



KordaMentha  
forensic

## Identification Report

Commonwealth Financial Planning Limited and Financial Wisdom Limited

Report of Compliance Expert

15 December 2015

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## Background Information and Disclaimer

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15 December 2015

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Dear Joanna and Louise,

**Identification Report of the Compliance Expert appointed under the Additional Licence  
Conditions of CFPL and FWL**

This Identification Report has been prepared by KordaMentha Forensic. It has been prepared pursuant to our appointment as Compliance Expert concerning the Additional Australian Financial Services Licence Conditions imposed on two subsidiaries of the Commonwealth Bank of Australia: Commonwealth Financial Planning Limited (CFPL) and Financial Wisdom Limited (FWL).

We would like to acknowledge the co-operation provided to us by both ASIC and the Commonwealth Bank of Australia in the preparation of this report, and the KordaMentha Forensic engagement team involved in preparing it.

Yours sincerely,



Owain Stone  
Partner  
Project Leader



John Temple-Cole  
Partner

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# A. Executive Summary

## Introduction

1. The Commonwealth Bank of Australia Group ('**CBA**') includes two financial planning entities known as Commonwealth Financial Planning Limited ('**CFPL**') and Financial Wisdom Limited ('**FWL**') ('**Licensee**' or '**Licensees**')<sup>1</sup>. Both Licensees are required to be licensed by the Australian Securities and Investments Commission ('**ASIC**').
2. On 19 August 2014, ASIC imposed, by consent, Additional Licence Conditions on the Licensees, under which we have been engaged to provide three written reports – the Comparison Report (published on 23 April 2015), this Identification Report and the Compliance Report (to be published following this Identification Report).
3. Our Comparison Report focussed on the Licensees' processes for reviewing and communicating with clients of 15 specific advisers ('**Identified Former Representatives**' or '**IFRs**') who were reviewed by the Licensees under an original compensation scheme ('**Compensation Program**'<sup>2</sup>), by comparison to the review and communication processes used in Project Hartnett<sup>3</sup>.
4. The Additional Licence Conditions are set out in Section B (at paragraph 36) in full, but as they are complex, we paraphrase them here for simplicity. Appendix B is a diagram providing an overview of the Additional Licence Conditions as they relate to our scope. In simple terms, the Additional Licence Conditions refer to steps undertaken and processes adopted by the Licensees in or around 2012, and subsequently, to:
  - a. Identify the clients of the 15 IFRs who were reviewed in the Compensation Program;
  - b. Identify advisers 'who exhibited risk attributes or behaviours which indicated the relevant representatives may have provided inappropriate advice' ('**Potential At Risk Representatives**' or '**PARRs**'), but who were not reviewed in the Compensation Program; and
  - c. Determine whether other advisers ought to have been assessed as part of the Compensation Program.
5. In this report we provide our opinions on whether the Licensees had a reasonable basis for adopting the above steps and processes. If we conclude that the Licensees did not have a reasonable basis, we are to provide an opinion on what additional steps and processes should reasonably be implemented by the Licensees.
6. In reaching our opinions, we considered each of the processes and steps taken by the Licensees, individually and as a whole, in the context of the circumstances at the time and without the benefit of hindsight. We have sought to identify and assess all relevant information reasonably available to the Licensees at that time, and whether and how this information was considered by them in making decisions in relation to each of the steps and processes. We also considered how the Licensees weighed the relative levels of risk identified for, and significance of, each matter in making these decisions.

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<sup>1</sup> For ease, we will refer throughout this report to 'the Licensee(s)', but this may refer, depending on the context, to CFPL, FWL, or CBA as a whole.

<sup>2</sup> Being the series of review and compensation activities undertaken around 2012 by the Licensees, as defined in Appendix A.

<sup>3</sup> Being a compensation program undertaken in 2011 and 2012 concerning two banned CFPL advisers.

7. We have considered the ordinary meaning of 'reasonable'. We acknowledge that processes of this type can never be expected to be perfect and should not be considered with hindsight. However we have also considered the circumstances at the time, including that the Licensees had previously identified certain high-risk advisers, which had led to the need for substantive compensation processes and to CFPL entering into an Enforceable Undertaking ('EU') with ASIC. Further, following the EU, both Licensees undertook additional review and remediation activities.

## Overall opinions

8. Having reviewed the processes and steps undertaken by the Licensees, in our opinion:
- The Licensees had a reasonable basis for the 'steps that the Licensee undertook to identify which of the clients of the [15] Identified Former Representatives were Affected Clients and therefore assessed as part of the Compensation Program' [Licence Condition 23(b)(i)];
  - The Licensees had a reasonable basis for the 'process that each Licensee undertook in or around July 2012 to identify representatives (other than the [15] Identified Former Representatives) who exhibited risk attributes or behaviours which indicated the relevant representatives may have provided inappropriate advice ('Potential at Risk Representatives') [Licence Condition 23(b)(ii)]; and
  - The Licensees did not have a reasonable basis for the 'additional processes that each Licensee undertook to determine whether any of those [51] Potential At Risk Representatives ought to have been assessed as part of the Compensation Program' [Licence Condition 23(b)(iii)].
9. As a result of the above findings, in our opinion the Licensees need to implement Additional Processes<sup>4</sup> to undertake further reviews of the advice provided by 17 PARRs where, in our opinion:
- There was not a reasonable basis for the process undertaken by the Licensees in relation to those PARRs; and
  - There has not been adequate subsequent review of advice provided by those PARRs prior to 2012 relating to their identified areas of potential concern.
10. We now discuss each of the above opinions in more detail.

## Licence Condition 23(b)(i)

11. This relates to the 'steps that the Licensee undertook to identify which of the clients of the Identified Former Representatives were Affected Clients and therefore assessed as part of the Compensation Program'.
12. We have sought information from the Licensees in relation to the steps and processes undertaken. This entailed the use of revenue data (to connect a client to an adviser receiving advice revenue such as fees and commissions) (hereafter referred to as '**Revenue Data**'), filtering out certain types of advice deemed by the Licensees to be not relevant or not of concern, and then undertaking a detailed assessment of the appropriateness of advice provided to the clients of those 15 IFRs.
13. Whilst not Revised Steps under the Additional Licence Conditions, there are a small number of steps where we are recommending that the Licensees now undertake minor rectification work, which they have agreed to do.

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<sup>4</sup> This arises from the processes we have reviewed relating to Licence Condition 23(b)(iii).



14. Having reviewed the steps and processes undertaken, in our opinion there was a reasonable basis for undertaking them and therefore there are no Revised Steps under this Licence Condition.

### Licence Condition 23(b)(ii)

15. This relates to the 'process that each Licensee undertook in or around July 2012 to identify representatives (other than the [15] Identified Former Representatives) who exhibited risk attributes or behaviours which indicated the relevant representatives may have provided inappropriate advice ('Potential at Risk Representatives').
16. The Licensees undertook a range of steps around July 2012 aimed at identifying whether there were advisers, other than the 15 IFRs, who may have provided inappropriate advice to clients and whose clients may have required compensation as a result. The Licensees refer to the steps around July 2012 as '**Project BIM**'.
17. Project BIM used, as a starting point, information gathered by the Licensees in relation to known 'at risk' advisers through other reviews, including an earlier project which had been running through late 2011 into early 2012. With the assistance of an external consulting firm ('**Consulting Firm 1**'), the information about these advisers, together with knowledge of other then known industry issues and risks, informed a series of data analytical profiling tests by adopting a statistical approach. The aim of Project BIM was to identify any 'unknown unknowns'; that is, additional advisers who had not already been identified by the Licensees who '*exhibited risk attributes or behaviours which indicated the advisers may have provided inappropriate advice*'. The Licensees and Consulting Firm 1 have informed us that such a sophisticated approach was not widely used in the industry at the time.
18. This analysis identified 71 advisers. The Licensees then 'scoped out' 20 of those advisers at meetings where Consulting Firm 1 was also in attendance. We have concluded that this specific step to scope out these 20 advisers was reasonable. This left 51 PARRs.
19. Whilst not Additional Processes under the Additional Licence Conditions, the Licensees have agreed to assess advice provided by two advisers to identify whether they gave inappropriate advice that led to client loss<sup>5</sup>.
20. Having reviewed the steps undertaken by the Licensees, individually and as a whole, to identify '*representatives (other than the [15] Identified Former Representatives)*', in our opinion, on balance, there was a reasonable basis for the overall process and there are therefore no Additional Processes in respect of this Licence Condition.

### Licence Condition 23(b)(iii)

21. This relates to the 'additional processes that each Licensee undertook to determine whether any of those Potential At Risk Representatives ought to have been assessed as part of the Compensation Program'.
22. The Licensees have put forward that, following the data analytics testing undertaken under Project BIM around July 2012 which identified 51 PARRs, they undertook reviews in 2012, and then another review process in 2014 (the '**PARR Reviews**'), of the advice provided by those advisers.
23. In our opinion, for 40 of these PARRs<sup>6</sup> there was not a reasonable basis for adopting the PARR Reviews to identify whether there were other representatives who ought to have been assessed as part of the Compensation Program, for the following reasons:

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<sup>5</sup> The specific behaviour of these advisers which has led to a need for further reviews is detailed from paragraph 120. These two advisers were not part of the 71 advisers identified in Project BIM.

<sup>6</sup> We explain the basis of our opinion that the reviews of the remaining 11 advisers were reasonable at paragraph 152.



- a. Given the PARRs were identified as being 'potentially at risk' using data from prior to 2012, in our opinion it was not reasonable that the 2012 and 2014 PARR Reviews failed to conduct reviews of advice provided in 2011 or earlier. This means that for many advisers, the 2012 and 2014 PARR Reviews did not extend back to the period of time when there were potential concerns about the advice provided by other advisers such as the 15 IFRs (i.e. from 2003);
  - b. Having engaged Consulting Firm 1 to conduct sophisticated data analytics testing, which led to the identification of these advisers as being '*potentially at risk*', the 2012 and 2014 PARR Reviews were limited:
    - i. The 2012 PARR Review only considered a representative sample of client files (six files, or less in some cases when less than six were available) for each adviser, which were not focussed on all of the relevant period of advice. In our opinion, this was insufficient for the purposes of reviewing advisers who had been identified as being '*potentially at risk*'. Therefore, a heightened and targeted review focussed on the relevant period of advice would have been appropriate; and
    - ii. The 2014 PARR Review was simply a review of BAU file reviews previously undertaken, followed by a further review of any advisers previously identified as 'high risk' in those reviews (which themselves had not identified any issues concerning these advisers' advice<sup>7</sup>), rather than being a heightened and targeted review which, in our opinion, would have been more suited to advisers who had been identified as being '*potentially at risk*'. The 2014 PARR Review did not involve undertaking any new or additional file reviews separate to usual supervision and monitoring processes.
24. We have also considered the impact of a data error relating to Project BIM which was identified shortly prior to finalisation of this report. This issue resulted in a number of advisers being mis-categorised as PARRs in the Project BIM testing, and other 'new PARRs' now being identified. This resulted in 43 PARRs now known to the Licensees<sup>8</sup>. In our opinion, for 31 of those 43 PARRs, there was no reasonable basis for the PARR Reviews<sup>9</sup>.
25. We also considered whether any of those 31 PARRs had been subject to adequate reviews outside the Compensation Program. We identified that 12 advisers had been subject to such adequate reviews. In addition, the Licensees are not reasonably required to undertake Additional Processes for a two further PARRs.
- Additional Processes*
26. As a result, the Licensees will need to undertake the Additional Processes set out at Section G to assess the advice provided by 17<sup>10</sup> PARRs to determine whether they should have been part of the Compensation Program.

<sup>7</sup> With the exception of four advisers who had a 'high' risk rating. See the table at paragraph 144 which shows the outcome for the 2014 PARR Reviews.

<sup>8</sup> Rather than the 51 PARRs identified as a result of Project BIM in 2012.

<sup>9</sup> Being (40 PARRs with no reasonable basis for the PARR reviews) – (12 PARRs removed as a result of the data error) + (4 'new PARRs' identified) – (1 'new PARR' where in our opinion there was a reasonable basis for the PARR Reviews) = 31 PARRs

<sup>10</sup> Being (31 PARRs now known to the Licensees where there was no reasonable basis for the PARR Reviews) – (12 PARRs where there had been subsequent adequate review) – (2 PARRs where no further reviews are possible) = 17 PARRs.

## B. The scope of the work to be undertaken by the Compliance Expert

### Scope of Additional Licence Conditions and our Engagement

27. On 19 August 2014, ASIC imposed, by consent, Additional Licence Conditions to the Australian Financial Services licences of the Licensees. The Additional Licence Conditions arose because of differences in the processes that the Licensees followed in Project Baringa compared to Project Hartnett.
28. KordaMentha Forensic is the Compliance Expert appointed by ASIC under clause 23 of the Additional Licence Conditions. The scope of our engagement is defined in the Additional Licence Conditions. We are to produce three reports referred to as:
  - a. Comparison Report (published by ASIC on 23 April 2015);
  - b. Identification Report (this report); and
  - c. Compliance Report (to be issued following this report).
  - d. ('the Engagement')
29. We have set out the scope of these reports below.
30. Appendix A is a glossary of defined terms.

### Scope of the Comparison Report and our opinions

31. The Comparison Report was published by ASIC on 23 April 2015<sup>11</sup>.
32. The Additional Licence Conditions refer to the 'Compensation Program'. The term 'Compensation Program' is not a reference to a separate 'program' of remediation activities undertaken by the Licensees. Rather, it is a term defined in the Additional Licence Conditions to refer to the specific subset of 15 IFRs, out of a total of 25 advisers considered under an assessment and compensation project called 'Project Baringa'<sup>12</sup>. Project Baringa itself was one of a number of assessment and compensation reviews undertaken by the Licensees.
33. The Comparison Report compared and identified the differences in the process steps undertaken by the Licensees for communicating with Affected Clients and providing for their participation in both the review process and the decision making process applied between Project Hartnett<sup>13</sup> and the Compensation Program.

### Our opinions

34. The Comparison Report identified certain process steps applied in Project Hartnett that were not applied in the Compensation Program ('**Additional Elements**').
35. The Additional Licence Conditions required the Licensees, amongst other things, to apply the Additional Elements identified in that report to applicable Affected Clients, and to communicate in writing with each of the Affected Clients, within 30 days of the Comparison Report, unless otherwise agreed with ASIC.

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<sup>11</sup> Refer to [Comparison Report](#)

<sup>12</sup> The other ten advisers are discussed at paragraph 56 below.

<sup>13</sup> Being a compensation program undertaken in 2011 and 2012. Refer to paragraph 50 for further information on Project Hartnett.

## Scope of this Identification Report

36. Appendix B is a diagram providing an overview of the Additional Licence Conditions as they relate to this Identification Report. As indicated there, our scope is as follows:
- a. Review:
    - i. The steps that the Licensee undertook to identify which of the clients of the [15] Identified Former Representatives were Affected Clients and therefore assessed as part of the Compensation Program [Licence Condition 23(b)(i)];
    - ii. The process that each Licensee undertook in or around July 2012 to identify representatives (other than the [15] Identified Former Representatives) who exhibited risk attributes or behaviours which indicated the relevant representatives may have provided inappropriate advice ('Potential at Risk Representatives') [Licence Condition 23(b)(ii)]; and
    - iii. The additional processes that each Licensee undertook to determine whether any of those [51] Potential At Risk Representatives ought to have been assessed as part of the Compensation Program' [Licence Condition 23(b)(iii)].
  - b. Provide a written report to ASIC and the Licensee ('Identification Report') outlining the Compliance Expert's opinion as to:
    - i. Whether there was a reasonable basis for each Licensee adopting the:
      - *Steps referred to in 23(b)(i) to identify which clients of the [IFRs] ought to have been assessed as part of the Compensation Program; and*
      - *Processes referred to in 23(b)(ii) and 23(b)(iii) to identify whether there were other representatives who ought to have been assessed as part of the Compensation Program.*
    - ii. To the extent that the Compliance Expert forms the opinion that there was not a reasonable basis for adopting the steps referred to in 23(b)(i), what revised steps should reasonably be implemented to identify which clients of the IFRs ought to have been assessed as part of the Compensation Program ('**Revised Steps**'); and
    - iii. To the extent that the Compliance Expert forms the opinion that there was not a reasonable basis for adopting the processes referred to in 23(b)(ii) or 23(b)(iii), what additional processes should reasonably be implemented to identify whether there were other representatives who ought to have been assessed as part of the Compensation Program ('**Additional Processes**').
37. In summary, this scope requires us to provide our opinion in relation to three key aspects:
- a. Whether there was a reasonable basis for the processes undertaken by the Licensees to identify the clients of the 15 IFRs in the Compensation Program. The process is referred to in this report as '**The steps to identify which clients of the IFRs were Affected Clients**'. Refer to Section D for details;
  - b. Whether there was a reasonable basis for the processes undertaken by the Licensees to identify whether advisers other than those 15 IFRs in the Compensation Program also exhibited risk attributes or behaviours which indicated the relevant advisers may have provided inappropriate advice. The process is referred to in this report as '**The process to identify the PARRs**'. Refer to Section E for details; and
  - c. Whether there was a reasonable basis for the additional processes that the Licensees undertook to determine whether any of the 51 PARRs ought to have been assessed as part of the Compensation Program. The process is referred to in this report as '**the Review of the PARRs**'. Refer to Section F for details.

38. Our scope is also to provide our opinions in relation to:
- Any steps which should reasonably be implemented to identify which clients of the IFRs ought to have been assessed as part of the Compensation Program (**'Revised Steps'**); and
  - Any processes which should reasonably be implemented to identify whether there were other representatives who ought to have been assessed as part of the Compensation Program (**'Additional Processes'**). Refer to Section G for details.

### Overview of our work in this Identification Report

39. We have undertaken the following main areas of work:
- Gathered and reviewed material which in our opinion is relevant to the scope of this report;
  - Held meetings with the Licensees, Consulting Firm 1 and the Licensees' internal and external legal representatives who attended those meetings, to gather information and explanations relevant to the scope of this report;
  - Considered the appropriate approach and standards to be applied in undertaking our work, and in assessing the steps and processes used by the Licensees, including discussing with ASIC and the Licensees various definitional and scope matters relevant to the Additional Licence Conditions;
  - Identified the steps which the Licensees undertook to identify Affected Clients of the IFRs, and considered whether there was a reasonable basis for these steps;
  - Identified the process which the Licensees undertook (including the data analytics work of Consulting Firm 1) to identify PARRs, including whether these PARRs should have been assessed as part of the Compensation Program, and considered whether there was a reasonable basis for this process;
  - Identified the processes which the Licensees undertook to review the 51 PARRs, and considered whether there was a reasonable basis for these processes;
  - Obtained, reviewed and assessed information and data relating to the above steps and processes, together with other reviews and assessments undertaken by the Licensees which in our opinion were relevant to our considerations;
  - Considered the need for any Revised Steps and Additional Processes, and what those should entail;
  - Held meetings with the Licensees and ASIC to present our findings, and considered submissions made by the Licensees<sup>14</sup> as to the factual accuracy of these findings; and
  - Prepared and finalised this report.
40. The work outlined above has required considerable detailed review, because of the number of individual advisers for which we have sought information and explanations and the fact that some of these advisers have been subject to a number of different reviews and assessments.

### Scope of Compliance Report

41. The Additional Licence Conditions require that the Licensees undertake further steps and processes, as identified by the Compliance Expert in the Comparison Report and Identification Report, by applying the Additional Elements, Revised Steps and Additional Processes. In our third report – the Compliance Report – we will provide our opinion as to whether the Licensees have done so.

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<sup>14</sup> ASIC allowed a process where the Licensees may make submissions in relation to the factual accuracy of our findings.

## Definitions in the Additional Licence Conditions

42. It is important in our opinion for readers of this report to understand the definitions of the key terms contained in the Additional Licence Conditions, which act to define the scope of this Identification Report.
43. These definitions are set out in the Glossary in Appendix A.

## Information relied on

44. The statements and opinions contained in this report are given in good faith, and to a large extent depend upon the accuracy and completeness of information and documentation provided to us by the Licensees, and explanations provided to us by the Licensees' employees, Consulting Firm 1, and the Licensees' legal representatives. KordaMentha Forensic does not warrant the accuracy or reliability of any of the information supplied to it. The scope of this Identification Report does not extend to testing the accuracy and completeness of the information provided to us. However, to satisfy ourselves that the information provided to us was suitable for the purposes of this report, we undertook various steps to assess, question and consider the information provided to us, as described at paragraph 39 above.
45. This report has been prepared by KordaMentha Forensic with care and diligence.

## References to Adviser names

46. Much of the information provided to us concerns and identifies the names of individual advisers. Apart from two advisers dealt with under Project Hartnett (Mr Don Nguyen and Mr Anthony Awkar, who will be referred to in the remainder of this report as '**Hartnett Adviser 1**' and '**Hartnett Adviser 2**'), we have anonymised the names of the individual advisers for legal reasons. We have therefore used an 'Adviser Number' for each adviser referred to by us, consistent with the approach adopted in the Comparison Report.

## C. Background concerning the Compensation Program and the Licensees' other advice reviews

### Introduction

47. The scope of this report requires us to assess the steps taken to identify Affected Clients of the 15 IFRs who were included in the Compensation Program, and to assess the reasonableness of the processes that were undertaken to identify whether other advisers should have been included in the Compensation Program.
48. The term 'Compensation Program' is not a reference to a separate 'program' of remediation activities undertaken by the Licensees. Rather, it is a term defined in the Additional Licence Conditions to refer to the remediation of a specific subset of 15 IFRs, out of a total of 25 advisers considered under 'Project Baringa'.
49. Understanding which advisers were covered by which review program is complex and therefore it is necessary to provide some context as to why these 15 IFRs were included in the definition of the Compensation Program, whereas others were not.

### Project Hartnett, the Enforceable Undertaking and Project Baringa

50. In September 2008, CFPL commenced investigations into potentially inappropriate advice given by one of its financial planners, Hartnett Adviser 1. CFPL undertook activities referred to as 'Project Hartnett' to assess and compensate clients who suffered losses as a result of inappropriate advice from this adviser<sup>15</sup>.
51. On 12 July 2010, CFPL lodged a Significant Breach Notification ('**Breach Report**') with ASIC in relation to the conduct of an ex-CFPL adviser, Hartnett Adviser 2<sup>16</sup>. On 17 December 2010, CFPL informed ASIC that the remediation of that adviser's clients would be included in the scope of Project Hartnett. As a result, the remediation activities under Project Hartnett related to two advisers.
52. On 25 October 2011, ASIC accepted an Enforceable Undertaking ('**EU**') from CFPL, which was focussed on conducting a comprehensive review of the provision of financial services, including its risk management framework, financial advice and the monitoring and supervision of its representatives. The EU also included the review of the advice given to clients by an additional 16 CFPL advisers who were the subject of Breach Reports submitted by CFPL to ASIC in the period 1 July 2008 to 25 October 2011.
53. Pursuant to the EU, CFPL undertook to review and, if appropriate, compensate clients who were adversely impacted as a result of inappropriate advice being provided to them by these 16 advisers subject to Breach Reports. The processes under the EU are referred to as the '**Past Business Review**'. In addition to CFPL's commitments under the EU, FWL also undertook a review of FWL representatives, outside of the EU, for the purposes of identifying any client loss.
54. The Licensees further expanded their remediation activities and subsequently included an additional nine advisers<sup>17</sup>. The compensation activities relating to the 16 advisers in the Past Business Review, and the additional nine advisers (a total of 25 advisers) were, from around 20 April 2012, given the name 'Project Baringa'.

<sup>15</sup> See [media release](#) dated 9 March 2011 regarding the banning of this adviser.

<sup>16</sup> See [media release](#) dated 30 April 2012 regarding the banning of this adviser.

<sup>17</sup> Three from CFPL and six from FWL.



55. The 27 advisers<sup>18</sup> covered by Project Hartnett and Project Baringa can be shown as follows:

Definition	Adviser number																										
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27
Project Hartnett		2																									
EU/Past Business Review																											
Additional CFPL advisers																											
Additional FWL advisers																											
Project Baringa																											

56. The Additional Licence Conditions refer to the 'Compensation Program' rather than Project Baringa. This is because the Compensation Program is defined by the Additional Licence Conditions as being the compensation activities relating to the 15 IFRs who are a subset of the 25 advisers considered in Project Baringa. A further 10 advisers were part of Project Baringa, but were specifically excluded from the definition of Compensation Program and IFR, because:

- In the case of nine advisers<sup>19</sup>, the Licensees undertook file reviews and determined that no compensation was payable, therefore the Licensees did not offer compensation to any of their clients; and
- For one adviser, it was agreed with ASIC that because of extenuating circumstances, the adviser would be dealt with in the same manner as the Additional Licence Conditions, but not be included in the definition of IFRs.<sup>20</sup>

## Prior work undertaken by the Licensees to identify client loss (Project AARK)

- Work had previously been undertaken by the Licensees to estimate the possible financial exposure it faced from client compensation payments for the purpose of its financial reporting<sup>21</sup>. This work was called Project AARK, which ran from late 2011 into early 2012.
- While Project AARK is not specifically referred to in the scope of this report (in the sense that the Additional Licence Conditions do not directly ask us to consider this project), it is relevant because some of the information gathered by the Licensees in relation to known 'at risk' advisers (or 'known knowns') through Project AARK was used as a starting point for Project BIM.
- Project AARK is also relevant because some of the advisers who were considered in Project AARK were subsequently included within Project Baringa and also the Compensation Program.
- As set out in detail in Appendix C, Project AARK involved:
  - A process to review 63 advisers, who were selected because they had been the subject of Breach Reports in the period since 2008, or were part of the then current target pipeline for the Licensees' investigations team;

<sup>18</sup> Being the 25 advisers in Project Baringa, and Hartnett Advisers 1 and 2.

<sup>19</sup> These were not the same nine advisers as referred to in paragraph 54.

<sup>20</sup> We have been informed that both ASIC and the Licensees were engaging with clients of this adviser at the time the Additional Licence Conditions were agreed. In light of this, ASIC and the Licensees considered that to delay communications with these clients while the Comparison Report was prepared (as would be required under the Additional Licence Conditions if this adviser was within the definition of the Compensation Program) would adversely affect the clients of this adviser. The clients of this adviser are not prejudiced by the adviser's exclusion from the definition of Compensation Program.

<sup>21</sup> This work is the review referred to in paragraph 53.



- b. From this body of 63 advisers, 32 advisers were excluded using a 'triage' process, based on a desktop review of known information to assess advisers considered 'at risk' of providing inappropriate advice resulting in client loss:
- i. Eight were excluded because, although a provisioning review was required, no files were available for review because the contractual arrangements with FWL advisers were such that FWL itself did not keep copies of client files, and once an adviser had left the Licensee, FWL did not contractually have a right to obtain customer files unless there was a specific complaint about that adviser<sup>22</sup>. ASIC informs us that whether the Licensees were legally required to ensure they could access the relevant client files prior to 25 October 2010, for advisers whose authorisation by the relevant Licensee had ceased, is not free of doubt. In our opinion, it was therefore reasonable for the Licensees to conclude that they had taken reasonable steps to obtain copies of the client files, which were unsuccessful;
  - ii. 19 were excluded because the Licensees considered they were unlikely to have provided advice which would have resulted in financial losses to their clients (described by the Licensees as 'compliance issues not impacting client outcomes'); and
  - iii. Five advisers were excluded because they were already the subject of other remediation processes.
- c. A file review of up to 25 files was undertaken for each of the remaining 31 advisers, by a combined team of the Licensees' staff and Consulting Firm 1. This resulted in a risk rating being assigned to each adviser, with an estimate of compensation exposure where appropriate.
61. As a result of this process, a provision for estimated compensation was recommended for 14 of the 31 advisers. They were also recommended for further review, such as further client file reviews, to determine possible compensation due to clients. Of those 14 advisers:
- a. 12 were subsequently included within what was later defined as the 'Compensation Program'<sup>23</sup>; and
  - b. Two advisers were identified for further review through other BAU processes<sup>24</sup>.
62. The 17 remaining advisers were not placed into a particular remediation program, although they were investigated to differing degrees through BAU processes. We discuss these advisers further in Section E.
63. Further details of this process are set out in Appendix C. We will refer to Project AARK further when considering Project BIM which was used by the Licensees to identify PARRs.

## Nine Past Business Review Advisers

64. As discussed at paragraph 56.a, nine advisers ('**Nine PBR Advisers**') had been included in Project Baringa, but excluded from the Compensation Program because the Licensees ultimately determined through Project AARK that no provision for financial loss was required to be made for them as no client loss was identified.

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<sup>22</sup> In which case we understand that those client files could be obtained from the adviser.

<sup>23</sup> These 12 advisers are therefore 12 of the 15 IFRs.

<sup>24</sup> Adviser 83 (who was authorised by another CBA licensee) and Adviser 86 (a CFPL adviser).

65. The Nine PBR Advisers were, however, included in the Past Business Review under the EU. Accordingly, CFPL was required to report to ASIC under the EU about its review of these advisers. As the review of these advisers did not subsequently result in any requirement to remediate any of their clients, they were included in Project Baringa for reporting reasons only. We discuss whether there was a reasonable basis for this outcome at paragraph 125.
66. Further, as discussed in our Comparison Report<sup>25</sup>, it was agreed with ASIC that one additional adviser (Adviser 3) would be dealt with in the same manner as the Additional Licence Conditions, but because of extenuating circumstances would not be included in the definition of Identified Former Representative<sup>26</sup>. This adviser was therefore not included in the Compensation Program.

## Composition of advisers in the Compensation Program

67. As explained above, the term 'Compensation Program' is defined in the Additional Licence Conditions to refer to 15 IFRs, a specific subset of the 25 advisers considered under Project Baringa.
68. The composition of advisers in the Compensation Program is based on the definitions in the Additional Licence Conditions:
- The Compensation Program definition includes only advisers who were IFRs; and
  - The IFRs definition means a list of 15 advisers provided by the Licensees to ASIC as being advisers whose advice needed to be reviewed *and* one or more of their clients compensated.
69. The consequence of the Additional Licence Conditions is that if an adviser was reviewed under Project Baringa and no loss to their clients was identified, then that adviser was not considered an IFR because none of that adviser's clients require compensation.
70. Extending the diagram from above, the advisers considered across Project Hartnett, Project Baringa and in the Compensation Program can be summarised as follows:

Definition	Adviser number																										
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27
Project Hartnett	2																										
EU/Past Business Review (CFPL)																											
Additional CFPL advisers																											
Additional FWL advisers																											
Project Baringa																											
Inclusion/exclusion in definition of Identified Former Representative																											
Specific exclusion as agreed with ASIC																											
No compensation paid, so not an IFR																											
Included, although no compensation was paid																											
Compensation Program as defined																											

<sup>25</sup> Paragraph 71a of the Comparison Report.

<sup>26</sup> As discussed at footnote 20, the clients of this adviser are not prejudiced by the adviser's exclusion from the definition of Compensation Program.

71. This Identification Report identifies whether or not there was a reasonable basis for the processes that the Licensees undertook to identify whether there were advisers, other than the 15 IFRs, who should have been included in the Compensation Program. This includes the consideration of the 10 advisers who were in Project Baringa but were not one of the 15 IFRs, together with other advisers who ought, in our opinion, to have been assessed.

## D. The steps to identify which clients of the IFRs were Affected Clients

### Introduction

72. The Additional Licence Conditions require us to consider if the processes the Licensees undertook to identify the Affected Clients of the 15 IFRs had a reasonable basis.

### Affected Clients

73. Affected Clients are defined in the Additional Licence Conditions as clients of IFRs, except for:
- Clients where the Licensee has no record of advice having been provided;
  - Groups of clients of IFRs as agreed with ASIC where it is not necessary to contact those clients for valid reasons (for example, where the only record of a client relationship involves a client having insurance cover that appears to have been obtained prior to the IFR giving advice);
  - Clients where returned mail is received, and after making appropriate efforts to contact the Affected Clients, the Licensee was unable to do so; or
  - Clients who were not included in the Compensation Program as a result of analysis conducted by the Licensee which indicated that clients did not receive the type of advice from the IFR that was the subject of concern.
74. Specifically, the Additional Licence Conditions state that:
- We are to review:
75. The steps that the Licensee undertook to identify which of the clients of the Identified Former Representatives were Affected Clients and therefore assessed as part of the Compensation Program [Licence Condition 23(b)(i)]; and
- We are to provide our opinion on whether there was a reasonable basis for the Licensee adopting the steps referred to in condition 23(b)(i) 'to identify which clients of the IFRs ought to have been assessed as part of the Compensation Program [Licence Condition 23(c)(i)(A)]
76. In this section, we review the steps taken by the Licensees and provide our opinion on whether they had a reasonable basis.

### The steps taken by the Licensees

77. As part of our scope, we have sought information from the Licensees as to the steps taken to identify which clients of the IFRs were Affected Clients. The Licensees have put forward that the steps entailed the use of Revenue Data (to connect a client to an adviser receiving advice revenue, such as fees and commissions, for advice provided), filtering out certain types of advice deemed by the Licensees to be not relevant or not of concern, and then undertaking a detailed assessment of the appropriateness of advice provided to the clients of those 15 IFRs.
78. The scope of the Additional Licence Conditions does not include considering the steps undertaken in the remediation assessment process to determine the amount of compensation that the Affected Clients would be entitled to i.e. we have not been engaged to review the reasonableness of the assessment of each Affected Client's case or the conclusions by the Licensees whether or not to offer compensation to an Affected Client and the amount of that compensation (if any).

79. Based on our analysis and discussions with the Licensees, review of relevant documents and information, and walk through of systems, we have identified 14 significant steps undertaken by the Licensees. With some exceptions for specific advisers, the steps taken by each of the Licensees were broadly similar.
80. We set out the detail of each of the 14 steps in Appendix D1, and provide a summary below.

### Summary of steps taken by the Licensees

81. The 14 steps fall into two major stages:
- Identification Process - how all clients of the 15 IFRs were identified (steps 1 to 6 in Appendix D1); and
  - Scoping Process – the process used to ‘scope out’ certain clients to arrive at the Affected Clients (steps 7 to 14 in Appendix D1).

#### Identification Process

82. The Licensees did not, at the time, have a complete central record of clients who had received advice from their advisers and so could not readily identify all the clients who had received advice from each IFR.
83. The Licensees did however hold records of advice revenue (such as fees and commissions) allocated to each adviser for advice provided and implemented. The Licensees’ analysis found that this Revenue Data provided the most complete information available when compared with alternative data from the Licensees’ systems. The Licensees therefore decided to use this Revenue Data to identify the policies<sup>27</sup> written by the adviser, on the central premise that all advice which was implemented by a client would generate revenue for the adviser.
84. By interrogating the Licensees’ systems, and extracting Revenue Data, the Licensees were able to identify the policies which had generated revenue related to clients of each IFR. A list of policies was given to each product provider (both internal and external) recommended to a client by an adviser, with a request for the relevant customer information.
85. The customer information was then used to generate a list of clients who had received advice from the adviser.
86. Based on customer information, some clients were merged into a single ‘case’ - most commonly where advice was given jointly to a married couple. Therefore a ‘case’ can relate to one or more clients.

#### Scoping process

87. Having identified all clients of IFRs, the Licensees removed certain clients. Broadly, the clients excluded were those who:
- Had been inherited from another adviser (**Inherited Clients**) and had not received advice from the IFR;
  - Had received only insurance-related advice where insurance advice was not the subject of concern for that particular IFR;
  - Had products which were not offered during the Authorisation Period;
  - Had a specific reason to exclude the type of advice as it was not the subject of concern for a particular IFR; or

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<sup>27</sup> i.e. an insurance policy, superannuation account or other wealth management product.

- e. Having assessed the case, the Licensees determined the client had not received advice from the IFR.
88. All remaining clients were Affected Clients of the 15 IFRs and were assessed as part of the Compensation Program.

## Our Opinion

89. In our opinion there was a reasonable basis for the Licensees adopting the steps referred to in Licence Condition 23(b)(i) to identify which clients of the IFRs were Affected Clients and assessed as part of the Compensation Program.
90. The reasons for this opinion are:
- a. Early in Project Baringa, the Licensees considered using information other than Revenue Data to identify the clients of IFRs. However, they found that Revenue Data gave the most complete information;
  - b. We 'walked through' the processes of how the Licensees went from the name of each IFR to the identification of a unique set of cases for each IFR (steps 2 to 6 in Appendix D1) and found that they had a reasonable basis;
  - c. For the Scoping Process, we reviewed each step and found that there was a reasonable basis for these because the Licensees only scoped out cases where:
    - i. The IFR had not provided advice to the client (e.g. an Inherited Client);
    - ii. The product related to a period before the Authorisation Period; or
    - iii. There was a specific reason for the cases to be removed for an individual adviser and that the reason had a reasonable basis, for example, where advice was not of the type which was the subject of concern for a particular IFR and so the client did not fall under the definition of Affected Client under the Additional Licence Conditions.
91. As outlined above in paragraph 78, the scope of our review does not include considering the steps undertaken in the remediation assessment process which was subsequently performed in relation to the Affected Clients under the Compensation Program.

### *Minor rectification work*

92. Whilst not Revised Steps under the Additional Licence Conditions, as a result of the preparation of this report, the Licensees have agreed to<sup>28</sup>:
- a. Review up to 18 cases for Adviser 27 for certain products which were inadvertently scoped out. The scoping was to exclude cases with only these 'legacy'<sup>29</sup> products from before February 2003. Up to 18 cases were inadvertently scoped out during this process; and
  - b. Review a further 10 cases for Adviser 27 which were scoped out because they contained policies which were closed before 2005 and so the advice resulting in those policies had not occurred in the previous seven years. The Licensees did not consider these cases because there was no obligation on that adviser to retain client files after seven years. However, no similar seven year time limit was applied to other IFRs and so it was not consistent for the Licensee to scope out these cases.

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<sup>28</sup> In these reviews, the Licensees have agreed that any clients identified as having received inappropriate advice that led to client loss will be treated in the same way as Affected Clients under the Additional Licence Conditions.

<sup>29</sup> Legacy products are products which are no longer recommended by the Licensees.

## E. The process to identify the PARRs

### Introduction

93. The Additional Licence Conditions in relation to this area of work require us to review:
- The process that each Licensee undertook in or around July 2012 to identify representatives (other than the [15 IFRs]) who exhibited risk attributes or behaviours which indicated the relevant representatives may have provided inappropriate advice ('Potential at Risk Representatives') [Licence Condition 23(b)(ii)]; and
  - Provide a written report outlining our opinion as to whether 'there was a reasonable basis for each Licensee adopting the process referred to in 23(b)(ii) to identify whether there were other representatives who ought to have been assessed as part of the Compensation Program'.
94. The process referred to in Licence Condition 23(b)(ii) is Project BIM, which was used to identify PARRs, as discussed later in this section.
95. The overarching purpose of Licence Conditions 23(b)(ii) (and 23(b)(iii), as discussed in Section F) is to identify whether other advisers (other than the 15 IFRs) ought to have been assessed as part of the Compensation Program.

### Project BIM

96. We have sought information from the Licensees as to the process undertaken as referred to in Licence Condition 23(b)(ii). The Licensees undertook a range of steps around July 2012 aimed at identifying whether there were advisers, other than the 15 IFRs, who may have provided inappropriate advice to clients and who may have required compensation as a result. The Licensees refer to the steps around July 2012 as 'Project BIM'.
97. Project BIM involved engaging Consulting Firm 1 to undertake data analytics testing to help identify 'high risk planners' based on a set of risk criteria to be agreed with [the Licensees] within the financial planning network through the use of advanced data analytics and reviews of files to the extent necessary'<sup>30</sup>.
98. We understand 'high risk planners' to mean advisers who exhibited risk attributes or behaviours which indicated the relevant representatives may have provided inappropriate advice.
99. Consulting Firm 1 undertook this process between March 2012 and July 2012, which involved:
- 'Compiling a comprehensive list of potential risks in the advice business across advice licensees... and working through the comprehensive list with...[the Licensees] to determine the potential latent issues applicable to ...[the Licensees] and hence the scope of assessment activities within risk appetite';
  - Assessing potential latent issues agreed on [with the Licensees] to identify whether a valid concern exists and applying investigative or analytical techniques to size and financially model potential issues;
  - Identifying 'high risk' planners based on a set of risk criteria to be agreed with [the Licensees] within the financial planning network through the use of advanced data analytics and reviews of files to the extent necessary';
  - Proposing remediation plans with [the Licensees] to address issues identified where required'.

<sup>30</sup> This is an extract from the engagement schedule between Consulting Firm 1 and the Licensees, although we understand from the Licensees that all file reviews were undertaken by the Licensees' staff following Project BIM. These were not performed by Consulting Firm 1.



100. Consulting Firm 1 undertook two types of data analytics testing:  
*'Deductive Testing'*
101. The purpose of this testing was to identify advisers with clients who had a *'high inherent risk of receiving poor quality advice'* based on the advice strategy the clients received. These advice strategies were determined by having regard to the analysis of risks and issues described in paragraph 99.a and the data that was readily available and usable for the Deductive Testing performed.
102. In total the Deductive Testing identified 44 advisers to potentially become PARRs<sup>31</sup>.  
*'Inductive Testing'*
103. The purpose of this testing was to identify advisers who were potentially at risk of providing inappropriate advice, but were previously unknown to the Licensees ('unknown unknowns') and who shared similar attributes to certain IFRs and other known advisers who may have provided inappropriate advice.
104. The Inductive Testing involved comparing a broad range of attributes of the known advisers to the attributes of all other Licensee advisers. The approximately 800 attributes included such attributes as tenure at the Licensee, adviser remuneration, adviser location and products recommended.
105. The Inductive Testing was conducted as an additional way of ascertaining PARRs who may not have been identified by the Deductive Testing.
106. In total the Inductive Testing identified 29 advisers to potentially become PARRs (two of whom were also identified in the Deductive Testing<sup>32</sup>).
107. The Deductive and Inductive Testing therefore resulted in 71 advisers<sup>33</sup> in total to potentially become PARRs.

## Project BIM outcomes

108. The Project BIM data analytics testing identified the abovementioned 71 advisers who had a higher than normal chance of potentially providing inappropriate advice. A process to 'scope out' certain advisers was then undertaken as a 'sense check' by the Licensees, with the involvement of Consulting Firm 1<sup>34</sup>, as a result of which the following advisers were scoped out:
- a. 11 advisers who were already being remediated or reviewed through other BAU processes; and
  - b. Nine other advisers where the Licensees and Consulting Firm 1 undertook a 'sense check', and assessed those advisers not to be at risk. This sense check included:
    - i. Examining any previous complaints, Breach Reports and Advice Assurance reviews (**'BAU AA reviews'**);
    - ii. Examining the customer demographics of each adviser to determine whether it might explain the behaviours identified in the data;
    - iii. Performing additional analytics on data regarding complaints and BAU AA reviews to identify whether other concerns were noted for the listed advisers; and

<sup>31</sup> The number of advisers and PARRs in this section refers to the results of the data analytics testing undertaken during Project BIM in 2012, and does not include changes to the number of PARRs as a result of the data errors identified in 2015 during the finalisation process of this report, as described in Section F at paragraph 170.

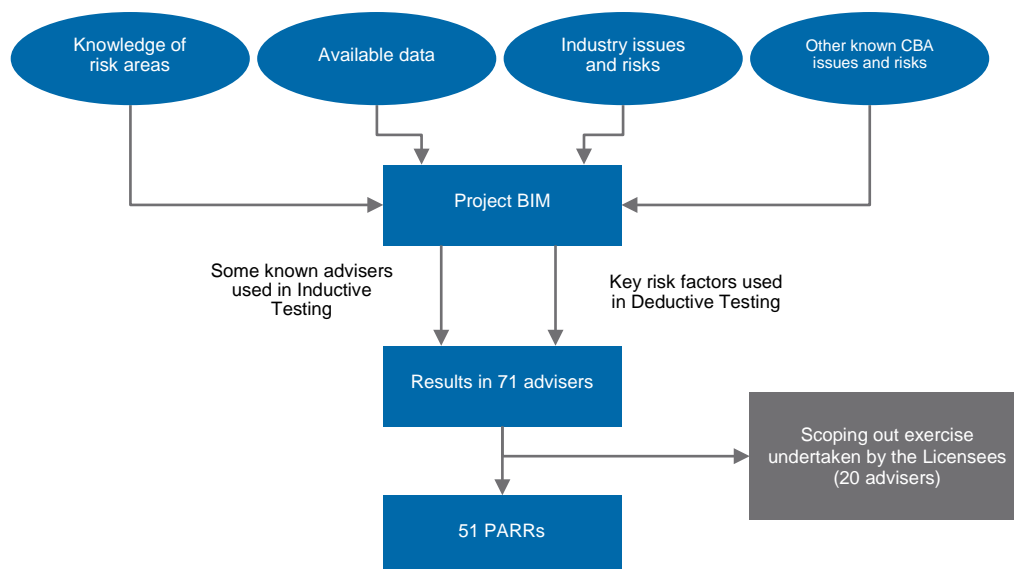
<sup>32</sup> Adviser 27 and Adviser 117.

<sup>33</sup> Being 44 advisers identified from Deductive Testing, plus 29 advisers identified from Inductive Testing, less 2 advisers identified in both tests.

<sup>34</sup> Consulting Firm 1's involvement included attendance and challenge by Consulting Firm 1 at workshops and/or meetings with the Licensees' Advice Leadership team. The Licensees were responsible for all decisions regarding the scoping out of advisers.

iv. Comparing benchmarks with those advisers identified through Project AARK.

109. This process is set out in the chart below.



110. A detailed diagram of Project BIM is set out in Appendix E2.

## Key Areas

111. As part of our work to consider Licence Condition 23(b)(ii) (i.e. whether Project BIM had a reasonable basis), we have reviewed a significant volume of information provided by the Licensees and Consulting Firm 1, and conducted a large number of meetings with both. As part of that work we have considered the steps in Project BIM, individually and as a whole, in order to determine whether the process had a reasonable basis.

112. In particular, we have considered two key areas:

- a. The information regarding certain advisers available to the Licensees at the time of Project BIM, as discussed at paragraph 113. While we conclude that on balance the process undertaken by the Licensees was reasonable, the Licensees have agreed to assess the advice of two further advisers to identify whether those advisers gave inappropriate advice that led to client loss. This work is not an Additional Process under the Additional Licence Conditions; and
- b. Data limitations in relation to Project BIM. As discussed at paragraph 128, we conclude that the Licensees had a reasonable basis in regard to this aspect.

### Known Advisers in 2012

113. Project AARK was the process undertaken by the Licensees from late 2011 into early 2012 which provided information used as one of the bases for Project BIM, as referred to in Section C above and in Appendix C.

114. Project AARK commenced with a desktop review of 63 advisers, who had been identified by the Licensees through Breach Reports and other internal monitoring systems within the Licensees, including where there was assessed to be a potential for client loss. Under Project AARK, ultimately a detailed review of 31 advisers was undertaken, and information from Project AARK was used in the data analytics testing in Project BIM.

115. We made numerous enquiries concerning these 63 advisers, and undertook an extensive review of a large number of documents<sup>35</sup> to consider the behaviours which had led these advisers to be identified for review. In particular we focussed on advisers who were not subject to a detailed review in Project AARK as their conduct had been deemed by the Licensees to relate to ‘*compliance issues not impacting client outcomes*’ (i.e. issues that relate to compliance with legislation or the Licensees’ requirements, but not to inappropriate advice provided to clients).
116. In our opinion 16 of the 63 advisers exhibited, to differing degrees, indicators of ‘dishonest or intentionally unfair behaviour’. This is a term which was used as part of the methodology in Project AARK, where if there was evidence of such behaviour in the file reviews in that project, a review of all clients would have been required<sup>36</sup>. Examples of this behaviour include:
- a. Signature forgery (three advisers, including one instance of an adviser photocopying a client signature, plus instances of alleged forgery for another adviser);
  - b. File manipulation and alteration (five advisers); and
  - c. Diverting client funds as security for a margin loan account taken out in the adviser’s own name (one adviser).
117. Whilst we recognise that these indicators do not, or at least may not, directly relate to client loss, in our opinion the indicators of ‘dishonest or intentionally unfair behaviour’ suggest that an adviser may have an increased likelihood of providing ‘inappropriate advice’ potentially leading to client loss.
118. In our opinion, the Licensees had information available to them at the time of Project BIM to suggest that these 16 advisers exhibited, to differing degrees, attributes of ‘dishonest or intentionally unfair behaviour’.
119. We now consider whether the Licensees undertook adequate review of these 16 advisers.
- Known advisers reviewed outside of the Compensation Program*
120. The abovementioned 16 advisers were not part of the Compensation Program, however they were the subject of other reviews outside of the Compensation Program. These 16 advisers had undergone various types of review, where:
- a. The adviser had been ‘triaged out’ from Project AARK as the issue was deemed to be a ‘compliance issue not impacting client outcomes’, however was reviewed through BAU processes;
  - b. The adviser was not reviewed in Project AARK as files were not available, but was reviewed (to a greater or lesser extent) through BAU processes; or
  - c. The adviser was reviewed in Project AARK but the Licensee determined that there was no client loss and therefore no compensation was payable (the Nine PBR advisers, as defined in Section C<sup>37</sup>).
121. We have therefore considered the adequacy of these reviews to consider whether each of these advisers should have had further file reviews to assess whether they should have been part of the Compensation Program.

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<sup>35</sup> Including Breach Reports, Targeted review reports, Project AARK-related documents and various other review and investigation reports prepared by the Licensees.

<sup>36</sup> A Project AARK report states that the factors considered are ‘indicators of fraud’ and ‘intentional misrepresentation’.

<sup>37</sup> The Past Business Review is explained in paragraph 53.

122. Out of the abovementioned 16 advisers, we have concluded that nine advisers had been the subject of adequate review outside of the Compensation Program, and that these reviews were completed prior to Project BIM<sup>38</sup>. We have determined this through considering the approach and breadth of review of those advisers taken by the Licensees in relation to previous investigations and Breach Reports, including whether clients were contacted as part of the process.
123. Out of the remaining seven advisers (where an adequate review outside of the Compensation Program was not completed prior to Project BIM), we have concluded that:
- a. One adviser has subsequently been the subject of adequate review outside of the Compensation Program since 2012, therefore no further review is required;
  - b. For four advisers, no information was, or is now, available for further review, because of the contractual arrangements in relation to FWL. In our opinion, the reviews of these advisers prior to 2012 were limited. However, ASIC informs us that whether the Licensees were legally required to ensure they could access the relevant client files prior to 25 October 2010, for advisers whose authorisation by the relevant Licensee had ceased, is not free of doubt. In our opinion it was therefore reasonable for the Licensees to conclude that they had taken reasonable steps to obtain copies of the client files, which were unsuccessful, and no further review of these advisers is therefore possible.
  - c. This leaves two advisers who in our opinion still require further review to determine whether they should have been part of the Compensation Program.
    - i. Adviser 80: There was evidence of an instance of misleading marketing material targeted at bankrupt clients promising 65% return over five years. The Licensees were unable to review client files as the adviser left prior to the review, however the Licensees did review documentation of 18 of the advisers' cases in 2012 following that adviser's departure. Based on that limited review, there was no inappropriate advice provided; and
    - ii. Adviser 114: A Breach Report in June 2010 records a client's signature was photocopied on a 'Transaction without Advice' document. The Licensee was satisfied that this was a one off and isolated incident but cannot provide any further information regarding this. We have separately seen a reference within the Licensee's documents to the adviser arranging funds to be released from a joint account without both account holders' signatures, but the Licensees are unable to identify any further information in relation to this issue.
124. The Licensees have agreed to assess advice provided by these two advisers to identify whether they gave inappropriate advice that led to client loss. These reviews are not Additional Processes under the Additional Licence Conditions. In the context of the scale and breadth of Project BIM, in our opinion, on balance the overall process was reasonable.

#### *Nine PBR Advisers*

125. At paragraph 64 we discussed the Nine PBR advisers who were included within Project Baringa for reporting purposes but excluded from the Compensation Program because the Licensee determined that there was no client loss, and therefore no compensation was payable.
126. Three of the Nine PBR advisers were included in the 16 advisers referred to above, as in our opinion they exhibited indicators of 'dishonest or intentionally unfair behaviour'. However, we concluded that each of those three advisers had been the subject of adequate review outside of the Compensation Program prior to 2012.

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<sup>38</sup> Through BAU processes.

127. We have also considered the remaining six of the Nine PBR Advisers. We have concluded that they did not exhibit indicators of 'dishonest or intentionally unfair behaviour' and had been the subject of adequate review outside of the Compensation Program.

### Data Limitations

128. We have undertaken a number of discussions with the Licensees and Consulting Firm 1 in respect of the data limitations of Project BIM, which include:
- No data specifically relating to insurance advice was used for testing, either because the Licensees, together with Consulting Firm 1, determined that the data was not available in a format which could be used for data analysis, or that testing for inappropriate advice in relation to insurance advice could not be undertaken through data analytics testing; and
  - A number of other data limitations regarding non-insurance data<sup>39</sup>, including the inability to obtain data in a suitable form within the timeframe set for Project BIM.

129. We have considered the impact of these limitations below.

#### *Insurance data limitations*

130. Insurance areas were identified as a 'medium' correlation risk of providing inappropriate advice in Project AARK. Insurance areas were therefore risk factors identified as potentially leading to inappropriate advice, and we have undertaken a number of discussions and made enquiries with the Licensees and Consulting Firm 1 in relation to whether there was a reasonable basis not to undertake the testing given these data limitations.
131. In particular, we have considered whether the testing could have been undertaken given a longer time frame for Project BIM (i.e. without project time limits being present).
132. On balance, although Consulting Firm 1 had rated insurance testing as a high priority when planning Project BIM, the identified difficulties<sup>40</sup> meant it was reasonable for the Licensees to determine not to undertake the data analytics testing on insurance data, as insurance risk was rated 'medium' correlation of inappropriate advice, rather than 'strong' correlation (which was tested via Deductive Testing).
133. In addition, these data limitations were considered at the time of Project BIM, and discussions between the Licensees and Consulting Firm 1 were held as to whether it was possible or feasible to test for inappropriate insurance-related advice using data analytics. It was ultimately concluded by the Licensees that it was not feasible to do so.
134. On balance, our opinion is that, despite the data limitations in relation to insurance advice, there was a reasonable basis for the Licensees to use the data analytics process. We set out detailed reasons for this opinion at Appendix E1.

#### *Other data limitations*

135. We have considered and discussed a number of other data limitations in relation to Project BIM, and concluded that these have a reasonable basis.

<sup>39</sup> For example, some data was limited as it was only available for particular timeframes.

<sup>40</sup> As discussed at Appendix E1.

## Our Opinion

136. Having reviewed the steps undertaken by the Licensees, individually and as a whole, to identify '*representatives (other than the [15] Identified Former Representatives)*', in our opinion, on balance, there was a reasonable basis for the overall process and there are therefore no Additional Processes in respect of this Licence Condition.

### *Further advice reviews*

137. Whilst not Additional Processes under the Additional Licence Conditions, the Licensees have agreed to assess advice provided by two advisers to identify whether they gave inappropriate advice that led to client loss<sup>41</sup>.

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<sup>41</sup> In these reviews, the Licensees have agreed that any clients identified as having received inappropriate advice that led to client loss will be treated in the same way as Affected Clients under the Additional Licence Conditions.

## F. The Review of the PARRs

### Introduction

138. Licence Condition 23(b)(iii) requires that we review:
139. The additional processes<sup>42</sup> that each Licensee undertook to determine whether any of those Potential At Risk Representatives ought to have been assessed as part of the Compensation Program.
140. Having performed this review, Licence Condition 23(c)(i) requires us to opine as to whether there was a reasonable basis for adopting those additional processes to identify whether there were other representatives who ought to have been assessed as part of the Compensation Program.

### The additional processes undertaken by the Licensees

141. As part of our scope, we have sought information as to the 'additional processes each Licensee undertook.'
142. Specifically, the Licensees undertook reviews of the advice provided by some of the 51 PARRs identified as a result of Project BIM, who had a higher than normal chance of potentially providing inappropriate advice. These reviews were undertaken between July and December 2012, and in July 2014. The overview of these processes is described by the Licensees as follows:
  - a. 2012 PARR Review: 'To better assess the quality of advice provided by each [PARR] and to separate the 'false positives' from advisers who may have, in fact, provided poor advice, the Licensee employed its Advice Assurance (AA) program'.
  - b. 2014 PARR Review: 'In June 2014, the Licensee conducted an analysis of previous reviews of [PARRs] that were identified in 2012. This included [advisers<sup>43</sup>] who were not reviewed in 2012'.
143. In this section of the report we consider these processes, which are collectively referred to by us as the '**PARR Reviews**'<sup>44</sup>.
144. The scope of these PARR Reviews is summarised below, and set out in more detail in Appendix F.

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<sup>42</sup> The reference to 'additional processes' in this clause of the Additional Licence Conditions is not to be confused with the 'Additional Processes' (i.e. additional work to be undertaken by the Licensees) referred to at clause 23(c)(iii) of the Additional Licence Conditions.

<sup>43</sup> 12 advisers in the case of CFPL, and five advisers in the case of FWL.

<sup>44</sup> The Licensees refer to this process as the 'AA Review', but we have assigned it a different name to avoid confusion with BAU AA reviews.



## PARR Reviews - Overview

	2012 PARR Review	2014 PARR Review
<b>Process</b>	A review of up to six client files for each adviser <sup>45</sup>	A review of the last three BAU AA reviews for each adviser. If any of those BAU AA reviews indicated that the adviser was 'high risk', then they were flagged for further review.
<b>Relevant period of review (i.e. when the advice was provided)</b>	2011 to 2012	<ul style="list-style-type: none"> <li>For advisers still authorised by the Licensees at the time of review – files from the 12 months preceding the review (i.e. no earlier than 2013).</li> <li>For advisers no longer with the Licensees, the last three BAU AA reviews before they left the Licensee. For some advisers this included reviews undertaken prior to 2012, before a revised AA review process was implemented.</li> </ul>
<b>Number of advisers included in review</b>	32 advisers	45 advisers
<b>Number of advisers not included in review</b>	19 advisers	6 advisers <sup>46</sup> : <ul style="list-style-type: none"> <li>4 had been reviewed in 2012<sup>47</sup>.</li> <li>2 were not reviewed in 2012 or 2014.</li> </ul>
<b>Reasons why advisers were not included</b>	Not reviewed as they were no longer authorised by the Licensees.	Not reviewed for the following reasons: <ul style="list-style-type: none"> <li>Already under review for remediation, or had been remediated, through BAU processes.</li> <li>No BAU AA review had been undertaken for the adviser during their tenure at the Licensee.</li> <li>Adviser was in a non-advice role and had been identified in Project BIM as part of a financial planning practice.</li> </ul>
<b>Outcome</b>	No advisers required further review	Four advisers deemed low quality/high risk and requiring further review: <ul style="list-style-type: none"> <li>Two advisers who had already been remediated, and</li> <li>Two advisers who were reviewed with no evidence of client loss resulting in compensation payable to their clients.</li> </ul>

145. The 2012 and 2014 PARR Review methodologies were fundamentally different:
- The 2012 PARR Review required a new review of client files using a BAU AA review checklist. This checklist had been revised in 2012; whereas
  - The 2014 PARR Review involved simply a re-review of three previous BAU AA reviews. If any of those BAU AA reviews indicated that the adviser was 'high risk', then they were flagged for further review.

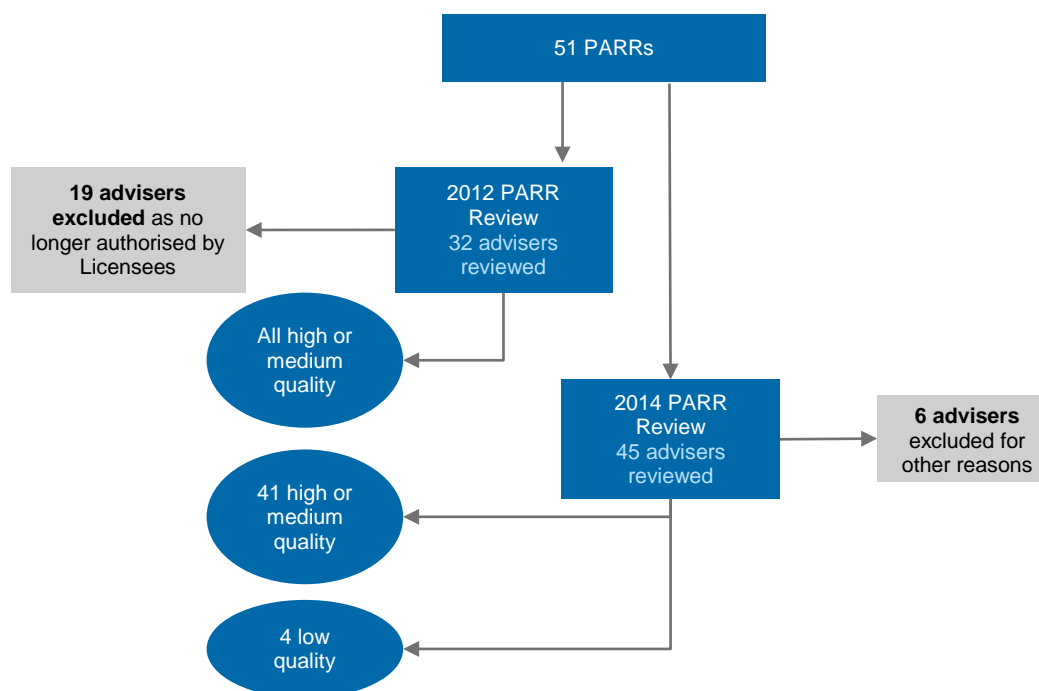
## Outcomes of the PARR Reviews

146. An overview of the outcome of the PARR Reviews is set out in the diagram below.

<sup>45</sup> The information provided shows that six files were reviewed for many of these 32 advisers, some had less than six files reviewed, and one adviser had 12 files reviewed

<sup>46</sup> Refer to paragraph 163.

<sup>47</sup> Adviser 29, Adviser 38, Adviser 41 and Adviser 104.



147. The 2012 PARR Review resulted in no advisers being identified as requiring further review and the 2014 PARR Review resulted in four advisers being identified as requiring further review (i.e. those deemed by the Licensees to be low quality/high risk as set out in the table at paragraph 144).

## Our opinions concerning the PARRs

148. For 40 of the 51 PARRs<sup>48</sup>, in our opinion the Licensees did not have a reasonable basis for adopting the PARR Reviews to identify whether there were other representatives who ought to have been assessed as part of the Compensation Program.
149. Having engaged Consulting Firm 1 to conduct sophisticated data analytics testing, which led to the identification of these advisers as being '*potentially at risk*', the PARR Reviews undertaken by the Licensees of the advice provided by these advisers was, in our opinion, limited in a number of respects as described below.
150. Whilst not determinative of our opinions, we observe that ultimately the combination of Project BIM and the PARR Reviews did not lead to the inclusion of any advisers in the Compensation Program, although some PARRs have had compensation paid to their clients outside of the Compensation Program (see paragraphs 152 and 178).
151. The bases for our opinions are set out below, with further detail in Appendix F.

### PARRs with no reasonable basis

Description	PARRs
PARRs total identified in Project BIM in 2012	51
Less PARRs where there was a reasonable basis for PARR Reviews	(11)
<b>Total PARRs for which there was not a reasonable basis for the PARR Reviews</b>	<b>40</b>

<sup>48</sup> As identified by Project BIM, discussed at paragraph 109.

## 11 PARRs where PARR Reviews were reasonable

152. We have identified that for 11 of the 51 PARRs, the Licensees had a reasonable basis for the PARR Reviews, for the following reasons:
- a. Two of the PARRs had already been reviewed either in the Compensation Program or under an agreed basis with ASIC;
  - b. Two of the PARRs had been the subject of Breach Reports and had been subject to adequate review prior to 2012. Compensation was paid to a number of clients in relation to one of these advisers;
  - c. One of the PARRs had undergone investigation prior to 2012, when their authorisation was terminated by the relevant Licensee;
  - d. Two of the PARRs were authorised for only a short period and were under 'pre-vetting' for a large portion of their authorisation. This involves heavy levels of supervision and review of any advice provided to clients; and
  - e. Four of the PARRs had been identified through Project BIM because they were part of a financial planning practice, but were not themselves providing advice in the relevant period while at the Licensees.
153. Details of these advisers are set out in Appendix F.
154. In our opinion these advisers did not require further review in 2012 or 2014 to determine whether they ought to have been assessed as part of the Compensation Program. This means that our concerns relate to the remaining 40 of the 51 PARRs.

## 2012 PARR Review

155. In our opinion, the 2012 PARR Review did not address a number of critical factors for the then current advisers, namely:
- a. It only covered files from the 12 months preceding the 2012 PARR Review (i.e. no earlier than 2011). This meant that any issues arising from advice provided prior to that would not have been identified. In our opinion, the review should have covered earlier periods because:
    - i. Project BIM used historical data from periods prior to 2012, and it was therefore possible that the reason the adviser was identified in Project BIM arose from advice provided prior to 2011; and
    - ii. Concerns had also been identified about the advice provided by other advisers, including the 15 IFRs, in earlier periods (approximately 2003 to 2011); and
  - b. The 2012 PARR Review only considered a representative sample of client files (six files, or less in some cases when less than six were available) for each adviser. The representative sample of six files was the industry standard sample size used in a BAU process. In our opinion, this was insufficient for the purposes of reviewing advisers who had specifically been identified as being '*potentially at risk*', and instead, a more targeted (where possible) and heightened review (focussed on the relevant period of advice) would have been appropriate.
156. Therefore, in our opinion, the 2012 PARR Review did not have a reasonable basis.

## 2014 PARR Review

157. The 2014 PARR Review involved reviewing only previous BAU AA reviews:
- a. For current PARRs: three BAU AA reviews from the previous 12 months; and
  - b. For non-current PARRs: the last three BAU AA reviews before the PARR left the Licensee.

158. In our opinion the 2014 PARR Review did not address a number of critical factors for current advisers, namely:
- a. Only reviewing files from the 12 months preceding the 2014 PARR Review (i.e. from 2013 onwards) did not include the relevant period of concern, up to and including 2012<sup>49</sup>;
  - b. In our opinion, the 2014 PARR Review provided no likelihood of finding new issues or inappropriate advice, as the BAU AA reviews which were reviewed had not (with the exception of two advisers who had already previously been investigated<sup>50</sup>) identified the need for any compensation; and
  - c. The file review representative sample size of up to six files (as was standard in a BAU AA review) was not adequate in the circumstances. In our opinion, this was insufficient for the purposes of reviewing advisers who had specifically been identified as being '*potentially at risk*', and instead, a more targeted (where possible) and heightened review (focussed on the relevant period of advice for that adviser) would have been appropriate.
159. For non-current advisers (where BAU AA reviews which had been undertaken prior to 2012 were reviewed for certain advisers<sup>51</sup>) there was a concern as to the relative reliability of the BAU AA processes prior to 1 July 2012. The BAU AA review process was revised from July 2012 onwards, meaning that BAU AA reviews prior to this date were undertaken using less robust processes, as evidenced by the below:
- a. Project AARK had identified that BAU AA review results were not a strong indicator as to the significance of concerns identified in Project AARK; and
  - b. Documents prepared in relation to Project AARK<sup>52</sup> show that 'good' or 'negligible risk' BAU AA review ratings were recorded for advisers at a similar time to:
    - i. Breach Reports being prepared;
    - ii. Complaints being received; and/or
    - iii. Compensation paid to clients for these advisers.
160. This therefore suggests that the BAU AA reviews prior to 2012 were not sufficiently focussed and robust, in and of themselves, to be relied upon to review PARRs in this context.
161. Therefore, in our opinion the 2014 PARR Review did not have a reasonable basis.

## The PARR Review process excluded some PARRs

### 2012 PARR Reviews

162. Non-current advisers were not reviewed in the 2012 PARR Review. In our opinion this approach did not have a reasonable basis because PARRs, by their very definition, were identified because they had 'higher than normal chance that they may have provided poor advice'. We do, however, recognise that some (though not all) of these PARRs were reconsidered in the 2014 PARR Review process.

### 2014 PARR Reviews

163. Six PARRs were not reviewed in 2014 for the following reasons:
- a. The advisers were already under review for remediation, or had been remediated, through BAU processes;

<sup>49</sup> Although the Authorisation Period of some PARRs had ended prior to 2012.

<sup>50</sup> Adviser 3 and Adviser 109. They were not reviewed in 2012 as both advisers had left prior to this date, and that the 2012 process did not include a review of non-current advisers.

<sup>51</sup> Depending on the date when the adviser left the Licensee.

<sup>52</sup> Including the spreadsheet used in the Project AARK Triage process.

- b. No BAU AA review had been undertaken for the adviser(s) during their tenure at the relevant Licensee. We understand that this was because they were authorised for only a short period and were under 'pre-vetting' for a large portion of their authorisation, which involves heavy levels of supervision and review of any advice provided to clients; or
  - c. The advisers were in a non-advice role at a financial planning practice and that practice had been identified through Project BIM.
164. In our opinion, the above appears reasonable. These six advisers are therefore part of the 11 PARRs for whom we have concluded there was a reasonable basis for the processes applied by the Licensees (see paragraph 152).

### Reviews through BAU processes

165. As already identified at paragraph 142, the Licensees have put forward specific review processes (i.e. the 2012 PARR Review and the 2014 PARR Review) which they say were undertaken to '*better assess the quality of advice provided by each PARR and to separate the 'false positives' from advisers who may have, in fact, provided poor advice*'. The Licensees consider that as Compliance Expert we must assess the reasonableness of the PARR Reviews in the context of the Licensees' ongoing BAU compliance, supervision and monitoring framework. These BAU processes involve both BAU AA reviews undertaken prior to Project BIM in 2012, and ongoing BAU AA reviews of advisers (including PARRs) after 2012 (including BAU AA reviews and the Adviser Early Warning System ('**AEWS**') which is an ongoing monitoring adviser system in place from March 2012 onwards).

#### *BAU processes prior to 2012*

166. The Licensees have provided information regarding the number of BAU AA reviews undertaken on each of the PARRs prior to 2012. Some of these advisers had undergone a substantial number of reviews, however, given the PARRs were identified in 2012 as having a 'higher than normal chance that they may have provided poor advice' through a new data analytics approach, in our opinion the advisers required a higher level of review than simply ensuring that previous BAU processes had not identified any issues.
167. Therefore, in our opinion even if the BAU processes *prior to 2012* are considered in conjunction with the PARR Reviews, there was still not a reasonable basis for the processes that the Licensees adopted to determine whether any of the PARRs ought to have been assessed as part of the Compensation Program.

#### *BAU processes after 2012*

168. The Licensees have provided information regarding the number of BAU AA reviews undertaken on each of the PARRs after 2012. Again, some of these advisers had undergone a substantial number of reviews, however, in our opinion:
- a. The broader ongoing BAU compliance, supervision and monitoring framework considers the *ongoing* advice provided by PARRs currently authorised by one of the Licensees (or authorised at some point since 2012)<sup>53</sup>. This means that the advisers who were identified as PARRs, but were no longer authorised by the Licensees in 2012 would not receive any further ongoing review through BAU processes;
  - b. For current (at 2012) advisers:

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<sup>53</sup> The AEWS started collecting data in March 2012.

- i. The BAU AA reviews only reviewed data and information which covers a representative sample of the financial advice provided by the adviser in the 12 months preceding the review. Reliance upon reviews after 2012 therefore does not address our concern that advisers who remained authorised with the Licensees through 2012 and 2014 (25 of the 40 PARRs) had received no review of files as part of the PARR Reviews for advice provided prior to 2011. Similarly, the AEWS system used current adviser data, rather than data related to the relevant period of concern, being prior to 2012<sup>54</sup>; and
  - ii. The representative samples selected in the BAU AA reviews did not target the particular type of advice that caused the adviser to have been identified as a PARR in Project BIM (where such specific areas were known through the Deductive Testing). Given that the Licensees had information to suggest a specific area (or areas) of potential concern for these particular PARRs, in our opinion the review to 'better assess the quality of advice provided by each PARR' should have targeted these particular areas of advice (where known).
169. Therefore, even if the ongoing BAU processes *after* 2012 are considered in conjunction with the PARR Reviews, in our opinion there was still not a reasonable basis for the processes that the Licensees adopted to determine whether any of the 40 PARRs ought to have been assessed as part of the Compensation Program.

## Advisers mis-categorised as PARRs and New PARRs identified in October 2015

170. Shortly prior to the finalisation process of this report, the Licensees became aware that there were some classification gaps in a data source used in Project BIM in 2012. Specifically, these gaps led to the mis-categorisation of some financial products, the result being that 12 advisers were incorrectly identified in the Project BIM testing, and subsequently miscategorised as PARRs (**'advisers mis-categorised as PARRs'**).
171. We understand that Consulting Firm 1 has undertaken checks on its results to remove this data error, and as a result the Licensees have now identified a group of 14 further advisers as potentially being PARRs. A 'sense check', as described in paragraph 108, was then undertaken by the Licensees, who concluded that four of those advisers should be 'New PARRs'<sup>55</sup>.
172. We have been informed by the Licensees that further work has been undertaken and that no wider issues exist. However, as the mis-categorisation issue was only identified shortly prior to the finalisation of this report, the scope of this report relates to the 51 PARRs (being those that were known to the Licensees in 2012) and the reasonableness of the process applied to those PARRs. However, in addition, we have also considered whether PARR Reviews and Additional Processes are required in relation to the New PARRs.
173. Based on information available to date, the following changes have been made to the number of PARRs now known to the Licensees:

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<sup>54</sup> Although the Authorisation Period of some PARRs had ended prior to 2012.

<sup>55</sup> This sense check was undertaken recently, on the same basis as the sense check undertaken as part of Project BIM. It initially considered 14 advisers as possible PARRs, and then concluded that 10 advisers should be 'scoped out', leaving four New PARRs.

## Changes to PARRs

Description	PARRs
<b>Project BIM (2012)</b>	
Advisers identified as possible PARRs	71
Less advisers 'scoped out' in sense check process	(20)
PARRs total in 2012 (of which, in our opinion, the Licensees had a reasonable basis in relation to 11 of these 51 PARRs)	<b>51</b>
<b>Identified in October 2015</b>	
Less advisers mis-categorised as PARRs	(12)
Add New PARRs identified (after sense check undertaken by Licensees)	4
Total PARRs now known to Licensees	<b>43</b>
<i>Consisting of:</i>	
Previous PARRs from Project BIM in 2012	39
New PARRs	4
Total PARRs now known to Licensees	<b>43</b>

174. As discussed in paragraph 152, we have concluded that for 11 PARRs, the Licensees had a reasonable basis for the PARR Reviews.

175. We have also considered the four New PARRs, and understand from the Licensees that one of those PARRs is the subject of current investigations by the Licensee<sup>56</sup>. We have therefore concluded that it is reasonable for the Licensees not to apply Additional Processes to this PARR<sup>57</sup>.

176. Therefore, after removing the PARRs for whom we have concluded that the Licensees had a reasonable basis, this results in the following:

### PARRs with no reasonable basis for PARR Reviews

Description	PARRs
Total PARRs now known to Licensees	43
Less PARRs where there was a reasonable basis for the PARR Reviews (paragraph 152)	(11)
Less one New PARR where there is a reasonable basis not to apply the PARR Reviews (paragraph 175)	(1)
Total PARRs now known to Licensees where there was no reasonable basis for the PARR Reviews <sup>58</sup>	<b>31</b>

177. The Licensees will not however, be required to undertake Additional Processes in relation to the 12 advisers who were mis-categorised as PARRs, but will be required to undertake Additional Processes for three of the four New PARRs.

<sup>56</sup> These investigations are unrelated to the area of potential concern identified through the data analytics testing.

<sup>57</sup> This is consistent with the advisers 'scoped out' of Project BIM because they were the subject of ongoing investigations (see paragraph 108.a). In other words, had the mis-categorisation error not occurred, and had the adviser been identified in 2012, they would have been 'scoped out' and therefore not subject to PARR Reviews.

<sup>58</sup> Consisting of 28 of the PARRs identified in Project BIM in 2012, and three of the New PARRs.



## Other reviews undertaken by the Licensees

178. We have been provided with information that shows that a number of the 31 PARRs above (for whom we have concluded the Licensees did not have a reasonable basis for adopting the PARR Reviews, and who are now known to the Licensees) were subsequently identified for review or remediation by the Licensees after 2012 by other means<sup>59</sup>.
179. Therefore, further to our opinion above that there was not a reasonable basis for the PARR Reviews, we have also considered any further reviews undertaken of advisers after 2012. This is to determine whether sufficient work has already been done after 2012, which in effect, has meant that adequate subsequent review has occurred outside of the Compensation Program. If so, no Additional Process is necessary for those PARRs, meaning that we do not require the Licensees to re-perform work that has already been undertaken.
180. We have determined this through considering the approach and breadth of review of those advisers undertaken by the Licensees in relation to previous investigations and Breach Reports, (including whether clients were contacted as part of the process), together with the BAU AA review history of PARRs still authorised by the Licensees after 2012. We have also considered whether any of the PARRs have been the subject of any registrations in the Licensees' Open Advice Review scheme, and, if so, the nature of the issue registered with the Licensees. If the PARR has had no registrations, or only one registration, for the Open Advice Review process, together with a history of regular monitoring since 2012 showing no 'low quality' BAU AA review ratings, we have concluded that on balance, the combination of these three factors means that the PARR has had adequate subsequent review outside of the Compensation Program.
181. We have concluded that 12<sup>60</sup> of those 31 PARRs have subsequently been the subject of adequate review after 2012, outside of the PARR Reviews. The details of these advisers is set out in Appendix F. In other words, although for these advisers there was not a reasonable basis for the PARR Reviews applied by the Licensees, as a result of other subsequent detailed review and/or investigation after 2012, the Licensees will not be required to undertake Additional Processes in relation to these 12 PARRs<sup>61</sup>.

### PARRs still requiring review (Additional Processes)

Description	PARRs
Total PARRs now known to Licensees where there was no reasonable basis for the 2012 and 2014 PARR Reviews	31
Less advisers with adequate subsequent review after 2012 outside of the Compensation Program	(12)
PARRs requiring further review (Additional Processes) <sup>62</sup>	<b>19</b>

182. As this table shows, there are 19 PARRs who in our opinion still require review.

## PARRs for whom Additional Processes are not reasonably required

183. We have identified two PARRs where the Licensees are not reasonably required to undertake Additional Processes. This is because:

<sup>59</sup> Client complaint, investigations into associations with other advisers, and AEWS alerts on data after 2012.

<sup>60</sup> These advisers are not the same as the advisers mis-categorised as PARRs.

<sup>61</sup> In any event, the Licensees would not have been required to undertake Additional Processes in relation to the PARRs who were mis-categorised as PARRs.

<sup>62</sup> Consisting of 18 of the PARRs identified in Project BIM in 2012, and one New PARR.

- a. For one PARR, the Licensees do not have access to the files held by FWL advisers (as a result of their contractual arrangements prior to 2010), and, in addition, have limited alternative information available in relation to this adviser which prevents them from being able to reconstruct client files for review; and
  - b. For another PARR, the Authorisation Period ended in November 2006, over nine years ago. Given the passage of time, the relatively short period of being an adviser (for some of which the adviser would have been under 'pre-vetting'), lack of complaints against the adviser relating to inappropriate advice, and no relevant registrations under Open Advice Review<sup>63</sup>, it is unlikely that the Licensee would be able to undertake any remediation in relation to this adviser.
184. The Licensees will therefore need to undertake the Additional Processes set out at Section G on the remaining 17 PARRs to determine whether they should have been part of the Compensation Program.

## Our Opinion

185. In our opinion, for 40 of the PARRS identified as a result of Project BIM in 2012, there was not a reasonable basis for adopting the PARR Reviews to identify whether there were other representatives who ought to have been assessed as part of the Compensation Program.
186. As a result of the data error identified in October 2015, there were some changes to PARRs, reducing the number of PARRs now known to the Licensees to 43. For 31 of those 43 PARRs, in our opinion there was not a reasonable basis for adopting the PARR Reviews to identify whether there were other representatives who ought to have been assessed as part of the Compensation Program.
187. Of these 31 PARRs, 12 PARRs now known to the Licensees have subsequently been subject to adequate review outside of the Compensation Program, and therefore the Licensees will not be required to undertake any Additional Processes in relation to them.
188. The Licensees are not reasonably required to undertake Additional Processes on two PARRs now known to the Licensees, either because they are not able to obtain sufficient information to reconstruct client files for review, or because of the time elapsed since the PARR has left the Licensee.
189. We set out the Additional Processes required to be undertaken on the remaining 17 PARRs now known to the Licensees in the next section.

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<sup>63</sup> There have been three registrations which refer to this adviser under the Open Advice Review, but upon investigation by the Licensee the issue appears to relate to prior to their Authorisation Period at the Licensee or the advice was given by a different adviser.

## G. Additional Processes

### Introduction

190. In this section we address the Revised Steps and Additional Processes which we are required to opine on under the Additional Licence Conditions (set out in the diagram in Appendix B):
- a. To the extent that the Compliance Expert forms the opinion that there was not a reasonable basis for adopting the steps referred to in 23(b)(i), what revised steps should reasonably be implemented to identify which clients of the [15] IFRs ought to have been assessed as part of the Compensation Program ('Revised Steps') [Licence Condition 23(c)(ii)]; and
  - b. To the extent that the Compliance Expert forms the opinion that there was not a reasonable basis for adopting the processes referred to in 23(b)(ii) or 23(b)(iii), what additional processes should reasonably be implemented to identify whether there were other representatives who ought to have been assessed as part of the Compensation Program ('Additional Processes') [Licence Condition 23(c)(iii)].

### Revised Steps

191. As we have found that there was a reasonable basis for the steps taken by the Licensees to identify Affected Clients of IFRs, there are no Revised Steps.

### Additional Processes for Licence Condition 23(b)(ii)

192. As we have found that there was a reasonable basis for the steps taken by the Licensees to identify representatives (other than the [15] Identified Former Representatives) who exhibited risk attributes or behaviours which indicated the relevant representatives may have provided inappropriate advice, there are no Additional Processes to identify PARRs under Licence Condition 23(b)(ii).

### Additional Processes for Licence Condition 23(b)(iii)

193. We set out below the Additional Processes which we consider should be implemented to identify whether any of the PARRs ought to have been assessed as part of the Compensation Program.
194. These Additional Processes are also set out in a diagram in Appendix G.

#### Additional Processes for PARRs

195. For each of the 17 PARRs who will be subject to Additional Processes (as discussed in Section F), the Licensee should undergo the following process:

Step	Description
1	For PARRs identified through Deductive Testing: <ul style="list-style-type: none"> <li>• Identify the particular area of advice that was the reason in Project BIM for the identification of the adviser as a PARR ('<b>Area(s) of Concern</b>') and for that Area of Concern obtain a sample of available client files (being a file that contains sufficient information to assess the appropriateness of an example of advice that was provided to the client by the PARR in the period prior to the period covered by the 2012 PARR Review, '<b>Client File(s)</b>').</li> <li>• For PARRs identified through Inductive Testing: The Licensees should obtain a random sample of available Client Files<sup>64</sup>.</li> </ul>



<sup>64</sup> An Area of Concern is not able to be identified for advisers identified through Inductive Testing.

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**Step Description**

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- 2 Undertake a review of information available for six Client Files (or where less than six Client Files can be located using reasonable endeavours, all available Client Files). Where possible this should relate to the Areas of Concern identified in step 1, or a random and available sample if no specific Area of Concern is able to be identified for that PARR.
- These reviews should be selected from advice provided in the period prior to the period covered by the 2012 PARR Review.
- For the purposes of the review, the Licensees should use the Project AARK Checklist<sup>65</sup> to help assess whether the advice provided was inappropriate and has led to client loss<sup>66</sup>.
- Where there is insufficient client information to assess the appropriateness of an example of advice provided to the client by the PARR during the relevant period (for example, because the PARR was an FWL adviser and there were contractual restrictions on accessing the files), then:
- The Licensees should take reasonable steps to attempt to reconstruct the Client File from information contained in electronic systems (**'File Reconstruction'**);
  - Where File Reconstruction is not possible, the Licensees should take reasonable steps to contact the client (where contractually permitted to do so and after consultation with ASIC as to whether it is appropriate to contact such clients and, if so, in which manner) to
    - Request the client provides any advice documents and, if necessary;
    - Conduct a client interview in relation to the advice the client received from the PARR.
- 3 If during Step 2 above, the Licensees identify one or more examples of inappropriate advice which has led to client loss (whether crystallised or not, and excluding disputed fees), then the Licensee should:
- Undertake a targeted review of an additional 25 Client Files to further assess the risk associated with the PARR; or
  - Where less than 25 additional Client Files can be located using reasonable endeavours, all available Client Files should be reviewed.
- 4 If the reviews undertaken in steps 2 to 3 show six or more examples of inappropriate advice which led to client loss (whether crystallised or not, and excluding disputed fees), the Licensee should undertake a full review of all Client Files (including File Reconstruction where necessary) for that PARR in accordance with the methodology used in the Compensation Program (including identification of the subject of concern and scoping<sup>67</sup>).
- If the reviews undertaken under step 2 show one example of inappropriate advice which led to client loss (whether crystallised or not, and excluding disputed fees), but the reviews under step 3 show no further examples, then:
- The Licensees will review the one example of client loss and undertake appropriate review and remediation to address the identified example on the same basis as if the client had been an Affected Client; and
  - No further review is required for that PARR.
- If the reviews undertaken under steps 2 and 3 show between two and five examples of inappropriate advice which have led to client loss (whether crystallised or not, and excluding disputed fees), then the Licensees will review the scale, nature and context of the examples of client loss and provide a proposed scope of work, to be discussed with
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<sup>65</sup> See step 6 of the table at paragraph 3 of Appendix C.

<sup>66</sup> With loss to be determined in accordance with the Financial Ombudsman Service approach to calculating loss in such matters.

<sup>67</sup> In accordance with the process discussed at Section D and Appendix D. See paragraph 81.

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Step	Description
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	<p>ASIC and KordaMentha Forensic, as to reasonable and proportional further steps in that situation. Such a proposal will include, at least, to undertake appropriate review and remediation to address the identified examples on the same basis as if the client had been an Affected Client; together with such other further steps as are considered reasonable. This may or may not include reviews of a further sample of Client Files, or that no further review is required for that PARR. The final decision as to the scope of work will be made by KordaMentha Forensic, by reference to pre-determined guidelines to be developed by KordaMentha Forensic, and published in the Compliance Report.</p>
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	<p>If the reviews undertaken under step 2 show no examples of inappropriate advice which led to client loss (whether crystallised or not, and excluding disputed fees), no further review is required for that PARR.</p>
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## Agreed minor rectification work and further advice reviews by the Licensees outside of the scope of the Additional Licence Conditions

196. Whilst not Revised Steps under the Additional Licence Conditions, as a result of the preparation of this report, the Licensees have agreed to undertake the minor rectification work described at paragraph 92.
197. Whilst not Additional Processes under the Additional Licence Conditions, the Licensees have agreed to assess advice provided by two advisers to identify whether they gave inappropriate advice that led to client loss.
198. In these reviews, the Licensees have agreed that any clients identified as having received inappropriate advice that led to client loss will be treated in the same way as Affected Clients under the Additional Licence Conditions.

## Appendix A Glossary

Defined term	Definition included in Additional Licence Conditions	Definition
Additional Elements	Yes	Any process steps applied in Project Hartnett that were not applied in the Compensation Program.
Additional Licence Conditions	No	The Licence Conditions imposed by ASIC on CFPL (Licence No: 231139) and FWL (Licence No: 231138).
Additional Processes	Yes	The processes that should reasonably be implemented to identify whether there were other representatives who ought to have been assessed as part of the Compensation Program.
Advisers mis-categorised as PARRs	No	The 12 advisers who were incorrectly identified in the Project BIM testing, and subsequently miscategorised as PARRs in 2012. These advisers were identified after a data error was identified during the process of finalisation of this report.
AEWS	No	Adviser Early Warning System, a BAU monitoring system at the Licensees which had been introduced in 2012 to monitor CFPL advisers.
Affected Clients	Yes	Refers to clients of IFRs except for: <ul style="list-style-type: none"> <li>a) Clients where the Licensee has no record of advice having been provided;</li> <li>b) Groups of clients of IFRs as agreed with ASIC where it is not necessary to contact those clients for valid reasons (for example, where the only record of a client relationship involves a client having insurance cover that appears to have been obtained prior to the IFRs giving advice);</li> <li>c) Clients where returned mail is received, and after making appropriate efforts to contact the Affected Clients, the Licensee was unable to do so; or</li> <li>d) Clients who were not included in the Compensation Program as a result of analysis conducted by the Licensee which indicated that clients did not receive the type of advice from the IFR that was the subject of concern.</li> </ul>
ASIC	No	Australian Securities and Investments Commission
Authorisation Period	No	The period during which the adviser was authorised to provide advice at the Licensees.
Area(s) of Concern	No	The particular area(s) of advice that was/were the reason in Project BIM for the identification of the adviser as a PARR.
ARS	No	Adviser Remediation System, a system used by the Licensees where cases were uploaded for scoping to be performed.
BAU	No	Business as usual
BAU AA reviews	No	Advice Assurance review, being a BAU process to review advisers.
Breach Report	No	A report lodged with ASIC recording a Significant Breach Notification, being a breach of relevant legislation.
CBA	No	Commonwealth Bank of Australia Group, which includes both CFPL and FWL.

Defined term	Definition included in Additional Licence Conditions	Definition
CFPL	No	Commonwealth Financial Planning Limited
Cleanskin	No	An insurance application which is accepted with standard rates without a loading premium (i.e. a person with no medical conditions to declare that would cause an increase from standard rates).
Client File(s)	No	A file that contains sufficient information to assess the appropriateness of an example of advice that was provided to the client by the PARR in the period prior to the period covered by the 2012 PARR Review.
Compensation Program	Yes	Means the review and compensation activities undertaken by the Licensee which: <ul style="list-style-type: none"> <li>(a) Were designed to identify where inappropriate advice was provided to a client resulting in the need for compensation, and if so, restore that Affected Client of an IFR to the position they would have been in had they received appropriate advice;</li> <li>(b) Were based on the process methodology developed for Project Hartnett and extended to address additional client, product and advice attributes; and</li> <li>(c) Commenced or concluded during the period from 25 October 2011 (being the date on which the EU took effect) until 30 June 2013,</li> </ul> but does not include the review and compensation activities conducted under Project Hartnett. It covers the 15 advisers which are the IFRs encompassed by the Additional Licence Conditions.
Consulting Firm 1	No	The external consulting firm used to assist in Project AARK and to undertake the data analytics testing in Project BIM.
Deductive Testing	No	One of the types of data analytics testing undertaken by Consulting Firm 1 in Project BIM in 2012.
EU	No	CFPL Enforceable Undertaking with ASIC executed on 25 October 2011.
FWL	No	Financial Wisdom Limited
Hartnett Adviser 1	No	Mr Don Nguyen, an ex-CFPL adviser whose clients were remediated under Project Hartnett.
Hartnett Adviser 2	No	Mr Anthony Awkar, an ex-CFPL adviser whose clients were remediated under Project Hartnett.
Identification Report	Yes	The written report to ASIC and the Licensees outlining the Compliance Expert's opinion in relation to in clause 23(c)(i) – (iii) of the Additional Licence Conditions.
Identified Former Representatives (IFR)	Yes	Those former representatives of the Licensee that the Licensee has, at the date these conditions were imposed, informed ASIC were identified by the Licensee as representatives whose advice needed to be reviewed, and one or more of their Affected Clients compensated, under the Compensation Program.
Inductive Testing		One of the types of data analytics testing undertaken by Consulting Firm 1 in Project BIM in 2012.



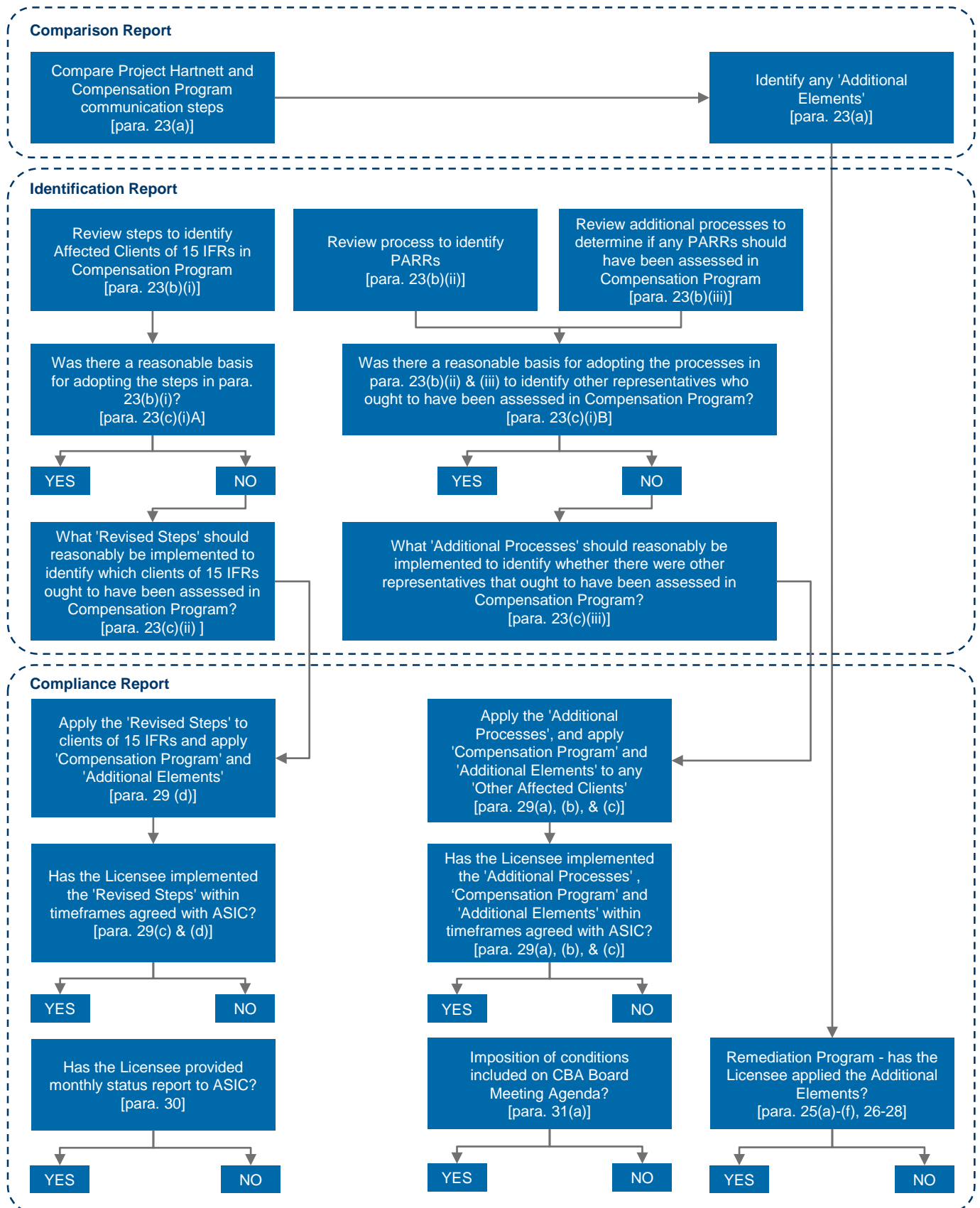
Defined term	Definition included in Additional Licence Conditions	Definition
Inherited Clients	No	Clients that were transferred to a new adviser (also referred to as Heritage Clients), and may or may not have received advice from the Inheriting Adviser.
Licensee(s)	No	Refers to CFPL and FWL. For ease, we refer throughout this report to 'the Licensee(s)', but this may refer, depending on the context, to CFPL, FWL, or CBA as a whole.
Other Affected Clients	Yes	Means clients of relevant representatives identified by [the Additional Processes, as required by clause condition 29(a) or 29(b) of the Additional Licence Conditions] except for: <ul style="list-style-type: none"> <li>(a) Clients where the Licensees have no record of advice having been provided;</li> <li>(b) Groups of clients of the relevant representatives where it is not necessary to contact those clients for valid reasons (for example, where the only record of a client relationship involves a client having insurance cover that appears to have been obtained prior to the relevant representative giving advice);</li> <li>(c) Clients where returned mail is received, and after making appropriate efforts to contact the Other Affected Clients, the Licensees are unable to do so; or</li> <li>(d) Clients who will not be included in the Compensation Program as a result of analysis conducted by the Licensees, in accordance with the Revised Steps (if any), which indicates that clients did not receive the type of advice from the Potential At Risk Representative that was the subject of concern.</li> </ul>
New PARRs	No	Four advisers who have now been identified as PARRs. These advisers were identified after a data error was identified during the process of finalisation of this report.
Nine PBR Advisers	No	Nine advisers included in the Project Baringa, but excluded from the Compensation Program.
Past Business Review (PBR)	No	Refers to review procedures performed as part of the EU.
PARR(s)	Yes	Potential At Risk Representative(s).
PARR Reviews	No	The processes referred to in clause 23(b)(iii) of the Additional Licence Conditions, being the reviews of PARRs undertaken in 2012 and 2014 by the Licensees.
Potential At Risk Representatives	Yes	Representatives (other than the 15 IFRs) who exhibited risk attributes or behaviours which indicated the relevant representatives may have provided inappropriate advice.
Project AARK	No	A project undertaken by CBA from late 2011 into early 2012 to estimate of the possible financial exposure it faced from client compensation payments for the purpose of its financial reporting.
Project AARK Checklist	No	The checklist of questions used in Project AARK by the Licensees and Consulting Firm 1 in their review of up to 25 files.

Defined term	Definition included in Additional Licence Conditions	Definition
Project Baringa	No	Means the process and methodology set out in the 'Project Baringa Client Remediation and Methodology' document. In effect, the methodology document used for this project describes the process undertaken for the Compensation Program, and refers to the advisers covered by the EU and other compensation activities (excluding the two advisers under Project Hartnett).
Project BIM	No	The range of steps around July 2012 aimed at identifying whether there were advisers, other than the 15 IFRs, who may have provided inappropriate advice to clients and whose clients may have required compensation as a result, referred to by the Licensees as 'Project BIM' (Business Issues Management).
Project Hartnett	Yes	Means the process and methodology set out in the Nguyen Methodology and the Awkar Methodology (provided to ASIC on 29 May 2014) and implemented by the Licensee to compensate clients who suffered losses as a result of inappropriate advice provided by two former representatives of the CFPL.
Revenue Data	No	The Licensees' records of revenue allocated to each adviser. This revenue includes commissions and fees earned by each adviser and was used by the Licensees to determine the policies and transactions that had been implemented for a client.
Revised Steps	Yes	The steps that should reasonably be implemented to identify which clients of the IFRs ought to have been assessed as part of the Compensation Program.
The Engagement	No	As a condition of the Additional Licence Conditions, KordaMentha Forensic has been engaged to provide three written reports.
The process to identify the PARRs	No	The processes undertaken by the Licensees to identify whether advisers in addition to those 15 IFRs in the Compensation Program also exhibited risk attributes or behaviours which indicated the relevant advisers may have provided inappropriate advice.
The steps to identify which clients of the IFRs were Affected Clients	No	The processes undertaken by the Licensees to identify the clients of the 15 IFRs in the Compensation Program to identify all the relevant clients of those advisers.
The Review of the PARRs	No	The additional processes that the Licensee undertook to determine whether any of the 51 PARRs ought to have been assessed as part of the Compensation Program.



# Appendix B: Additional Licence Conditions Overview Diagram

See the [media release](#) dated 23 April 2015 for a text version of the additional licence conditions in this diagram.



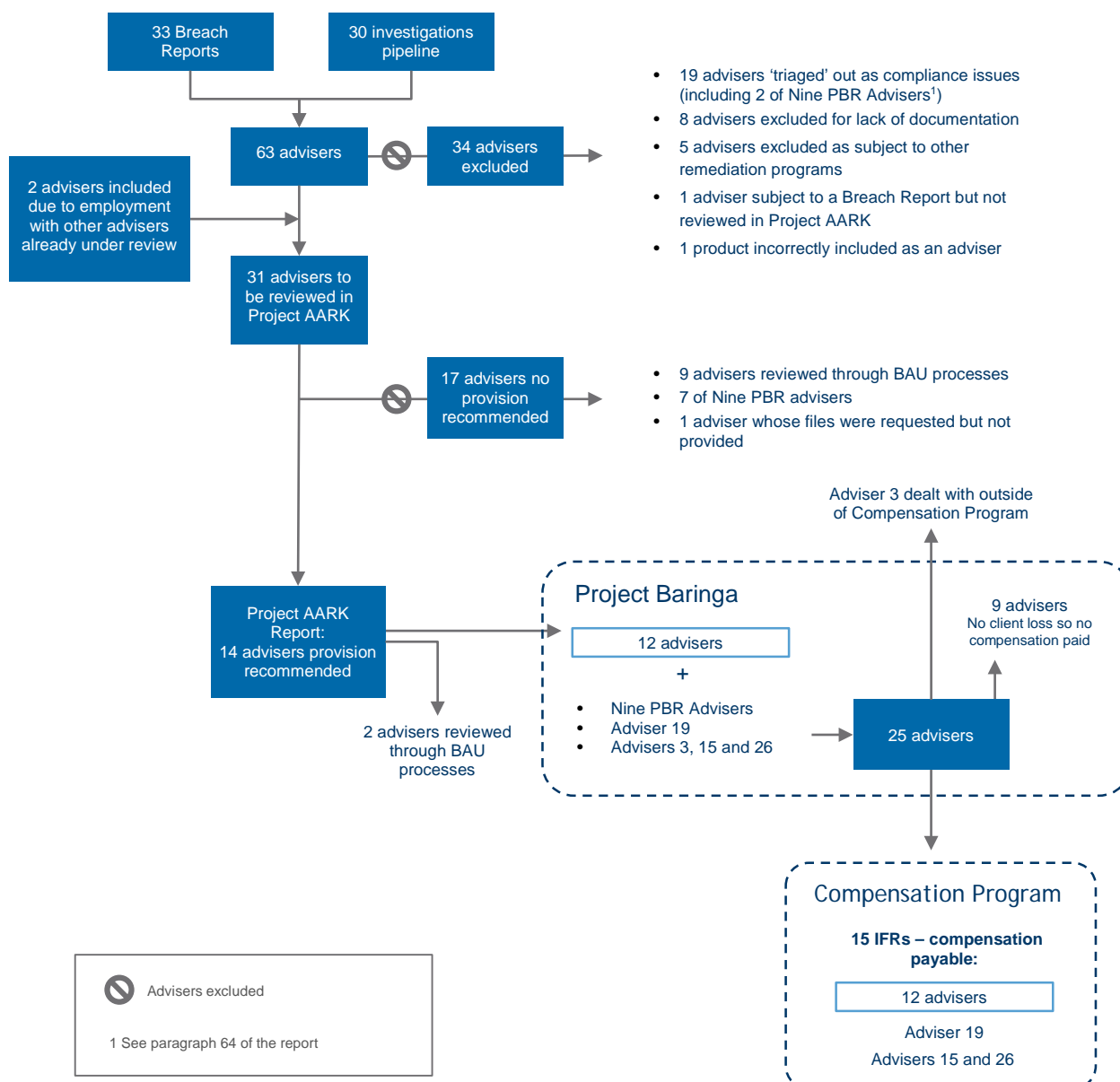
# Appendix C: The Project AARK process

## Introduction

1. In this Appendix, we set out details of one of the processes used by the Licensees in late 2011 and early 2012 to identify advisers with clients who may have been due compensation. This was referred to as 'Project AARK'.
2. While the Additional Licence Conditions do not directly ask us to consider Project AARK, we consider it is relevant because some of the information gathered by the Licensees in relation to known 'at risk' advisers (or 'known knowns') through Project AARK was used as a starting point for Project BIM.

## Key steps in Project AARK

### Project AARK



3. We set out in more detail below the key steps in the Project AARK process.

### Project AARK process

Step	Process	Advisers
1	<b>Advisers with a Breach Report were included in Project AARK</b> Advisers with Breach Reports since 2008 were included within Project AARK.	33 advisers
2	<b>Advisers from the current investigations pipeline were included within Project AARK</b> All advisers who were in the 'open' investigations pipeline were included within Project AARK. Advisers who had been removed from the pipeline after a completed investigation were not included.	30 advisers
3	<b>Triage process in Project AARK – 'compliance only issues'</b> This process involved 19 advisers being 'triaged out' of Project AARK, and hence not undergoing file reviews. Advisers were 'triaged out' on the basis of a desktop review of a document which summarised the background information for the advisers considered for Project AARK, and the Licensees' judgement. This resulted in the identification of those advisers with 'compliance issues not impacting client outcomes'.	19 advisers removed
4	<b>Triage process in Project AARK – files not available</b> Eight FWL advisers were 'triaged out' because files were not available for review for contractual reasons. While some attempts were made to obtain these by FWL, none were obtained.	8 advisers removed
5	<b>Other reasons for exclusion:</b> <ul style="list-style-type: none"> <li>Five advisers were excluded because they were already the subject of remediation projects (two advisers were IFRs and three advisers were through other remediation programs<sup>1</sup>).</li> <li>One adviser was subject to a Breach Report but not reviewed in Project AARK<sup>2</sup>.</li> <li>One product was incorrectly included in the population of advisers subject to Breach Reports to ASIC<sup>3</sup>.</li> </ul> This resulted in 29 advisers remaining for review.	7 advisers removed
6	<b>File review process in Project AARK Report 1 (not shown in diagram)</b> The Licensees and Consulting Firm 1 undertook a review of up to 25 files <sup>4</sup> , using a checklist of questions ('Project AARK Checklist'). During the file review process, another two advisers were added to the group for review, as they were at the same practice as two other IFRs <sup>5</sup> , and it was identified that their advice may also be of poor quality. This resulted in 31 advisers for review. The risk ratings given to each advisers were: <ul style="list-style-type: none"> <li>Very High: Significant concerns about appropriateness of advice provided (8 advisers)</li> <li>High: Material concerns about the advice provided (2 advisers)</li> <li>Medium: Moderate concerns about the advice provided (11 advisers)</li> <li>Low: No significant concerns noted (9 advisers)</li> <li>Not applicable: Exclude adviser from the review<sup>6</sup> (1 adviser)</li> </ul> This resulted in the Licensees identifying a need for a provision for 17 advisers. Those for whom no provision was made, because no client loss was identified, were not considered for inclusion in the Compensation Program.	31 Advisers reviewed (not shown in diagram): <ul style="list-style-type: none"> <li>Provision recommended for 17 advisers</li> <li>No provision required for 14 advisers</li> </ul>

<sup>1</sup> Project Hartnett for Hartnett Adviser 1 and Hartnett Adviser 2, and a separate process for Adviser 3.

<sup>2</sup> Adviser 73.

<sup>3</sup> Adviser 46.

<sup>4</sup> For six advisers, 25 files were not available and therefore less files were reviewed. In addition, for Advisers 22, Adviser 24 and Adviser 25, less files were reviewed due to the high frequency and consistent nature of reviewed files. Those three advisers were then included in Project Baringa.

<sup>5</sup> Adviser 23 and Adviser 24.

<sup>6</sup> FWL requested that the adviser be excluded from review due to information discrepancies (Adviser 99).

Step	Process	Advisers
7	<p><b>Cleanskin advisers removed in Project AARK Report 2 (not shown in diagram)</b></p> <p>Adviser 4, Adviser 5 and Adviser 34 were removed from the need for a provision on the basis that under 30% of their clients were determined to be 'cleanskins', a benchmark derived by CommInsure.</p> <p>'Cleanskin' is a reference to an insurance application which is accepted with standard rates without a loading premium (i.e. a person with no medical conditions to declare that would cause an increase from standard rates). High levels of cleanskin applications by an adviser may be an indication of inappropriate advice<sup>7</sup>. While client loss is not immediately identified, any future claim for the non-disclosed medical conditions may not be accepted by the insurer, leading to client loss. The benchmark used in Project AARK suggests that an adviser having no more than 30% of all applications as cleanskins is acceptable.</p>	3 advisers excluded from provision (not shown in diagram)
8	<p><b>Provision made for certain advisers</b></p> <p>A provision was then estimated for the remaining 14 advisers, and they were recommended for further review, such as further client file reviews, to determine possible compensation due to clients:</p> <ul style="list-style-type: none"> <li>• 12 of those advisers became IFRs (and were therefore included within Project Baringa and the Compensation Program).</li> <li>• Two other advisers were identified for further review through other BAU means<sup>8</sup> (and were therefore not included in Project Baringa).</li> </ul>	Provision recommended for 14 advisers
9	<p><b>Provision not made for other advisers</b></p> <p>17 advisers were not allocated a provision, and were therefore not included within the Compensation Program. This would appear to be either because there was no compensation due, or they were remediated through BAU processes. A number were returned to the investigations pipeline for further review.</p> <p>Seven of the advisers were subsequently included in Project Baringa, as these were part of the Nine PBR Advisers (see step 10 below).</p>	17 advisers were excluded from the Compensation Program
10	<p><b>Advisers included in Project Baringa</b></p> <p>A process was undertaken by the Licensees to identify certain advisers to include in Project Baringa:</p> <ul style="list-style-type: none"> <li>• 12 of the advisers for whom a provision was recommended in Project AARK were included in Project Baringa<sup>9</sup>.</li> <li>• Three advisers were also included in Project Baringa who had been excluded from Project AARK as they had been remediated through other means (Adviser 3, Adviser 15 and Adviser 26).</li> <li>• Adviser 19 was also included in Project Baringa at a later date. This adviser was not identified as having provided inappropriate advice at the time of Project AARK.</li> <li>• Nine other advisers, while no provision was made for them in Project AARK, were also included in the Project Baringa (the Nine PBR Advisers<sup>10</sup>). This was because those advisers were included in the Past Business Review under the EU. Accordingly, CFPL was required to report to ASIC under the EU about its review of these advisers. As the review of these advisers did not subsequently result in any requirement to remediate any of their clients, they were included in Project Baringa for reporting reasons only. Those advisers were: <ul style="list-style-type: none"> <li>– Seven who were reviewed in Project AARK, but for whom no provision was recommended as no client loss was identified.</li> <li>– Two advisers who had initially been 'triaged' out of Project AARK at Step 3 above, and so had not been the subject of file reviews under Project AARK.</li> </ul> </li> </ul>	25 Advisers were in Project Baringa

<sup>7</sup> For example, Adviser 20, one of the IFRs, had been shown to inappropriately have not disclosed medical conditions in order to get insurance applications accepted.

<sup>8</sup> Adviser 83 (who was authorised by another CBA licensee) and Adviser 86 (a CFPL adviser).

<sup>9</sup> These were the advisers who were identified in Project AARK as requiring a provision (excluding Adviser 83 and Adviser 86, who were reviewed outside of Project Baringa).

<sup>10</sup> As referred to at paragraph 64 of the report.

# Appendix D1: The steps to identify which clients of the IFRs were Affected Clients

## Introduction

1. In this Appendix, we set out the steps the Licensees took to identify which of the clients of the IFRs were Affected Clients and therefore assessed as part of the Compensation Program.
2. We have sought an explanation from the Licensees of the steps taken to identify which clients of the IFRs were Affected Clients. Based on our discussions with the Licensees, review of relevant documents and 'walk throughs' of systems, we have identified 14 significant steps the Licensees took. With some exceptions for specific advisers, the steps taken by each of the Licensees were broadly similar.
3. The 14 steps fall into two major stages:
  - a. Identification Process – how the clients were identified (steps 1 to 6); and
  - b. Scoping Process – how the identified clients were filtered out so that only Affected Clients remained (steps 7 to 14).
4. We have produced diagrams of these processes in Appendix D2.

## Identification Process

5. In the Identification Process, the Licensees identified the clients of the IFRs using the following major steps:

### Identification Process

Step	Description of process/decision made
1	<p><b>Decision to rely on revenue/commissions information to identify clients</b></p> <ul style="list-style-type: none"> <li>• The Licensees did not have a central record of clients who had received advice from their advisers and so could not readily identify all the clients who had received advice from each IFR.</li> <li>• The Licensees held records of revenue (i.e. commissions) allocated to each adviser. The Licensees' analysis found that this provided the most complete information available when compared with alternative data from the Licensees' systems. It was decided to use this Revenue Data to identify the policies<sup>1</sup> written by the adviser, on the central premise that all advice which was implemented by a client would generate revenue for the adviser.</li> </ul>
2	<p><b>Search for adviser revenue account codes</b></p> <ul style="list-style-type: none"> <li>• Each adviser has one or more 'account codes' in the Revenue Data which are unique identifiers for the adviser.</li> <li>• To find the account codes for each adviser, a wild card search was performed in the Licensees' relevant system. The wild card search allowed for variants of the adviser name. e.g. if the adviser name was Chris Smith, the search would be 'Chris* Smi*'. This would return any accounts with either 'Chris' or 'Christopher' in the name.</li> <li>• Cross-checks with other Licensee systems were performed to ensure completeness of the account codes.</li> </ul>
3	<p><b>Extraction of revenue information</b></p> <ul style="list-style-type: none"> <li>• Using the adviser account codes, a search was performed on the revenue systems to extract relevant data. Due to the large period of time being sought for advisers, this included searching in both legacy and current systems.</li> <li>• Separate extracts had to be performed for each year for each adviser.</li> <li>• The result was a series of spreadsheets containing the revenue information for each adviser.</li> </ul>

<sup>1</sup> i.e. an insurance policy, superannuation account or other wealth management product.



Step	Description of process/decision made
	<ul style="list-style-type: none"> <li>This information included a unique identifier for each investment or insurance product for the customer. This is referred to as a 'Policy' or 'Policy Number'.</li> <li>As Revenue Data was generated every fortnight and policies have trailing commissions, each Policy Number would appear many times in the extracted Revenue Data.</li> </ul>
4	<p><b>Creation of unique set of policies for each adviser</b></p> <ul style="list-style-type: none"> <li>The spreadsheets of extracts from the Revenue Data were consolidated to arrive at a set of unique Policy Numbers for each adviser.</li> <li>As a control and to make sure Policy Numbers were not missed, this consolidation process was performed by two people independently and the results then compared and reconciled for differences.</li> </ul>
5	<p><b>Extraction of policy information</b></p> <ul style="list-style-type: none"> <li>A list of Policy Numbers was given to the issuer of each product (either internal or external), with a request for the relevant customer information.</li> <li>The customer information was then used to generate a list of clients who had received advice from the adviser.</li> </ul>
6	<p><b>Merging of clients into cases</b></p> <p>Based on customer information, some clients were merged into a single 'case'. Clients were grouped together in a 'case' - most commonly where advice was given jointly to a married couple. Therefore a 'case' can be one or more clients.</p>

## Scoping Process

6. Once cases were identified by steps 1 to 6, they were then uploaded onto the Licensees' Adviser Remediation System ('ARS') for scoping processes to be performed. These further steps were followed so that only clients potentially requiring remediation remained to be assessed as part of the Compensation Program. These clients were subsequently defined by the Additional Licence Conditions as 'Affected Clients'.

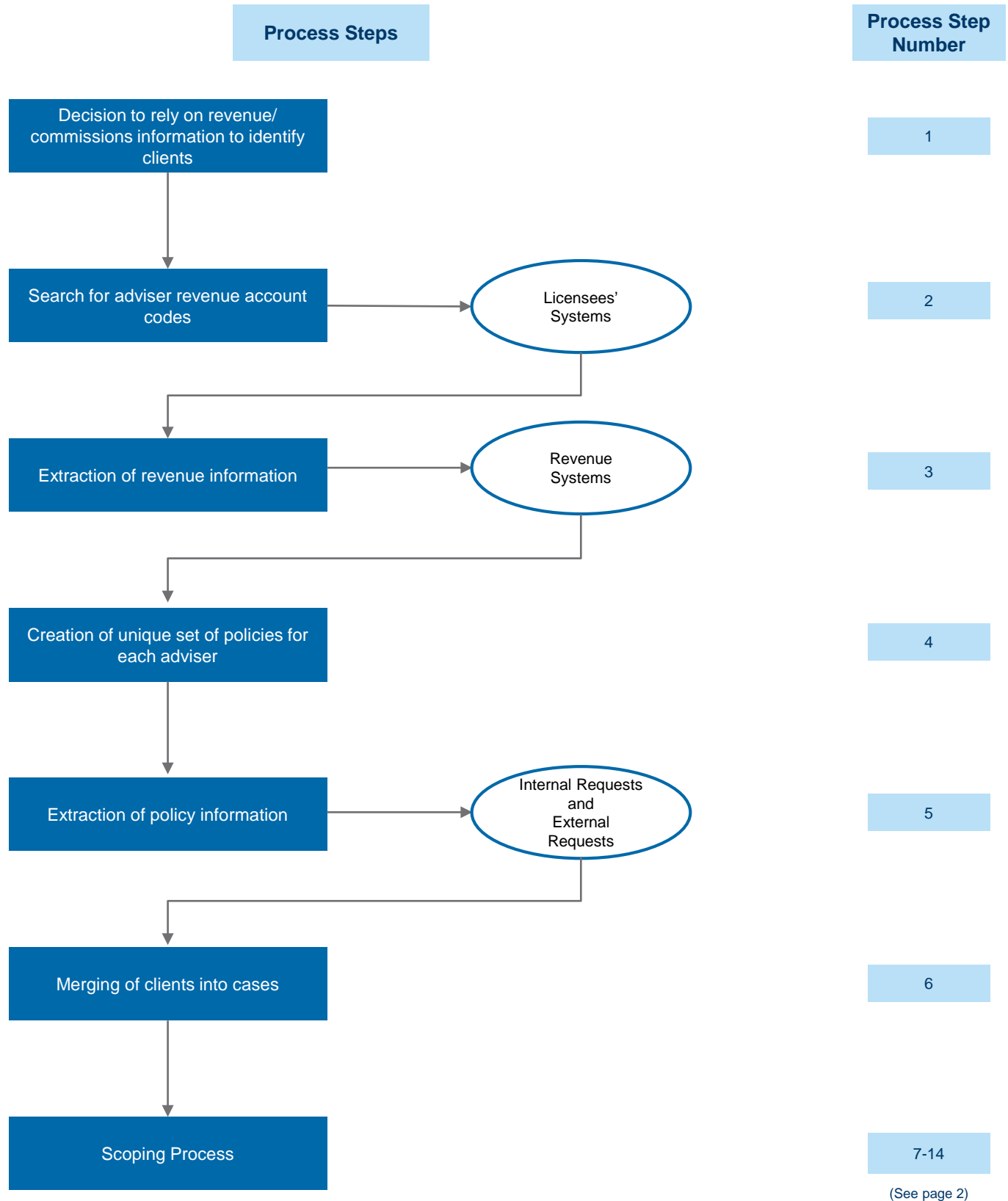
## Scoping Process

Step	Description of process/decision made
7	<p><b>Cases removed before loading on ARS</b></p> <ul style="list-style-type: none"> <li>Adviser 21 – The standard heritage filter was applied for this adviser (see step 9 below), but before cases were loaded into ARS (Step 8). This had the effect of removing 1,523 cases.</li> <li>Adviser 27 – Cases with 'Calibre' only products were scoped out as these were legacy products from before the period of review. Up to 18 cases were erroneously scoped out during this process. Whilst not an Additional Process as defined in the Additional Licence Conditions, as a result of the preparation of this report, the Licensee has agreed to review these cases.</li> </ul>
8	<p><b>Cases loaded into ARS</b></p> <p>This is the database used by the Licensees to manage and assess cases.</p>
9	<p><b>Application of the Heritage filter to scope out cases before assessment</b></p> <ul style="list-style-type: none"> <li>This step was designed to remove clients inherited from other advisers ('Inherited Clients') who did not receive advice from the IFRs.</li> <li>If an Inherited Client had not received advice from the Inheriting Adviser, they were removed from the client population. The process of determining whether a client received advice from the Inheriting Adviser was based on whether the Revenue Data (which provided policy and transaction information) indicated that advice had been provided.</li> <li>Four criteria must all be met to be removed by the Heritage filter:             <ol style="list-style-type: none"> <li>The policy commenced outside of the period that the adviser was authorised by the Licensees ('Authorisation Period') for each adviser;</li> <li>No transactions greater than \$5,000 occurred during the Authorisation Period for each adviser;</li> <li>There were no internally geared options; and</li> <li>There were no products from the PAXUS administration system.</li> </ol> </li> </ul>

Step	Description of process/decision made
10	<p><b>Application of the 'Insurance Only' filter to scope out cases before assessment</b></p> <ul style="list-style-type: none"> <li>The Insurance Only filter was designed to remove cases where only insurance advice had been provided and the IFR had not had insurance advice identified as an area of concern. It was applied to cases which only had CommInsure policies.</li> <li>The insurance filter was applied to Advisers 14, 15, 16, 17, 18 and 27, but was not applied to all advisers (e.g. Advisers 13 and 20).</li> </ul> <p>We consider the application of this filter in more detail below.</p>
11	<p><b>Application of the PAXUS Only filter to scope out cases before assessment</b></p> <ul style="list-style-type: none"> <li>PAXUS is an administration system for legacy Commonwealth Investment products from the period before February 2003 including: <ul style="list-style-type: none"> <li>Commonwealth Investment Funds;</li> <li>Commonwealth Life Insurance and Family Bonds; and</li> <li>Commonwealth Personal Superannuation &amp; Retirement Income Streams.</li> </ul> </li> <li>As these products relate to advice before the period for which advice was being reviewed, any clients having only PAXUS products were scoped out.</li> </ul> <p>Any clients having a combination of PAXUS and other products remained in scope (unless the other products were insurance, due to the Insurance Only filter, as described in Step 10 above).</p>
12a	<p><b>Application of the 'Other Reasons' filter to scope out cases before assessment – Adviser 16</b></p> <ul style="list-style-type: none"> <li>A client is not an Affected Client (as subsequently defined by the Additional Licence Conditions) if: <ul style="list-style-type: none"> <li><i>as a result of analysis conducted by the licensee which indicated that clients did not receive the type of advice from the Identified Former Representative that was the subject of concern.</i></li> </ul> </li> <li>The subject of concern with Adviser 16's advice was the switching to more aggressive portfolios outside the relevant client risk profiles. The Licensee reviewed all cases where a switch had been made.</li> <li>161 cases where there was no switching were not assessed as part of the Compensation Program.</li> </ul> <p>As switching was the area identified as the area of concern the exclusion of these cases is consistent with the Additional Licence Conditions.</p>
12b	<p><b>Application of the 'Other Reasons' filter to scope out cases before assessment – Adviser 27</b></p> <ul style="list-style-type: none"> <li>10 cases were scoped out for Adviser 27 as advice was provided and implemented from before 2005 and so had not occurred within the last seven years. The Licensee did not consider these cases because there was no obligation on Adviser 27 to retain client files after seven years.</li> <li>No similar seven year time limit was applied to other IFRs and so it was not consistent of the Licensee to scope out these cases.</li> </ul> <p>Whilst not a Revised Step as defined in the Additional Licence Conditions, as a result of the preparation of this report, the Licensee has agreed to review the 10 cases which were scoped out.</p>
13	<p><b>Adviser 19 investigation</b></p> <ul style="list-style-type: none"> <li>Adviser 19 was the subject of investigation towards the end of Project Baringa. This investigation did not follow the ARS scoping process used for other IFRs. The advice that was the subject of concern was Colonial Hybrid Notes. The review was conducted through commissions extraction and file review for identified clients with Colonial Hybrid Notes.</li> <li>45 cases were identified with these concerns and were uploaded into ARS for assessment. As the investigation did not follow the ARS scoping process, Appendix D2 depicts these 45 cases being included for case assessment after client scoping process and filtering process.</li> </ul> <p>A separate 39 cases were reviewed outside the Compensation Program. These files were not related to Colonial Hybrid Notes.</p>
14	<p><b>Cases were assessed for whether any advice was given</b></p> <p>By reviewing each case, the Licensees categorised cases into Affected Clients (as subsequently defined by the Additional Licence Conditions) and 'No Advice Given' (where the Licensees have no record of advice having been provided). 'No Advice Given' was determined if the client fell into one of the following four categories:</p> <ol style="list-style-type: none"> <li>Client directed;</li> <li>No evidence of advice post 2003;</li> <li>No evidence of advice; or</li> <li>Advice not implemented.</li> </ol>

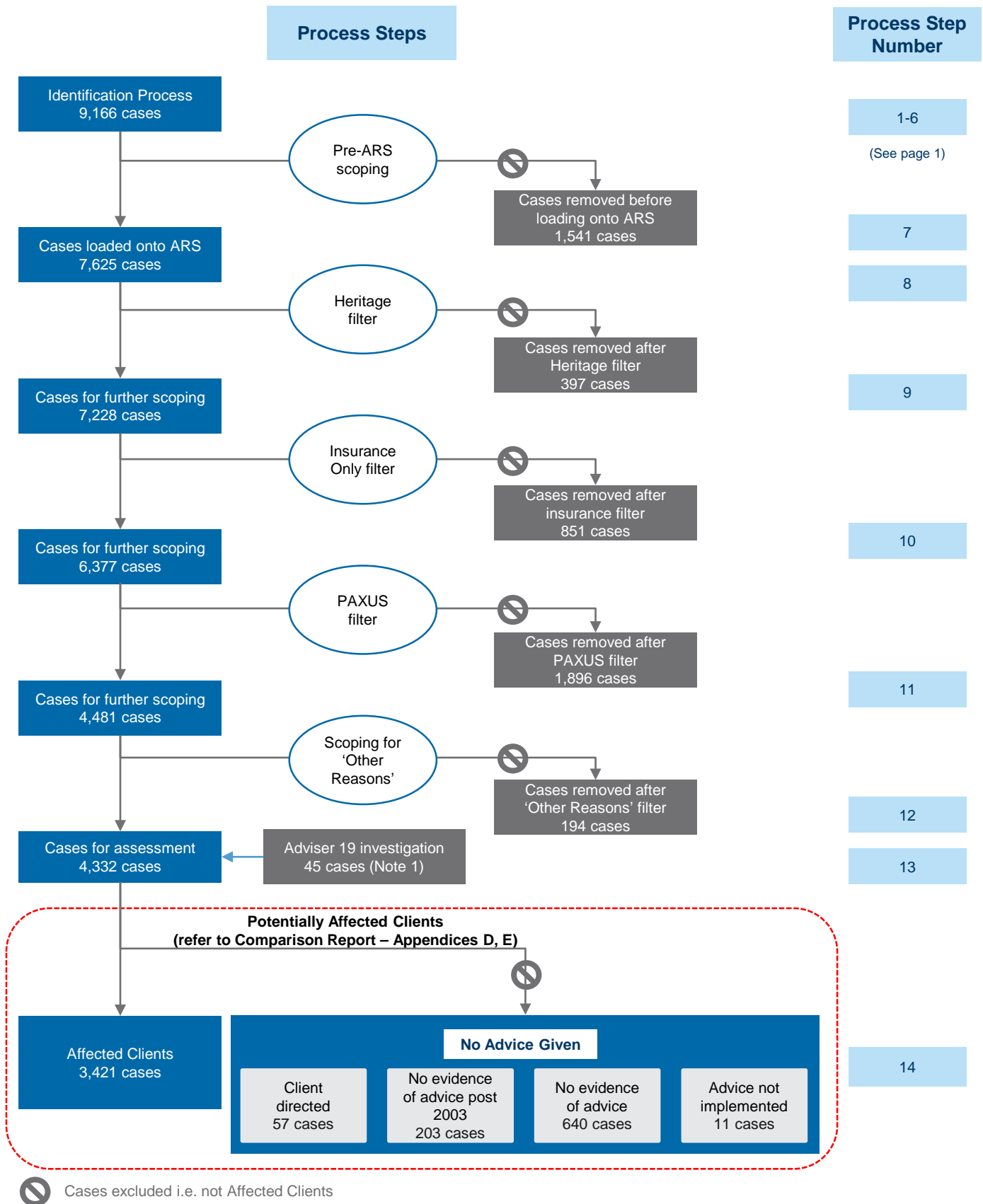
# Appendix D2: Diagram of the steps to identify Affected Clients

## 1. Identification Process



# Appendix D2: Diagram of the steps to identify Affected Clients

## 2. Scoping Process



Note 1: As the investigation did not follow the ARS scoping process, 45 cases were included for case assessment after client scoping process and filtering process.

# Appendix E1: Project BIM - the process to identify PARRs

## Introduction

1. In this Appendix, we set out details of the process used by the Licensees to identify PARRs, which was known as 'Project BIM'. This relates to Licence Condition 23(b)(ii) which is discussed at Section E of the report.
2. Based on our discussions with the Licensees and Consulting Firm 1 who undertook Project BIM, together with our review of relevant documents, we have identified a number of significant steps in Project BIM. The steps taken by both Licensees were the same.
3. A diagram of the process is set out at Appendix E2.

## The Project BIM process

4. The Licensees undertook the following significant steps:

### Project BIM process

Step	Description of process/decision made
1	<p>Project BIM involved amongst other things, engaging Consulting Firm 1 to help identify <i>'high risk planners based on a set of risk criteria to be agreed with [the Licensees] ... through the use of advanced data analytics and reviews of files to the extent necessary'</i><sup>1</sup>.</p> <p>This work was undertaken between March 2012 and July 2012.</p>
2	<p>The following knowledge was utilised to identify high risk factors relating to inappropriate advice:</p> <ul style="list-style-type: none"> <li>• Outcomes of previous projects (such as Project AARK);</li> <li>• Industry experience; and</li> <li>• Areas of 'high risk' known at the time and known individuals which had been previously identified.</li> </ul>
3	<p>The Consulting Firm 1 obtained data from the Licensees in order to undertake its testing. This data came from a number of different data sources, including, but not limited to:</p> <ul style="list-style-type: none"> <li>• Concerns raised by the Licensees' Audit and Assurance teams;</li> <li>• Various internal risk monitoring systems;</li> <li>• Data on commissions paid to advisers (from 2009 only);</li> <li>• Other financial information from a number of databases; and</li> <li>• The names of terminated advisers.</li> </ul> <p>Various data limitations were faced in relation to the data available, in particular, that certain data from insurance systems was not available for testing. We discuss this further below.</p>
4a	<p>Consulting Firm 1 undertook two types of testing, the first type being:</p> <p><b>'Deductive Testing'</b> – the purpose of this testing was to identify advisers with clients who had a <i>'high inherent risk of receiving poor quality advice'</i> based on the advice strategy the clients received. These advice strategies were determined by having regard to the analysis of risks and issues and the data that was readily available and usable for the Deductive Testing performed.</p> <p>These tests identified 44 advisers to potentially become PARRs.<sup>2</sup></p>

<sup>1</sup> This is an extract from the engagement schedule between Consulting Firm 1 and the Licensees, although we understand from the Licensees that file reviews were undertaken by the Licensees' staff following Project BIM. These were not performed by Consulting Firm 1.

<sup>2</sup> Two of whom were also identified in the Inductive Testing. See Step 4b.

Step	Description of process/decision made
4b	<p>Consulting Firm 1 undertook two types of testing, the second type being:</p> <p><b>'Inductive Testing'</b> – The purpose of this testing was to identify advisers who were potentially at risk of providing inappropriate advice, but were previously unknown to the Licensees ('unknown unknowns') and who shared similar attributes to certain IFRs and other known advisers who may have provided inappropriate advice.</p> <p>The Inductive Testing involved comparing a broad range of attributes of certain known advisers to the attributes of all other advisers at the Licensees. The approximately 800 attributes included such attributes as tenure at the licensee, adviser remuneration, adviser location and products recommended.</p> <p>The Inductive Testing was conducted as an additional way of ascertaining PARRs who may not have been identified by the Deductive Testing.</p> <p>In total, the Inductive Testing identified 29 advisers to potentially become PARRs (two of whom were also identified in the Deductive Testing).</p>
5	<p>A 'scoping-out' process was undertaken of the 71 advisers<sup>3</sup> identified in the Deductive and Inductive Testing. This process was undertaken by the Licensees, with involvement from Consulting Firm 1<sup>4</sup>, and included a review of historical background information for these advisers where appropriate. This resulted in 20 advisers being scoped out by the Licensees:</p> <ul style="list-style-type: none"> <li>• 11 advisers who had been remediated, or were being reviewed through other processes.</li> <li>• 9 advisers who were unknown to the Licensees prior to Project BIM, but who, after checking background information, were assessed not to be at risk.</li> </ul> <p>This resulted in 51 advisers<sup>5</sup> being identified as PARRs.</p>
5.	<p>The steps above all relate to the work undertaken in 2012, and do not include any work undertaken in 2015 in relation to the identification of some classification gaps in a data source used in Project BIM in 2012, as discussed in Section F of the report. Specifically, these gaps led to the mis-categorisation of some financial products, the result being that 12 advisers were incorrectly identified in the Project BIM testing, and subsequently miscategorised as PARRs. Four new advisers were then also identified as PARRs. We discuss this further at Section F of the report.</p>

## Our Opinions

6. As part of our work, we have held discussions with the Licensees and Consulting Firm 1, and reviewed numerous documents in relation to the steps above, in order to assess whether the process had a reasonable basis. While we have considered the steps in the process both individually and as a whole, we set out below our opinion in relation to each of the steps discussed in the table above.

### Step 1: the Licensees engaged Consulting Firm 1 to undertake data analytics to help identify 'high risk' planners based on a set of risk criteria

7. We consider that the use of data analytics (which we understand was not widely in use for this purpose in the industry in 2012) was appropriate for the purposes of identifying 'unknown unknowns'.
8. The only alternative would be an entirely file-based approach looking at client files of each of the Licensees' (approximately 2000) advisers. In our opinion, this would not be a reasonable approach, as it would be extremely time consuming, inefficient and costly.
9. Also, in our opinion a risk-based approach, such as that adopted by the Licensees through Consulting Firm 1, using knowledge of the business and the industry to identify the highest risk advisers, was appropriate.

<sup>3</sup> Being 44 advisers identified from Deductive Testing, plus 29 advisers identified from Inductive Testing, less 2 advisers identified in both tests.

<sup>4</sup> Consulting Firm 1's involvement included attendance and challenge by Consulting Firm 1 at workshops and/or meetings with the Licensees' Advice Leadership team. The Licensees were responsible for all decisions regarding the scoping out of advisers.

<sup>5</sup> Being the 71 advisers identified less 20 advisers scoped out.

## Step 2: Knowledge from Project AARK was utilised to identify high risk factors relating to inappropriate advice

10. The Licensees and Consulting Firm 1 identified a number of areas of high risk factors to use in testing in Project BIM.
11. This was based on a number of sources, including knowledge from previous projects, including Project AARK, which identified a set of factors which correlated with an indication of providing inappropriate advice. The factors which strongly correlated with an indication of providing inappropriate advice were then used in the Deductive Testing undertaken by Consulting Firm 1.
12. We have considered the reasonableness of the above, and conclude that there was a reasonable basis for the areas of risk which were tested in the Deductive Testing in Project BIM. The Inductive Testing, which was designed to use a different approach of matching particular adviser attributes rather than testing for outliers in a particular area of risk, and so did not relate to a particular risk area.

## Step 3: Data limitations

13. We have undertaken a number of discussions with the Licensees and Consulting Firm 1 in relation to the data limitations of Project BIM (particularly insurance data) with the conclusion that Project BIM did have a reasonable basis in this regard.
14. Project BIM planning initially identified insurance-related risk areas as being 'High Priority', but these areas were ultimately not tested. Because insurance data was not included in the Project BIM testing, this meant that advisers who exhibited attributes in the risk areas below could not be directly identified in relation to the following areas:
  - a. Inappropriate loss of insurance;
  - b. Inappropriate use of cleanskins;
  - c. Clients being over insured;
  - d. Inappropriate churning/switching; and
  - e. Inappropriate super switching (i.e. lost insurance).
15. Given the fact that insurance areas were identified as medium factors correlating with an indication of providing inappropriate advice in Project AARK<sup>6</sup> (and therefore insurance areas were a risk factor issue identified as potentially leading to inappropriate advice), we have made enquiries with the Licensees and Consulting Firm 1 in relation to whether there was a reasonable basis not to undertake the testing given these data limitations.
16. In particular, we have considered whether the testing could have been undertaken given a longer time frame (i.e. without project time limits being present) for Project BIM, as set out below.

### *Insurance data limitations*

17. Although some of the insurance data was not available in an appropriate or useable format in the timeframe for Project BIM, we understand from the Licensees and Consulting Firm 1 that in any event, inappropriate advice and client loss relating to insurance would not have been effective to identify from data analytics alone:
  - a. We understand that at the time of Project BIM the data limitations were considered, and that the data was not used for certain insurance tests as it was not available in a useable format in the Project BIM timeframe;

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<sup>6</sup> With cleanskins being present in 5 out of 17 advisers (29%) assessed in Project AARK as being of medium or high risk.



- b. Subsequent discussions between the Licensees and Consulting Firm 1 were held as to whether it was possible or feasible to test for inappropriate insurance-related advice using data analytics alone. It was ultimately concluded that it was not feasible to do so. Such information is not readily available. It may also require file reviews;
  - c. The Licensees were able to undertake some testing of cleanskin data in relation to a number of IFRs, outside of the Project BIM process, however, this testing involved reviewing the information of particular advisers, rather than testing a whole population. We also understand from the Licensees that the data used for the IFR testing may not be complete;
  - d. In addition, client loss in relation to 'cleanskin' insurance will only be identified if and when a client has a claim for a medical condition which is not previously disclosed in the application; and
  - e. Other areas of insurance (Over-insurance, Loss of insurance, Switching (insurance), Super switching (with loss of insurance)) cannot be tested using data analytics alone:
    - i. For example, identifying appropriate levels of insurance (and therefore over-insurance) requires a significant amount of information about the demographic of the area in which the adviser is based, together with the financial background and needs of a particular client; and
    - ii. Similarly, identifying switching requires information about the previous product held by a particular client. If the previous product was with an external financial services firm, then such information is not available to the Licensees.
18. Therefore, although Consulting Firm 1 (along with the Licensees) rated insurance testing as a high priority when planning Project BIM, on balance, the identified difficulties meant it was reasonable for the Licensees to determine not to undertake the data analytics testing, as insurance areas were rated a medium correlation with providing inappropriate advice. We have not tested the veracity of the Licensees' medium risk rating for insurance.
19. In conclusion, on balance, despite the data limitations in relation to insurance advice, our opinion is that there was a reasonable basis for the Licensees to use the data analytics process to identify PARRs.

#### Step 4: Deductive and Inductive Testing

20. We have considered the data analytics testing undertaken by Consulting Firm 1 and concluded that that there was a reasonable basis for the steps in both the Deductive and Inductive Testing.
21. Whilst not Additional Processes under the Additional Licence Conditions, the Licensees have agreed to assess advice provided by two advisers to identify whether they gave inappropriate advice that led to client loss. We set out the reasons for this below.
- Known Advisers*
22. We have identified a number of advisers who were already known to the Licensees prior to Project BIM.
23. We identified these advisers as a result of our review of Project AARK (the process undertaken by the Licensees from late 2011 into early 2012 which provided information used as a basis for Project BIM), as referred to in Section C of the report and Appendix C. Project AARK commenced with a desktop review of 63 advisers, who had been identified through Breach Reports and other internal monitoring systems within the Licensees, and, where there was assessed to be a potential for client loss. Under Project AARK, ultimately a review of 31 advisers was undertaken on a detailed basis.

24. We made numerous enquiries concerning these 63 advisers, including the extensive review of a large number of documents<sup>7</sup> to consider the behaviours of the 63 advisers which had led them to be identified for review.
- a. In particular we focussed on advisers who were not reviewed in Project AARK as their conduct had been deemed by the Licensees to relate to 'compliance issues not impacting client outcomes'. 19 advisers were excluded using a process which the Licensees describe as a 'triage', selected based on a desktop review of known information to assess advisers considered 'at risk' of providing inappropriate advice resulting in client loss. These advisers therefore did not undergo the methodology (being up to a 25 file review) of Project AARK. After making enquiries concerning these advisers, the Licensees has now described that the issues facing these advisers fall into the following categories<sup>8</sup>:
    - i. 'Documentation or file management issues' (record-keeping or file management);
    - ii. 'Poor business practices' (conduct such as backdating documents, failure to comply with ongoing reviews, fee disclosure issues, and holding signed, blank Statements of Advice on file); or
    - iii. Other issues (lack of evidence to suggest understanding of customer circumstances);
  - b. Eight FWL advisers<sup>9</sup> were excluded because, although a provisioning review was required, no files were available for review. This is because the contractual arrangements with FWL advisers were such that FWL itself did not keep copies of client files, and once an adviser had left the Licensee, it did not have a right to obtain customer files unless there was a specific complaint about that adviser. The adviser being identified as a PARR is not a sufficient reason to request files. Again, these advisers therefore did not undergo the methodology (being up to a 25 file review<sup>10</sup>) of Project AARK. Many of the issues facing these advisers are now deemed by the Licensees to be:
    - i. 'Poor business practices' (conduct such as backdating documents, failure to comply with ongoing reviews, fee disclosure issues, and holding signed, blank Statements of Advice on file); or
    - ii. 'Individualised Poor Behaviours' (conduct such as signature forgery, misappropriation of customer funds, non-disclosure, file manipulation and deceptive behaviour);
  - c. Five advisers were excluded because they were already the subject of other remediation processes. These advisers were IFRs, or were being dealt with by the Licensees separately to the Project Baringa process<sup>11</sup>;
  - d. One 'adviser' was not an adviser that was a natural person, but rather a product, and had incorrectly been included as an adviser subject to a Breach Report<sup>12</sup>; and
  - e. One adviser was subject to a Breach Report but not reviewed in Project AARK<sup>13</sup>.
25. As a result of the enquiries which we have made in relation to these advisers, in our opinion 16 of the 63 advisers exhibited, to differing degrees, indicators of 'dishonest or intentionally unfair behaviour'. Examples of this behaviour include:

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<sup>7</sup> Including Breach Reports to ASIC, various review reports prepared by the Licensees, and Project AARK-related documents.

<sup>8</sup> We understand that the Licensees did not categorise these advisers in this way at the time of Project AARK or Project BIM.

<sup>9</sup> There was also an additional adviser (Adviser 73) who was not included in Project AARK for unknown reasons, and therefore did not undergo a 25 file review. We have made enquiries of the Licensees as to the behaviour of this adviser, and in our opinion there has been adequate review of that adviser outside of the Compensation Program.

<sup>10</sup> In some cases where 25 files were not available, less files were reviewed.

<sup>11</sup> Project Hartnett for Hartnett Adviser 1 and Hartnett Adviser 2, and a separate process for Adviser 3.

<sup>12</sup> Adviser 46.

<sup>13</sup> Adviser 73.

- a. Signature forgery (three advisers, including one instance of an adviser photocopying a client signature, plus instances of alleged forgery for a further adviser);
  - b. File manipulation and alteration (five advisers); and
  - c. Diverting client funds as security for a margin loan account taken out in the adviser's own name (one adviser).
26. In our opinion, the Licensees had information available to them at the time of Project BIM, that 16 advisers exhibited, to differing degrees, attributes of 'dishonest or intentionally unfair behaviour'.
27. Out of the abovementioned 16 advisers, we have concluded that nine advisers had been the subject of adequate review outside of the Compensation Program, and that these reviews were completed prior to Project BIM<sup>14</sup>. We have determined this through considering the approach and breadth of review of those advisers taken by the Licensees in relation to previous investigations and Breach Reports, including whether clients were contacted as part of the process.
28. Out of the remaining seven advisers, we have concluded that:
- a. One adviser has subsequently been the subject of adequate review outside of the Compensation Program since 2012, therefore no further review is required;
  - b. For four advisers, no information was, or is now, available for further review, because of the contractual arrangements in relation to FWL. In our opinion, the reviews of these advisers prior to 2012 was limited. However, ASIC informs us that whether the Licensees were legally required to ensure they could access the relevant client files prior to 25 October 2010, for advisers whose authorisation by the relevant Licensee had ceased, is not free of doubt. In our opinion it was therefore reasonable for the Licensees to conclude that they had taken reasonable steps to obtain copies of the client files, which were unsuccessful and that no further review of these advisers is therefore possible.
  - c. This leaves two advisers who in our opinion still require further file reviews to assess whether those advisers gave inappropriate advice that led to client loss:
    - i. **Adviser 80:** There was evidence of an instance of misleading marketing material targeted at bankrupt clients promising 65% return over five years. The Licensees were unable to review client files as the adviser left prior to the review, however the Licensees did review documentation of 18 of the advisers' cases in 2012 following that adviser's departure. Based on that limited review, there was no inappropriate advice provided; and
    - ii. **Adviser 114:** A Breach Report in June 2010 records a client's signature was photocopied on a 'Transaction without Advice' document. The Licensee was satisfied that this was a one off and isolated incident but cannot provide any further information regarding this. We have separately seen a reference within the Licensee's documents to the adviser arranging funds to be released from a joint account without both account holders' signatures, but the Licensees are unable to identify any further information in relation to this issue.

## Step 5: A 'scoping-out' process was undertaken of the 71 advisers identified in the BIM report

29. We have considered the reasons why the 71 advisers identified in Project BIM were reduced to 51 PARRs.

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<sup>14</sup> Through BAU processes.

30. This process was done in meetings of senior representatives of Licensees, attended by Consulting Firm 1, and included a review of historical background information for these advisers where appropriate.
31. There were 20 advisers 'scoped out' at this step:
- a. 11 advisers who had been remediated, or were being reviewed through other processes. In our opinion, scoping out such advisers is reasonable; and
  - b. Nine advisers were scoped out who were unknown to the Licensees prior to Project BIM, for reasons including:
    - i. Less than 0.1% of the client portfolio was flagged above the deductive threshold;
    - ii. Adviser had relatively few clients and not deemed to be of concern; and
    - iii. Adviser had relatively small funds under management<sup>15</sup>.
32. Given the process was undertaken jointly with Consulting Firm 1, and involved a review of historical information on these clients as a 'sense check' before excluding them as PARRs, we have concluded this was reasonable.

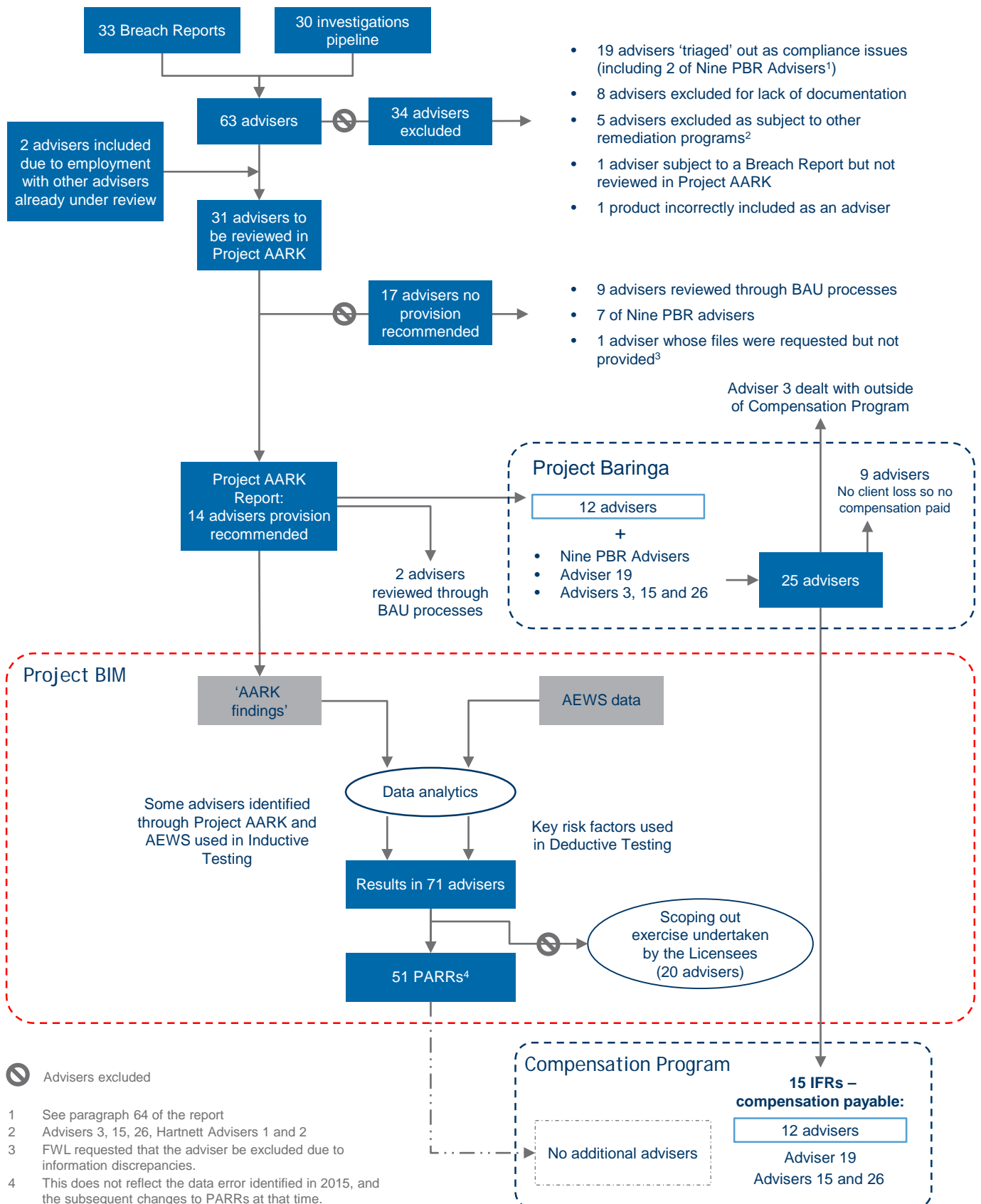
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<sup>15</sup> One of the outcomes from Project AARK was that advisers with relatively low levels of funds under management were 'less likely to be at risk'.



# Appendix E2: Diagram of process to identify PARRs

## Project AARK



⊘ Advisers excluded

1 See paragraph 64 of the report  
 2 Advisers 3, 15, 26, Hartnett Advisers 1 and 2  
 3 FWL requested that the adviser be excluded due to information discrepancies.  
 4 This does not reflect the data error identified in 2015, and the subsequent changes to PARRs at that time.

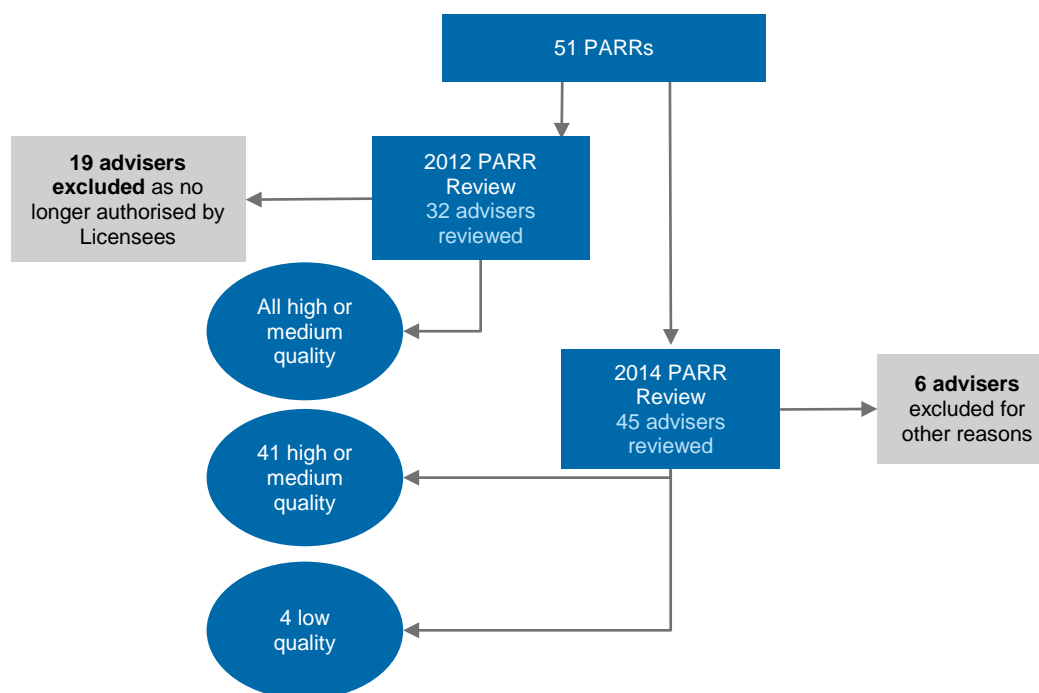
## Appendix F: The PARR Reviews

### Introduction

1. In this Appendix, we discuss the steps in the PARR Reviews, as summarised in Section F of the report.

### Outcomes of the PARR Reviews process

2. An overview of the PARR Review, and its outcome, is set out in the diagram below.



### Key Steps

3. We set out below the key steps in the PARR Reviews. These steps relate to the known PARRs in 2012, and do not reflect subsequent changes in PARRs due to the data error identified in 2015 (as discussed in paragraph 170 of the report).

#### PARR Reviews process

Step	Process	Number of PARRs
1	<p><u>2012 PARR Review of current PARRs</u></p> <p>For the 32 PARRs who remained authorised by the Licensees in 2012, the process adopted was a review of up to six files where an adviser had provided the financial advice in the 12 months preceding the review.</p> <p>The 2012 PARR Review of the then current PARRs relied upon a review of up to six files using the 'AA checklist', a checklist designed to assess the quality of advice.</p>	32 PARRs (9 CFPL, 23 FWL)
2	<p><u>2012 PARR Review excluded PARRs who were no longer active at the Licensees</u></p> <p>For the 19 PARRs who were no longer authorised by the Licensees in July 2012, no review was undertaken.</p> <p>The Licensees have informed us that they attempted to obtain FWL files, but they were not able to obtain files for review.</p>	19 PARRs (13 CFPL, 6 FWL)

Step	Process	Number of PARRs
3	<p><u>2014 PARR Review for the then current PARRs</u></p> <p>This involved an analysis of previous reviews of 28 PARRs who remained authorised by the Licensees.</p> <p>The process adopted was as follows:</p> <ul style="list-style-type: none"> <li>The three most recent BAU AA reviews following the 2012 PARR Review were reviewed; and</li> <li>If any of those reviews indicated that the PARR was 'high risk', the PARR was flagged for further review.</li> </ul> <p>No then current PARRs were identified as 'high risk' as a result of this part of the review.</p>	28 PARRs (8 CFPL, 20 FWL)
4	<p><u>2014 PARR Review for PARRs no longer authorised by the Licensees</u></p> <p>This process involved an analysis of previous BAU AA reviews of 17 PARRs no longer authorised by the Licensees. This included PARRs who were not reviewed in 2012.</p> <p>The process adopted was as follows:</p> <ul style="list-style-type: none"> <li>The three BAU AA reviews preceding the date on which the PARR's authorisation ended were reviewed; and</li> <li>If any of those reviews indicated that the PARR was 'high risk', the PARR was flagged for further review.</li> </ul> <p>This review resulted in four PARRs being flagged as 'high risk'<sup>1</sup>, and given further review:</p> <ul style="list-style-type: none"> <li>Two of whom had already been reviewed through other BAU processes, and terminated; and</li> <li>Two other PARRs had no compensation due to their clients.</li> </ul>	17 PARRs (12 CFPL, 5 FWL)
5	<p><u>The 2014 PARR Review excluded some PARRs.</u></p> <p>Six PARRs were not reviewed, for the following reasons:</p> <ul style="list-style-type: none"> <li>The adviser(s) were already under review for remediation, or had been remediated, through BAU processes;</li> <li>The adviser(s) were in a non-advice role at a financial planning practice and that practice had been identified through Project BIM; or</li> <li>No BAU AA reviews had been undertaken for the adviser(s) during their tenure at the Licensee.</li> </ul>	6 PARRs (2 CFPL, 4 FWL)

## Our Opinions

- For the reasons set out in Section F of the report, we have concluded that for 40 of the 51 PARRs, there was not a reasonable basis for adopting the PARR Reviews to identify whether there were other representatives who ought to have been assessed as part of the Compensation Program.
- We set out the reasons below why we have concluded that the Licensees had a reasonable basis in relation to 11 of the 51 PARRs:

### Reasonableness Findings

PARRs	Reasonable basis for the PARR Reviews?	Reason	Number of PARRs
Advisers 3 and 23	Yes	PARRs had already been reviewed either in the Compensation Program or under an agreed basis with ASIC, and therefore did not require further detailed review.	2

<sup>1</sup> Advisers 3, 52, 85 and 109.



PARRs	Reasonable basis for the PARR Reviews?	Reason	Number of PARRs
Advisers 67 and 123	Yes	PARRs had been the subject of Breach Reports and had therefore been subject to adequate review. Compensation was paid to clients in relation to one of these PARRs.	2
Adviser 109	Yes	PARR had been the subject of investigation prior to 2012, when the adviser was terminated by the Licensee	1
Advisers 51 and 78	Yes	PARRs were authorised for only a short period and were under 'pre-vetting' for a large portion of their authorisation. This involves heavy levels of supervision and review of any advice provided to clients.	2
Advisers 53, 104, 126, 127	Yes	PARRs had been identified through Project BIM because they were part of a financial planning practice, but were not providing advice in the relevant period while at the Licensees.	4
<b>Total for which there was a reasonable basis for the PARR Reviews</b>			<b>11</b>

6. In our opinion these PARRs did not require review in 2012 or 2014 to determine whether they ought to have been assessed as part of the Compensation Program. This means that our concerns relate to the remaining 40 of the 51 PARRs.

## Advisers mis-categorised as PARRs and New PARRs identified in October 2015

7. As set out in at paragraph 170 of the report, shortly prior to the finalisation process of this report, the Licensees became aware that there were some classification errors in a data source used in Project BIM in 2012 which led to the following changes:
- a. 12 advisers were miscategorised as PARRs and have now been removed from being PARRs;
  - b. A group of 14 further advisers were identified as potentially being PARRs. Of those 14 advisers:
    - i. 11 advisers had not been identified or reviewed by the Licensees as part of Project AARK or Project BIM;
    - ii. One adviser<sup>2</sup> had been identified in Project AARK, but scoped out; and
    - iii. Two advisers<sup>3</sup> had been identified in the 71 potential PARRs in Project BIM, but were then scoped out.
8. As a result of a recent 'sense check' (undertaken on the same basis as the sense check undertaken after Project BIM in 2012), four of these 14 advisers were then identified to become PARRs.
9. This means that based on information available to date, the following changes have been made to the number of PARRs:

<sup>2</sup> Adviser 44.

<sup>3</sup> Advisers 72 and 129.

## Changes to PARRs as a result of data errors

Description	PARRs
Advisers identified in Project BIM in 2012 as possible PARRs	71
Less advisers 'scoped out' in 'sense check' process in 2012	<u>(20)</u>
<b>PARRs total - Project BIM in 2012</b>	<b>51</b>
<b>PARRs now known to the Licensees (October 2015)</b>	
Less 12 advisers mis-categorised as PARRs <sup>4</sup>	(12)
Add New PARRs (after 'sense check' undertaken by Licensees) <sup>5</sup>	<u>4</u>
<b>Total PARRs known to the Licensees at October 2015</b>	<b>43</b>

10. As discussed in Section F of the report, we have concluded that for 11 PARRs, the Licensees had a reasonable basis for the PARR Reviews. We have also concluded that it is reasonable for the Licensees not to now apply PARR Reviews to one of the New PARRs<sup>6</sup>. Therefore, this results in the following:

### PARRs with no reasonable basis for PARR Reviews

Description	PARRs
Total PARRs now known to Licensees	43
Less PARRs where there was a reasonable basis for the PARR Reviews	(11)
Less 1 New PARR where there is a reasonable basis not to apply the PARR Reviews	<u>(1)</u>
<b>Total PARRs now known to Licensees where there was no reasonable basis for the PARR Reviews</b>	<b>31<sup>7</sup></b>

## Adequate review outside of the PARR Reviews

11. We have also considered any further targeted reviews or investigations undertaken of PARRs after 2012. This is to determine whether sufficient work has already been done after 2012, which in effect, has meant that adequate subsequent review has occurred outside of the Compensation Program. If so, no Additional Processes are necessary for those PARRs, meaning that we do not require the Licensees to re-perform work that has already been undertaken.
12. For PARRs who are still authorised by the Licensees, we have also considered:
- The PARR's BAU AA review ratings after 2012, where these have shown no 'low quality' ratings; and
  - Whether the PARR has had any registrations for the Licensees' Open Advice Review process.
13. If the PARR has had no registrations, or only one registration, for the Open Advice Review process, together with a history of regular monitoring since 2012 showing no 'low quality' BAU AA review ratings, we have concluded that on balance, the combination of these three factors means that the PARR has had adequate subsequent review outside of the Compensation Program.
14. On this basis, although we have concluded that the Licensees did not have a reasonable basis for adopting the PARR Reviews, we have concluded that the 12 PARRs below have had adequate review outside of the Compensation Program since 2012.

<sup>4</sup> Advisers 38, 64, 66, 68, 85, 89, 94, 95, 96, 116, 119 and 122.

<sup>5</sup> Advisers 129, 130, 131 and 132.

<sup>6</sup> This is consistent with the advisers 'scoped out' of Project BIM because they were the subject of ongoing investigations (see paragraph 108 of the report). In other words, had the mis-categorisation error not occurred, and had the adviser been identified in 2012, they would have been 'scoped out' and therefore not subject to PARR Reviews.

<sup>7</sup> Consisting of 28 of the PARRs identified in Project BIM in 2012, and three of the New PARRs.

## PARRs who have had adequate review outside of the Compensation Program since 2012

PARRs	Reasonable basis for the PARR Reviews?	Adequate subsequent review meaning no Additional Process is required?	Reason
Adviser 29	No	Yes	<p>The 2012 PARR Review rated the adviser as 'high quality' and did not identify that they should be part of the Compensation Program.</p> <p>The PARR was investigated in 2013 as a result of a client complaint and \$1.86 million paid in compensation to clients in relation to 46 cases of inappropriate advice.</p>
Adviser 28	No	Yes	<p>The PARR was reviewed in 2014 by Consulting Firm 1 given the PARR's association with other advisers for whom compensation had been paid.</p> <p>From the review of 25 files, Consulting Firm 1 concluded that '<i>there were no indications of inappropriate advice where the client was worse off</i>' however there were documentation concerns.</p>
Adviser 41	No	Yes	<p>The PARR had been identified in the Deductive testing in Project BIM. This was based on data prior to 2012.</p> <p>The adviser subsequently received a 'medium quality' rating in the 2012 PARR Review.</p> <p>The PARR was later investigated as a result of an AEWS alert in 2013 in relation to internally geared advice and risk profile indicators. There was no known client loss identified as a result of this investigation.</p>
Adviser 117	No	Yes	<p>The PARR had been identified in both the Deductive and Inductive testing in Project BIM.</p> <p>The PARR subsequently received a 'medium quality' rating in the 2012 PARR Review.</p> <p>The PARR was later investigated as a result of an AEWS alert in December 2012 and March 2013 in relation to three areas. There was no known client loss identified as a result of this investigation.</p>
Advisers 49,111, 127	No	Yes	<p>The PARRs had been identified in either the Deductive or the Inductive testing in Project BIM.</p> <p>Prior to 2012, the PARRs had 'good' (or equivalent) BAU AA reviews. The PARRs have had no complaints or known client loss.</p> <p>After 2012, the PARRs had no 'high risk' or equivalent BAU AA review ratings. There have been no registrations through the Licensees' Open Advice Review process.</p>
Advisers 29,120,131	No	Yes	<p>The PARRs had been identified in either the Deductive or the Inductive testing in Project BIM.</p> <p>The PARRs each had one 'high risk' or 'improvement required' BAU AA review rating prior to 2012, with the rest being 'good' (or equivalent). The PARRs have had no substantiated complaints or known client loss.</p> <p>After 2012, the PARRs had no 'high risk' (or equivalent) BAU AA review ratings. There have been no registrations through the Licensees' Open Advice Review process.</p>
Adviser 108	No	Yes	<p>The PARR had been identified in the Inductive testing in Project BIM.</p> <p>The PARR had received a 'high risk' rating in a BAU AA review in 2009, but all 'moderate', 'medium quality' or 'good' ratings since 2009.</p> <p>The PARR has had no client loss, and was not subject to any complaints. However, the PARR has had one registration through the Licensees' Open Advice Review process.</p>
Adviser 132	No	Yes	<p>The PARR had been identified as a New PARR in 2015.</p> <p>The PARR had four 'high risk' or 'improvement required' BAU AA review ratings prior to 2012, with the rest being 'good' (or equivalent). The PARR had had no complaints or known client loss.</p>

PARRs	Reasonable basis for the PARR Reviews?	Adequate subsequent review meaning no Additional Process is required?	Reason
			After 2012, the PARR had three 'good' BAU AA review ratings. There have been no registrations through the Licensees' Open Advice Review process.

## PARRs for whom Additional Processes are not reasonably required

15. We have identified two PARRs where the Licensees are not reasonably required to undertake Additional Processes, for the following reasons:

### PARR for whom Additional Processes are not reasonably required

PARRs	Reasonable basis for the PARR Reviews?	Adequate subsequent review meaning no Additional Process is required?	Additional Processes Possible?	Reason
Adviser 87	No	No	No	<p>The Licensees do not have access to the files held by certain departed FWL advisers (as a result of their contractual arrangements).</p> <p>In addition, no information is available regarding client contact information, transactional information or any advice documentation, therefore file reconstruction is not possible.</p> <p>Prior to the PARR's authorisation ending in 2009, the PARR had 'negligible risk' (or equivalent) BAU AA review ratings and no complaints or known client loss.</p>
Adviser 79	No	No	No	<p>Prior to the PARR's authorisation ending in 2006, the PARR had 'low', 'moderate', 'negligible risk' (or equivalent) BAU AA review ratings, and had been under 'pre-vetting' for some of the Authorisation Period. The PARR had one complaint not relating to inappropriate advice (outcome unknown).</p> <p>Given the passage of time, the lack of complaints against the adviser relating to inappropriate advice, the relatively short period of being an adviser (for some of which the adviser would have been under 'pre-vetting'), and no relevant registrations under Open Advice Review<sup>8</sup>, it is unlikely that the Licensee would be able to undertake any remediation in relation to this adviser.</p>

<sup>8</sup> There have been three registrations which refer to this adviser under the Open Advice Review, but upon investigation by the Licensee the issue appears to relate to prior to their Authorisation Period at the Licensee or the advice was given by a different adviser.



# Appendix G: Diagram of Additional Processes for PARR Reviews

