



## **Compliance Report (Part 4)**

Commonwealth Financial Planning Limited and Financial Wisdom Limited

Report of Compliance Expert

15 March 2019

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## Background Information and Disclaimer

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15 March 2019

By email: [joanna.bird@asic.gov.au](mailto:joanna.bird@asic.gov.au)

Dear Joanna

**Compliance Report (Part 4) of the Compliance Expert appointed under the  
Additional Licence Conditions of CFPL and FWL**

This Compliance Report (Part 4) 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



John Temple-Cole  
Engagement Partner



Owain Stone  
Project Leader

## Table of contents

A.	Executive summary .....	5
	Introduction .....	5
	Background to our earlier reports.....	5
	Scope of this Compliance Report (Part 4) .....	7
	Summary of total compensation offered.....	10
B.	Other matters relating to preparation of this report .....	13
	Definitions in the Additional Licence Conditions.....	13
	Information relied on .....	13
	References to adviser and client names .....	13
	<b>PART 4 – Application of Second Round of the Compensation Program to Other Affected Clients .....</b>	<b>14</b>
C.	The steps to identify which clients of the Five Advisers were Other Affected Clients.....	15
	Introduction .....	15
	The steps taken by the Licensees.....	15
	Our Findings .....	17
D.	Overview of Second Round of the Compensation Program and other Conditions .....	19
	Overview .....	19
E.	Additional Elements (Initial Letter).....	21
	Background .....	21
	Our Review.....	21
	Our Findings .....	21
F.	Condition 25 – Assessment Outcomes Letter .....	23
	Background .....	23
	Our Review.....	23
	Our Findings .....	24
G.	Condition 26 – Provision of information to Independent Advisor .....	27
	Background .....	27
	Our Review.....	27
	Our Findings .....	27
H.	Condition 27 – Further Licensee Review .....	29
	Background .....	29
	Our Review.....	29
	Our Findings .....	29



I.	Condition 28 – FLR outcome letter.....	31
	Background .....	31
	Our Review.....	31
	Our Findings .....	31
J.	Condition 29(c) – Application of Second Round of the Compensation Program (including Additional Elements).....	32
	Background .....	32
	Our Review.....	32
	Our Findings .....	32
K.	Outcomes resulting from Conditions 25 to 29(c).....	34
	Summary of clients who have now received an offer of compensation .....	34
	Other Licence Condition requirements.....	39
L.	Condition 24 – Reasonable access for Compliance Expert .....	40
	Background .....	40
	Our Review.....	40
	Our Findings .....	40
M.	Condition 30 – Status reports to ASIC.....	41
	Background .....	41
	Our Review.....	41
	Our Findings .....	41
N.	Condition 31(a) – Inclusion on CBA Board meeting agenda.....	42
	Background .....	42
	Our Review.....	42
	Our Findings .....	42

## List of Appendices

Appendix A	Glossary
Appendix B	Additional Licence Conditions Overview Diagram
Appendix C	The steps to identify which clients of the Five Advisers were Other Affected Clients
Appendix D	Diagram of the steps to identify Other Affected Clients



## A. Executive summary

### Introduction

1. The Commonwealth Bank of Australia Group ('CBA') includes two financial planning entities known as Commonwealth Financial Planning Limited ('CFPL') and Financial Wisdom Limited ('FWL') ('Licensee' or 'Licensees')<sup>1</sup>. Both Licensees are required to be licensed by the Australian Securities and Investments Commission ('ASIC').
2. This is the final report prepared by KordaMentha Forensic as the Compliance Expert engaged by ASIC. The engagement arose when, 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 the Compliance Report. For practical reasons, the Compliance Report has been published in parts, as described below.
3. Those Additional Licence Conditions (also referred to as the 'Licence Conditions' or 'Conditions', as the context requires) were imposed after a scheme developed to compensate customers of 15 former CFPL and FWL advisers was not applied consistently across all affected customers of the two businesses. This inconsistency disadvantaged some customers.

### Background to our earlier reports

4. Given the substantial number of issues we identified as a result of these Licence Conditions in our earlier reports, including the identification of additional advisers requiring review, and the payment of compensation to clients of those advisers who had previously not received compensation, we provide below a summary of the findings of our earlier reports. This summary is provided by way of context to explain the scope of our earlier reports, and the opinions expressed therein, insofar as they are relevant to understanding the scope of this report. Reference should be made to each of the earlier reports for further details.

#### *Comparison Report*

5. The Comparison Report was published by ASIC on 23 April 2015<sup>2</sup>.
6. The Comparison Report compared the process steps undertaken in Project Hartnett (concerning advice received from banned former CFPL advisers Don Nguyen and Anthony Awkar) to the process steps applied in the Compensation Program to clients of 15 former CFPL and FWL advisers ('Identified Former Representatives' or 'IFRs') who gave advice between 2003 and 2012. Many of these clients had been offered compensation as a result of adviser misconduct, in a separate Compensation Program (known by CBA as Project Baringa, and which we refer to in this report as the First Round of the Compensation Program).
7. The Comparison Report identified that certain process steps that were applied in Project Hartnett, had not been applied, or had been applied inconsistently, in the First Round of the Compensation Program. As a result, these steps ('Additional Elements') had to be applied to 4,333 Cases in the First Round of the Compensation Program, by the Licensees communicating with each of these Cases and giving them various options, including \$5,000 to have their advice independently reviewed.

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

<sup>2</sup> Refer to the [Comparison Report](#).

### *Identification Report*

8. The Identification Report was published by ASIC on 17 December 2015<sup>3</sup>.
9. Relevantly, in that report we opined that the Licensees did not have a reasonable basis for the processes the Licensees used to determine whether 17 advisers, out of 51 Potential At Risk Representatives ('**PARRs**') should have been included in the First Round of the Compensation Program. These 51 PARRs were representatives (other than the 15 IFRs) who exhibited risk attributes or behaviours which indicated they may have provided inappropriate advice, but had not been included in the First Round of the Compensation Program by the Licensees.
10. As a result of our findings, CFPL and FWL were required to undertake a review of the Client Files of the 17 PARRs to determine whether any of those advisers should have been included in a further compensation program.
11. Any clients of those 17 PARRs who were found to have suffered a loss as a result of inappropriate advice were required to be compensated in a process overseen by KordaMentha Forensic. As discussed below (under Part 3 of the Compliance Report), we identified that five of the 17 PARRS required a full review. In this report (Part 4 of the Compliance Report) we report on the results of our review of whether the Licensees have undertaken appropriate review and remediation of the clients of those five advisers.

### *Compliance Report (Parts 1 and 2)*

12. Parts 1 and 2 of the Compliance Report were published by ASIC on 5 December 2016<sup>4</sup>.
13. We reported on the Licensees' compliance with the requirements to apply the Additional Elements to the 4,333 Cases identified in the Comparison Report (described above), including the Licensees writing to them in the agreed form, offering up to \$5,000 to have their advice independently reviewed, reassessing their advice (if requested to do so, and including consideration of any information provided by the client) and compensating them where required.
14. We concluded in that report that the Licensees did apply the Additional Elements, and that they had offered an additional amount of \$4.96 million to 185 customers of the 15 IFRs as a result of the provision of inappropriate advice leading to loss. This was in addition to the \$26.97 million paid to 707 customers of the same 15 IFRs under the First Round of the Compensation Program.

### *Compliance Report (Part 3)*

15. Part 3 of the Compliance Report was published by ASIC on 23 January 2018<sup>5</sup>.
16. It considered whether the Licensees had appropriately applied the Additional Processes identified as a result of our Identification Report, which required the Licensees to review a prescribed sample of Client Files of the 17 PARRs to determine whether the clients of any of those advisers should have been included in a compensation program.
17. Relevantly, we concluded that the Licensees were required to undertake a full review of all Client Files of five of the 17 PARRs ('**the Five Advisers**' or '**The Adviser(s)**' as the context requires) in a compensation program.
18. This compensation program (including file reconstruction where necessary) was required to be conducted in accordance with the same methodology used in the First Round of the Compensation Program plus the Additional Elements. This is referred to as the 'Second Round of the Compensation Program' in this report.

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<sup>3</sup> Refer to the [Identification Report](#).

<sup>4</sup> Refer to the [Compliance Report \(Parts 1 and 2\)](#).

<sup>5</sup> Refer to the [Compliance Report \(Part 3\)](#).

## Scope of this Compliance Report (Part 4)

19. This Compliance Report (Part 4) considers whether the Licensees have undertaken appropriate review and remediation of the clients ('Other Affected Clients') of the Five Advisers identified as a result of the Compliance Report (Part 3). This required CBA (under Condition 29(c)) to apply the Second Round of the Compensation Program (including the Additional Elements) to 1,286 clients identified as Other Affected Clients. These requirements included conditions around the written communications between the Licensees and potential Other Affected Clients and the options available to those clients. The flowchart at paragraph 143 below shows how the Other Affected Clients and the No Evidence of Advice Cases have been treated, including the results of the Licensees undertaking the FLR for those cases that requested it.
20. As detailed below, \$2,202,258 (including interest and five cases of what CBA have referred to as 'goodwill' payments) of compensation has been offered to 228 cases of the Five Advisers as a result of those clients being provided with either inappropriate advice leading to loss, or compensation for fee refunds or implementation errors. Additionally, \$132,783 was offered in compensation under settlement agreements reached through the FOS<sup>6</sup> process with four cases<sup>7</sup>. Therefore, total compensation under condition 29(c) was \$2,335,041.

### Overall opinions relating to Compliance Report (Part 4)

21. 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.

#### *Identification and scoping of clients*

22. The Licensees had a reasonable basis for the steps that they undertook to identify which of the clients of the Five Advisers were Other Affected Clients and therefore assessed as part of the Second Round of the Compensation Program [Licence Condition 29(c)]. These steps identified 1,286 Other Affected Clients.
23. We sought information from the Licensees in relation to the steps and processes undertaken. This entailed the use of revenue data (to connect a client to an adviser receiving advice revenue such as fees and commissions) ('**Revenue Data**'), filtering out certain types of advice which satisfied criteria (subject to our review) as being not relevant or not of concern, and then undertaking a detailed assessment of the appropriateness of advice provided to the clients of the Five Advisers. The scope of the advice provided by the Five Advisers that the Licensees assessed comprised advice provided by three advisers prior to 2012 (up to when their authorisations ceased), and for two advisers, advice provided both before and after 2012 (up to when their authorisations ceased).

#### *Review of assessment outcomes*

24. An assessment was conducted by the Financial Planning Expert ('**FPE**') engaged by KordaMentha, of the appropriateness of the client advice contained in a sample of client files to confirm whether the FPE agreed with the conclusions reached by the Licensees regarding the assessment outcomes. This process was similar to that outlined in the previous Compliance Report (Part 3).
25. There was one instance where there was a difference of opinion in the assessment outcome determined by the Licensees compared to the outcome reached by the FPE. The FPE did not agree that the advice provided to a particular client of this Adviser (the '**Contended Client File**') was appropriate for their circumstances.

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<sup>6</sup> We refer here to FOS, noting that from 1 November 2018, all financial services complaints were dealt with by the Australian Financial Complaints Authority (AFCA).

<sup>7</sup> There is one additional FOS case (i.e. five in total) where the compensation amount has not been finalised or offered.

26. CBA maintains that the assessment outcome, and the advice provided, was appropriate. However, given that the FPE's opinion was that the advice was not appropriate, we required CBA to take a series of further steps and, CBA agreed with us to take the following steps:
- a. To undertake additional review of any Other Affected Clients of the Five Advisers having similar circumstances and advice recommendations as the Contended Client File; and
  - b. To the extent that any such clients were identified, to provide those clients with all the options available under the Second Round of the Compensation Program.
27. As a result of undertaking the above further steps, CBA identified one additional case. Therefore, in conjunction with the Contended Client File, the Licensees wrote to these two cases informing them that their assessment outcomes have changed from 'Appropriate' to 'Inappropriate'. These two clients have been provided with all the options available under the Second Round of the Compensation Program again. Those options were not requested by either of the two clients.

#### Summary of compliance for Additional Licence Conditions

28. Having reviewed the processes and steps undertaken by the Licensees in relation to the Five Advisers for the identification and scoping of clients and the application of the Second Round of the Compensation Program, our opinions regarding compliance with the Additional Licence Conditions are as follows.

**Table 1 – Summary of compliance for the Second Round of the Compensation Program [Condition 29(c)]**

Licence Condition	Description	Compliance
Additional Elements	Written communication in the form of an Initial Letter with the Other Affected Clients	98.68%
Condition 24	Reasonable access for Compliance Expert	Yes
Condition 25	Written communications in the form of Assessment Outcomes Letter with the Other Affected Clients	98.76%
Condition 26	Provision of information to Independent Advisor where requested	
	<ul style="list-style-type: none"> <li>• Reasonably sufficient information requirement</li> <li>• Timing requirement (provided to the client's Independent Advisor within 14 days)</li> </ul>	Yes 96.77%
Condition 27	Further Licensee Review (completed within 90 days of client request)	100.00%
Condition 28	Further Licensee Review outcome letter (completed within 30 days of completion of Condition 27)	100.00%
Condition 29(c)	Application of Second Round of the Compensation Program and Additional Elements to Other Affected Clients	Yes
Condition 30	Licensee status reports to ASIC	Yes
Condition 31(a)	Inclusion on CBA Board meeting agenda	Yes

#### *Additional Elements – Initial Letter to Other Affected Clients*

29. In our opinion, the Licensees have complied with this condition for 1,269 cases (98.68% of the Other Affected Clients) but have not complied with the timing requirement in this condition for the remaining 17 cases (1.32%). The 17 cases were subsequently rectified. Refer to Section E for further information.

*Condition 24 (reasonable access for Compliance Expert)*

30. In our opinion the Licensees have complied with Condition 24 in relation to the provision of requested information, relating to Part 4 of the Compliance Report.
31. Refer to Section L for further information.

*Condition 25 (written communications in the form of Assessment Outcomes Letter with the Other Affected Clients)*

32. In our opinion, the Licensees have complied with this condition for 1,270 cases (98.76%) but have not complied with the timing requirement in this condition for 14 cases (1.09%). The 14 cases were subsequently rectified.
33. As outlined in paragraphs 24 to 27 above, the FPE reviewed a sample of files and disagreed with CBA's assessment outcome for one file (the Contended Client File). This resulted in an expanded review by CBA, which was overseen by KordaMentha, and which identified one additional client with similar circumstances and investment recommendations to the Contended Client File, that required a change in assessment outcome. CBA has written to these two clients (0.16% of Other Affected Clients) informing them of the change and re-offered all available options under the Second Round of the Compensation Program. Those options were not requested by either of the two clients.
34. Refer to Section F for further information.

*Condition 26 (provision of information to Independent Advisor where requested) – reasonably sufficient information requirement*

35. Condition 26 requires that information provided to the client's Independent Advisor be reasonably sufficient to assist the client's Independent Advisor to form an opinion regarding the advice that the Other 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, required to comply with Condition 26:
- a. Assisting the Independent Advisor to form an opinion regarding the advice that the Other 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.
36. Based on the information provided in response to our enquiries, and the sample testing we have undertaken, in our opinion, the Licensees have complied with the above required attributes, through the provision of all available information the case assessors had used in assessing the advice and determining any offer of compensation, including critical advice documents e.g. Statements of Advice, Financial Needs Analysis and Records of Advice.
37. Refer to Section G for further information.

*Timing requirement*

38. In our opinion, the Licensees have complied with the timing requirement of Condition 26 for 60 of the 62 cases that either sought advice from an Independent Advisor or requested the information themselves (96.77%). Two cases (3.23%) received their information late.
39. Refer to Section G for further information.

*Condition 27 (Further Licensee Review)*

40. In our opinion, the Licensees have complied with this condition by undertaking and completing a Further Licensee Review ('FLR') within 90 days, for all 61 cases that requested an FLR (100%).
41. Refer to Section H for further information.

*Condition 28 (FLR outcome letter)*

42. In our opinion, the Licensees have complied with this condition by sending the FLR outcome letter for all 61 cases (100%) within the required timeframe.
43. Refer to Section I for further information.

*Condition 29(c) (Application of Second Round of the Compensation Program to the Other Affected Clients)*

44. In our opinion, the Licensees have complied with this condition. Refer to Section J for further information.

*Condition 30 (Licensee status reports to ASIC)*

45. In our opinion, the Licensees have complied with this condition. Refer to Section M for further information.

*Condition 31(a) (Inclusion on CBA Board meeting agenda)*

46. In our opinion, the Licensees have complied with this condition. Refer to Section N for further information.

## Summary of total compensation offered

47. The table below summarises all compensation offered under the Second Round of the Compensation Program. This includes compensation offered through Condition 25 letters, FLRs and agreements from the FOS process. The compensation offered to Other Affected Clients totalled \$2,335,041 (including interest, compensation offered under the FOS process, and what CBA have referred to as 'goodwill payments') to 232 cases. The Licensees offered this compensation as a result of their application of Conditions 25, 27 and 29(c) of the Additional Licence Conditions:

**Table 2 – Summary of total compensation offered**

Category of cases	Number of cases offered	Amount offered (including interest)
Second Round of the Compensation Program (Condition 25)	227	\$2,180,501
Further Licensee Review (Condition 27)	10	\$21,756
<b>Sub-total</b>	<b>228<sup>8</sup></b>	<b>\$2,202,258</b>
FOS process	4 <sup>9</sup>	\$132,783
<b>Total (inclusive of 'goodwill payments' and FOS process payments)</b>	<b>232</b>	<b>\$2,335,041</b>

48. In relation to the ten client cases where the FLR resulted in additional compensation offers (\$21,756 in total), from our review of information provided by the Licensees, we are aware that the reasons for the changes in assessments were:
- Engagement with the customer to enquire and discuss advice provided;
  - 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 have led to reassessment of the appropriate asset allocation and/or appropriate gearing strategy; and

<sup>8</sup> The total is 228 as nine of the 10 FLR cases have previously received compensation under condition 25 and one was offered compensation under the FLR process only.

<sup>9</sup> In one other case, the compensation amount has not yet been finalised.

- d. Calibration of fee refund calculations to account for differences in timing of when calculations are performed and when the compensation is offered.
49. The compensation of \$2,335,041 is separate to any compensation paid by the Licensees under the Open Advice Review program.
50. There were five Other Affected Clients that also registered under the Open Advice Review program. All five of these Other Affected Clients requested an FLR<sup>10</sup>.

**Summary of assessment outcomes by adviser, and in total (excluding FOS)**

51. The table below summarises the results of the identification and scoping of Other Affected Clients, and the assessment outcomes of the Second Round of the Compensation Program (excluding FOS) for each adviser.

**Table 3 – Summary of outcomes by Adviser (excluding FOS)**

Description	Adviser 30	Adviser 52	Adviser 72	Adviser 91	Adviser 107	Total
Other Affected Clients	294	128	511	217	136	<b>1,286</b>
Appropriate Advice	256	105	440	197	104	<b>1,102</b>
<i>Appropriate Advice (%)</i>	87%	82%	86%	91%	77%	<b>86%</b>
Inappropriate Advice – loss	15	13	50	12	25	<b>115</b>
<i>Inappropriate Advice – loss (%)</i>	5%	10%	10%	5%	18%	<b>9%</b>
Inappropriate Advice – no loss	23	10	21	8	7	<b>69</b>
<i>Inappropriate Advice – no loss (%)</i>	8%	8%	4%	4%	5%	<b>5%</b>
<b>Total compensation offered<sup>11</sup></b>	<b>\$298,686</b>	<b>\$568,908</b>	<b>\$655,619</b>	<b>\$434,040</b>	<b>\$245,004</b>	<b>\$2,202,258</b>

52. As the table shows:
- Out of 1,286 Other Affected Clients reviewed across the Five Advisers, 86% were found to have received appropriate advice and 14% (184 cases) were found to have received inappropriate advice.
  - The extent of inappropriate advice differed between the Five Advisers. For Adviser 107, 23% of advice was found to be inappropriate. For Adviser 91, approximately 9% of advice was found to be inappropriate.
  - Of the 14% of Other Affected Clients found to have received inappropriate advice, 9% (115 cases) were found to have suffered loss, and 5% (69 cases) to have suffered no loss.
  - The average compensation offered per case for Inappropriate Advice - Loss amount was \$19,150.
53. Refer to Section K for further details.

<sup>10</sup> Three of the five Other Affected Client requested an FLR within the 120-day timeframe, and the other two requested an FLR outside of the 120-day timeframe.

<sup>11</sup> Inclusive of what CBA refer to as “goodwill payments”.

**Cases referred by client to Financial Ombudsman Service**

54. Five Other Affected Clients made a complaint to the Financial Ombudsman Service Australia (**FOS**). Four out of five complaints were withdrawn and settlement agreements were reached with a total amount offered of \$132,783. The other one complaint is currently in the process of being finalised and a settlement being negotiated.

## B. Other matters relating to preparation of this report

### Definitions in the Additional Licence Conditions

55. 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.
56. These definitions are set out in the Glossary in Appendix A.

### Information relied on

57. This report contains statements and opinions based on our expertise and independent assessment of the information and documentation provided to us by the Licensees, including explanations provided to us by the Licensees' employees. We have made all relevant inquiries and assessments to ensure the reliability, suitability and completeness of the information relied upon by us in performing our obligations under our contract with ASIC ('Contract').
58. Subject to our obligations under the Contract, KordaMentha Forensic does not warrant the accuracy or reliability of information provided by the Licensees and their employees.
59. This report has been prepared by KordaMentha Forensic in good faith and with all due skill, care and diligence.

### References to adviser and client names

60. 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.
61. Further, for reasons of privacy, we have not referred to individual client names.

**PART 4 – Application of Second Round of the Compensation Program to Other Affected Clients**

## C. The steps to identify which clients of the Five Advisers were Other Affected Clients

### Introduction

62. The Additional Licence Conditions require us to consider the processes the Licensees undertook to identify the Other Affected Clients of the Five Advisers.

#### Other Affected Clients

##### *Population*

63. Other Affected Clients are defined in the Additional Licence Conditions as clients of relevant representatives identified by operation of Condition 29(a) or 29(b) (i.e. the **'Five Advisers'**), except for:

- a. Clients where the Licensee has no record of advice having been provided;
- b. Groups of clients of the Five Advisers 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 Adviser giving advice);
- c. Clients where returned mail is received, and after making appropriate efforts to contact the Other Affected Clients, the Licensee was unable to do so; or
- d. Clients who will not be included in the Second Round of the Compensation Program as a result of analysis conducted by the Licensee, in accordance with the Revised Steps (if any)<sup>12</sup>, which indicates that clients did not receive the type of advice from the Advisers that was the subject of concern.

64. Specifically, Additional Licence Condition 29(c) states that for representatives who are identified as a result of Conditions 29(a) and 29(b), the Licensees are to commence implementation of the Second Round of the Compensation Program (including the Additional Elements) to the Other Affected Clients, in the same manner as the First Round of the Compensation Program.

##### *Compliance Expert scope*

65. As the Compliance Expert, we are required to:

- a. Review the steps the Licensee undertook to identify which of the clients of the Five Advisers were Other Affected Clients and therefore assessed as part of the Second Round of the Compensation Program; and
- b. Provide our opinion on the steps adopted by the Licensee to identify which clients of the Five Advisers ought to have been assessed as part of the Second Round of the Compensation Program.

66. In this section, we review the steps taken by the Licensees and provide our opinion on whether those steps complied with the Additional Licence Conditions.

### The steps taken by the Licensees

67. As part of our scope, we have sought information from the Licensees as to the steps taken to identify which clients of the Advisers were Other Affected Clients. In summary, the overall process was generally similar to that of the First Round of the Compensation Program. We outline the details of that process below.

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<sup>12</sup> As outlined in the Identification Report, no Revised Steps were identified.

68. The Licensees have put forward that the steps entailed the use of Revenue Data (to connect a client to an adviser receiving advice revenue, such as fees and commissions, for advice provided), filtering out certain types of advice which satisfied criteria (subject to our review) as being not relevant or not of concern and then undertaking a detailed assessment of the appropriateness of advice provided to the clients of those Five Advisers.
69. Based on our analysis and discussions with the Licensees, review of relevant documents and information, and walk through of systems, we have identified 10 significant steps undertaken by the Licensees.
70. We set out the detail of each of the 10 steps in Appendix C, and provide a summary below.

#### Summary of steps taken by the Licensees

71. The 10 steps fall into two major stages:
- Identification Process – how all clients of the Advisers were identified (steps 1 to 6 in Appendix C); and
  - Scoping Process – the process used to ‘scope out’ certain clients to arrive at the Other Affected Clients (steps 7 to 10 in Appendix C).

#### Identification Process

72. The Licensees did not (at the time the advice was provided) have a complete central record of clients who had received advice from their advisers and so could not readily identify all the clients who had received advice from each Adviser.
73. The Licensees did however hold records of advice revenue (such as fees and commissions) allocated to each adviser for advice provided and implemented. The Licensees’ analysis found that this Revenue Data provided the most complete information available when compared with alternative data from the Licensees’ systems. The Licensees therefore decided to use this Revenue Data to identify the policies<sup>13</sup> written by the adviser, on the central premise that all advice which was implemented by a client would generate revenue for the adviser.
74. By interrogating the Licensees’ systems, and extracting Revenue Data, the Licensees were able to identify the policies which had generated revenue related to clients of each Adviser. For internally issued products issued by related parties of CBA, the policies were then matched to clients’ details.
75. For external products, a list of policies was given to each external product provider that was recommended to a client by an Adviser, with a request for the relevant customer information. Despite not all product providers responding with the requested information, we are satisfied that the steps undertaken by CBA in seeking to obtain the information, were reasonable.
76. The available customer information was then used to generate a list of clients who had received advice from each of the Five Advisers.
77. Based on customer information, some clients were merged into a single ‘case’ - most commonly where advice was given jointly to a married couple. Therefore a ‘case’ can relate to one or more clients.

#### Scoping process

78. Having identified all potential clients of the Five Advisers, the Licensees excluded certain clients. All three of the following criteria had to be satisfied for the client to be excluded:

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<sup>13</sup> i.e. an insurance policy, superannuation account or other wealth management product.

- a. Had been inherited from another adviser ('**Inherited Clients**') and had not received advice from the Adviser. This included reviews for insurance-related products (as was the case in the First Round of the Compensation Program)<sup>14</sup>;
  - b. Only received a "risk" insurance product, as there was no investment component attached to these particular products<sup>15</sup>; and
  - c. There were no documents found on COIN or CommSee during the Authorisation Period.
79. This meant that insurance advice was also to be reviewed unless the above scoping criteria were met. The overall effect of the amalgamated heritage and insurance filter was that more potential clients were scoped in for review and assessment under Condition 25, compared to the number of clients that would have been scoped in had the scoping criteria used in the First Round of the Compensation Program been applied.
80. After having assessed a potential client for whether advice was provided, the Licensees then determined those clients that had not received advice from the Adviser. For example, the transaction may have been client-directed, not implemented or there was no evidence of advice having been provided.
81. After excluding clients that had not received advice from the Adviser, all remaining clients (Other Affected Clients) of the Five Advisers were assessed as part of the Second Round of the Compensation Program.

## Our Findings

82. In our opinion the steps adopted by the Licensees to identify which clients of the Five Advisers were Other Affected Clients and assessed as part of the Second Round of the Compensation Program, using a process similar to that used to identify Affected Clients in the First Round of the Compensation Program, complied with the Additional Licence Conditions. In our opinion, the process used in the First Round of the Compensation Program, and in the Second Round of the Compensation Program, were both reasonable and complied with the Additional Licence Conditions.
83. The reasons for our opinion in relation to the Second Round of the Compensation Program are:
- a. The process is broadly similar to that undertaken in the First Round of the Compensation Program. There have been refinements to the identification processes to include more potential clients for assessment of whether advice was provided, as well as refinements to the scoping process to be more conservative in scoping out potential clients of Advisers;
  - b. Early in Project Baringa, the Licensees considered using information other than Revenue Data to identify the clients of Advisers. However, they found that Revenue Data gave the most complete information;
  - c. We 'walked through' the processes used by the Licensees to identify a unique set of cases for each Adviser (steps 2 to 6 in Appendix C) and found that they had a reasonable basis; and
  - d. For the Scoping Process outlined above in paragraph 78, we reviewed each step and found that there was a reasonable basis for these.

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<sup>14</sup> Two of the documents provided in relation to the identification and scoping of clients process, referred to the Licensees having removed the 'Insurance Only' filter for the Second Round of the Compensation Program. These were the 'Licence Conditions - Information requests following scoping meeting' and 'Identification and Scoping End to End Process' documents. This wording suggested that the scoping process differed to the First Round of the Compensation Program. However, upon further discussion with the Licensees, they clarified the 'removal' to mean that the filter was amalgamated into the heritage filter so that clients were still reviewed for the heritage and insurance filters simultaneously.

<sup>15</sup> A "risk" product means an insurance product (e.g. life, TPD, trauma, income protection). The converse of this is a "non-risk" product, which includes a "risk" insurance product and also contains an investment component (e.g. annuity, bond).

84. The Revenue Data for Adviser 72 was scoped in late 2016. This Adviser was still employed by the Licensees at this time, however was later suspended in January 2017. The effect of the Adviser's continued ability to operate between late 2016 and January 2017 resulted in advice being provided to further clients that did not exist at the time of the scoping of clients in late 2016.
85. Therefore, in late 2017 during the Second Round of the Compensation Program, CBA identified that this scoping discrepancy had occurred, in that there were an additional 14 cases to be included by the Licensees for scoping<sup>16</sup>.

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<sup>16</sup> CBA sent Initial Letters to all 14 cases by 14 December 2017, except for one which was sent on 23 January 2018. All 14 cases are included in the Second Round of the Compensation Program and were afforded all the same options and time periods as the other cases. As at this date of this report, none of the advice provided to these 14 cases has been assessed as 'Inappropriate' and none of these cases have requested an FLR.

## D. Overview of Second Round of the Compensation Program and other Conditions

86. In this Compliance Report (Part 4) we are required to provide an opinion as to whether the Licensees have complied with the conditions below in respect of the population of Other Affected Clients.

### Overview

87. 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 4 – Licence Conditions applicable to Condition 29(c) (relevant to this report)**

#	Description	Requirements
<b>Part 4</b>		
<b>Second Round of the Compensation Program</b>		
Additional Elements	Initial Letter	The Licensees were to send an Initial Letter to Other Affected Clients, notifying them of a potential issue with advice they may have received and that CBA would be in contact with them after the investigation had been completed. The timing of when these letters were to be issued was agreed between CBA and ASIC for each Adviser.  Additionally, similarly to the First Round of the Compensation Program, the Licensees also communicated with the No Evidence of Advice Clients of the Advisers, by sending an Initial Letter to them.
25	Assessment Outcomes Letter	The Licensees must apply the Second Round of the Compensation Program to the Other Affected Clients, unless otherwise agreed to by ASIC, and according to timeframes agreed with ASIC. They must write to the Other Affected Clients with an explanation of the processes applied under the Second Round of the Compensation Program, offer up to \$5,000 for an Independent Advisor, an explanation of Conditions 26, 27, and 28, and offer access to the Open Advice Review program.
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's Independent Advisor to form an opinion regarding the advice that the Other Affected Clients 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 Assessment Outcomes Letter (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.
29(c)	Second Round of the Compensation Program	In relation to the Five Advisers who were identified as a result of Conditions 29(a) and 29(b), the Licensees were required to commence implementation of the Second Round of the Compensation Program (including applying the Additional Elements) to the 1,286 clients identified as Other Affected Clients in the same manner as the First Round of the Compensation Program

#	Description	Requirements
<b>Other</b>		
24	Compliance Expert access to information	The Licensees 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, i.e. after this report.
31(a)	Inclusion of conditions in board agenda and 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.

## E. Additional Elements (Initial Letter)

### Background

88. The Licensees must apply the Additional Elements (Initial Letter) to the Other Affected Clients, unless otherwise agreed to by ASIC, and according to timelines agreed with ASIC. Additionally, similarly to the First Round of the Compensation Program, the Licensees also communicated with the No Evidence of Advice Clients of the Advisers, by sending an Initial Letter to them. NEA Clients were also not required to be sent an outcomes letter under the Additional Licence Conditions, however the Licensees did communicate with these NEA clients in a form similar to the Outcomes Assessment Letter, to inform them that the Licensees held no evidence of advice.

### Our Review

89. Our assessment of compliance with the requirement to issue an Initial Letter to Other Affected Clients (as well as those sent to all NEA clients) involved the following procedures:
- a. We reviewed the template letter and a sample of Initial Letters<sup>17</sup> that were sent to the Other Affected Clients population for the following aspects<sup>18</sup>:
    - i. Informing them that there may have been an issue with advice given to them by their adviser;
    - ii. Noting an investigation was being undertaken about the advice provided; and
    - iii. Stating the client would be contacted following the investigation.
  - b. We assessed the application of the Additional Elements (being the requirement to send an Initial Letter) to the Other Affected Clients, to confirm that the Licensees had issued an Initial Letter to each Other Affected Client (as well as all NEA clients). This was also conducted through reviewing and enquiring into 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. This included further steps around reviewing and enquiring into the 'address-washing' process, which was the process undertaken to determine alternative addresses for each client. If the address on file was not current, we reviewed the procedures for locating other addresses or contact details to deliver the letter to the client. These procedures undertaken by the Licensees included further system searches and attempting to contact the customer directly via phone call or email.

### Our Findings

90. The Licensees have complied with this condition for 1,269 cases (98.68% of Other Affected Clients) but have not complied with the timing requirement in this condition for the remaining 17 cases (1.32%). This was as a result of the following reasons:
- a. An additional 14 cases were identified in relation to one Adviser. Refer to paragraph 85 above for further details.
  - b. There were three cases relating to another Adviser that received their Initial Letters late. This was because:

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<sup>17</sup> CBA had indicated there were instances where an Initial Letter was not sent to some of the clients in the potential Other Affected Clients population. This arose when there was a lack of current contact information or because of an oversight. We enquired into these particular clients and identified that CBA had determined that these clients did not receive advice and therefore would be NEA clients. In our opinion this process is reasonable.

<sup>18</sup> Specified in our Comparison Report, paragraph 109.

- i. One case was originally flagged as a potential ‘quarantined’<sup>19</sup> case as it involved the Adviser’s brother. After further review, this case was determined to no longer need to be quarantined;
  - ii. One case was created a result of splitting out a related-party client from the Adviser; and
  - iii. One case was incorrectly identified as requiring address details from a third-party provider.
91. 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.
92. In our opinion, the Licensees have complied with application of Additional Elements to the Other Affected Clients, other than in respect of the 17 cases (1.32%) that received their Initial Letter late.

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<sup>19</sup> Quarantined cases refer to those cases where the Adviser provided advice to themselves, or to a spouse or close relative. It was necessary to quarantine them for further review to ensure the Advisers themselves were not included in the Second Round of the Compensation Program. Once the review had been conducted, the letters were sent to non-Adviser cases as part of the Second Round of the Compensation Program.

## F. Condition 25 – Assessment Outcomes Letter

### Background

93. Under Condition 25, the Licensees were required to undertake the procedures below:
- a. According to the deadlines agreed with ASIC, the Licensee must:
    - i. Communicate in writing, in a form or forms agreed with ASIC, with each of the Other Affected Clients.
  - b. The written communication (**‘Assessment Outcomes Letter’**) must include:
    - i. An explanation of the processes applied to the Other Affected Client under the Second Round of the Compensation Program including details of any assessment that was undertaken of the advice provided to the Other Affected Client, the reason for the assessment, the outcome of the assessment and how the Other 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 Other Affected Client seeking advice from a licensed financial advisor, lawyer or accountant (**‘Independent Advisor’**) about the advice they had 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 Other Affected Client;
    - iii. An explanation of the matters contained in Conditions 26, 27 and 28; and
    - iv. An explanation that the Other 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.
94. Similarly to the First Round of the Compensation Program, the Licensees sent an Initial Letter to the No Evidence of Advice cases advising that according to the Licensees’ records, no advice was provided by the Adviser to those particular clients. However, if the client disagreed, they could contact CBA to discuss the matter further and potentially be included in the Second Round of the Compensation Program if it was later deemed that the client, after having provided further information to CBA for consideration, did actually receive advice. If so, they were required to be sent an Assessment Outcomes Letter.

### Our Review

95. Our assessment of compliance with Condition 25 involved the following procedures:
- a. Assessment of the letter-sending process to Other Affected Clients. 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 to deliver the letter to the client. These procedures included further system searches and attempting to contact the customer directly via phone call or email.
    - ii. Reviewing and enquiring into the treatment of the ‘returned to sender’ (**‘RTS’**) 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 Other Affected Clients to confirm inclusion of the following required information:

- i. The assessment of their advice under the Second Round of the Compensation Program;
  - ii. An offer of up to \$5,000 for an Independent Advisor;
  - iii. Options to access documents under Condition 26 (refer to Section G below);
  - iv. An offer of a FLR by the Licensee of the advice received and any compensation (refer to Section H below);
  - v. The options for lodging a dispute with the Financial Ombudsman Service or pursuing a claim (in which case the Licensee will release the Other Affected Client from the terms of any release that the Other Affected Client has given to the Licensee on the condition that the Other Affected Client repays any final settlement sum, including the interest component, it had received from the FLR; 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 b. 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 Other Affected Clients as all letters were to be sent according to agreed deadlines with ASIC.
  - f. Assessment by the FPE of the appropriateness of the client advice contained in a sample of client files to confirm whether they agreed with the conclusions reached by the Licensees regarding the assessment outcomes. This process was similar to that outlined in the previous Compliance Report (Part 3).

## Our Findings

96. The Licensees have complied with this condition for 1,270 cases (98.76%) but have not complied with the timing requirement in this condition for the remaining 16 cases (1.24%). This was because an additional 14 cases were identified in relation to one Adviser. Refer to paragraph 85 above for further details. Another two cases (0.16%) were identified from a sample review of assessment outcomes by the FPE and resulting further steps required to be undertaken by CBA. Refer to paragraphs 98 to 109 below.
97. Additionally, during our review of the RTS process, we identified one case where an alternative address had been located for a case but the letter was not reissued to this address. CBA has now rectified this. This does not meet the definition of an exception within Condition 25 as the first Assessment Outcome Letter for this client had been sent on time. Upon becoming aware of this failure to reissue the letter for this case, the Licensees undertook a detailed review of all RTS cases and confirmed that this was an isolated issue.

### Difference in opinion between the Licensees and FPE on the advice finding for Adviser 52

98. The FPE found that, in their opinion, and contrary to the Licensees' finding, a Client File for Adviser 52 (the Contended Client File) contained inappropriate client advice.
99. We discussed the FPE's finding with the FPE to understand their position regarding the advice appropriateness of the Contended Client File. In the FPE's opinion, the advice provided for this particular case recommended that the entire portfolio be invested in a market-linked income fund (with a recommended investment time horizon of one to three years). The FPE deemed this to be inappropriate, as approximately half of the client's funds were planned for expenditure within 12 months. In the FPE's opinion, the recommended investment had insufficient liquidity.

100. We provided the FPE's opinion, and queries regarding the advice to the Licensee and considered the submission received from the Licensee in response. We then facilitated a discussion between the FPE and the Licensee providing both with the opportunity to provide their respective opinions of the Contended Client File for Adviser 52.
101. Following the discussion, CBA remained of the opinion that the advice was appropriate. The Licensee submitted to the Compliance Expert further information which it considered relevant to the FPE's deliberations. This information was provided to, and considered by, the FPE.
102. After consideration of the additional information submitted by the Licensee and discussions with the Compliance Expert and Licensee, the FPE reached a final position that the advice was inappropriate.
103. The FPE's final opinion was that the following components of the advice were inappropriate for approximately half of the portfolio due to:
  - a. A misclassification of planned expenditure;
  - b. The recommended investment having inappropriate time horizon; and
  - c. The recommended investment having inappropriate liquidity conditions.
104. The Licensee determined that based on the circumstances of this case, the inappropriate advice identified for Adviser 52 had not led to client loss and we agree with this outcome. The Licensee maintains its view that the advice was appropriate. We, as the Compliance Expert, (based on the FPE's opinion) reject this view.

*Further work required*

105. As a result of our opinion as Compliance Expert that the advice recommendation for the Contended Client File was not appropriate, we required the Licensees to identify any Other Affected Clients with similar circumstances and advice recommendations to the Contended Client File. The relevant factors we required the Licensees to apply in undertaking this review were:
  - a. Where an Adviser recommended that a customer invest in a product identical, or having similar characteristics to, the product recommended to the Contended Client File (discussed above in paragraph 99); and
  - b. Where the client also had one or more investment objectives with a timeframe of less than one year.
106. The Licensees identified 10 other cases that met the above criteria:
  - a. Nine cases had initially been assessed by the Licensees as 'Appropriate'. The Licensees' review of these other cases in the expanded review determined that the assessment for one case (initially assessed as 'Appropriate') should have been assessed as 'Inappropriate'. Regarding the other eight cases, we agreed that these were appropriate as they were provided with separate advice corresponding with both their short and long-term objectives, through the use of cash accounts, terms deposits and pensioner accounts for their short-term objectives, and an investment fund for long-term objectives; and
  - b. One case had initially been assessed as 'Inappropriate' (because the recommended product was not in line with the client's risk profile).
107. This outcome required that the Licensees write to two cases (the Contended Client File, and the one inappropriate case which had initially been assessed as appropriate), which they did on 22 October 2018. The Licensees informed these two cases that their assessment outcomes have changed from 'Appropriate' to 'Inappropriate'. These two clients have been provided with all the options available under the Second Round of the Compensation Program again. Those options were not requested by either of the two clients.

108. Apart from this, our review did not identify any other issues in the procedures undertaken by the Licensees relating to the assessment outcomes, and the content within the template and sample letters.
109. In our opinion, the Licensees have complied with application of the Second Round of the Compensation Program (including applying the Additional Elements) to the Other Affected Clients, other than in respect of the 14 cases (1.09% of Other Affected Clients) that received their Assessment Outcomes Letter approximately three months late, and also the two cases (0.16% of Other Affected Clients) that received revised assessment outcomes.

## G. Condition 26 – Provision of information to Independent Advisor

### Background

110. Under Condition 26, the Licensees were required to undertake the procedures below:

If an Other 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 Other 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.

### Our Review

111. Our assessment of compliance with Condition 26 involved the following procedures:

- a. 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 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 our 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, in which case information that did not relate to the relevant case was redacted.
- b. 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/or the client's Independent Advisor and enquiries into whether any documents were not provided.
- c. Reviewing guidelines and enquiring into the process undertaken by the Licensees' customer contact centre in logging requests for information to be provided.
- d. Sample testing and walkthrough of the Licensees' systems to check for any requests for information that were not responded to.
- e. Review and enquiry of the timing of information provided to the cases that requested information (i.e. whether provided within 14 days), including whether claims were lodged with FOS subsequent to the FLR process.

### Our Findings

#### Reasonably sufficient requirement

112. Condition 26 requires that information provided to the client's Independent Advisor be reasonably sufficient to assist the client's Independent Advisor to form an opinion regarding the advice the Other 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, required to comply with Condition 26:

- a. Assisting the Independent Advisor to form an opinion regarding the advice that the Other Affected Client received from the Licensee and/or its representative;
- b. Assisting the Independent Advisor to form an opinion regarding understanding the Licensees' assessment of that advice; and

c. Assisting the Independent Advisor to form an opinion regarding understanding the basis upon which any offer of compensation was made.

113. Based on the information provided in response to our enquiries, and the sample testing we have undertaken, in our opinion, the Licensees have complied with the above 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, including critical advice documents e.g. Statements of Advice, Financial Needs Analysis and Records of Advice.

#### Timing requirement

114. Condition 26 requires that reasonably sufficient information be provided to the client's Independent Advisor no later than 14 days after a request. A total of 62 cases requested access to information. There were two instances where the information was not provided within the 14-day requirement as a result of an oversight by CBA. These two letters were sent after 55 and 59 days. This represents a compliance rate of 96.77%.

115. Apart from the two exceptions noted above, our review did not identify any other issues in the procedures undertaken by the Licensees.

116. In our opinion, the Licensees have complied with the timing requirement of Condition 26, other than in respect of two out of 62 cases (3.23%) as their Independent Advisor received their information late.

## H. Condition 27 – Further Licensee Review

### Background

117. Under Condition 27, the Licensees were required to undertake the procedures below:
- If, within 120 days of the Licensee issuing an Assessment Outcomes Letter (referred to in Condition 25), an Other 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 Other Affected Client by the Licensee and/or its representative was inadequate (**'Notification'**), the Licensee must:
- a. Review its original assessment of that case i.e. an FLR; and
  - b. In conducting the FLR (which must 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 First Round of the Compensation Program.
118. 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 Adviser. This circumstance did not however arise.

### Our Review

119. 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 Licensees' 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 the Licensees' systems to check for any notifications that did not result in an FLR being conducted; and
  - e. Enquiring into and reviewing the timing of completion of FLRs in response to notifications being received (i.e. within 90 days).

### Our Findings

120. 45 cases requested an FLR within the 120-day timeframe provided to Other Affected Clients.
121. There were also an additional 16 cases that requested an FLR outside of 120 days. The Licensees nevertheless agreed to continue with the FLR process for these 16 cases, despite not being required to under the Additional Licence Conditions.
122. The Licensees have complied with this condition by undertaking and completing the FLR within 90 days for all 61 cases (100%).
123. Our review did not identify any other issues in the procedures undertaken by the Licensees.

124. In our opinion, the Licensees have complied with Condition 27.

## I. Condition 28 – FLR outcome letter

### Background

125. Subsequent to an FLR being completed, the Licensees were required to write to the relevant Other 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 remain unresolved), the Other Affected Client had the right to lodge a dispute with the FOS and/or pursue a claim against the Licensees.
126. The Licensees had 30 days following the completion of the FLR to send the FLR outcome letter to each Other Affected Client.
127. 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 Adviser and opted for an FLR after the initial assessment had been completed. This circumstance did not however arise.

### Our Review

128. 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 client lodges a dispute with FOS, the Licensees will:
      - Not take any objection to FOS considering the dispute;
      - Not rely on any release that the case has given to the Licensees; and
      - 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. The client 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

129. 45 cases requested an FLR within the 120-day timeframe provided to Other Affected Clients.
130. There were also an additional 16 cases that requested an FLR outside of 120 days. The Licensees nevertheless agreed to continue with the FLR process for these 16 cases, despite not being required to under the Additional Licence Conditions.
131. The Licensees have complied with this condition by sending the FLR outcome letter within 30 days for all 61 cases (100%).
132. Our review did not identify any other issues in the procedures undertaken by the Licensees.
133. In our opinion, the Licensees have complied with Condition 28.

## J. Condition 29(c) – Application of Second Round of the Compensation Program (including Additional Elements)

### Background

134. Under Condition 29(c), in relation to the Five Advisers who were identified as a result of Conditions 29(a) and 29(b), the Licensees were required to commence implementation of the Second Round of the Compensation Program (including applying the Additional Elements) to the 1,286 clients identified as Other Affected Clients in the same manner as the First Round of the Compensation Program.

### Our Review

135. Our assessment of compliance with Condition 29(c) involved the following procedures for the Other Affected Clients:
- a. Reviewing the implementation of the Second Round of the Compensation Program, meaning the review and compensation activities undertaken by the Licensee which:  
*Were designed to identify whether inappropriate advice was provided to a client resulting in the need for compensation, and if so, restore that [Other] Affected Client...to the position they would have been in had they received appropriate advice<sup>20</sup>.*
  - b. Reviewing the application of the Additional Elements.

### Our Findings

136. In Section C, we opine that the steps adopted by the Licensees to identify which clients of the Five Advisers were Other Affected Clients and assessed as part of the Second Round of the Compensation Program, using a process similar to that used to identify Affected Clients in the First Round of the Compensation Program, complied with the Additional Licence Conditions. In our opinion, the process used in the First Round of the Compensation Program, and in the Second Round of the Compensation Program, both complied with the Additional Licence Conditions.
137. In Section E, we set out our assessment of the application of the Additional Elements (being the requirement to send an Initial Letter) to the potential Other Affected Clients. As we state there, in our opinion the Licensees have applied the Additional Elements for 1,269 cases (98.68% of Other Affected Clients) but have not complied with the timing requirement in this condition for the remaining 17 cases (1.32%).
138. In Section F, we set out our opinion in relation to our review of the steps undertaken by the Licensees, including assessment by the FPE of the appropriateness of the client advice contained in a sample of client files to confirm whether they agreed with the conclusions reached by the Licensees regarding the assessment outcomes. As we state there, in our opinion, the Licensees have complied with the application of the Second Round of the Compensation Program to the Other Affected Clients, other than in respect of the 14 cases that received their Assessment Outcomes Letter approximately three months late, and also two cases that received revised assessment outcomes.

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<sup>20</sup> Additional Licence Conditions, definition of “Compensation Program” at page 19.

139. In light of our findings summarised above (and as detailed in the remainder of this report), in our opinion, the Licensees have complied with Condition 29(c), namely to commence implementation of the Second Round of the Compensation Program (including applying the Additional Elements) to the 1,286 clients identified as Other Affected Clients in the same manner as the First Round of the Compensation Program.

## **K. Outcomes resulting from Conditions 25 to 29(c)**

### **Summary of clients who have now received an offer of compensation**

140. As a result of the Licensees applying the Second Round of the Compensation Program and writing to clients under Condition 25, compensation has been offered to 227 cases.
141. Additionally, 61 cases also requested a Further Licensee Review under Condition 27, resulting in nine of these cases receiving a further offer of compensation, i.e. in addition to amounts offered under Condition 25. One case received an offer only under the FLR process, which means a total of 228 cases received offers of compensation either through Condition 25 or FLR.
142. There were five further cases that received what CBA have referred to as a 'goodwill' payment, which was arrived at through a settlement discussion in an effort to resolve the client's assessment of advice and potential compensation. Through enquiries with CBA, CBA stated that it did not initiate these discussions, but rather, it was the respective client that initiated these discussions in each case. The total of the 'goodwill' payments to these five cases was \$37,103.
143. The flowchart below shows how the Other Affected Clients and the No Evidence of Advice Cases have been treated, including the results of the Licensees undertaking the FLR for those cases that requested it.

**Overview of Conditions 25 to 29(c)**

*Compensation Program (Condition 29(c))*

**Other Affected Clients**  
Offer under Second Compensation Program: 232 cases (\$2,335,041 including interest, goodwill, and FOS)

*Client communication*

**Other Affected Clients**  
1,286 cases received an Initial Letter (Additional Elements) and Assessment Outcomes Letter (Condition 25)

**No Evidence of Advice cases**  
2,318 NEA cases received an Initial Letter

*Client assessment (Conditions 27 and 28)*

**Requested access to information (Condition 26)**  
Total: 62 cases (either requested by the client or their Independent Advisor)

**Clients sought advice from Independent Advisor**  
Total: 62 cases

**Total clients communicated**  
Total: 3,604 cases

**Other Affected Clients (1,286 cases)**

**Offer to Other Affected Clients and No Evidence of Advice:** Offer already received under Second Compensation Program (see above)

**FLR requested (within 120 days):** 45 cases  
Further compensation offered: seven cases (\$15,603 including interest)

**FLR requested (outside 120 days):** 16 cases  
Further compensation offered: three cases (\$6,153 including interest and goodwill)

**FOS:** 5 Other Affected Clients lodged a claim, but were subsequently withdrawn (\$132,783). The compensation amount for one of the five cases has not yet been finalised.

### Summary of the Second Round of the Compensation Program

144. The table below summarises the compensation offered to Other Affected Clients, including the FLR process.

**Table 5 – Summary of the Second Round of the Compensation Program (excluding FOS)**

Category of cases	Number of cases offered	Amount offered (including interest)
<b>Other Affected Clients (Condition 25)</b>		
Advice appropriate	109	\$358,229
No evidence of inappropriateness	2	\$38,552
Advice inappropriate	103	\$1,688,130
Advice Likely inappropriate	12	\$94,490
<b>Sub-total</b>	<b>226</b>	<b>\$2,179,401</b>
<b>No evidence of advice</b>	<b>1</b>	<b>\$1,100</b>
<b>Total</b>	<b>227</b>	<b>\$2,180,501</b>
Further Licensee Review (Condition 27)	10	\$21,756
<b>Total</b>	<b>228<sup>21</sup></b>	<b>\$2,202,258</b>

145. The ‘Advice appropriate’ cases are those which CBA assessed as having been provided with appropriate advice. In some of these cases, remediation was offered as a result of errors in the implementation of the appropriate advice, or to refund some fee amounts which are not instances of inappropriate advice.
146. The ‘No evidence of inappropriateness’ cases are those where CBA assessed the advice provided to the clients as ‘likely being appropriate’. This uncertainty arises as a result of missing information. In this circumstance, the client was advised of this in the Assessment Outcomes Letter and encouraged to contact CBA if they had any further information to assist with the assessment. Similar to the ‘Advice appropriate’ cases, there were some instances where remediation amounts were offered as a result of errors in the implementation of the likely-appropriate advice, or refund of some fee amounts.
147. The ‘Advice inappropriate’ cases are those which CBA assessed as having received inappropriate advice. These cases were then assessed to determine whether compensation was required, or whether the actual portfolio in which the client was invested had outperformed the relevant benchmark portfolio. There were some instances where remediation amounts were offered as a result of errors in the implementation of the advice, or to refund some fee amounts.
148. The ‘Advice likely inappropriate’ cases are those where CBA assessed the advice provided to the client as ‘likely being inappropriate’. This uncertainty arises as a result of missing information. In this circumstance, the client was advised of this in the Assessment Outcomes Letter and encouraged to contact CBA if they had any further information to assist with the assessment. Similarly to the ‘Advice inappropriate’ cases, these cases were then assessed to determine whether compensation was required, or whether the actual portfolio in which the client was invested had outperformed the relevant benchmark portfolio.

<sup>21</sup> The total is 228 as nine of the 10 FLR cases have previously received compensation under condition 25 and one was offered compensation for the first time.

149. The 'No evidence of advice' case is not an Other Affected Client as they did not receive advice from CBA. They were notified of this determination in a letter and were encouraged to contact CBA if they believed this to be incorrect. The payment of \$1,100 arose from a goodwill payment (see paragraph 142 above for further information).
150. In respect of the 10 Further Review Licensee Review cases, one case was offered compensation for the first time. From our review of information provided by the Licensees, we are aware that the main reasons for the changes in assessment were:
- Engagement with the customer to enquire and discuss advice provided;
  - 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 have led to reassessment of the appropriate asset allocation and/or appropriate gearing strategy; and
  - Calibration of fee refund calculations to account for differences in timing of when calculations are performed and when the compensation is offered.
151. There were five Other Affected Clients that also registered under the Open Advice Review program. All five of these Other Affected Clients requested an FLR<sup>22</sup>.

*Summary of assessment outcomes by adviser, and in total*

152. The table below summarises the results of the identification and scoping of Other Affected Clients, and the assessment outcomes of the Second Round of the Compensation Program for each adviser.

**Table 6 – Summary of outcomes by Adviser (excluding FOS)**

Description	Adviser 30	Adviser 52	Adviser 72	Adviser 91	Adviser 107	Total
Other Affected Clients	294	128	511	217	136	<b>1,286</b>
Appropriate Advice	256	105	440	197	104	<b>1,102</b>
<i>Appropriate Advice (%)</i>	87%	82%	86%	91%	75%	<b>86%</b>
Inappropriate Advice - loss	15	13	50	12	25	<b>115</b>
<i>Inappropriate Advice - Loss (%)</i>	5%	10%	10%	5%	18%	<b>9%</b>
Inappropriate Advice – No Loss	23	10	21	8	7	<b>69</b>
<i>Inappropriate Advice – No Loss (%)</i>	8%	8%	4%	4%	5%	<b>5%</b>
Cases seeking Independent Advice	9	4	42	2	5	<b>62</b>
Cases requesting client files	12	2	32	9	7	<b>62</b>
Cases requesting FLR	12	4	32	11	2	<b>61</b>
<b>Total compensation offered</b>	<b>\$298,686</b>	<b>\$568,908</b>	<b>\$655,619</b>	<b>\$434,040</b>	<b>\$245,004</b>	<b>\$2,202,258</b>
<b>Average compensation per case for Inappropriate Advice - Loss</b>	<b>\$19,912</b>	<b>\$43,762</b>	<b>\$13,112</b>	<b>\$36,170</b>	<b>\$9,800</b>	<b>\$19,150</b>

<sup>22</sup> Three of the five Other Affected Client requested an FLR within the 120-day timeframe, and the other two requested an FLR outside of the 120-day timeframe.

153. As the table shows:
- a. Out of 1,286 Other Affected Clients reviewed across the Five Advisers, 86% were found to have received appropriate advice, and 14% (184 cases) were found to have received inappropriate advice;
  - b. The extent of inappropriate advice differed between the Five Advisers. For Adviser 107, 23% of advice was found to be inappropriate. For Adviser 91, 9% of advice was found to be inappropriate;
  - c. Of the 14% of Other Affected Clients found to have received inappropriate advice, 9% were found to have suffered loss, and 5% to have suffered no loss; and
  - d. The average compensation amount offered per case for Inappropriate Advice – Loss was \$19,150.

#### Cases referred by client to Financial Ombudsman Service

154. There were five Other Affected Clients that made a complaint to FOS. We outline the circumstances and outcomes of these four cases below. A total of \$132,783 in compensation has been offered to four of these five cases:
- a. One case lodged a complaint following the receipt of their FLR outcome letter. The complaint was regarding the signing of the resolution agreement which the Licensee required to be signed before any compensation was paid as remediation. Subsequently, the customer withdrew the complaint and a settlement agreement was reached in the amount of \$118.
  - b. One other case also lodged a complaint following the receipt of their FLR outcome letter. The complaint was regarding the client's risk profile under the assessment process. Subsequently, the customer withdrew the complaint and a settlement agreement was reached in the amount of \$53,895.
  - c. One case initially lodged a complaint prior to the FLR process, however, the FOS claim was put on hold until the FLR process was completed. This case reopened the FOS claim subsequent to the FLR process. The complaint was regarding the client's risk profile under the assessment process and the amount offered as compensation. Subsequently, the customer withdrew the complaint and a settlement agreement was reached in the amount of \$28,418.
  - d. One case lodged a complaint following the receipt of their FLR outcome letter. The complaint was regarding the client's investment options recommended by one of the Advisers. Subsequently, the customer withdrew the complaint and a settlement agreement was reached in the amount of \$50,350.
  - e. One case lodged a complaint following the receipt of their FLR outcome letter. The complaint is currently in the process of being finalised and a commercial settlement is being negotiated.
155. The compensation of \$2,335,041 (including interest and goodwill, and FOS payments) is separate to any compensation paid under the Open Advice Review program.

## **Other Licence Condition requirements**

## **L. Condition 24 – Reasonable access for Compliance Expert**

### **Background**

156. 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**

157. During The Engagement, we have required the efforts of the Licensees in providing access to information and staff 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 the Compliance report. The Licensees have made reasonable efforts, and dedicated considerable resources to undertaking the processes required.
158. The Licensees have provided all of the information that has been requested throughout Part 4 of the Compliance Report. This report has been provided to ASIC within the agreed deadline.

### **Our Findings**

159. In our opinion the Licensees have complied with Condition 24 in relation to the provision of requested information, relating to Part 4 of the Compliance Report. The information outlined in this report reflects information known as at the date of this report.

## M. Condition 30 – Status reports to ASIC

### Background

160. 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

161. Our assessment of compliance with Condition 30 involved the following procedures:
- a. Reviewing each of the monthly status reports from the commencement of the Additional Licence Conditions to the date of this report 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 Affected Clients and Other Affected Clients with FOS following the Licensee undertaking the FLR;
    - v. Number of additional representatives, Affected Clients 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

162. In our opinion, the Licensees have complied with Condition 30.

## **N. Condition 31(a) – Inclusion on CBA Board meeting agenda**

### **Background**

163. 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**

164. Our assessment of compliance with Condition 31(a) involved the following procedures, which were undertaken as part of Parts 1 and 2 of the Compliance Report:

- 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**

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

## Appendix A Glossary

Defined term	Definition included in Additional Licence Conditions	Definition
Accelerated Remediation Approach	No	The Licensees proceed directly to the Second Round of the Compensation Program for advisers identified as providing six or more instances of inappropriate advice leading to client loss, without completing the remaining sample file reviews required under the Additional Processes.
Additional Elements	Yes	Any process steps applied in Project Hartnett that were not applied in the First Round of 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 First Round of the Compensation Program.
Advisers	No	One or more of the five PARRs that required their clients to be reviewed and remediated under the Second Round of the Compensation Program.
Affected Client(s)	Yes	Refers to clients of IFRs except for: <ul style="list-style-type: none"> <li>a. Clients where the Licensee has no record of advice having been provided;</li> <li>b. Groups of clients of IFRs as agreed with ASIC where it is not necessary to contact those clients for valid reasons (for example, where the only record of a client relationship involves a client having insurance cover that appears to have been obtained prior to the IFRs giving advice);</li> <li>c. Clients where returned mail is received, and after making appropriate efforts to contact the Affected Clients, the Licensee was unable to do so; or</li> <li>d. Clients who were not included in the First Round of the Compensation Program as a result of analysis conducted by the Licensee which indicated that clients did not receive the type of advice from the IFR that was the subject of concern.</li> </ul>
Area(s) of Concern (AOC)	No	The particular area(s) of advice that was/were the reason in Project BIM for the identification of the adviser as a PARR.
Assessment Outcomes Letter	No	The written communications to Other Affected Clients under Condition 25.
ASIC	No	Australian Securities and Investments Commission.
Authorisation Period	No	The period during which the Adviser was authorised to provide advice at the Licensees.
Case Assessors	No	Consulting Firm 1's file reviewers.
CBA	No	Commonwealth Bank of Australia Group, which includes both CFPL and FWL.
CFPL	No	Commonwealth Financial Planning Limited.
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.



<b>Defined term</b>	<b>Definition included in Additional Licence Conditions</b>	<b>Definition</b>
Client File Review Outcome	No	The output of each review summarising the Case Assessor and Peer Reviewer's assessment of advice and any themes identified.
Comparison Report	No	The written report to ASIC and the Licensees outlining the Compliance Expert's opinion in relation to clause 23(a) of the Additional Licence Conditions.
Compliance Report	Yes	<p>The written report to ASIC and the Licensees outlining the Compliance Expert's opinion in relation to clauses 24 to 31(a) of the Additional Licence Conditions.</p> <p>The Compliance Report has been provided in stages and addresses the following scope:</p> <ol style="list-style-type: none"> <li>a. Parts 1 and 2 of the Compliance Report were published by ASIC on 5 December 2016 and considered the Licensees' compliance with Additional Licence Conditions 24 to 28 and 30 to 31(a) (inclusive).</li> <li>b. Part 3 of the Compliance Report was published on 23 January 2018 and considers the Licensees' compliance with Additional Licence Conditions 29(a) and (b), including whether the Licensees have appropriately applied the Additional Processes identified as a result of our Identification Report, which require the Licensees to review a prescribed sample of Client Files of a further 17 advisers to determine whether the clients of those advisers should be included in a compensation program.</li> <li>c. Part 4 of the Compliance Report (this report) considers the Licensees' compliance with Additional Licence Condition 29(c), including whether the Licensees have undertaken appropriate review and remediation for the clients of any advisers identified as a result of Part 3 of the Compliance Report.</li> </ol>
Consulting Firm 1	No	The external consulting firm used to assist in Project AARK and to undertake the data analytics testing in Project BIM.
Contended Client File	No	A client file identified from a sample in which the FPE did not agree with the assessment outcome.
Deductive PARR(s)	No	Potential At Risk Representative(s) identified through Project BIM in 2012 using deductive data analytics tests to identify advisers with clients who had a high inherent risk of receiving poor quality advice based on the advice strategy the clients received. These advice strategies were determined by having regard to the analysis of certain risks and issues and data that was readily available and usable for the deductive testing performed.
Enhanced AARK Checklist	No	Checklist used by the Licensees and Consulting Firm 1 to assist with their assessment of client advice.
EU	No	CFPL Enforceable Undertaking with ASIC executed on 25 October 2011.
File Review Process	No	The process designed and adopted by the Licensees to govern the review of Client Files as required by the Additional Processes.
Financial Planning Expert (FPE)	No	We engaged the Financial Planning Expert to review a sample of Client Files reviewed by the Licensees and to assess the appropriateness of the client advice contained therein.



Defined term	Definition included in Additional Licence Conditions	Definition
First Round of the Compensation Program	No	<p>This was previously referred to as 'Compensation Program' in all previous reports.</p> <p>It means the review and compensation activities undertaken by the Licensee which:</p> <ol style="list-style-type: none"> <li>Were designed to identify where inappropriate advice was provided to a client resulting in the need for compensation, and if so, restore that Affected Client of an IFR to the position they would have been in had they received appropriate advice;</li> <li>Were based on the process methodology developed for Project Hartnett and extended to address additional client, product and advice attributes; and</li> <li>Commenced or concluded during the period from 25 October 2011 (being the date on which the EU took effect) until 30 June 2013,</li> </ol> <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>
The Five Advisers	No	The five out of the 17 PARRs that required their clients to be reviewed and remediated under the Second Round of the Compensation Program.
FOS	No	Financial Ombudsman Service Australia.
FLR	No	Further Licensee Review.
Further Review Program	No	The Licensees' review of additional Client Files for six advisers as required under Steps 3 and 4 of the Additional Processes.
FWL	No	Financial Wisdom Limited.
Hartnett Adviser 1	No	Mr Don Nguyen.
Hartnett Adviser 2	No	Mr Anthony Awkar.
Independent Advisor	Yes	A licensed financial advisor, lawyer or accountant who is engaged by the Other Affected Client to provide independent advice 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 Other Affected Client. The Licensee will reimburse the Other Affected Client up to the cost of \$5,000.
Identification Report	Yes	The written report to ASIC and the Licensees outlining the Compliance Expert's opinion in relation to clauses 23(b)(i)-(iii) and 23(c)(i) - (iii) of the Additional Licence Conditions.
Identified Former Representatives (IFRs)	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 First Round of the Compensation Program.



Defined term	Definition included in Additional Licence Conditions	Definition
Inductive PARR(s)	No	Potential At Risk Representative identified through Project BIM in 2012 using inductive data analytics tests to identify advisers who were potentially at risk of providing inappropriate advice and who shared similar attributes to certain IFRs and other known advisers who may have provided inappropriate advice. The inductive testing involved comparing a broad range of attributes of the known advisers to the attributes of all other Licensee advisers. The approximately 800 attributes included such attributes as tenure at the Licensee, adviser remuneration, adviser location and products recommended.
Initial Letter	No	In Project Hartnett, Potentially Affected Clients received a letter indicating there was an investigation being conducted into the advice provided to them by their adviser and that, following completion of the review, the Licensee would contact them to confirm the outcome.
Initial Review Program	No	The Licensees' review of six Client Files for each of 17 advisers as required under Step 2 of the Additional Processes.
Inherited Clients	No	Clients that had been inherited from another adviser and had not received advice from any of the Five Advisers.
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.
No Evidence of Advice Client(s) or NEA Cases	No	Clients where the Licensees have identified no record of advice having been provided.
OAR Program	No	Open Advice Review Program.
Other Affected Client(s)	Yes	Means clients of relevant representatives identified by [the Additional Processes, as required by clause Condition 29(a) or 29(b) of the Additional Licence Conditions] except for: <ul style="list-style-type: none"> <li>a. Clients where the Licensees have no record of advice having been provided;</li> <li>b. Groups of clients of the relevant representatives where it is not necessary to contact those clients for valid reasons (for example, where the only record of a client relationship involves a client having insurance cover that appears to have been obtained prior to the relevant representative giving advice);</li> <li>c. Clients where returned mail is received, and after making appropriate efforts to contact the Other Affected Clients, the Licensees are unable to do so; or</li> <li>d. Clients who will not be included in the Second Round of the Compensation Program as a result of analysis conducted by the Licensees, in accordance with the Revised Steps (if any), which indicates that clients did not receive the type of advice from the Potential At Risk Representative that was the subject of concern.</li> </ul>
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.
Peer Reviewer(s)	No	The Licensees' assessors engaged to review Consulting Firm 1's Client File Reviews.
Pilot Program	No	The Licensees' review of Client Files for one adviser, undertaken as a trial of the Sampling Methodology and File Review Process to identify and resolve potential issues before undertaking their review of the remaining 16 advisers.



Defined term	Definition included in Additional Licence Conditions	Definition
Potential At Risk Representatives (PARRs)	No	Representatives (other than the 15 IFRs) who exhibited risk attributes or behaviours which indicated the relevant representatives may have provided inappropriate advice.
Prioritised List	No	List prepared by Consulting Firm 1 prioritising files for retrieval in accordance with the Sampling Methodology.
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 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 First Round of the Compensation Program, and refers to the advisers covered by the EU and other compensation activities (excluding the two advisers under Project Hartnett).
Project BIM	No	The range of steps around July 2012 aimed at identifying whether there were advisers, other than the 15 IFRs, who may have provided inappropriate advice to clients and whose clients may have required compensation as a result, referred to by the Licensees as 'Project BIM' (Business Issues Management).
Project Hartnett	Yes	Means the process and methodology set out in the Nguyen Methodology and the Awkar Methodology (provided to ASIC on 29 May 2014) and implemented by the Licensee to compensate clients who suffered losses as a result of inappropriate advice provided by two former representatives of the CFPL.
Revenue Data	No	Records of advice revenue (such as fees and commissions) allocated to each adviser for advice provided and implemented. This data is used for connecting a client to an adviser receiving advice revenue.
Review Committee	No	The Review Committee was responsible for reviewing proposed Client File Review Outcomes and determining whether the proposed Client File Review Outcomes received by it should be accepted.
Review Period	No	A requirement of the Additional Processes that the example of advice under review be provided to the client by the PARR in the period prior to the period covered by the 2012 PARR review.
RG 146	No	ASIC Regulatory Guidelines 146.
Sampling Methodology	No	The methodology designed and adopted by the Licensees to select Client Files for review in accordance with the requirements of the Additional Processes.
Second Round of the Compensation Program	No	The compensation program relating to the clients of the Five Advisers (including file reconstruction where necessary) conducted in accordance with the same methodology used in the First Round of the Compensation Program (including identification of the subject of concern and scoping as required under Step 4 of the Additional Processes and discussed in Section D and Appendix D of the Identification Report) and the Additional Elements.
STAE	No	The Licensees' Senior Technical Advice Experts.
The 4,333 Cases	No	The 2,707 Affected Clients and 1,626 No Evidence of Advice Clients, totalling of 4,333 Cases.
The Adviser(s)	No	The five out of the 17 PARRs that required their clients to be reviewed and remediated under the Second Round of the Compensation Program.



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<b>Defined term</b>	<b>Definition included in Additional Licence Conditions</b>	<b>Definition</b>
The Engagement	No	As a condition of the Additional Licence Conditions, KordaMentha Forensic have been engaged to provide a Comparison Report, Identification Report and a Compliance Report.

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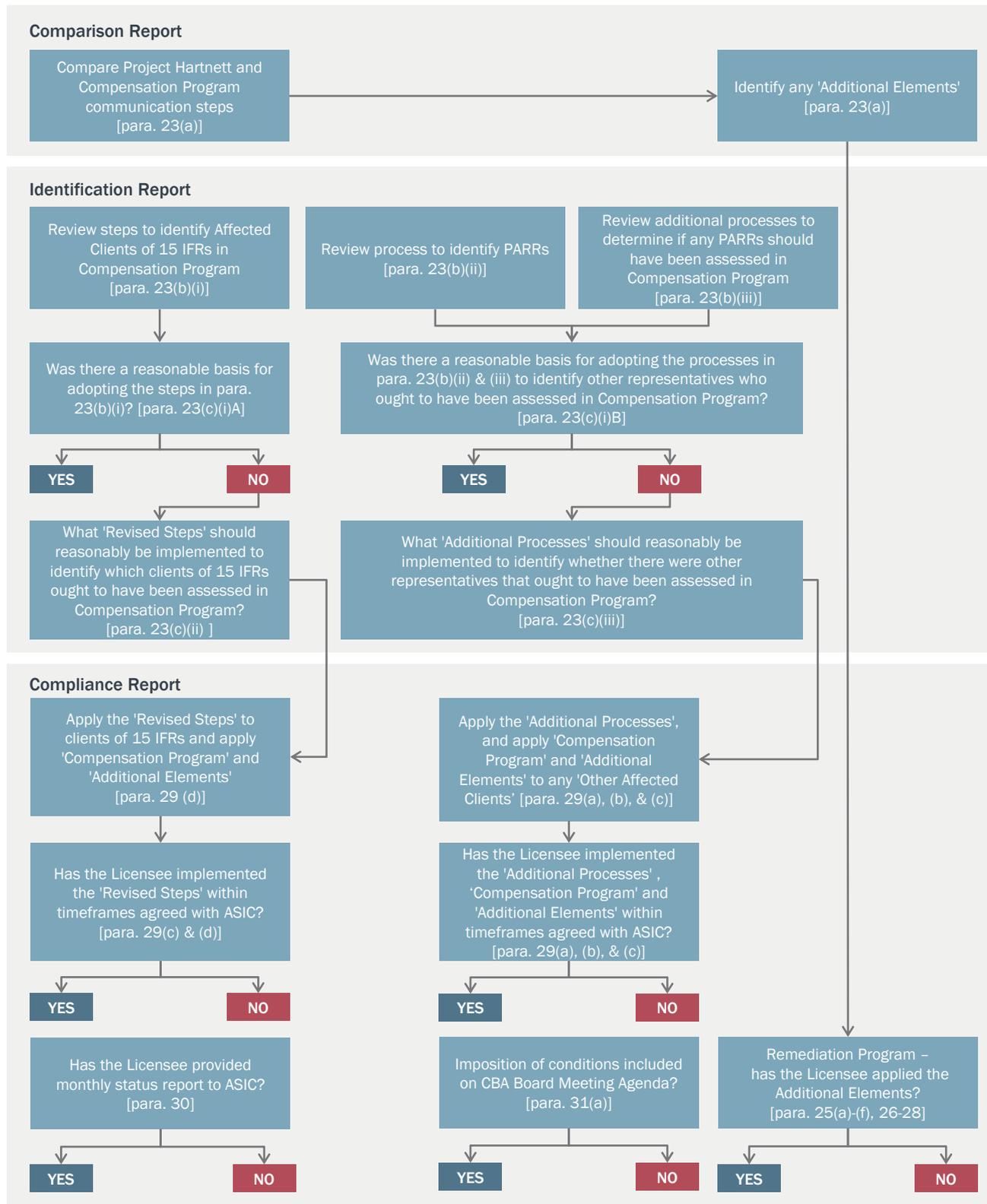


## Appendix B Additional Licence Conditions Overview Diagram



# 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.



**Appendix C    The steps to identify which clients of the Five Advisers  
were Other Affected Clients**



# Appendix C

## The steps to identify which clients of the Advisers were Other Affected Clients

### 1 Introduction

1. In this Appendix, we set out the steps the Licensees took to identify which of the clients of the Advisers were Other Affected Clients and therefore assessed as part of the Second Round of the Compensation Program.
2. We have sought an explanation from the Licensees of the steps taken to identify which clients of the Advisers were Other Affected Clients. Based on our discussions with the Licensees, review of relevant documents and 'walk throughs' of systems, we have identified 10 significant steps the Licensees took.
3. The 10 steps fall into two major stages:
  - a. Identification Process – how the clients were identified (steps 1 to 6); and
  - b. Scoping Process – how the identified clients were filtered out so that only Other Affected Clients remained (steps 7 to 10).
4. We have produced diagrams of these processes in Appendix D.

### 2 Identification Process

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

#### Identification Process

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

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



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

## 2.1 Scoping Process

6. Once cases were identified by steps 1 to 6, they were then uploaded onto the Licensees' Adviser Remediation System ('ARS') for scoping processes to be performed. These further steps were followed so that only clients potentially requiring remediation remained to be assessed as part of the Second Round of the Compensation Program. These clients were subsequently defined by the Additional Licence Conditions as 'Other Affected Clients'. We have reviewed these steps in order to confirm that the Licensees have identified all Other Affected Clients, as required by the Additional Licence Conditions. In doing so we have confirmed that only those clients who fall into one of the exceptions permitted by the Additional Licence Conditions (for example, '*clients where the licensee has no record of advice having been provided*', and '*clients where returned mail is received, and after making appropriate efforts to contact the Other Affected Clients, the licensees are unable to do so*<sup>2</sup>) have been excluded.

### Scoping Process

Step	Description of process/decision made
7	<p><b>Cases loaded into ARS</b></p> <p>This is the database used by the Licensees to manage and assess cases.</p>
8	<p><b>Application of the Heritage filter to scope out cases before assessment</b></p> <ul style="list-style-type: none"> <li>This step was designed to remove clients inherited from other advisers ('<b>Inherited Clients</b>') who did not receive advice from any of the Five Advisers.</li> <li>If an Inherited Client had not received advice from any of the Five Advisers, they were removed from the client population. The process of determining whether a client received advice from the Inheriting Adviser was based on whether the Revenue Data (which provided policy and transaction information) indicated that advice had been provided.</li> <li>The criteria that must be met to be removed by the Heritage filter are broadly similar to the criteria that was applied in the First Round of the Compensation Program. There have been refinements to this criteria:</li> </ul>

<sup>2</sup> As per definition of 'Other Affected Clients', see Additional Licence Conditions at page 25



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**Step Description of process/decision made**

- a. The policy commenced outside of the period that the Adviser was authorised by the Licensees ('**Authorisation Period**') for each Adviser; and
  - i. If it was a Colonial First State ('**CFS**') policy, it was opened outside of the period that the Adviser was receiving commissions on the policy ('**Commission Period**');
  - ii. If it was a CFS policy, there were no transactions switching from one assets allocation to another during the Commission Period;
  - iii. If it was a CFS policy, there were no transactions greater than \$5,000 during the Commission Period (excluding non-advice related transactions); and
  - iv. If it was an insurance policy, it was a product identified as a 'risk' product<sup>3</sup>.
- b. No transactions greater than \$5,000 occurred during the Authorisation Period for each Adviser;
- c. There were no internally geared options; and
- d. No documents were found on COIN or CommSee for the client during the Authorisation Period.

**9 Review of cases for specific reasons**

- After the identification of the potential Other Affected Clients, they were further refined to take into account the following:
  - Splitting of cases – this occurred in some circumstances where upon review of the case, it was determined that the clients within the case had received different pieces of advice and therefore should be treated separately. In other circumstances, the case had a change in circumstances between the clients e.g. a divorce, meaning that the clients should again be treated separately.
  - Duplicates – upon review of the potential Other Affected Clients, it was determined that some of the cases were referring to the same clients. As such, duplicated cases were excluded.
  - Merging of cases – in some circumstances, the review of cases revealed that multiple cases received the same piece of advice, i.e. they were related and should be dealt with together.
  - Cases where the Licensees could not verify details – in 34 instances, the contact details for these cases could not be identified. We have confirmed that clients in this circumstance have been excluded, only after CBA has made appropriate efforts to identify relevant contact details of those clients, in accordance with the Additional Licence Conditions<sup>4</sup>.
  - Quarantined cases – these are cases relating to the Advisers themselves. As agreed with ASIC, CBA would not compensate these cases.
- After the refinements were undertaken, the remaining potential Other Affected Clients were issued the Initial Letter (refer to Section E of the report regarding this process).

**10 Cases were assessed for whether any advice was given**

- By reviewing each case, the Licensees categorised cases into Other Affected Clients (as defined by the Additional Licence Conditions) and 'No Evidence of Advice' (where the Licensees have no record of advice having been provided). 'No Evidence of Advice' was determined if the client fell into one of the following four categories:
    - Client directed.
    - No evidence of advice post 2003.
    - No evidence of advice.
    - Advice not implemented.
  - Additionally, the same refinements of splitting cases and merging of duplicates and other cases (as seen in Step 9 above) were again applied if the detailed review identified that it was appropriate to do so.
  - The Other Affected Clients were issued a condition 25 letter detailing the assessment and outcome.
  - The No Evidence of Advice clients also received a letter notifying them that no advice was provided, however, if the client disagreed, they should contact the Licensees to discuss it further.
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<sup>3</sup> A 'risk' product means an insurance product (e.g. life, TPD, trauma, income protection). The converse of this is a 'non-risk' product, which includes a 'risk' insurance product and also contains an investment component (e.g. annuity, bond).

<sup>4</sup> Additional Licence Conditions at page 25, definition of 'Other Affected Clients', sub paragraph c



## Appendix D     Diagram of the steps to identify Other Affected Clients



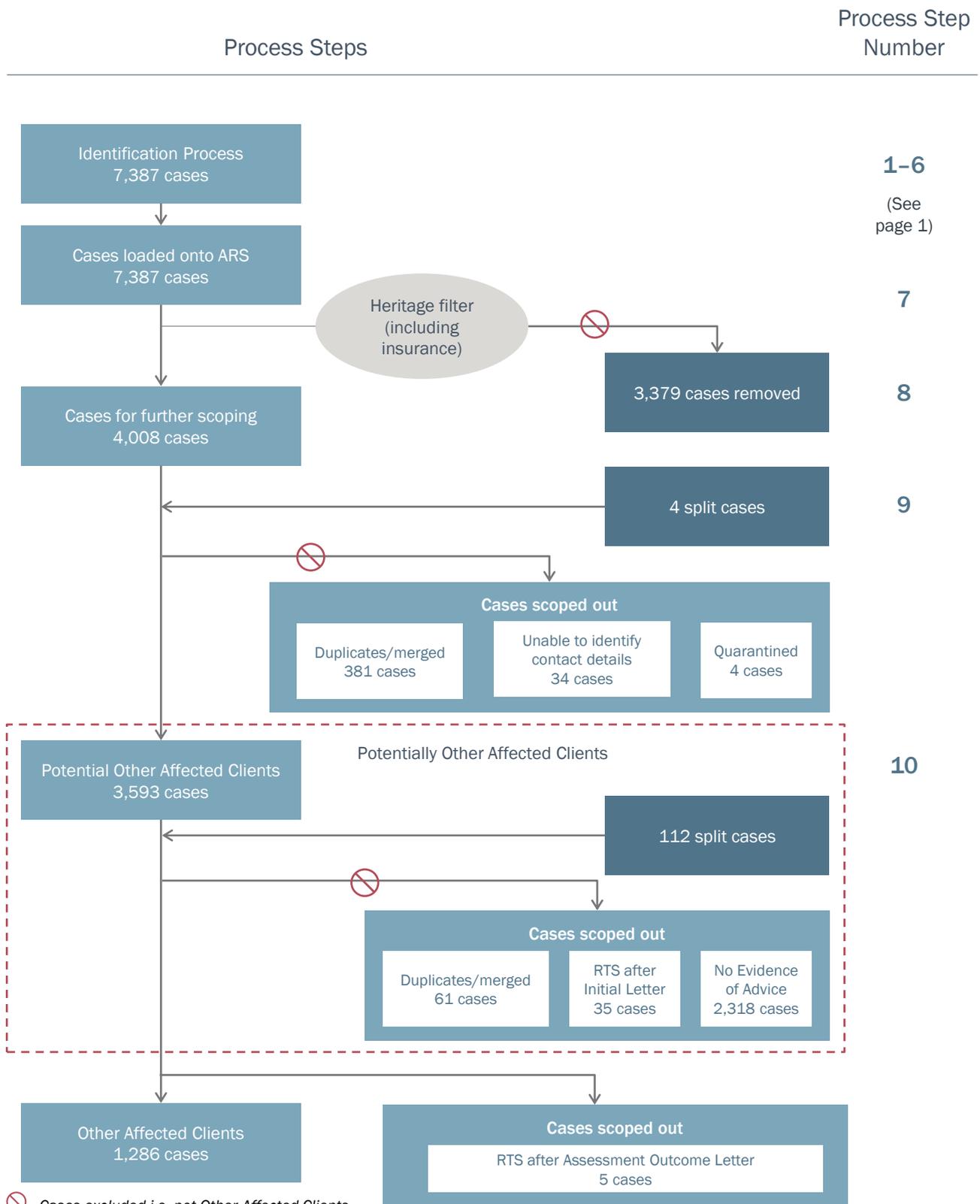
# Appendix D: Diagram of the steps to identify Other Affected Clients

## 1. Identification process



# Appendix D: Diagram of the steps to identify Other Affected Clients

## 2. Scoping process



⊘ Cases excluded i.e. not Other Affected Clients