



ASIC

Australian Securities & Investments Commission

3 June 2014

Dr Kathleen Dermody  
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Senate Economics References Committee  
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Dear Dr Dermody

**Senate Inquiry into the Performance of the Australian Securities and Investments Commission (ASIC)**

1. The purpose of this letter is to provide some additional information in relation to ASIC's answers to the Committee's questions on notice of 23 May 2014, as submitted on 29 May 2014 (Questions) and to correct one matter in ASIC's Third Submission on Commonwealth Financial Planning dated May 2014.

**Confidential list of advisers**

2. ASIC's answers to questions 4 and 5 foreshadowed that we would provide the Committee with a confidential list of the relevant advisers. That confidential list is **attached**.

**Additional information**

3. ASIC requested additional information from CBA to enable us to answer Question 6(e), (f) and (g), Question 7(e), (f) and (g), Question 8 and Question 11. We have received information from CBA which enables us to answer Questions 6 (e), (f) and (g), Questions 7 (e), (f) (in part) and (g) and Question 11 (**see below**). We will provide the Committee with further information in relation to Question 7(f) when we receive it.
4. ASIC has also requested additional information from CBA to enable us to answer the same Questions about the compensation process that applied to the three "other" CFPL advisers. We have received information which allows us to answer those questions, with the exception of part of (f). We will provide the Committee with further information in relation to (f) when we receive it.
5. For completeness, ASIC also wishes to provide additional information to the Committee in relation to Questions 1, 2 and 3.

*Additional information: Questions 1, 2 and 3*

6. Further to ASIC's answers to Questions 1 and 2:

- 6.1. After becoming aware (in the circumstances set out in answers 1.2 and 1.3) that the \$52 million included compensation paid to clients of Financial Wisdom ASIC, among other things, reviewed its records relating to this matter.
  - 6.2. The review identified an email exchange on 29 and 30 July 2013 between an ASIC senior manager and a CBA legal counsel which indicated that the total compensation figure of \$50 million (as it then was) ) was *"inclusive of \$38,515,000 in relation to Project Hartnett and Past Business Review advisers"*. The email was not identified by ASIC at the time of its evidence to the Committee. The email did not identify Financial Wisdom Limited or any advisors associated with Financial Wisdom.
  - 6.3. In preparing our evidence to the Inquiry, we checked the accuracy of information (including in relation to the compensation process and the amount of compensation paid to affected clients of CFPL) contained in our submission with CFPL (as set out in answer 2.3) and the Past Business Review independent expert.
7. Further to ASIC's answers to Question 3:
- 7.1. ASIC was provided (by email, on 17 February 2012) with a copy of the Customer Remediation Policy that CFPL applied in the course of the Past Business Review. That document stated that:
    - *"... the customer should be engaged to: (i) alert them to the identified issue or potential issue; (ii) provide them with an overview of the review and remedial process and the approximate timeframe for assessment and resolution ..."*
    - *"CFPL may, in its discretion, contribute to the cost of the customer obtaining independent advice on the settlement offer"*.

The former statement is consistent with the Project Hartnett methodology regarding upfront communication. The latter statement represents a departure from the Project Hartnett methodology.
  - 7.2. The final report of the Past Business Review independent expert (referred to at answer 3.6.1) certified compliance with the Customer Remediation Policy.
8. Notwithstanding the matter referred to in paragraph 7.1 above, it was ASIC's understanding that the Customer Remediation Policy was consistent with Project Hartnett; specifically, that clients in the Past Business Review would receive upfront communication and the offer to pay for independent advice.
  9. ASIC gained this understanding from certain communications with CBA. In particular, in response to a request from ASIC to detail, in the Colonial First State Hartnett closure report, *"how it is proposed that Hartnett will morph into the business review requirement of the EU"*, CBA amended the closure report to include a page on the Past Business Review. That page included the following statement: *"The Past Business Review will be subject to the CFP Customer Remediation Policy. The CFP Remediation Policy has been developed to incorporate the key controls developed, tested and refined under Project Hartnett."*
  10. In the circumstances, ASIC would have expected that any departures from the Project Hartnett methodology (for the purposes of the Past Business Review compensation program) would have been discussed with ASIC. The discretionary nature of the offer to pay for independent advice was an important departure from the Project Hartnett methodology and was not brought to ASIC's attention or discussed with ASIC. In addition, the decision to dispense with the requirement for upfront communication was not brought to ASIC's attention or discussed with ASIC.

11. In preparing our evidence for the Inquiry, we communicated with CBA and the Past Business Review independent expert and took reassurance as to its accuracy from the matters set out in answers 2.3 and 3.3.

*Additional information: Questions 6, 7, 8 and 11*

12. We are informed by CBA, in relation to Question 6, that:

- 12.1. Of the 415 clients who received an offer of compensation from CFPL, 361 clients accepted CFPL's first offer of compensation.
- 12.2. 54 clients rejected the first offer of compensation made by the CBA and subsequently received a revised offer. 48 clients accepted the revised offer.
- 12.3. All revised offers were initially proposed by the relevant case manager. As part of CFPL's remediation policy and process, all such revised offers proceeded through peer review, manager review and a review by a group comprising the project manager, a customer experience manager and a remediation project manager. All revised cases then were reviewed and approved by the Remediation Panel. There was no single individual who made the decision concerning a revised offer. If the revised offer was less than \$10,000 (subsequently increased to \$25,000), it did not go to the Panel for detailed review but the remediation proposal was noted and approved by the Remediation Panel.
- 12.4. After being provided with a compensation offer, no clients failed to respond.

13. We are informed by CBA, in relation to Question 7, that:

- 13.1. Of the 403 clients who received an offer of compensation from CFPL, 377 clients accepted CFPL's first offer of compensation.
- 13.2. Of the 403 clients who received an offer of compensation from CFPL, 19 clients rejected CFPL's first offer of compensation. Seven clients have neither accepted nor rejected a compensation offer.
- 13.3. After being provided with a compensation offer, 4 clients failed to respond.

14. We are informed by CBA, in relation to Question 8, that:

- 14.1. Financial Wisdom considered 1,063 cases to determine whether advice was provided by the 6 relevant advisers. Of those 1,063 cases, Financial Wisdom determined that no advice was actually provided in 270 cases. Financial Wisdom determined that advice was provided in 793 cases.
- 14.2. Of the 793 clients in respect of whom advice was provided, 258 clients were offered compensation.
- 14.3. Of the 793 clients in respect of whom advice was provided, 535 clients were not offered compensation.
- 14.4. No customers who received advice were excluded from the compensation process
- 14.5. Each of the 535 cases where a customer was not offered compensation was assessed in accordance with Financial Wisdom's remediation methodology. As part of this process, the initial assessment was made by a case manager. All cases then proceeded through a series of reviews including peer review and manager review. The highest level of case review

was conducted by a group comprising the Head of Customer Experience – Advice, the Project Manager and the leader of the case manager team, who was the Remediation Project Manager (unless the case in question was considered to be complex in which case the matter was reviewed by the Remediation Panel). The Remediation Project Manager was a member of the Remediation Panel. This Panel was comprised of representatives from Financial Wisdom, CBA Group Customer Relations, Group Finance, Risk Management and Legal.

- 14.6. Of the 258 clients offered compensation, 242 clients accepted the first offer.
- 14.7. Of the 258 clients offered compensation, 16 clients rejected the first offer.
- 14.8. Of the 16 clients that rejected the first offer, 15 accepted the revised offer.
- 14.9. All revised offers were initially proposed by the relevant case manager. As part of Financial Wisdom's remediation policy and process, all such revised offers proceeded through peer review, manager review and a review by a group comprising the project manager, a customer experience manager and a remediation project manager. All revised cases then were reviewed and approved by the Remediation Panel. There was no single individual who made the decision concerning a revised offer. If the revised offer was less than \$10,000 (subsequently increased to \$25,000), it did not go to the Panel for detailed review but the remediation proposal was noted and approved by the Remediation Panel.
- 14.10. There were no uncontactable clients.
- 14.11. After being provided with a compensation offer, one client did not respond.
15. We are informed by CBA, in relation to Question 11, that in certain cases, across all the remediation activity (including Project Hartnett, the Past Business Review and remediation of customers of certain Financial Wisdom and CFPL advisers), CFPL has reimbursed customers for professional costs incurred which were in excess of \$5,000 where CFPL was satisfied the costs were reasonably incurred. In a number of cases in the Past Business Review, CFPL reimbursed clients for professional costs upon request by clients. In the time available, CBA has not been able to identify the exact number of these cases.

*Additional information: compensation process that applied to the three "other" CFPL advisers*

16. We are informed by CBA that:
  - 16.1. Of the 573 clients in respect of whom advice was provided, 55 clients were offered compensation.
  - 16.2. No customers who received advice were excluded from the compensation process.
  - 16.3. Customers who were not offered compensation were assessed in accordance with CFPL's Customer Remediation Policy. As part of this process, the initial assessment was made by a case manager. All cases then proceeded through a series of reviews including peer review and manager review. The highest level of case review was conducted by a group comprising the Head of Customer Experience – Advice, the Project Manager and the leader of the case manager team, who was the Remediation Project Manager (unless the case in question was considered to be complex in which case the matter was reviewed by the Remediation Panel). The Remediation Project Manager was a member of the Remediation Panel. This Panel was comprised of representatives from CFPL, CBA Group Customer Relations, CBA Group Finance, CBA Group Risk Management and CBA Group Legal (Remediation Panel).

- 16.4. Of the 55 clients who received an offer of compensation from CFPL, no clients rejected CFPL's first offer of compensation.
- 16.5. After being provided with a compensation offer, no clients failed to respond.

**ASIC's Third Submission on Commonwealth Financial Planning May 2014**

I refer to ASIC's Third Submission on Commonwealth Financial Planning dated May 2014. In that submission at paragraph 8, it is stated that

*"In addition, the offer to obtain independent advice was extended to all clients whose files were reviewed (not only those clients who received an offer of compensation: see paragraph 7(d))."*

That statement was based on information provided by the Commonwealth Bank at the time the submission was being prepared. The bank has now advised us that that was incorrect, and that the offer of independent advice was extended beyond those clients offered compensation to include the majority but not all of clients whose files were reviewed. We apologise for the inaccuracy.

Please contact me if you wish to discuss any of these matters.

Yours sincerely,

Greg Kirk  
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Strategy Group