

## NOTICE OF FILING

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### Details of Filing

Document Lodged: Concise Statement  
File Number: NSD1447/2019  
File Title: AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION v  
SELECT AFSL PTY LTD ACN 151 931 618 & ORS  
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF  
AUSTRALIA



A handwritten signature in blue ink that reads 'Warwick Soden'.

Dated: 9/09/2019 10:49:05 AM AEST

Registrar

### Important Information

As required by the Court's Rules, this Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

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Form NCF1



## Concise Statement

No. of

Federal Court of Australia  
District Registry: New South Wales  
Division: General

**AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION**  
Plaintiff

**SELECT AFSL PTY LTD (ACN 151 931 618)**  
First Defendant

**BLUEINC SERVICES PTY LTD (ACN 109 789 077)**  
Second Defendant

**INSURANCE MARKETING SERVICES PTY LTD (ACN 160 307 979)**  
Third Defendant

**RUSSELL HUGH HOWDEN**  
Fourth Defendant

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Filed on behalf of: Australian Securities & Investments Commission, Plaintiff

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## A. INTRODUCTION

1. In the period 1 February 2015 to 19 March 2018 (**Relevant Period**), the First Defendant (**Select**) held Australian Financial Services Licence number 408647 (**Select AFSL**) and marketed and sold to consumers certain life and accidental injury insurance (**Insurance Products**) issued by St Andrew's Life Insurance Pty Ltd (**St Andrew's**). In dealing with consumers, Select was represented by sales agents (**Sales Agents**) and customer service and retention agents (**Retention Agents**) who were either employees of the Second Defendant (**BlueInc Services**) or contracted to the Third Defendant (**IMS**) by labour hire providers.
2. During the Relevant Period, Select sold Insurance Products to 14 consumers identified in **Schedule 1** to this Concise Statement (**Consumers**) by telephone, all but two of whom were vulnerable. The Sales Agents made false and/or misleading representations to all of the Consumers, engaged in conduct towards all of the Consumers that in all the circumstances was unconscionable, and coerced 13 of the Consumers into providing their payment details and/or purchasing the products. When certain Consumers tried to cancel their policies, Retention Agents unduly harassed them, coerced them and/or otherwise engaged in unconscionable conduct. The dealings with the Consumers were in breach of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**).
3. During the Relevant Period, non-monetary benefits were provided to Sales Agents by BlueInc Services in the form of a cruise to the Gold Coast, a Vespa scooter (**Vespa**), and trips to Las Vegas and Hawaii (collectively, the **Incentives**). The Incentives were conflicted remuneration and were prohibited by the *Corporations Act 2001* (Cth) (**Corporations Act**).
4. By reason of its dealings with consumers and the Incentives, Select breached its general obligations as a financial services licensee under the Corporations Act.
5. The Fourth Defendant (**Russell Howden**) was the sole director of Select, BlueInc Services and IMS and was involved in the provision of conflicted remuneration and the associated breaches of Select's general obligations as a financial services licensee. Russell Howden also breached the director's duties he owed Select and BlueInc Services.

## B. IMPORTANT FACTS GIVING RISE TO THE CLAIM

### B.1. The Select AFSL and the Insurance Products

6. Since 22 August 2011, Select has held the Select AFSL (which authorises it to provide general financial product advice and deal in life risk insurance products to retail consumers) and has been a financial services licensee for the purposes of Chapter 7 of the Corporations Act.
7. The Insurance Products marketed and sold under Select's 'Let's Insure' brand were Funeral Cover, Essentials Life Cover, EasyLife Cover and Accident Cover, with certain optional extras. The Insurance Products marketed and sold under Select's 'FlexiSure' brand were Life Cover with certain optional extras.
8. The Insurance Products are financial products pursuant to the Corporations Act and the ASIC Act. In marketing and distributing them, Select was engaged in trade or commerce,

provided financial services within the meaning of Chapter 7 of the Corporations Act and Part 2 Division 2 of the ASIC Act, and provided financial product advice to retail clients.

## **B.2. Corporate structure and arrangements**

9. Select, BlueInc Services and IMS are related bodies corporate, all being ultimately 100% owned by BlueInc Group Pty Ltd. All of the voting shares and 92% of the non-voting shares in BlueInc Group Pty Ltd are owned by Howden Family Holdings Pty Ltd, which is solely owned by Russell Howden's wife. Russell Howden is the sole director of each of the companies named in this paragraph.
10. From 23 April 2013, Select and St Andrew's were parties to a Distribution Agreement, pursuant to which Select agreed to market and distribute the Insurance Products in exchange for a commission on all policies sold. Select sub-contracted its obligations to IMS, which in turn sub-contracted many of those obligations to BlueInc Services.

## **B.3. The Call Centre and the Refer a Friend Program**

11. Select primarily marketed and sold the Insurance Products to individual consumers via Sales Agents working in a call centre staffed by Sales Agents and Retention Agents.
12. Sales Agents used leads to telephone consumers for the purpose of marketing the Insurance Products to them. One form of lead used by Select during 2015 was the Refer a Friend Program, where a referring consumer would receive a gift card from Select if a person they referred purchased an Insurance Product. While Select initially sought the referrals in writing and requested that the referrer obtain consent of the referred person first, from January 2015 Sales Agents sought referrals from consumers during telephone calls without the requirement or opportunity to obtain the referred person's consent.
13. The role of Retention Agents included persuading consumers who wished to cancel their insurance policies to maintain them. They used tactics with the consumers including persistently overcoming objections, offering premium fee waivers for periods of time and insisting that the consumers could only cancel their insurance policies in writing.

## **B.4. Non-monetary benefits provided to Sales Agents**

14. During the Relevant Period, the following Incentives were provided to Sales Agents:
  - a. from February to June 2015, the 'Let's Insure Sailors' Sales Incentive' was conducted pursuant to which 15 qualifying Sales Agents received a four night Gold Coast cruise package, meals, drinks package and two days of annual leave;
  - b. from 9 February to 30 June 2015, the 'Vespa Sales Battle' was conducted pursuant to which the highest scoring Sales Agent won a Vespa;
  - c. from January to March 2016, the 'Let's Insure 1<sup>st</sup> Quarter 2016 Incentive' was conducted pursuant to which eight qualifying Sales Agents received a seven day trip to Las Vegas including flights, accommodation, breakfasts and four days of annual leave; and
  - d. from 1 July to 30 November 2017, the 'BlueInc Group Excellence Conference Incentive' was conducted pursuant to which nine qualifying Sales Agents received a seven day trip to Hawaii including flights, five nights' accommodation, arrival dinner, travel insurance, transport and four group excursions (**Hawaii Incentive**).

15. Russell Howden was involved in the decision-making to conduct each of the Incentives. He approved the offering of the benefits, the qualifying criteria and the budgets. He knew that each of the Incentives was to be, and was, given to Sales Agents who met the qualifying criteria. He personally arranged for the purchase of the Vespa and was a director of BlueInc Services, which paid for the Incentives. He was also a director of the company which developed, co-ordinated and implemented the Hawaii Incentive.
16. All of the Incentives except for the Hawaii Incentive were conducted while the Refer a Friend Program operated.

#### **B.5. Dealings with the Consumers**

17. In the course of marketing the Insurance Products to the Consumers, the Sales Agents made one or more false and/or misleading representations to each of the Consumers, as indicated in **Schedule 1**, including that:
  - a. there were limited exclusions to the Insurance Products, when there were in fact significant exclusions (**Limited Exclusions Representation**);
  - b. certain products were a standard component of the Insurance Products, when in fact they were optional extras (**Standard Cover Representation**);
  - c. the insurance policy would pay each policy beneficiary the insured amount, when in fact the insured amount would only be paid once per insured person (**All Family Benefit Representation**); and
  - d. the premium would remain the same throughout the duration of the policy, when in fact the premium was stepped (**Flat Premium Representation**).
18. Sales Agents coerced those Consumers indicated in **Schedule 1** into purchasing Insurance Products over the telephone and/or providing their payment details, including by telephoning some without prior notice, making one or more of the misleading representations referred to in paragraph 17 above, playing a pre-recorded PDS without first obtaining the Consumer's consent to receive it in this way, referring to other individuals known to the Consumer that they had spoken with or "helped", quoting a particular level of cover and not offering alternatives, upselling optional extras without disclosing they were optional, rushing the Consumers through the call, and/or signing them up to purchase Insurance Products and/or eliciting payment details without giving them an opportunity to reflect upon whether they wished to proceed with the purchase.
19. In all the circumstances, the Sales Agents engaged in unconscionable conduct with respect to the Consumers indicated in **Schedule 1** in selling the Insurance Products and/or taking payment details since the Consumers were vulnerable and/or in a weaker bargaining position than Select, some Consumers did not understand what was being sold to them, the Sales Agents made one or more of the misleading representations referred to in paragraph 17 above, the Sales Agents engaged in one or more of the acts in paragraph 18 above which amounted to undue influence, pressure upon or unfair tactics against the Consumers, and/or the Sales Agents did not act with good faith with respect to the Consumers. Also, in some cases the Sales Agents were participating in the incentives referred to paragraph 14 above.
20. In circumstances including where the Consumers had been signed up to the insurance policies over the telephone and no statement was made to them at that time that a policy

could only be cancelled in writing, Retention Agents unduly harassed those Consumers indicated in **Schedule 1**, including by engaging in the conduct referred to in paragraph 13 above, not permitting them to cancel their insurance policies during telephone calls, refusing or failing to provide reasonable assistance to Consumers to cancel their policies and/or continuing to seek payment despite being told that the Consumer could not afford the premiums or wanted to cancel the policy.

21. Retention Agents coerced one of the Consumers, as indicated in **Schedule 1**, into not cancelling her insurance policy, including by ignoring her requests to cancel her policy, offering her a lower level of coverage in lieu of cancellation and refusing or failing to cancel her policy.
22. In all the circumstances, the Retention Agents engaged in unconscionable conduct with respect to the Consumers indicated in **Schedule 1** who sought to cancel their insurance policies because the Consumers were vulnerable and in a weaker bargaining position than Select, the Consumers did not understand what had been sold to them, and the Retention Agents engaged in the conduct referred to in paragraphs 13 and 20 above, and thereby used unfair tactics, applied pressure and/or did not act with good faith with respect to the Consumers.

### **C. SUMMARY OF RELIEF SOUGHT FROM THE COURT**

23. ASIC seeks the relief set out in the accompanying Originating Process.

### **D. PRIMARY LEGAL GROUNDS FOR RELIEF SOUGHT**

#### **D.1. Consumer contraventions**

24. The conduct of all of the Sales Agents and Retention Agents referred to above is attributed to Select and to either BlueInc Services (where BlueInc Services employed the agent) or IMS (where IMS contracted the agent) pursuant to s.12GH(2) of the ASIC Act.
25. **False and/or misleading representations:** By reason of the matters referred to in paragraph 17 above, Sales Agents made one or more false and/or misleading representations to the Consumers identified in Schedule 1 and, consequently, Select and BlueInc Services or IMS (as indicated in Schedule 1) contravened ss.12DA(1) or 12DB(1) of the ASIC Act on each occasion.
26. **Coercion:** By reason of the matters referred to in paragraphs 18 and 21 above, Sales Agents and a Retention Agent coerced the Consumers identified in Schedule 1, and, consequently, Select and BlueInc Services or IMS (as indicated in Schedule 1) contravened s.12DJ(1) of the ASIC Act on each occasion.
27. **Undue harassment:** By reason of the matters referred to in paragraph 20 above, Retention Agents unduly harassed the Consumers identified in Schedule 1 and, consequently, Select and BlueInc Services or IMS (as indicated in Schedule 1) contravened s.12DJ(1) of the ASIC Act on each occasion.
28. **Unconscionable conduct:** By reason of the matters referred to in paragraphs 19 and 212 above, Sales Agents and Retention Agents engaged in unconscionable conduct towards the Consumers identified in Schedule 1 and, consequently, Select and BlueInc Services or IMS (as indicated in Schedule 1) contravened s.12CB(1) of the ASIC Act on each occasion.



**D.2. Conflicted remuneration contraventions**

29. Each of the Incentives was conflicted remuneration by operation of the presumption in s.963L(b) of the Corporations Act or, in any event, within the meaning of s.963A. As each of the Sales Agents was a representative of Select and Select was relevantly the responsible licensee, Select contravened s.963E when each of the Sales Agents accepted the Incentives. Select also contravened s.963F as it failed to take reasonable steps to ensure that each of the Sales Agents did not accept the Incentives. By paying for the Incentives, BlueInc Services gave conflicted remuneration to its employees in contravention of s.963J. Russell Howden was involved in each of the contraventions of ss.963E, 963F and 963J by reason of the matters referred to in paragraph 15 above.

**D.3. Breach of the Select AFSL**

30. By reason of the matters referred to in paragraphs 6 to 22 above, Select, as a financial services licensee, breached its general obligations in ss.912A(1)(a) and 912A(1)(c) of the Corporations Act. Russell Howden was also involved in some of the contraventions.

**D.4. Breach of director's duties**

31. By reason of the matters referred to in paragraph 15 above, Russell Howden failed to exercise his powers and discharge his duties to Select and BlueInc Services with the care and diligence required by s.180(1) of the Corporations Act in causing or allowing Select and BlueInc Services to contravene ss.963E, 963F and 963J of the Corporations Act (as relevant) or failing to prevent those contraventions.

**E. ALLEGED HARM**

32. The Consumers suffered harm by being signed up to Insurance Products they did not understand or want, and in some cases suffered financial loss and distress.

Date: 9 September 2019



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Lawyer, ASIC


For and on behalf of the Australian Securities and Investments Commission

This pleading was prepared by Naomi Sharp SC, Gillian Walker, Penelope Abdiel and Katarina Grenfell of counsel and Conrad Gray, Lawyer.

**Certificate of lawyer**

I, Conrad Gray, certify to the Court that, in relation to the Concise Statement filed on behalf of the Plaintiff, the factual and legal material available to me at present provides a proper basis for each allegation.

Date: 9 September 2019

A handwritten signature in cursive script, appearing to read "Conrad Gray", is written over a horizontal line.

Signed by Conrad Gray

Lawyer for the Plaintiff





**SCHEDULE 1 – CONSUMER CONTRAVENTIONS**

CONSUMER	Product and date sold	Limited Exclusions Representation (s.12DB(1)(j) ASIC Act)	All Family Benefit Representation (s.12DB(1)(ka) ASIC Act)	Standard Cover Representation (s.12DB(1)(li) ASIC Act)	Flat Premium Representation (s.12DB(1)(lo) ASIC Act)	Other Representations (s.12DB(1) or s.12DA)	Coercion (Sales) (s.12D(1) ASIC Act)	Unconscionability (Sales) (s.12CB(1) ASIC Act)	Coercion (Retention) (s.12D(1) ASIC Act)	Undue Harassment (Retention) (s.12D(1) ASIC Act)	Unconscionability (Retention) (s.12CB(1) ASIC Act)	Relevant Defendants
David Mirrawana	Let's Insure Funeral Cover, with optional ADC, AIC, HEC 23 March 2015	X	X	X	X		X	X		X		Select, BlueInc
Zondani Mtawala	Let's Insure Funeral Cover, with optional ADC, AIC, HEC 14 April 2015	X	X				X	X				Select, BlueInc and IMS
Teubiti Tapera	FlexiSure Life Cover 7 May 2015					X	X	X				Select, BlueInc and IMS
Jennifer Yakumul	FlexiSure Life Cover with optional AC 29 May 2015	X		X			X	X	X		X	Select, BlueInc and IMS
Dawnetta Yeatman	FlexiSure Life Cover 17 June 2015					X	X	X		X		Select, BlueInc and IMS
Josephine Shadforth	Let's Insure Funeral Cover, with optional ADC and AIC 26 June 2015	X		X		X	X	X		X	X	Select, BlueInc and IMS

Additional contraventions for Teubiti Tapera for false and/or misleading representations that he would be paid his benefits "no matter what" in contravention of s.12DB(1)(e) of the ASIC Act, and that his policy documentation could only be sent to him once his policy had commenced or he provided his payment information in contravention of s.12DB(1)(y) of the ASIC Act.

Additional contraventions for Dawnetta Yeatman for false and/or misleading representations that the minimum level of cover for FlexiSure Life Cover was \$35,000 in contravention of s.12DB(1)(e) of the ASIC Act, and that she would save \$50 per month and have additional coverage of \$20,000 if she purchased FlexiSure Life Cover in contravention of s.12DB(1)(e) of the ASIC Act.

Additional contraventions for Josephine Shadforth for false and/or misleading representations that a cancellation request was required to be in writing because Let's Insure Funeral Cover was a financial product in contravention of s.12DB(1)(i) of the ASIC Act, and that Select would "take over" her existing insurance policy in contravention of s.12DA of the ASIC Act.

Additional contraventions for Geraldine Campbell for false and/or misleading representations that her son would be covered under FlexiSure CC for any illness or health condition not related to his heart condition in contravention of s.12DB(1)(x) of the ASIC Act, and that her children would be covered if they were to suffer a trauma event such as cancer, bacterial meningitis, paralysis, loss of sight, loss of hearing, major burns and major head trauma, when in fact there were significant exclusions for coverage in respect of those conditions, in contravention of s.12DB(1)(x) of the ASIC Act.

Additional contravention for Kathy Marika for a false and/or misleading representation that Select offered HEC as a gift and/or "just to help out" the family in contravention of s.12DB(1)(g) of the ASIC Act.

Additional contravention for Ishad Hussain for a false and/or misleading representation that a cancellation request required his signature because Let's Insure AC was a financial product in contravention of s.12DB(1)(x) of the ASIC Act.

Additional contraventions for Freddie Lewis for false and/or misleading representations that, if Freddie Lewis hung up, it would be difficult for him to contact FlexiSure by callback in contravention of s.12DA of the ASIC Act, and that his bank account details were required for the purposes of paying benefits to him in contravention of s.12DA of the ASIC Act.

Additional contravention for Cynthia Mimiyouan for false and/or misleading representations that both she and Derek Wurrawiya were "really happy" with the quote given to them for Let's Insure Funeral Cover in contravention of s.12DB(1)(d) of the ASIC Act.

CONSUMER	Product and date sold	Limited Exclusions Representation (s.12DB(1)(f) ASIC Act)	All Family Benefit Representation (s.12DB(1)(e) ASIC Act)	Standard Cover Representation (s.12DB(1)(i) ASIC Act)	Flat Premium Representation (s.12DB(1)(g) ASIC Act)	Other Representations (s.12DB(1) or s.12DA)	Coercion (Sales) (s.12D.J(1) ASIC Act)	Unconscionability (Sales) (s.12CB(1) ASIC Act)	Coercion (Retention) (s.12D.J(1) ASIC Act)	Undue Harassment (Retention) (s.12D.J(1) ASIC Act)	Unconscionability (Retention) (s.12CB(1) ASIC Act)	Relevant Defendants
Georgina Gaykamangu	Let's Insure Funeral Cover with optional ADC, AIC, HEC 7 July 2015	X		X			X	X				Select, BlueInc
Geraldine Campbell	FlexiSure Life Cover with optional CC 2 September 2015	X		X		X	X	X				Select, BlueInc
Edmund Nundhirbala	Let's Insure Funeral Cover with optional ADC, AIC, HEC 4 September 2015	X		X			X	X				Select, BlueInc
Kathy Marika	Let's Insure Funeral Cover with optional ADC, AIC x2 9 September 2015	X	X	X	X		X	X		X	X	Select, BlueInc
Ishad Hussain	Let's Insure AC 4 November 2015	X			X					X	X	Select, BlueInc
Freddie Lewis	FlexiSure Life Cover 25 November 2015					X	X	X		X	X	Select, BlueInc and IMS
Cynthia Mirniyowan and Derek Wurrwilya	Let's Insure Funeral Cover with optional AIC, ADC and ADC booster 28 April 2016	X	X	X			X	X		X	X	Select, BlueInc
Deepak Shrestha	Let's Insure Easy Life Cover with optional AC 22 August 2017	X			X		X	X				Select, IMS