

Independent Expert Final Report Summary

Commonwealth Financial Planning Limited

31 January 2019

LIMITATION

This Final Report Summary is prepared to provide a summary of our work carried out as the Independent Expert as defined within paragraphs 3.5.5 (i), 3.5.5 (ii) and 3.5.5 (iii) of the Enforceable Undertaking between Commonwealth Financial Planning Limited and BW Financial Advice Limited and the Australian Securities and Investments Commission (ASIC).

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Our scope and other limitations are stated in our engagement agreement and statement of work dated 11th April 2018.



1. Executive summary

1.1 Background

Commonwealth Financial Planning Limited (CFPL) and BW Financial Advice Limited (BWFAL) entered an Enforceable Undertaking (EU) with the Australian Securities and Investments Commission (ASIC) on 9 April 2018.

The EU required CFPL to attest that the material changes implemented to its systems, processes and controls are reasonably adequate to address ASIC's concerns and identify and remediate Ongoing Service (OGS) Clients in respect of whom they did not discharge their Annual Review contractual obligations for the period 1 July 2015 to 31 January 2018.

CFPL was also required to appoint an Independent Expert to report (Final Report) by 9 July 2018 as to whether CFPL had taken reasonable steps to identify and remediate CFPL OGS Clients and that its systems, processes and controls are reasonably adequate to track CFPL OGS Clients and discharge its contractual obligations. EY was engaged by CFPL on 11 April 2018 as the Independent Expert.

1.1.1 Interim report

We issued an Interim Report to CFPL and ASIC on 9 July 2018. Our Interim Report raised:

- ▶ No material exceptions in the controls relied on by CFPL to identify and remediate CFPL OGS Clients for the periods: 1 July 2015 to 31 May 2016 and 5 June 2017 to 31 January 2018
- ▶ CFPL's decision to undertake additional work to ensure reasonable steps were taken to identify and remediate OGS Clients for the period 1 June 2016 to 4 June 2017
- ▶ Four key findings and recommendations regarding the changes implemented to its systems, processes and controls to ensure controls are further embedded and more readily demonstrable and sustainable.

1.1.2 Enforceable Undertaking variation

CFPL requested, and ASIC accepted, an extension of time to provide the Attestation and the Independent Expert's Final Report to 31 January 2019. A variation of the EU was agreed on 20 December 2018 which included additional clauses requiring:

- ▶ The Independent Expert to report on whether CFPL has taken reasonable steps to address the findings and recommendations made within Section 4 of the Interim Report
- ▶ CFPL to, within five days of the variation being accepted by ASIC, provide ASIC with a written plan (Action Plan)
- ▶ CFPL to, within five days of providing the Action Plan, and on 10 January 2019, provide ASIC a written report (Progress Report).

In the event CFPL does not satisfactorily meet the clauses within the EU and variation of the EU, as determined by ASIC, CFPL undertakes to stop charging or receiving ongoing service fees from OGS Clients or enter into any new ongoing service arrangements.

1.2 Our scope

The scope of our Final Report is defined in paragraphs 3.5.5 (i) and 3.5.5 (ii) of the EU dated 9 April 2018 and 3.5.5 (iii) of the EU variation dated 20 December 2018.

Our Final Report is to be provided to CFPL and ASIC by 31 January 2019, addressing whether:

- ▶ 3.5.5 (i) - CFPL has taken reasonable steps to identify and remediate CFPL OGS Clients in respect of whom CFPL did not discharge its CFPL Annual Review contractual obligations in relation to the period 1 July 2015 to 31 January 2018
- ▶ 3.5.5 (ii) - CFPL's systems, processes and controls (in place on a date between the Acceptance Date and the date of the Final Report) as designed and implemented are reasonably adequate to track CFPL OGS Clients and the discharge of CFPL's contractual obligations to those clients, and
- ▶ 3.5.5 (iii) - CFPL has taken reasonable steps to address the findings and recommendations made within Section 4 of the Interim Report.

1.3 Our approach

Our approach sought to assess the activities, controls and outcomes relied on by CFPL to demonstrably satisfy the requirements of the EU. Our approach consisted of assessing the:

- ▶ Activities and controls undertaken by CFPL to design, build and implement the changes to its systems, processes and controls to track OGS Clients, discharge its contractual obligations and address the findings and recommendations from our Interim Report
- ▶ Changes made to CFPL's systems, processes and controls against ASIC's concerns, relevant regulatory guidance and the findings and recommendations from our Interim Report
- ▶ Operational effectiveness of controls to either prevent or detect system or process failures or instances of non-compliance with OGS contractual obligations
- ▶ Activities and controls undertaken by CFPL to identify and remediate OGS Clients for the period 1 July 2015 to 31 January 2018, with particular focus on the period 1 June 2016 to 4 June 2017.

Our work was primarily performed on materials provided by CFPL up to and including 18 January 2019. We may refer to events or materials post this date but have not necessarily had an opportunity to substantively test these.

1.4 Overall results

For the period 1 July 2015 to 31 January 2018, CFPL has reported 3,711 OGS Clients have been remediated \$8,407,468, with a further 499 OGS Clients to be remediated \$810,310 – with 42 of these clients to be contacted notifying them of their compensation entitlement.

CFPL has committed to completing its remediation closure activities in 120 days.

We believe when CFPL demonstrably completes its closure activities it has committed to it will have satisfied the steps we would reasonably expect of a licensee of CFPL's size, scope and complexity.

Remediation activities continued throughout January 2019, which has limited the time for CFPL to perform its closure activities and for independent validation.

CFPL has made changes to its systems, processes and controls, many of which have been recently implemented. Our testing found no material exceptions in the design adequacy of the changes. Where controls have not been operationalised, or had sufficient volumes to enable expected test plans, CFPL must demonstrate the controls are in-use and operating effectively before they can be independently assessed.

In relation to its remediation activities, CFPL proposes to complete its closure activities within 120 days to demonstrate that reasonable steps were taken to remediate OGS Clients for the period 1 July 2015 to 31 January 2018.

In relation to its go forward systems, processes and controls, CFPL has agreed to complete a post implementation review within 120 days.

1.4.1 EU paragraph 3.5.5 (i) – OGS Client remediation

The below findings relate to the steps taken by CFPL to identify and remediate OGS Clients.

1.4.1.1 Case assessment exceptions required CFPL to reperform assessments

Results of our initial case assessment testing either exceeded our acceptable tolerance or required us to extend our samples. CFPL responded by reassessing all case assessments where a file note was relied on to evidence the Annual Review.

Our subsequent testing found no further material exceptions.

1.4.1.2 Controls testing had limited demonstrability

At the time of our report, limited controls testing had been performed across CFPL's Three Lines of Accountability (3LoA). Other than EY, which is not part of CFPL's control framework, no controls testing had occurred outside of the direct remediation team.

CFPL did however engage a third party to independently validate the remediation calculation model. That work identified no exceptions.

1.4.2 EU paragraph 3.5.5 (ii) - Systems, processes and controls to track OGS Clients and discharge contractual obligations

The below findings relate to our assessment of CFPL's systems, processes and controls to track OGS Clients and discharge its contractual obligations.

1.4.2.1 Inconsistent interpretation and application of OGS Annual Review obligation

CFPL applied two standards when assessing its OGS Annual Review obligation:

- ▶ For the period 1 July 2015 to 4 June 2017, CFPL required evidence that the Annual Review was '*delivered*'
- ▶ Post 4 June 2017, CFPL accepts '*offering*' the Annual Review as meeting its OGS Annual Review Obligation.

This current interpretation is inconsistent with ASIC's client-focused expectations outlined in information sheet INFO 232: *Fees for no service: Remediation*, issued in August 2018.

With the release of INFO 232, we understand new executive management are reevaluating the current standard and are likely to revert to the more client-focused interpretation. CFPL has committed that any impacted OGS Clients will be remediated within 120 days.

1.4.2.2 Controls are designed adequately but have not demonstrated operational effectiveness

CFPL has defined 14 key controls, predominately manual, to track and deliver its OGS contractual obligations - nine relating to Annual Review services and five relating to non-Annual Review services (such as the provision of ancillary services).

We found 11 of these satisfied our criteria of a control. The remaining three, one of which relates to the Annual Review controls, were relevant to the process and systems, but did not sufficiently articulate the specific control.

Design adequacy testing

We have assessed each of the 11 controls from a design adequacy perspective and believe, if operating effectively, together with three controls once sufficiently defined and designed, would collectively meet our expectations of CFPL having reasonably adequate controls to track OGS Clients and discharge its contractual obligations.

We found the relevant controls are recently implemented, with two controls implemented in January 2019 and six in September 2018.

CFPL's Line 1 assessed 13 controls in January 2019 to be designed adequately. While CFPL's Line 2 design adequacy testing had not been completed while preparing our Final Report.

Operational effectiveness testing

We performed operational effectiveness testing on five of the 11 controls all relating to Annual Review services. Our testing found no material exceptions in three of the controls and material exceptions in two manual controls, for example closure of weekly reconciliation exceptions. We were unable to test the remaining controls due to the recency of their implementation.

CFPL's Line 1 team reported five controls passed operational effectiveness testing, five failed and four had insufficient samples to test. CFPL's Line 2 operational effectiveness testing had not been completed at the date of our report.

Consistent with our Interim Report, manual controls have a higher inherent risk of failure due to human error or being overridden.

Refer to Appendix C for our detailed controls analysis.

1.4.3 EU paragraph 3.5.5 (iii) - Interim Report findings and recommendations

We have assessed the design and, where possible, performed operational walkthroughs to assess CFPL's 23 actions and deliverables to address our Interim Report findings and recommendations. No material exceptions were identified.

Implementation timeframes and performance cycles has meant changes made to the consequence management framework and associated controls could not be tested.

Refer to Appendix A for CFPL's detailed response to our Interim Report.

1.5 Recommendations

To address the above findings, we recommend that CFPL within 120 days:

- ▶ Completes its closure activities to demonstrate that reasonable steps have been taken to identify and remediate OGS Clients. This should include:
 - ▶ Completing end-to-end completeness and accuracy testing and reconciliations across - client population, case assessments, remediation calculations, communications and payments
 - ▶ Documenting go forward accountabilities, processes and controls to manage outstanding cases (for example, return to sender, updated bank account details and inbound contacts).
- ▶ Completes a post implementation review of the changes to its systems, processes and controls
- ▶ Determines the application of the OGS Annual Review interpretation and application business rule post 4 June 2017 and remediate customers impacted.

We will independently validate completion of these recommendations.

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