



Federal Court of Australia

District Registry: New South Wales

Division: General

No: NSD1306/2021

**AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION**

Plaintiff

**ONEPATH CUSTODIANS PTY LTD ACN 008 508 496**

Defendant

**ORDER**

**JUDGE:** JUSTICE STEWART

**DATE OF ORDER:** 29 November 2023

**WHERE MADE:** Sydney

**THE COURT NOTES THAT:**

- A. In these declarations and orders, terms which are defined in the Amended Statement of Agreed Facts and Admissions dated 17 November 2023 have the same meaning as they do in that document.
- B. The Amended Statement of Agreed Facts and Admissions may be inspected by a person pursuant to r 2.32(2)(d) of the *Federal Court Rules 2011* (Cth).

**THE COURT DECLARES THAT:**

***Section 12DA***

1. During the period from 15 December 2015 until on or around 9 May 2020, the Trustee in trade or commerce engaged in conduct in relation to financial services that was misleading or deceptive or was likely to mislead or deceive and thereby contravened section 12DA of the *Australian Securities and Investments Commission Act 2001*, in that the Trustee sent a de-linking letter to each of 766 Previously Linked Members which:
  - (a) stated “the rate at which you paid your fees and insurance premiums while you were a member of the employer plan will change to Integra Super Personal rates”;



- (b) did not inform the Member that the right unilaterally to terminate the Adviser Service Fee would also change, in that now the Member had that right whereas previously the Principal Employer had that right;
  - (c) under the heading “What are the benefits of investing your superannuation with OnePath's Integra Super Personal?” listed a number of features of membership in the Personal Division but did not include the Member's new right unilaterally to terminate the Adviser Service Fee;
  - (d) enclosed a document described as a “Changing Jobs Kit” in which, under the heading “A job change can be an ideal time to organise your super”, listed a number of steps the Member could take to reduce fees and taxes but did not refer to the Member's new right unilaterally to terminate the Adviser Service Fee;
  - (e) did not state that the Member now had a right unilaterally to terminate the Adviser Service Fee by written notice to the Trustee; and
  - (f) in the circumstances, represented that the Previously Linked Member did not have the right unilaterally to terminate the Adviser Service Fee, whereas he or she did.
2. During the period from 22 September 2016 to 23 December 2016, the Trustee in trade or commerce engaged in conduct in relation to financial services that was misleading or deceptive or was likely to mislead or deceive and thereby contravened section 12DA of the *Australian Securities and Investments Commission Act 2001*, in that the Trustee issued to each of approximately 15,962 Previously Linked Members an annual statement for the year ending 30 June 2016 which:
- (a) as part of “Your account summary”, listed a dollar amount as “Fees paid by you”;
  - (b) under the heading “Total fees you paid”, stated “The total of the fees and rebates applied to your account from [date] to [date] is as follows” and listed the dollar amount as “Adviser Service Fee”;
  - (c) stated “Where your statement indicates that an Adviser Service Fee is applicable, it is agreed and negotiated between your employer (or former



- employer) and their appointed financial adviser, and cannot be cancelled until after you have left their employment”;
- (d) did not state that the Previously Linked Member, once their employment had ceased, had been de-linked from the Employer Plan and transferred to the Personal Division, had a right unilaterally to terminate the Adviser Service Fee by written notice to the Trustee; and
  - (e) in the circumstances, represented that:
    - (i) negotiation of the Adviser Service Fee, including cancellation, was still a matter between the Previously Linked Member's former employer and the Plan Adviser, whereas the Previously Linked Member now had his or her own right to cancel the fee;
    - (ii) in exchange for the Adviser Service Fee, the Plan Adviser provided services to the Previously Linked Member, whereas while in a small number of cases services may have been provided the fee had to be paid when Previously Linked Members were not entitled to receive those services; and
    - (iii) the Previously Linked Member did not have the right unilaterally to terminate the Adviser Service Fee, whereas the Previously Linked Member did.
3. During the period 11 October 2017 to 30 November 2021, the Trustee in trade or commerce engaged in conduct in relation to financial services that was misleading or deceptive or was likely to mislead or deceive and thereby contravened section 12DA of the *Australian Securities and Investments Commission Act 2001*, in that the Trustee issued to each of approximately 2,451 Previously Linked Members an annual statement for at least one of the years ending 30 June 2017 to 30 June 2021 which:
- (a) as part of “Your account summary”, listed a dollar amount as “Fees paid by you”;
  - (b) under the heading “Total fees you paid”, stated “This approximate amount includes all the fees and costs which affected your investment during the period” and listed the dollar amount including the “Adviser Service Fee”;



- (c) stated “Where your statement indicates that an Adviser Service Fee is applicable, it is agreed and negotiated between your employer (or former employer) and their appointed financial adviser, and cannot be cancelled until after you have left their employment”;
- (d) specified a total amount for the “Adviser Service Fee” and then stated “Total of any adviser service fees (if applicable) you have agreed with your financial adviser to be deducted from your account and paid to them for the service and advice they provide”;
- (e) at no place stated that the Previously Linked Member, once their employment had ceased, had been de-linked from the Employer Plan and transferred to the Personal Division, had a right unilaterally to terminate the Adviser Service Fee by written notice to the Trustee; and
- (f) in the circumstances, represented that:
  - (i) negotiation of the Adviser Service Fee, including cancellation, was still a matter between the Previously Linked Member's former employer and the Plan Adviser, whereas the Previously Linked Member now had his or her own right to cancel the fee;
  - (ii) the Previously Linked Member had agreed to the Adviser Service Fee, whereas the Adviser Service Fee was agreed between the Plan Adviser and the Previously Linked Member’s former employer, and was applicable to that Member as a result of them becoming Members via the relevant Employer Plan; and
  - (iii) in exchange for the Adviser Service Fee, the Plan Adviser provided services to the Previously Linked Member, whereas while in a small number of cases services may have been provided the fee had to be paid when Previously Linked Members were not entitled to receive those services; and
  - (iv) the Previously Linked Member did not have the right unilaterally to terminate the Adviser Service Fee, whereas the Previously Linked Member did.



***Section 12DB***

4. By reason of the matters referred to in the three preceding paragraphs, the Trustee in connection with the supply of financial services:
  - (a) made a false or misleading representation to each of approximately 15,962 Previously Linked Members in respect of the fees to be paid by the Previously Linked Member, and by each such representation contravened section 12DB(1)(g); and
  - (b) made a false or misleading representation to each of approximately 15,962 Previously Linked Members concerning the existence of a right, namely the Member's right to terminate the Adviser Service Fee, and by each such representation contravened section 12DB(1)(i).

***Section 912A(1)(a)***

5. During the period from 15 December 2015 until on or around 30 November 2021, the Trustee failed to do all things necessary to ensure that the financial services covered by its AFSL Number 238346 were provided efficiently, honestly and fairly, and thereby contravened section 912A(1)(a), in that:
  - (a) the Trustee did not inform Previously Linked Members, including when they ceased employment with the Principal Employer, were de-linked from the Employer Plan and transferred to the Personal Division, that they now had a right unilaterally to terminate the Adviser Service Fee by written notice to the Trustee;
  - (b) on the occasion of each Previously Linked Member being transferred to the Personal Division, the Trustee issued to that Member a de-linking letter which was misleading and deceptive and contained the false or misleading representations referred to above;
  - (c) the Trustee issued to each Previously Linked Member annual statements which were misleading and deceptive and contained the false or misleading representations referred to above;
  - (d) the Trustee allowed its appointed administrator of the Trust to make deductions of Adviser Service Fees in a total amount of approximately



\$3,787,966.21 from the accounts of approximately 16,210 Previously Linked Members; and

- (e) the Trustee allowed its appointed administrator of the Trust to pay those deductions to the Plan Adviser assigned to the Employer Plan from which the Member had been de-linked.

**THE COURT ORDERS THAT:**

6. The Trustee pay to the Commonwealth a pecuniary penalty of \$5 million in respect of the contraventions of sections 12DB(1)(g) and 12DB(1)(i) of the *Australian Securities and Investments Commission Act 2001*.
7. Pursuant to section 12GLB of the *Australian Securities and Investments Commission Act 2001* and section 1101B(1) of the *Corporations Act 2001* the Trustee publish a written adverse publicity notice (Written Notice) within 14 days of this order, in the terms set out in the Schedule, by:
  - (a) for a period of no less than 90 days, maintaining a copy of the Written Notice, in font no less than 10 point, in an immediately visible area of the following web address: <https://onpathsuperinvest.com.au/> (the Webpage);
  - (b) for a period of no less than 365 days, maintaining a copy of the Written Notice, in font no less than 10 point, in an immediately visible area of the webpage to appear after a person uses credentials to log into OnePath's "Super & Investment Customers" or "Super & Investment Advisers" sections of the Webpage.
8. The Trustee pay a contribution to ASIC's costs of and incidental to this proceeding fixed in the amount of \$400,000.

**AND THE COURT DIRECTS THAT:**

9. The Registry provide an electronic copy of the parties' submissions upon request to any person.



Date that entry is stamped: **29 November 2023**

*Sia Lagos*  
Registrar



## SCHEDULE

*The Federal Court of Australia has ordered OnePath Custodians Pty Ltd (OnePath Custodians) to publish this notice.*

On 29 November 2023 Justice Stewart of the Federal Court of Australia ordered OPC to pay a penalty of \$5 million for contravening Australia’s financial services laws.

The Court found that between December 2015 and November 2021 OPC made false or misleading representations in communications to members of the superannuation product ‘Integra Super’ about Adviser Service Fees. OPC told members that they had to pay the Adviser Service Fee for superannuation advice from a ‘Plan Adviser’ even after the member had been transferred from the “Employer” division to the “Personal” division of Integra Super where they were not entitled to receive advice services.

OPC also misled members by representing that:

- the member had agreed to the Adviser Service Fee, whereas that fee was agreed between the Plan Adviser and the member’s former employer; and
- the negotiation of the Adviser Service Fee was a matter for the member’s former employer and the Plan Adviser, whereas the member had their own right to cancel the fee.

During this period OPC issued “de-linking letters” to approximately 766 members and annual statements to approximately 15,962 members containing the false or misleading representations, and charged \$3.8m in Adviser Service Fees to relevant members.

This conduct contravened the following financial services laws:

- sections 12DA, 12DB(1)(g) and 12DB(1)(i) of the *Australian Securities and Investments Commission Act 2001* (Cth); and
- section 912A(1)(a) of the *Corporations Act 2001* (Cth).

All affected members have been remediated as part of a remediation program that has put them back in the position they would have been if they had not been charged the Adviser Service Fees.

OPC is a wholly owned subsidiary of Insignia Financial Ltd. Prior to February 2020, OPC was wholly owned by Australia and New Zealand Banking Group Limited.

For further information about the conduct, see:

- Justice Stewart’s judgment [[hyperlink](#)];
- ASIC media release [[hyperlink](#)]; and
- Statement of facts agreed between the parties to the proceeding [[hyperlink](#)].