

## NOTICE OF FILING AND HEARING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 9/09/2019 9:11:35 AM AEST and has been accepted for filing under the Court's Rules. Filing and hearing details follow and important additional information about these are set out below.

### Filing and Hearing Details

Document Lodged:	Originating process (Rule 2.2): Federal Court (Corporations) Rules 2000 form 2
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
Reason for Listing:	To Be Advised
Time and date for hearing:	To Be Advised
Place:	To Be Advised



A handwritten signature in blue ink, reading 'Warwick Soden'.

Dated: 9/09/2019 10:49:01 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.

The Reason for Listing shown above is descriptive and does not limit the issues that might be dealt with, or the orders that might be made, at the hearing.

The date and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.

DATE AND TIME TO BE ADVISED BY THE REGISTRY.



**Form 2      Originating process**  
(rules 2.2 and 15A.3)

No.                      of 20

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) and others**  
**(according to the attached schedule)**

Defendants

This is an application for:

- (a) declaratory relief pursuant to s.21 of the *Federal Court of Australia Act 1976* (Cth) (**FCA**), s.1317E(1) of the *Corporations Act 2001* (Cth) (**Corporations Act**), and s.12GBA(1) of the *Australian Securities and Investments Commission 2001* (Cth) (**ASIC Act**);
- (b) injunctive relief pursuant to s.23 of the FCA, s.1324 of the Corporations Act and s.12GD(1) of the ASIC Act;
- (c) orders for pecuniary penalties pursuant to s.1317G(1) of the Corporations Act and s.12GBA of the ASIC Act;
- (d) orders for adverse publicity pursuant to ss.12GLA(2) and/or 12GLB(1) of the ASIC Act and/or ss.1101B(1)(a) and/or 1324(7) of the Corporations Act;
- (e) probation orders pursuant to s.12GLA(1) of the ASIC Act;
- (f) non-party consumer redress orders pursuant to s.12GNB of the ASIC Act;

---

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

Prepared by: Conrad Gray

Tel 02 9911 2313 Fax 02 9911 2369

Email conrad.gray@asic.gov.au

**Address for service** Australian Securities and Investments Commission  
Level 5, 100 Market Street Sydney New South Wales 2000



- (g) disqualification orders against the Fourth Defendant pursuant to ss.206C or 206E of the Corporations Act; and
- (h) costs,

in respect of:

- (i) the marketing and sale of insurance products in contravention of ss.12CB(1), 12DA(1), 12DB(1), and 12DJ(1) of the ASIC Act;
- (j) attempts to persuade purchasers of insurance products not to cancel their products in contravention of ss.12CB(1) and 12DJ(1) of the ASIC Act;
- (k) the provision of conflicted remuneration to representatives of a responsible licensee or employees in contravention of ss.963E, 963F and 963J of the Corporations Act;
- (l) the breach of general obligations of a financial services licensee in contravention of ss.912A(1)(a) and (c) of the Corporations Act; and
- (m) the breach of the Fourth Defendant's director duties in contravention of s.180(1) of the Corporations Act.

The Court's jurisdiction to hear the present case and to grant the relief sought is found in s.1337B(1) of the Corporations Act, s.12GJ(1) of the ASIC Act and s.39B(1A)(c) of the *Judiciary Act 1903* (Cth).

#### **A. DETAILS OF APPLICATION**

In this Originating Process, the terms which are defined in the accompanying Concise Statement have the same meaning as they do in that document.

On the grounds stated in the accompanying Concise Statement, the Plaintiff claims:



## DECLARATORY RELIEF IN RELATION TO CONTRAVENTIONS OF PART 7.7A CHAPTER 7 OF THE CORPORATIONS ACT

### The Cruise Incentive

1. A declaration that the First Defendant (**Select**), a financial services licensee which was providing financial product advice to retail clients, contravened s.963E of the Corporations Act when the following of its representatives, for which it was the responsible licensee, accepted a non-monetary benefit in the form of a four night cruise package to the Gold Coast in July 2015:

- 1.1. Adit Shah;
- 1.2. Amy Gibbons;
- 1.3. Clare McParland;
- 1.4. Clare Sadler;
- 1.5. David Liu;
- 1.6. Gregory Chadwick;
- 1.7. Lee Marshall;
- 1.8. Mathew Canning;
- 1.9. Patrick Hoey;
- 1.10. Rebecca Dudbridge;
- 1.11. Simon Hudson;
- 1.12. Sinead Keane;
- 1.13. Daryl Banks;
- 1.14. George Flegg; and
- 1.15. Hugo Thompson,

since the nature of the cruise package and the circumstances in which it was given to the representatives could reasonably be expected to influence the financial product advice that they gave during the qualifying period of February 2015 to June 2015, with the acceptance of the cruise package by each representative constituting a separate contravention of s.963E.

2. A declaration that Select, a financial services licensee which was providing financial product advice to retail clients, contravened s.963F of the Corporations Act by failing to take reasonable steps to ensure that the persons named below,



being representatives of its financial services license, did not accept a non-monetary benefit in the form of a four night cruise package to the Gold Coast in July 2015:

- 2.1. Adit Shah;
- 2.2. Amy Gibbons;
- 2.3. Clare McParland;
- 2.4. Clare Sadler;
- 2.5. David Liu;
- 2.6. Gregory Chadwick;
- 2.7. Lee Marshall;
- 2.8. Mathew Canning;
- 2.9. Patrick Hoey;
- 2.10. Rebecca Dudbridge;
- 2.11. Simon Hudson;
- 2.12. Sinead Keane;
- 2.13. Daryl Banks;
- 2.14. George Flegg; and
- 2.15. Hugo Thompson,

since the nature of the cruise package and the circumstances in which it was given to the representatives could reasonably be expected to influence the financial product advice that they gave during the qualifying period of February 2015 to June 2015, with a separate contravention of s.963F occurring each time a representative accepted the cruise package.

3. A declaration that the Second Defendant (**BlueInc Services**) contravened s.963J of the Corporations Act by giving a non-monetary benefit in the form of a four night cruise package to the Gold Coast in July 2015 to its employees named below, being representatives of Select, which as a financial services licensee was providing financial product advice to retail clients:

- 3.1. Adit Shah;
- 3.2. Amy Gibbons;



- 3.3. Clare McParland;
- 3.4. Clare Sadler;
- 3.5. David Liu;
- 3.6. Gregory Chadwick;
- 3.7. Lee Marshall;
- 3.8. Mathew Canning;
- 3.9. Patrick Hoey;
- 3.10. Rebecca Dudbridge;
- 3.11. Simon Hudson;
- 3.12. Sinead Keane;
- 3.13. George Flegg; and
- 3.14. Hugo Thompson,

since the nature of the cruise package and the circumstances in which it was given to the representatives could reasonably be expected to influence the financial product advice that they gave during the qualifying period of February 2015 to June 2015, with the giving of the cruise package to each representative constituting a separate contravention of s.963J.

4. A declaration that the Fourth Defendant (**Russell Howden**) was involved (within the meaning of s.79 of the Corporations Act) in each of the contraventions of s.963E and s.963F of the Corporations Act by Select referred to in paragraphs 1 and 2 above.
5. A declaration that Russell Howden was involved (within the meaning of s.79 of the Corporations Act) in each of the contraventions of s.963J of the Corporations Act by BlueInc Services referred to in paragraph 3 above.

#### **The Vespa Competition**

6. A declaration that Select, a financial services licensee which was providing financial product advice to retail clients, contravened s.963E of the Corporations Act when Patrick Hoey, a representative for which it was the responsible licensee, accepted a non-monetary benefit in the form of a brand new Vespa scooter on 1 July 2015, since the nature of the Vespa scooter and the circumstances in which it was given to Patrick Hoey could reasonably be expected to influence the



financial product advice given by Patrick Hoey during the qualifying period of 9 February 2015 to 30 June 2015.

7. A declaration that Select, a financial services licensee which was providing financial product advice to retail clients, contravened s.963F of the Corporations Act when it failed to take reasonable steps to ensure that Patrick Hoey (being a representative of its financial services license) did not accept a non-monetary benefit in the form of a brand new Vespa scooter on 1 July 2015, since the nature of the Vespa scooter and the circumstances in which it was given to Patrick Hoey could reasonably be expected to influence the financial product advice given by Patrick Hoey during the qualifying period of 9 February 2015 to 30 June 2015.
8. A declaration that BlueInc Services contravened s.963J of the Corporations Act by giving a non-monetary benefit in the form of a brand new Vespa scooter on 1 July 2015 to its employee Patrick Hoey (being a representative of Select, which as a financial services licensee was providing financial product advice to retail clients), since the nature of the Vespa scooter and the circumstances in which it was given could reasonably be expected to influence the financial product advice given by Patrick Hoey during the qualifying period of 9 February 2015 to 30 June 2015.
9. A declaration that Russell Howden was involved (within the meaning of s.79 of the Corporations Act) in each of the contraventions of s.963E and s.963F of the Corporations Act by Select referred to in paragraphs 6 and 7 above.
10. A declaration that Russell Howden was involved (within the meaning of s.79 of the Corporations Act) in each of the contraventions of s.963J of the Corporations Act by BlueInc Services referred to in paragraph 8 above.

### **The Las Vegas Incentive**

11. A declaration that Select, a financial services licensee which was providing financial product advice to retail clients, contravened s.963E of the Corporations Act on each occasion when the following of its representatives, for which it was the responsible licensee, accepted a non-monetary benefit in the form of a seven day holiday package to Las Vegas in the United States of America in April 2016:
  - 11.1. Clare Sadler;
  - 11.2. Danielle Keane;
  - 11.3. Daryl Banks;



- 11.4. David Liu;
- 11.5. David Suet;
- 11.6. Matalena Wilson;
- 11.7. Rebecca Dudbridge; and
- 11.8. Zara Linehan,

since the nature of the Las Vegas package and the circumstances in which it was given to the representatives could reasonably be expected to influence the financial product advice that they gave during the qualifying period January 2016 to March 2016, with the acceptance of the Las Vegas package by each representative constituting a separate contravention of s.963E.

12. A declaration that Select, a financial services licensee which was providing financial product advice to retail clients, contravened s.963F of the Corporations Act by failing to take reasonable steps to ensure that the persons named below, being representatives of its financial services license, did not accept a non-monetary benefit in the form of a seven day holiday package to Las Vegas in the United States of America in April 2016:

- 12.1. Clare Sadler;
- 12.2. Danielle Keane;
- 12.3. Daryl Banks;
- 12.4. David Liu;
- 12.5. David Suet;
- 12.6. Matalena Wilson;
- 12.7. Rebecca Dudbridge; and
- 12.8. Zara Linehan,

since the nature of the Las Vegas holiday package and the circumstances in which it was given to the representatives could reasonably be expected to influence the financial product advice that they gave during the qualifying period January 2016 to March 2016, with a separate contravention of s.963F occurring each time a representative accepted the cruise package.

13. A declaration that BlueInc Services contravened s.963J of the Corporations Act by giving a non-monetary benefit in the form of a seven day holiday package to Las Vegas in the United States of America in April 2016 to its employees named





below, being representatives of Select, which as a financial services licensee was providing financial product advice to retail clients:

- 13.1. Clare Sadler;
- 13.2. Danielle Keane;
- 13.3. Daryl Banks;
- 13.4. David Liu;
- 13.5. David Suet;
- 13.6. Matalena Wilson;
- 13.7. Rebecca Dudbridge; and
- 13.8. Zara Linehan,

since the nature of the Las Vegas package and the circumstances in which it was given to the representatives could reasonably be expected to influence the financial product advice that they gave during the qualifying period January 2016 to March 2016, with the giving of the Las Vegas package to each representative constituting a separate contravention of s.963J.

14. A declaration that Russell Howden was involved (within the meaning of s.79 of the Corporations Act) in each of the contraventions of s.963E and s.963F of the Corporations Act by Select referred to in paragraphs 11 and 12 above.
15. A declaration that Russell Howden was involved (within the meaning of s.79 of the Corporations Act) in each of the contraventions of s.963J of the Corporations Act by BlueInc Services referred to in paragraph 13 above.

#### **The Hawaii Incentive**

16. A declaration that Select, a financial services licensee which was providing financial product advice to retail clients, contravened s.963E of the Corporations Act when the following of its representatives, for which it was the responsible licensee, accepted a non-monetary benefit in the form of a seven night holiday package to Hawaii in the United States of America in December 2017:
  - 16.1. Benjamin Moore;
  - 16.2. Daniel Saphra;
  - 16.3. Adit Shah;
  - 16.4. Daryl Banks;



- 16.5. Francis Teague;
- 16.6. Jason Downing;
- 16.7. Jessica Lane;
- 16.8. Paris Brookes; and
- 16.9. Tex Jacks,

since the nature of the Hawaii package and the circumstances in which it was given to the representatives could reasonably be expected to influence the financial product advice that they gave during the qualifying period 1 July 2017 to 30 November 2017, with the acceptance of the Hawaii package by each representative constituting a separate contravention of s.963E.

17. A declaration that Select, a financial services licensee which was providing financial product advice to retail clients, contravened s.963F of the Corporations Act by failing to take reasonable steps to ensure that the persons named below, being representatives of its financial services license, did not accept a non-monetary benefit in the form of a seven night holiday package to Hawaii in the United States of America in December 2017:

- 17.1. Benjamin Moore;
- 17.2. Daniel Saphra;
- 17.3. Adit Shah;
- 17.4. Daryl Banks;
- 17.5. Francis Teague;
- 17.6. Jason Downing;
- 17.7. Jessica Lane;
- 17.8. Paris Brookes; and
- 17.9. Tex Jacks,

since the nature of the Hawaii package and the circumstances in which it was given to the representative could reasonably be expected to influence the financial product advice that they gave during the qualifying period 1 July 2017 to 30 November 2017, with a separate contravention of s.963F occurring each time a representative accepted the cruise package.



18. A declaration that BlueInc Services contravened s.963J of the Corporations Act by giving a non-monetary benefit in the form of a seven night holiday package to Hawaii in the United States of America in December 2017 to its employees named below, being representatives of Select, which as a financial services licensee was providing financial product advice to retail clients:

- 18.1. Benjamin Moore;
- 18.2. Daniel Saphra;
- 18.3. Adit Shah;
- 18.4. Daryl Banks;
- 18.5. Francis Teague;
- 18.6. Jason Downing;
- 18.7. Jessica Lane;
- 18.8. Paris Brookes; and
- 18.9. Tex Jacks,

since the nature of the Hawaii package and the circumstances in which it was given to the representatives could reasonably be expected to influence the financial product advice that they gave during the qualifying period 1 July 2017 to 30 November 2017, with the giving of the Hawaii package to each representative constituting a separate contravention of s.963J.

19. A declaration that Russell Howden was involved (within the meaning of s.79 of the Corporations Act) in each of the contraventions of s.963E and s.963F of the Corporations Act by Select referred to in paragraphs 16 and 17 above.
20. A declaration that Russell Howden was involved (within the meaning of s.79 of the Corporations Act) in each of the contraventions of s.963J of the Corporations Act by BlueInc Services referred to in paragraph 18 above.

#### **DECLARATORY RELIEF IN RELATION TO CONTRAVENTIONS OF CHAPTER 2D OF THE CORPORATIONS ACT**

21. A declaration that Russell Howden contravened s.180(1) of the Corporations Act by failing to exercise his powers and discharge his duties owed to each of BlueInc Services and Select with care and diligence by:
- 21.1. establishing, approving and/or implementing incentive programs in circumstances where the nature of the Incentives or the circumstances in



which they were given could reasonably be expected to have influenced the financial product advice given by Select's sales agents; and/or

- 21.2. failing to take reasonable steps to prevent a contravention by BlueInc Services and Select, or exposing BlueInc Services and Select to a contravention, of ss.963E, 963F and 963J (as relevant) of the Corporations Act.

## **DECLARATORY RELIEF IN RELATION TO CONTRAVENTIONS OF THE ASIC ACT**

### **Contraventions relating to David Mirrawana**

22. A declaration that on 23 March 2015 during a telephone call made to David Mirrawana by an employee of BlueInc Services, who was also an agent of Select, and in connection with the supply of a financial service, each of BlueInc Services and Select:
- 22.1. made a false and/or misleading representation concerning the existence, exclusion or effect of a condition or right in contravention of s.12DB(1)(i) of the ASIC Act by representing to David Mirrawana that there were no exclusions to the Let's Insure Funeral Cover, optional accidental death cover (**ADC**) and optional accidental serious injury cover (**AIC**) save for limited sporting-based exclusions to the AIC, when in fact there were significant exclusions to each of the ADC and AIC;
- 22.2. made a false and/or misleading representation that services were of a particular value in contravention of s.12DB(1)(a) of the ASIC Act by representing to David Mirrawana that Let's Insure would pay \$16,000 to each beneficiary of a Let's Insure Funeral Cover policy when in fact only payments totalling of \$16,000 per insured who passed away would be paid;
- 22.3. made a false and/or misleading representation concerning the existence of a right in contravention of s.12DB(1)(i) of the ASIC Act by representing to David Mirrawana that ADC, AIC and Household Expenses Cover (**HEC**) were not optional extras and/or were a standard component of the insurance policy, when in fact they were all optional extras that a consumer could elect not to add to Let's Insure Funeral Cover;
- 22.4. made a false and/or misleading representation with respect to the price of services in contravention of s.12DB(1)(g) of the ASIC Act by representing to David Mirrawana that the insurance premium remained



the same throughout the duration of the policy, when in fact the premium for Let's Insure Funeral Cover was stepped and would therefore increase over the life of the policy.

23. A declaration that on 23 March 2015 during a telephone call made to David Mirrawana by an employee of BlueInc Services, who was also an agent of Select, and in connection with the supply of a financial service, the caller coerced David Mirrawana into purchasing Let's Insure Funeral Cover, ADC, AIC and HEC, and/or providing his direct debit payment details over the telephone by:

- 23.1. telephoning David Mirrawana without prior notice;
- 23.2. failing to slow down his speech notwithstanding David Mirrawana telling him near the beginning of the call that he did not understand and that the Sales Agent was talking too fast;
- 23.3. stating that he had "helped" and "looked after" individuals known to David Mirrawana and members of his community;
- 23.4. making one or more of the false and/or misleading representations the subject of the declarations in paragraph 22 above;
- 23.5. quoting only for the top level of cover for the Let's Insure Funeral Cover, the ADC and the AIC and not offering alternative levels of cover;
- 23.6. upselling optional HEC, AIC and ADC without disclosing that they were optional extras;
- 23.7. playing a pre-recorded Product Disclosure Statement (**PDS**) without first seeking David Mirrawana's consent to receive the PDS in this way;
- 23.8. failing to make a genuine, or alternatively, reasonable attempt to confirm that David Mirrawana understood everything discussed during the telephone call;
- 23.9. rushing David Mirrawana through the telephone call; and
- 23.10. signing up David Mirrawana to the Let's Insure Funeral Cover with optional ADC, AIC and HEC during the same telephone call and/or taking direct debit payment details rather than giving him the opportunity to reflect,

and consequently Select and BlueInc Services each contravened s.12DJ(1) of the ASIC Act.



24. A declaration that the signing up of David Mirrawana to Let's Insure Funeral Cover, HEC, AIC and ADC and/or taking his direct debit details during a telephone call on 23 March 2015 by a caller who was an employee of BlueInc Services and an agent of Select, in connection with the supply of a financial service, constituted the engaging in of unconscionable conduct by BlueInc Services and Select towards David Mirrawana in contravention of s.12CB(1) of the ASIC Act as:
- 24.1. David Mirrawana's personal characteristics placed him in a position of vulnerability vis-a-vis Select and BlueInc Services and/or in a weaker bargaining position;
  - 24.2. undue influence and pressure was exerted upon, and unfair tactics used against, David Mirrawana, including by engaging in the conduct identified in paragraph 23 above;
  - 24.3. the caller did not act in good faith in his dealings with David Mirrawana;
  - 24.4. at the conclusion of the call, David Mirrawana did not understand that he had been signed up to Let's Insure Funeral Cover with optional HEC, AIC and ADC, or any insurance policy at all;
  - 24.5. David Mirrawana could not afford the premiums;
  - 24.6. David Mirrawana did not understand the PDS relating to the insurance policy; and
  - 24.7. at the time of the telephone call, the caller was participating in a sales incentive program to win a Vespa scooter and a sales incentive program to qualify for a four night cruise package to the Gold Coast.
25. A declaration that on 1 April 2015 during telephone calls between Deborah Armstrong from Bawinanga Aboriginal Corporation on behalf of David Mirrawana and employees of BlueInc Services who were also agents of Select, and in connection with the supply of a financial service, the caller unduly harassed David Mirrawana by:
- 25.1. not permitting him to cancel his insurance policy during a telephone call; and/or
  - 25.2. requiring him to provide a written document bearing his signature before permitting him to cancel his insurance policy,





notwithstanding that David Mirrawana was within the 30 day cooling off period, had purchased the insurance policy over the telephone and not been advised at that time that it could only be cancelled in writing, and consequently Select and BlueInc Services each contravened s.12DJ(1) of the ASIC Act.

### **Contraventions relating to Zondani Mtawale**

26. A declaration that on 14 April 2015 during a telephone call made to Zondani Mtawale by a contractor of the Third Defendant (**IMS**) and an employee of BlueInc Services, who were also agents of Select, and in connection with the supply of a financial service, each of IMS, BlueInc Services and Select:
  - 26.1. made a false and/or misleading representation concerning the existence, exclusion or effect of a condition or right in contravention of s.12DB(1)(i) of the ASIC Act by representing to Zondani Mtawale that there were no exclusions to the Let's Insure Funeral Cover, ADC and AIC save for limited sporting-based exclusions to the AIC, when in fact there were significant exclusions to each of the ADC and AIC;
  - 26.2. made a false and/or misleading representation that services were of a particular value in contravention of s.12DB(1)(a) of the ASIC Act by representing to Zondani Mtawale that Let's Insure would pay the total amount of benefits to each beneficiary of a Let's Insure Funeral Cover policy when in fact only payments totalling the amount of benefits would be paid per insured person under the policy.
27. A declaration that on 14 April 2015 during a telephone call made to Zondani Mtawale by a contractor of IMS and an employee of BlueInc Services, who were also agents of Select, and in connection with the supply of a financial service, the callers coerced Zondani Mtawale into purchasing Let's Insure Funeral Cover, AIC, ADC and HEC and/or providing his direct debit payment details over the telephone, by:
  - 27.1. making one or more of the false and/or misleading representations the subject of the declarations in paragraph 26 above;
  - 27.2. making no attempts, or no reasonable attempts, to offer Zondani Mtawale alternative levels of insurance cover, other than advising Zondani Mtawale that he would have the option of changing his cover in the future;
  - 27.3. playing a pre-recorded PDS without first seeking Zondani Mtawale's consent to receive it this way;



- 27.4. ignoring and/or refusing Zondani Mtawale's multiple requests to be emailed the policy information, including the PDS, so that he could read it and respond, prior to the conclusion of the sale;
- 27.5. ignoring and/or refusing Zondani Mtawale's multiple requests that he be afforded time to discuss the policy with his wife, prior to the conclusion of the sale; and
- 27.6. ignoring and/or refusing Zondani Mtawale's request that he be able to provide his banking details online, rather than over the phone,
- and consequently Select, IMS and BlueInc Services each contravened s.12DJ(1) of the ASIC Act.
28. A declaration that the signing up of Zondani Mtawale to Let's Insure Funeral Cover, ADC, AIC and HEC and/or taking his direct debit details during a telephone call on 14 April 2015 by callers who were a contractor of IMS and an employee of BlueInc Services, and who were also agents of Select, in connection with the supply of a financial service, constituted the engaging in of unconscionable conduct by IMS, BlueInc Services and Select towards Zondani Mtawale in contravention of s.12CB(1) of the ASIC Act as:
- 28.1. Zondani Mtawale's personal characteristics placed him in a weaker bargaining position than Select, IMS and BlueInc Services;
- 28.2. undue influence and pressure were exerted upon, and unfair tactics used against, Zondani Mtawale, including by engaging in the conduct identified in paragraph 27 above;
- 28.3. the callers did not act in good faith in their dealings with Zondani Mtawale;
- 28.4. at the time of the telephone call, the callers were participating in a sales incentive program to win a Vespa scooter and a sales incentive program to qualify for a four night cruise package to the Gold Coast; and
- 28.5. the requirement that Zondani Mtawale provide his banking details over the telephone, rather than online, so that direct debit payments could be taken from him, was not reasonably necessary for the protection of the legitimate interests of Select.

**Contraventions relating to Teubiti Tapera**

29. A declaration that on 6 May 2015 during a telephone call made to Teubiti Tapera by a contractor of IMS, who was also an agent of Select, and in connection with





the supply of a financial service, each of IMS and Select made a false and/or misleading representation that the financial services had particular uses or benefits in contravention of s.12DB(1)(e) of the ASIC Act by representing to Teubiti Tapera that the money he spent on the FlexiSure policy would “definitely” come back to him “no matter what happens”, and that he would “no matter what” “not be losing any finances”, when in fact benefits would only be paid to policy beneficiaries upon the occurrence of a particular event, such as the death of the policyholder.

30. A declaration that on 7 May 2015 during a telephone call made to Teubiti Tapera by an employee of BlueInc Services, who was an agent of Select, and in connection with the supply of a financial service, each of BlueInc Services and Select made a false and/or misleading representation concerning the existence, exclusion or effect of a condition or right in contravention of s.12DB(1)(i) of the ASIC Act by representing to Teubiti Tapera that Select could only send him the policy information once the insurance policy had commenced and/or once he had provided his payment details, when in fact it was not necessary in order to provide written policy information to a consumer that the consumer already have commenced the policy or provided payment details in respect of the policy.
31. A declaration that on 6 and 7 May 2015 during telephone calls made to Teubiti Tapera by a contractor of IMS and an employee of BlueInc Services, who were also agents of Select, and in connection with the supply of a financial service, the callers coerced Teubiti Tapera into purchasing FlexiSure Life Cover insurance and/or providing his credit card details over the telephone, by:
- 31.1. speaking too quickly for Teubiti Tapera to understand;
  - 31.2. rushing him through the conversations;
  - 31.3. making one or more of the false and/or misleading representations the subject of the declarations in paragraphs 29 and 30 above;
  - 31.4. playing a pre-recorded PDS without first seeking Teubiti Tapera’s consent to receive the PDS in this way; and
  - 31.5. ignoring and/or refusing Teubiti Tapera’s requests on a total of five occasions that he be sent the policy information and/or be given the opportunity to speak with his existing funeral cover provider,
- and consequently Select, IMS and BlueInc Services each contravened s.12DJ(1) of the ASIC Act.



32. A declaration that the signing up of Teubiti Tapera to FlexiSure Life Cover and/or taking credit card details during telephone calls on 6 and 7 May 2015 by callers who were a contractor of IMS and an employee of BlueInc Services, and who were also agents of Select, in connection with the supply of a financial service, constituted the engaging in of unconscionable conduct by IMS, BlueInc Services and Select towards Teubiti Tapera in contravention of s.12CB(1) of the ASIC Act as:
- 32.1. Teubiti Tapera's personal characteristics placed him in a weaker bargaining position than Select, IMS and BlueInc Services;
  - 32.2. undue influence and pressure was exerted upon, and unfair tactics used against, Teubiti Tapera, including by engaging in the conduct identified in paragraph 31 above;
  - 32.3. the callers did not act in good faith in their dealings with Teubiti Tapera;
  - 32.4. Teubiti Tapera already had a funeral insurance policy that covered himself and his wife;
  - 32.5. Teubiti Tapera could not afford a premium of \$213.86 per month; and
  - 32.6. the caller on the 7 May 2015 telephone call was participating in a sales incentive program to win a Vespa scooter and a sales incentive program to qualify for a four night cruise package to the Gold Coast.

**Contraventions relating to Jennifer Yalumul**

33. A declaration that on 29 May 2015 during a telephone call made to Jennifer Yalumul by a contractor of IMS, who was also an agent of Select, and in connection with the supply of a financial service, each of IMS and Select:
- 33.1. made a false and/or misleading representation concerning the existence, exclusion or effect of a condition or right in contravention of s.12DB(1)(i) of the ASIC Act by representing to Jennifer Yalumul that there were no exclusions to the FlexiSure Accident Cover save for intentional or self-inflicted injury and participating in professional sports, when in fact there were significant exclusions to the Accident Cover;
  - 33.2. made a false and/or misleading representation concerning the existence of a right in contravention of s.12DB(1)(i) of the ASIC Act by representing to Jennifer Yalumul that FlexiSure Accident Cover was not an optional extra and/or was a standard component of the insurance policy, when in



fact the Accident Cover was an optional extra that a consumer could elect not to add to FlexiSure Life Cover.

34. A declaration that on 29 May 2015 during a telephone call made to Jennifer Yalumul by a contractor of IMS, who was also an agent of Select, and in connection with the supply of a financial service, the caller coerced Jennifer Yalumul into purchasing FlexiSure Life Cover and optional Accident Cover and/or providing her direct debit payment details over the telephone by:
- 34.1. making one or more of the false and/or misleading representations the subject of the declarations in paragraph 33 above;
  - 34.2. upselling Accident Cover without disclosing that it was an optional extra;
  - 34.3. quoting only a particular level of cover and not offering alternative levels of cover with respect to either policy;
  - 34.4. playing a pre-recorded PDS without first seeking Jennifer Yalumul's consent to receive the PDS in this way;
  - 34.5. failing to make a genuine, or alternatively, reasonable attempt to confirm that Jennifer Yalumul understood everything discussed during the telephone call; and
  - 34.6. signing up Jennifer Yalumul to the FlexiSure Life Cover with optional Accident Cover during the same telephone call and/or taking direct debit payment details rather than giving her the opportunity to reflect,
- and consequently Select and IMS each contravened s.12DJ(1) of the ASIC Act.
35. A declaration that the signing up of Jennifer Yalumul to FlexiSure Life Cover and Accident Cover and/or taking her direct debit details during a telephone call on 29 May 2015 by a caller who was a contractor of IMS and an agent of Select, in connection with the supply of a financial service, constituted the engaging in of unconscionable conduct by IMS and Select towards Jennifer Yalumul in contravention of s.12CB(1) of the ASIC Act as:
- 35.1. Jennifer Yalumul's personal characteristics placed her in a position of vulnerability vis-a-vis Select and IMS and/or in a weaker bargaining position;
  - 35.2. undue influence and pressure was exerted upon, and unfair tactics used against, Jennifer Yalumul, including by engaging in the conduct identified in paragraph 34 above;



- 35.3. the caller did not act in good faith in her dealings with Jennifer Yalumul;
  - 35.4. Jennifer Yalumul did not understand what was being sold to her or the PDS relating to the insurance policy;
  - 35.5. at the conclusion of the call, Jennifer Yalumul did not understand that she had been signed up to FlexiSure Life Cover with optional Accident Cover, or any insurance policy at all, nor the nature of the FlexiSure Life Cover with optional Accident Cover that she had been signed up to; and
  - 35.6. Jennifer Yalumul could not afford the premiums.
36. A declaration that in the period 1 February 2016 to 28 August 2017 contractors of IMS and employees of BlueInc Services, who were also agents of Select, in connection with the supply of a financial service, coerced Jennifer Yalumul into not cancelling her FlexiSure Life Cover and optional Accident Cover by:
- 36.1. ignoring repeated requests by Jennifer Yalumul to cancel her insurance and instead offering lower levels of cover for a reduced premium;
  - 36.2. failing to make a genuine attempt to inform Jennifer Yalumul of the process required to cancel her policy;
  - 36.3. failing to make a genuine, or alternatively, reasonable, attempt to confirm that Jennifer Yalumul wished to continue her FlexiSure Life Cover with optional Accident Cover;
  - 36.4. refusing or failing to cancel Jennifer Yalumul's FlexiSure Life Cover with optional Accident Cover when she requested cancellation during calls on 4 February 2016, 16 May 2017, 2 August 2017, 9 August 2017 and 28 August 2017; and
  - 36.5. requiring Jennifer Yalumul to cancel her policy in writing,
- and consequently Select, IMS and BlueInc Services each contravened s.12DJ(1) of the ASIC Act.
37. A declaration that not permitting Jennifer Yalumul to cancel her FlexiSure Life Cover with optional Accident Cover in the period 1 February 2016 to 28 August 2017 by contractors of IMS and employees of BlueInc Services, who were also agents of Select, in connection with the supply of a financial service, constituted the engaging in of unconscionable conduct by IMS, BlueInc Services and Select towards Jennifer Yalumul in contravention of s.12CB(1) of the ASIC Act as:



- 37.1. Jennifer Yalumul's personal characteristics placed her in a position of vulnerability vis-a-vis Select, IMS and BlueInc Services and/or in a weaker bargaining position;
- 37.2. undue influence and pressure was exerted upon, and unfair tactics used against, Jennifer Yalumul including by engaging in the conduct identified in paragraph 36 above;
- 37.3. the callers did not act in good faith in their dealings with Jennifer Yalumul;
- 37.4. Jennifer Yalumul did not understand the PDS relating to the FlexiSure Life Cover and optional Accident Cover;
- 37.5. at the time she was signed up to the policies, Jennifer Yalumul did not understand that she had been signed up to FlexiSure Life Cover with optional Accident Cover, or any insurance policy at all, nor the nature of the insurance policies that she had been signed up to;
- 37.6. Jennifer Yalumul could not afford the premiums;
- 37.7. at the time of the 4 February 2016 call, the caller was participating in a sales incentive program to qualify for a seven day holiday package to Las Vegas; and
- 37.8. at the time of the 9 August 2017 call at 11.35am, the caller was participating in a sales incentive program to qualify for a seven day holiday package to Hawaii.

#### **Contraventions relating to Dawnetta Yeatman**

38. A declaration that on 17 June 2015 during a telephone call made to Dawnetta Yeatman by a contractor of IMS, who was also an agent of Select, and in connection with the supply of a financial service, each of IMS and Select:
  - 38.1. made a false and/or misleading representation concerning the existence of a right in contravention of s.12DB(1)(e) of the ASIC Act by representing to Dawnetta Yeatman that the minimum level of cover of the FlexiSure Life Cover was \$35,000, when in fact the minimum level of cover for FlexiSure Life Cover was \$15,000;
  - 38.2. made a false and/or misleading representation that services had particular benefits in contravention of s.12DB(1)(e) of the ASIC Act by representing to Dawnetta Yeatman that she would save \$50 per month



and have an additional coverage of \$20,000, when there were no reasonable grounds for making the representation.

39. A declaration that on 17 June 2015 during a telephone call made to Dawnetta Yeatman by a contractor of IMS, who was also an agent of Select, in connection with the supply of a financial service, the caller coerced Dawnetta Yeatman into purchasing FlexiSure Life Cover and/or providing her direct debit payment details over the telephone by:

- 39.1. speaking quickly and talking over Dawnetta Yeatman and not responding to her questions;
- 39.2. rushing Dawnetta Yeatman through the conversation;
- 39.3. using many words that Dawnetta Yeatman did not understand;
- 39.4. making one or more of the false and/or misleading representations the subject of the declarations in paragraph 38 above;
- 39.5. playing a pre-recorded PDS without first seeking Dawnetta Yeatman's consent to receive the PDS in this way;
- 39.6. ignoring and/or refusing Dawnetta Yeatman's multiple requests that she be sent the policy information prior to the conclusion of the sale;
- 39.7. ignoring Dawnetta Yeatman's requests that she be allowed to make up her mind after receiving the policy information;
- 39.8. failing to make a genuine, or alternatively, reasonable, attempt to confirm that Dawnetta Yeatman understood everything that was discussed during the telephone call;
- 39.9. signing up Dawnetta Yeatman to the FlexiSure Life Cover during the same telephone call and/or taking direct debit payment details rather than giving her the opportunity to reflect;
- 39.10. failing to expressly confirm with Dawnetta Yeatman that she understood that she was signing up to FlexiSure Life Cover that day,

and consequently Select and IMS each contravened s.12DJ(1) of the ASIC Act.

40. A declaration that the signing up of Dawnetta Yeatman to FlexiSure Life Cover and/or taking her direct debit details during a telephone call on 17 June 2015 by a caller who was a contractor of IMS and an agent of Select, in connection with the supply of a financial service, constituted the engaging in of unconscionable





conduct by IMS and Select towards Dawnetta Yeatman in contravention of s.12CB(1) of the ASIC Act as:

- 40.1. Dawnetta Yeatman's personal characteristics placed her in a position of vulnerability vis-a-vis Select and IMS and/or in a weaker bargaining position;
  - 40.2. undue influence and pressure was exerted upon, and unfair tactics used against, Dawnetta Yeatman, including by engaging in the conduct identified in paragraph 39 above;
  - 40.3. the caller did not act in good faith in his dealings with Dawnetta Yeatman;
  - 40.4. Dawnetta Yeatman did not understand the PDS relating to the insurance policy;
  - 40.5. at the time she was signed up to the policy, Dawnetta Yeatman did not understand the nature of the FlexiSure Life Cover that she had been signed up to;
  - 40.6. Dawnetta Yeatman already had funeral and life insurance;
  - 40.7. Dawnetta suffered a number of chronic diseases; and
  - 40.8. Dawnetta Yeatman was on a disability pension and could not afford the premiums.
41. A declaration that in the period 7 September 2015 to 7 October 2015, employees of BlueInc Services, who were also agents of Select, and in connection with the supply of a financial service, unduly harassed Dawnetta Yeatman by continuing to contact Dawnetta Yeatman on multiple occasions to seek payment of her insurance premiums in circumstances where Dawnetta Yeatman:
- 41.1. had informed Select that she already had funeral cover and life insurance;
  - 41.2. had informed Select that she was on a disability pension;
  - 41.3. could not afford the FlexiSure premiums;
  - 41.4. had arranged with her bank to cancel the direct debit facility in respect of the FlexiSure Life Cover premium payments;
  - 41.5. had informed Select that she had cancelled the direct debit facility in respect of the FlexiSure Life Cover premium payments;
  - 41.6. had told Select representatives to leave her alone; and
  - 41.7. had hung up on a series of calls made by Select representatives,



and consequently Select and BlueInc Services each contravened s.12DB(1)(i) of the ASIC Act.

**Contraventions relating to Josephine Shadforth**

42. A declaration that on 26 June 2015 during a telephone call made to Josephine Shadforth by an employee of BlueInc Services, who was also an agent of Select, and in connection with the supply of a financial service, each of BlueInc Services and Select:
- 42.1. made a false and/or misleading representation concerning the existence, exclusion or effect of a condition or right in contravention of s.12DB(1)(i) of the ASIC Act by representing to Josephine Shadforth that there were no exclusions to the Let's Insure Funeral Cover, ADC and AIC save for the professional sports exclusion, when in fact there were significant exclusions to each of the ADC and AIC;
  - 42.2. made a false and/or misleading representation concerning the existence of a right in contravention of s.12DB(1)(i) of the ASIC Act by representing to Josephine Shadforth that ADC and AIC were not optional extras and/or were a standard component of the insurance policy, when in fact they were both optional extras that a consumer could elect not to add to Let's Insure Funeral Cover;
  - 42.3. engaged in conduct that was misleading or deceptive, or was likely to mislead or deceive, in contravention of s.12DA of the ASIC Act by representing to Josephine Shadforth that Select would "take over" Josephine Shadforth's existing insurance policy, when in fact Select did not take over existing insurance policies, but instead commenced new policies with consumers.
43. A declaration that on 18 September 2015 during a telephone call made to Josephine Shadforth by a contractor of IMS, who was also an agent of Select, and in connection with the supply of a financial service, each of IMS and Select made a false and/or misleading representation concerning the existence, exclusion or effect of a condition or right in contravention of s.12DB(1)(i) of the ASIC Act by representing to Josephine Shadforth that, because it was a financial product, the Let's Insure Funeral Cover and optional ADC and AIC could only be cancelled in writing, when in fact there was no requirement on Select to obtain cancellation requests in writing from consumers by virtue of the insurance policies being a financial product.





44. A declaration that on 26 June 2015 during a telephone call made to Josephine Shadforth by an employee of BlueInc Services, who was also an agent of Select, and in connection with the supply of a financial service, the caller coerced Josephine Shadforth into purchasing Let's Insure Funeral Cover, ADC and AIC and/or providing her direct debit payment details over the telephone by:

- 44.1. telephoning Josephine Shadforth without prior notice;
- 44.2. stating that he had "helped" individuals known to Josephine Shadforth and members of her community;
- 44.3. making one or more of the false and/or misleading representations the subject of the declarations in paragraph 42 above;
- 44.4. quoting only for the top level of cover for the Let's Insure Funeral Cover, ADC and AIC and not referring to alternative levels of cover;
- 44.5. playing a pre-recorded PDS without first seeking Josephine Shadforth's consent to receive the PDS in this way;
- 44.6. stating that Select would assist Josephine Shadforth to cancel her existing insurance policy; and
- 44.7. signing up Josephine Shadforth to the Let's Insure Funeral Cover with optional ADC and AIC during the same telephone call and/or taking direct debit payment details rather than giving her the opportunity to reflect,

and consequently Select and BlueInc Services each contravened s.12DJ(1) of the ASIC Act.

45. A declaration that the signing up of Josephine Shadforth to Let's Insure Funeral Cover, ADC and AIC and/or taking her direct debit payment details during a telephone call on 26 June 2015 by callers who were employees of BlueInc Services and agents of Select, in connection with the supply of a financial service, constituted the engaging in of unconscionable conduct by BlueInc Services and Select towards Josephine Shadforth in contravention of s.12CB(1) of the ASIC Act as:

- 45.1. Josephine Shadforth's personal characteristics placed her in a position of vulnerability vis-a-vis Select and BlueInc Services and/or in a weaker bargaining position;



- 45.2. undue influence and pressure was exerted upon, and unfair tactics used against, Josephine Shadforth, including by engaging in the conduct identified in paragraph 44 above;
  - 45.3. the callers did not act in good faith in their dealings with Josephine Shadforth;
  - 45.4. Josephine Shadforth did not understand the PDS relating to the insurance policy;
  - 45.5. Josephine Shadforth already had funeral insurance from another provider;
  - 45.6. at the conclusion of the call, Josephine Shadforth did not understand the nature of the Let's Insure Funeral Cover with optional ADC and AIC, including that it was an additional policy to the one she already held;
  - 45.7. Josephine Shadforth was receiving a disability pension as her only income;
  - 45.8. Josephine Shadforth could not afford two sets of insurance premiums; and
  - 45.9. at the time of the telephone calls, one of the callers was participating in a sales incentive program to win a Vespa scooter and a sales incentive program to qualify for a four night cruise package to the Gold Coast.
46. A declaration that in the period 17 September 2015 to 15 October 2015, a contractor of IMS and employees of BlueInc Services, who were also agents of Select, in connection with the supply of a financial service, unduly harassed Josephine Shadforth by not permitting, or refusing to provide any reasonable assistance to, her to cancel the Let's Insure Funeral Cover with optional ADC and AIC and/or by continuing to seek payment for the policy in circumstances where:
- 46.1. Select knew or should have known that Josephine Shadforth was paying for two insurance policies at the same time, in the period 25 June 2015 to 15 October 2015;
  - 46.2. a Select representative had made the misleading or deceptive representation that Select would "take over" Josephine Shadforth's existing insurance policy subject of the declaration in paragraph 42.3 above;



- 46.3. a Select representative had stated that they would assist Josephine Shadforth in cancelling her Insuranceline insurance policy, but made no reasonable attempt to do so;
- 46.4. Select representatives failed to advise Josephine Shadforth during the calls of 26 June 2015 that the Let's Insure policy could only be cancelled in writing;
- 46.5. Josephine Shadforth had repeatedly attempted to cancel, or sought assistance to cancel, the Let's Insure Funeral Cover with optional ADC and AIC over the telephone on 17 September 2015, 18 September 2015 and 15 October 2015, and
- 46.6. the Select representative made the false and/or misleading representation referred to in paragraph 43 above.

and consequently Select, IMS and BlueInc Services each contravened s.12DJ(1) of the ASIC Act.

47. A declaration that not permitting Josephine Shadforth to cancel her Let's Insure Funeral Cover with optional ADC and AIC and continuing to seek payment for the policies from Josephine Shadforth in the period 26 June 2015 to 15 October 2015 by a contractor of IMS and employees of BlueInc Services, who were also agents of Select, in connection with the supply of a financial service, constituted the engaging in of unconscionable conduct by IMS, BlueInc Services and Select towards Josephine Shadforth in contravention of s.12CB(1) of the ASIC Act as:

- 47.1. Josephine Shadforth's personal characteristics placed her in a position of vulnerability vis-a-vis Select, IMS and BlueInc Services and/or in a weaker bargaining position;
- 47.2. the callers did not act in good faith in their dealings with Josephine Shadforth;
- 47.3. undue influence and pressure was exerted upon, and unfair tactics used against, Josephine Shadforth, including by engaging in the conduct identified in paragraph 46 above;
- 47.4. Josephine Shadforth did not understand the PDS relating to the insurance policy;
- 47.5. Josephine Shadforth already had funeral insurance with another provider;



- 47.6. at the conclusion of the call, Josephine Shadforth did not understand the nature of the Let's Insure Funeral Cover with optional ADC and AIC, including that it was an additional policy to the one she already held;
- 47.7. Josephine Shadforth was receiving a disability pension as her only income; and
- 47.8. Josephine Shadforth could not afford two sets of insurance premiums.

#### **Contraventions relating to Georgina Gaykamangu**

48. A declaration that on 7 July 2015 during a telephone call made to Georgina Gaykamangu by an employee of BlueInc Services, who was also an agent of Select, and in connection with the supply of a financial service, each of BlueInc Services and Select:
  - 48.1. made a false and/or misleading representation concerning the existence, exclusion or effect of a condition or right in contravention of s.12DB(1)(i) of the ASIC Act by representing to Georgina Gaykamangu that there were no exclusions to the Let's Insure Funeral Cover, ADC and AIC save for professional sports-based exclusions to the AIC, when in fact there were significant exclusions to each of the ADC and AIC;
  - 48.2. made a false and/or misleading representation concerning the existence of a right in contravention of s.12DB(1)(i) of the ASIC Act by representing to Georgina Gaykamangu that ADC, AIC and HEC were not optional extras and/or were a standard component of the insurance policy, when in fact they were all optional extras that a consumer could elect not to add to Let's Insure Funeral Cover.
49. A declaration that on 7 July 2015 during a telephone call made to Georgina Gaykamangu by an employee of BlueInc Services, who was also an agent of Select, and in connection with the supply of a financial service, the caller coerced Georgina Gaykamangu into purchasing Let's Insure Funeral Cover, ADC, AIC and HEC and/or providing her direct debit payment details over the telephone, by:
  - 49.1. telephoning Georgina Gaykamangu without prior notice;
  - 49.2. referring to individuals known to Georgina Gaykamangu and asserting that they had policies with Let's Insure;
  - 49.3. using many words that Georgina Gaykamangu did not understand;



- 49.4. making one or more of the false and/or misleading representations of the subject of the declarations in paragraphs 48 above;
- 49.5. quoting only for the top level of cover for the Let's Insure Funeral Cover, ADC and AIC and not offering alternative levels of cover;
- 49.6. upselling HEC, ADC and AIC without disclosing that they were optional extras;
- 49.7. upselling coverage for Zackeus Wanybarrnga without disclosing that Georgina Gaykamangu had the option of obtaining cover for herself alone;
- 49.8. playing Georgina Gaykamangu a pre-recorded PDS without first seeking Georgina Gaykamangu's consent to receive the PDS in this way;
- 49.9. failing to make a genuine, or alternatively, reasonable, attempt to confirm that Georgina Gaykamangu understood everything discussed during the telephone call;
- 49.10. signing up Georgina Gaykamangu to Let's Insure Funeral Cover, ADC, AIC and HEC during the same telephone call and/or taking direct debit payment details rather than giving her the opportunity to reflect; and
- 49.11. failing to make a genuine or, alternatively, reasonable, attempt to confirm that Georgina Gaykamangu understood and/or consented to premium payments being deducted from her bank account,

and consequently Select and BlueInc Services each contravened s.12DJ(1) of the ASIC Act.

50. A declaration that the signing up of Georgina Gaykamangu to Let's Insure Funeral Cover, ADC, AIC and HEC and/or taking her direct debit details during a telephone call on 7 July 2015 by a caller who was an employee of BlueInc Services and an agent of Select, in connection with the supply of a financial service, constituted the engaging in of unconscionable conduct by BlueInc Services and Select towards Georgina Gaykamangu in contravention of s.12CB(1) of the ASIC Act as:

- 50.1. Georgina Gaykamangu's personal characteristics placed her in a position of vulnerability vis-a-vis Select and BlueInc Services and/or in a weaker bargaining position;



- 50.2. undue influence and pressure was exerted upon, and unfair tactics used against, Georgina Gaykamangu, including by engaging in the conduct identified in paragraph 49 above;
- 50.3. the caller did not act in good faith in her dealings with Georgina Gaykamangu;
- 50.4. Georgina Gaykamangu did not understand the PDS relating to the insurance policy;
- 50.5. at the conclusion of the call, Georgina Gaykamangu did not understand that she had been signed up to Let's Insure Funeral Cover with optional ADC, AIC and HEC and that premium payments would be periodically deducted from her bank account; and
- 50.6. Georgina Gaykamangu could not afford the premiums.

**Contraventions relating to Geraldine Campbell**

51. A declaration that on 2 September 2015 during a telephone call made to Geraldine Campbell by an employee of BlueInc Services, who was also an agent of Select, and in connection with the supply of a financial service, each of BlueInc Services and Select:
  - 51.1. made a false and/or misleading representation concerning the existence, exclusion or effect of a condition or right in contravention of s.12DB(1)(i) of the ASIC Act by representing to Geraldine Campbell that there were no exclusions to the FlexiSure Life Cover other than (i) pre-existing medical conditions and suicide for the first five years; (ii) certain pre-existing medical conditions such as HIV; and (iii) exclusions for dangerous occupations, pastimes and engaging in criminal activities, when in fact there were significant other exclusions to the FlexiSure Life Cover;
  - 51.2. made a false and/or misleading representation concerning the existence of a right in contravention of s.12DB(1)(i) of the ASIC Act by representing to Geraldine Campbell that her children would be covered if they were to suffer an accidental death or 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;
  - 51.3. made a false and/or misleading representation concerning the existence of a right in contravention of s.12DB(1)(i) of the ASIC Act by representing





to Geraldine Campbell that her son Emmanuel would obtain a financial benefit under the FlexiSure Optional Children's Cover for accidental death or trauma (CC) if he suffered an illness or health condition that was not related to his heart condition, when in fact there were significant exclusions to the CC;

- 51.4. made a false and/or misleading representation concerning the existence of a right in contravention of s.12DB(1)(i) of the ASIC Act by representing to Geraldine Campbell that CC was not an optional extra and/or was a standard component of the insurance policy, when in fact CC was an optional extra that a consumer could elect not to add to FlexiSure Life Cover.
52. A declaration that on 2 September 2015 during a telephone call made to Geraldine Campbell by an employee of BlueInc Services, who was also an agent of Select, and in connection with the supply of a financial service, the caller coerced Geraldine Campbell into purchasing FlexiSure Life Cover and CC and/or providing her direct debit payment details over the telephone, by:
- 52.1. making one or more of the false and/or misleading representations the subject of the declarations in paragraph 51 above;
  - 52.2. quoting only for one level of cover for the FlexiSure Life Cover and CC and not offering alternative levels of cover;
  - 52.3. upselling CC without disclosing that it was an optional extra;
  - 52.4. playing a pre-recorded PDS without first seeking Geraldine Campbell's consent to receive the PDS in this way;
  - 52.5. failing to make a genuine or, alternatively, reasonable attempt to confirm that Geraldine Campbell understood everything that was discussed during the telephone call; and
  - 52.6. signing up Geraldine Campbell to the FlexiSure Life Cover with optional CC during the same telephone call and/or taking her direct debit payment details rather than giving her the opportunity to reflect,
- and consequently Select and BlueInc Services each contravened s.12DJ(1) of the ASIC Act.
53. A declaration that the signing up of Geraldine Campbell to FlexiSure Life Cover and CC and/or taking her direct debit details during a telephone call on 2



September 2015 by a caller who was an employee of BlueInc Services and an agent of Select, in connection with the supply of a financial service, constituted the engaging in of unconscionable conduct by BlueInc Services and Select towards Geraldine Campbell in contravention of s.12CB(1) of the ASIC Act as:

- 53.1. Geraldine Campbell's personal characteristics placed her in a position of vulnerability vis-a-vis Select and BlueInc Services and/or in a weaker bargaining position;
- 53.2. undue influence and pressure was exerted upon, and unfair tactics used against, Geraldine Campbell, including by engaging in the conduct identified in paragraph 52 above;
- 53.3. the caller did not act in good faith in his dealings with Geraldine Campbell;
- 53.4. Geraldine Campbell did not understand the PDS relating to the insurance policy;
- 53.5. at the conclusion of the call, Geraldine Campbell did not understand that she had been signed up to FlexiSure Life Cover with optional CC, nor the nature of the insurance policy that she had been signed up to; and
- 53.6. Geraldine Campbell could not afford the premiums.

**Contraventions relating to Edmund Nundhirribala**

54. A declaration that on 4 September 2015 during a telephone call made to Edmund Nundhirribala by an employee of BlueInc Services, who was also an agent of Select, and in connection with the supply of a financial service, each of BlueInc Services and Select:
  - 54.1. made a false and/or misleading representation concerning the existence, exclusion or effect of a condition or right in contravention of s.12DB(1)(i) of the ASIC Act by representing to Edmund Nundhirribala that there were no exclusions to the Let's Insure Funeral Cover, ADC and AIC save for limited professional sporting-based exclusions to the AIC, when in fact there were significant exclusions to each of the ADC and AIC;
  - 54.2. made a false and/or misleading representation concerning the existence of a right in contravention of s.12DB(1)(i) of the ASIC Act by representing to Edmund Nundhirribala that ADC, AIC and HEC were not optional extras and/or were a standard component of the insurance policy, when in fact





they were all optional extras that a consumer could elect not to add to Let's Insure Funeral Cover.

55. A declaration that on 4 September 2015 during a telephone call made to Edmund Nundhirribala by an employee of BlueInc Services, who was also an agent of Select, and in connection with the supply of a financial service, the caller coerced Edmund Nundhirribala into purchasing Let's Insure Funeral Cover, ADC, AIC and HEC and/or providing his direct debit payment details over the telephone by:

- 55.1. telephoning Edmund Nundhirribala without prior notice;
- 55.2. speaking to Edmund Nundhirribala quickly;
- 55.3. referring to individuals known to Edmund Nundhirribala, including members of his family, and stating that one of those individuals had taken out funeral insurance with Select and had really wanted Select to call him and provide him with a free quote;
- 55.4. making one or more of the false and/or misleading representations the subject of the declarations in paragraph 54 above;
- 55.5. quoting only for the top level of cover for the Let's Insure Funeral Cover, ADC and AIC and not offering alternative levels of cover;
- 55.6. upselling ADC, AIC and HEC without disclosing that they were optional extras;
- 55.7. playing a pre-recorded PDS without first seeking Edmund Nundhirribala's consent to receive the PDS in this way;
- 55.8. failing to make a genuine, or alternatively, reasonable, attempt to confirm that Edmund Nundhirribala understood everything that was discussed during the telephone call; and
- 55.9. signing up Edmund Nundhirribala to the Let's Insure Funeral Cover, with optional ADC, AIC and HEC and/or taking his direct debit payment details during the same telephone call rather than giving him the opportunity to reflect,

and consequently Select and BlueInc Services each contravened s.12DJ(1) of the ASIC Act.

56. A declaration that the signing up of Edmund Nundhirribala to Let's Insure Funeral Cover, ADC, AIC and HEC and/or taking his direct debit payment details during a telephone call on 4 September 2015 by a caller who was an employee of



BlueInc Services and an agent of Select, in connection with the supply of a financial service, constituted the engaging in of unconscionable conduct by BlueInc Services and Select towards Edmund Nundhirribala in contravention of s.12CB(1) of the ASIC Act as:

- 56.1. Edmund Nundhirribala's personal characteristics placed him in a position of vulnerability vis-a-vis Select and BlueInc Services and/or in a weaker bargaining position;
- 56.2. undue influence and pressure was exerted upon, and unfair tactics used against, Edmund Nundhirribala, including by engaging in the conduct identified in paragraph 55 above;
- 56.3. the caller did not act in good faith in her dealings with Edmund Nundhirribala;
- 56.4. Edmund Nundhirribala did not understand the PDS relating to the insurance policy;
- 56.5. at the conclusion of the call, Edmund Nundhirribala did not understand that he had been signed up to Let's Insure Funeral Cover with optional ADC, AIC and HEC, or any insurance policy at all;
- 56.6. Edmund Nundhirribala did not want an insurance policy; and
- 56.7. Edmund Nundhirribala could not afford the premiums.

**Contraventions relating to Kathy Marika**

57. A declaration that on 9 September 2015 during a telephone call made to Kathy Marika by an employee of BlueInc Services, who was also an agent of Select, and in connection with the supply of a financial service, each of BlueInc Services and Select:
  - 57.1. made a false and/or misleading representation concerning the existence, exclusion or effect of a condition or right in contravention of s.12DB(1)(i) of the ASIC Act by representing to Kathy Marika that there were no exclusions to the Let's Insure Funeral Cover, ADC and AIC save for a criminal activity-based exclusion to the AIC, when in fact there were significant exclusions to each of the ADC and AIC;
  - 57.2. made a false and/or misleading representation that services were of a particular value in contravention of s.12DB(1)(a) of the ASIC Act by representing to Kathy Marika that Let's Insure would pay \$32,000 or



\$38,000 to each beneficiary of a Let's Insure Funeral Cover policy, when in fact only payments totalling \$37,000 per insured who passed away would be paid;

- 57.3. made a false and/or misleading representation concerning the existence of a right in contravention of s.12DB(1)(i) of the ASIC Act by representing to Kathy Marika that ADC, AIC and HEC were not optional extras and/or were a standard component of the insurance policy, when in fact they were all optional extras that a consumer could elect not to add to Let's Insure Funeral Cover;
  - 57.4. made a false and/or misleading representation with respect to the price of services in contravention of s.12DB(1)(g) of the ASIC Act by representing to Kathy Marika that the HEC was offered as a gift and/or "just to help out", when in fact the HEC was an optional extra to Let's Insure Funeral Cover for which the policy owner would be charged an additional premium amount;
  - 57.5. made a false and/or misleading representation with respect to the price of services in contravention of s.12DB(1)(g) of the ASIC Act by representing to Kathy Marika that the insurance premium remained the same throughout the duration of the policy, when in fact the premium for Let's Insure Funeral Cover was stepped and would therefore increase over the life of the policy.
58. A declaration that on 9 September 2015 during a telephone call made to Kathy Marika by an employee of BlueInc Services, who was also an agent of Select, and in connection with the supply of a financial service, the caller coerced Kathy Marika into purchasing two Let's Insure Funeral Cover policies, each with optional ADC and optional AIC and/or providing her direct debit payment details over the telephone by:
- 58.1. speaking to Kathy Marika quickly;
  - 58.2. using words that Kathy Marika did not understand;
  - 58.3. not allowing Kathy Marika an opportunity to reflect when asked questions or provided information;
  - 58.4. ignoring and/or speaking over Kathy Marika's statements that she already held funeral insurance;



- 58.5. ignoring and/or speaking over Kathy Marika's statements that she was happy with her existing funeral insurance policy, and that she did not want to change;
- 58.6. ignoring Kathy Marika's request that she be afforded the opportunity to speak with her existing funeral insurance provider;
- 58.7. making one or more of the false and/or misleading representations the subject of the declarations in paragraph 57 above;
- 58.8. not offering alternative levels of cover to those quoted;
- 58.9. upselling HEC, ADC and AIC without disclosing that they were optional extras;
- 58.10. playing a pre-recorded PDS without first seeking Kathy Marika's consent to receive the PDS in this way;
- 58.11. failing to make a genuine, or alternatively, reasonable, attempt to confirm that Kathy Marika understood the Let's Insure Funeral Cover, ADC and AIC policies that she was purchasing;
- 58.12. rushing Kathy Marika through the telephone call; and
- 58.13. signing up Kathy Marika to the two Let's Insure Funeral Cover policies, each with optional ADC and AIC and/or taking her direct debit payment details during the same telephone call rather than giving her the opportunity to reflect,

and consequently Select and BlueInc Services each contravened s.12DJ(1) of the ASIC Act.

59. A declaration that the signing up of Kathy Marika to two Let's Insure Funeral Cover policies, each with optional ADC and optional AIC, and/or taking her direct debit payment details during a telephone call on 9 September 2015 by a caller who was an employee of BlueInc Services and an agent of Select, in connection with the supply of a financial service, constituted the engaging in of unconscionable conduct by BlueInc Services and Select towards Kathy Marika in contravention of s.12CB(1) of the ASIC Act as:

- 59.1. Kathy Marika's personal characteristics placed her in a position of vulnerability vis-a-vis Select and BlueInc Services and/or in a weaker bargaining position;



- 59.2. undue influence and pressure was exerted upon, and unfair tactics used against, Kathy Marika, including by engaging in the conduct identified in paragraph 58 above;
- 59.3. the caller did not act in good faith in his dealings with Kathy Marika;
- 59.4. Kathy Marika did not understand the PDS relating to the insurance policies;
- 59.5. Kathy Marika had indicated to the caller that she already had funeral insurance;
- 59.6. at the conclusion of the call, Kathy Marika did not understand that she had been signed up to Let's Insure Funeral Cover with optional AIC and ADC for herself, her three children and her four grandchildren in the form of two separate policies, nor the nature of the insurance policies that she had been signed up to; and
- 59.7. Kathy Marika could not afford the premiums.
60. A declaration that in the period 16 September 2015 to 15 September 2016 employees of BlueInc Services and contractors of IMS, who were agents of Select, and in connection with the supply of a financial service, unduly harassed Kathy Marika by continuing to contact Kathy Marika to seek payment of her insurance premiums in circumstances in which:
- 60.1. Kathy Marika had informed Select on three separate prior occasions that she already had funeral insurance;
- 60.2. Kathy Marika had sought to cancel her Let's Insure Funeral Cover policies because she was not working;
- 60.3. Kathy Marika could not afford the premiums, of which she had repeatedly advised Select; and
- 60.4. Select had automatically increased Kathy Marika's premiums, and consequently Select and BlueInc Services each contravened s.12DJ(1) of the ASIC Act.
61. A declaration that not permitting Kathy Marika to cancel her two Let's Insure Funeral Cover policies, each with optional ADC and optional AIC, and/or continuing to seek payment for the policies from Kathy Marika in the period 16 September 2015 to 15 September 2016, in connection with the supply of a financial service, constituted the engaging in of unconscionable conduct by



BlueInc Services and Select towards Kathy Marika in contravention of s.12DB(1) of the ASIC Act as:

- 61.1. Kathy Marika's personal characteristics placed her in a position of vulnerability vis-a-vis Select, IMS and BlueInc Services and/or in a weaker bargaining position;
- 61.2. undue influence and pressure was exerted upon, and unfair tactics used against, Kathy Marika, including by engaging in the conduct identified in paragraph 60 above;
- 61.3. the callers did not act in good faith in their dealings with Kathy Marika;
- 61.4. at the time of the 27 January 2016 call with Kathy Marika, the caller was participating in a sales incentive program to qualify for a seven day holiday package to Las Vegas;
- 61.5. Kathy Marika had indicated to the caller that she already had funeral insurance;
- 61.6. at the conclusion of the call, Kathy Marika did not understand that she had been signed up to Let's Insure Funeral Cover with optional AIC and ADC for herself, her three children and her four grandchildren in the form of two separate policies, nor the nature of the insurance policies she had been signed up to;
- 61.7. Kathy Marika could not afford the premiums; and
- 61.8. Kathy Marika requested to cancel the policies on repeated occasions and informed Select that it was because she could not afford the premiums.

#### **Contraventions relating to Irshad Hussain**

62. A declaration that on 4 November 2015 during a telephone call made to Irshad Hussain by an employee of BlueInc Services, who was also an agent of Select, and in connection with the supply of a financial service, each of BlueInc Services and Select:
  - 62.1. made a false and/or misleading representation concerning the existence, exclusion or effect of a condition or right in contravention of s.12DB(1)(i) of the ASIC Act by representing to Irshad Hussain that there were no exclusions to the Let's Insure Accident Cover (**Let's Insure AC**) save for professional or motor sport-based exclusions, when in fact there were significant other exclusions to the policy;





- 62.2. made a false and/or misleading representation with respect to the price of services in contravention of s.12DB(1)(g) of the ASIC Act by representing to Irshad Hussain that the insurance premium remained the same throughout the duration of the policy, when in fact the premium was subject to automatic increases and would therefore increase over the life of the policy unless the consumer took positive steps to opt out of that increase.
63. A declaration that on 11 November 2016 during a telephone call made to Irshad Hussain by an employee of BlueInc Services, who was also an agent of Select, and in connection with the supply of a financial service, each of BlueInc Services and Select made a false and/or misleading representation concerning the existence, exclusion or effect of a condition or right in contravention of s.12DB(1)(i) of the ASIC Act by representing to Irshad Hussain that there was a requirement on Select to obtain cancellation requests in writing from consumers by virtue of the Let's Insure AC being a financial product, when in fact there was no requirement on Select to obtain cancellation requests in writing from consumers by virtue of the insurance policy being a financial product.
64. A declaration that the signing up of Irshad Hussain to Let's Insure AC and/or taking his credit card details during a telephone call on 4 November 2015 by a caller who was an employee of BlueInc Services and an agent of Select, in connection with the supply of a financial service, constituted the engaging in of unconscionable conduct by BlueInc Services and Select towards Irshad Hussain in contravention of s.12CB(1) of the ASIC Act as:
- 64.1. Irshad Hussain's personal characteristics placed him in a position of vulnerability vis-a-vis Select and BlueInc Services and/or in a weaker bargaining position;
  - 64.2. undue influence and pressure was exerted upon, and unfair tactics used against, Irshad Hussain, including the making of one or more of false and/or misleading representations;
  - 64.3. the caller did not act in good faith in his dealings with Irshad Hussain;
  - 64.4. it was reasonably apparent to the caller that Irshad Hussain did not understand English;
  - 64.5. the caller did not clarify that the policy was for accident cover with a death benefit, and not life insurance as initially stated;



- 64.6. the caller did not explain the scope of coverage under the proposed policy, including the full extent of the exclusions;
  - 64.7. the caller did not inform Irshad Hussain that the policy would be subject to automatic yearly increases in the premiums;
  - 64.8. Irshad Hussain did not understand the PDS relating to the insurance policy; and
  - 64.9. at the conclusion of the call, Irshad Hussain did not understand the nature of the Let's Insure AC policy that he had been signed up to.
65. A declaration that in the period 24 October 2016 to 4 April 2017 employees of BlueInc Services, who were also agents of Select, and in connection with the supply of a financial service, unduly harassed Irshad Hussain by:
- 65.1. not permitting him to cancel his insurance policy during telephone calls on 24 October 2016, 11 November 2016 and 4 April 2017; and/or
  - 65.2. requiring him to provide a written document bearing his signature before permitting him to cancel his insurance policy,
- and consequently Select and BlueInc Services each contravened s.12DJ(1) of the ASIC Act.
66. A declaration that not permitting Irshad Hussain to cancel his Let's Insure AC policy in the period 24 October 2016 to 4 April 2017, in connection with the supply of a financial service, constituted the engaging in of unconscionable conduct by BlueInc Services and Select towards Irshad Hussain in contravention of s.12CB(1) of the ASIC Act as:
- 66.1. Irshad Hussain's personal characteristics placed him in a position of vulnerability vis-a-vis Select and BlueInc Services and/or in a weaker bargaining position;
  - 66.2. undue influence and pressure was exerted upon, and unfair tactics used against, Irshad Hussain, including by engaging in the conduct identified in paragraph 65 above;
  - 66.3. the callers did not act in good faith in their dealings with Irshad Hussain;
  - 66.4. it was reasonably apparent to the callers that Irshad Hussain did not understand English;





- 66.5. Irshad Hussain did not understand the PDS relating to the Let's Insure AC; and
- 66.6. Irshad Hussain was not permitted, and/or reasonable assistance was not provided to Irshad Hussain, to cancel the Let's Insure AC and payment for the policy continued to be sought from him.

**Contraventions relating to Freddie Lewis**

67. A declaration that on 25 November 2015 during a telephone call made to Freddie Lewis by a contractor of IMS, who was also an agent of Select, and in connection with the supply of a financial service, each of IMS and Select:
- 67.1. made a misleading or deceptive representation in contravention of s.12DA of the ASIC Act by representing to Freddie Lewis that it would be difficult for Freddie Lewis to contact FlexiSure, when in fact Freddie Lewis could have contacted FlexiSure by calling an inbound sales number;
- 67.2. made a misleading or deceptive representation in contravention of s.12DA of the ASIC Act by representing to Freddie Lewis that FlexiSure was taking bank account details from him for the purpose of paying benefits to Freddie Lewis, when in fact the purpose for which Select sought Freddie Lewis' bank account details was so that it could periodically debit money from that account in payment of premiums under the FlexiSure Life Cover.
68. A declaration that on 25 November 2015 during telephone calls made to Freddie Lewis by a contractor of IMS, who was also an agent of Select, and in connection with the supply of a financial service, the caller coerced Freddie Lewis into purchasing FlexiSure Life Cover and/or providing his credit card details over the telephone by:
- 68.1. continuing to attempt to sell Freddie Lewis FlexiSure Life Cover after Freddie Lewis stated that he was attending a funeral at the time;
- 68.2. initially refusing to allow Freddie Lewis to call back at a more convenient time;
- 68.3. making one or more of the misleading or deceptive representations the subject of the declarations in paragraph 67 above;
- 68.4. quoting only for a particular level of cover and giving Freddie Lewis no effective choice as to an alternative level of cover;



- 68.5. playing a pre-recorded PDS without first seeking Freddie Lewis' consent to receive the PDS in this way;
  - 68.6. ignoring indications from Freddie Lewis that he did not understand what was being offered to him and required of him;
  - 68.7. failing to make a genuine, or alternatively, reasonable, attempt to confirm that Freddie Lewis understood that he was being signed up to FlexiSure Life Cover, and/or that premium payments would be charged to his credit card;
  - 68.8. rushing Freddie Lewis through the two telephone calls on 25 November 2015; and
  - 68.9. signing up Freddie Lewis to the FlexiSure Life Cover on the same day and/or taking credit card details rather than giving him the opportunity to reflect,
- and consequently Select and IMS each contravened s.12DJ(1) of the ASIC Act.
69. A declaration that the signing up of Freddie Lewis to FlexiSure Life Cover and/or taking his credit card details during telephone calls on 25 November 2015 by a caller who was a contractor of IMS and an agent of Select, in connection with the supply of a financial service, constituted the engaging in of unconscionable conduct by IMS and Select towards Freddie Lewis in contravention of s.12CB(1) of the ASIC Act as:
- 69.1. Freddie Lewis' personal characteristics placed him in a position of vulnerability vis-a-vis Select and IMS and/or in a weaker bargaining position;
  - 69.2. undue influence and pressure was exerted upon, and unfair tactics used against, Freddie Lewis, including by engaging in the conduct identified in paragraph 68 above;
  - 69.3. the caller did not act in good faith in her dealings with Freddie Lewis;
  - 69.4. Freddie Lewis did not understand the PDS relating to the insurance policy;
  - 69.5. at the conclusion of the calls, Freddie Lewis did not understand that he had been signed up to FlexiSure Life Cover, or any insurance policy at all; and



69.6. at the conclusion of the calls, Freddie Lewis did not understand that he had provided credit card details for the purpose of Select charging to it the premium payments due for the FlexiSure Life Cover.

70. A declaration that in the period 9 December 2015 to 9 February 2016 contractors of IMS and employees of BlueInc Services, who were also agents of Select, and in connection with the supply of a financial service, unduly harassed Freddie Lewis by:

- 70.1. placing 24 telephone calls and sending three letters to Freddie Lewis regarding unsuccessful premium collection attempts;
- 70.2. not permitting Freddie Lewis to cancel the FlexiSure Life Cover policy as requested by him during telephone calls on 15 December 2015 and 25 January 2016;
- 70.3. continuing to attempt to persuade Freddie Lewis to keep the policy with a lowered premium and benefit;
- 70.4. continuing to seek payment from Freddie Lewis notwithstanding that Freddie Lewis informed the callers that he was not working and could not afford the premium payments;
- 70.5. encouraging Freddie Lewis to keep the FlexiSure Life Cover policy by using Centrelink benefits to pay for it; and
- 70.6. requiring Freddie Lewis to provide Select with a written document bearing his signature before permitting him to cancel his FlexiSure Life Cover policy,

and consequently Select and BlueInc Services each contravened s.12DJ(1) of the ASIC Act.

71. A declaration that by not permitting Freddie Lewis to cancel his FlexiSure Life Cover and/or continuing to seek payment from Freddie Lewis in the period 9 December 2015 to 9 February 2016 by contractors of IMS and employees of BlueInc Services, who were also agents of Select, in connection with the supply of a financial service, constituted the engaging in of unconscionable conduct by BlueInc Services and Select towards Freddie Lewis in contravention of s.12CB(1) of the ASIC Act as:



- 71.1. Freddie Lewis' personal characteristics placed him in a position of vulnerability vis-a-vis Select, IMS and BlueInc Services and/or in a weaker bargaining position;
- 71.2. undue influence and pressure was exerted upon, and unfair tactics used against, Freddie Lewis, including by engaging in the conduct identified in paragraph 70 above;
- 71.3. the callers did not act in good faith in their dealings with Freddie Lewis;
- 71.4. at the time of the 15 and 25 January 2016 calls with Freddie Lewis, the callers were participating in a sales incentive program to qualify for a seven day holiday package to Las Vegas;
- 71.5. at the conclusion of the call, Freddie Lewis did not understand that he had been signed up to FlexiSure Life Cover, or any insurance policy at all;
- 71.6. Freddie Lewis could not afford the premiums; and
- 71.7. Freddie Lewis had repeatedly informed Select that he wished to cancel the policy as he could not afford it.

**Contraventions relating to Cynthia Mirniyowan**

72. A declaration that on 28 April 2016 during a telephone call made to Cynthia Mirniyowan by an employee of BlueInc Services, who was also an agent of Select, and in connection with the supply of a financial service, each of BlueInc Services and Select:
  - 72.1. made a false and/or misleading representation concerning the existence, exclusion or effect of a condition or right in contravention of s.12DB(1)(i) of the ASIC Act by representing to Cynthia Mirniyowan that there were no exclusions to the Let's Insure Funeral Cover, ADC and AIC save for limited professional sporting-based and criminal activity exclusions to the AIC, when in fact there were significant exclusions to each of the ADC and AIC;
  - 72.2. made a false and/or misleading representation that services were of a particular value in contravention of s.12DB(1)(a) of the ASIC Act by representing that each person would receive payments of \$12,000 for funeral, \$100,000 as a result of an accident, and \$25,000 for serious injury, when in fact Let's Insure Funeral Cover with ADC and AIC only paid the total amount of benefits per insured who passed away, or who was injured, and not the total amount of benefits per policy beneficiary;



- 72.3. made false and/or misleading representations concerning purported testimonials by Cynthia Mirniyowan to her partner Derek Wurrawilya, and by Derek Wurrawilya to Cynthia Mirniyowan, that they were each “really happy” with the quote provided to them for the purchase of the Let’s Insure Funeral Cover with AIC and ADC, and in making the representations contravened s.12DB(1)(d) of the ASIC Act;
- 72.4. made false and/or misleading representations concerning the existence of a right in contravention of s.12DB(1)(i) of the ASIC Act by representing to Cynthia Mirniyowan that ADC and AIC (including the ADC booster) were not optional extras and/or were a standard component of the insurance policy, when in fact they were both optional extras that a consumer could elect not to add to Let’s Insure Funeral Cover.
73. A declaration that on 28 April 2016 during telephone calls made to Cynthia Mirniyowan by an employee of BlueInc Services, who was also an agent of Select, and in connection with the supply of a financial service, the caller coerced Cynthia Mirniyowan into purchasing Let’s Insure Funeral Cover, ADC, AIC and the ADC booster and/or providing her credit card details over the telephone by:
- 73.1. increasing the level of AIC for Cynthia Mirniyowan from \$22,000 to \$25,000 without asking her if she wanted that increase;
- 73.2. making one or more of the false and/or misleading representations the subject of the declarations in paragraph 72 above;
- 73.3. not offering Cynthia Mirniyowan alternative levels of cover, other than offering her \$25,000 of cover instead of \$22,000 of cover;
- 73.4. playing a pre-recorded PDS without first seeking Cynthia Mirniyowan’s consent to receive the PDS in this way;
- 73.5. signing up Cynthia Mirniyowan to the insurance policy during the 28 April 2016 telephone calls, without confirming that she had been made aware of the PDS;
- 73.6. rushing Cynthia Mirniyowan and Derek Wurrawilya through the telephone calls on 28 April 2016;
- 73.7. making the 28 April 2016 telephone calls to Cynthia Mirniyowan and Derek Wurrawilya in quick succession, without affording them the opportunity to discuss the policies between themselves; and



- 73.8. failing to take reasonable steps to confirm that Cynthia Mirniyowan understood the nature of the Let's Insure Funeral Cover with ADC, AIC and the ADC booster that she had been signed up to,
- and consequently Select and BlueInc Services each contravened s.12DJ(1) of the ASIC Act.
74. A declaration that the signing up of Cynthia Mirniyowan to Let's Insure Funeral Cover, ADC, AIC and ADC booster and/or taking her direct debit details during telephone calls made to Cynthia Mirniyowan on 28 April 2016 by a caller who was an employee of BlueInc Services and an agent of Select, in connection with the supply of a financial service, constituted the engaging in of unconscionable conduct by BlueInc Services and Select towards Cynthia Mirniyowan in contravention of s.12CB(1) of the ASIC Act as:
- 74.1. Cynthia Mirniyowan's personal characteristics placed her in a position of vulnerability vis-a-vis Select and BlueInc Services and/or in a weaker bargaining position;
- 74.2. undue influence and pressure was exerted upon, and unfair tactics used against, Cynthia Mirniyowan, including by engaging in the conduct identified in paragraph 73 above;
- 74.3. the caller did not act in good faith in his dealings with Cynthia Mirniyowan;
- 74.4. Cynthia Mirniyowan did not understand the PDS relating to the insurance policy; and
- 74.5. at the conclusion of the calls, Cynthia Mirniyowan did not understand the nature of the Let's Insure Funeral Cover with ADC, AIC and ADC booster that she had been signed up to.
75. A declaration that in the period 19 May 2016 to 6 February 2017, employees of BlueInc Services, who were also agents of Select, and in connection with the supply of a financial service, unduly harassed Cynthia Mirniyowan by continuing to contact Cynthia Mirniyowan to seek payment of her insurance premiums, in circumstances where:
- 75.1. Select was aware that the reason for non-payment of her premiums was insufficient funds; and
- 75.2. Cynthia Mirniyowan had informed Select, on four separate occasions, that she did not have the financial means to make the premium payments,





and consequently Select and BlueInc Services each contravened s.12DJ of the ASIC Act.

76. A declaration that not cancelling Cynthia Mirniyowan's Let's Insure Funeral Cover with ADC, AIC and ADC booster and/or continuing to seek payment from her in the period 19 May 2016 to 6 February 2017 by callers who were employees of BlueInc Services, who were also agents of Select, in connection with the supply of a financial service, constituted the engaging in of unconscionable conduct by BlueInc Services and Select towards Cynthia Mirniyowan in contravention of s.12CB(1) of the ASIC Act as:
- 76.1. Cynthia Mirniyowan's personal characteristics placed her in a position of vulnerability vis-a-vis Select, IMS and BlueInc Services and/or in a weaker bargaining position;
  - 76.2. undue influence and pressure was exerted upon, and unfair tactics used against, Cynthia Mirniyowan, including by engaging in the conduct identified in paragraph 75 above;
  - 76.3. the callers did not act in good faith in their dealings with Cynthia Mirniyowan;
  - 76.4. at the time she was signed up to the policies, Cynthia Mirniyowan did not understand the nature of the Let's Insure Funeral Cover with ADC, AIC and ADC booster that she had been signed up to; and
  - 76.5. Cynthia Mirniyowan had informed Select, on four separate occasions, that she did not have the financial means to make the premium payments.

**Contraventions relating to Deepak Shrestha**

77. A declaration that on 22 August 2017 during a telephone call made to Deepak Shrestha by a contractor of IMS, who was also an agent of Select, and in connection with the supply of a financial service, each of IMS and Select:
- 77.1. made a false and/or misleading representation concerning the existence, exclusion or effect of a condition or right in contravention of s.12DB(1)(i) of the ASIC Act by representing to Deepak Shrestha that there were no exclusions to the optional Accident Cover to the Let's Insure Easy Life Insurance (**Easy Life AC**) save for intentional self-inflicted injuries and participating in professional sports, when in fact there were significant other exclusions to the Easy Life AC;



- 77.2. made a false and/or misleading representation with respect to the price of services in contravention of s.12DB(1)(g) of the ASIC Act by representing to Deepak Shrestha that the insurance premium remained the same throughout the duration of the policy, when in fact the premium was subject to automatic increases and would therefore increase over the life of the policy unless the consumer took positive steps to opt out of that increase.
78. A declaration that during telephone calls made to Deepak Shrestha on 21 August 2017 and 22 August 2017 by a contractor of IMS, who was also an agent of Select, and in connection with the supply of a financial service, the caller coerced Deepak Shrestha into purchasing Let's Insure Easy Life Insurance and Easy Life AC and/or providing his credit card details over the telephone by:
- 78.1. persisting in attempting to sell Deepak Shrestha life insurance, notwithstanding Deepak Shrestha's express statements that he already held life insurance;
  - 78.2. ignoring Deepak Shrestha's multiple express statements that he did not want to purchase life insurance;
  - 78.3. ignoring Deepak Shrestha's request to be given time to reflect and/or review the policy documents;
  - 78.4. failing to ascertain whether Deepak Shrestha had received or reviewed the policy documents sent to him in the mail prior to the 22 August 2017 call;
  - 78.5. making one or more of the false and/or misleading representations the subject of the declarations in paragraph 77 above;
  - 78.6. upselling Easy Life AC without disclosing that it was an optional extra;
  - 78.7. playing a pre-recorded PDS without first seeking Deepak Shrestha's consent to receive the PDS in this way so;
  - 78.8. persisting in attempting to sell Deepak Shrestha life insurance, notwithstanding Deepak Shrestha's statements indicating that he was confused about what was being discussed;
  - 78.9. failing to take genuine or reasonable steps to confirm that Deepak Shrestha did wish to purchase Let's Insure Easy Life Insurance with optional Easy Life AC;



- 78.10. failing to make a genuine or, alternatively, reasonable attempt to confirm that Deepak Shrestha understood everything discussed during the telephone call, understood what Let's Insure Easy Life Insurance with optional Easy Life AC did and did not cover, and consented to having premium payments charged to his credit card;
- 78.11. rushing Deepak Shrestha through the telephone call on 22 August 2017; and
- 78.12. pressuring Deepak Shrestha,
- and consequently Select and IMS each contravened s.12DJ(1) of the ASIC Act.
79. A declaration that the signing up of Deepak Shrestha to Let's Insure Easy Life Insurance and Easy Life AC and/or taking his credit card details during a telephone call on 22 August 2017 by a caller who was a contractor of IMS and an agent of Select, in connection with the supply of a financial service, constituted the engaging in of unconscionable conduct by IMS and Select towards Deepak Shrestha in contravention of s.12CB(1) of the ASIC Act as:
- 79.1. Deepak Shrestha's personal characteristics placed him in a position of vulnerability vis-a-vis Select and IMS and/or in a weaker bargaining position;
- 79.2. undue influence and pressure was exerted upon, and unfair tactics used against, Deepak Shrestha, including by engaging in the conduct identified in paragraph 78 above;
- 79.3. the caller did not act in good faith in his dealings with Deepak Shrestha;
- 79.4. Deepak Shrestha did not understand the PDS relating to the insurance policy;
- 79.5. at the conclusion of the call, Deepak Shrestha did not understand the nature of the insurance policies that he had been signed up to; and
- 79.6. Deepak Shrestha did not appreciate that premium payments would be charged to his credit card on an automatic, fortnightly basis.

**DECLARATORY RELIEF IN RELATION TO CONTRAVENTIONS OF PART 7.6 OF CHAPTER 7 OF THE CORPORATIONS ACT**

80. A declaration that in the period January 2015 to May 2017, Select contravened s.912A(1)(a) of the Corporations Act as it failed to do all things necessary to



ensure that the financial services covered by the license were provided efficiently, honestly and fairly by:

- 80.1. unfairly utilising the Refer a Friend Program to solicit from newly-acquired customers contact details for their friends or family, in circumstances where Sales Agents were incentivised during the same period to increase the number of sales of insurance policies that they completed, the newly-acquired customers were incentivised to provide those contact details and the referred persons were precluded from expressly consenting to the provision of their contact details to Select and/or their consent was not sought;
  - 80.2. enabling Sales Agents to imply to the referred persons that the customer who had provided Select with their contact details had encouraged Select's contact of the referred person and/or endorsed or approved of Select's insurance policies, or make misleading and/or deceptive representations to the referred persons;
  - 80.3. failing to adequately monitor calls of Sales Agents seeking contact details through the Refer a Friend Program or using contact details so obtained; and/or
  - 80.4. failing to identify that the use of the Refer a Friend Program would or was causing, or contributing to, a spike in sales in postcodes with a high proportion of Aboriginal and/or Torres Strait Islander populations in the period from January 2015 to October 2015.
81. A declaration that Russell Howden was involved within the meaning of s.79 of the Corporations Act in the contravention of s.912A(1)(a) of the Corporations Act by Select referred to in paragraph 80 above.
82. A declaration that Select contravened the general obligations it owes as a financial services licensee pursuant to s.912A(1)(c) of the Corporations Act to comply with the financial services laws in Part 7.7A Division 4 of the Corporations Act when it accepted conflicted remuneration in the form of:
- 82.1. fifteen of the representatives of its financial services license accepting non-monetary benefits in the form of a four night cruise package to the Gold Coast in July 2015;
  - 82.2. one of its representatives of its financial services license accepting a non-monetary benefit in the form of a brand new Vespa scooter on 1 July 2015;



82.3. eight of the representatives of its financial services license accepting non-monetary benefits in the form of a seven day holiday package to Las Vegas in the United States of America in April 2016;

82.4. nine of the representatives of its financial services license accepting non-monetary benefits in the form of a seven night holiday package to Hawaii in the United States of America in December 2017,

with each acceptance referred to above constituting a contravention of s.912A(1)(c) of the Corporations Act.

83. A declaration that Russell Howden was involved within the meaning of s.79 of the Corporations Act in each of the contraventions of s.912(1)(c) of the Corporations Act by Select referred to in paragraph 82 above.

84. A declaration that Select contravened the general obligations it owed as a financial services licensee pursuant to s.912A(1)(c) of the Corporations Act to comply with the financial services laws in Part 7.7A Division 4 of the Corporations Act when it failed to take reasonable steps to ensure that representatives of its financial services license did not accept conflicted remuneration in the form of:

84.1. fifteen of the representatives of its financial services license accepting non-monetary benefits in the form of a four night cruise package to the Gold Coast in July 2015;

84.2. one of the representatives of its financial services license accepting a non-monetary benefit in the form of a brand new Vespa scooter on 1 July 2015;

84.3. eight of the representatives of its financial services license accepting non-monetary benefits in the form of a seven day holiday package to Las Vegas in the United States of America in April 2016;

84.4. nine of the representatives of its financial services license accepting non-monetary benefits in the form of a seven night holiday package to Hawaii in the United States of America in December 2017,

with each failure referred to above constituting a contravention s.912A(1)(c) of the Corporations Act.

85. A declaration that Russell Howden was involved within the meaning of s.79 of the Corporations Act in each of the contraventions of s.912(1)(c) of the Corporations Act by Select referred to in paragraph 84 above.



86. A declaration that Select contravened the general obligations it owed as a financial services licensee pursuant to s.912A(1)(c) of the Corporations Act to comply with the financial services laws in s.12CB(1) of the ASIC Act when, in connection with the supply of a financial service, it:
- 86.1. engaged in unconscionable conduct towards fourteen consumers in respect of the sale of insurance policies;
  - 86.2. engaged in unconscionable conduct towards six consumers in respect of their retention of insurance policies,
- all but two of whom were in a position of vulnerability vis-à-vis Select and all of whom were in weaker bargaining position, with each instance of unconscionable conduct constituting a contravention of s.912A(1)(c) of the Corporations Act.
87. A declaration that Select contravened the general obligations it owed as a financial services licensee pursuant to s.912A(1)(c) of the Corporations Act to comply with the financial services laws in s.12DA of the ASIC Act when it made three representations that were misleading or likely to mislead to two consumers, with each representation that was misleading or likely to mislead constituting a contravention of s.912A(1)(c) of the Corporations Act.
88. A declaration that Select contravened the general obligations it owed as a financial services licensee pursuant to s.912A(1)(c) of the Corporations Act to comply with the financial services laws in s.12DB of the ASIC Act when it made false or misleading representations in connection with the supply of a financial service by way of:
- 88.1. the All Family Benefit Representation to four consumers that services were of a particular value in contravention of s.12DB(1)(a);
  - 88.2. the Limited Exclusions Representation to 11 consumers as to the existence, exclusion or effect of a condition or right in contravention of s.12DB(1)(i);
  - 88.3. five false or misleading representations to four consumers as to the existence, exclusion or effect of a condition or right in contravention of s.12DB(1)(i);
  - 88.4. the Standard Cover Representation to eight consumers as to the existence of a right in contravention of s.12DB(1)(i);
  - 88.5. three false or misleading representations to two consumers that financial services had particular uses or benefits in contravention of s.12DB(1)(e);





- 88.6. the Flat Premium Representation to four consumers with respect to the price of services in contravention of s.12DB(1)(g);
- 88.7. a false or misleading representation to one consumer with respect to the price of services in contravention of s.12DB(1)(g);
- 88.8. a false or misleading representation to one consumer concerning a testimonial by any person or a representation that purports to be such a testimonial in contravention of s.12DB(1)(d),

with each false or misleading representation made constituting a contravention of s.912A(1)(c) of the Corporations Act.

- 89. A declaration that Select contravened the general obligations it owed as a financial services licensee pursuant to s.912A(1)(c) of the Corporations Act to comply with the financial services laws in s.12DJ(1) of the ASIC Act when, in connection with the supply of a financial service, it:
  - 89.1. coerced 13 consumers into purchasing insurance policies;
  - 89.2. coerced one consumer into retaining insurance policies;
  - 89.3. unduly harassed seven consumers into retaining insurance policies,
 with each instance of coercion or undue harassment constituting a contravention of s.912A(1)(c) of the Corporations Act.

#### **DISQUALIFICATION ORDER IN RELATION TO CONTRAVENTIONS OF THE CORPORATIONS ACT**

- 90. An order pursuant to s.206C of the Corporations Act that Russell Howden be disqualified from managing corporations for such period as the Court considers appropriate.
- 91. Further or in the alternative, an order pursuant to s.206E of the Corporations Act that Russell Howden be disqualified from managing corporations for such period as the Court considers appropriate.
- 92. An order pursuant to s.1324 of the Corporations Act restraining Russell Howden for such period as the Court considers appropriate, from:
  - 92.1. carrying on a financial services business;
  - 92.2. carrying on a business related to, concerning or directed to 'financial products' or 'financial services' within the meaning of s.761A of the Corporations Act;



- 92.3. managing corporations related to, concerning or directed to 'financial products' or 'financial services' within the meaning of s.761A of the Corporations Act;
- 92.4. providing 'financial services' within the meaning of s.761A of the Corporations Act;
- 92.5. dealing in 'financial services' within the meaning of s.761A of the Corporations Act;
- 92.6. dealing in 'financial products' within the meaning of s.761A of the Corporations Act; and/or
- 92.7. in any way holding himself out as doing, or being in any way involved in, the matters referred to in sub-paragraphs 92.1 to 92.6 above.

#### **PECUNIARY PENALTIES IN RELATION TO CONTRAVENTIONS OF THE CORPORATIONS ACT**

93. An order that Select pay pecuniary penalties pursuant to s.1317G(1) of the Corporations Act.
94. An order that BlueInc Services pay pecuniary penalties pursuant to s.1317G(1) of the Corporations Act.
95. An order that Russell Howden pay pecuniary penalties pursuant to s.1317G(1) of the Corporations Act.

#### **PECUNIARY PENALTIES IN RELATION TO CONTRAVENTIONS OF THE ASIC ACT**

96. An order that Select pay pecuniary penalties pursuant to s.12GBA of the ASIC Act.
97. An order that BlueInc Services pay pecuniary penalties pursuant to s.12GBA of the ASIC Act.
98. An order that IMS pay pecuniary penalties pursuant to s.12GBA of the ASIC Act.

#### **INJUNCTIONS**

99. An injunction pursuant to s.1324 of the Corporations Act restraining:
  - 99.1. BlueInc Services from giving conflicted remuneration to its employees in contravention of Part 7.7A of Chapter 7 of the Corporations Act;



- 99.2. Select from accepting and/or failing to take reasonable steps to ensure that representatives of its financial services licence do not accept conflicted remuneration in contravention of 7.7A of Chapter 7 of the Corporations Act.
100. An injunction pursuant to s.1324 of the Corporations Act restraining Russell Howden, in respect of companies of which he is a director and which hold a financial services licence, from causing or permitting those companies to give conflicted remuneration to their representatives.
101. An injunction pursuant to s.12GD of the ASIC Act restraining BlueInc Services, Select and IMS, and their employees and agents, from:
- 101.1. pressing a consumer to purchase an insurance policy over the telephone during the same call in circumstances where the consumer has asked for time to consider the transaction;
- 101.2. selling an insurance policy to a consumer over the telephone during the first substantive outbound telephone call to the consumer about the insurance policy;
- 101.3. selling an insurance policy to a consumer without taking genuine and reasonable steps to confirm that the consumer has received and considered a written product disclosure statement and a written financial services guide in relation to the policy;
- 101.4. selling an insurance policy to a consumer without taking genuine and reasonable steps to ensure that the consumer understands the coverage offered by the policy, the exclusions to the policy and the cost of the policy over the duration of that policy;
- 101.5. making false or misleading representations in relation to the coverage offered by the policy, the exclusions to the policy and the cost of the policy over the duration of that policy;
- 101.6. requiring a policy to be cancelled in writing where that policy has been sold during a telephone call.

#### **ADVERTISING ORDERS**

102. An order pursuant to ss.12GLA(2) and/or 12GLB(1) of the ASIC Act and/or ss.1101B(1)(a) and/or 1324(7) of the Corporations Act that Select, BlueInc Services and IMS, at their own expense:



102.1. shall, within 14 days of the date of this order, publish or cause to be published a notice in the terms and form of **Annexure A** to this order (the Notice) on the homepage of the websites located at <http://www.selectins.com.au>, <https://letsinsure.com.au>, <https://flexisure.com.au> and <http://www.blueinc.com.au> (**the Websites**) such that:

- a. the Notice shall be viewable by clicking a 'click-through' banner located on the homepage of each of the Websites (**each homepage**);
- b. the 'click-through' banner is to be:
  - i. of a size no less than one third of each homepage;
  - ii. located in the top half of each homepage; and
  - iii. not obscured, blocked or interfered with by any operation of the Websites;
- c. the 'click-through' banner shall contain the words "Sales and Retention Misconduct by [Select/Let's Insure/FlexiSure/BlueInc – as applicable] – Notice Ordered by the Federal Court of Australia – Click Here" in at least size 14, bold, black and sans-serif font centred on a white background;
- d. the 'click-through' banner is to operate in the form of a one-click hyperlink to the Notice;
- e. the Notice shall occupy the entire webpage that is accessed via the 'click-through' banner;
- f. the Notice shall be in size 14, bold, black and sans-serif font that is left aligned on a white background and in a black bordered box;
- g. the Notice is to remain on each of the Websites for a period of six months;
- h. the Websites, including the homepages and the webpages that are accessed via the 'click-through' banners, shall not have in place any mechanism which would preclude search engines from:
  - i. indexing the pages; or
  - ii. scanning the pages for links to follow;

102.2. shall, within 21 days of the date of this order, send or cause to be sent by pre-paid ordinary mail and by email, if an email address is known, a communication in the form of **Annexure B** to this order to each person



who was sold any of the following insurance products over the telephone during the period 1 February 2015 to 21 December 2017 (inclusive):

- a. Let's Insure Funeral Cover;
- b. Let's Insure Accident Cover;
- c. Essentials Life Cover;
- d. Easy Life Insurance;
- e. FlexiSure Life Cover;

102.3. shall, within 21 days of the date of this order, send or cause to be sent by SMS a communication in the form of **Annexure C** to this order to each person for whom a mobile telephone number is known who was sold any of the following insurance products over the telephone during the period 1 February 2015 to 21 December 2017 (inclusive):

- a. Let's Insure Funeral Cover;
- b. Let's Insure Accident Cover;
- c. Essentials Life Cover;
- d. Easy Life Insurance;
- e. FlexiSure Life Cover;

102.4. despite the requirements of paragraphs 102.2 and 102.3 above, are not required to send a communication in the form of Annexure B or C to a person who has already been refunded all premiums paid for an insurance product distributed under the Let's Insure or FlexiSure brands;

102.5. shall set up or cause to be set up a dedicated customer complaints handling telephone number for the purpose of the communications referred to in paragraphs 102.1, 102.2 and 102.3 of this order (Customer Complaints number);

102.6. shall, within 28 days of the date of this order, provide to the Plaintiff a written statement from the Managing Director of each of Select, BlueInc Services and IMS setting out the steps taken by those Defendants to comply with paragraphs 102.1 to 102.5 of this order;

102.7. shall, within 12 months of the date of this order, provide to the Plaintiff a written statement from the Managing Director of each of Select, BlueInc Services and IMS setting out:

- a. the number of people who were sold any of the insurance policies referred to in paragraph 102.2 above during the period 1 February



2015 to 21 December 2017 (inclusive) and who were not sent a communication pursuant to paragraph 102.2 and 102.3 of this order by reason of having already been refunded all premiums paid for the relevant insurance policy;

- b. the number of people who were sold any of the insurance policies referred to in paragraph 102.2 above during the period 1 February 2015 to 21 December 2017 (inclusive) and who were sent a communication pursuant to paragraphs 102.2 and 102.3 of this order;
- c. of those people who were sent a communication referred to in paragraph (b) of this order:
  - i. the number of people who contacted the Customer Complaints number;
  - ii. the number of people who received a refund of some or all premiums paid and the total value of those refunds paid, including any interest rate applied;
  - iii. the number of people who retained their insurance policies.

103. It will be sufficient compliance with paragraphs 102.1, 102.2, 102.3 and 102.5 above if:

103.1. it is agreed in writing between Select, BlueInc Services and IMS that one of those parties will perform the obligations contained in orders 102.1, 102.2, 102.3 and 102.5 above; and

103.2. those obligations are in fact so performed.

#### **PROBATION ORDERS**

104. Pursuant to s.12GLA(2)(b) of the ASIC Act, Select, BlueInc Services and IMS are to, at their own expense, establish a compliance, education and training, and internal operations review program (**Compliance Program**) set out in **Annexure D** to these Orders.

105. Within 30 days of the date of these orders, the parties are to confer on a process by which consumer complaints, claims or concerns received by Select, BlueInc Services and/or IMS as a result of the advertising orders in paragraph 102 above are handled and resolved appropriately and promptly and which may include the appointment of an independent claims reviewer.





106. Failing agreement in relation to the process referred to in the preceding order, the parties are to:

106.1. each file proposed orders pursuant to s.12GLA(2)(b) of the ASIC Act; and

106.2. have the matter listed for determination by the Court.

#### **NON-PARTY CONSUMER REDRESS**

107. An order pursuant to s.12GNB of the ASIC Act against Select, BlueInc Services and IMS to redress the loss or damage suffered by that class of persons identified in Schedule 1 to the Concise Statement filed in these proceedings, whose entry into contracts of insurance distributed by Select was procured by unconscionable conduct within the meaning of s.12CB(1) of the ASIC Act and/or coercion within the meaning of s.12DJ(1) of the ASIC Act by Select, BlueInc Services and/or IMS, and whose insurance policies have lapsed or have been cancelled, and who have not received a refund of all premiums paid by the date of these orders.

#### **OTHER**

108. An order that the Defendants pay the Plaintiff's costs of the proceeding.

109. Such further or other orders as the Court considers appropriate.

Date: 9 September 2019

A handwritten signature in blue ink, appearing to read 'Conrad Gray', written over a dotted line.

Conrad Gray

Plaintiff's legal practitioner

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

This application will be heard by the Federal Court of Australia, Level 17, Law Courts Building, 184 Phillip Street, Queens Square, Sydney at \_\_\_\_\_ am/pm  
on \_\_\_\_\_ 2019.

**B. NOTICE TO DEFENDANTS****TO:**

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

'North Tower' Suite 2 Level 11

1-5 Railway Street

CHATSWOOD NSW 2067

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

'North Tower' Suite 2 Level 11

1-5 Railway Street

CHATSWOOD NSW 2067

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

'North Tower' Suite 2 Level 11

1-5 Railway Street

CHATSWOOD NSW 2067

Fourth Defendant – RUSSELL HUGH HOWDEN

32 Treatts Road

LINDFIELD NSW 2070

If you or your legal practitioner do not appear before the Court at the time shown above, the application may be dealt with, and an order made, in your absence. As soon after that time as the business of the Court will allow, any of the following may happen:

- (a) the application may be heard and final relief given;
- (b) directions may be given for the future conduct of the proceeding;
- (c) any interlocutory application may be heard.

Before appearing before the Court, you must file a notice of appearance, in the prescribed form, in the Registry and serve a copy of it on the plaintiff.

*Note* Unless the Court otherwise orders, a defendant that is a corporation must be represented at a hearing by a legal practitioner. It may be represented at a hearing by a director of the corporation only if the Court grants leave.



**C. APPLICATION FOR WINDING UP ON GROUND OF INSOLVENCY**

N/A

**D. FILING**

Date of filing:

.....  
*Registrar*

This originating process is filed by Conrad Gray for the plaintiff.

**E. SERVICE**

The plaintiff's address for service is:

Place: Australian Securities and Investments Commission

Level 5, 100 Market Street

SYDNEY NSW 2000

Email: Conrad.Gray@asic.gov.au

It is intended to serve a copy of this originating process on each defendant.



## **SCHEDULE OF PARTIES**

### **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



## ANNEXURE A – Website Notice

- We broke the law in the way we sold and handled insurance.
- This might mean that you can get your money back.
- For further information, call our dedicated number on [insert] or seek your own advice.

### How this affects you

If you are a customer who:

- bought insurance over the telephone from Let's Insure or FlexiSure between 1 February 2015 and 21 December 2017; or
- had difficulty cancelling your Let's Insure or FlexiSure insurance during that time, and

you think that the person who spoke to you about your Let's Insure/FlexiSure insurance:

- put pressure on you to buy insurance or talked you into buying insurance; or
- sold you insurance that you didn't understand or want; or
- made it difficult for you to cancel your insurance; or
- harassed you to pay your insurance; or
- said things to you that were wrong;

you might be able get your money back or other compensation.

### I think this happened to me – what do I need to do?

If you would like to talk to someone about your Let's Insure/FlexiSure insurance, or whether you can get your money back, you can:

- call our Customer Complaints Handling number on [insert]; or
- speak to your financial advisor or financial counsellor.

### Federal Court action

The Australian Securities and Investments Commission (ASIC), an independent government body, recently took court action against us because of the way we sold Let's Insure/FlexiSure insurance over the phone and made it hard for people to cancel their insurance.

The Federal Court of Australia has found that we<sup>1</sup> breached the *Corporations Act 2001* (Cth) and the *Australian Securities and Investments Act 2001* (Cth) in relation to the sale of Let's Insure and FlexiSure insurance policies between 1 February 2015 to 21 December 2017.

<sup>1</sup> Select AFSL Pty Ltd, BlueInc Services Pty Ltd and Insurance Marketing Services Pty Ltd.



The Court found that, in dealing with 14 consumers, we:

- **engaged in unconscionable conduct** in selling policies of insurance over the telephone, including to Aboriginal consumers who spoke very little English, and in making it difficult for some consumers to cancel their policies of insurance;
- **unduly harassed** some consumers;
- **coerced** some consumers;
- **made false or misleading representations** to some consumers;
- made representations that were misleading, or likely to mislead, to some consumers; and
- **offered a gift that we did not intend to provide** as offered to some consumers.

The Court also found that we<sup>2</sup> **gave and accepted conflicted remuneration** by providing some sales agents who sold Let's Insure and FlexiSure insurance over the phone with benefits in the form of:

- a fully paid cruise to the Gold Coast;
- a Vespa scooter;
- a fully paid trip to Las Vegas; and
- a fully paid trip to Hawaii.

The number of sales made by a sales agent was considered when determining who would receive these benefits. The director of our companies, Russell Howden, was involved in these contraventions.

---

<sup>2</sup> Select AFSL Pty Ltd and BlueInc Services Pty Ltd.





## ANNEXURE B – Letter/Email

[Let's Insure/FlexiSure Letterhead]

Dear [client name]

### You may be able to get your money back

- **We broke the law in the way we sold and handled insurance.**
- **This might mean that you can get your money back.**
- **Call [insert] or speak to your local financial counsellor for help.**

#### How this affects you

If you think that the person who sold you your [Let's Insure/FlexiSure] insurance policy:

- put pressure on you to buy insurance or talked you into buying insurance; or
- sold you insurance that you didn't understand or want; or
- made it difficult for you to cancel your insurance; or
- harassed you to pay your insurance; or
- said things to you that were wrong;

you might be able get your money back or other compensation.

#### I think this happened to me – what do I need to do?

If you would like to talk to someone about your [Let's Insure/FlexiSure] insurance, or whether you can get your money back, you can:

- call our Customer Complaints Handling number on [insert]; or
- speak to your financial advisor or financial counsellor who can help you with money questions.

#### Why are you receiving this letter?

The Federal Court of Australia has told us to write to you about the [Let's Insure/FlexiSure] insurance policy that you were sold over the phone on [insert date].

The Australian Securities and Investments Commission (ASIC), an independent government body, recently took our companies<sup>3</sup> to court because of the way we sold Let's Insure and FlexiSure insurance over the phone and made it hard for people to cancel their insurance.

The Federal Court decided that we broke the law in the way that we sold and handled insurance to 14 customers between 1 February 2015 and 21 December 2017.

<sup>3</sup> Select AFSL Pty Ltd, BlueInc Services Pty Ltd and Insurance Marketing Services Pty Ltd.



When this was happening, we also gave some of our employees overseas holidays and prizes for selling the most insurance and this also broke the law. If you would like more information on how we broke the law, please see: [include link to the Notice published on the Let's Insure's/FlexiSure's website].

Kind regards,

[Let's Insure/FlexiSure]



### **ANNEXURE C – SMS**

The Federal Court decided that we broke the law when we sold Let's Insure/FlexiSure insurance to some people and made it hard for them to cancel it.

You may be able to get your money back.

If you want more information, call us on [insert] or speak to a financial counsellor.

Click this link for more information [include link to the Notice published on the Let's Insure's/FlexiSure's website].



## ANNEXURE D – COMPLIANCE PROGRAM

Select AFSL Pty Ltd (ACN 151 931 618) (**Select**), BlueInc Services Pty Ltd (ACN 109 789 077) and Insurance Marketing Services Pty Ltd (ACN 160 307 979) (together, the **Entities**; each, an **Entity**) shall establish a compliance, education and training, and internal operations review program (**Compliance Program**) that complies with each of the below requirements.

For the purpose of this Annexure D, the reference to 'staff' is a reference to employees, contractors and/or other representatives of the relevant Entity.

### A. General

1. The Entities will pay all costs associated with implementing the Compliance Program, including but not limited to the appointment of the Consultant (defined at paragraph 4 below).

### B. Appointments

2. Within seven (7) days of the date of the order of the Court (**Court Order**), the Entities will appoint a responsible senior manager, with suitable qualifications or experience in corporate compliance, of their business as a Compliance Officer with responsibility for ensuring that the Compliance Program is effectively established, implemented and maintained in accordance with the Court Order (**Compliance Officer**).
3. On the second and third annual anniversary of the Court Order, the Compliance Officer will report to ASIC as to whether:
  - 3.1. the Compliance Officer has taken reasonable steps to ensure that the Entities' policies, procedures and systems for managing the risks identified in the course of the Initial Review and Compliance Review referred to at paragraph 8.1 below and – including those policies, procedures and systems adopted as a result of the recommendations made in the course of the Compliance Review referred to at paragraph 21 below – are appropriate and adequate; and
  - 3.2. nothing has come to the Compliance Officer's attention during the previous 12 months to suggest that the Compliance Program is not appropriate, to the extent reasonably possible, to address the risks set out in paragraph 8.1 below; or



- 3.3. any matters that have come to their attention during the previous 12 months that would indicate that the Compliance Program is not appropriate to ensure that the risks set out in paragraph 8.1 below have been or will be adequately addressed, and what steps the Entities have taken or will take to address those matters (including any relevant timeframes).
4. Within fourteen (14) days of the date of the Court Order, the Entities will engage, jointly and severally, one expert (**Consultant**) who:
- 4.1. has the necessary expertise, experience and operational capacity to perform the role contemplated by the Court Order; and
- 4.2. has had no prior or existing contractual, employment or other commercial relationship with the Entities, their related bodies corporate and their officers at the time of the appointment; and
- 4.3. will at all material times be capable of exercising objective and impartial judgement,
- whose:
- 4.4. terms of appointment are to be based on the matters set out in paragraphs 7 and 23 below; and
- 4.5. whose appointment and terms of appointment are to be approved by ASIC in writing, such approval not to be unreasonably withheld.
5. If one Consultant cannot address all of the risks set out in paragraph 8.1 below, two or more Consultants may be engaged.
6. If the Consultant becomes unable to proceed with the engagement as a result of physical impediment, conflict of interest or becoming aware of information that adversely affects their ability to exercise objective and impartial judgment, the Consultant must notify each of the Entities and ASIC of the same, and a different Consultant may be engaged in accordance with the process set out in paragraph 4 above within 14 days of the first Consultant's notice.

### **C. Initial Steps and Review**

#### **a. Initial Review**

7. The Entities will instruct the Consultant to conduct an initial review and risk assessment in accordance with paragraphs 8 to 9 below (**Initial Review**),



- including to prepare the Initial Review Report (defined in paragraph 9 below) to be completed within three (3) months of the date of the Court Order (or such further time as the Consultant requires, with any extension of time to be approved by ASIC, such approval not to be unreasonably withheld).
8. The Initial Review must, at a minimum:
    - 8.1. identify areas where each Entity is at risk of breaching:
      - 8.1.1. Pt. 2, Div. 2, Subdivisions C and D of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**); and
      - 8.1.2. Ch.7, Pt.7.6, Division 3 and Pt. 7.7A, Division 4 of the *Corporations Act 2001* (Cth) (**Corporations Act**);
    - 8.2. assess the likelihood of these risks occurring;
    - 8.3. identify where there may be gaps in each Entity's existing policies, procedures and systems for managing these risks, including, but not limited to the Entities' policies, procedures and systems around induction and training; and
    - 8.4. provide recommendations for action.
  9. The Consultant will prepare a written report (**Initial Review Report**) setting out:
    - 9.1. a description of the methodology, parameters, limitations, qualifications and assumptions applicable to the Initial Review, including evidence gathered and examined;
    - 9.2. the findings of the Initial Review, including the reasons for each of the Consultant's opinions; and
    - 9.3. recommendations made as a consequence of the Initial Review.
  10. Select, on behalf of the Entities, will provide a copy of the Initial Review Report to ASIC within five (5) days of receiving it from the Consultant.
  11. Each Entity will implement promptly and with due diligence any recommendations made by the Consultant as a result of the Initial Review, within 30 days of receiving the Initial Review Report (or such further time as the Entity requires, with any extension of time to be approved by ASIC, such approval not to be unreasonably withheld).



### **b. Compliance Policy**

12. Within 30 days of the issuance of the Initial Review Report, each Entity will issue a compliance policy (**Compliance Policy**) that:
  - 12.1. is written in plain language;
  - 12.2. contains a statement of commitment to compliance with the Corporations Act and the ASIC Act, including in particular to ensuring appropriate sales and retention conduct and not providing conflicted remuneration to staff;
  - 12.3. contains a strategic outline of how the commitment at paragraph 12.2 above will be realised within the Entity;
  - 12.4. addresses each of the recommendations made by the Consultant in the Initial Review and what steps it has taken or is taking to implement the recommendations;
  - 12.5. contains a requirement for all staff to report any Compliance Program related issues, including any concerns regarding sales and retention conduct and conflicted remuneration to the Compliance Officer; and
  - 12.6. refers staff to its Complaints Handling System (as referred to in paragraph 14 below).
13. Each Entity will provide a copy of their Compliance Policy to ASIC and the Entity's staff within five (5) days of issuing it.

### **c. Complaints Handling System**

14. Within four (4) months of the date of the Court Order, each Entity will ensure that it has a complaints handling system:
  - 14.1. that addresses each of the recommendations made by the Consultant in the Initial Review to the extent those recommendations relate to complaints handling;
  - 14.2. that at a minimum, is capable of identifying, storing and responding to consumer complaints; and
  - 14.3. of which staff and consumers are made aware.
15. Each Entity will provide a copy of any policies and procedures regarding the complaints handling system to ASIC and the Entity's staff within five (5) days of issuing them.





#### **d. Education and training**

16. Each Entity will introduce regular (at least once a year) practical training for all staff of each Entity whose duties could result in them being concerned with conduct that may contravene Ch.7, Pt.7.6, Division 3 and Pt. 7.7A, Division 4 of the Corporations Act and Pt. 2, Div. 2, Subdivisions C and D of the ASIC Act.
17. Each Entity must ensure that its training is:
  - 17.1. designed and conducted by a suitably qualified compliance professional (**Compliance Trainer**) with expertise in compliance with the Corporations Act and ASIC Act; and
  - 17.2. addresses any matters, and/or adopts recommendations made in the Initial Review Report by the Consultant.
18. In relation to training scheduled in the three (3) year period following the date of the Court Order, each Entity must provide to its Compliance Trainer, for the purposes of conducting training for the Entity's staff, a copy of:
  - 18.1. the Court Order;
  - 18.2. the Compliance Policy of each Entity;
  - 18.3. any policies and procedures regarding the complaints handling system; and
  - 18.4. all reports prepared by the Consultant as at the date the training is scheduled.
19. Each Entity will ensure that awareness of the Compliance Policy and complaints handling system form part of the induction of all new staff, including directors, officers, employees, consultants, contractors and other representatives of the Entity.

### **D. Compliance Review and Recommendations**

#### **a. Compliance Review**

20. Within the period of four (4) to five (5) months of receiving the Initial Review Report from the Consultant, each Entity will instruct the Consultant to conduct a further review of the Compliance Program (**Compliance Review**) to be carried out in accordance with paragraphs 21 to 22 below, including to prepare the Compliance Review Report (defined in paragraph 22 below), to be completed within 12 months of the date of the Court Order (or such further time as the



Consultant requires, with any extension of time to be approved by ASIC, such approval not to be unreasonably withheld).

21. The Compliance Review must, at a minimum:
  - 21.1. review the extent to which each Entity's Compliance Program adequately addresses the matters identified and recommendations made in the Initial Review or any subsequent review, including:
    - 21.1.1. the adequacy of each Entity's sales and retention conduct, including with respect to identifying and dealing with potentially vulnerable consumers;
    - 21.1.2. the adequacy of each Entity's remuneration practices as relevant to the prohibition on conflicted remuneration;
    - 21.1.3. the adequacy and effectiveness of each Entity's complaints handling system; and
    - 21.1.4. the adequacy and effectiveness of each Entity's policies, procedures, scripts and staff training;
  - 21.2. make recommendations for rectifying any deficiencies in paragraphs 21.1.1 to 21.1.4 above that the Consultant considers are reasonably necessary to ensure that each Entity has the required policies, procedures and training in place to ensure effective on-going compliance with Ch.7, Pt.7.6, Division 3 and Pt. 7.7A, Division 4 of the Corporations Act and Pt. 2, Div. 2, Subdivisions C and D of the ASIC Act.
22. The Consultant will prepare a written report (**Compliance Review Report**) setting out:
  - 22.1. a description of the methodology, parameters, limitations, qualifications and assumptions applicable to the Compliance Review, including evidence gathered and examined;
  - 22.2. the findings of the Compliance Review, including the reasons for each of the Consultant's opinions; and
  - 22.3. recommendations made as a consequence of the Compliance Review.
23. Select, on behalf of the Entities, will provide a copy of the Compliance Review Report to ASIC within five (5) days of receiving it from the Consultant.



### **b. Recommendations**

24. Each Entity shall implement promptly and with due diligence any recommendations made by the Consultant as a result of the Compliance Review within 30 days of receiving the Compliance Review Report (or such further time as the Entity requires, with any extension of time to be approved by ASIC, such approval not to be unreasonably withheld).
25. Each Entity shall, in the event that the Compliance Review Report identifies any recommendations or actions that have not been implemented by that Entity, provide ASIC with a written plan (**Remedial Action Plan**) setting out the actions the Entity proposes to take to ensure that those recommendations and actions are implemented.
26. Each Entity will provide its Remedial Action Plan to ASIC within 14 days of the Compliance Review Report being provided to ASIC.
27. Each Entity will implement promptly and with due diligence any Remedial Action Plan within the 30 days referred to in paragraph 24 above, except that if ASIC requires any reasonable modifications to any Remedial Action Plan, then the Entity will implement the Remedial Action Plan as so modified.

### **E. Reasonable assistance to the Consultant**

28. Each Entity shall:
  - 28.1. permit the Consultant access to its books and to interview current employees to the extent that it is reasonable having regard to the requirements of this Court Order;
  - 28.2. give the Consultant any information or explanation reasonably requested of any matter connected with the Compliance Program;
  - 28.3. provide the Consultant access to all customer data required to enable it to fulfil its obligations under this Court Order and the Compliance Program; and
  - 28.4. otherwise give all reasonable assistance to the Consultant to enable the Consultant to carry out the terms of their engagement and to produce the Initial Review Report and the Compliance Review Report.



## **F. Other**

29. If requested by ASIC, each Entity will, at their own expense and within a reasonable period, provide ASIC with copies of documents and information in respect of matters that are the subject of the Compliance Program.
30. Each Entity acknowledges that ASIC may from time to time publicly refer to the content of any of the Initial Review Report, the Entity's Compliance Policy, the Compliance Review Report, the Entity's Remedial Action Plan and/or the Compliance Program and may make public a summary of that material or a statement that refers to the content of that material.
31. Each Entity will notify ASIC as soon as reasonably practicable, and in any event within ten (10) days of becoming aware, of any failure by any of the Entities to comply with the terms of the Court Order.