clients by amending the template documents to remove certain services;
- (iii) the ability of Count Authorised Representatives to charge a fee for review services was subject to the client having executed either a TFCA or OSA, and the charges were required to comply with the Sub-Set of Compliance Documents relating to fees and commissions;

Particulars

For example, see Count Client Fee Guidelines: COU.

0006.0004.0010.

Further particulars will be provided following evidence.

- (iv) the services described at subparagraphs 34.1 to 34.3 are examples of what Count Authorised Representatives may have offered to provide to some Group Members; and
- (c) otherwise does not know and therefore cannot admit the allegations in the paragraph.

35. In answer to paragraph 35 of the Claim, Count:

- (a) in relation to the Applicant, refers to and repeats paragraph 34(a) above;
- (b) in relation to the Group Members, refers to and repeats paragraph 34(b) above and admits that from time to time some Group Members entered into a TFCA and/or OSA with Count Authorised Representatives; and
- (c) otherwise denies the allegations in the paragraph.

36. In answer to paragraph 36 of the Claim, Count:

- (a) in respect of the allegation in subparagraph 36.1:

- (i) refers to and repeats paragraphs 34 and 35 above;
 - (ii) says that the provision, or an offer, of an annual review, or annual ongoing personal advice, may have been one of the services promised by Count Authorised Representatives to some Group Members under the TFCA and/or OSA; and
 - (iii) otherwise denies the allegation in the subparagraph;
- (b) in respect of the allegation in subparagraph 36.2:
- (i) refers to and repeats paragraph 34 and 35 above;
 - (ii) says that sections 961B and 961J of the Corporations Act were in force from 1 July 2013; and
 - (iii) otherwise denies the allegation in the subparagraph.

37. In answer to paragraph 37 of the Claim, Count:

- (a) in relation to the Applicant:
- (i) admits that the Applicant paid ongoing services fees during the Relevant Period;
 - (ii) admits that a proportion of the ongoing fees paid were retained by Count;
 - (iii) says that during the Relevant Period the Applicant paid an ongoing service fee of \$5,500 per annum (for the periods of around financial year 2014-2015, 7 August 2015 to 6 August 2016 and 7 August 2016 to 6 August 2017) and around \$2,200 with a partial refund of \$1,100 for the period of around 19 July 2017 to July 2018);
- (b) in relation to the Group Members:
- (i) admits that some Group Members were charged and paid an ongoing fee under the TFCA and/or OSA;
 - (ii) otherwise does not know and therefore cannot admit the allegation in the paragraph; and
- (c) otherwise denies the allegation in the paragraph.

38. In answer to paragraph 38 of the Claim, Count:

- (a) refers to and repeats paragraphs 10 and 14 above;
- (b) in relation to the Applicant, says that the Applicant paid ongoing service fees to Count and Centenary and otherwise denies the paragraph; and

- (c) in relation to the Group Members, does not know and therefore cannot admit the allegation in the paragraph.

39. In answer to paragraph 39 of the Claim, Count:

- (a) says that the allegation is vague and embarrassing because it does not particularise the facts upon which the ongoing service was allegedly not provided;
- (b) says further that insofar as the particulars of the allegation are intended to be those set out in paragraph 41 below and relates to the Applicant, Count refers to its response in paragraph 41 below and otherwise denies the allegation; and
- (c) otherwise, in relation to the Group Members, does not know and therefore cannot admit the allegation in the paragraph.

40. Not used.

41. In answer to paragraph 41 of the Claim, Count:

- (a) admits that Mr Williams gives evidence in the terms stated at paragraphs 17 and 18 of his affidavit;
- (b) says that when read in context, paragraph 18 of Mr Williams' affidavit refers to or relates to not providing an ROA or SOA;

Particulars

Affidavit of Michael Williams affirmed on 18 June 2021 at [17] and [18].

- (c) says that in 2014:
 - (i) Mr Williams provided personal advice to the Applicant in relation to income protection insurance for Neal Hunter on 18 August 2014; and
 - (ii) on or around 9 December 2014, Mr Williams met with the Applicant for a review of their financial affairs for the Self-Managed Super Fund and personal circumstances;

Particulars

COU.0002.0001.0677

- (d) says that in 2016:
 - (i) a Half Yearly Review meeting was held in June 2016 with the Applicant and Mr Williams during which personal advice was provided to the Applicant;
 - (ii) Mr Williams provided personal advice in relation to the purchase of a property;

- (iii) following payment in or around July 2016 of a holding deposit by the Applicant for a property, Mr Williams awaited instructions from the Applicant in relation to the settlement of the property in order to consider how the remaining funds would be invested in line with the Applicant's risk profile and time horizon;

Particulars

COU.0005.0001.0494; COU.0002.0001.0793;
 COU.0002.0001.0789; COU.0002.0001.0815;
 COU.0002.0001.0834; COU.0002.0001.0873;
 COU.0002.0001.0872; COU.0005.0001.0563.

42. In answer to paragraph 42 of the Claim, Count:

- (a) refers to and repeats paragraph 41 above;
- (b) admits Centenary received approximately \$5,500 per annum for the provision of advice under the Ongoing Service Package in addition to receiving Commissions in 2014 and 2016; and
- (c) otherwise denies the allegations in the paragraph.

43. In answer to paragraph 43 of the Claim, Count:

- (a) says that the Applicant initially received advice from one of the Applicant's Representatives in or around May 2008;
- (b) says that the Applicant's Representatives held themselves out as financial advisers; and
- (c) otherwise does not know and therefore cannot admit the allegations in the paragraph.

43A. In answer to paragraph 43A, Count:

- (a) refers to and repeats paragraphs 34(b), 35(b), 36(a)(ii) above; and
- (b) otherwise does not know and therefore cannot admit the allegation in this paragraph.

43B. Count denies the allegations in paragraph 43B of the Claim.

D Facts relevant to licensee claim

What Count did and what Count knew - Count Licensee Standards

44. In answer to paragraph 44 of the Claim, Count says that:

- (a) it developed and/or adopted the Count Licensee Standards; and

- (b) the reference to 'implemented' is vague and embarrassing and therefore it does not know and cannot admit the allegation in the paragraph.

45. In answer to paragraph 45 of the Claim, Count:

- (a) says that its Representatives were required to comply with the Sub-Set of Compliance Documents; and
- (b) otherwise denies the allegation in the paragraph.

46. In answer to paragraph 46 of the Claim, Count:

- (a) refers and repeats paragraphs 26(b) above and 71 below;
- (b) admits that the instructions in sub-paragraphs 46.1 - 46.4 of the Claim were never provided to the Applicant's Representatives;
- (c) in relation to sub-paragraph 46.5:
- (i) refers to and repeats paragraph 26 above;
- (ii) says that the Count Licensee Standards did not instruct the Representatives to disclose the matters referred to in sub-paragraphs 26.1 - 26.3, 26.4(a), 26.4(d), 26.5, 26.10 and 26.11 being allegations expressly concerning the Applicant, the Applicant's Representatives and the Applicant's Products only;
- (iii) says that the Count Licensee Standards did not instruct the Representatives to disclose the matters referred to in sub-paragraphs 26.4(b), 26.4(c), 26.4(e), 26.6, 26.7, 26.8 and 26.9 in the specific terms alleged by the applicant in paragraph 26;
- (iv) refers to and repeats paragraph 44 above and says the Count Licensee Standards addressed matters including the payment of commissions and conflicts which may arise;
- (v) will rely on the terms of the Count Licensee Standards for their full force and effect; and
- (vi) otherwise denies the sub-paragraph; and
- (d) otherwise denies the allegation in the paragraph.

47. Count denies the allegation in paragraph 47 of the Claim and says that:

- (a) the Licensee Standard titled 'Prioritising Clients' Interests' dated 24 February 2020, particularised in paragraph 47 of the Claim, was and is not a Count Licensee Standard; and

- (b) the Licensee Standard titled 'Prioritising Clients' Interests' dated 22 October 2018 was in force for the remainder of the Relevant Period.

Particulars

Letter from Clayton Utz to Piper Alderman dated 8 February 2021.

48. In answer to paragraph 48 of the Claim, Count:

- (a) relies on the terms of the Count Licensee Standards for their full force and effect; and
- (b) otherwise denies the allegations in the paragraph.

What Count did and what Count knew - QAA process

49. In answer to paragraph 49 of the Claim, Count:

- (a) says that the QAA process was one of the ways Count monitored and supervised Representatives;
- (b) says further that Count monitored and supervised Representatives through other systems and processes, including but not limited to:
- (i) educational and professional development
- (ii) pre-vetting;
- (iii) the Count Early Warning System (prior to May 2016) and the Adviser Early Warning System, and the Instance, Issue, Incident & Breach (IIIB) Process (from May 2016);
- (iv) a process of capturing details of conflicts and conflicted remuneration;
- (v) conducting regular monitoring, auditing and reporting of the representatives; and
- (c) otherwise admits the allegation in the paragraph.

50. In answer to paragraph 50 of the Claim, Count says that:

- (a) the individuals who conducted file reviews as part of the QAA process during the Relevant Period were not limited to Count employees;
- (b) those that prepared and issued the QAA question sets during the Relevant Period were not limited to Count employees;
- (c) from the start of the Relevant Period until around 1 October 2019, the individuals who conducted the QAA file reviews were part of the Advice Licensee Services, Advice Review

and Remediation, Advice Professional Services or Advice Services business units, within the CBA group;

- (d) after 1 October 2019 employees of Count and an external company, Assured Support, conducted QAA reviews;
- (e) the QAA review was conducted on various of the Representative's customer files, following which there was to be a full de-brief between the reviewer and the Representative;
- (f) following the completion of the review the reviewer would issue a report on the outcome of the review; and
- (g) otherwise admits the allegation in the paragraph.

51. In answer to paragraph 51 of the Claim, Count:

- (a) in respect of subparagraph 51.1, admits that the Question Set as at 2015 included a question as to whether there had been appropriate disclosure of, amongst other things, commissions in the advice document;
- (b) admits that the Question Set as at 2015 identified the matter pleaded at subparagraph 51.2, and did not identify the matters pleaded at subparagraphs 51.3 and 51.4 of the Claim as arising in all circumstances;
- (c) in relation to sub-paragraph 51.5:
 - (i) refers to and repeats paragraphs 26 and 50 above;
 - (ii) says that the Question Sets did not require the Representatives to disclose the matters referred to in sub-paragraphs 26.1 - 26.3, 26.4(a), 26.4(d), 26.5, 26.10 and 26.11 being allegations concerning the Applicant, the Applicant's Representatives and the Applicant's Products only;
 - (iii) says that the Question Sets did not require the Representatives to disclose the matters referred to in sub-paragraphs 26.4(b), 26.4(c), 26.4(e), 26.6, 26.7, 26.8 and 26.9 in the specific terms alleged by the applicant in paragraph 26;
 - (iv) refers to and repeats paragraph 51.1 above and says the Question Sets addressed matters including the payment of commissions and conflicts which may arise;
 - (v) will rely on the terms of the Question Sets for their full force and effect; and
 - (vi) otherwise denies the sub-paragraph.

~~(e)~~(d) says that the Question Set as at 2015 identified that:

- (i) the best interest duty required an adviser to not recommend a product or service to create extra revenue for themselves or a related party where additional benefits for the client could not be demonstrated; and
- (ii) the more material the conflict of interest, the more the adviser would need to demonstrate that they prioritised the clients' best interests; and

~~(d)~~(e) otherwise denies the paragraph.

52. In answer to paragraph 52 of the Claim, Count:

- (a) says that the Question Set as at 1 November 2018 said:
 - (i) *"Has there been appropriate disclosure of fees, commission, benefits or incentives in the advice document and/or have the appropriate fees been charged?"*
 - (ii) *"An adviser cannot comply with the Best Interest duty (conflicts priority rule) merely by disclosing a conflict of interest or getting the client to consent to a conflict."*
 - (iii) *"Conflicts to be considered when determining whether the client's interests have been prioritised in order to avoid any breach of s 961J include:*
 - A. *recommending insurance, more insurance or replacement insurance where that results in additional remuneration for the adviser than would otherwise be the case;*
 - B. *recommending a CBA Group product or platform;*
 - C. *recommending a hold on a product paying grandfathered commissions"*
 - (iv) *"Best interest duty requires that an adviser must not recommend a product or service to create extra revenue for themselves (or a related party) where additional benefits for the client cannot be demonstrated. eg. where the adviser recommends a new insurance policy - could the client instead have applied to increase the cover from an existing policy? What benefits has the client obtained from purchasing the new policy?"; and*
- (b) will rely on the terms of the 1 November 2018 Question Set for their full force and effect; and
- (c) otherwise denies the allegations in the paragraph.

53. In answer to paragraph 53 of the Claim, Count:

- (a) says that a Question Set in place during 2020 said: *"The relevant fees, commissions, soft dollar benefits and costs of recommendations were all correctly disclosed in writing";*
- (b) will rely on the terms of the 2020 Question Set for its full force and effect; and

- (c) otherwise admits the allegation in the paragraph.

What Count did and what Count knew - BAC Review and remuneration supervision

54. In answer to paragraph 54 of the Claim, Count:

- (a) says that:

- (i) it implemented the BAC Review from December 2018 as a new preventative file review process, designed to be conducted on advice files prior to advices being presented;
- (ii) the BAC Review underwent a pilot phase commencing in around December 2018 before being implemented in early 2019 and continued until on or around 30 October 2019;
- (iii) the 'failure rates' resulting from the BAC file reviews do not equate to a breach of legal obligations;

- (b) in respect of subparagraph 54.3, says further that the relevant date is 1 March 2019 but otherwise admits subparagraph 54.3; and

- (c) otherwise denies the allegation in the paragraph.

55. Count denies the allegation in paragraph 55 of the Claim.

56. In answer to paragraph 56 of the Claim, Count:

- (a) says that:

- (i) the QAA Question Sets from prior to November 2018 identified that the best interest duty required an adviser to not recommend a product or service to create extra revenue for themselves or a related party where additional benefits for the client could not be demonstrated;
- (ii) it implemented processes including those described at paragraph 49 above to ensure compliance with the Sub-Set of Compliance Documents insofar as the Count Licensee Standards are concerned and statutory obligations to clients;
- (iii) the BAC Review was a project which adopted some questions from the QAA Question Sets; and

- (b) otherwise denies the allegations in the paragraph.

57. In answer to paragraph 57 of the Claim, Count:

- (a) refers to and repeats paragraph 54 above; and
 - (b) otherwise denies the allegations in the paragraph.
58. In answer to paragraph 58 of the Claim, Count:
- (a) refers to and repeats paragraphs 49 and 54 above; and
 - (b) otherwise admits the allegation in the paragraph.
59. In answer to paragraph 59 of the Claim, Count:
- (a) says that the paragraph is vague and embarrassing because it does not specify the specific guidance that Count provided to Member Firms;
 - (b) says further that it provided guidance to its Member Firms generally that was not just limited to the content of Count Licensee Standards, but also through systems including those described at paragraph 49 above; and
 - (c) otherwise denies the allegations in the paragraph.
60. In answer to paragraph 60 of the Claim, Count:
- (a) says that it engaged in supervision of its Member Firms' compliance with their statutory duties (including the duties in sections 961B and 961J of the Corporations Act);
 - (b) says further that supervision was not limited to providing information to Member Firms on conflicted remuneration and included systems and processes such as those listed at paragraph 49 above; and
 - (c) otherwise denies the allegations in the paragraph.

What Count did and what Count knew - the BCC Tool

61. In answer to paragraph 61 of the Claim, Count says that:
- (a) from July 2013 and during the Relevant Period, it utilised various controls to monitor the Applicant's Representatives' compliance with the prohibition against conflicted remuneration under Division 4 of Part 7.7A of the Corporations Act;
 - (b) until at least 2018, those controls included the Ban on Conflicted Commission Tool (**Count BCC Tool**); and
 - (c) otherwise admits the allegations in the paragraph.
62. In answer to paragraph 62 of the Claim, Count:

- (a) refers to and repeats paragraph 26(b) above;
- (b) admits that the BCC Tool was limited to detecting remuneration that was banned under Division 4 of Part 7.7A of the Corporations Act; and
- (c) otherwise admits the allegations in the paragraph.

63. In answer to paragraph 63 of the Claim, Count:

- (a) denies subparagraph 63.1 and says further that the Count BCC Tool did identify conflicted remuneration prior to 1 September 2018;
- (b) in respect of subparagraph 63.2:
 - (i) refers to and repeats paragraph 155(a) below;
 - (ii) says that the BCC Tool filtered out product provider payments that did not meet the FOFA definitions of conflicted remuneration; and

Particulars

Section 1528 of the *Corporations Act* and regulations
7.7A.16A and 7.7A.16B of the *Corporations
Regulations 2001* (Cth).

- (iii) otherwise does not know and therefore cannot admit the allegation in the subparagraph;
- (c) in respect of subparagraph 63.3,
 - (i) admits that as at 2015:
 - A. certain issues were identified with the filters used in the BCC Tool in that they were not operating as intended in all circumstances;
 - B. these issues may have resulted in payments incorrectly being filtered out of testing or not identified for investigation; and
 - C. recommendations were made to address each of these issues which involved identifying those payments which were incorrectly filtered out and investigating; and
 - (ii) otherwise denies the allegation in subparagraph 63.3; and

Particulars

CBA WM Advice – Ban on Commissions, June 2018:
COU.2000.0396.7352

- (d) denies the allegation in subparagraph 63.4.

What Count did and what Count knew - the industry (except Count) ceases Commissions

64. Count denies the allegations in paragraph 64 of the Claim.
65. Count denies the allegations in paragraph 65 of the Claim.
66. In answer to paragraph 66 of the Claim, Count:
- (a) refers to and repeats paragraph 26(b) above;
 - (b) admits that the receipt of Commissions by Count resulted in a financial benefit; and
 - (c) otherwise denies the allegations in the paragraph.
67. In answer to paragraph 67 of the Claim, Count:
- (a) refers to and repeats paragraphs 64(a) and 65 above;
 - (b) says that the decision to terminate grandfathered trail commissions from investments and group life policies received by CFPL did not relate to Count; and
 - (c) otherwise denies the allegations in the paragraph.

What Count did and what Count knew - the CTC Program

68. In answer to paragraph 68 of the Claim, Count:
- (a) in respect of subparagraph 68.1, says that:
 - (i) at least from 1 July 2017 the Grandfathered Member Firms that were subject to consequence management had benefits withheld; and
 - (ii) otherwise denies the allegation in the subparagraph;
 - (b) in respect of subparagraph 68.2, says that:
 - (i) the GAF did not require changes to be made to the CTC program to remove any conflict of interest;
 - (ii) it will rely on the findings of the GAF for their full force and effect; and
 - (iii) otherwise admits the allegations in the subparagraph;

- (c) in respect of subparagraph 68.3, says that:
 - (i) up until around June 2019 CTC Points were awarded to Member Firms based on earnings;
 - (ii) from around 1 July 2017 a consequence management process was implemented which allowed Count to defer CTC payments if a Member Firm had a compliance issue, including, in relation to the quality of advice; and
 - (iii) insofar as the allegation relates to the entire Relevant Period, it denies the allegation in the subparagraph.
- (d) denies the allegation in subparagraph 68.4;
- (e) in respect of subparagraph 68.5:
 - (i) will rely on the findings of the GAF for their full force and effect; and
 - (ii) says that insofar as it is alleged that Count knew of such implication during the whole Relevant Period, that allegation is denied;
- (f) says further that Count implemented effective supervision and monitoring systems and processes to supervise and monitor the provision of advice in accordance with statutory obligations, as referred to in paragraph 49 above; and
- (g) otherwise denies the allegations in the paragraph.

69. In answer to paragraph 69 of the Claim, Count:

- (a) refers to and repeats paragraph 68 above; and
- (b) otherwise denies the allegations in the paragraph.

70. In answer to paragraph 70 of the Claim, Count:

- (a) refers to and repeats paragraph 16 above; and
- (b) otherwise denies the allegations in the paragraph.

What Count failed to do to supervise its advisers

71. In answer to paragraph 71 of the Claim, Count:

- (a) refers to and repeats the allegation in paragraph 30 of the Claim, which pleads contrary allegations to those made at subparagraphs 71.1 and 71.2;
- (b) denies the allegations in subparagraphs 71.1 and 71.2;

- (c) in relation to subparagraph 71.3, admits that, during the Relevant Period, in all circumstances and situations and without consideration of:
- (i) the quantum of any Commission; and/or
 - (ii) the circumstances in which any Commission was to be paid; and/or
 - (iii) the advice, financial product and client to which the Commission relates it did not instruct its Representatives:
 - A. to "dial down", "switch off" or rebate each and every commission received;
 - B. that additional benefits or services should be provided in return for the payment of Commissions and/or Benefits; and
- (d) otherwise denies the allegations in the paragraph.

72. In answer to paragraph 72 of the Claim, Count:

- (a) says that paragraphs 59 and 60 above do not refer to the specific guidance provided by Count to Representatives;
- (b) says that there was no single detailed standard or benchmark for the steps Count should have taken during the Relevant Period to monitor or supervise the remuneration arrangements between Member Firms and employees and/or contractors of the Member Firms;

Particulars

Expert Report of Steven Bardy dated 14 February 2022,
[188](c) and [189].

- (c) says that it implemented effective supervision and monitoring systems and processes such as those referred to at paragraph 49 above to ensure compliance by Representatives with their statutory duties; and
- (d) otherwise denies the allegations in the paragraph.

73. In answer to paragraph 73 of the Claim, Count:

- (a) refers to and repeats paragraph 26 above;
- (b) admits that, during the Relevant Period, none of the Count Licensee Standards in all circumstances and situations and without consideration of (i) the quantum of any Commission and/or Benefit, and/or (ii) the circumstances in which any Commission and/or Benefit was to be received and/or (iii) the advice, financial product and client to which the

Commission and/or Benefit relates instructed Representatives to not accept Commissions and/or Benefits;

- (c) admits that, during the Relevant Period, none of the Count Licensee Standards required Representatives, in all circumstances, to provide additional services to the Applicant and Group Members in return for the receipt of Commissions and/or Benefits;
- (d) says that Count Licensee Standards did provide guidance about how to manage any conflict created by Commissions/Benefits; and

Particulars

See various versions of Conflicts of Interest including
Alternative Remuneration Licensee Standard:
COU.0013.0001.0010; CBA.0015.0005.7561;
CBA.0015.0005.7574; CBA.0015.0005.7479;
CBA.0015.0005.7516; CBA.0001.0082.6650;
CBA.0001.0082.6640; COU.0005.0001.1341.

- (e) otherwise denies the allegations in the paragraph.

E The misleading conduct

74. In answer to paragraph 74 of the Claim, Count:

- (a) refers to and repeats paragraphs 26, 32 and 46 above; and
- (b) otherwise denies the allegations in the paragraph.

75. In answer to paragraph 75 of the Claim, Count:

- (a) refers to and repeats paragraph 26 above;
- (b) in relation to subparagraph 75.1,
 - (i) admits that Representatives were permitted by Count, including through the Sub-Set of Compliance Documents, to continue to receive Commissions, where grandfathering provisions or legislative exemptions applied; and
 - (ii) says that in the circumstances of a conflict of interest and where Commissions were otherwise being received pursuant to grandfathering provisions or legislative exemptions, the Sub-Set of Compliance Documents mandated that certain steps be taken by the Representatives to ensure they have acted in the clients' best interests and that the client's interests were placed ahead of the Representatives, and detailed how to manage conflicts of interests;

Particulars

See various versions of Conflicts of Interest including
Alternative Remuneration Licensee Standard:
COU.0013.0001.0010; CBA.0015.0005.7561;
CBA.0015.0005.7574; CBA.0015.0005.7479;
CBA.0015.0005.7516; CBA.0001.0082.6650;
CBA.0001.0082.6640; COU.0005.0001.1341

- (c) in relation to subparagraph 75.2,
 - (i) refers to and repeats paragraphs 32 and 75.1 above and 75(e)(iv) below;
 - (ii) admits that Count did not require its Representatives to provide any service in exchange for Commissions or charge an ongoing service fee, rather than both or a combination of both; and
 - (iii) otherwise denies the allegations in the subparagraph;
- (d) in relation to subparagraph 75.3,
 - (i) refers to and repeats paragraphs 16 to 23, 26, 49 and 68(c) above;
 - (ii) in the premises of the paragraphs listed in paragraph 75(d)(i) above, admits that Count:
 - A. permitted Grandfathered Member Firms to receive Commissions and/or Benefits; and
 - B. incentivised Grandfathered Member Firms to generate revenue, including from Commissions and/or Benefits;
 - (iii) otherwise denies the allegation in the subparagraph;
- (e) in relation to subparagraph 75.4,
 - (i) refers to and repeats paragraphs 75.1 and 75.2 above;
 - (ii) says that the allegation that Count "*did not do anything to unwind or ameliorate the effect of the conflict created by the receipt of Commissions*" is vague and embarrassing;
 - (iii) admits that Count instructed its Representatives how to manage conflicts of interest, including by disclosure;

Particulars

See various versions of Conflicts of Interest including
 Alternative Remuneration Licensee Standard:
 COU.0013.0001.0010; CBA.0015.0005.7561;
 CBA.0015.0005.7574; CBA.0015.0005.7479;
 CBA.0015.0005.7516; CBA.0001.0082.6650;
 CBA.0001.0082.6640; COU.0005.0001.1341

- (iv) admits that Count did not instruct its Representatives to:
 - A. "dial down", switch off, or rebate each and every commission received; and/or
 - B. reduce the Representative's fees by the amount of each commission received; and
- (v) otherwise denies the allegations in the subparagraph;
- (f) in relation to subparagraph 75.5:
 - (i) says that the allegation that Count had "*widespread failings*" in its advice business is vague and embarrassing;
 - (ii) says that CBA are in the process of remediating financial advice customers who paid ongoing advice service fees to a financial advice practice that is or was previously authorised under Count between July 2008 and September 2019 (**FFNS Remediation**);
 - (iii) says that the FFNS Remediation related to instances of service delivery failures in CBA's aligned advice businesses where some customers paid ongoing advice service fees for periodic reviews they may not have received; and
 - (iv) otherwise denies the allegations in the subparagraph;
- (g) in relation to sub-paragraph 75.6:
 - (i) refers to and repeats sub-paragraph 26(d) above:
 - (ii) otherwise denies the allegations in the subparagraph:
- (h) denies the allegation at sub-paragraph 75.7;
- (i) denies the allegation at sub-paragraph 75.8;
- (j) in relation to sub-paragraph 75.9:
 - (i) refers to and repeats paragraph 9A above; and

(ii) denies the allegation in this sub-paragraph.

(k) in relation to the allegation at sub-paragraph 75.10, says:

(i) insofar as the allegation relates to the Applicant Products Distribution Agreements, it denies the sub-paragraph; and

~~(iv)~~(ii) it otherwise does not know and therefore cannot admit the allegation in the sub-paragraph.

76. In answer to paragraph 76 of the Claim, Count:

(a) refers and repeats paragraph 75 above; and

(b) otherwise denies the allegations in the paragraph.

77. Count denies the allegations in paragraph 77 of the Claim.

78. In answer to paragraph 78 of the Claim, Count:

(a) refers and repeats paragraphs 2, 7 and 26(b); and

(b) otherwise denies the allegations in the paragraph.

F Contraventions

79. In answer to paragraph 79 of the Claim, Count:

(a) refers to and repeats paragraph 24 above;

(b) refers to and repeats paragraph A (Nature of Proceedings) above and says that any cause of action relying upon the provision of Pre-Relevant Period Advice is barred by statute; and

(c) otherwise denies the allegation in the paragraph.

80. In answer to paragraph 80 of the Claim, Count:

(a) refers to and repeats paragraph 25(f) above; and

(b) otherwise admits the allegation in the paragraph.

81. In answer to paragraph 81 of the Claim, Count:

(a) refers to and repeats paragraph 25 above; and

(b) otherwise denies the allegation in the paragraph.

F.1 Breach of Contract - Ongoing Advice

82. In answer to paragraph 82 of the Claim, Count:
- (a) in relation to the Applicant, repeats paragraphs 34(a) and 37 above; and
 - (b) otherwise denies the allegation in the paragraph.
83. Count denies the allegation in paragraph 83 of the Claim.
84. Not used.
85. In answer to paragraph 85 of the Claim, Count:
- (a) refers to and repeats paragraph 41 above; and
 - (b) otherwise denies the allegation in the paragraph.
86. In answer to paragraph 86 of the Claim, Count:
- (a) denies that allegation as it relates to the Applicant; and
 - (b) does not know and therefore cannot admit the allegation as it relates to Group Members.

F.2 Benchmark - the scope of the duties owed

87. In answer to paragraph 87 of the Claim, Count:
- (a) in relation to subparagraph 87.1, admits that, during the Relevant Period, the Representatives, in providing personal advice to the Applicant and Group Members who were retail clients, were under the obligation in section 961B of the Corporations Act to act in the best interests of the client in relation to the advice;
 - (b) in relation to subparagraph 87.2, admits that, during the Relevant Period, the Representatives, in providing personal advice to the Applicant and Group Members who were retail clients, were under the obligation in section 961J of the Corporations Act to give priority to the client's interests when providing personal advice;
 - (c) refers to and repeats paragraph 26(b) above; and
 - (d) otherwise denies the allegations in the paragraph.
88. In answer to paragraph 88 of the Claim, Count:
- (a) refers to and repeats paragraphs 2 to 4 above;

- (b) says that the obligation in section 921E of the Corporations Act required a “*relevant provider*” to comply with the FASEA Code of Ethics;
- (c) says further that in order to be a “*relevant provider*” within the meaning of section 910A of the Corporations Act, a person was required to be an individual;
- (d) in the premises above at (b) and (c), denies that Member Firms who were Representatives and not individuals owed a statutory obligation to comply with the FASEA Code of Conduct;
- (e) says that section 921E of the Corporations Act applied on and after 1 January 2020 as a result of section 1546F of the Corporations Act; and
- (f) otherwise admits the allegations in the paragraph.

89. In answer to paragraph 89 of the Claim, Count:

- (a) in relation to subparagraph 89.1, says that:
 - (i) where any Commission or Benefit was received by a reasonably competent financial adviser making a product recommendation to a retail client, the adviser would have considered whether the Commission or Benefit was conflicted remuneration within the definition of section 963A of the Corporations Act;
 - (ii) whether or not the Commission or Benefit was conflicted remuneration would depend upon:
 - A. the nature of the remuneration;
 - B. the circumstances in which it was given;
 - C. whether the remuneration was reasonably expected to influence the choice of financial product recommended; and
 - D. whether the remuneration was reasonably expected to influence the financial product advice provided by the adviser;
 - (iii) says that there were exclusions which applied to Commissions and Benefits regardless of section 963A of the Corporations Act;
 - (iv) says that the determination of whether one or more of the exclusions referred to above in sub-paragraph 89(a)(iii) applied depended upon factors that included:
 - A. the type of product recommended;
 - B. the date when the advice was provided;

- C. the nature and quantum of any remuneration that might be received; and
 - D. transition arrangements that applied to the product recommendation;
- (v) otherwise denies the allegation in the subparagraph;
- (b) in relation to subparagraph 89.2:
- (i) says that the option to “dial down” or “switch off” Commissions was not available for all products;
 - (ii) admits that a reasonably competent financial adviser would have understood that Commissions could be rebated by them back to the client; and
 - (iii) in the premises above at 89(b) denies the subparagraph;
- (c) in relation to subparagraph 89.3:
- (i) refers to and repeats;
 - A. paragraph 87(a) and (b) above (in relation to the content of the Best Interests Duty);
 - B. paragraph 87(c) and (d) above (in relation to the Conflicts Priority Rule); and
 - C. paragraph 88 above (in relation to the FASEA Code of Ethics);
 - (ii) says that the reference to the “*Appropriate Advice Duty*” in the subparagraph is embarrassing because the term is not otherwise defined in the Claim;
 - (iii) says that insofar as the subparagraph makes generalised reference to compliance with the entirety of the Corporations Act and the entirety of the FPA Code of Professional Practice without identifying the particular provisions that are alleged to be relevant to the proceedings, the paragraph is vague and embarrassing and is liable to be struck out pursuant to r 16.02(2)(c) and/or (d) of the *Federal Court Rules 2011* (Cth) (**FCRs**) and Count therefore does not admit those aspects of the subparagraph; and
 - (iv) otherwise denies the allegation in the subparagraph;
- (d) in relation to subparagraph 89.4:
- (i) refers to and repeats paragraph 89(c) above; and
 - (ii) otherwise denies the allegation in the subparagraph;

- (e) in relation to subparagraph 89.5, says that a reasonably competent financial adviser would have complied with licensee standards issued by the relevant licensee in relation to the receipt of Commissions and/or Benefits to the extent those standards applied to the adviser;
 - (f) denies the "Benchmark" as pleaded;
 - (g) denies that the "Benchmark" reflected or gave rise to any independent legal obligation according to its terms; and
 - (h) otherwise denies the allegations in the paragraph.
90. In answer to paragraph 90 of the Claim, Count:
- (a) says that the obligation in section 961B(1) of the Corporations Act was qualified and informed by sub-sections 961B(2) to (5) of the Corporations Act;
 - (b) admits that one of the ways a provider could satisfy the duty in sub-section 961B(1) of the Corporations Act was if the provider proved that they had done each of the things in sub-sections 961B(2)(a) to (g) of the Corporations Act;
 - (c) in relation to the Applicant, refers to and repeats paragraph 25 above and says that, in relation to each instance of personal advice given, the relevant representative did each of the things in sub-sections 961B(2)(a) to (g) of the Corporations Act;
 - (d) relies on section 961B of the Corporations Act for its full force and effect; and
 - (e) otherwise denies the allegations in the paragraph.
91. In answer to paragraph 91 of the Claim, Count:
- (a) relies on section 961J of the Corporations Act for its full force and effect; and
 - (b) otherwise denies the allegations in the paragraph.
92. In answer to paragraph 92 of the Claim, Count:
- (a) refers to and repeats paragraph 88 above;
 - (b) in relation to subparagraph 92.1, admits that Standard 3 of the FASEA Code provided that an adviser must not advise, refer or act in any other manner where the adviser has a conflict of interest or duty;
 - (c) in relation to subparagraphs 92.2 and 92.3:
 - (i) admits that Standard 7 of the FASEA Code stated that the client must give free, prior and informed consent to all benefits the adviser and their principal would receive in

connection with acting for the client, including any fees for services that may be charged;

- (ii) says further that Standard 7 of the FASEA Code stated that if required in the case of an existing client, the consent referred to above in subparagraph 91(c)(i) should be obtained as soon as practicable after the Code commenced;
- (iii) admits that Standard 7 of the FASEA Code stated that except where expressly permitted by the Corporations Act, an adviser may not receive any benefits, in connection with acting for a client, that derive from a third party other than their principal; and
- (iv) says further that Standard 7 of the FASEA Code stated that an adviser must satisfy themselves that any fees and charges that the client must pay to the adviser or the adviser's principal, and any benefits that the adviser or the adviser's principal received, in connection with acting for the client are fair and reasonable and represent value for money for the client;

(d) denies the allegations in subparagraphs 92.4 and 92.5; and

(e) otherwise denies the allegations in the paragraph.

93. Count denies the allegation in paragraph 93 of the Claim.

94. In answer to paragraph 94 of the Claim, Count:

- (a) says that the obligation to comply with section 961B(1) of the Corporations Act applied in relation to the provision of personal advice to a person as a retail client; and

Particulars

Section 961(1) of the Corporations Act.

- (b) otherwise denies the allegation in the paragraph.

F.3 Fiduciary duty

95. In answer to paragraph 95 of the Claim, Count:

- (a) refers to and repeats paragraph 43 above;

(b) in relation to subparagraph 95.1;

- (i) admits that the Applicant's Representatives provided personal advice to the Applicant during the relevant period as pleaded above at paragraph 25; and

(ii) denies that it undertook to provide financial advice to the Applicant or Group Members during the Relevant Period;

(c) in relation to subparagraph 95.2,

(i) admits that the Applicant's Representatives did hold themselves out as financial advisers to the Applicant; and

(ii) in respect of Group Members, does not know the extent to which Representatives were held out as having expertise in providing financial advice and therefore does not admit the allegation;

~~(b)~~(d) denies the allegation in subparagraph 95.3;

~~(e)~~(e) says that insofar as the paragraph makes allegations with respect to the conduct of Authorised Representatives to Group Members it does not know and cannot admit those allegations; and

~~(d)~~(f) otherwise denies the allegation in the paragraph.

96. In answer to paragraph 96 of the Claim, Count:

(a) refers to and repeats paragraphs 2, 22, 23 and 43 above; and

(b) otherwise denies the allegation in the paragraph.

97. Count denies the allegation in paragraph 97 of the Claim.

98. In answer to paragraph 98 of the Claim, Count:

(a) refers to and repeats paragraphs 43, 95 and 96 above;

(b) denies that Count owed any fiduciary duties to the Applicant or Group Members;

(c) denies that a fiduciary duty arose per se between the Applicant and any of the Applicant's Representatives;

(d) denies that a fiduciary duty arose per se between each Representative and their client Group Member and says that whether a fiduciary duty arose between a Representative and a Group Member, and the scope of any such duty, would depend, inter alia, on:

(i) the particular task the Representative had agreed to undertake, including what requests for advice were or were not made of the Representative in respect of the particular task; and

- (ii) whether the interest in the relevant task had been disclosed to the Group Member;
and
- (iii) the contractual relationship and whether the conduct was otherwise authorised by law;
and
- (iv) the individual circumstances of the Group Member;
- (e) having regard to the matters pleaded above at paragraph 98(d), says that insofar as the paragraph makes allegations with respect to Group Members it does not know and cannot admit those allegations;
- (f) says that the Applicant was fully informed about and consented to the receipt by Centenary Financial Pty Ltd of the Commissions; and
- (g) otherwise denies the allegations in the paragraph.

99. Count denies the allegations in paragraph 99 of the Claim.

100. In answer to paragraph 100 of the Claim, Count:

- (a) refers to and repeats paragraph 98 above; and
- (b) otherwise denies the allegations in the paragraph.

F.4 Statutory contraventions – breach of ss 961B and 961J

101. In answer to paragraph 101 of the Claim, Count:

- (a) refers to and repeats paragraphs 26, 87, 89, 90 and 91 above;
- (b) in relation to subparagraph 101.1, denies the subparagraph;
- (c) in relation to subparagraph 101.2:
 - (i) admits that the Applicant's Representatives did not in fact "dial down", switch off, rebate or otherwise turn off the Commissions; and
 - (ii) otherwise denies the allegations in the subparagraph;
- (d) in relation to subparagraph 101.3:
 - (i) admits that the Applicant's Representatives did not in fact reduce the ongoing service fees paid pursuant to the Ongoing Service Package by the amount of the Commissions;

- (ii) says that the ongoing services fees paid pursuant to the Ongoing Service Package were calculated in circumstances where the Applicant's Representatives received Commissions;
 - (iii) otherwise denies the allegations in the sub-paragraph;
- (e) in relation to subparagraph 101.4:
- (i) refers to and repeats subparagraph 101(d)(ii) above; and
 - (ii) otherwise denies the allegations in the sub-paragraph;
- (f) in relation to sub-paragraph 101.5:
- (i) refers to and repeats sub-paragraph 101(d)(ii) above; and
 - (ii) otherwise denies the allegation in the sub-paragraph;
- (g) in relation to sub-paragraph 101.6:
- (i) refers to and repeats paragraph 29 above; and
 - (ii) otherwise denies the allegation in the sub-paragraph;
- (h) in relation to sub-paragraph 101.7 does not know and therefore cannot admit the allegation;
- ~~(h)~~(i) otherwise denies the allegations in the paragraph.

102. In answer to paragraph 102 of the Claim, Count:

- (a) refers to and repeats paragraph 26 above; and
- (b) otherwise denies the allegation in the paragraph.

103. In answer to paragraph 103 of the Claim, Count:

- (a) refers to and repeats paragraphs 89 and 101-102 above;
- (b) says that the "Benchmark" was not a source of any legal obligation owed by Count to the Applicant or Group Members that was capable of being breached; and
- (c) otherwise denies the allegations in the paragraph.

104. In answer to paragraph 104 of the Claim, Count:

- (a) refers to and repeats paragraphs 87, 90-91, 93-94, and 101-102 above; and
- (b) otherwise denies the allegations in the paragraph.

105. In answer to paragraph 105 of the Claim, Count:

- (a) refers to and repeats paragraphs 106-113 below;
- (b) says that the Count Licensee Standards were not a source of any legal obligation owed by Count to the Applicant or Group Members that was capable of being breached; and
- (c) otherwise denies the allegations in the paragraph.

106. In answer to paragraph 106 of the Claim, Count:

- (a) refers to and repeats paragraph 26 above; and
- (b) otherwise denies the allegations in the paragraph.

107. In answer to paragraph 107 of the Claim, Count:

- (a) refers to and repeats paragraph 24(b) above;
- (b) admits that the disclosure of fees section of the 4 August 2014 ROA stated that all fees were previously disclosed the applicant's Statement of Advice dated 1 January 2007; and
- (c) otherwise does not know and does not admit the allegations in the paragraph.

108. In answer to paragraph 108 of the Claim, Count:

- (a) refers to paragraph 25(a)(iv) above and says that no personal advice was conveyed by or contained in the documents dated 31 July 2015;
- (b) refers to and repeats paragraph 26 above; and
- (c) otherwise denies the allegations in the paragraph.

109. In answer to paragraph 109 of the Claim, Count:

- (a) refers to and repeats paragraphs 24(b) and 26 above;
- (b) admits that the "Other benefits" section of the ROA contained the statement "[t]here are no new benefits or other conflicts of interest to my advice other than those previously disclosed in your SOA"; and
- (c) otherwise denies the allegations in the paragraph.

110. In answer to paragraph 110 of the Claim, Count:

- (a) refers to paragraph 25(d) above and says that no personal advice was conveyed on 19 February 2017;

- (b) refers to and repeats and paragraph 26 above; and
- (c) otherwise denies the allegations in the paragraph.

111. In answer to paragraph 111 of the Claim, Count:

- (a) refers to and repeats paragraph 26 above; and
- (b) otherwise denies the allegations in the paragraph.

112. In answer to paragraph 112 of the Claim, Count:

- (a) refers to and repeats paragraph 26 above; and
- (b) otherwise denies the allegations in the paragraph.

113. In answer to paragraph 113 of the Claim, Count:

- (a) refers to and repeats paragraphs 89 and 106-112 above; and
- (b) otherwise denies the allegations in the paragraph.

114. In answer to paragraph 114 of the Claim, Count:

- (a) refers to and repeats paragraphs 87, 90-91, 93-94 and 106-112 above; and
- (b) otherwise denies the allegations in the paragraph.

F.5 Causation - adviser claims

115. In answer to paragraph 115 of the Claim, Count:

- (a) refers to and repeats paragraphs 104 and 114 above; and
- (b) otherwise denies the allegations in the paragraph.

116. In answer to paragraph 116 of the Claim, Count:

- (a) in relation to the chapeau of paragraph 116:
 - (i) admits that, where the Applicant's Representatives or Representatives were engaged in conduct:
 - A. that related to the provision of a financial service;
 - B. on which the client could reasonably be expected to, and did in fact in good faith, rely, then Count was, and is, responsible to the client for the conduct of the Applicant's Representative or Representatives;

Particulars

Sections 917A, 917B and 917E of the Corporations Act.

- (ii) further admits that, if it is responsible for the conduct of the Applicant's Representatives or Representatives under Division 6 of Part 7.6 of the Corporations Act, then the client has the same remedies against Count that the client has against the Applicant's Representative or Representatives;

Particulars

Section 917F of the Corporations Act.

- (b) in relation to sub-paragraph 116.1:
 - (i) says that the words "acting as pleaded in this Further Amended Statement of Claim" are imprecise and ambiguous, hence are embarrassing, and liable to be struck out pursuant to r 16.02(2)(c) and/or (d) of the FCRs;
 - (ii) admits that from time to time the Applicant's Representatives and the Representatives engaged in some conduct that:
 - A. related to the provision of a financial service within the meaning of section 917A(1)(a) of the Corporations Act;
 - B. on which the client could reasonably be expected to, and did in fact in good faith, rely;
 - (iii) otherwise does not know and cannot admit whether the Applicant or Group Members in fact relied on the financial service provided by the Representatives;
 - (iv) otherwise denies the allegations in the sub-paragraph;
- (c) in relation to subparagraph 116.2:
 - (i) says that the general reference to reliance upon the "conduct of the Representatives" are imprecise and ambiguous, hence are embarrassing, and liable to be struck out pursuant to r 16.02(2)(c) and/or (d) of the FCRs;
 - (ii) admits that from time to time the Representatives engaged in some conduct that:
 - A. related to the provision of a financial service within the meaning of section 917A(1)(a) of the Corporations Act;
 - B. on which the client could reasonably be expected to, and did in fact in good faith, rely;

(iii) otherwise does not know and cannot admit whether the Applicant or Group Members in fact relied on the “conduct of the Representatives”;

(d) otherwise denies the allegations in the paragraph.

117. In answer to paragraph 117 of the Claim, Count:

(a) admits that, where the Applicant's Representative or a Representative was engaged in conduct:

(i) that related to the provision of a financial service;

(ii) on which the client could reasonably be expected to, and did in fact in good faith, rely, then Count was, and is, responsible to the client for the conduct of the Applicant's Representative or Representative;

Particulars

Sections 917A, 917B and 917E of the Corporations Act.

(b) further admits that, if it is responsible for the conduct of the Applicant's Representative or Representative under Division 6 of Part 7.6 of the Corporations Act, then the client has the same remedies against Count that the client has against the Applicant's Representative or Representative.

Particulars

Section 917F of the Corporations Act.

(c) otherwise denies the allegations in the paragraph.

F.6 Statutory contraventions – breach of s 961L by Count

118. In answer to paragraph 118 of the Claim, Count:

(a) admits that, during the Relevant Period, Count, as the financial services licensee, was under the obligation in section 961L of the Corporations Act to take reasonable steps to ensure that the Representatives complied with sections 961B(1) and 961J(1) of the Corporations Act;

(b) otherwise denies the allegation in the paragraph.

119. Not used.

120. In answer to paragraph 120 of the Claim, Count:

(a) denies the allegations in subparagraph 120.1;

- (b) denies the allegations in subparagraph 120.2:
- (c) in relation to subparagraph 120.3:
 - (i) says in relation to subparagraph 120.3(a) that the reference to “*the way in which the adviser receives Commissions and Benefits*” and the general reference to “*an adviser’s statutory obligation to their clients*” is vague, embarrassing and is liable to be struck out pursuant to r 16.02(2)(c) and/or (d) of the FCRs and does not admit the sub-paragraph;
 - (ii) says in relation to sub-paragraph 120.3(b) that the reference to “those obligations” when read with sub-paragraph 120.3(a) is vague, embarrassing and is liable to be struck out pursuant to r 16.02(2)(c) and/or (d) of the FCRs and does not admit the sub-paragraph;
 - (iii) says in relation to sub-paragraph 120.3(c) that the reference to “*the same principle*” when read with sub-paragraphs 120.3(a) and (b) is vague, embarrassing and is liable to be struck out pursuant to r 16.02(2)(c) and/or (d) of the FCRs and does not admit the sub-paragraph; and
 - (iv) denies the allegations in subparagraph 120.3(d);
- (d) in relation to subparagraph 120.4:
 - (i) says that a reasonably competent financial services licensee would have given instructions and guidance to representatives of the licensee that was reasonably directed at ensuring they complied with (relevantly for the purposes of these proceedings) sections 961B and 961J;
 - (ii) otherwise does not admit the allegation in the subparagraph;
- (e) in relation to subparagraph 120.5:
 - (i) says that a reasonably competent financial services licensee would have trained, monitored and supervised representatives of the licensee in a manner that was reasonably directed at ensuring they complied with sections 961B and 961J;
 - (ii) otherwise does not admit the allegation in the subparagraph;
- (f) in relation to subparagraph 120.6:
 - (i) admits that a reasonably competent licensee would periodically review its APLs;
 - (ii) admits that in reviewing its APLs, a reasonably competent licensee would have regard to its customer base;

- (iii) otherwise denies the allegation in the subparagraph;
 - (g) in relation to sub-paragraph 120.7:
 - (i) says that a reasonably competent financial services licensee would have engaged in monitoring and supervision that was reasonably directed at ensuring the licensee's representatives complied with sections 961B and 961J;
 - (ii) otherwise does not admit the allegation in the subparagraph;
 - (h) denies the allegation in subparagraph 120.8;
 - (i) denies the allegation in subparagraph 120.9;
 - (j) admits the allegation in subparagraph 120.10;
 - (k) in relation to subparagraph 120.11:
 - (i) refers to and repeats paragraph 120(d) above;
 - (ii) otherwise does not admit the allegation in the sub-paragraph;
 - (l) in relation to sub-paragraph 120.12, says that:
 - (i) a reasonably competent financial services licensee would have trained, monitored and supervised representatives of the licensee in a manner that was reasonably directed at ensuring they complied with sections 961B and 961J; and
 - (ii) otherwise denies the allegation in the sub-paragraph;
 - (m) denies the "961L Benchmark" as pleaded;
 - (n) denies that the "961L Benchmark" reflected or gave rise to any independent legal obligation according to its terms;
 - (o) relies upon the terms of section 961L; and
 - (p) otherwise denies the allegations in the paragraph.
121. In answer to paragraph 121 of the Claim, Count:
- (a) in relation to subparagraph 121.1:
 - (i) refers to and repeats paragraph 122 below; and
 - (ii) otherwise denies the allegation in the sub-paragraph;
 - (b) in relation to subparagraph 121.2:

- (i) refers to and repeats paragraphs 123 to 124 below; and
 - (ii) otherwise denies the allegation in the subparagraph;
- (c) In relation to sub-paragraph 121.3:
- (i) refers to paragraph 128 below; and
 - (ii) otherwise denies the allegation in the subparagraph;
- (d) In relation to sub-paragraph 121.4:
- (i) refers to paragraphs 131 to 133 below; and
 - (ii) otherwise denies the allegation in the subparagraph;
- (e) In relation to sub-paragraph 121.5:
- (i) refers to paragraphs 136 to 137 below; and
 - (ii) otherwise denies the allegation in the subparagraph;
- (f) In relation to subparagraph 121.6:
- (i) refers to paragraph 138 below; and
 - (ii) otherwise denies the allegation in the subparagraph; and
- (g) otherwise denies the allegations in the paragraph.

QAA process

122. Count denies the allegations in paragraph 122 of the Claim.

BAC Review process

123. In answer to paragraph 123 of the Claim, Count:

- (a) refers to and repeats paragraphs 54 to 58 above;
- (b) says that as at 11 March 2019, less than 29% of advisers had been subject to a file review;
- (c) says that as at 23 October 2019, around 87% of advisers had been subject to a BAC Review; and
- (d) otherwise denies the allegations in the paragraph.

124. In answer to paragraph 124 of the Claim, Count:

- (a) refers to and repeats paragraphs 54 to 58 above;
- (b) says that around 87% of advisers were subject to the BAC Review during the period December 2018 - October 2019; and
- (c) otherwise denies the allegations in the paragraph.

125. In answer to paragraph 125 of the Claim, Count:

- (a) refers to and repeats paragraph 54 to 58 and 124 above; and
- (b) otherwise denies the allegations in the paragraph.

126. In answer to paragraph 126 of the Claim, Count:

- (a) refers to and repeats paragraphs 54 to 58, 124 and 125 above and the earlier paragraphs referred to therein; and
- (b) otherwise denies the allegations in the paragraph.

127. In answer to paragraph 127 of the Claim, Count:

- (a) refers to and repeats paragraphs 54 to 58 and 124 to 126 above; and
- (b) otherwise denies the allegations in the paragraph.

APL Process

128. In answer to paragraph 128 of the Claim, Count:

- (a) refers to and repeats paragraphs 13 above; and
- (b) otherwise denies the allegations in the paragraph.

129. In answer to paragraph 129 of the Claim, Count:

- (a) refers to and repeats paragraphs 13 and 128 above; and
- (b) otherwise denies the allegations in the paragraph.

130. In answer to paragraph 130 of the Claim, Count:

- (a) refers to and repeats paragraphs 13, 128 and 129 above; and
- (b) otherwise denies the allegations in the paragraph.

Remuneration policies

131. Count does not know and cannot admit the allegations in paragraph 131 of the Claim.

132. In answer to paragraph 132 of the Claim, Count:

- (a) refers to and repeats paragraphs 14 to 21 above;
- (b) in relation to subparagraph 132.1 says that for Member Firms:
 - (i) the quality of financial advice provided to customers could impact upon remuneration in that customers who received poor quality advice may choose not to retain an adviser from a Member Firm, with resulting impacts upon remuneration;
 - (ii) admits that, apart from through the CTC program, Count's remuneration policies did not contain a metric that generally linked the quantum of remuneration to an independent evaluation of the financial advice they provided;
 - (iii) from around 1 July 2017, benefits payable through the CTC program were to be withheld in the event of there being compliance issues;
 - (iv) it had effective supervision and monitoring systems and processes which monitored compliance of advisers with their statutory duties, as referred to in paragraph 49 above; and
 - (v) otherwise denies the allegation in the subparagraph;
- (c) in relation to subparagraph 132.2 admits that Member Firm remuneration was linked to the volume of business written;
- (d) in relation to subparagraph 132.3:
 - (i) repeats paragraphs 17 to 21 above; and
 - (ii) otherwise denies the allegation in the subparagraph;
- (e) denies the allegation in subparagraph 132.4; and
- (f) otherwise denies the allegations in the paragraph.

133. In answer to paragraph 133 of the Claim, Count:

- (a) Count says in relation to sub-paragraphs 133.1 and 133.2:
 - (i) Representatives were required to only recommend products that were in the best interests of customers;
 - (ii) Count had a process for approval to recommend products not on the APL if the Representative thought it was in the best interests of the client to do so;

- (iii) the APL was a mechanism by which:
 - A. Count would demonstrate its consideration of appropriate financial, risk and credit products and services; and
 - B. Count provided Representatives with information to assist them in demonstrating adequate product and service knowledge to support their recommendations;
- (iv) insofar as they related to Grandfathered Member Firms admits the allegations in the subparagraphs and otherwise denies the allegations in the subparagraphs.

(b) denies the allegation in sub-paragraph 133.3; and

134. Count denies the allegations in paragraph 134 of the Claim:

135. In answer to paragraph 135 of the Claim, Count:

- (a) refers to and repeats paragraph 134 above; and
- (b) otherwise denies the allegations in the paragraph.

Count Licensee Standards

136. In answer to paragraph 136 of the Claim, Count:

- (a) in relation to subparagraph 136.1:
 - (i) refers to and repeats paragraph 120(d)(iii);
 - (ii) says that, to the extent that the word "*should*" in the chapeau to paragraph 136 is to be understood as alleging that the Count Licensee Standards did not address the matter in paragraph 136.1, it denies that allegation;
 - (iii) says that the Sub-Set of Compliance Documents instructed advisers:
 - A. that the receipt of grandfathered remuneration may be a potential conflict; and
 - B. of the steps to be taken in those circumstances to ensure the advisers acted in the best interests of the client; and
 - (iv) otherwise denies the allegations in the subparagraph;
- (b) in relation to sub-paragraph 136.2:
 - (i) refers to and repeats paragraphs 120(d)(iv) and 136(a)(iii) above;

- (ii) says that, to the extent that the word "*should*" in the chapeau to paragraph 136 is to be understood as alleging that the Count Licensee Standards did not address the matter in paragraph 136.2, it denies that allegation; and
 - (iii) otherwise denies the allegation in the sub-paragraph;
- (c) in relation to sub-paragraph 136.3:
 - (i) says that, to the extent that the word "should" in the chapeau to paragraph 136 is to be understood as alleging that the Count Licensee Standards did not address the matter in paragraph 136.3, it denies that allegation;
 - (ii) says that the Count Licensee Standards instructed advisers to be aware of potential conflicts, including those created by related parties and financial incentives and such instruction applied to products on the APL; and
 - (iii) otherwise denies the allegation in the sub-paragraph;
- (d) in relation to subparagraph 136.4:
 - (i) refers to and repeats paragraph 136(a)(iii) above;
 - (ii) says that, to the extent that the word "*should*" in the chapeau to paragraph 136 is to be understood as alleging that the Count Licensee Standards did not address the matter in paragraph 136.4, it denies that allegation; and
 - (iii) otherwise denies the allegation in the sub-paragraph;
- (e) in relation to sub-paragraph 136.5:
 - (i) says that, to the extent that the word "*should*" in the chapeau to paragraph 136 is to be understood as alleging that the Count Licensee Standards did not address the matter in paragraph 136.5, it denies that allegation;
 - (ii) says that it was a standard term of the Count Representative Agreement that Representatives were to comply with all the relevant laws;
 - (iii) says further that the Count Licensee Standards otherwise instructed advisers during the Relevant Period:
 - A. to provide all the services promised in the ongoing fee agreement. unless the client specifically declined a particular service; and
 - B. of the steps to be taken to offer a service and the steps to be taken when a client was difficult to contact or declined a service; and

- (iv) otherwise denies the allegation in the subparagraph;
- (f) in relation to subparagraph 136.6:
 - (i) says that, to the extent that the word “should” in the chapeau to paragraph 136 is to be understood as alleging that the Count Licensee Standards did not address the matter in paragraph 136.6, it denies that allegation;
 - (ii) the Count Licensee Standards instructed advisers that:
 - A. disclosure and consent could not always satisfy their obligations around conflicts; and
 - B. where conflicts could not be adequately managed through controls and disclosure they were required to avoid the conflict or refrain from providing the affected financial service either by referring the client to another adviser within the licensee to provide advice or declining or withdrawing the services provided to the client;
 - (iii) otherwise denies the allegation in the sub-paragraph;
- (g) in relation to subparagraph 136.7:
 - (i) refers to and repeats paragraphs 26, 89 and 90 above; and
 - (ii) otherwise denies the allegation in the sub-paragraph; and
- (h) otherwise denies the allegations in the paragraph.

137. In answer to paragraph 137 of the Claim, Count:

- (a) in relation to sub-paragraph 137.1:
 - (i) refers to and repeats paragraphs 105 to 112 above; and
 - (ii) otherwise denies the allegation in the sub-paragraph;
- (b) in relation to subparagraph 137.2:
 - (i) admits there was minimal (if any) review, correction, modification or amendment by Count of any of the personal advice by the Applicant during the Relevant Period; and
 - (ii) otherwise denies the allegation in the sub-paragraph.
- (c) denies the allegation in sub-paragraph 137.3; and
- (d) otherwise denies the allegations in the paragraph.

138. In answer to paragraph 138 of the Claim, Count:

- (a) in relation to subparagraph 138.1:
 - (i) refers to and repeats paragraphs 62(b), 63(b)(ii), 63(c)(i), 120(d) and 155(a) above; and
 - (ii) otherwise denies the allegations in the sub-paragraph;
- (b) in relation to subparagraph 138.2:
 - (i) refers to and repeats paragraphs 61 to 63 above; and
 - (ii) otherwise denies the allegations in the sub-paragraph;
- (c) in relation to subparagraph 138.3:
 - (i) denies that the matters in sub-paragraph 138.3 were “gaps” in Count’s training program that gave rise to any shortfall against the standard of what was expected of a reasonably competent licensee;
 - (ii) denies that the matters in sub-paragraph 138.3 were capable of giving rise to a contravention of section 961 L of the Corporations Act; and
 - (iii) otherwise denies the allegations in the sub-paragraph;
- (d) in relation to subparagraph 138.4:
 - (i) refers to and repeats paragraph 54 above; and
 - (ii) otherwise admits the allegation in the subparagraph;
- (e) in relation to subparagraph 138.5:
 - (i) refers to and repeats paragraph 54 above; and
 - (ii) otherwise denies the allegations in the subparagraph;
- (f) in relation to subparagraph 138.6:
 - (i) says that insofar as section 961S of the Corporations Act is relied upon in relation to an alleged contravention of section 961L of the Corporations Act, section 961S is not among the provisions listed in section 961L;
 - (ii) says in any case that the obligation in section 961L requires the taking of “reasonable steps” to ensure that representatives of the licensee comply with the provisions identified in that sub-section;

- (iii) says that it took reasonable steps to ensure that fee disclosure statements were provided to the Applicant and Group Members; and
- (iv) otherwise denies the allegation in the subparagraph; and
- (g) otherwise denies the allegations in the paragraph.

Ongoing advice

139. In answer to paragraph 139 of the Claim, Count:

- (a) in relation to subparagraph 139.1:
 - (i) says that, to the extent that the word “should” in the chapeau to paragraph 139 is to be understood as alleging that Count did not identify the matter in paragraph 139.1, it refers to and repeats paragraph 136(e) above; and
 - (ii) otherwise denies the allegation in the subparagraph;
- (b) in relation to sub-paragraph 139.2:
 - (i) says that, to the extent that the word “should” in the chapeau to paragraph 139 is to be understood as alleging that Count did not identify the matter in paragraph 139.2, otherwise repeats paragraph 139.1 above; and
 - (ii) otherwise denies the allegation in the sub-paragraph.

140. In answer to paragraph 140 of the Claim, Count:

- (a) refers to and repeats paragraphs 121, 122, 123, 131, 136, 137, 138 and 139 above;
- (b) says that the “961L Benchmark” was not an independent legal obligation that was capable of being breached by Count; and
- (c) otherwise denies the allegations in the paragraph.

141. In answer to paragraph 141 of the Claim, Count:

- (a) refers to and repeats paragraphs 121, 122, 123, 131, 136, 137, 138 and 139 above; and
- (b) otherwise denies the allegations in the paragraph.

F.7 Causation

142. In answer to paragraph 142 of the Claim, Count:

- (a) refers to and repeats paragraphs 136 and 137 above; and

(b) otherwise denies the allegations in the paragraph.

143. In answer to paragraph 143 of the Claim, Count:

- (a) says that the reference to paragraph 169 of the pleading is embarrassing because there is no such paragraph;
- (b) refers to paragraph 142 above; and
- (c) otherwise denies the allegation in the paragraph.

F.8 Misleading Conduct

144. In answer to paragraph 144 of the Claim, Count:

- (a) refers to and repeats paragraph 74 above; and
- (b) otherwise denies the allegation in the paragraph.

145. In answer to paragraph 145 of the Claim, Count:

- (a) refers to and repeats paragraphs 74 and 75 above; and
- (b) otherwise denies the allegations in the paragraph.

145A. In answer to paragraph 145 of the Claim, Count

- (a) refers to and repeats paragraphs 74 and 75 above; and
- (b) otherwise denies the allegations in the paragraph.

145AA. In answer to paragraph 145 of the Claim, Count

- (c) refers to and repeats paragraphs 74 and 75 above;
- (d) does not know and therefore cannot admit whether some or all of the allegations set out in the definition of 'True Position' were not disclosed to Group Members; and
- (e) otherwise denies the allegation in the paragraph.

146A. In answer to paragraph 146A of the Claim, Count:

- (a) refers to and repeats paragraphs 74 and 75 above; and
- (b) otherwise denies the allegations in the paragraph.

146AA. In answer to paragraph 146AA of the Claim, Count:

(a) refers to and repeats paragraphs 74 and 75 above;

(b) does not know and therefore cannot admit whether some or all of the allegations set out in the definition of 'True Position' were not disclosed to Group Members; and

(c) otherwise denies the allegation in the paragraph.

146. In answer to paragraph 146 of the Claim, Count:

(a) refers to and repeats paragraph 145 above; and

(b) otherwise denies the allegation in the paragraph.

147. In answer to paragraph 147 of the Claim, Count:

(a) refers to and repeats paragraph 144 to 146 above; and

(b) otherwise denies the allegation in the paragraph.

148. Count denies the allegation in paragraph 148 of the Claim.

149. In answer to paragraph 149 of the Claim, Count denies that it is liable to compensate the Applicant or any of the Group Members for loss and damage suffered by reason of any alleged statutory contraventions, including, profits, or at all.

150. Count denies the allegation in paragraph 150 of the Claim.

151. Count denies the allegation in paragraph 151 of the Claim.

152. In answer to paragraph 152 of the Claim, Count:

(a) refers to and repeats paragraph 86 above;

(b) denies that the Applicant or any of the Group Members are entitled to damages for breach of contract from Count or at all; and

(c) says the Applicant was sent a letter outlining steps to obtain a refund for ongoing advice service fees paid without admission as to whether services were provided or not, and the Applicant did not respond to that letter.

Particulars

Letter from CBA to the Applicant dated 5 August 2022

G Receipt of Conflicted Remuneration

153. In answer to paragraph 153 of the Claim, Count:

- (a) refers to and repeats paragraph 155 below; and
- (b) otherwise admits that, subject to prescribed circumstances, Count and Authorised Representatives were prohibited from accepting conflicted remuneration under arrangements entered into on or after 1 July 2013.

154. In answer to paragraph 154 of the Claim, Count admits that section 963A(1) of the Corporations Act defined 'conflicted remuneration' as pleaded in paragraph 154 of the Claim, save that the Corporations Act says "monetary or non-monetary", and not "monetary or otherwise", during the Relevant Period.

155. In answer to paragraph 155 of the Claim, Count:

- (a) says that conflicted remuneration was permitted to be paid where:
 - (i) in relation to product providers:
 - A. the relevant arrangement with product providers was entered into prior to 1 July 2013; and
 - B. the commission and/or benefit related to products available before 1 July 2013 and acquired by clients before 1 July 2014; or
 - (ii) in relation to platform providers:
 - A. the relevant arrangement with platform providers was entered into prior to 1 July 2013; and
 - B. the commission and/or benefit related to clients who opened accounts before 1 July 2014 under the grandfathered arrangement referred to in 155(a)(ii) above; and

Particulars

Section 1528 of the Corporations Act and regulations 7.7A.16A and 7.7A.16B of the *Corporations Regulations 2001* (Cth).

- (b) otherwise admits the allegations in the paragraph.

156. In answer to paragraph 156 of the Claim, Count:

- (a) refers to and repeats paragraph 155 above; and
- (b) otherwise admits the allegation in the paragraph.

157. In answer to paragraph 157 of the Claim, Count:
- (a) refers to and repeats paragraphs 155 and 156 above; and
 - (b) otherwise admits the allegation in the paragraph.
158. In answer to paragraph 158 of the Claim, Count:
- (a) refers to and repeats paragraphs 155 and 156 above; and
 - (b) otherwise denies the allegation in the paragraph.
159. In answer to paragraph 159 of the Claim, Count:
- (a) refers to and repeats paragraphs 155 and 156 above; and
 - (b) otherwise denies the allegation in the paragraph.
160. In answer to paragraph 160 of the Claim, Count:
- (a) refers to and repeats paragraphs 158 and 159 above; and
 - (b) otherwise denies the allegation in the paragraph.
161. In answer to paragraph 161 of the Claim, Count:
- (a) refers to and repeats paragraph 19 above; and
 - (b) otherwise denies the allegation in the paragraph.
162. In answer to paragraph 162 of the Claim, Count:
- (a) refers to and repeats paragraphs 161 above; and
 - (b) otherwise denies the allegation in the paragraph.
163. Count admits the allegation in paragraph 163 of the Claim.
164. In answer to paragraph 164 of the Claim, Count:
- (a) refers to and repeats paragraphs 155, 156 and 158 above; and
 - (b) otherwise denies the allegation in the paragraph.
165. In answer to paragraph 165 of the Claim, Count:
- (a) refers to and repeats paragraphs 153 to 164 above; and
 - (b) otherwise denies the allegation in the paragraph.

166. In answer to paragraph 166 of the Claim, Count:

- (a) refers to and repeats paragraphs 153 to 165 above; and
- (b) otherwise denies the allegation in the paragraph.

Date: 20 March 2024

A handwritten signature in blue ink that reads "Clayton Utz".

Signed by Ross David McInnes
Lawyer for the Respondent

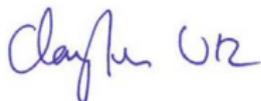
This pleading was prepared by Clayton Utz, lawyers for the respondent, and settled by Elizabeth Collins SC, Patrick Meagher, Matt Sherman and John Birrell.

Certificate of lawyer

I Ross David McInnes certify to the Court that, in relation to the defence filed on behalf of the Respondent, the factual and legal material available to me at present provides a proper basis for:

- (a) each allegation in the pleading; and
- (b) each denial in the pleading; and
- (c) each non admission in the pleading.

Date: 20 March 2024



Signed by Ross David McInnes

Lawyer for the Respondent