

NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 13/02/2017 4:32:28 PM AEDT and has been accepted for filing under the Court's Rules. Details of filing follow and important additional information about these are set out below.

Details of Filing

Document Lodged: Particulars (including Further and Better Particulars)
File Number: NSD2204/2016
File Title: Australian Securities and Investment Commission v Westpac Securities Administration Ltd ACN 000 049 472 & Anor
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



A handwritten signature in blue ink, reading 'Warwick Soden'.

Dated: 13/02/2017 4:32:38 PM AEDT

Registrar

Important Information

As required by the Court's Rules, 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 and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.

Particulars of Claim

No. 2204 of 2016



Federal Court of Australia
District Registry: NEW SOUTH WALES
Division: GENERAL

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION

Plaintiff

WESTPAC SECURITIES ADMINISTRATION LIMITED (ACN 000 049 472) AND ANOTHER

Defendants

A. Parties

1. The Plaintiff, the Australian Securities and Investments Commission (**ASIC**), is a body corporate able to sue in its corporate name.
2. The First Defendant, Westpac Securities Administration Limited (ACN 000 049 472) (**WSAL**) is and at all material times was:
 - a. the holder of an Australian Financial Services Licence numbered 233731 (the **WSAL AFS Licence**); and
 - b. carrying on a financial services business in Australia within the meaning of section 911D of the *Corporations Act 2001* (Cth) (**Corporations Act**) Act under the WSAL AFS Licence.
3. The Second Defendant, BT Funds Management Limited (ACN 002 916 458) (**BTFM**) is and at all material times was:
 - a. the holder of an Australian Financial Services Licence numbered 233724 (**BTFM AFS Licence**); and
 - b. carrying on a financial services business in Australia within the meaning of section 911D of the *Corporations Act* under the BTFM AFS Licence.
4. WSAL and BTFM are and were at all material times:
 - a. wholly-owned subsidiaries of Westpac Banking Corporation (ACN 007 457 141) (**Westpac**);

| | |
|--------------------|------------------------------------------------|
| Filed on behalf of | Australian Securities & Investments Commission |
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Attention: Nathalie Pietsch

- b. members of a group of companies (the **Westpac Group**), which also includes BT Financial Group Pty Ltd (ACN 087 480 331) (**BTFG**); and
- c. part of the BT Financial Group (**BT**), being the wealth management division of the Westpac Group.

B. WSAL, BTFM and the provision of financial services

- 5. WSAL is the issuer of a number of superannuation products, including the BT Business Super account (the **BT Business Account**).
- 6. The BT Business Account forms part of a superannuation fund known as the Westpac MasterTrust – Superannuation Division (ABN 81 236 903 448) (the **BT Business Account Fund**).
- 7. WSAL is the trustee of the BT Business Account Fund.
- 8. BTFM is the issuer of a number of superannuation products, including the BT Lifetime Super - Employer Plan account (the **BT Lifetime Account**).
- 9. The BT Lifetime Account forms part of a superannuation fund known as the Retirement Wrap (ABN 39 827 542 991) (the **BT Lifetime Account Fund**).
- 10. BTFM is the trustee of the BT Lifetime Account Fund.
- 11. The BT Business Account Fund and BT Lifetime Account Fund are:
 - a. regulated superannuation funds for the purposes of section 19 of the *Superannuation Industry (Supervision) Act 1993 (Cth)* (**SIS Act**);
 - b. 'regulated superannuation funds' within the meaning of section 10 of the SIS Act; and
 - c. 'superannuation entities' within the meaning of section 10 of the SIS Act.
- 12. In the premises set out in paragraphs 5 to 11, a membership in the BT Business Account or BT Lifetime Account is:
 - a. a beneficial interest in a superannuation entity;
 - b. a 'superannuation interest' within the meaning of section 10 of the SIS Act; and
 - c. a 'financial product' within the meaning of Chapter 7, Division 3 of the Corporations Act, including by reason of section 764A(1)(g) of the Corporations Act.
- 13. Under the WSAL AFS Licence, WSAL:
 - a. was authorised to provide financial product advice, including in relation to superannuation products, being 'general advice' within the meaning of section 766B(4) of the Corporations Act; but

- b. was not authorised to provide financial product advice, including in relation to superannuation products, being 'personal advice' within the meaning of section 766B(3) of the Corporations Act.
14. Under the BTFM AFS Licence, BTFM:
- a. was authorised to provide financial product advice, including in relation to superannuation products, being 'general advice' within the meaning of section 766B(4) of the Corporations Act; but
 - b. was not authorised to provide financial product advice, including in relation to superannuation products, being 'personal advice' within the meaning of section 766B(3) of the Corporations Act.
15. In providing financial product advice, including in relation to superannuation products, WSAL and BTFM were persons providing financial services within the meaning of section 766A of the Corporations Act.

C. The Super Activation team and the Campaigns

16. At all material times, the Westpac Group has operated a team of employees referred to as various times as the 'Super Activation' or 'Investor Solutions - Outbound' or 'Investor Solutions' or 'Outbound Scalable Advice Division' telephone unit (**Super Activation**).
17. At any one time the Super Activation team:
- a. usually included about 8 to 10 employees; and
 - b. was located at the Westpac Group's offices at 275 Kent Street, Sydney, or from about September 2015 at Tower Two, International Towers Sydney, 200 Barangaroo Avenue, Barangaroo NSW.
18. As part of its business operations, the Westpac Group has conducted 'campaigns' which involved:
- a. contacting persons with an existing membership in a superannuation account with the Westpac Group (such as a BT Business Account or BT Lifetime Account) by written correspondence and, or alternatively, telephone correspondence with a member or members of the Super Activation team;
 - b. offering free of charge to conduct a search for any superannuation the person held other than in their Westpac Group accounts (**External Accounts**);
 - c. offering to 'roll over' amounts held in one or more External Accounts into the person's Westpac Group account (such as a BT Business Account or BT Lifetime Account) (**BT Account**) (or where the person held one or more Westpac Group

accounts, to roll over amounts held in such accounts so that the person had only one Westpac Group account), free of any charge by the Westpac Group; and

- d. encouraging the person to take up such offers.
19. In the period from 1 January 2013 to 16 September 2016, the Super Activation staff participated in 37 such campaigns.
 20. Between 18 May 2013 and September 2016 and in the course of these campaigns:
 - a. the Super Activation team contacted and actually spoke with approximately 95,682 Westpac Group customers;
 - b. approximately 31,506 Westpac Group customers rolled over at least one External Account into an account with the Westpac Group; and
 - c. \$646,719,225.51 in additional funds under management (**FUM**) for the Westpac Group were generated by such campaigns.
 21. The campaigns included campaigns with internal Westpac title "*FY 14 Q2 Consolidation CAP FUP*" and "*FY 14 Q4 Consolidation CAP FUP*", both with Super Activation Code No. CAPOX00003, which occurred between 2 April 2014 and 19 January 2015 (**Sample Campaigns**).
 22. In the course of the Sample Campaigns, approximately 193 customers rolled over into a BT Account and an additional approximately \$6,450,101.49 FUM was generated for the Westpac Group.
 23. Super Activation staff involved in the Sample Campaigns included (together, the **Relevant Super Activation Staff**):
 - a. AA;
 - b. BB;
 - c. CC;
 - d. DD;
 - e. EE; and
 - f. FF.
 24. The Relevant Super Activation Staff at all material times:
 - a. were employed by either Westpac or BTFG;
 - b. were acting as agents for BTFM when contacting members of the BT Lifetime Account;

- c. were acting as agents for WSAL when contacting members of the BT Business Account;
 - d. were acting as agents for WSAL or BTFM and were engaging in conduct on behalf of either WSAL or BTFM as the case may be for the purposes of section 769B of the Corporations Act within the scope of their actual or apparent authority, such that:
 - i. the conduct of the Relevant Super Activation staff is taken under s 769B(1) of the Corporations Act to be conduct by either WSAL or BTFM itself respectively; and
 - ii. the state of mind of the Relevant Super Activation staff is taken under s 769B(3) to be the state of mind of either WSAL or BTFM itself respectively;
 - e. were acting as representatives of either WSAL or BTFM respectively within the meaning of sections 910A and 960 of the Corporations Act; but
 - f. were at no stage authorised representatives of either WSAL or BTFM within the meaning of section 916A of the Corporations Act.
25. In participating in calls with customers in their role generally, and in the course of the Sample Campaigns specifically, the Relevant Super Activation Staff were provided with a document styled as a Quality Monitoring Framework document (**QM Framework**), which was updated from time to time, and which:
- a. encouraged those staff to adopt a structure and approach to calls with a customer aimed at influencing that customer to rollover their External Accounts into their BT Account;
 - b. set out a four-part structure to be adopted on calls involving:
 - i. an 'Open' section to put the customer in a positive, receptive frame of mind and gain permission from the customer to ask them questions;
 - ii. a 'Gather' section involving asking the customer questions to gather, uncover, clarify and develop an understanding of the customer's needs, interests, motivations and requirements;
 - iii. a 'Presenting' section to conduct a persuasive, interactive presentation to the customer based on what the customer said in the 'Gather' section, including through linking the customer's motivations to the product being offered in the campaign; and
 - iv. an 'Objection Handling / Closing' section, aimed at overcoming any objections raised by the customer to rolling over their superannuation into their BT Account, and using the end of the call to move the customer closer to the sale;

- c. encouraged those staff to use sales techniques in the process of calls such as:
 - i. asking open ended questions of the customer in order to understand what was important to the customer and unlock the customer's unique requirements; and
 - ii. asking leading questions to lead the customer in the direction that the staff member wanted the customer to go so that they could find out more specific information about the customer's requirements;
 - d. set out specific example statements and questions which those staff could use on calls with customers to seek to achieve the structure and techniques described in the QM Framework; and
 - e. set out a scoring system by which a call by those staff to a customer could be scored for how closely it followed the QM Framework.
26. The Relevant Super Activation Staff were trained, encouraged and directed to follow the QM Framework in their calls with customers generally, and in the Sample Campaigns specifically, including through:
- a. being provided with a copy of the QM Framework:
 - i. in hard copy at their induction to the Super Activation team;
 - ii. via email from time to time; and, or alternatively
 - iii. by way of an A3 laminated hard copy of the QM Framework otherwise available in their offices;
 - b. having approximately four of their calls with customers each month being reviewed by their 'sales coach' and 'scored' in accordance with the scoring system set out in the QM Framework;
 - c. being required to attend one-on-one meetings with a sales coach approximately once per week, where:
 - i. the sales coach and the relevant staff member listened to recordings of calls that the staff member had made with customers;
 - ii. such calls were assessed for how closely they followed the requirements of the QM Framework; and
 - iii. suggestions were provided to the staff member as to how they might more closely follow the requirements of the QM Framework in future calls with customers;

- d. being encouraged by their sales coach to follow scripts on calls with customers, where those scripts sought to reflect, or at least adopt aspects of, the approach to calls described in the QM Framework;
- e. having scores given to their calls pursuant to the scoring system in the QM Framework, and the FUM which was generated from the calls which they made, as significant inputs into the calculation of any bonuses which those staff members were paid.

D. Advice provided to clients during the Campaigns

Customer 1

27. At all material times, Customer 1 was:
- a. a member of the BT Lifetime Account; and
 - b. a retail client for the purposes of section 761G of the Corporations Act.
28. By way of letters sent to Customer 1 on or about 23 July 2014, 11 August 2014 and 29 September 2014 (the **Customer 1 Correspondence**), BTFM:
- a. offered to search for any External Accounts that Customer 1 had;
 - b. offered to roll over any External Accounts held by Customer 1 into her BT Lifetime Account; and
 - c. sought to influence Customer 1 to take up such offers.

PARTICULARS

Such influence included through expressly or impliedly stating that:

- (a) searching for and rolling over superannuation was a simple and easy process, and a search could identify lost and ATO-held superannuation;
 - (b) consolidating superannuation accounts into a BT Account would or may lead to benefits such as the saving of fees, reducing administrative effort, and increasing convenience; and
 - (c) generally ensuring that superannuation was set up in a more efficient and efficacious manner would or may lead to greater returns;
 - (d) the customer could win a prize by rolling over superannuation.
29. On 10 September 2014, Customer 1 accessed the BT website and requested a search be conducted to locate amounts held in External Accounts.
30. On 29 September 2014, BTFM sent a letter to Customer 1 which set out the results of the superannuation search which she had requested.

31. In the course of the Sample Campaigns, on 3 October 2014, Super Activation staff member AA called Customer 1 twice at about 11:22 am and 11:58 am (the **Customer 1 Conversations**).
32. In the Customer 1 Conversations (or alternatively in the Customer 1 Conversations in addition to the Customer 1 Correspondence), AA and therefore BTFM (or alternatively AA and BTFM) provided one or more recommendations and/or statements of opinion to Customer 1.

PARTICULARS

ASIC relies on each, some or all of the following recommendations and/or statements of opinion to Customer 1:

- (a) the express statement of opinion that Customer 1 rolling over her External Accounts into her BT Lifetime Account would potentially save her on fees;
 - (b) the express statement of opinion that saving on fees and manageability were two main reasons why clients liked to combine their superannuation;
 - (c) the express statement of opinion that combining superannuation accounts made a lot more sense from a management point of view;
 - (d) the express statement of opinion that AA could help Customer 1 combine her External Accounts into her BT Lifetime Account on the phone now and that the only thing he needed from her was her tax file number;
 - (e) the express statement of opinion that one of Customer 1's other accounts may have no funds in it due to potentially having been swallowed up by fees;
 - (f) the implied statement of opinion that Customer 1 rolling over her External Accounts into her BT Lifetime Account may or would lead to her saving on fees and achieving a greater level of manageability;
 - (g) the implied statement of opinion that Customer 1 rolling over her External Accounts into her BT Lifetime Account may or would lead to a more efficient and efficacious setup of her superannuation and therefore greater returns;
 - (h) the implied recommendation that Customer 1 should roll over her External Accounts into her BT Lifetime Account; and/or
 - (i) the implied recommendation that Customer 1 should take steps to roll over her External Accounts into her BT Lifetime Account on the phone now.
33. Each, some or all of the recommendations and/or statements of opinion set out in paragraph 32 were:

- a. intended by AA and therefore BTFM to influence Customer 1 in deciding to consolidate her External Accounts into her BT Lifetime Account; and/or

PARTICULARS

ASIC relies on each, some or all of the following matters:

- (a) the Customer 1 Conversations, including the recommendations and/or statements of opinion set out above at paragraph 32;
 - (b) the use of the QM Framework by AA (as set out at paragraphs 25 and 26 above);
 - (c) the training, encouragement and direction to the Relevant Super Activation staff, including AA, to follow that QM Framework (as set out at paragraphs 25 and 26 above);
 - (d) that the Customer 1 Conversations occurred in the context of campaigns targeted at generating increased FUM for the Westpac Group (as set out at paragraphs 18 to 22 above); and/or
 - (e) that the Relevant Super Activation Staff, including AA, were trained, encouraged and directed, including by way of FUM targets and payment of bonuses, to generate FUM for the Westpac Group through encouraging customers to consolidate one or more External Accounts into their BT Account, and did in fact generate FUM for the Westpac Group in this manner.
- b. could reasonably be regarded as being intended by AA and therefore BTFM (or alternatively AA and BTFM) to have such an influence.

PARTICULARS

ASIC relies on the following matters:

- (a) the Customer 1 Conversations; or alternatively
 - (b) the Customer 1 Conversations in addition to the Customer 1 Correspondence.
34. Each, some or all of the recommendations and/or statements of opinion set out above at paragraph 32 were provided in circumstances where:
- a. AA and therefore BTFM had considered one or more of Customer 1's objectives, financial situation and needs; and/or
 - b. a reasonable person might expect AA and therefore BTFM to have considered one or more of Customer 1's objectives, financial situation and needs.

PARTICULARS

- (a) In relation to both (a) and (b), ASIC relies on each, some or all of the following objectives, financial situations and needs of Customer 1:
- (i) Customer 1's financial situation as being a person with one or more superannuation accounts;
 - (ii) Customer 1's stated objective and/or need to consolidate her superannuation into the one account for better manageability;
 - (iii) Customer 1's stated objective and/or need to save on fees;
 - (iv) Customer 1's stated objective and/or need to not lose money because her superannuation was in different places;
 - (v) Customer 1's implied objective and/or need to ensure that she adopted an efficient and efficacious setup of her superannuation to ensure she was receiving the greatest possible returns; and/or
 - (vi) Customer 1's stated and/or implied financial situation as being a person with multiple superannuation accounts having some or all of the above-mentioned objectives and/or needs.
- (b) In relation to both (a) and (b), ASIC relies on the fact that AA and therefore BTFM in the Customer 1 Conversations had:
- (i) called to speak to Customer 1 personally about the consolidation of Customer 1's superannuation accounts;
 - (ii) asked Customer 1 for the main reason that Customer 1 asked BTFM to look into her superannuation and Customer 1 responded that she wanted to roll it all into one;
 - (iii) asked Customer 1 what she saw as the main benefits of combining her superannuation and Customer 1 responded that it was to save on fees and that she was losing money because her superannuation was in different places; and/or
 - (iv) clarified, in response to Customer 1's answers, that her personal motivations were to improve manageability of her accounts and to save on fees.

35. By reason of the matters set out above, AA, and therefore BTFM, provided personal financial product advice to Customer 1, for the purposes of section 766B(3) of the Corporations Act.

Customer 2

36. At all material times, Customer 2 was:
- a. a member of the BT Lifetime Account; and
 - b. a retail client for the purposes of section 761G of the Corporations Act.
37. By way of emails and a letter sent to Customer 2 on or about 11 April 2014, 17 July 2014, 23 July 2014 and 16 September 2014 (the **Customer 2 Correspondence**), BTFM:
- a. offered to search for any External Accounts that Customer 2 had;
 - b. offered to roll over any External Accounts held by Customer 2 into his BT Lifetime Account; and
 - c. sought to influence Customer 2 to take up such offers.

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The Plaintiff repeats particulars (a) to (d) at paragraph 28 above.

38. On 17 September 2014, Customer 2 accessed the BT website and requested a search be conducted to locate amounts held in External Accounts.
39. In the course of the Sample Campaigns, on 1 October 2014, Super Activation staff member AA called Customer 2 at about 12:19pm (the **Customer 2 Conversation**).
40. In the Customer 2 Conversation (or alternatively in the Customer 2 Conversation in addition to the Customer 2 Correspondence), AA and therefore BTFM (or alternatively AA and BTFM) provided one or more recommendations and/or statements of opinion to Customer 2.

PARTICULARS

ASIC relies on each, some or all of the following recommendations and/or statements of opinion to Customer 2:

- (a) the express statement of opinion that Customer 2 could potentially save on fees by bringing his External Accounts over to his BT Lifetime Account;
- (b) the express statement of opinion that it makes a lot more sense for Customer 2 to pay only one set of fees, potentially, rather than multiple sets of fees;
- (c) the express statement of opinion that many BT customers say that they want to consolidate their superannuation funds to save fees;
- (d) the express statement of opinion that what AA could do for Customer 2 was to help Customer 2 roll over his External Accounts into his BT Lifetime

Account that day over the phone and that this would save Customer 2 from having to complete any forms and potentially save Customer 2 on fees;

- (e) the express statement of opinion that once Customer 2's External Accounts were rolled over into his BT Lifetime Account he would start potentially saving on fees;
- (f) the implied statement of opinion that Customer 2 rolling over his External Accounts into his BT Lifetime Account may or would lead to him saving on fees;
- (g) the implied statement of opinion that Customer 2 rolling over his External Accounts into his BT Lifetime Account would or may lead to a more efficient and efficacious setup of his superannuation and therefore greater returns;
- (h) the implied recommendation that Customer 2 should roll over his External Accounts into his BT Lifetime Account; and/or
- (i) the implied recommendation that Customer 2 should take steps to roll over his External Accounts into his BT Lifetime Account on the phone now.

41. Each, some or all of the recommendations and/or statements of opinion set out in paragraph 40:

- a. were intended by AA and therefore BTFM to influence Customer 2 in deciding to consolidate his External Accounts into his BT Lifetime Account; and/or

PARTICULARS

ASIC relies on each, some or all of the following matters:

- (a) the Customer 2 Conversation, including the recommendations and/or statements of opinion set out above at paragraph 40;
- (b) the use of the QM Framework by AA (as set out at paragraphs 25 and 26 above);
- (c) the training, encouragement and direction to the Relevant Super Activation staff, including AA, to follow that QM Framework (as set out at paragraphs 25 and 26 above);
- (d) that the Customer 2 Conversation occurred in the context of campaigns targeted at generating increased FUM for the Westpac Group (as set out at paragraphs 18 to 22 above); and/or
- (e) that the Relevant Super Activation Staff, including AA, were trained, encouraged and directed, including by way of FUM targets and payment of

bonuses, to generate FUM for the Westpac Group through encouraging customers to consolidate one or more External Accounts into their BT Account, and did in fact generate FUM for the Westpac Group in this manner.

- b. could reasonably be regarded as being intended by AA and therefore BTFM (or alternatively AA and BTFM) to have such an influence.

PARTICULARS

ASIC relies on the following matters:

- (a) the Customer 2 Conversation; or alternatively
- (b) the Customer 2 Conversation in addition to the Customer 2 Correspondence.

42. Each, some or all of the recommendations and/or statements of opinion set out in paragraph 40 were provided in circumstances where:

- a. AA and therefore BTFM had considered one or more of Customer 2's objectives, financial situation and needs; and/or
- b. a reasonable person might expect AA and therefore BTFM to have considered one or more of Customer 2's objectives, financial situation and needs.

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- (a) In relation to both (a) and (b), ASIC relies on each, some or all of the following objectives, financial situations and needs of Customer 2:
 - (i) Customer 2's financial situation as being a person with one or more superannuation accounts;
 - (ii) Customer 2's stated objective and/or need to save on fees;
 - (iii) Customer 2's stated objective and/or need to consolidate his superannuation into the one account for better manageability;
 - (iv) Customer 2's implied objective and/or need to ensure that he adopted an efficient and efficacious setup of his superannuation to ensure he was receiving the greatest possible returns;
 - (v) Customer 2's stated and/or implied financial situation as being a person with multiple superannuation accounts having some or all of the above-mentioned objectives and/or needs;
 - (vi) Customer 2's stated financial situation that he was retiring; and/or

- (vii) Customer 2's implied objective and/or need to organise his superannuation in a manner that was most appropriate to the fact that he was retiring.
- (b) In relation to both (a) and (b), ASIC relies on the fact that AA and therefore BTFM in the Customer 2 Conversation had:
- (i) called to speak to Customer 2 personally about the consolidation of Customer 2's superannuation accounts;
 - (ii) stated that the purpose of the call was to see how Customer 2 was tracking and to go through Customer 2's superannuation results;
 - (iii) asked Customer 2 for the main reason that he asked BTFM to look into his superannuation, and Mr and Mrs Customer 2 told him that Customer 2 was retiring;
 - (iv) asked Customer 2 what he personally saw as the main benefits of bringing all of his superannuation into the one account, and Customer 2 told him that it was saving on fees and making his accounts easier to manage;
 - (v) asked Customer 2 whether saving on fees was the most important factor to him, and Customer 2 told him that it was.
43. By reason of the matters set out above, AA, and therefore BTFM, provided personal financial product advice to Customer 2, for the purposes of section 766B(3) of the Corporations Act.

Customer 3

44. At all material times, Customer 3 was:
- a. a member of the BT Business Account; and
 - b. a retail client for the purposes of section 761G of the Corporations Act.
45. By way of letters sent to Customer 3 on or about 14 August 2014 and 24 September 2014 (the **Customer 3 Correspondence**), WSAL:
- a. offered to search for any External Accounts that Customer 3 had;
 - b. offered to roll over any External Accounts held by Customer 3 into his BT Business Account; and
 - c. sought to influence Customer 3 to take up such offers.

PARTICULARS

The Plaintiff repeats particulars (a) to (c) at paragraph 28 above.

46. On 11 September 2014, Customer 3 accessed the BT website and requested a search be conducted to locate his superannuation held on his behalf in External Accounts.
47. On 24 September 2014, WSAL sent a letter to Customer 3 which set out the results of the superannuation search which he had requested.
48. In the course of the Sample Campaigns, on 2 October 2014 at about 12:49pm, Super Activation staff member BB called Customer 3 in the course of which:
 - a. Customer 3 expressed concern about what exit fees he could be charged for leaving an External Account he held with MLC;
 - b. BB dialled in MLC to the call, and a representative of MLC stated that there were no exit fees on Customer 3's External Account with MLC, his balance on that account was \$49,312.27, and that he had insurance benefits of \$224,597 in death cover and \$216,732 in TPD cover which would close down if he withdrew all his money from his MLC account;
 - c. the MLC representative indicated that the particular MLC superannuation product that Customer 3 held with MLC required a rollover form, and BB requested that the rollover form be emailed to her;
 - d. Customer 3 indicated to BB that he wanted to bring his insurance coverage in his BT Business Account up to the level of his insurance coverage with MLC, and BB indicated that his MLC account would not be rolled over into his BT Business Account until his insurance had been increased; and
 - e. Customer 3 consented to other External Accounts besides his MLC Account being rolled over into his BT Business Account.
49. On 10 October 2014 at about 9:45am, BB had a further call with Customer 3 (together with the 2 October 2014 call, the **Customer 3 Conversations**), and on that call BB and Customer 3 discussed Customer 3 increasing his insurance with his BT Business Account, and potentially subsequently rolling over his MLC Account into his BT Business Account.
50. In the Customer 3 Conversations (or alternatively in the Customer 3 Conversations in addition to the Customer 3 Correspondence), BB and therefore WSAL (or alternatively BB and WSAL) provided one or more recommendations and/or statements of opinion to Customer 3.

PARTICULARS

ASIC relies on each, some or all of the following recommendations and/or statements of opinion to Customer 3:

- (a) the express statement of opinion that while some funds may charge an exit fee for leaving the fund, most of BT's clients prefer to pay the one-off exit fee rather than paying ongoing other fees;
- (b) the express statement of opinion that BB was seeking to put Customer 3 in a better position than he was in presently through having a fund with MLC;
- (c) the express and/or implied statement of opinion in the course of completing an insurance form for Customer 3 that he did not have to keep his TPD cover if he did not want to, and that he did not have salary continuance insurance with MLC, thereby implying that he may not require such insurance with his BT Business Account;
- (d) the implied statement of opinion that Customer 3 rolling over his External Accounts into his BT Business Account may or would lead to him saving on fees at the same time as providing an adequate level of insurance cover;
- (e) the implied statement of opinion that Customer 3 rolling over his External Accounts into his BT Business Account would or may lead to a more efficient and efficacious setup of his superannuation and therefore greater returns;
- (f) the implied recommendation that Customer 3 should roll over his External Accounts into his BT Business Account; and/or
- (g) the implied recommendation that Customer 3 should take steps to roll over his External Accounts into his BT Business Account on the phone now.

51. Each, some or all of the recommendations and/or statements of opinion set out in paragraph 50 were

- a. intended by BB and therefore WSAL to influence Customer 3 in deciding to consolidate his External Accounts into his BT Business Account; and/or

PARTICULARS

ASIC relies on each, some or all of the following matters:

- (a) the Customer 3 Conversations, including the recommendations and/or statements of opinion set out above at paragraph 50;
- (b) the use of the QM Framework by BB (as set out at paragraphs 25 and 26 above);

- (c) the training, encouragement and direction to the Relevant Super Activation staff, including BB, to follow that QM Framework (as set out at paragraphs 25 and 26 above);
 - (d) that the Customer 3 Conversations occurred in the context of campaigns targeted at generating increased FUM for the Westpac Group (as set out at paragraphs 18 to 22 above); and/or
 - (e) that the Relevant Super Activation Staff, including BB, were trained, encouraged and directed, including by way of FUM targets and payment of bonuses, to generate FUM for the Westpac Group through encouraging customers to consolidate one or more External Accounts into their BT Account, and did in fact generate FUM for the Westpac Group in this manner.
- b. could reasonably be regarded as being intended by BB and therefore WSAL (or alternatively BB and WSAL) to have such an influence.

PARTICULARS

ASIC relies on the following matters:

- (a) the Customer 3 Conversations; or alternatively
 - (b) the Customer 3 Conversations in addition to the Customer 3 Correspondence.
52. Each, some or all of the recommendations and/or statements of opinion set out in paragraph 50 were provided in circumstances where BB and therefore WSAL:
- a. had considered one or more of Customer 3's objectives, financial situation and needs; and/or
 - b. a reasonable person might expect her to have considered one or more of Customer 3's objectives, financial situation and needs.

PARTICULARS

- (a) In relation to both (a) and (b), ASIC relies on each, some or all of the following objectives, financial situations and needs of Customer 3:
 - (i) Customer 3's financial situation as being a person with one or more superannuation accounts;
 - (ii) Customer 3's stated objective and/or need to ensure that his level of insurance with BT was at the same level as it was with MLC;

- (iii) Customer 3's stated and/or implied objective and/or need to appropriately consider any exit fees that would be payable for leaving any External Accounts;
 - (iv) Customer 3's stated and/or implied objective and/or need to ensure that his insurance coverage was appropriate for his particular circumstances, including that he did not have time to complete the relevant forms to increase his insurance, and that he had been a type 2 diabetic for 9 years but that that did not stop him from playing golf, engaging in normal activities or affect his work;
 - (v) Customer 3's implied objective and/or need to ensure that he adopted an efficient and efficacious setup of his superannuation to ensure he was receiving the greatest possible returns;
 - (vi) Customer 3's stated and/or implied financial situation as being a person with multiple superannuation accounts having some or all of the above-mentioned objectives and/or needs; and/or
 - (vii) Customer 3's financial situation that Customer 3 had another superannuation account with MLC in respect of which there were no exit fees payable, the balance on that account was \$49,312.27, and Customer 3 had insurance benefits of \$224,597 in death cover and \$216,732 in TPD cover which would close down if he withdrew all his money from his MLC account.
- (b) In relation to both (a) and (b), ASIC relies on the fact that BB and therefore WSAL in the Customer 3 Conversations had:
- (i) called to speak to Customer 3 personally about the consolidation of Customer 3's superannuation accounts;
 - (ii) stated that the purpose of BB's 2 October 2014 call was to see if she could assist Customer 3 personally in combining his External Accounts into his BT Business Account;
 - (iii) been told by Customer 3 that Customer 3 wanted to ensure that his level of insurance with BT was at the same level as it was with MLC;
 - (iv) been told by Customer 3 that Customer 3 had a concern about being charged exit fees for leaving any External Accounts;
 - (v) been told by MLC that there were no exit fees on Customer 3's MLC account, that the balance on that account was \$49,312.27, and that he had insurance benefits of \$224,597 in death cover and \$216,732 in

TPD cover which would close down if he withdrew all his money from his MLC account;

- (vi) asked Customer 3 whether he wanted to increase his insurance above what he currently had (which she said would involve a whole new application process) and Customer 3 had said he did not want to go through that process and did not have time for it; and/or
- (vii) asked Customer 3 whether, failing increasing his insurance cover, he was reasonably well and healthy, and was told that Customer 3 had been a type 2 diabetic for 9 years, but that did not stop him playing golf, engaging in normal activities, or affect his work.

53. By reason of the matters set out above, BB, and therefore WSAL, provided personal financial product advice to Customer 3, for the purposes of section 766B(3) of the Corporations Act.

Customer 4

54. At all material times, Customer 4 was:
- a. a member of the BT Business Account; and
 - b. a retail client for the purposes of section 761G of the Corporations Act.
55. By way of letters sent to Customer 4 on about 11 August 2014 and 27 August 2014 (the **Customer 4 Correspondence**), WSAL:
- a. offered to search for any External Accounts that Customer 4 had;
 - b. offered to roll over any External Accounts held by Customer 4 into his BT Business Account; and
 - c. sought to influence Customer 4 to take up such offers.

PARTICULARS

The Plaintiff repeats particulars (a) to (d) at paragraph 28 above.

56. On 20 September 2014, Customer 4 accessed the BT website and requested a search be conducted to locate amounts held on his behalf in External Accounts.
57. In the course of the Sample Campaigns, on 7 October 2014 at about 1:00pm, Super Activation staff member FF called Customer 4 (the **Customer 4 Conversation**).
58. In the Customer 4 Conversation (or alternatively in the Customer 4 Conversation in addition to the Customer 4 Correspondence), FF and therefore WSAL (or alternatively

FF and WSAL) provided one or more recommendations and/or statements of opinion to Customer 4.

PARTICULARS

ASIC relies on each, some or all of the following recommendations and/or statements of opinion:

- (a) the express statement of opinion that she could potentially consolidate Customer 4's superannuation accounts to potentially save him on fees;
- (b) the express and/or implied statements of opinion that Customer 4 consolidating his External Accounts into his BT Business account may or would help him cut down on fees and lead to a greater level of manageability by having all his accounts all in one place;
- (c) the implied statement of opinion that Customer 4 rolling over his External Accounts into his BT Lifetime Account would or may lead to a more efficient and efficacious setup of his superannuation and therefore greater returns; and/or
- (d) the implied recommendation that Customer 4 should roll over his External Accounts into his BT Business Account; and/or
- (e) the implied recommendation that Customer 4 should take steps to roll over his External Accounts into his BT Business Account on the phone now.

59. Each, some or all of the recommendations and/or statements of opinion set out in paragraph 58:

- a. were intended by FF and therefore WSAL to influence Customer 4 in deciding to consolidate an External Account into his BT Business Account; and/or

PARTICULARS

ASIC relies on each, some or all of the following matters:

- (a) the Customer 4 Conversation, including the recommendations and/or statements of opinion set out above at paragraph 58;
- (b) the use of the QM Framework (as set out at paragraphs 25 and 26 above) by FF;
- (c) the training, encouragement and direction to the Relevant Super Activation staff, including FF, to follow that QM Framework (as set out at paragraphs 25 and 26 above);

- (d) that the Customer 4 Conversation occurred in the context of campaigns targeted at generating increased FUM for the Westpac Group (as set out at paragraphs 18 to 22 above); and/or
 - (e) that the Relevant Super Activation Staff, including FF, were trained, encouraged and directed, including by way of FUM targets and payment of bonuses, to generate FUM for the Westpac Group through encouraging customers to consolidate one or more External Accounts into their BT Account, and did in fact generate FUM for the Westpac Group in this manner.
- b. could reasonably be regarded as being intended by FF and therefore WSAL (or alternatively FF and WSAL) to have such an influence.

PARTICULARS

ASIC relies on the following matters:

- (a) the Customer 4 Conversation; or alternatively
 - (b) the Customer 4 Conversation in addition to the Customer 4 Correspondence.
60. Each, some or all of the recommendations and/or statements of opinion set out at paragraph 58 were provided in circumstances where:
- a. FF and therefore WSAL had considered one or more of Customer 4's objectives, financial situation and needs; and/or
 - b. a reasonable person might expect FF and therefore WSAL to have considered one or more of Customer 4's objectives, financial situation and needs.

PARTICULARS

- (a) In relation to both (a) and (b), ASIC relies on each, some or all of the following objectives, financial situations and needs of Customer 4:
 - (i) Customer 4's financial situation as being a person with one or more superannuation accounts;
 - (ii) Customer 4's stated objective and/or need to save on fees;
 - (iii) Customer 4's stated objective and/or need to consolidate his superannuation into the one account for better manageability;
 - (iv) Customer 4's implied objective and/or need to ensure that he adopted an efficient and efficacious setup of his superannuation to ensure he was receiving the greatest possible returns;

- (v) Customer 4's stated and/or implied financial situation as being a person with multiple superannuation accounts having some or all of the above-mentioned objectives and/or needs; and/or
- (b) In relation to both (a) and (b), ASIC relies on the fact that FF and therefore WSAL in the Customer 4 Conversation had:
 - (i) called to speak to Customer 4 personally about the consolidation of Customer 4's superannuation accounts;
 - (ii) asked Customer 4 for his reasons for wanting to find his other superannuation accounts, and Customer 4 had told her that he wanted to cut down on fees and have all his accounts in the one place for manageability; and
 - (iii) clarified with Customer 4 that his objectives were to save on fees, see what superannuation he has and manage his superannuation better, to which Customer 4 agreed.

61. By reason of the matters set out above, FF, and therefore WSAL, provided personal financial product advice to Customer 4, for the purposes of section 766B(3) of the Corporations Act.

Customer 5

62. At all material times, Customer 5 was:
- a. a member of the BT Business Account; and
 - b. a retail client for the purposes of section 761G of the Corporations Act.
63. By way of letters and emails sent to Customer 5 on or about 29 July 2014, 7 August 2014 and 17 September 2014 (the **Customer 5 Correspondence**), WSAL:
- a. offered to search for any External Accounts that Customer 5 had;
 - b. offered to roll over any External Accounts held by Customer 5 into his BT Business Account; and
 - c. sought to influence Customer 5 to take up such offers.

PARTICULARS

The Plaintiff repeats particulars (a) to (d) at paragraph 28 above.

64. On 17 September 2014, Customer 5 accessed the BT website and requested a search be conducted to locate amounts held on his behalf in External Accounts.

65. In the course of the Sample Campaigns, on 2 October 2014 at about 3:15pm, Super Activation staff member DD called Customer 5 (the **Customer 5 Conversation**).
66. In the Customer 5 Conversation (or alternatively in the Customer 5 Conversation in addition to the Customer 5 Correspondence), DD and therefore WSAL (or alternatively DD and WSAL) provided one or more recommendations and/or statements of opinion to Customer 5.

PARTICULARS

ASIC relies on each, some or all of the following recommendations and/or statements of opinion:

- (a) the express statement of opinion that DD may be able to help Customer 5, through the super search that had been initiated, to potentially save on fees;
 - (b) the express statement of opinion that she could definitely help Customer 5 increase the manageability of his superannuation by consolidating his superannuation and that all she needed to do so was his tax file number;
 - (c) the express statement of opinion that once Customer 5's External Accounts were rolled over into his BT Business Account, he would achieve easier management;
 - (d) the express statement of opinion that she could consolidate Customer 5's superannuation in the next few minutes over the phone;
 - (e) the implied statement of opinion that Customer 5 rolling over his External Accounts into his BT Business Account may or would lead to him saving on fees and lead to a greater level of manageability;
 - (f) the implied statement of opinion that Customer 5 rolling over his External Accounts into his BT Business Account would or may lead to a more efficient and efficacious setup of his superannuation and therefore greater returns;
 - (g) the implied recommendation that Customer 5 should roll over his External Accounts into his BT Business Account; and/or
 - (h) the implied recommendation that Customer 5 should take steps to roll over his External Accounts into his BT Business Account on the phone now.
67. Each, some or all of the recommendations and/or statements of opinion set out in paragraph 66:
- a. were intended by DD and therefore WSAL to influence Customer 5 in deciding to consolidate his External Accounts into his BT Business Account; and/or

PARTICULARS

ASIC relies on each, some or all of the following matters:

- (a) the Customer 5 Conversation, including the recommendations and/or statements of opinion set out above at paragraph 66;
 - (b) the use of the QM Framework (as set out at paragraphs 25 and 26 above) by DD;
 - (c) the training, encouragement and direction to the Relevant Super Activation staff, including DD, to follow that QM Framework (as set out at paragraphs 25 and 26 above);
 - (d) that the Customer 5 Conversation occurred in the context of campaigns targeted at generating increased FUM for the Westpac Group (as set out at paragraphs 18 to 22 above); and/or
 - (e) that the Relevant Super Activation Staff, including DD, were trained, encouraged and directed, including by way of FUM targets and payment of bonuses, to generate FUM for the Westpac Group through encouraging customers to consolidate one or more External Accounts into their BT Account, and did in fact generate FUM for the Westpac Group in this manner.
- b. could reasonably be regarded as being intended by DD and therefore WSAL (or alternatively DD and WSAL) to have such an influence.

PARTICULARS

ASIC relies on the following matters:

- (a) the Customer 5 Conversation; or alternatively
 - (b) the Customer 5 Conversation in addition to the Customer 5 Correspondence.
68. Each, some or all of the recommendations and/or statements of opinion set out in paragraph 66 were provided in circumstances where:
- a. DD and therefore WSAL had considered one or more of Customer 5's objectives, financial situation and needs; and/or
 - b. a reasonable person might expect DD and therefore WSAL to have considered one or more of Customer 5's objectives, financial situation and needs.

PARTICULARS

- (a) In relation to both (a) and (b), ASIC relies on each, some or all of the following objectives, financial situations and needs of Customer 5:

- (i) Customer 5's financial situation as being a person with one or more superannuation accounts;
 - (ii) Customer 5's stated financial situation that he had been told by someone at BT that he had an unusually low amount of superannuation for a person of his age;
 - (iii) Customer 5's stated and/or implied objective and/or need to remedy or ameliorate any issues with his superannuation fund that would mean that he was not achieving the returns that he should or could achieve;
 - (iv) Customer 5's stated objective and/or need to consolidate his superannuation into the one account for better manageability;
 - (v) Customer 5's implied objective and/or need to ensure that he adopted an efficient and efficacious setup of his superannuation to ensure he was receiving the greatest possible returns; and/or
 - (vi) Customer 5's stated and/or implied financial situation as being a person with multiple superannuation accounts having some or all of the above-mentioned objectives and/or needs.
- (b) In relation to both (a) and (b), ASIC relies on the fact that DD and therefore WSAL in the Customer 5 Conversation had:
- (i) called to speak to Customer 5 personally about the consolidation of Customer 5's superannuation accounts;
 - (ii) stated that the purpose of the call was to see how everything was going with Customer 5's superannuation and to see if she could help Customer 5 through the super search that had been initiated to potentially save him on fees;
 - (iii) asked Customer 5 the reason why he had set up a super search, and Customer 5 had told her that he had been told to do so by someone at BT because he apparently had an unusually low amount of superannuation for a person his age;
 - (iv) asked Customer 5 why he wanted to combine his superannuation and Customer 5 told her that it was so that he could better keep track of it; and/or
 - (v) clarified that management of superannuation was Customer 5's objective, and Customer 5 told her that it was.

69. By reason of the matters set out above, DD, and therefore WSAL, provided personal financial product advice to Customer 5, for the purposes of section 766B(3) of the Corporations Act.

Customer 6

70. At all material times, Customer 6 was:
- a. a member of the BT Lifetime Account; and
 - b. a retail client for the purposes of section 761G of the Corporations Act.
71. By way of letters sent to Customer 6 on 30 July 2014 and 24 September 2014 (the **Customer 6 Correspondence**), BTFM:
- a. offered to search for any External Accounts that Customer 6 had;
 - b. offered to roll over any External Accounts held by Customer 6 into her BT Lifetime Account; and
 - c. sought to influence Customer 6 to take up such offers.

PARTICULARS

The Plaintiff repeats paragraphs (a) to (c) at paragraph 28 above.

72. On 13 September 2014, Customer 6 accessed the BT website and requested a search be conducted to locate amounts held on her behalf in External Accounts.
73. On 24 September 2014, BTFM sent a letter to Customer 6 which set out the results of the superannuation search which she had requested.
74. In the course of the Sample Campaigns, on 3 October 2014 at about 9:54am, Super Activation staff member AA called Customer 6 (the **Customer 6 Conversation**).
75. In the Customer 6 Conversation (or alternatively in the Customer 6 Conversation in addition to the Customer 6 Correspondence), AA and therefore BTFM (or alternatively AA and BTFM) provided one or more recommendations and/or statements of opinion to Customer 6.

PARTICULARS

ASIC relies on each, some or all of the following recommendations and/or statements of opinion:

- (a) the express statement of opinion that AA may be able to potentially save Customer 6 on fees by bringing her External Accounts over to her BT Lifetime Account;

- (b) the express statement of opinion that potentially saving on fees and having easier manageability were probably the two main reasons that BT clients liked to consolidate their superannuation;
- (c) the express statement of opinion that consolidating superannuation accounts definitely makes sense from a logical standpoint;
- (d) the express statement of opinion that AA could go through Customer 6's superannuation on that call and bring them all over to her BT Lifetime Account so that she could start reaping the benefits of consolidation;
- (e) the express statement of opinion that a separate account Customer 6 had might not have had much money in it as it may potentially have been eaten up by fees;
- (f) the express statement of opinion that once Customer 6's External Accounts were rolled over into her BT Lifetime Account, her accounts would be organised and she would potentially start saving on fees;
- (g) the express and/or implied statement of opinion that Customer 6 rolling over her External Accounts into her BT Lifetime Account may or would lead to her saving on fees and obtain a greater level of manageability;
- (h) the implied statement of opinion that rolling over Customer 6's External Accounts into her BT Lifetime Account would or may lead to a more efficient and efficacious setup of her superannuation and therefore greater returns;
- (i) the implied recommendation that Customer 6 should roll over her External Accounts into her BT Lifetime Account; and/or
- (j) the implied recommendation that Customer 6 should take steps to roll over her External Accounts into her BT Lifetime Account on the phone now.

76. Each, some or all of the recommendations and/or statements or opinion set out in paragraph 75:

- a. were intended by AA and therefore BTFM to influence Customer 6 in deciding to consolidate her External Accounts into her BT Lifetime Account; and/or

PARTICULARS

ASIC relies on each, some or all of the following matters:

- (a) the Customer 6 Conversation, including the recommendations and/or statements of opinion set out above at paragraph 75;

- (b) the use of the QM Framework (as set out at paragraphs 25 and 26 above) by AA;
 - (c) the training, encouragement and direction to the Relevant Super Activation staff, including AA, to follow that QM Framework (as set out at paragraphs 25 and 26 above);
 - (d) that the Customer 6 Conversation occurred in the context of campaigns targeted at generating increased FUM for the Westpac Group (as set out at paragraphs 18 to 22 above); and/or
 - (e) that the Relevant Super Activation Staff, including AA, were trained, encouraged and directed, including by way of FUM targets and payment of bonuses, to generate FUM for the Westpac Group through encouraging customers to consolidate one or more External Accounts into their BT Account, and did in fact generate FUM for the Westpac Group in this manner.
- b. could reasonably be regarded as being intended by AA and therefore BTFM (or alternatively AA and BTFM) to have such an influence.

PARTICULARS

ASIC relies on the following matters:

- (a) the Customer 6 Conversation; or alternatively
 - (b) the Customer 6 Conversation in addition to the Customer 6 Correspondence.
77. Each, some or all of the recommendations and/or statements of opinion set out at paragraph 75 were provided in circumstances where:
- a. AA and therefore BTFM had considered one or more of Customer 6's objectives, financial situation and needs; and/or
 - b. a reasonable person might expect AA and therefore BTFM to have considered one or more of Customer 6's objectives, financial situation and needs.

PARTICULARS

- (a) In relation to both (a) and (b), ASIC relies on each, some or all of the following objectives, financial situations and needs of Customer 6:
 - (i) Customer 6's financial situation as being a person with one or more superannuation accounts;
 - (ii) Customer 6's stated objective and/or need to save on fees;

- (iii) Customer 6's stated objective and/or need to consolidate her superannuation into the one account for better or easier manageability;
 - (iv) Customer 6's implied objective and/or need to ensure that she adopted an efficient and efficacious setup of his superannuation to ensure she was receiving the greatest possible returns;
 - (v) Customer 6's stated and/or implied financial situation as being a person with multiple superannuation accounts having some or all of the above-mentioned objectives and/or needs; and/or
- (b) In relation to both (a) and (b), ASIC relies on the fact that AA and therefore WSAL in the Customer 6 Conversation had:
- (i) called to speak to Customer 6 personally about the consolidation of Customer 6's superannuation accounts;
 - (ii) stated that the purpose of AA's call was to go through Customer 6's superannuation search results and to potentially save Customer 6 on fees by bringing her External Accounts over to her BT Lifetime Account;
 - (iii) asked Customer 6 for the main reason why she asked BTFM to look for her superannuation, and Customer 6 told him that she thought it would be easier and she would save on fees if she combined them; and
 - (iv) confirmed with Customer 6 that she mainly wanted to have easier manageability and also potentially save on fees.

78. By reason of the matters set out above, AA, and therefore BTFM, provided personal financial product advice to Customer 6, for the purposes of section 766B(3) of the Corporations Act.

Customer 7

79. At all material times, Customer 7 was:

- a. a member of the BT Lifetime Account; and
- b. a retail client for the purposes of section 761G of the Corporations Act.

80. By way of correspondence sent to Customer 7 on or about 17 February 2014, 7 August 2014 and 24 October 2014 (the **Customer 7 Correspondence**), BTFM:

- a. offered to search for any External Accounts that Customer 7 had;
- b. offered to roll over any External Accounts held by Customer 7 into his BT Lifetime Account; and

- c. sought to influence Customer 7 to take up such offers.

PARTICULARS

The Plaintiff repeats paragraphs (a) to (c) at paragraph 28 above.

81. On 24 October 2014, Customer 7 accessed the BT website and requested a search be conducted to locate amounts held on his behalf in External Accounts.
82. In the course of the Sample Campaigns, on 20 November 2014 at about 11:12am, Super Activation staff member AA called Customer 7 (the **Customer 7 Conversation**).
83. In the Customer 7 Conversation (or alternatively in the Customer 7 Conversation in addition to the Customer 7 Correspondence), AA and therefore BTFM (or alternatively AA and BTFM) provided one or more recommendations and/or statements of opinion to Customer 7.

PARTICULARS

ASIC relies on each, some or all of the following recommendations and/or statements of opinion:

- (a) the express statement of opinion that AA may be able to help Customer 7 organise his superannuation by combining them into his BT Lifetime Account;
- (b) the express statement of opinion that creating a bigger pool of money to potentially get a better performance and paying one set of fees and avoiding multiple sets of fees were some of the main reasons that clients liked to consolidate their superannuation;
- (c) the express statement of opinion that AA could help Customer 7 consolidate his superannuation into his BT Lifetime Account that day so that he could pay just one set of fees and potentially have a larger pool of money which he could potentially get a better return from;
- (d) the express statement of opinion that all AA needed from Customer 7 to effect the consolidation that day was his verbal consent over the phone and his tax file number;
- (e) the express and/or implied statements of opinion that once Customer 7's accounts were consolidated into his BT Lifetime Account, he would have a larger pool of money in his account to potentially get him better returns in the future and save him on fees;

- (f) the implied statement of opinion to that Customer 7 rolling over his External Accounts into his BT Lifetime Account would or may lead to a more efficient and efficacious setup of his superannuation and therefore greater returns;
- (g) the implied recommendation that to Customer 7 should roll over his External Accounts into his BT Lifetime Account; and/or
- (h) the implied recommendation that Customer 7 should take steps to roll over his External Accounts into his BT Lifetime Account on the phone now.

84. Each, some or all of the recommendations and/or statements of opinion set out in paragraph 83:

- a. were intended by AA and therefore BTFM to influence Customer 7 in deciding to consolidate his External Accounts into his BT Lifetime Account; and/or

PARTICULARS

ASIC relies on each, some or all of the following matters:

- (a) the Customer 7 Conversation, including the recommendations and/or statements of opinion set out above at paragraph 83;
 - (b) the use of the QM Framework (as set out at paragraphs 25 and 26 above) by AA;
 - (c) the training, encouragement and direction to the Relevant Super Activation staff, including AA, to follow that QM Framework (as set out at paragraphs 25 and 26 above);
 - (d) that the Customer 7 Conversation occurred in the context of campaigns targeted at generating increased FUM for the Westpac Group (as set out at paragraphs 18 to 22 above); and/or
 - (e) that the Relevant Super Activation Staff, including AA, were trained, encouraged and directed, including by way of FUM targets and payment of bonuses, to generate FUM for the Westpac Group through encouraging customers to consolidate one or more External Accounts into their BT Account, and did in fact generate FUM for the Westpac Group in this manner.
- b. could reasonably be regarded as being intended by AA and therefore BTFM (or alternatively AA and BTFM) to have such an influence.

PARTICULARS

ASIC relies on the following matters:

- (a) the Customer 7 Conversation; or alternatively
 - (b) the Customer 7 Conversation in addition to the Customer 7 Correspondence.
85. Each, some or all of the recommendations and/or statements of opinion set out above at paragraph 83 were provided in circumstances where:
- a. AA and therefore BTFM had considered one or more of Customer 7's objectives, financial situation and needs; and/or
 - b. a reasonable person might expect AA and therefore BTFM to have considered one or more of Customer 7's objectives, financial situation and needs.

PARTICULARS

- (a) In relation to both (a) and (b), ASIC relies on each, some or all of the following objectives, financial situations and needs of Customer 7:
 - (i) Customer 7's financial situation as being a person with one or more superannuation accounts;
 - (ii) Customer 7's stated and/or implied objective and/or need to earn a greater by creating one bigger pool of funds in his account;
 - (iii) Customer 7's stated and/or implied objective and/or need to reduce the costs of his superannuation;
 - (iv) Customer 7's implied objective and/or need to ensure that he adopted an efficient and efficacious setup of his superannuation to ensure he was receiving the greatest possible returns; and/or
 - (v) Customer 7's stated and/or implied financial situation as being a person with multiple superannuation accounts having some or all of the above-mentioned objectives and/or needs.
- (b) In relation to both (a) and (b), ASIC relies on the fact that AA and therefore BTFM in the Customer 7 Conversation had:
 - (i) called to speak to Customer 7 personally about the consolidation of Customer 7's superannuation accounts;
 - (ii) stated that the purpose of AA's call was to see how Customer 7 was going and to go through his superannuation search results and help Customer 7 organise his superannuation by combining them into his BT Lifetime Account;
 - (iii) asked Customer 7 what his main reason was for asking BTFM to look for his superannuation and AA was told by Customer 7 that he thought

he would get more interest if he had more money in his account, consolidation was to bring his funds together to create a bigger pool of money to potentially get performance out of it and that he wanted to reduce his costs by having one account; and/or

- (iv) clarified with Customer 7 that he wanted to bring his accounts together to create a bigger pool of money to potentially achieve a better performance and to pay one set of fees and avoid multiple sets of fees, to which Customer 7 agreed.

86. By reason of the matters set out above, AA, and therefore BTFM, provided personal financial product advice to Customer 7, for the purposes of section 766B(3) of the Corporations Act.

Customer 8

87. At all material times, Customer 8 was:

- a. a member of the BT Business Account; and
- b. a retail client for the purposes of section 761G of the Corporations Act.

88. By way of correspondence sent to Customer 8 on or about 17 February 2014 and 14 August 2014 (the **Customer 8 Correspondence**), WSAL:

- a. offered to search for any External Accounts that Customer 8 had;
- b. offered to roll over any External Accounts held by Customer 8 into his BT Business Account; and
- c. sought to influence Customer 8 to take up such offers.

PARTICULARS

The Plaintiff repeats paragraphs (a) to (c) at paragraph 28 above.

89. On 18 September 2014, Customer 8 accessed the BT website and requested a search be conducted to locate amounts held on his behalf in External Accounts.

90. In the course of the Sample Campaigns, on 2 October 2014 at about 11:01am, Super Activation staff member AA called Customer 8 (the **Customer 8 Conversation**).

91. In the Customer 8 Conversation (or alternatively in the Customer 8 Conversation in addition to the Customer 8 Correspondence), AA and therefore WSAL (or alternatively AA and WSAL) provided one or more recommendations and/or statements of opinion to Customer 8.

PARTICULARS

ASIC relies on each, some or all of the following recommendations and/or statements of opinion:

- (a) the express statement of opinion that AA could potentially save Customer 8 fees by rolling over any External Accounts into his BT Business Account;
- (b) the express statement of opinion that a lot of BT's clients say that they are concerned that they are losing money on fees;
- (c) the express statement of opinion that Customer 8 was potentially paying multiple sets of fees so it definitely made sense from a logical standpoint for Customer 8 to consolidate his accounts;
- (d) the express statement of opinion that AA could actually help Customer 8 consolidate his External Accounts into his BT Business Account over the phone and that would save him from having to fill out multiple forms;
- (e) the express statement of opinion that Customer 8 could substantially save on fees once he consolidated his External Accounts into his BT Business Account;
- (f) the express statement of opinion that in two or three weeks Customer 8's External Accounts would be rolled over into his BT Business Account and he would start potentially saving on fees;
- (g) the express and/or implied statement of opinion that Customer 8 rolling over his External Accounts into his BT Business Account may or would lead to him saving on fees;
- (h) the implied statement of opinion that Customer 8 rolling over his External Accounts into his BT Business Account would or may lead to a more efficient and efficacious setup of his superannuation and therefore greater returns;
- (i) a implied recommendation that Customer 8 should roll over his External Accounts into his BT Business Account; and/or
- (j) the implied recommendation that Customer 8 should take steps to roll over his External Accounts into his BT Business Account on the phone now.

92. Each, some or all of the recommendations and/or statements of opinion set out in paragraph 91:

- a. were intended by AA and therefore WSAL to influence Customer 8 in deciding to consolidate his External Accounts into his BT Business Account; and/or

PARTICULARS

ASIC relies on each, some or all of the following matters:

- (a) the Customer 8 Conversation, including the recommendations and/or statements of opinion set out above at paragraph 91;
 - (b) the use of the QM Framework (as set out at paragraphs 25 and 26 above) by AA;
 - (c) the training, encouragement and direction to the Relevant Super Activation staff, including AA, to follow that QM Framework (as set out at paragraphs 25 and 26 above);
 - (d) that the Customer 8 Conversation occurred in the context of campaigns targeted at generating increased FUM for the Westpac Group (as set out at paragraphs 18 to 22 above); and/or
 - (e) that the Relevant Super Activation Staff, including AA, were trained, encouraged and directed, including by way of FUM targets and payment of bonuses, to generate FUM for the Westpac Group through encouraging customers to consolidate one or more External Accounts into their BT Account, and did in fact generate FUM for the Westpac Group in this manner.
- b. could reasonably be regarded as being intended by AA and therefore WSAL (or alternatively AA and WSAL) to have such an influence.

PARTICULARS

ASIC relies on the following matters:

- (a) the Customer 8 Conversation; or alternatively
 - (b) the Customer 8 Conversation in addition to the Customer 8 Correspondence.
93. Each, some or all of the recommendations and/or statements of opinion set out above at paragraph 91 were provided in circumstances where:
- a. AA and therefore WSAL had considered one or more of Customer 8's objectives, financial situation and needs; and/or
 - b. a reasonable person might expect AA and therefore WSAL to have considered one or more of Customer 8's objectives, financial situation and needs.

PARTICULARS

- (a) In relation to both (a) and (b), ASIC relies on each, some or all of the following objectives, financial situations and needs of Customer 8:

- (i) Customer 8's financial situation as being a person with one or more superannuation accounts;
 - (ii) Customer 8's stated and/or implied objective and/or need to save on fees;
 - (iii) Customer 8's stated and/or implied objective and/or need to not lose money from his superannuation account;
 - (iv) Customer 8's implied objective and/or need to ensure that he adopted an efficient and efficacious setup of his superannuation to ensure he was receiving the greatest possible returns; and/or
 - (v) Customer 8's express and/or implied financial situation as being a person with multiple superannuation accounts having some or all of the above-mentioned objectives and/or needs.
- (b) In relation to both (a) and (b), ASIC relies on the fact that AA and therefore WSAL in the Customer 8 Conversation had:
- (i) called to speak to Customer 8 personally about the consolidation of Customer 8's superannuation accounts;
 - (ii) stated that AA was calling Customer 8 to go through Customer 8's superannuation results and potentially save him on fees by rolling over any External Accounts into his BT Business Account;
 - (iii) asked Customer 8 what he personally saw as the main benefit of bringing all of his superannuation accounts together and Customer 8 had stated that it was mainly to have one set of accounting fees rather than a number of different sets of accounting fees; and
 - (iv) AA clarified with Customer 8 that saving on fees was the main benefit for him, to which Customer 8 agreed and expressed a concern that money was 'going out the door'.

94. By reason of the matters set out above, AA, and therefore WSAL, provided personal financial product advice to Customer 8, for the purposes of section 766B(3) of the Corporations Act.

Customer 9

95. At all material times, Customer 9 was:
- a. a member of the BT Business Account; and/or
 - b. a retail client for the purposes of section 761G of the Corporations Act.

96. By way of correspondence sent to Customer 9 on or about 17 February 2014, 30 July 2014 and 11 August 2014 (the **Customer 9 Correspondence**), WSAL:
- a. offered to search for any External Accounts that Customer 9 had;
 - b. offered to roll over any External Accounts held by Customer 9 into his BT Business Account; and
 - c. sought to influence Customer 9 to take up such offers.

PARTICULARS

The Plaintiff repeats paragraphs (a) to (d) at paragraph 28 above.

97. In the course of the Sample Campaigns, on 16 June 2014 at about 4:08pm, Super Activation staff member CC called Customer 9 (the **Customer 9 Conversation**).
98. In the Customer 9 Conversation (or alternatively in the Customer 9 Conversation in addition to the Customer 9 Correspondence), CC and therefore WSAL (or alternatively CC and WSAL) provided one or more recommendations and/or statements of opinion to Customer 9.

PARTICULARS

ASIC relies on each, some or all of the following recommendations and/or statements of opinion:

- (a) the express statement of opinion that CC could roll all amounts held in Customer 9's External Accounts into his BT Business Account over the phone, electronically, so that he did not have to do any paperwork;
- (b) the express statement of opinion that a lot of the customers that CC spoke to like the fact that they could potentially save on fees by combining their super and that they also mentioned the fact that it was a little easier to manage;
- (c) the express statement of opinion that once Customer 9's External Accounts were rolled over into his BT Business Account he would hopefully potentially save on fees;
- (d) the express and/or implied statement of opinion that Customer 9 rolling over his External Accounts into his BT Business Account may or would lead to him saving on fees;
- (e) the implied statement of opinion that Customer 9 rolling over his External Accounts into his BT Business Account would or may lead to a more efficient and efficacious setup of his superannuation and therefore greater returns; and/or

- (f) implied recommendation that Customer 9 should roll over his External Accounts into his BT Business Account; and/or
- (g) implied recommendation that Customer 9 should take steps to roll over his External Accounts into his BT Business Account on the phone now.

99. Each, some or all of the recommendations and/or statements of opinion set out in paragraph 98:

- a. were intended by CC and therefore WSAL to influence Customer 9 in deciding to consolidate his External Accounts into his BT Business Account; and/or

PARTICULARS

ASIC relies on each, some or all of the following matters:

- (a) the Customer 9 Conversation, including the recommendations and/or statements of opinion set out above at paragraph 98;
 - (b) the use of the QM Framework (as set out at paragraphs 25 and 26 above) by CC;
 - (c) the training, encouragement and direction to the Relevant Super Activation staff, including CC, to follow that QM Framework (as set out at paragraphs 25 and 26 above);
 - (d) that the Customer 9 Conversation occurred in the context of campaigns targeted at generating increased FUM for the Westpac Group (as set out at paragraphs 18 to 22 above); and/or
 - (e) that the Relevant Super Activation Staff, including CC, were trained, encouraged and directed, including by way of FUM targets and payment of bonuses, to generate FUM for the Westpac Group through encouraging customers to consolidate one or more External Accounts into their BT Account, and did in fact generate FUM for the Westpac Group in this manner.
- b. could reasonably be regarded as being intended by CC and therefore WSAL (or alternatively CC and WSAL) to have such an influence.

PARTICULARS

ASIC relies on the following matters:

- (a) the Customer 9 Conversation; or alternatively
- (b) the Customer 9 Conversation in addition to the Customer 9 Correspondence.

100. Each, some or all of the recommendations and/or statements of opinion set out above at paragraph 98 were provided in circumstances where:
- a. CC and therefore WSAL had considered one or more of Customer 9's objectives, financial situation and needs; and/or
 - b. a reasonable person might expect CC and therefore WSAL to have considered one or more of Customer 9's objectives, financial situation and needs.

PARTICULARS

- (a) In relation to both (a) and (b), ASIC relies on each, some or all of the following objectives, financial situations and needs of Customer 9:
 - (i) Customer 9's financial situation as being a person with one or more superannuation accounts;
 - (ii) Customer 9's stated and/or implied objective and/or need to save on fees;
 - (iii) Customer 9's implied objective and/or need to ensure that he adopted an efficient and efficacious setup of his superannuation to ensure he was receiving the greatest possible returns; and/or
 - (iv) Customer 9's stated and/or implied financial situation as being a person with multiple superannuation accounts having some or all of the above-mentioned objectives and/or needs.
- (b) In relation to both (a) and (b), ASIC relies on the fact that CC and therefore WSAL in the Customer 9 Conversation had:
 - (i) called to speak to Customer 9 personally about the consolidation of Customer 9's superannuation accounts;
 - (ii) stated that the purpose of CC's call was in relation to Customer 9's BT superannuation account and in particular to help him understand and organise his superannuation;
 - (iii) asked Customer 9 what he saw as the main benefits of combining his superannuation into his BT Business Account and was told that it was saving fees; and
 - (iv) stated that once his External Accounts were consolidated into Customer 9's BT Business Account hopefully he would could then potentially save on fees.

101. By reason of the matters set out above, CC, and therefore WSAL, provided personal financial product advice to Customer 9, for the purposes of section 766B(3) of the Corporations Act.

Customer 10

102. At all material times, Customer 10 was:
- a. a member of the BT Business Account; and
 - b. a retail client for the purposes of section 761G of the Corporations Act.
103. By way of a letter sent to Customer 10 on or about 27 August 2014 (the **Customer 10 Correspondence**), WSAL:
- a. offered to search for any External Accounts that Customer 10 had;
 - b. offered to roll over any External Accounts held by Customer 10 into his BT Business Account; and
 - c. sought to influence Customer 10 to take up such offers.

PARTICULARS

The Plaintiff repeats paragraphs (a) to (c) at paragraph 28 above.

104. On 14 October 2014, Customer 10 accessed the BT website and requested a search be conducted to locate amounts held on his behalf in External Accounts.
105. In the course of the Sample Campaigns, on 29 October 2014 at about 3:50pm, Super Activation staff member AA called Customer 10 (the **Customer 10 Conversation**).
106. In the Customer 10 Conversation (or alternatively in the Customer 10 Conversation in addition to the Customer 10 Correspondence), AA and therefore WSAL (or alternatively AA and WSAL) provided one or more recommendations and/or statements of opinion to Customer 10.

PARTICULARS

ASIC relies on each, some or all of the following recommendations and/or statements of opinion:

- (a) the express statement of opinion that AA could help Customer 10 organise his superannuation by bringing all his External Accounts to his BT Business Account;
- (b) the express statement of opinion that a lot of BT's clients are combining their superannuation accounts into their BT fund so that they have a larger

amount in their account and because they were attracted to the past performance that BT accounts have been able to yield for its clients;

- (c) the express statement of opinion that having a larger amount of money in a person's account and in a performing fund like BT was always a good thing;
- (d) the express statement of opinion that AA could help Customer 10 consolidate his External Accounts into his BT Business Account over the phone and get his account all nice and organised and avoid Customer 10 having to do any forms;
- (e) the express statement of opinion that in two or three weeks Customer 10's External Accounts would be rolled over into his BT Business Account and it would all be in the one place for Customer 10 and hopefully starting to work hard for his retirement;
- (f) the express and/or implied statement of opinion that Customer 10 rolling over his External Accounts into his BT Business Account may or would lead to him having a bigger amount in his account in a fund with attractive past performances;
- (g) the implied statement of opinion that Customer 10 rolling over his External Accounts into his BT Business Account would or may lead to a more efficient and efficacious setup of his superannuation and therefore greater returns;
- (h) the implied recommendation that Customer 10 should roll over his External Accounts into his BT Business Account; and
- (i) the implied recommendation that Customer 10 should take steps to roll over his External Accounts into his BT Business Account on the phone now.

107. Each, some or all of the recommendations and/or statements of opinion set out in paragraph 106 were:

- a. intended by AA and therefore WSAL to influence Customer 10 in deciding to consolidate his External Accounts into his BT Business Account; and/or

PARTICULARS

ASIC relies on each, some or all of the following matters:

- (a) the Customer 10 Conversation, including the recommendations and/or statements of opinion set out above at paragraph 106;
- (b) the use of the QM Framework (as set out at paragraphs 25 and 26 above) by AA;

- (c) the training, encouragement and direction to the Relevant Super Activation staff, including AA, to follow that QM Framework (as set out at paragraphs 25 and 26 above);
 - (d) that the Customer 10 Conversation occurred in the context of campaigns targeted at generating increased FUM for the Westpac Group (as set out at paragraphs 18 to 22 above); and/or
 - (e) that the Relevant Super Activation Staff, including AA, were trained, encouraged and directed, including by way of FUM targets and payment of bonuses, to generate FUM for the Westpac Group through encouraging customers to consolidate one or more External Accounts into their BT Account, and did in fact generate FUM for the Westpac Group in this manner.
- b. could reasonably be regarded as being intended by AA and therefore WSAL (or alternatively AA and WSAL) to have such an influence.

PARTICULARS

ASIC relies on the following matters:

- (a) the Customer 10 Conversation; or alternatively
 - (b) the Customer 10 Conversation in addition to the Customer 10 Correspondence.
108. Each, some or all of the recommendations and/or statements of opinion set out above in paragraph 106 were provided in circumstances where:
- a. AA and therefore WSAL had considered one or more of Customer 10's objectives, financial situation and needs; and/or
 - b. a reasonable person might expect AA and therefore WSAL to have considered one or more of Customer 10's objectives, financial situation and needs.

PARTICULARS

- (a) In relation to both (a) and (b), ASIC relies on each, some or all of the following objectives, financial situations and needs of Customer 10:
 - (i) Customer 10's financial situation as being a person with one or more superannuation accounts;
 - (ii) Customer 10's stated and/or implied objective and/or need was to ensure that he was in the best performing fund (or the best performing fund in respect of which he was a member);

- (iii) Customer 10's implied objective and/or need to ensure that he adopted an efficient and efficacious setup of his superannuation to ensure he was receiving the greatest possible returns; and/or
 - (iv) Customer 10's stated and/or implied financial situation as being a person with multiple superannuation accounts having some or all of the above-mentioned objectives and/or needs.
- (b) In relation to both (a) and (b), ASIC relies on the fact that AA and therefore WSAL in the Customer 10 Conversation had:
- (i) called to speak to Customer 10 personally about the consolidation of Customer 10's superannuation accounts;
 - (ii) stated that the purpose of AA's call was to go through Customer 10's superannuation search results and that AA wanted to help Customer 10 organise his superannuation by bringing all his External Accounts to his BT Business Account;
 - (iii) asked Customer 10 how he considered that combining all of his superannuation together would help in his future financial goals and Customer 10 told him that the BT Business Account was Customer 10's best performing superannuation account; and
 - (iv) clarified with Customer 10 whether performance of the superannuation fund was the most important thing to him, and Customer 10 said that it was.

109. By reason of the matters set out above, AA, and therefore WSAL, provided personal financial product advice to Customer 10, for the purposes of section 766B(3) of the Corporations Act.

Customer 11

110. At all material times, Customer 11 was:

- a. a member of the BT Business Account; and
- b. a retail client for the purposes of section 761G of the Corporations Act.

111. By way of correspondence sent to Customer 11 on or about 18 February 2014, 30 April 2014, 29 July 2014, 30 July 2014 and 14 August 2014 (the **Customer 11 Correspondence**), WSAL:

- a. offered to search for any External Accounts that Customer 11 had;

- b. offered to roll over any External Accounts held by Customer 11 into his BT Business Account; and
- c. sought to influence Customer 11 to take up such offers.

PARTICULARS

The Plaintiff repeats particulars (a) to (d) at paragraph 28 above.

- 112. On 29 July 2014, Customer 11 accessed the BT website and requested a search be conducted to locate amounts held on his behalf in External Accounts.
- 113. On 14 August 2014, WSAL sent a letter to Customer 11 which set out the results of the superannuation search which he had requested.
- 114. In the course of the Sample Campaigns, on 18 September 2014 at about 12:24pm, Super Activation staff member AA called Customer 11 (the **Customer 11 Conversation**).
- 115. In the Customer 11 Conversation (or alternatively in the Customer 11 Conversation in addition to the Customer 11 Correspondence), AA and therefore WSAL (or alternatively AA and WSAL) provided one or more recommendations and/or statements of opinion to Customer 11.

PARTICULARS

ASIC relies on each, some or all of the following recommendations and/or statements of opinion:

- (a) the express statement of opinion that he could help bring Customer 11's External Accounts over to his BT Business Account to potentially save him on fees;
- (b) the express and/or implied statement of opinion that rolling over superannuation to have it all in the one spot and not lose money in finance and fees on accounts to which Customer 11 was not making contributions definitely made sense;
- (c) the express statement of opinion that rolling over superannuation on the basis of manageability and saving on fees were probably the main reasons that most of BT's clients liked to rollover their superannuation;
- (d) the express statement of opinion that rolling over superannuation made superannuation a lot easier to manage and saved on costs, and that after all it was Customer 11's retirement savings at the end of the day;

- (e) the express statement of opinion that AA could help bring Customer 11's superannuation over to his BT Business Account on the phone so that Customer 11 could start potentially saving on fees and that the only thing he needed was Customer 11's tax file number;
- (f) the express statement of opinion that Customer 11's comment that the amounts in his other funds were dwindling away with fees and charges was a pretty common story that BT hear from a lot of their clients and that it was a good thing Customer 11 was consolidating his superannuation;
- (g) the express and/or implied statement of opinion that Customer 11 rolling over his External Accounts into his BT Business Account may or would lead to him saving on fees and improving the manageability of his superannuation;
- (h) the express and/or implied statement of opinion that Customer 11 rolling over his External Accounts into his BT Business Account would or may lead to a more efficient and efficacious setup of his superannuation and therefore greater returns; a
- (i) the implied recommendation that Customer 11 should roll over his External Accounts into his BT Business Account; and
- (j) the implied recommendation that Customer 11 should take steps to roll over his External Accounts into his BT Business Account on the phone now.

116. Each, some or all of the recommendations and/or statements of opinion set out in paragraph 115:

- a. were intended by AA and therefore WSAL to influence Customer 11 in deciding to consolidate his External Accounts into his BT Business Account; and/or

PARTICULARS

ASIC relies on each, some or all of the following matters:

- (a) the Customer 11 Conversation, including the recommendations and/or statements of opinion set out above at paragraph 115;
- (b) the use of the QM Framework (as set out at paragraphs 25 and 26 above) by AA;
- (c) the training, encouragement and direction to the Relevant Super Activation staff, including AA, to follow that QM Framework (as set out at paragraphs 25 and 26 above);

- (d) that the Customer 11 Conversation occurred in the context of campaigns targeted at generating increased FUM for the Westpac Group (as set out at paragraphs 18 to 22 above); and/or
 - (e) that the Relevant Super Activation Staff, including AA, were trained, encouraged and directed, including by way of FUM targets and payment of bonuses, to generate FUM for the Westpac Group through encouraging customers to consolidate one or more External Accounts into their BT Account, and did in fact generate FUM for the Westpac Group in this manner.
- b. could reasonably be regarded as being intended by AA and therefore WSAL (or alternatively AA and WSAL) to have such an influence.

PARTICULARS

ASIC relies on the following matters:

- (a) the Customer 11 Conversation; or alternatively
- (b) the Customer 11 Conversation in addition to the Customer 11 Correspondence.

117. Each, some or all of the recommendations and/or statements of opinion set out at paragraph 115 were provided in circumstances where:

- a. AA and therefore WSAL had considered one or more of Customer 11's objectives, financial situation and needs; and/or
- b. a reasonable person might expect AA and therefore WSAL to have considered one or more of Customer 11's objectives, financial situation and needs.

PARTICULARS

- (a) In relation to both (a) and (b), ASIC relies on each, some or all of the following objectives, financial situations and needs of Customer 11:
 - (i) Customer 11's financial situation as being a person with one or more superannuation accounts;
 - (ii) Customer 11's stated objective and/or need to have all his superannuation in the one spot to ensure that he was not losing money in finance and fees;
 - (iii) Customer 11's stated objective and/or need to save on fees;

- (iv) Customer 11's implied objective and/or need to ensure that he adopted an efficient and efficacious setup of his superannuation to ensure he was receiving the greatest possible returns; and/or
 - (v) Customer 11's stated and/or implied financial situation as being a person with multiple superannuation accounts having some or all of the above-mentioned objectives and/or needs.
- (b) In relation to both (a) and (b), ASIC relies on the fact that AA and therefore WSAL in the Customer 11 Conversation had:
- (i) called to speak to Customer 11 personally about the consolidation of Customer 11's superannuation accounts;
 - (ii) stated that the reason for AA's call was to see how Customer 11 was going with his BT Business Account and to go through Customer 11's superannuation results and help him bring them over to his BT Business Account to potentially save him on fees;
 - (iii) asked Customer 11 what he personally saw as the main benefits of consolidating his superannuation into one place, and Customer 11 told him that he wanted to have it all in one spot and not lose money in finance and fees on accounts to which he was not making contributions; and/or
 - (iv) clarified with Customer 11 that the main benefits that he saw in consolidating his superannuation into one place was manageability and to save on fees.

118. By reason of the matters set out above, AA, and therefore WSAL, provided personal financial product advice to Customer 11, for the purposes of section 766B(3) of the Corporations Act.

Customer 12

119. At all material times, Customer 12 was:
- a. a member of the BT Business Account; and
 - b. a retail client for the purposes of section 761G of the Corporations Act.
120. By way of correspondence sent to Customer 12 on or about 18 February 2014, 30 April 2014, 29 July 2014, 27 August 2014 and 17 September 2014 (the **Customer 12 Correspondence**), WSAL:
- a. offered to search for any External Accounts that Customer 12 had;

- b. offered to roll over any External Accounts held by Customer 12 into his BT Business Account; and
- c. sought to influence Customer 12 to take up such offers.

PARTICULARS

The Plaintiff repeats particulars (a) to (d) at paragraph 28 above.

- 121. On 17 April 2014, Customer 12 accessed the BT website and requested a search be conducted to locate amounts held on his behalf in External Accounts.
- 122. In the course of the Sample Campaigns, on 7 October 2014 at about 3:08pm, Super Activation staff member AA called Customer 12 (the **Customer 12 Conversation**).
- 123. In the Customer 12 Conversation (or alternatively in the Customer 12 Conversation in addition to the Customer 12 Correspondence), AA and therefore WSAL (or alternatively AA and WSAL) provided one or more recommendations and/or statements of opinion to Customer 12.

PARTICULARS

ASIC relies on each, some or all of the following recommendations and/or statements of opinion:

- (a) the express statement of opinion that AA could potentially save Customer 12 on fees by rolling over any External Accounts into his BT Business Account;
- (b) the express statement of opinion that having a potentially better performance is one of the main reasons that BT's clients say they like to consolidate their External Accounts into their BT account;
- (c) the express statement of opinion that obviously superannuation was a lot more manageable when it is all in the one place;
- (d) the express statement of opinion that he could actually help Customer 12 bring his External Accounts over to his BT Business Account verbally over the phone so that Customer 12 would start to potentially get the performance that he was after;
- (e) the express and/or implied statement of opinion that Customer 12 rolling over his External Accounts into his BT Business Account may or would lead to him having better performing superannuation;
- (f) the implied statement of opinion that Customer 12 rolling over his External Accounts into his BT Business Account would or may lead to a more efficient and efficacious setup of his superannuation and therefore greater returns;

- (g) the implied recommendation that Customer 12 should roll over his External Accounts into his BT Business Account; and/or
 - (h) the implied recommendation that Customer 12 should take steps to roll over his External Accounts into his BT Business Account on the phone now.
124. Each, some or all of the recommendations and/or statements of opinion set out in paragraph 123:
- a. were intended by AA and therefore WSAL to influence Customer 12 in deciding to consolidate his External Accounts into his BT Business Account; and/or

PARTICULARS

ASIC relies on each, some or all of the following matters:

- (a) the Customer 12 Conversation, including the recommendations and/or statements of opinion set out above at paragraph 123;
 - (b) the use of the QM Framework (as set out at paragraphs 25 and 26 above) by AA;
 - (c) the training, encouragement and direction to the Relevant Super Activation staff, including AA, to follow that QM Framework (as set out at paragraphs 25 and 26 above);
 - (d) that the Customer 12 Conversation occurred in the context of campaigns targeted at generating increased FUM for the Westpac Group (as set out at paragraphs 18 to 22 above); and/or
 - (e) that the Relevant Super Activation Staff, including AA, were trained, encouraged and directed, including by way of FUM targets and payment of bonuses, to generate FUM for the Westpac Group through encouraging customers to consolidate one or more External Accounts into their BT Account, and did in fact generate FUM for the Westpac Group in this manner.
- b. could reasonably be regarded as being intended by AA and therefore WSAL (or alternatively AA and WSAL) to have such an influence.

PARTICULARS

ASIC relies on the following matters:

- (a) the Customer 12 Conversation; or alternatively
- (b) the Customer 12 Conversation in addition to the Customer 12 Correspondence.

125. Each, some or all of the recommendations and/or statements of opinion described at sub-paragraph (a) above was provided in circumstances where:
- a. AA and therefore WSAL had considered one or more of Customer 12's objectives, financial situation and needs; and/or
 - b. a reasonable person might expect AA and therefore WSAL to have considered one or more of Customer 12's objectives, financial situation and needs.

PARTICULARS

- (a) In relation to both (a) and (b), ASIC relies on each, some or all of the following objectives, financial situations and needs of Customer 12:
 - (i) Customer 12's financial situation as being a person with one or more superannuation accounts;
 - (ii) Customer 12's stated and/or implied objective and/or need to ensure that he was maximising the amount of interest he was receiving;
 - (iii) Customer 12's stated and/or implied objective and/or need to achieve better performance on his superannuation;
 - (iv) Customer 12's implied objective and/or need to ensure that he adopted an efficient and efficacious setup of his superannuation to ensure he was receiving the greatest possible returns; and/or
 - (v) Customer 12's stated and/or implied financial situation as being a person with multiple superannuation accounts having some or all of the above-mentioned objectives and/or needs.
- (b) In relation to both (a) and (b), ASIC relies on the fact that AA and therefore WSAL in the Customer 12 Conversation had:
 - (i) called to speak to Customer 12 personally about the consolidation of Customer 12's superannuation accounts;
 - (ii) stated that the purpose of AA's call was to go through Customer 12's superannuation results to potentially save him on fees by rolling over any External Accounts into his BT Business Account;
 - (iii) asked Customer 12 what sort of benefits he saw for himself in consolidating his superannuation and Customer 12 answered that he was not gaining any interest by having money sitting in other accounts; and/or

- (iv) clarified with Customer 12 that the main benefit he saw for himself in consolidating his superannuation was to achieve potentially better performance, and Customer 12 confirmed that it was.

126. By reason of the matters set out above, AA, and therefore WSAL, provided personal financial product advice to Customer 12, for the purposes of section 766B(3) of the Corporations Act.

Customer 13

127. At all material times, Customer 13 was:

- a. a member of the BT Business Account; and
- b. a retail client for the purposes of section 761G of the Corporations Act.

128. By way of correspondence sent to Customer 13 on or about 27 August 2014 and 24 September 2014 (the **Customer 13 Correspondence**), WSAL offered to search for any External Accounts that Customer 13 had, offered to roll over any External Accounts held by Customer 13 into his BT Business Account, and sought to influence Customer 13 to take up such offers.

PARTICULARS

The Plaintiff repeats paragraphs (a) to (c) at paragraph 28 above.

129. On 9 September 2014, Customer 13 accessed the BT website and requested a search be conducted to locate amounts held on his behalf in External Accounts.
130. On 24 September 2014, WSAL sent a letter to Customer 13 which set out the results of the superannuation search which he had requested.
131. In the course of the Sample Campaigns, on 7 October 2014 at about 5:06pm, Super Activation staff member AA called Customer 13 (the **Customer 13 Conversation**).
132. In the Customer 13 Conversation (or alternatively the Customer 13 Conversation in addition to the Customer 13 Correspondence), AA and therefore WSAL (or alternatively AA and WSAL) provided one or more recommendations and/or statements of opinion to Customer 13.

PARTICULARS

ASIC relies on each, some or all of the following recommendations and/or statements of opinion:

- (a) the express statement of opinion AA could potentially save Customer 13 on fees by rolling over any External Accounts into his BT Business Account;

- (b) the express statement of opinion that achieving a better performance out of a customer's superannuation is one of the main reasons that BT's clients like to consolidate their superannuation, along with the fact that it is more manageable when it is one place;
- (c) the express statement of opinion that by consolidating his superannuation, Customer 13 would be potentially saving on fees, depending on if whether he is paying fees on other accounts;
- (d) the express statement of opinion that AA could go through Customer 13's super results and actually help him consolidate his External Accounts into his BT Business Account over the phone that day using a verbal request and that we would have all his accounts in one place so he could potentially start getting better performance from his superannuation;
- (e) the express statement of opinion that in 2 or 3 weeks Customer 13's External Accounts would be rolled over into his BT Business Account and would be all nice and organised and he would be potentially getting the performance that he wanted;
- (f) the express and/or implied statement of opinion a statement of opinion that Customer 13 rolling over his External Accounts into his BT Business Account may or would lead to him having better performance from his superannuation;
- (g) the express and/or implied statement of opinion that Customer 13 rolling over his External Accounts into his BT Business Account would or may lead to a more efficient and efficacious setup of his superannuation and therefore greater returns;
- (h) the implied recommendation that Customer 13 should roll over his External Accounts into his BT Business Account; and/or
- (i) the implied recommendation that Customer 13 should take steps to roll over his External Accounts into his BT Business Account on the phone now.

133. Each, some or all of the recommendations and/or statements of opinion set out in paragraph 132:

- a. were intended by AA and therefore WSAL to influence Customer 13 in deciding to consolidate his External Accounts into his BT Business Account; and/or

PARTICULARS

ASIC relies on each, some or all of the following matters:

- (a) the Customer 13 Conversation, including the recommendations and/or statements of opinion set out above at paragraph 132;
 - (b) the use of the QM Framework (as set out at paragraphs 25 and 26 above) by AA;
 - (c) the training, encouragement and direction to the Relevant Super Activation staff, including AA, to follow that QM Framework (as set out at paragraphs 25 and 26 above);
 - (d) that the Customer 13 Conversation occurred in the context of campaigns targeted at generating increased FUM for the Westpac Group (as set out at paragraphs 18 to 22 above); and/or
 - (e) that the Relevant Super Activation Staff, including AA, were trained, encouraged and directed, including by way of FUM targets and payment of bonuses, to generate FUM for the Westpac Group through encouraging customers to consolidate one or more External Accounts into their BT Account, and did in fact generate FUM for the Westpac Group in this manner.
- b. could reasonably be regarded as being intended by AA and therefore WSAL (or alternatively AA and WSAL) to have such an influence.

PARTICULARS

ASIC relies on each, some or all of the following matters:

- (a) the Customer 13 Conversation; or alternatively
 - (b) the Customer 13 Conversation in addition to the Customer 13 Correspondence.
134. Each, some or all of the recommendations and/or statements of opinion set out above at paragraph 132 were provided in circumstances where:
- a. AA and therefore WSAL had considered one or more of Customer 13's objectives, financial situation and needs; and/or
 - b. a reasonable person might expect AA and therefore WSAL to have considered one or more of Customer 13's objectives, financial situation and needs.

PARTICULARS

- (a) In relation to both (a) and (b), ASIC relies on each, some or all of the following objectives, financial situations and needs of Customer 13:

- (i) Customer 13's financial situation as being a person with one or more superannuation accounts;
 - (ii) Customer 13's stated and/or implied objective and/or need to ensure that he was maximising the principal sum in his superannuation account and thereby obtain a better return;
 - (iii) Customer 13's stated and/or implied objective and/or need to achieve a greater level of performance on his superannuation;
 - (iv) Customer 13's stated and/or implied objective and/or need to ensure that he adopted an efficient and efficacious setup of his superannuation to ensure he was receiving the greatest possible returns; and/or
 - (v) Customer 13's stated and/or implied financial situation as being a person with multiple superannuation accounts having some or all of the above-mentioned objectives and/or needs.
- (b) In relation to both (a) and (b), ASIC relies on the fact that AA and therefore WSAL in the Customer 13 Conversation had:
- (i) called to speak to Customer 13 personally about the consolidation of Customer 13's superannuation accounts;
 - (ii) stated that the purpose of AA's call was as to go through Customer 13's superannuation search results and to potentially save him on fees by rolling over any External Accounts into his BT Business Account;
 - (iii) asked Customer 13 what he personally saw as the main benefit of bringing all of his superannuation accounts together and Customer 13 stated that it was to put them all in one larger sum and get a better return from them; and/or
 - (iv) clarified with Customer 13 that performance of the fund was the main benefit Customer 13 saw in consolidating his superannuation accounts.

135. By reason of the matters set out above, AA, and therefore WSAL, provided personal financial product advice to Customer 13, for the purposes of section 766B(3) of the Corporations Act.

Customer 14

136. At all material times, Customer 14 was:

- a. a member of the BT Business Account; and
 - b. a retail client for the purposes of section 761G of the Corporations Act.
137. By way of correspondence sent to Customer 14 on or around 17 February 2014, 11 August 2014 and 30 July 2014 (the **Customer 14 Correspondence**), WSAL:
- a. offered to search for any External Accounts that Customer 14 had;
 - b. offered to roll over any External Accounts held by Customer 14 into his BT Business Account; and
 - c. sought to influence Customer 14 to take up such offers.

PARTICULARS

The Plaintiff repeats paragraphs (a) to (d) at paragraph 28 above.

138. In the course of the Sample Campaigns, on 29 August 2014 at about 12:10pm, Super Activation staff member CC called Customer 14 (the **Customer 14 Conversation**).
139. In the Customer 14 Conversation (or alternatively in the Customer 14 Conversation in addition to the Customer 14 Correspondence), CC and therefore WSAL (or alternatively CC and WSAL) provided one or more recommendations and/or or statements of opinion to Customer 14.

PARTICULARS

ASIC relies on each, some or all of the following recommendations and/or statements of opinion:

- (a) the express statement of opinion that CC could actually help Customer 14 consolidate his superannuation if that is what he wanted to do and that could be done over the phone quite easily, saving Customer 14 time doing the paperwork;
- (b) the express statement of opinion that a lot of customers CC speaks to like the fact that by combining their superannuation accounts it is a little easier to manage and that you can potentially save on fees;
- (c) the express and/or implied statement of opinion that Customer 14 rolling over his External Accounts into his BT Business Account may or would lead to him saving on fees and achieving a greater level of manageability;
- (d) the implied statement of opinion that Customer 14 rolling over his External Accounts into his BT Business Account would or may lead to a more efficient and efficacious setup of his superannuation and therefore greater returns;

- (e) the implied recommendation that Customer 14 should roll over his External Accounts into his BT Business Account; and/or
- (f) the implied recommendation that Customer 14 should take steps to roll over his External Accounts into his BT Business Account on the phone now.

140. Each, some or all of the recommendations and/or statements of opinion set out in paragraph 139:

- a. were intended by CC and therefore WSAL to influence Customer 14 in deciding to consolidate his External Accounts into his BT Business Account; and/or

PARTICULARS

ASIC relies on each, some or all of the following matters:

- (a) the Customer 14 Conversation, including the recommendations and/or statements of opinion set out above at paragraph 139;
 - (b) the use of the QM Framework (as set out at paragraphs 25 and 26 above) by CC;
 - (c) the training, encouragement and direction to the Relevant Super Activation staff, including CC, to follow that QM Framework (as set out at paragraphs 25 and 26 above);
 - (d) that the Customer 14 Conversation occurred in the context of campaigns targeted at generating increased FUM for the Westpac Group (as set out at paragraphs 18 to 22 above); and/or
 - (e) that the Relevant Super Activation Staff, including CC, were trained, encouraged and directed, including by way of FUM targets and payment of bonuses, to generate FUM for the Westpac Group through encouraging customers to consolidate one or more External Accounts into their BT Account, and did in fact generate FUM for the Westpac Group in this manner.
- b. could reasonably be regarded as being intended by CC and therefore WSAL (or alternatively CC and WSAL) to have such an influence.

PARTICULARS

ASIC relies on each, some or all of the following matters:

- (a) the Customer 14 Conversation; or alternatively
- (b) the Customer 14 Conversation in addition to the Customer 14 Correspondence.

141. Each, some or all of the recommendations and/or statements of opinion set out above at paragraph 140 were provided in circumstances where:
- a. CC and therefore WSAL had considered one or more of Customer 14's objectives, financial situation and needs; and/or
 - b. a reasonable person might expect CC and therefore WSAL to have considered one or more of Customer 14's objectives, financial situation and needs.

PARTICULARS

- (a) In relation to both (a) and (b), ASIC relies on each, some or all of the following objectives, financial situations and needs of Customer 14:
 - (i) Customer 14's financial situation as being a person with one or more superannuation accounts;
 - (ii) Customer 14's stated and/or implied objective and/or need to ensure that he was not losing superannuation by having multiple superannuation accounts;
 - (iii) Customer 14's stated objective and/or need to save on fees;
 - (iv) Customer 14's stated and/or implied objective and/or need to ensure that he adopted an efficient and efficacious setup of his superannuation to ensure he was receiving the greatest possible returns; and/or
 - (v) Customer 14's stated and/or implied financial situation as being a person with multiple superannuation accounts having some or all of the above-mentioned objectives and/or needs.
- (b) In relation to both (a) and (b), ASIC relies on the fact that CC and therefore WSAL in the Customer 14 Conversation had:
 - (i) called to speak to Customer 14 personally about the consolidation of Customer 14's superannuation accounts;
 - (ii) stated that the purpose of CC's call was to see how Customer 14 was going with understanding and organising his BT superannuation account;
 - (iii) asked Customer 14 what he saw as the benefit of combining his superannuation into his BT Business Account and was told that he was concerned about losing some of his superannuation; and/or

(iv) stated that customers that she speaks to also state that combining superannuation is a little easier to manage and allows you to potentially save on fees, to which Customer 14 agreed.

142. By reason of the matters set out above, CC, and therefore WSAL, provided personal financial product advice to Customer 14, for the purposes of section 766B(3) of the Corporations Act.

Customer 15

143. At all material times, Customer 15 was:

- a. a member of the BT Business Account.
- b. a retail client for the purposes of section 761G of the Corporations Act.

144. By way of letter dated about February 2014 (the **Customer 15 Correspondence**), WSAL:

- a. offered to search for any External Accounts that Customer 15 had;
- b. offered to roll over any External Accounts held by Customer 15 into his BT Business Account; and
- c. sought to influence Customer 15 to take up such offers.

PARTICULARS

The Plaintiff repeats particulars (a) to (d) at paragraph 28 above.

145. In the course of the Sample Campaigns, on 23 June 2014 at about 12:12pm, Super Activation staff member DD called Customer 15 (the **First Customer 15 Conversation**).

146. In the First Customer 15 Conversation (or alternatively in the First Customer 15 Conversation in addition to the Customer 15 Correspondence), DD and therefore WSAL (or alternatively DD and WSAL) provided one or more recommendations and/or or statements of opinion to Customer 15.

PARTICULARS

ASIC relies on each, some or all of the following recommendations and/or statements of opinion:

- (a) the express statement of opinion that DD could potentially help Customer 15 save on fees by consolidating any External Accounts into his BT Business Account;
- (b) the express statement of opinion that consolidation had the benefit of putting all Customer 15's superannuation in the one place;

- (c) the express and/or implied statement of opinion that Customer 15's stated reasons for rolling over his superannuation accounts into his BT Business Account so as to not lose money anywhere else and to get an increase in his superannuation funds overall were understandable;
- (d) the express and/or implied statement of opinion that Customer 15 rolling over his External Accounts into his BT Business Account may or would lead to him saving on fees, lead to a greater level of manageability and reduce the risk that he was losing money in other accounts while also allowing him to enter into a salary sacrifice arrangement through his employer;
- (e) the express and/or implied statement of opinion that Customer 15 rolling over his External Accounts into his BT Business Account would or may lead to a more efficient and efficacious setup of his superannuation and therefore greater returns;
- (f) the implied recommendation that Customer 15 should roll over his External Accounts into his BT Business Account; and/or
- (g) the implied recommendation that Customer 15 should take steps to roll over his External Accounts into his BT Business Account on the phone now.

147. Each, some or all of the recommendations and/or statements of opinion set out at paragraph 146:

- a. were intended by DD and therefore WSAL to influence Customer 15 in deciding to consolidate his External Accounts into his BT Business Account; and/or

PARTICULARS

ASIC relies on each, some or all of the following matters:

- (a) the First Customer 15 Conversation, including the recommendations and/or statements of opinion set out above at paragraph 146;
- (b) the use of the QM Framework (as set out at paragraphs 25 and 26 above) by DD;
- (c) the training, encouragement and direction to the Relevant Super Activation staff, including DD, to follow that QM Framework (as set out at paragraphs 25 and 26 above);
- (d) that the First Customer 15 Conversation occurred in the context of campaigns targeted at generating increased FUM for the Westpac Group (as set out at paragraphs 18 to 22 above); and/or

- (e) that the Relevant Super Activation Staff, including DD, were trained, encouraged and directed, including by way of FUM targets and payment of bonuses, to generate FUM for the Westpac Group through encouraging customers to consolidate one or more External Accounts into their BT Account, and did in fact generate FUM for the Westpac Group in this manner.
- b. could reasonably be regarded as being intended by DD and therefore WSAL (or alternatively DD and WSAL) to have such an influence.

PARTICULARS

ASIC relies on the following matters:

- (a) the First Customer 15 Conversation; or alternatively
 - (b) the First Customer 15 Conversation in addition to the Customer 15 Correspondence.
148. Each, some or all of the recommendations and/or statements of opinion set out at paragraph 146 were provided in circumstances where :
- a. DD and therefore WSAL had considered one or more of Customer 15's objectives, financial situation and needs; and/or
 - b. a reasonable person might expect DD and therefore WSAL to have considered one or more of Customer 15's objectives, financial situation and needs.

PARTICULARS

- (a) In relation to both (a) and (b), ASIC relies on each, some or all of the following objectives, financial situations and needs of Customer 15:
 - (i) Customer 15's financial situation as being a person with one or more superannuation accounts;
 - (ii) Customer 15's stated and/or implied objective and/or need to ensure that he was not losing superannuation by having multiple superannuation accounts;
 - (iii) Customer 15's stated objective and/or need to increase his superannuation funds overall;
 - (iv) Customer 15's stated and/or implied objective and/or need to ensure that he adopted an efficient and efficacious setup of his superannuation to ensure he was receiving the greatest possible returns; and/or

- (v) Customer 15's stated and/or implied financial situation as being a person with multiple superannuation accounts having some or all of the above-mentioned objectives and/or needs.
- (b) In relation to both (a) and (b), ASIC relies on the fact that DD and therefore WSAL in the First Customer 13 Conversation had:
- (i) called to speak to Customer 15 personally about the consolidation of Customer 15's superannuation accounts;
 - (ii) stated that the purpose of DD's call was to see how Customer 15 was going with his BT superannuation account and to see whether she could potentially help him save on fees by consolidating any External Accounts into his BT Business Account; and/or
 - (iii) DD had asked Customer 15 what he personally saw as the main benefit of bringing all of his superannuation accounts together, and Customer 15 stated that it was to ensure he was not losing money in other accounts and so that he achieved an increase in his superannuation funds overall.
149. By reason of the matters set out above, DD, and therefore WSAL, provided personal financial product advice to Customer 15, for the purposes of section 766B(3) of the Corporations Act.
150. On 30 September 2014, Customer 15 accessed the BT website and requested a search be conducted to locate amounts held on his behalf in External Accounts.
151. In the course of the Sample Campaigns, on 15 October 2014, Super Activation staff member EE called Customer 15 at about 5:38pm (the **Second Customer 15 Conversation**).
152. In the Second Customer 15 Conversation (or alternatively the Second Customer 15 Conversation in addition to the Customer 15 Correspondence), EE and therefore WSAL (or alternatively EE and WSAL) provided one or more recommendations and/or statements of opinion to Customer 15.

PARTICULARS

ASIC relies on each, some or all of the following recommendations and/or statements of opinion:

- (a) the express statement of opinion that many of EE's clients mention that they are consolidating their External Accounts into their BT account in order to have the one superannuation account and potentially save on fees;

- (b) the express and/or implied statement of opinion that Customer 15 rolling over his External Accounts into his BT Business Account may or would lead to him saving on fees;
 - (c) the implied a statement of opinion that Customer 15 rolling over his External Accounts into his BT Business Account would or may lead to him saving fees;
 - (d) the implied recommendation that Customer 15 should roll over his External Accounts into his BT Business Account; and/or
 - (e) the implied recommendation that Customer 15 should take steps to roll over his External Accounts into his BT Business Account on the phone now.
153. Each, some or all the recommendations and/or statements of opinion set out in paragraph 152:
- a. were intended by EE and therefore WSAL to influence Customer 15 in deciding to consolidate his External Accounts into his BT Business Account; and/or

PARTICULARS

ASIC relies on each, some or all of the following matters:

- (a) the Second Customer 15 Conversation, including the recommendations and/or statements of opinion set out above at paragraph 152;
 - (b) the use of the QM Framework (as set out at paragraphs 25 and 26 above) by EE;
 - (c) the training, encouragement and direction to the Relevant Super Activation staff, including EE, to follow that QM Framework (as set out at paragraphs 25 and 26 above);
 - (d) that the Second Customer 15 Conversation occurred in the context of campaigns targeted at generating increased FUM for the Westpac Group (as set out at paragraphs 18 to 22 above); and/or
 - (e) that the Relevant Super Activation Staff, including EE, were trained, encouraged and directed, including by way of FUM targets and payment of bonuses, to generate FUM for the Westpac Group through encouraging customers to consolidate one or more External Accounts into their BT Account, and did in fact generate FUM for the Westpac Group in this manner.
- b. could reasonably be regarded as being intended by EE and therefore WSAL (or alternatively EE and WSAL) to have such an influence.

PARTICULARS

ASIC relies on each, some or all of the following matters:

- (a) the Second Customer 15 Conversation; or alternatively
- (b) the Second Customer 15 Conversation in addition to the Customer 15 Correspondence.

154. Each, some or all of the recommendations and/or statement of opinion set out at paragraph 152 were provided in circumstances where:

- a. EE and therefore WSAL had considered one or more of Customer 15's objectives, financial situation and needs; and/or
- b. a reasonable person might expect EE and therefore WSAL to have considered one or more of Customer 15's objectives, financial situation and needs.

PARTICULARS

- (a) In relation to both (a) and (b), ASIC relies on each, some or all of the following objectives, financial situations and needs of Customer 15:
 - (i) Customer 15's financial situation as being a person with one or more superannuation accounts;
 - (ii) Customer 15's stated and/or implied objective and/or need to ensure that he was not losing superannuation by having other superannuation accounts;
 - (iii) Customer 15's stated objective and/or need to save on fees;
 - (iv) Customer 15's stated and/or implied objective and/or need to ensure that he adopted an efficient and efficacious setup of his superannuation to ensure he was receiving the greatest possible returns; and/or
 - (v) Customer 15's stated and/or implied financial situation as being a person with multiple superannuation accounts having some or all of the above-mentioned objectives and/or needs.
- (b) In relation to both (a) and (b), ASIC relies on the fact that EE and therefore WSAL in the First Customer 15 Conversation had:
 - (i) called to speak to Customer 15 personally about the consolidation of Customer 15's superannuation accounts;
 - (ii) asked Customer 15 what he personally saw as the main benefit of bringing all of his superannuation accounts together and Customer 15

stated that it was because he was not getting any money by leaving the funds in the other accounts and he wanted to save on fees; and

- (iii) clarified with Customer 15 that saving of fees was important to Customer 15.

155. By reason of the matters set out in paragraph 152, EE, and therefore WSAL, provided personal financial product advice to Customer 15, for the purposes of section 766B(3) of the Corporations Act.

E. The Contraventions

156. In providing financial services pursuant to the WSAL AFS Licence and BTFM AFS License respectively, both WSAL and BTFM were required to:
- a. do all things necessary to ensure that such financial services were provided efficiently, honestly and fairly, under section 912A(1)(a) of the Corporations Act;
 - b. comply with the conditions on the WSAL AFS Licence and BTFM AFS License respectively, under section 912A(1)(b) of the Corporations Act; and
 - c. comply with financial services laws such as the Corporations Act, under section 912A(1)(c) of the Corporations Act.
157. Under the Corporations Act, where personal financial product advice is provided to a retail client, the providing entity for the purposes of section 944A of the Corporations Act must:
- a. subject to specific exclusions which do not apply to the circumstances set out in this claim, provide the client with a statement of advice under section 946A of the Corporations Act; and
 - b. act in the best interests of the client under section 961B of the Corporations Act.

Breach of AFSL – section 912A(1)(b) Corporations Act

158. On each occasion that Super Activation staff provided the customers set out at paragraphs 27 to 155 above (**Relevant Customers**) with personal product financial advice in the circumstances set out above:
- a. where the customer was a member of the BT Business Account, WASL breached the terms of the WSAL AFSL, set out at paragraph 13 above; and
 - b. where the customer was a member of the BT Lifetime Account, BTFM breached the terms of the BTFM AFSL, set out at paragraph 14 above.

159. In the premises set out in the preceding paragraph, WSAL and BTFM contravened section 912A(1)(b) of the Corporations Act.

Failure to provide Statement of Advice – section 946A Corporations Act

160. On each occasion that Super Activation staff provided the Relevant Customers with personal financial advice in the circumstances set out at paragraphs 27 to 155 above, those clients were not provided with a statement of advice in accordance with section 946A of the Corporations Act.
161. In the premises set out in the preceding paragraph, WSAL and BTFM contravened section 946A of the Corporations Act.

Failure to act in best interests etc – section 961K(2) Corporations Act

162. On each occasion that Super Activation staff provided the Relevant Customers with personal financial product advice in the circumstances set out at paragraphs 27 to 155 above, WSAL and BTFM:
- a. failed to adequately identify the objectives, financial situation and needs of the customer that would reasonably be considered as relevant to advice on rolling over superannuation accounts, before recommending that the customer rollover any External Accounts into their BT Account;
 - b. failed to conduct a reasonable investigation into the financial products that might achieve the customer's objectives;
 - c. failed to consider the merits of the customer rolling their superannuation account into an existing External Account or a superannuation product in which they did not have an account, rather than their BT Business Account or BT Lifetime Account;
 - d. failed to consider or compare the respective features and benefits of the superannuation accounts that were the subject of the rollover;
 - e. failed to make reasonable inquiries to obtain complete and accurate information where information was incomplete, including as to the insurance needs and existing insurance coverage of the customer;
 - f. failed to assess whether they had the necessary expertise to provide the advice and decline to provide the advice; and
 - g. may well have advised the customer to roll out of External Accounts which were better suited to the customer's personal objectives, financial situation and needs than their BT Lifetime Account or BT Business Account.

163. In the premises set out in the preceding paragraph, the Relevant Super Activation Staff failed to act in the best interests of the client, in contravention of section 961B of the Corporations Act.
164. By reason of the matters set out at paragraph 162 above, WSAL and BTFM contravened section 961K(2) of the Corporations Act.

Failure to do all things necessary to ensure financial services are provided efficiently, honestly and fairly - section 912A(1)(a) Corporations Act

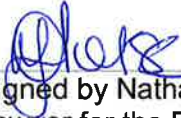
165. In providing financial product advice, including in relation to superannuation products, WSAL and BTFM were persons providing financial services within the meaning of section 766A of the Corporations Act.
166. WSAL and BTFM provided financial product advice to customers including:
- a. by way of the Super Activation team in the course of a number of 'campaigns' as set out at paragraphs 16 to 26; and
 - b. by way of the particular instances set out at paragraphs 27 to 155.
167. In ensuring that WSAL and BTFM did all things necessary to ensure that the financial services set out in paragraph 166 were provided honestly, efficiently and fairly within the meaning of s 912A(1), WSAL and BTFM were required to ensure that the Super Activation team:
- a. did not adopt a structure and approach to calls that was liable to lead to the Super Activation staff providing personal advice to customers to rollover their External Accounts into their BT Account; and/or providing such advice in circumstances where steps of the type set out above at paragraph 162(a) to (f) had not been taken;
 - b. did not take the steps referred to in paragraph (a):
 - i. regardless of the appropriateness of the BT Account to the customer, including whether that step involved them rolling out of one or more External Accounts which were better suited to the customer than their BT Account; and
 - ii. without having any or sufficient details of the customer's External Accounts; and/or
 - c. did not implement the approach set out in paragraphs (a) and (b) for the primary purpose and objective of generating an increase in FUM for WSAL, BTFM and/or the Westpac Group, and in doing so prefer their own interests and the interests of WSAL, BTFM and/or the Westpac Group in generating FUM to the interests of their customers.

168. By adopting and implementing the QM Framework, through training, encouraging, and directing Super Activation staff to follow the QM Framework in their calls with customers generally and in the Sample Campaigns specifically as set out at paragraphs 25 and 26 above, WSAL and BTFM:
- a. adopted and implemented a structure and approach to calls with customers in the Sample Campaigns that was liable to lead to the Super Activation staff:
 - i. providing personal advice to customers to rollover their External Accounts into their BT Account; and
 - ii. doing so without taking steps of the type set out above at paragraph 162(a) to (f); and
 - b. adopted and implemented that structure and approach:
 - i. regardless of the appropriateness of the BT Account to the customer, including whether that step involved them rolling out of one or more External Accounts which were better suited to the customer than their BT Account; and
 - ii. without having any or sufficient details of the customer's External Accounts;
 - c. adopted and implemented that structure and approach for the primary purpose and objective of generating an increase in FUM for themselves and the Westpac Group, and in doing so preferred their own interests and the interests of the Westpac Group in generating FUM to the interests of their customers.
169. By reason of the matters set out in paragraph 168, WSAL and BTFM failed to do all things necessary to ensure that the financial services being provided under their respective licences were being provided efficiently, honestly and fairly as set out above at paragraph 167.
170. In the premises set out in the preceding paragraph, WSAL and BTFM contravened section 912A(1)(a) of the Corporations Act.

Breach of financial services law – section 912A(1)(c) Corporations Act

171. By reason of the breaches set out at paragraphs 159, 161, 163 and 170, WSAL and BTFM contravened section 912A(1)(c) of the Corporations Act by failing to comply with financial services laws.

Date: 13 February 2017

A handwritten signature in blue ink, appearing to read 'N. Pietsch', is written over a horizontal line.

Signed by Nathalie Pietsch
Lawyer for the Plaintiff