



KordaMentha
forensic

Compliance Report (Parts 1 and 2)

Commonwealth Financial Planning Limited and Financial Wisdom Limited

Report of Compliance Expert

30 November 2016

Copyright

© 2016 The Australian Securities and Investments Commission (ASIC)

All rights reserved.

This Compliance Report is subject to copyright. Except as permitted under the *Copyright Act 1968* (Cth), no part of this report may be published, reproduced, stored in any retrieval system, or communicated by any means or in any form whatsoever without the prior written permission of ASIC.

Please address all copyright inquiries to ASIC at kordamenthareport@asic.gov.au.

Background Information and Disclaimer

This report is prepared by KordaMentha Forensic as the compliance expert engaged by ASIC under the additional Licence Conditions imposed by ASIC on two AFS Licensees: Commonwealth Financial Planning Limited ABN 65 003 900 169 (AFS Licence No: 231139) and Financial Wisdom Limited ABN 70 006 646 108 (AFS Licence No: 231138) ('**Additional Licence Conditions**'). Both Licensees are subsidiaries of the Commonwealth Bank of Australia ABN 48 123 123 124. The report deals only with the issues set out in the Additional Licence Conditions.

For ASIC purposes, this is ASIC Report 504 and is available on the ASIC website at asic.gov.au.

Information contained in this report is current as at the date of the report, and may not reflect any event or circumstances which occur after the date of the report.

This report is published for general information only.

Information contained in this report is not intended to be used for any specific purpose by any person, except for personal review by individuals directly affected by AFS Licensees' financial services within the period covered by the Additional Licence Conditions. All users of this report (including clients and former clients of the AFS Licensees within the scope of the Additional Licence Conditions) should seek independent expert advice before using or relying on any information contained in this report. Neither ASIC nor KordaMentha Forensic will be liable to anyone for any use of the report, or for any reliance on any information contained in the report.

All queries related to the content, or to any use of this report must be addressed to KordaMentha Forensic at CBAreview@kordamentha.com, with a copy to ASIC at kordamenthareport@asic.gov.au.

Joanna Bird / Louise Macaulay
Senior Executive, Financial Advisers
Australian Securities and Investments Commission
Level 5
100 Market Street
Sydney NSW 2000

30 November 2016

By email: Joanna.bird@asic.gov.au
Louise.macaulay@asic.gov.au

Dear Joanna & Louise,

Compliance Report (Parts 1 and 2) of the Compliance Expert appointed under the Additional Licence Conditions of CFPL and FWL

This Compliance Report (Parts 1 and 2) 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

Table of contents

A.	Executive Summary.....	1
	Introduction.....	1
	Overall opinions relating to application of Additional Elements to the 4,333 Cases.....	2
	Summary of further compensation offered.....	4
	Cases referred by clients to the Financial Ombudsman Service ('FOS').....	5
B.	Scope of our work.....	6
	Scope of Additional Licence Conditions and our Engagement.....	6
	Scope of the Comparison Report and our opinions.....	6
	Scope of the Identification Report and our opinions.....	7
	Scope of the Compliance Report.....	8
	Definitions in the Additional Licence Conditions.....	9
	Information relied on.....	9
	References to adviser and client names.....	9
	PART 1- Application of Additional Elements to the 4,333 Cases.....	10
C.	Overview of Additional Elements and other Conditions.....	11
	Overview.....	11
D.	Condition 25 – Written communications.....	12
	Background.....	12
	Our Review.....	14
	Our Findings.....	15
E.	Condition 26 – Provision of information to Independent Advisor.....	16
	Background.....	16
	Our Review.....	16
	Our Findings.....	17
F.	Condition 27 – Further Licensee Review.....	19
	Background.....	19
	Our Review.....	19
	Our Findings.....	19
G.	Condition 28 – FLR outcome letter.....	21
	Background.....	21
	Our Review.....	21
	Our Findings.....	21
H.	Outcomes resulting from Conditions 25 to 28.....	22
	Categories of clients now receiving an offer of compensation.....	22
	PART 2 – Other Licence Condition requirements.....	28
I.	Condition 24 – Reasonable access for Compliance Expert.....	29
	Background.....	29

	Our Review	29
	Our Findings	29
J.	Condition 30 – Status reports to ASIC	30
	Background	30
	Our Review	30
	Our Findings	30
K.	Condition 31(a) – Inclusion on CBA Board meeting agenda.....	31
	Background	31
	Our Review	31
	Our Findings	31

List of Appendices

Appendix A Glossary

Appendix B Additional Licence Conditions Overview Diagram

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**')¹. 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), the Identification Report (published on 17 December 2015) and this Compliance Report.
3. We are required to review the Licensees' compliance with Conditions 24 to 31(a) (inclusive) and provide this Compliance Report outlining our opinion as to whether the Licensees have complied with those conditions.
4. Our scope requires us to provide our opinion on:
 - a. Whether the Licensees have appropriately applied the processes required under the Additional Licence Conditions (the '**Additional Elements**') to the 2,707 Affected Clients. It was agreed with ASIC that the Licensees would also write to No Evidence of Advice Clients. After having also agreed with ASIC that three of these No Evidence of Advice Clients would be exempt from this process², this left 1,626 cases. Together, these cases are referred to in this report as '**the 4,333 Cases**' identified as a result of our Comparison Report.

The Licensees were required to write to the 4,333 Cases in the agreed form, offering up to \$5,000 for an Independent Advisor, reassess their advice (if requested to do so, and including consideration of any information provided by the client) and compensate them where required. Our opinions in this respect are dealt with in **Part 1** of this report;
 - b. Whether the Licensees have complied with certain other requirements of an administrative nature under the Additional Licence Conditions. Our opinions are dealt with in **Part 2** of this report;
 - c. Whether the Licensees have appropriately applied the Additional Processes identified as a result of our Identification Report, involving the review of a sample of client files of a further 17 advisers to determine whether the clients of those advisers should be included in a compensation program. These reviews are in progress. Our opinions in this respect will be dealt with in **Part 3**, to be published separately.
 - d. If those reviews identify that any of the clients of those 17 advisers are found to have suffered a loss as a result of inappropriate advice provided by the Licensees' advisers, those clients will be compensated in a process overseen by KordaMentha Forensic and will also be subject to Conditions 24 to 31(a). Our opinions in this respect will be dealt with in **Part 4**, to be published separately.

¹ 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.

² CBA proposed, and ASIC agreed, that it would not write remediation letters to three Affected Clients as they were, or had an association with an Identified Former Representative, whose advice was being reviewed under these Additional Licence Conditions.

Overall opinions relating to application of Additional Elements to the 4,333 Cases

5. Having reviewed the processes and steps undertaken by the Licensees, our opinions are as follows. These opinions are expressed elsewhere in this report. Because this is a summary of our opinions, they do not include all bases for those opinions. This summary should be read in conjunction with the full report.

Summary of compliance

6. The table below outlines the compliance for each of the Licence Conditions required to be applied to the 4,333 Cases.

Table 1 - Summary of compliance

Licence Condition		Compliance
Condition 24	Reasonable access for Compliance Expert	Yes
Condition 25	Written communications with the 4,333 Cases (by 22 May 2015, unless otherwise agreed with ASIC)	99.95%
Condition 26	Provision of information to Independent Advisor where requested	
	- Timing requirement (provided to clients within 14 days)	98.10%
	- Reasonably sufficient information requirement	Yes
Condition 27	Further Licensee Review (completed within 90 days of client request)	92.50%
Condition 28	Further Licensee Review outcome letter (completed within 30 days of completion of Condition 27)	97.50%
Condition 30	Licensee status reports to ASIC	Yes
Condition 31(a)	Inclusion on CBA Board meeting agenda	Yes

Condition 24 (reasonable access for Compliance Expert)

7. In our opinion the Licensees have complied with Condition 24 in relation to the provision of requested information, up to the date of Parts 1 and 2 of this report. The information outlined in this report reflects information known as at 15 November 2016. Refer to Section I for further information.

Condition 25 (written communications with the 4,333 Cases)

8. The Licensees have complied with this condition to write to clients in the agreed form, and within the agreed time for 4,331 cases (99.95%). The Licensees have not complied with the timing requirement in this condition for two cases (0.05%). The two cases were subsequently rectified. Refer to Section D for further information.

Condition 26 (provision of information to Independent Advisor where requested)

Reasonably sufficient information requirement

9. Condition 26 requires that information provided to the client be reasonably sufficient to assist the Independent Advisor to form an opinion regarding the advice that the Affected Client received from the Licensee and/or its representative. We have considered a sample of cases and the Licensees' provision of information within 14 days with respect to the following three attributes, being required attributes necessary to comply with Condition 26:

- a. Assisting the Independent Advisor to form an opinion regarding the advice that the Affected Client received from the Licensee and/or its representative;
 - b. Understanding the Licensees' assessment of that advice; and
 - c. Understanding the basis upon which any offer of compensation was made.
10. Based on the information provided in response to our enquiries, and the sample testing we have undertaken, the Licensees have complied with the second and third required attributes, through the provision of all available information that the case assessors had used in assessing the advice and determining any offer of compensation.
11. With regards to the first requirement, based on the sample testing we have undertaken, and information we have been provided with in response to our enquiries, we are satisfied that the Licensees have demonstrated that information provided to the clients within 14 days was reasonably sufficient to assist the Independent Advisor to form an opinion regarding the advice that the Affected Client received from the Licensee and/or its representative and determining any offer of compensation.
12. Refer to Section E for further information.

Timing requirement

13. In our opinion, the Licensees have complied with the timing requirement of Condition 26 for 207 cases (98.10%), but have not complied with this condition for four cases (1.90%) as they received their information late.
14. Refer to Section E for further information.

Condition 27 (Further Licensee Review)

15. The Licensees have complied with this condition for 186 cases (92.50%) by undertaking and completing the FLR within 90 days, but have not complied with the timing requirement in this condition for 15 cases (7.50%). However, for 10 of these 15 cases, they had progressed through receiving an FLR outcome letter (Condition 28) so as to have effectively caught up to be compliant when Conditions 27 and 28 are considered together (for the Further Licensee Review ('FLR') process). In the remaining five cases, clients received the FLR outcome letter, but outside of the total time requirement for the FLR process.
16. Refer to Section F for further information.

Condition 28 (FLR outcome letter)

17. The Licensees have complied with this condition by sending the FLR outcome letter for 195 cases (97.01%) within the timeframe required but have not complied with the timing requirement in this condition for five cases (being those discussed under Condition 27) (2.99%) as they received the letter late.
18. Refer to Section G for further information.

Condition 30 (Licensee status reports to ASIC)

19. The Licensees have complied with this condition. Refer to Section J for further information.

Condition 31(a) (inclusion on CBA Board meeting agenda)

20. The Licensees have complied with this condition. Refer to Section K for further information.

Summary of further compensation offered

21. As a result of the Licensees applying the Additional Elements as required under Conditions 25 to 28, there has been further compensation offered to 185 cases.
22. The further compensation offered (which is in addition to compensation paid under the Compensation Program totalling \$26,965,907³, including interest) totals \$4,954,053 (including interest) relating to 185 cases⁴, as a result of the Additional Licence Conditions. The main categories⁵ of client receiving offers of compensation are summarised as follows:
 - a. For 82 out of 471 Reassessment Cohort cases (i.e. cases where, independent of an FLR request, the Licensees undertook a reassessment of whether any advice was provided and if so, whether there was sufficient documentation retained on file to support the original assessment⁶):
 - i. Two cases had initially received compensation for inappropriate advice. However, as a result of reassessment, the Licensees have now determined that further compensation of \$540,612 (including interest) was payable and they received customised letters sent under Condition 25 outlining the offer.
 - ii. 51 cases had initially not been offered compensation because the Licensees deemed that they received appropriate advice. However, as a result of reassessment using the documents that were available, the Licensees have now determined that inappropriate advice was provided which led to these cases suffering a loss. Total compensation of \$657,094 (including interest) was offered in the letters sent under Condition 25.
 - iii. Five cases had initially not been offered compensation because the Licensees were unable to assess the advice, due to lack of information. However, as a result of reassessment after the clients provided further information, the Licensees have now determined that inappropriate advice was provided which led to these cases suffering a loss. Total compensation of \$248,012 (including interest) was offered in the letters sent under Condition 25.
 - b. There were 12 cases where the Licensees had initially assessed that no advice had been provided to these clients. However, as a result of the letters sent under Condition 25, these clients contacted the Licensees saying that advice had been provided by an IFR. As a result, the Licensees have now determined that inappropriate advice was provided to four of these 12 cases which led to client loss. Total compensation of \$126,921 (including interest) was offered in the letters sent under Condition 25.
 - c. For 103 Further Licensee Review cases (i.e. cases that requested their advice and compensation be re-reviewed after receiving the letters sent under Condition 25):
 - i. 73 cases that had initially (in the Compensation Program) accepted compensation for inappropriate advice, but requested an FLR to review that outcome, leading to further compensation of \$2,009,634 (including interest) being offered.
 - ii. Seven cases where no compensation was initially offered (in the Compensation Program) for the reason that the Licensees assessed that no loss had been suffered because the client's investments had outperformed the reference portfolio. Following a request for an FLR, the Licensees determined that the cases had now suffered a loss and compensation of \$179,089 (including interest) was offered.

³ Appendix E to the [Comparison Report](#)

⁴ Total cases receiving an offer is 185, rather than 189 due to an overlap of 4 cases receiving an offer in both the Reassessment Cohort and FLR.

⁵ There are other small categories of cases receiving offers and have not been specifically outlined below in the breakdown.

⁶ Refer to paragraph 88 for an explanation of the circumstances of these reviews.

- iii. One case had no compensation initially offered because the Licensees assessed that the investment which resulted from the advice outperformed the reference portfolio. However, as a result of the Licensee undertaking its own reassessment of this advice (to validate past assessments), it determined that the case had suffered a loss and that compensation should be offered. This case provided additional information and then requested an FLR. It was determined that revised total compensation of \$625,772 (including interest) was to be offered.
 - iv. One case had no compensation initially offered because the Licensees assessed that no advice had been provided. However, as a result of the Licensees undertaking their own reassessment, it was found that advice had actually been provided, that it was inappropriate and had led to loss. Compensation was offered to this case. Following a request for an FLR, it was determined that revised total compensation of \$101,665 (including interest) was to be offered.
23. Our scope does not include investigating the specific reasons why the Licensees have now reached a different assessment outcome for individual cases. However, from our review of information provided by the Licensees we are aware that the main reasons for the changes in assessment outcome were:
- a. Further information or submissions being provided by the clients or their Independent Advisor to the Licensees for consideration in the assessment of their advice;
 - b. Reassessment of the client's risk appetite which may lead to reassessment of the appropriate asset allocation and/or appropriate gearing strategy; and
 - c. Changes to the amount of loss assessed, for reasons including the calculation methodology regarding the order of intraday transactions and the timing of recurring monthly fee payments⁷.
24. The above further compensation is separate to any compensation paid under the Open Advice Review program.

Cases referred by clients to the Financial Ombudsman Service ('FOS')

25. There were nine Affected Clients that made a claim to FOS, the outcomes of which were as follows:
- a. Five cases were offered further compensation (in addition to any compensation arising from an FLR) in order to settle the dispute on a commercial basis;
 - b. One case was offered further compensation based on a recommendation issued by FOS;
 - c. One case was not offered further compensation (under a FLR or otherwise) and voluntarily withdrew the dispute;
 - d. One case where the claim was in relation to both an IFR and a non-IFR. An offer of compensation was made for the non-IFR advice only and was not related to the FLR process; and
 - e. One case was not offered further compensation as a determination made by FOS concurred with the FLR outcome.

⁷ We were informed by the Licensees that this change to methodology led to a relatively small difference in compensation outcomes, and in some cases the change was in the client's favour. In other cases, the difference would have resulted in less compensation for the client, but in these instances, the Licensees did not seek reimbursement from the client for the excess.

B. Scope of our work

Scope of Additional Licence Conditions and our Engagement

26. 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.
27. 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 (published by ASIC on 15 December 2015);
 - c. Compliance Report:
 - i. Parts 1 and 2 in this report;
 - ii. Parts 3 and 4 to be published separately.

(‘the Engagement’)
28. We have set out the scope of these reports below.
29. Appendix A is a glossary of defined terms.

Scope of the Comparison Report and our opinions

Purpose

30. The Comparison Report was published by ASIC on 23 April 2015⁸.
31. The Comparison Report compared and identified the differences in the process steps undertaken by the Licensees for communicating with:
 - a. Clients who received advice from banned former CFPL advisers Don Nguyen and Anthony Awkar, and who were remediated under a compensation program known as Project Hartnett⁹; and
 - b. Certain clients of a further 15 former CFPL and FWL advisers who gave advice between 2003 to 2012, many of whom were offered compensation as a result of adviser misconduct, in a separate Compensation Program known as Project Baringa.

Our opinions

32. The Comparison Report identified certain process steps applied in Project Hartnett that were not applied in the Compensation Program (referred to as **‘Additional Elements’**), namely:
 - a. In the Compensation Program most clients assessed did not receive an Initial Letter, indicating that the advice they received was being investigated and that CFPL would contact them with the outcome, or else received a letter that was inconsistent with those used in Project Hartnett;

⁸ Refer to the [Comparison Report](#).

⁹ Being a compensation program undertaken in 2011 and 2012.

- b. In the Compensation Program, no clients received an offer of up to \$5,000 for independent professional advice to help them assess the validity of the Licensees' review of their advice, an offer which had generally been made in Project Hartnett; and
 - c. In Project Hartnett, clients who received the Initial Letter indicating there was an investigation being conducted into the advice provided to them, but who were determined not to be entitled to compensation, received a letter stating this result of the file review. However, in the Compensation Program, while some clients received a letter offering compensation or advising they were not entitled to compensation, most clients reviewed received no such communication.
33. The Additional Licence Conditions required the Licensees, amongst other things, to apply the Additional Elements to Affected Clients. It was agreed with ASIC that the Licensees would also write to No Evidence of Advice Clients. After having also agreed with ASIC that three of these No Evidence of Advice Clients would be exempt from this process¹⁰, this left 1,626 cases. Therefore, the Additional Elements identified above were to be applied to the 4,333 Cases¹¹, which was to involve:
- a. Writing to the 2,707 Affected Clients offering them up to \$5,000 to have their financial advice independently reviewed and the other options described above; and
 - b. Writing to a further 1,626 No Evidence of Advice Clients informing them that the Licensee's review of their file found no evidence that they had received advice, but if that is not correct, the clients will be offered \$5,000 assistance and all the options available under the Additional Licence Conditions.
34. These communications with each of the 4,333 Cases were required to be undertaken within 30 days of the publication of the Comparison Report (i.e. by 22 May 2015), unless otherwise agreed with ASIC.

Scope of the Identification Report and our opinions

Purpose

35. The Identification Report was published by ASIC on 17 December 2015¹².
36. The scope of that report required 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 advisers (IFRs) that were considered in the Compensation Program;
 - b. Whether there was a reasonable basis for the processes undertaken by the Licensees to identify whether advisers other than those 15 IFRs considered in the Compensation Program (**'Potentially At Risk Representatives'**, or **'PARRs'**) also exhibited risk attributes or behaviours which indicated the relevant advisers may have provided inappropriate advice; and

¹⁰ CBA proposed, and ASIC agreed, that it would not write remediation letters to three Affected Clients as they were, or had an association with an Identified Former Representative, whose advice was being reviewed under these Additional Licence Conditions.

¹¹ The 4,333 Cases comprises the 4,330 cases identified at the time of writing the Comparison Report, plus six additional cases identified subsequently by the Licensees, less three cases that were agreed with ASIC that were exempt from this process. In our [Comparison Report](#), Appendix E, we reported that there were 2,740 Affected Clients and 1,590 No Evidence of Advice Clients. Due to the Licensees subsequently performing reassessment of some of these cases, 56 Affected Clients were identified as actually not being provided with advice and therefore are now No Evidence of Advice Clients. Similarly, 17 No Evidence of Advice Clients were identified as having received advice and are now Affected Clients. Additionally, there were six further Affected Clients identified resulting from split cases and review of Adviser 19, as well as three cases that were agreed with ASIC would be exempt from this process. This results in 2,707 Affected Clients and 1,626 No Evidence of Advice Clients.

¹² Refer to the [Identification Report](#).

- c. Whether there was a reasonable basis for the additional processes that the Licensees undertook to determine whether any of the 51 PARRs who were identified ought to have been assessed as part of the Compensation Program.

Our opinions

37. In the Identification Report we found that in 2012 the Licensees took reasonable steps to identify which clients of the 15 IFRs should have been included in a compensation program.
38. The Identification Report also found that the Licensees took reasonable steps to identify whether there were any Potentially At Risk Representatives.
39. However, we found that the Licensees did not have a reasonable basis for the processes the Licensees used to determine whether 17 of the Potentially At Risk Representatives should have been included in the Compensation Program.
40. As a result of our findings, CFPL and FWL were required to apply **Additional Processes**, involving the review of the client files of the 17 Potentially At Risk Representatives to determine whether those advisers should be included in a compensation program. If any of the clients of those 17 advisers are found to have suffered a loss as a result of inappropriate advice provided by the Licensees' advisers, those clients will be compensated in a process overseen by KordaMentha Forensic and reported on in Parts 3 and 4 of the Compliance Report. This will be published separately.

Scope of the Compliance Report

Purpose

41. We are required to review the Licensees' compliance with Conditions 24 to 31(a) (inclusive) and provide a written report outlining the Compliance Expert's opinion as to whether the Licensees have complied with those conditions.
42. That scope requires us to provide our opinion on:
 - a. Whether the Licensees have appropriately applied the Additional Elements identified as a result of our Comparison Report to the 4,333 Cases, including writing to them in the agreed form, offering up to \$5,000 for assistance, reassessing their advice (if requested to do so, and including consideration of any information provided by the client) and compensating them where required. Our opinions in this respect are dealt with in **Part 1** of this report;
 - b. Whether the Licensees have complied with certain requirements of an administrative nature under the Additional Licence Conditions. Our opinions in this respect are dealt with in **Part 2** of this report;
 - c. Whether the Licensees have appropriately applied the Additional Processes identified as a result of our Identification Report, involving the review of a sample of the client files of 17 advisers to determine whether those advisers should be included in a compensation program. As the Licensees' work is ongoing, our opinions in this respect will be dealt with in **Part 3** of this report; and
 - d. If any of the clients of those 17 advisers are found to have suffered a loss as a result of inappropriate advice provided by the Licensees' advisers, those clients will be compensated in a process overseen by KordaMentha Forensic and will be subject to Conditions 24 to 31(a). Again, as the Licensees' work is ongoing, our opinions in this respect will be dealt with in **Part 4** of this report.
43. For an overview of the scope of our reports, refer to Appendix B.

Definitions in the Additional Licence Conditions

44. 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 Compliance Report.
45. These definitions are set out in the Glossary in Appendix A.

Information relied on

46. 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 Compliance 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 in each section below.
47. This report has been prepared by KordaMentha Forensic with care and diligence.

References to adviser and client names

48. 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 are referred to in our reports as '**Hartnett Adviser 1**' and '**Hartnett Adviser 2**' respectively), 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 and the Identification Report.
49. Further, for reasons of privacy, we have not referred to individual client names.

PART 1- Application of Additional Elements to the 4,333 Cases

C. Overview of Additional Elements and other Conditions

50. As part of the Compliance Report, we are to provide an opinion as to whether the Licensees have complied with the conditions below.

Overview

51. The following table summarises the processes required to be complied with by the Licensees. For further details regarding each of the conditions, refer to their respective sections in this report.

Table 2 – Licence Conditions (relevant to Parts 1 and 2 of this report)

#	Description	Requirements
Part 1		
25	Written communication to clients	The Licensees must apply the Additional Elements to the Affected Clients, unless otherwise agreed to by ASIC, within 30 days of the Comparison Report being published. However, as agreed with ASIC, the Licensees were to also communicate with the No Evidence of Advice Clients of the 15 IFRs.
26	Client access to advice information	The Licensees must provide access to information available to the Licensee which is reasonably sufficient to assist the client and/or their Independent Advisor to form an opinion regarding the advice that the 4,333 Cases may have received from the Licensee and/or its representative, the Licensees' assessment of that advice and the basis upon which any offer of compensation was made, within 14 days of the request.
27	FLR request and performance	Clients can request an FLR within 120 days of the written communication (under Condition 25) via a written request. The Licensees have 90 days to complete the FLR.
28	FLR outcome letter	Within 30 days of completing the FLR, the Licensees must provide a written response detailing the outcome of the FLR and alternative actions for dispute resolution.
Part 2		
24	Compliance Expert access to information	The Licensee must use all reasonable efforts to provide access to its books, officers, employees, advisers, agents and independent contractors requested by the Compliance Expert to complete the work set out in Condition 23.
30	Monthly status reports to ASIC	The Licensees will provide a status report to ASIC on a monthly basis, commencing one month after Conditions 23 to 33 come into effect and concluding one month after the steps specified in Conditions 25 to 29 have been completed.
31(a)	Inclusion of conditions in agenda and board papers	The Licensees must arrange for the inclusion of the imposition of Conditions 23 to 32 on the agenda of and in the papers for the next scheduled board meeting of CBA after these conditions come into effect or if this is not practicable, the following scheduled board meeting.

D. Condition 25 - Written communications

Background

52. Under Condition 25, the Licensees were required to undertake the procedures below:
- a. Following the provision by the Compliance Expert of the Comparison Report to the Licensee, the Licensee must:
 - i. Within 30 days of the date of receipt, apply the Additional Elements to applicable Affected Clients, unless otherwise agreed to by ASIC; and
 - ii. Within 30 days of the date of receipt, communicate in writing, in a form or forms agreed with ASIC, with each of the Affected Clients.
 - b. The written communication must include:
 - i. An explanation of the processes applied to the Affected Client under the Compensation Program including details of any assessment that was undertaken of the advice provided to the Affected Client, the reason for the assessment, the outcome of the assessment and how the Affected Client can access documents constituting or relating to the advice;
 - ii. An offer to pay up to \$5,000 towards the cost of the Affected Client seeking advice from a licensed financial advisor, lawyer or accountant (**'Independent Advisor'**) about the advice that they received from the Licensee and/or its representative, the position taken by the Licensee following its assessment of the advice, any offer of compensation made by the Licensee following that assessment and any avenue of redress available to the Affected Client;
 - iii. An explanation of the matters contained in Conditions 26, 27 and 28; and
 - iv. An explanation that the Affected Client may (but is not required to), as an alternative or in addition to the matters set out in these conditions, have access to the Open Advice Review Program.
53. As stated in paragraph 33 above, the Licensees agreed to communicate with No Evidence of Advice clients as their treatment was different compared to if they had been assessed under Project Hartnett. This is because they received no Initial Letter, or any other communication from CBA.

Overview of Additional Elements

54. The Licensees must apply the Additional Elements to the Affected Clients, unless otherwise agreed to by ASIC, within 30 days of the Comparison Report being published. However, as agreed with ASIC, the Licensees were to also communicate with all the No Evidence of Advice Clients of the 15 IFRs.
55. The client experience for the 4,333 Cases assessed in the Compensation Program differed depending on whether the Licensee originally assessed that they were entitled to compensation. Therefore, the form of letter to be sent by the Licensees (within 30 days of receipt of the Comparison Report¹³) also needed to be varied depending on outcomes and communications to date.

¹³ In certain specific cases ASIC agreed that the Licensees could send a letter outside of the 30 day requirement.

Overview of Additional Elements applied to each group of the 4,333 Cases

56. In the tables below, we outline the Additional Elements by groups of cases. They are replicated here from the Comparison Report (with the addition of four cases¹⁴ being split subsequently) to provide an overview of the categories and number of clients that the Additional Elements were applied to. Refer to the Comparison Report for further information.

Table 3 - 3,624 cases where the Licensee assessed that no compensation was payable under the Compensation Program

Group/circumstances	Additional Elements required to be applied
<p>1,400 cases where CBA assessed the advice provided (by the 15 IFRs) was appropriate.</p> <p>The process was for no Initial Letter to be sent to these clients (although there were exceptions), and no offer of \$5,000 for independent professional advice was made. Therefore these clients were not given the same opportunity to participate as clients assessed under Project Hartnett.</p>	<ul style="list-style-type: none"> • A \$5,000 offer for independent professional advice was to be sent to clients of these 1,400 cases. • In doing so they should take into account whether the client had received a letter in the tone of the Project Hartnett Initial Letter.
<p>586 cases where CBA assessed the advice provided (by the 15 advisers) was inappropriate. However, because CBA also assessed that the client had suffered no loss, no compensation offer was made.</p> <p>The process was for no Initial Letter to be sent to these clients, and no offer of \$5,000 for independent professional advice was made. Therefore, these clients were not given the same opportunity to participate.</p>	<ul style="list-style-type: none"> • A \$5,000 offer for independent professional advice was to be sent to clients of these 586 cases. • In doing so they should take into account whether the client had received a letter in the tone of the Project Hartnett Initial Letter.
<p>12 cases where CBA was not able to complete its assessment as it was unable to contact the relevant client.</p>	<ul style="list-style-type: none"> • Further attempts to contact these clients were to be made with a view to undertaking the Additional Elements described above.
<p>1,626 No Evidence of Advice Cases where CBA assessed no advice had been provided to the client (by the 15 advisers).</p> <p>The process was for no Initial Letter to be sent to these clients, and no offer of \$5,000 for independent professional advice was made.</p> <p>As these 1,626 cases were assessed as not receiving advice they did not fall under the definition of Affected Clients under the Additional Licence Conditions.</p> <p>The treatment of these 1,626 cases was different from that which would have been experienced by these clients if they had been assessed under Project Hartnett because they received no Initial Letter, or any other communication from CBA.</p>	<ul style="list-style-type: none"> • A letter that is similar in tone to the Project Hartnett Initial Letter was to be sent to these 1,626 cases. If the Licensees subsequently formed the view that advice had been provided to any of these cases, a \$5,000 offer for independent professional advice was to be made.

¹⁴ There were an additional two cases identified relating to Adviser 19, however, they are not included as they do not fall into the above categories as they had not been reviewed at the time of writing the [Comparison Report](#).

Table 4 - 708 cases where the Licensee assessed that compensation was payable

Group	Additional Elements required to be applied
<p>For 688 cases, an offer has been accepted.</p> <p>The process was for no Initial Letter to be sent to these clients, and no offer of \$5,000 for independent professional advice made. Therefore, these clients were not given the same opportunity to participate.</p>	<ul style="list-style-type: none"> A \$5,000 offer for independent professional advice was to be sent to clients of these 688 cases. In doing so they should take into account whether the client had received a letter in the tone of the Project Hartnett Initial Letter.
<p>For eight cases, CBA made an offer but the client did not respond.</p> <p>The process was for no Initial Letter to be sent to these clients, and no offer of \$5,000 for independent professional advice made. Therefore, these clients were not given the same opportunity to participate.</p>	<ul style="list-style-type: none"> A \$5,000 offer for independent professional advice was to be sent to clients of these eight cases. In doing so they should take into account whether the client had received a letter in the tone of the Project Hartnett Initial Letter.
<p>For 12 cases, CBA intended to make an offer but the client could not be contacted.</p>	<ul style="list-style-type: none"> Further attempts to contact these clients were to be made with a view to undertaking the Additional Elements described above.

57. Where relevant, CBA were to communicate with clients by way of a close out letter notifying the outcome of the assessment.

Our Review

58. Our assessment of compliance with Condition 25 involved the following procedures:
- a. Assessment of the application of the Additional Elements to the 4,333 Cases, where applicable. This was conducted through:
 - i. Reviewing and enquiring into the 'address-washing' process, which was the process undertaken to determine the appropriate address for each client. If the current address could not be located, we reviewed the procedures for locating other addresses or contact details in order to deliver the letter to the client. These procedures included further system searches, validating addresses against Australia Post's Delivery Point ID, and contacting the customer directly via phone call or email.
 - ii. Reviewing CBA's internal reconciliation reports for the mailout of letters, which included status tracking of mailouts by the mailhouse engaged by CBA to distribute the letters.
 - iii. Reviewing and enquiring into the treatment of the 'returned to sender' process for undelivered mail, including walkthroughs to further understand the process and performing sample testing to ensure that there were attempts to resolve undelivered mail.
 - b. Reviewing the letters used as templates (as agreed with ASIC) applicable to various circumstances of all of the above groups of cases (paragraph 56 above) for the following required information:
 - i. The assessment of their advice under the Compensation Program;
 - ii. An offer of \$5,000 for an Independent Advisor;
 - iii. Options to access documents under Condition 26 (refer to Section E below);
 - iv. An offer of a further review (FLR) by the Licensee of the advice received and any compensation (refer to Section F below);

- v. In the case of Affected Clients, the options for lodging a dispute with the Financial Ombudsman Service or pursuing a claim (in which case the Licensee will release the Affected Client from the terms of any release that the Affected Client has given to the Licensees on the condition that the Affected Client repays any final settlement sum, including the interest component, it had received from the Further Licensee Review); and
 - vi. An offer to register for the Open Advice Review program.
- c. Sample testing of all the types of letters sent for the required information set out in subparagraph a. above;
 - d. Sample testing that the letter was appropriate for the client's circumstances.
 - e. Enquiring and reviewing into the timing of letters sent to the 4,333 Cases as all letters were to be sent within 30 days of the Comparison Report being published (i.e. by 22 May 2015, unless otherwise agreed with ASIC).

Our Findings

- 59. The Licensees have complied with this condition for 4,331 cases (99.95%) but have not complied with the timing requirement in this condition for two cases (0.05%). One case received their letter on or around 22 October 2015 (approximately five months late). The other received it on or around 7 July 2016 (approximately one year after the timing requirement) due to the splitting of a case subsequent to the initial letter being sent on 21 May 2015 (which was within the timing requirement).
- 60. Apart from this, our review did not identify any other issues in the procedures undertaken by the Licensees and the content within the template and sample letters.
- 61. In our opinion, the Licensees have complied with Condition 25 and the application of Additional Elements to the 4,333 Cases, other than in respect of two cases (0.05%) that received their letter late.

E. Condition 26 - Provision of information to Independent Advisor

Background

62. Under Condition 26, the Licensees were required to undertake the procedures below:
- If an Affected Client seeks advice from an Independent Advisor the Licensee will, on request, provide the Independent Advisor with access to information available to the Licensee which is reasonably sufficient to assist the Independent Advisor to form an opinion regarding the advice that the Affected Client received from the Licensee and/or its representative, the Licensees' assessment of that advice and the basis upon which any offer of compensation was made. Such information must be provided as soon as practicable after the request but in any case no later than 14 days after the request.
63. As the Licensees were required to communicate with all the 4,333 Cases (Condition 25), not just with Affected Clients, Condition 26 also applied to the No Evidence of Advice Clients.

Our Review

64. Our assessment of compliance with Condition 26 involved the following procedures:
- Reviewing the Licensees' guidelines for determining the information to be provided when a request to access information was received. These guidelines were to assist the Licensees in determining what documents were to be provided in order to comply with the requirement of being 'reasonably sufficient', as well as identification of any information that should be redacted for legal privilege, confidentiality or privacy purposes.

From enquiries with the Licensees, the approach undertaken under these guidelines was to provide all documents that the case assessors had access to at the time of making the initial assessment of the advice. This included documents that related to multiple cases where information that did not relate to the relevant case was redacted.
 - Sample testing of the information provided to clients in response to requests for information. This involved review of the types of documents that were provided to clients and enquiries into whether any documents were not provided.

We also made enquiries into 106 cases where one, or more batches of information were provided after the 14-day requirement. The Licensees took the approach of providing what in their view constituted 'reasonably sufficient' information (Requested Documents) in a first tranche of information (generally within 14 days). At the same time, the Licensees also, in some cases, provided the clients and their Independent Advisor with Additional Documents which had come to light as a result of searches for any other information contained in their databases or at the various office branches.
 - The Licensees then also subsequently continued to search for any other information, and if further information was located this was then provided in a further tranche of Additional Documents. This included some instances where Additional Documents were provided to the client and their Independent Advisor at the same time or subsequent to the FLR outcome letter (Condition 28) being sent, i.e. after reassessment of advice in the FLR process had been completed (Condition 27). We performed sample testing of the Additional Documents to consider whether the Additional Documents:
 - Were duplicates of the Requested Documents;

- ii. If they were not duplicates, whether they contained information already used in the Compensation Program and/or the FLR process; and
 - iii. If they were not used in the Compensation Program and/or the FLR process, whether the information was relevant to the advice and assessment of compensation.
- d. Reviewing guidelines and enquiring into the process undertaken by the Licensees' customer contact centre in logging requests for information to be provided.
 - e. Sample testing of Quality Assurance checks of the inbound and outbound phone calls at the customer contact centre for any requests for information that should have been logged for actioning.
 - f. Sample testing and walkthrough of Licensees' systems to check for any requests for information that were not responded to.
 - g. Reviewing the nature of the claims lodged with FOS subsequent to the FLR process.
 - h. Review and enquiry of the timing of information provided to the 4,333 Cases (i.e. whether provided within 14 days).

Our Findings

Reasonably sufficient requirement

- 65. Condition 26 requires that information provided to the client be reasonably sufficient to assist the Independent Advisor to form an opinion regarding the advice that the Affected Client received from the Licensee and/or its representative. We have considered a sample of cases and the Licensees' provision of information within 14 days with respect to the following three attributes, being required attributes necessary to comply with Condition 26:
 - a. Assisting the Independent Advisor to form an opinion regarding the advice that the Affected Client received from the Licensee and/or its representative;
 - b. Understanding the Licensees' assessment of that advice; and
 - c. Understanding the basis upon which any offer of compensation was made.
- 66. Based on the information provided in response to our enquiries, and the sample testing we have undertaken, the Licensees have complied with the second and third required attributes, through the provision of all available information that the case assessors had used in assessing the advice and determining any offer of compensation.
- 67. With regards to the first requirement, based on the sample testing we have undertaken, and information we have been provided with in response to our enquiries we are satisfied that the Licensees have demonstrated that information provided to the clients within 14 days was reasonably sufficient to assist the Independent Advisor to form an opinion regarding the advice that the Affected Client received from the Licensee and/or its representative and the basis upon which any offer of compensation was made. Our reasons for this opinion are that:
 - a. For the sample of cases that we reviewed, the Additional Documents contained some duplicate information that had already been provided in the Requested Documents within the 14-day requirement. This means that there are no issues with the subsequent provision of these duplicated documents for this sample.

- b. In relation to information that was not duplicated, we reviewed the information in conjunction with the Requested Documents to determine whether there was any relevant information that had not yet been incorporated into the Compensation Program assessment and/or the FLR assessment. From the review of the sample of cases, the Additional Documents did not contain any new advice information that had not been incorporated into the assessment of compensation. For example, switch confirmations were provided to some clients within the Additional Documents. Whilst these specific documents had not been provided in the Requested Documents, the information contained within them had already been incorporated into the asset allocations used for assessment of compensation and disclosed in the calculations provided within 14 days.
- c. Within the Additional Documents, there were some documents that were not duplicated nor advice documents and did not appear to be of relevance in the assessment of compensation. Therefore, these documents were provided by the Licensees to the client for completeness and do not have any impact on Condition 26.
- d. We reviewed the nature of all nine claims lodged with FOS, specifically for any issues raised in relation to Additional Documents not having been considered in the clients' assessments. There was one case where the client had claimed a particular document was provided in the Additional Documents and was of relevance to their assessment and had not been considered in the assessment. FOS determined that the document was not relevant to the assessment. Therefore, we did not identify any FOS claims where additional compensation was offered due to Additional Documents not having been considered in the Compensation Program and/or the FLR assessment.
- e. CBA has submitted that they undertook a sample check of 141 of the 211 cases that requested information about their advice to review whether there had been any issues raised regarding Additional Documents not being considered in the Compensation Program and/or the FLR assessment. There were no instances of this occurring. In our opinion, this is not definitive of there being no actual objections (for example, if a particular client decided that they did not wish to further pursue their case or to raise an objection).

Timing requirement

- 68. Condition 26 requires that reasonably sufficient information be provided to the client no later than 14 days after a request. 211 cases requested access to information. There were four instances where the first tranche of information was not provided within the 14-day requirement. This represents a compliance rate of 98.10%. In three of these four instances, the information was provided within six days after the 14-day requirement (i.e. up to 20 days in total). In the fourth instance, information was provided 42 days after the deadline (56 days in total).
- 69. Out of the 211 cases requesting access to information, there were 19 cases where Additional Documents were provided subsequently to the FLR outcome letter (Condition 28) being sent. These ranged from between one to five months after the FLR outcome letter. However, for the reasons discussed above in paragraphs 65 to 67, we have not identified any issues regarding these documents.
- 70. Apart from the four exceptions noted, our review did not identify any other issues in the procedures undertaken by the Licensees.
- 71. In our opinion, the Licensees have complied with the timing requirement of Condition 26, other than in respect of four out of 211 cases (1.90%) as they received their information late.

F. Condition 27 - Further Licensee Review

Background

72. Under Condition 27, the Licensees were required to undertake the procedures below:
- a. If, within 120 days of the Licensee issuing a communication referred to in Condition 25(b), an Affected Client has notified the Licensee in writing of their view (whether or not they took up the offer to obtain advice from an Independent Advisor, and regardless of the content of that advice) that the original assessment of the advice given to the Affected Client by the Licensee and/or its representative was inadequate (**'Notification'**), the Licensee must:
 - i. Review its original assessment of that case (**'Further Licensee Review'** or **'FLR'**); and
 - ii. In conducting the Further Licensee Review (which will be conducted as soon as practicable, but completed no later than 90 days following the receipt of a Notification), apply the Additional Elements together with the process and methodology applied in the relevant Compensation Program.
73. This condition was also applicable to No Evidence of Advice cases, to the extent that they informed the Licensees that they had in fact received advice from an IFR.

Our Review

74. Our assessment of compliance with Condition 27 involved the following procedures:
- a. Reviewing the Licensees' monthly reporting to ASIC to ensure the number of notifications requesting an FLR were disclosed.
 - b. Walkthrough of the Licensees' systems to understand the process of capturing client requests for an FLR and tracking the timing of completion.
 - c. Reviewing and enquiring into the procedures undertaken by the Licensee's customer operations centre to ensure all FLR notifications were recorded and actioned. This included reviewing the documents which set out the steps that the Licensees undertook in response to receipt of a written request for an FLR. The steps included the recording of mail received in the dedicated PO Box, acknowledgement of the clients' request, confirming that an FLR would be completed, informing the clients of the FLR process, and creating a work item for processing.
 - d. Sample testing and walkthrough of Licensees' systems to check for any notifications that did not result in an FLR being conducted.
 - e. Enquiring into and reviewing the timing of completion of FLRs in response to notifications being received (i.e. within 90 days).

Our Findings

75. 201 cases requested an FLR. The Licensees have complied with this condition by undertaking and completing the FLR within 90 days, for 186 cases (92.50%) but have not complied with the timing requirement in this condition for 15 cases (7.5%).
76. For 10 out of the 15 instances, the clients received their subsequent FLR outcome letter (under Condition 28 discussed below) sufficiently within the next timeframe, i.e. 30 days under Condition 28, so as to have effectively caught up in the FLR process as a whole. In the remaining five cases, clients received the FLR outcome letter, but outside of the total time requirement for the FLR process. The average delay was 4.75 days, with the greatest being eight days.

77. Apart from the exceptions noted, our review did not identify any other issues in the procedures undertaken by the Licensees.
78. In our opinion, the Licensees have complied with Condition 27, other than in respect of 15 out of 201 cases (7.50%).

G. Condition 28 - FLR outcome letter

Background

79. Subsequent to an FLR being completed, the Licensees were required to write to the Affected Clients detailing the outcome of the FLR and informing them that if they were unsatisfied with the outcome (or in any event if any matters remains unresolved), the Affected Client had the right to lodge a dispute with the FOS and/or pursue a claim against the Licensees.
80. The Licensees had 30 days following the completion of the FLR to send the FLR outcome letter to each Affected Client.
81. This condition was also applicable to No Evidence of Advice cases, to the extent that they informed the Licensees that they had in fact received advice from an IFR and opted for an FLR after the initial assessment had been completed.

Our Review

82. Our assessment of compliance with Condition 28 involved the following procedures:
 - a. Sample testing of FLR outcome letters to ensure required information of the following type was included:
 - i. If the client was unsatisfied with the FLR outcome, they have the right to lodge a dispute with FOS and that if the cases lodges a dispute with FOS, the Licensees will:
 - A. Not take any objection to FOS considering the dispute;
 - B. Not rely on any release that the case has given to the Licensees; and
 - C. Where FOS considers that the appropriate compensation is in excess of FOS's Terms of Reference, agree to resolve the dispute at the settlement amount that FOS decides is appropriate.
 - ii. They can pursue a claim against the Licensees as an alternative to lodging a dispute with FOS or do so after receiving a FOS determination.
 - b. Reviewing the Licensees' monthly reporting to ASIC to ensure the number of notifications requesting an FLR were disclosed.
 - c. Reviewing and enquiring into the timing of sending the FLR outcome letters (i.e. within 30 days) to clients that requested an FLR.

Our Findings

83. 201 cases requested an FLR. The Licensees have complied with this condition by sending the FLR outcome letter for 195 cases (97.01%) but have not complied with the timing requirement in this condition for five cases (being those discussed under Condition 27) (2.99%). The average delay for the five instances was 4.75 days, with the greatest being eight days.
84. Apart from the exceptions noted, our review did not identify any other issues in the procedures undertaken by the Licensees.
85. In our opinion, the Licensees have complied with Condition 28, other than in respect of 5 out of 201 cases (2.99%) as they received their letter late.

H. Outcomes resulting from Conditions 25 to 28

Categories of clients now receiving an offer of compensation

86. As a result of the Licensees applying the Additional Elements as required under Conditions 25 to 28, further compensation has now been offered to 185 cases.
87. The clients now receiving these offers are comprised of three categories: Reassessment Cohort, Recently Identified Affected Clients, and Further Licensee Review. These are discussed below.

Reassessment Cohort

88. The **'Reassessment Cohort'** category is comprised of 471 cases that were referred to in the Comparison Report¹⁵. This comprises of 404 Affected Clients and 67 No Evidence of Advice Clients. This composition was not known at the time of writing our Comparison Report.
89. At the time of writing the Comparison Report, we were informed by the Licensees that they were *'reassessing these cases that were reviewed in Project Baringa and were assessed as "advice appropriate", to confirm the assessment outcome'*.
90. The reason provided to us by CBA for the reassessment was that there were *'a number of customers who had previously been flagged in the [CBA's client remediation database] as "advice appropriate" when the actual outcome of CBA's past review was that there was "no evidence of advice"'*. This reassessment involved CBA undertaking a data validation exercise, as without doing so CBA would have written to those customers and expressed the view that their advice was appropriate in circumstances where the customer never received advice from that particular adviser.
91. The data validation exercise identified 471 cases in this Reassessment Cohort where at the time of our Comparison Report, CBA was *'unable to confidently verify the assessment outcomes based on the information available in the ...database'*.
92. CBA was to review these 471 cases to determine whether the client received advice and if so, whether there was sufficient documentation retained on file to support the original assessment, to ensure those clients received the appropriate letter.
93. The result of this reassessment is that 82 of these 471 Reassessment Cohort cases have received an offer of compensation (we reiterate that at the date of our Comparison Report, the Licensees had informed us that they would confirm the "no evidence of advice" or "advice appropriate" assessment). These offers total \$1,638,113 (including interest), after the Licensees determined that the advice for these 82 cases was inappropriate and had led to client loss.
94. Additionally, a further seven of these 471 cases have received a revised offer of compensation as a result of a Further Licensee Review (under Condition 27 and 28).

Recently Identified Affected Clients

95. The **'Recently Identified Affected Clients'** category are cases that were sent a letter as part of the Additional Elements process (refer to Section D above) which specified that either the Licensee had no evidence of the client receiving advice, or that transactions had been client-directed (as opposed to adviser directed).

¹⁵ Paragraph 25

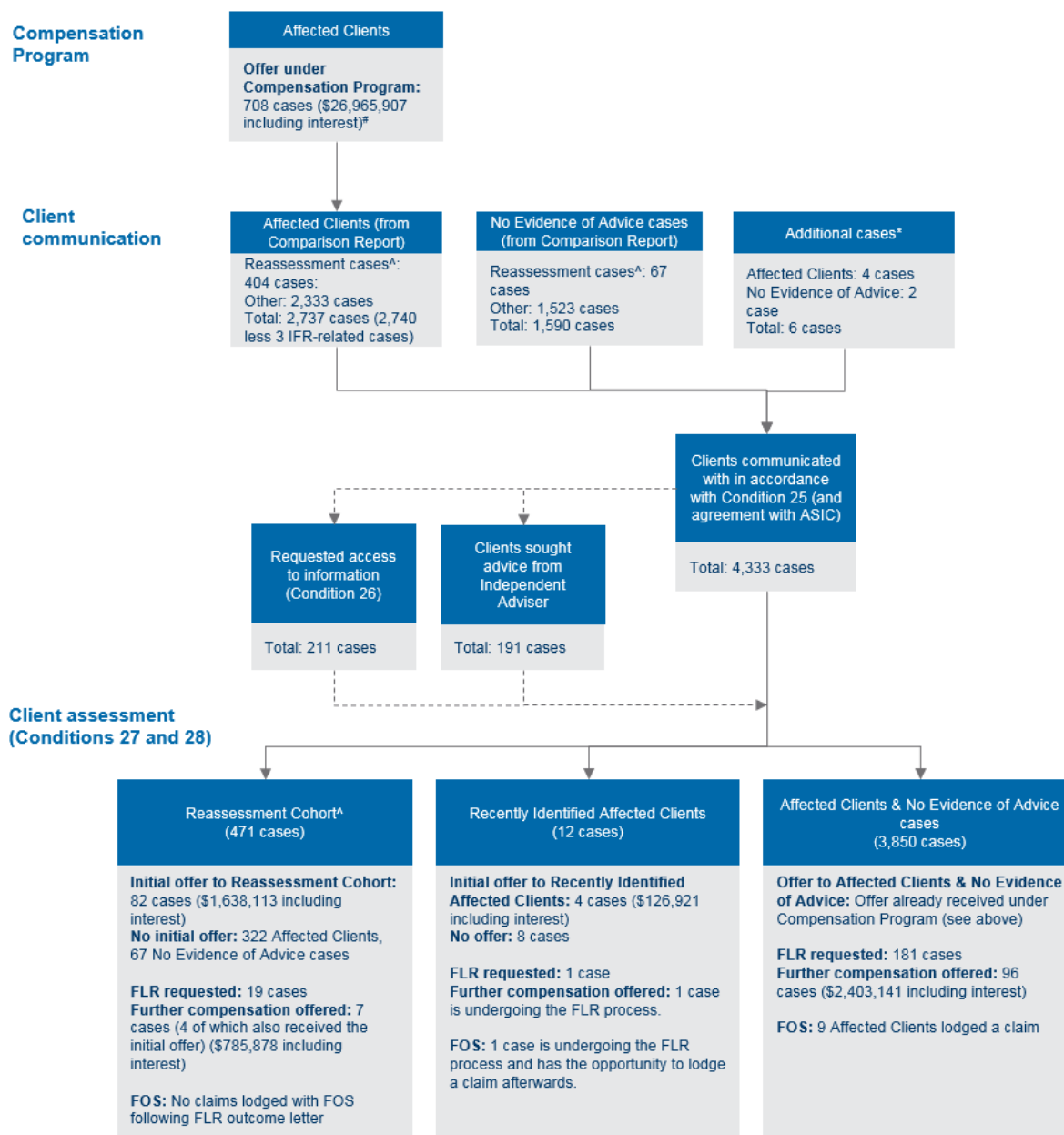
96. Subsequently to having received these letters, 12 clients contacted the Licensees claiming that they had actually received advice. The Licensees agreed that these clients had received advice. They are therefore treated as Recently Identified Affected Clients. This in turn led to the Licensees conducting an assessment of that advice. Having done so, the Licensees determined that the advice was inappropriate for four of the 12 cases and had led to client loss, totalling \$126,921 (including interest).

Further Licensee Review

97. The Further Licensee Review category refers to the remainder of Affected Clients that do not fall into the above two categories.
98. There were 103 cases that received a revised offer of compensation as a result of a Further Licensee Review (under Conditions 27 and 28). This compensation totalled \$3,189,019 (including interest).
99. As discussed in paragraph 94 above, an additional seven cases that were in the Reassessment Cohort received an offer of compensation and received revised compensation under a Further Licensee Review (under Conditions 27 and 28). They are deemed to have received further compensation in this category.

Summary of clients now receiving an offer of compensation

100. The flowchart below shows how the 4,333 Cases identified as a result of the Comparison Report (as detailed in Appendix E of that report) and the No Evidence of Advice Cases have now been subsequently treated, including the results of the Licensees undertaking the FLRs for the cases that requested it.



Refer to the Comparison Report, Appendix E for further information.

[^] The reason for the reassessment was that there were a number of customers who had previously been flagged in the CBA database as "advice appropriate" when the actual outcome of CBA's past review was that there was "no evidence of advice". CBA undertook a reassessment of whether there was any advice provided and if so, whether there was sufficient documentation retained on file to support the original assessment.

* The Additional cases were from 4 cases being split due to change in client circumstances. An additional 2 were identified from investigations into Adviser 19.

Summary of further compensation offered

101. The table below summarises all further compensation offered totalling \$4,954,053 (including interest) to 185 cases, as a result of Conditions 25 to 28 being applied:

Table 5 - Summary of further compensation offered

Category of cases	Number of cases offered	Amount offered (including interest)
Reassessment Cohort	82 (4 of which also received FLR compensation)	\$1,638,113
Recently Identified Affected Clients	4	\$126,921
Further Licensee Review	103	\$3,189,019
Total	185¹⁶	\$4,954,053

102. The further compensation offered (i.e. in addition to compensation paid under the Compensation Program totalling \$26,965,907¹⁷, including interest) totals \$4,954,053 (including interest) relating to 185 cases, as a result of the Additional Licence Conditions.
103. Our scope does not include investigating the specific reasons why the Licensees have now reached a different assessment outcome for individual cases. However, from our review of information provided by the Licensees, we are aware that the main reasons for the changes in assessment were:
- Further information or submissions being provided by the clients or their Independent Advisor to the Licensees for consideration in the assessment of their advice;
 - Reassessment of the client's risk appetite which may lead to reassessment of the appropriate asset allocation and/or appropriate gearing strategy; and
 - Changes to the amount of loss assessed, for reasons including the calculation methodology regarding the order of intraday transactions and the timing of recurring monthly fee payments¹⁸.
104. The main categories¹⁹ of client receiving offers of compensation are summarised as follows:
- For 82 of the 471 Reassessment Cohort cases (i.e. cases where, independent of an FLR request, the Licensees undertook a reassessment of whether any advice was provided and if so, whether there was sufficient documentation retained on file to support the original assessment):
 - Two cases had initially received compensation for inappropriate advice. However, as a result of reassessment, the Licensees have now determined that further compensation of \$540,612 (including interest) was payable and they received customised letters sent under Condition 25 outlining the offer.

¹⁶ Total cases receiving an offer is 185, rather than 189 due to an overlap of 4 cases receiving an offer in both the Reassessment Cohort and FLR.

¹⁷ Appendix E to the [Comparison Report](#)

¹⁸ We were informed by the Licensees that this change to methodology led to a relatively small difference in compensation outcomes, and in some cases the change was in the client's favour. In other cases, the difference would have resulted in less compensation for the client, but in these instances, the Licensees did not seek reimbursement from the client for the excess.

¹⁹ There are other small categories of cases receiving offers and have not been specifically outlined below in the breakdown.

- ii. 51 cases had initially not been offered compensation because the Licensees deemed that they received appropriate advice. However, as a result of reassessment using the documents that were available, the Licensees have now determined that inappropriate advice was provided which led to these cases suffering a loss. Total compensation of \$657,094 (including interest) was offered in the letters sent under Condition 25 to those where documents were available.
 - iii. Five cases had initially not been offered compensation because the Licensees were unable to assess the advice, due to lack of information. However, as a result of reassessment after the clients provided further information, the Licensees have now determined that inappropriate advice was provided which led to these cases suffering a loss. Total compensation of \$248,012 (including interest) was to be offered in the letters sent under Condition 25.
- b. There were 12 Recently Identified Affected Clients where the Licensees had initially assessed that no advice had been provided to these clients. However, as a result of the letters sent under Condition 25, these clients contacted the Licensees saying that advice had been provided by an IFR. As a result, the Licensees have now determined that inappropriate advice was provided to four of these 12 cases which led to client loss. Total compensation of \$126,921 (including interest) was offered in the letters sent under Condition 25.
- c. For 103 Further Licensee Review cases (i.e. cases that requested their advice and compensation be re-reviewed):
- i. 73 cases that had initially (in the Compensation Program) accepted compensation for inappropriate advice, but requested an FLR to review that outcome, leading to further compensation of \$2,009,634 (including interest) being offered.
 - ii. Seven cases where no compensation was initially offered for the reason that the Licensees assessed that no loss had been suffered because the client's investments had outperformed the reference portfolio. Following a request for an FLR, the Licensees determined that the cases had now suffered a loss and compensation of \$179,089 (including interest) was offered.
 - iii. One case where no compensation was initially offered because the Licensees assessed that the investment which resulted from the advice outperformed the reference portfolio. However, as a result of the Licensees undertaking its own reassessment of this advice (to validate past assessments), it determined that the case had suffered a loss and that compensation should be offered. This case provided additional information and then requested an FLR. It was determined that revised total compensation of \$625,772 (including interest) was to be offered.
 - iv. One case where no compensation was initially offered because the Licensees assessed that no advice had been provided. However, as a result of the Licensees undertaking its own reassessment, it was found that advice had actually been provided, that it was inappropriate and had led to loss. Compensation was offered to this case. Following a request for an FLR, it was determined that revised total compensation of \$101,665 (including interest) was to be offered.
105. The further compensation of \$4,954,053 (including interest) is separate to any compensation paid under the Open Advice Review program, which is ongoing.
106. There were 294 Affected Clients and No Evidence of Advice Clients that also registered under the Open Advice Review program. Of these, 63 requested an FLR (all are Affected Clients).

Cases referred by client to Financial Ombudsman Service

107. There were nine Affected Clients that made a claim to FOS following the receipt of their FLR outcome letter and the outcomes of those FOS claims were as follows:
- a. Five cases were offered further compensation (in addition to any compensation arising from an FLR) in order to settle the dispute on a commercial basis;
 - b. One case was offered further compensation based on a recommendation issued by FOS;
 - c. One case was not offered further compensation (under an FLR or otherwise) and voluntarily withdrew the dispute;
 - d. One case where the claim was in relation to both an IFR and a non-IFR, an offer of compensation was made for the non-IFR advice only and was not related to the FLR process; and
 - e. One case was not offered further compensation as a determination made by FOS concurred with the FLR outcome.

PART 2 - Other Licence Condition requirements

I. Condition 24 - Reasonable access for Compliance Expert

Background

108. Condition 24 requires that the Licensees must use all reasonable efforts to provide access to its books, officers, employees, advisors, agents and independent contractors as requested by us in the completion of work relating to the Engagement.

Our Review

109. During the Engagement, we have required the efforts of the Licensees in providing access to information and staff in order for us to perform analyses, investigations and to conduct interviews. This occurred throughout our work and during reporting for the Comparison Report, Identification Report and this report. The Licensees have made reasonable efforts, and dedicated considerable resources to undertaking the processes required.
110. The Licensees have provided all of the information that has been requested throughout Parts 1 and 2 of the Compliance Report. Whilst there have been numerous occasions where the provision of information to us has been outside of the Licensees' self-imposed deadlines, leading to the need to revise some engagement milestones, ultimately this report has been provided to ASIC within the agreed deadline.

Our Findings

111. In our opinion the Licensees have complied with Condition 24 in relation to the provision of requested information, up to the production of Parts 1 and 2 of this report. The information outlined in this report reflects information known as at 15 November 2016.
112. Work in relation to Part 3 and Part 4 is ongoing and checking compliance with this condition is therefore ongoing. Compliance will be reported in the subsequent parts of this report.

J. Condition 30 - Status reports to ASIC

Background

113. Under Condition 30, the Licensees were required to provide a status report to ASIC on a monthly basis, commencing one month after the Additional Licence Conditions came into effect. Monthly reporting is to continue until one month after completion of Condition 29.

Our Review

114. Our assessment of compliance with Condition 30 involved the following procedures:
- a. Reviewing the status reports to check that the Licensees' have provided a status report to ASIC every month since the commencement of the Additional Licence Conditions to the date of this report.
 - b. Reviewing the monthly status reports to check the following required information was disclosed:
 - i. Number of clients it has communicated with in accordance with Conditions 25 to 29;
 - ii. Number of clients who sought advice from an Independent Advisor;
 - iii. Number of requests for an FLR received and the number of FLRs completed;
 - iv. Number of claims lodged by the 4,333 Cases with FOS following the Licensee undertaking the FLR;
 - v. Number of additional representatives and Other Affected Clients identified by operation of Condition 29; and
 - vi. Any other information ASIC specifically request in writing relating to the Licensees' compliance with Conditions 23 to 31(a).
 - c. Enquiring with ASIC whether any specific requests were made for additional disclosure, and if so that CBA has complied with these requests.

Our Findings

115. In our opinion, the Licensees have complied with Condition 30, up to the date of this report.
116. As Condition 30 requires a monthly status report to be issued subsequent to completion of Condition 29, monthly reporting remains an ongoing process. The subsequent parts of this report will provide further opinion regarding the Licensees' compliance with Condition 30.

K. Condition 31(a) - Inclusion on CBA Board meeting agenda

Background

117. Under Condition 31(a), the Licensees were required to arrange for inclusion of the imposition of Conditions 23 to 32 on the agenda of and in the papers for the next scheduled board meeting of the CBA after these conditions came into effect or if this was not practicable, the following scheduled board meeting.

Our Review

118. Our assessment of compliance with Condition 31(a) involved the following procedures:
- a. Reviewing the agendas and board papers showing the inclusion of Conditions 23 to 32 and reference to the publication of the Comparison Report and Identification Report.
 - b. Reviewing the dates of agendas and board papers to check compliance with timing requirements.

Our Findings

119. In our opinion, the Licensees have complied with Condition 31(a).

Appendix A Glossary

Defined term	Definition included in Additional Licence Conditions	Definition
Additional Documents	No	At the same time or after the Licensees provided the Requested Documents, the Licensees also, in some cases, provided the clients and their Independent Advisor further documents which had come to light as a result of searches for any other information contained in their databases or at the various office branches.
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 the Identification 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"> a) Clients where the Licensee has no record of advice having been provided; 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); 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 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.
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.

Defined term	Definition included in Additional Licence Conditions	Definition
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.
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	<p>Means the review and compensation activities undertaken by the Licensee which:</p> <ul style="list-style-type: none"> (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; (b) Were based on the process methodology developed for Project Hartnett and extended to address additional client, product and advice attributes; and (c) Commenced or concluded during the period from 25 October 2011 (being the date on which the EU took effect) until 30 June 2013, <p>but does not include the review and compensation activities conducted under Project Hartnett.</p> <p>It covers the 15 advisers which are the IFRs encompassed by the Additional Licence Conditions.</p>
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.
FLR	No	Further Licensee Review, as required under Condition 28.
FOS	Yes	Financial Ombudsman Service
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.

Defined term	Definition included in Additional Licence Conditions	Definition
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	No	One of the types of data analytics testing undertaken by Consulting Firm 1 in Project BIM in 2012.
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 condition 29(a) or 29(b) of the Additional Licence Conditions] except for: <ul style="list-style-type: none"> (a) Clients where the Licensees have no record of advice having been provided; (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); (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 (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.
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 the Identification Report.
Nine PBR Advisers	No	Nine advisers included in the Project Baringa, but excluded from the Compensation Program.
No Evidence of Advice Clients	No	Clients that the Licensees deemed not to have received advice from an IFR, as reported in Appendix E of the Comparison Report.
Notification	Yes	An Affected Client can notify the Licensees in writing of their view (whether or not they took up the offer to obtain advice from an Independent Advisor, regardless of the content of that advice) that the original assessment of the advice given to the Affected Client by the Licensees and/or its representative was inadequate. The FLR process is then initiated.
Past Business Review (PBR)	No	Refers to review procedures performed as part of the EU.
PARR(s)	Yes	Potential At Risk Representative(s).

Defined term	Definition included in Additional Licence Conditions	Definition
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.
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.
Reassessment Cohort	No	The 471 cases where, independent of an FLR request, the Licensees undertook a reassessment of whether any advice was provided and if so, whether there was sufficient documentation retained on file to support the original assessment.
Recently Identified Affected Clients	No	The 12 cases that were sent a letter as part of the Additional Elements process which specified that either the Licensee had no evidence of the client receiving advice, or that transactions had been client-directed (as opposed to adviser directed). Subsequently to having received these letters, these cases claimed they had actually received advice and the Licensees agreed.
Requested Documents	No	The first tranche of information provided to the client and/or their Independent Advisor which in the Licensees' view constituted 'reasonably sufficient' information (generally within 14 days).
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 4,333 Cases	No	The 2,707 Affected Clients and 1,626 No Evidence of Advice Clients, totalling of 4,336 Cases.

Defined term	Definition included in Additional Licence Conditions	Definition
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



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.

