

NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 17/03/2020 2:24:39 PM AEDT and has been accepted for filing under the Court's Rules. Details of filing follow and important additional information about these are set out below.

Details of Filing

Document Lodged: Concise Statement
File Number: VID183/2020
File Title: AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION v
COLONIAL FIRST STATE INVESTMENTS LIMITED
Registry: VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



Dated: 17/03/2020 2:30:45 PM AEDT

A handwritten signature in blue ink that reads 'Sia Lagos'.

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 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.



Form NCF1

Concise Statement

No. of 2020

Federal Court of Australia
District Registry: Victoria
Division: General

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION
Plaintiff

COLONIAL FIRST STATE INVESTMENTS LIMITED ACN 002 348 352 in its own
capacity and as trustee for the Colonial First State FirstChoice Superannuation
Trust
Defendant

A. IMPORTANT FACTS GIVING RISE TO THE CLAIM

- 1. Colonial First State Investments Limited (CFSIL) is:
1.1. a subsidiary of Commonwealth Bank Limited;
1.2. the trustee of the Colonial First State FirstChoice Superannuation Trust
(FirstChoice Fund); and
1.3. the trustee of the Commonwealth Essential Super fund (CES Fund).
2. Products offered by the FirstChoice Fund included the "FirstChoice Personal Super"
and "FirstChoice Employer Super" products. The CES Fund offers a product, the
Commonwealth Essential Super product (CFSIL's MySuper Product), which APRA
has authorised, under s 29T of the Superannuation Industry (Supervision) Act 1993
(Cth) (SIS Act), to be offered as a "MySuper product" (as defined in the SIS Act).

CFSIL's breach of s 29WA of the SIS Act

- 3. From 1 January 2014, s 29WA of the SIS Act came into operation. That section
provided, in effect, that all contributions for which a trustee has not directly received
a valid investment direction from the member must be paid into a MySuper product.
4. By 14 February 2014, a CFSIL employee had identified that CFSIL was in breach of
s 29WA of the SIS Act, and this was reported to the board of directors of CFSIL. On
19 March 2014, CFSIL notified APRA that it was in breach of s 29WA of the SIS Act
with respect to approximately 13,000 members of the FirstChoice Fund.

Filed on behalf of (name & role of party) The Plaintiff
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(include state and postcode)

5. By April 2014, CFSIL had breached s 29WA with respect to 12,911 members of the FirstChoice Fund (**Affected Members**), because it did not have a valid investment direction from each member, and so their respective contributions were required to have been, from 1 January 2014, paid into CFSIL's MySuper product.

Letter sent to 12,911 members of the FirstChoice Fund affected by CFSIL's breach of s 29WA of the SIS Act

6. On 22 April 2014, in a purported effort to remedy its breach of s 29WA of the SIS Act, CFSIL sent a letter to the 12,911 Affected Members. Among other things, the letter stated:

Investment selection – your urgent response is required

...

There has been a recent change to superannuation legislation which requires us to hold an investment direction from you in relation to future contributions paid into FirstChoice Personal Super. If a direction is not held by us, we are unable to accept contributions into your account. For this reason, we would like to confirm the investment option(s) into which you would like your contributions to be paid.

...

What you need to do

Simply sign and date the form enclosed confirming your investment selection and send it back to us using the reply paid envelope provided. Alternatively, you can call us on the number below to confirm your investment selection.

If you want to change the investment option(s), please refer to the Product Disclosure Statement available on our website or discuss it with your financial adviser. Once you have chosen the investment option(s) you can advise us by the phone. Alternatively, if you have transaction access to your account, you can make the change online by logging on to FirstNet....

What will happen if you do not reply

It is important that we receive your direction as soon as possible. If we do not receive your direction by 16 May 2014, we will commence the process to transfer your account into a MySuper product. This may result in transaction costs to you

...

7. In fact, under the applicable superannuation legislation, no response or action was required on the part of each of the Affected Member for he or she to continue to pay his or her superannuation contributions to CFSIL. CFSIL could continue to receive superannuation contributions and pay them into CFSIL's MySuper product in the CES Fund.
8. Further, the "transaction costs" referred to in the letter (in the context of transfer to CFSIL's MySuper product only) were limited to the "buy/sell spreads" incurred when transferring members between products. These costs would have also been incurred if the member chose to change investment options within the FirstChoice Fund. The "buy/sell" spreads for FirstChoice Personal Super were 0% to .65%, depending on the investment option. The "buy/sell" spreads for CFSIL's MySuper

product were 0 to .015%, depending on the investment option. There were no costs incurred in establishing an account in the MySuper product.

Call program undertaken by CFSIL with respect to CFSIL's breach of s 29WA of the SIS Act

9. From on or around 18 March 2014 and until May 2016, CFSIL conducted a call program to attempt to contact all members affected by a breach by CFSIL of s 29WA of the *SIS Act*, again in a purported attempt to remedy its breach.
10. Of the 12,911 Affected Members, 8,452 were called by CFSIL or Salmat (who was engaged by CFSIL), and of these 8,452, 3,285 Affected Members were called by CFSIL employees.
11. The CFSIL Customer Guidance Manager provided the CFSIL employees who conducted the calls with a script on 18 March 2014, which was revised and re-circulated on 21 March 2014. Both of these scripts contained words to the effect of "*Recent changes in legislation require us to confirm you are comfortable/satisfied/happy with the investment option your contributions are currently being paid into*". The scripts failed to disclose that the member had the option of doing nothing, and having his or her contributions transferred to CFSIL's MySuper product. In fact, the changes to the *SIS Act* did not impose on CFSIL any requirement to confirm with each member that he or she were comfortable, satisfied and or happy with the investment option his or her contributions were currently being paid into.
12. CFSIL undertook a review of audio recordings with respect to these calls to Affected Members, as a result of a notice ASIC issued to it dated 20 August 2019 under s 33 of the *Australian Securities and Investments Act 2001 (Cth) (ASIC Act)*. Following this review, by letter dated 17 September 2019, CFSIL notified ASIC that it had breached provisions that required reporting under s 912D of the *Corporations Act 2001 (Cth) (Corporations Act)*, in relation to CFSIL's conduct during calls to Affected Members.
13. Set out in Annexure A is a summary of 36 calls conducted by CFSIL staff, with respect to 36 Affected Members (**Subset of 29WA Calls**). In each of these calls, as described in Annexure A, the CFSIL staff member, in effect:
 - 13.1. said words to the effect of the script language described at paragraph 11 above;
 - 13.2. expressly or impliedly represented that legislative changes required CFSIL to contact each member, when that was not the case;
 - 13.3. expressly or impliedly represented that the member was required to take action in order for the member's superannuation contributions to continue to be received by CFSIL, when that was not the case;
 - 13.4. failed to disclose to the member his or her option of doing nothing, in which case his or her contributions transferred to CFSIL's MySuper

product, in circumstances where there was a reasonable expectation that the member's option of doing nothing would have been disclosed to the member;

- 13.5. expressly or impliedly made a recommendation or statement of opinion that the member should continue to have his or her superannuation contributions invested with FirstChoice Personal Super, which was intended to influence the member in making a decision in relation to his or her superannuation, or could reasonably be regarded as being intended to have such an influence; and
- 13.6. did not provide a general advice warning: that is, did not state that the information provided was of a general nature, and did not take into account the member's specific needs or circumstances.

Effect of the letter and the call program

14. As a result of CFSIL's communications with 12,911 members in a purported attempt to remedy its breach of s 29WA of the *SIS Act*, 8,605 of the Affected Members provided an investment direction, and as a consequence, CFSIL retained them in the FirstChoice Personal Super product rather than them moving to CFSIL's MySuper product.

CFSIL's call campaign with respect to members with "accrued default amounts"

15. In addition to its call program to "remedy" its breach of s 29WA of the *SIS Act*, CFSIL also conducted a call program as part of its transition plan (required under *Prudential Standard SPS 410 MySuper Transition*, issued by APRA on 11 December 2012), which included processes to communicate with members in respect of which it held an "accrued default amount" (as defined in s 20B of the *SIS Act*) (**ADA**) about the movement of their ADA to a MySuper product.
16. This call program, with respect to FirstChoice Personal Super products with ADAs, was conducted from around April 2014 until August 2016. Set out in Annexure B is a summary of 10 calls conducted by CFSIL staff, during the course of this call program, with respect to 10 members (**Subset of ADA Calls**). In each of these calls, as described in Annexure B, the CFSIL staff member, in effect:
 - 16.1. expressly or impliedly represented that legislative changes required CFSIL to contact each member, when that was not the case;
 - 16.2. expressly or impliedly represented that the member was required to take action in order for the member's superannuation contributions to continue to be received by CFSIL, when that was not the case;
 - 16.3. failed to disclose to the member his or her option of doing nothing, and having his or her contributions transferred to CFSIL's MySuper product, in circumstances where there was a reasonable expectation that the member's option of doing nothing would have been disclosed to the member;

- 16.4. expressly or impliedly made a recommendation or statement of opinion that the member should continue to have his or her superannuation contributions invested with FirstChoice Personal Super, which was intended to influence the member in making a decision in relation to his or her superannuation, or could reasonably be regarded as being intended to have such an influence; and
 - 16.5. did not provide a general advice warning: that is, did not state that the information provided was of a general nature, and did not take into account the member's specific needs or circumstances.
17. As a result of the CFSIL employees' conduct during the call, the member provided an investment direction and as a consequence CFSIL retained them in the FirstChoice Personal Super product rather than them moving to CFSIL's MySuper product.

B. RELIEF SOUGHT FROM THE COURT

18. ASIC seeks the relief set out in the accompanying originating application.

C. PRIMARY LEGAL GROUNDS FOR THE RELIEF SOUGHT

19. In the letters sent to 12,911 Affected Members, CFSIL expressly or impliedly represented, in trade or commerce in relation to a financial product and/or financial services, that:
 - 19.1. the member was required to take action (in the form of providing an investment direction) in order for CFSIL to continue to receive that member's superannuation contributions, when that was not the case;
 - 19.2. changes to the superannuation legislation required CFSIL to hold investment directions from its members, when that was not the case; and/or
 - 19.3. if the member moved to CFSIL's MySuper product, the member would incur more costs than he or she would if he or she moved to a different product in the FirstChoice Fund.
20. In each of the Subset of 29WA Calls and Subset of ADA Calls, CFSIL expressly or impliedly represented, in trade or commerce in relation to a financial product and/or financial services: that legislative changes required CFSIL to contact each member, when that was not the case; that the member was required to take action (in the form of confirming they were happy or comfortable with their current superannuation product) in order for CFSIL to continue to receive that member's superannuation contributions, when that was not the case; and failed to disclose to the member their option of doing nothing.
21. The conduct of CFSIL's employees was, by reason of s 12GH(2) of the ASIC Act and/or s 769B(4) of the Corporations Act, engaged in also by CFSIL.

22. By its conduct as identified in paragraphs 13, 16 and 19 to 21 above, CFSIL engaged in false or misleading conduct, misleading or deceptive conduct or conduct that was likely to mislead or deceive, in contravention of ss 12DA, 12DB(1)(h) and (i) of the *ASIC Act* and/or s 1041H of the *Corporations Act*.
23. Further and/or alternatively, in each of the Subset of 29WA Calls and Subset of ADA Calls:
 - 23.1. the conduct constituted financial product advice within the meaning of s 766B(1) of the *Corporations Act*, by a representative of CFSIL within the meaning of s 910A of the *Corporations Act*, and constituted the provision of a financial service in relation to a financial product, within the meaning of s 12BAB of the *ASIC Act*;
 - 23.2. the conduct contained representations in relation to the characteristics and/or suitability for purpose of the financial services, which was liable to mislead, in contravention of s 12DF of the *ASIC Act*; and
 - 23.3. in contravention of s 949A of the *Corporations Act*, CFSIL failed to warn the member that the advice being provided had been prepared without taking account of the client's objectives, financial situation or needs, and because of that, the client should, before acting on the advice, consider the appropriateness of the advice.
24. In the premises referred to above, CFSIL has failed to do all things necessary to ensure its services are provided efficiently, honestly and fairly, in contravention of s 912A(1)(a) of the *Corporations Act*, and has failed to comply with financial services laws, in contravention of s 912A(1)(c) of the *Corporations Act*.

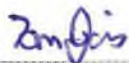
Dated: 17 March 2020

This concise statement was prepared by counsel, S R Senathirajah and G Coleman.

Certificate of lawyer

I Thomas Litchfield Jarvis certify to the Court that, in relation to the concise statement filed on behalf of the Applicant, the factual and legal material available to me at present provides a proper basis for each allegation in the document.

Dated: 17 March 2020

A handwritten signature in blue ink, appearing to read 'Tom Jarvis', is positioned above a horizontal line.

Signed by Tom Jarvis
Lawyer for the Plaintiff

Annexure A – Summary of Subset of 29WA Calls

1. On 18 March 2014, during a call with FirstChoice Fund member Person 1, CFSIL employee Andrew [REDACTED] said words to the following effect (among others) [Audio ID: CBA.5970.0007.0189]:

CFSIL: *The reason for my call ... is related to a recent industry change whereby – remember your account was set up by an employer?*

Member: *Just say that last bit again?*

CFSIL: *You know when your account was set up by one of your employers – well what's happened is since then when you joined that employer, they picked the automatic investment option that your money went into. Since then, obviously, the money that has been going into your account, which it still is – obviously has been going into the same option. Look – basically, all we need to do for you today, all we need to do is just a confirmation from you that you are happy to have the option that you are currently going into – you are quite happy for those to still keep going to that option. You're happy to do that?*

Member: *Well, I understand it okay, but I have been discussing recently whether that is the correct thing for us, and we thought we should actually contact someone at Colonial First State to maybe discuss if we should be changing that.*

CFSIL: *I see. Well, what we can do is, for the moment, I can just leave a note on your profile that you are happy to leave them for the moment, but you can give us a call at anytime ... and you can switch over the phone or you can send in writing. It's up to you.*

Member: *Okay, yeah that's fine.*

CFSIL: *... Excellent, fantastic, so I will just confirm with you that you are happy for me to leave a note on your profile that for this present moment you are happy for your investment option that your funds have been going to, to remain as such until you otherwise decide.*

2. On 19 March 2014, during a call with FirstChoice Fund member Person 2, CFSIL employee Sarah [REDACTED] said words to the following effect (among others) [Audio ID: CBA.5970.0007.0350]:

CFSIL: *The main reason why I've called today is that there's been some legislative changes that affect your account in some way and I just want to have a chat, it's more a courtesy call, just about your current investment selection, that's where your employer is paying you your*

super. So are you free for a moment? It's not going to take very long at all, just to have a quick chat about it.

Member: *Sure.*

CFSIL: *The account I have in front of me is your FirstChoice Super. ... Do you remember having an employer account, one of those corporate accounts?*

Member: *Yep.*

CFSIL: *So what happens, when you have that account and you transferred it over to this one, we just transferred over the same investment, and all we're pretty much asking is with your investment selections, are you currently happy with them, do you look into them often, or not really?*

Member: *Yeah, I do, I've got a – I've got someone that we use, that I usually go and see, I haven't seen him for about a year or so, but yes, I do use him.*

CFSIL: *Okay, fantastic. Well, pretty much all I'm asking is – I'm going to leave your investment selections as is then, and I can make a note on your file on your account on your behalf, just to say that you're comfortable with the current options. Are you happy with all that? Yeah? Lovely.*

Member: *Sorry, why are you ringing? You said you were going to tell me about changes. But you haven't told me anything about changes – you've asked me.*

CFSIL: *Fair enough. The recent legislative changes were that with your employer accounts, you know how you transferred it over from the other account to this one? Under super nomination. So what that was, in 2005 the Super Nomination Act, it states that you're allowed to choose exactly where your investments are. So when we transferred it over I guess it just got transferred over as to what was.*

Member: *Oh right, right, got you.*

CFSIL: *Just to say that you're happy with what you had, even though you had them before. Is that okay?*

Member: *Okay.*

CFSIL: *Make a little more sense? I know it's a bit ... with the nominations came out last year, end of last year, these calls can take months to come through, for us to get the data from APRA, so that's where we*

got the data from now. So, I know it's a bit odd.... But look I guess if you are a bit wary about it, you can always call us back and things like that. But you should get a letter in the mail about it soon anyway.

3. On 20 March 2014, during a call with FirstChoice Fund member Person 3, CFSIL employee Martin [REDACTED] said words to the following effect (among others) [Audio ID: CBA.5970.0008.0795]:

CFSIL: *I'm calling you in regards to your current employer contributions and which option they are being deposited into. Um, due to recent changes in legislation, require us to confirm that you're comfortable with your current investment selection.*

Member: *Um – I think so.*

CFSIL: *Good answer. All right, so I'm happy to leave your investment selection as is, and I'm going to make a note on your account on your behalf that you're comfortable with that current option. Would that be fair?*

Member: *Yeah, that'd be good. I haven't looked at it or anything, so – just whatever [indistinct] with it at the beginning.*

CFSIL: *You're not the only one, so don't feel bad. Everyone does that, including myself. We go, oh, it's just super. So what I've done is that I've put that on your account and that'll be updated.*

4. On 20 March 2014, during a call with FirstChoice Fund member Person 4, CFSIL employee Sarah [REDACTED] said words to the following effect (among others) [Audio ID: CBA.5970.0007.0351]:

CFSIL: *Now the reason for my odd call is just in regards to your super account that you have with us, the one where your current employer is paying your contributions. ... So look the main reason I guess for motivation behind our calls today is we're calling all of our clients that had an old employer account and transferred over to the current account. It's just because of the new legislation and I guess more of a courtesy call. ... I just want to do a quick security check ... and I'll go through your account and I'll tell you where your money's invested and I just want to have a chat with you to see if you're happy with where your money is sitting at the moment. Now the reason I guess we're doing this is because like I said the legislation came out – a few years ago now, but – it's come out of the water now that we just want to make sure you're happy with the investments you have, because previously your employer chose them, not you, that's why we want to ask.*

...

You've got your money in First Choice Growth, do you look at your Super often or not really?

Member: *No not really.*

CFSIL: *Look with First Choice Growth, just need to pretty much confirm I'm going to leave the investment selection as it is and going to make a note on your file and on your account all on your behalf just to say that you're comfortable with that current option. Is that right?*

Member: *Yep.*

5. On 24 March 2014, during a call with FirstChoice Fund member Person 5, CFSIL employee Michael [REDACTED] said words to the following effect (among others) [Audio ID: CBA.5970.0170.0138]:

CFSIL: *So, there's been a recent change in legislation that's required us to confirm that you're comfortable for us to continue to deposit your employer contributions into the investment option you're currently in. ... When you left that employer, we just moved you to a personal super account ... and kept you in the same option. Now, the way that the regulator is actually looking upon that is that it was the employer that chose that on your behalf and you didn't get an active choice in the matter. So, what we're calling up now to check is that, a, you are comfortable with your investment options to continue – your investment deposits to continue – to go in there, and secondly, also to make you aware that you actually do have a choice in – in option. There's like, 120 different ones you can chose to invest in. So that was sort of the purpose of my call.. are you comfortable for it to go, continue to go into the current option that it's in?*

Member: *Well, how do I know what the option is that it's going into?*

CFSIL: *Yeah. Yeah. Definitely. Yes. That's no problem. ... [discussion of member's current investment option, level of risk in current option] ... So, just back onto what I mentioned at the very start of the conversation there – in the interim, let's say for example if next week your employer does put \$200 into your account, right, for your super, are you comfortable that even just for the interim, for the time being, that your money continues to go into the options that we have here. So, we can sort of tick you off the list to say you're consenting to...*

Member: *Yes, that's fine.*

CFSIL: *So I'll leave your investment selection as it is, and I'll make a note on your account on your behalf that you're comfortable with the current option.*

Member: *Yeah.*

6. On 27 March 2014, during a call with FirstChoice Fund member Person 6, CFSIL employee Greg ██████ said words to the following effect (among others) [Audio ID: CBA.5970.0170.0184]:

CFSIL: *Now, I was just giving you a call because last year the regulator that looks after the superannuation and what have you, changed the legislation regarding matters where superannuation was transferred from an employer fund to a personal superannuation fund. ... With the change of legislation that's occurred last year, what they want us to do is contact our clients where a change like that took place, to check with you to make sure that you're comfortable with your investment selection.*

Member: *Wow.*

CFSIL: *Yeah. So – that's the question. Are you comfortable with your existing investment selection?*

Member: *Well yeah, I suppose so.*

7. On 27 March 2014, during a call with FirstChoice Fund member Person 7, CFSIL employee Greg ██████ said words to the following effect (among others) [Audio ID: CBA.5970.0170.0191]:

CFSIL: *Now, last year the regulator has changed legislation and has asked that clients, where that happened, that we contact them to see if you're comfortable with your existing investment selection, and where your employer contributions are going. So, just – that's the reason for the call, is to see if you are comfortable with the investment selection that you have on your account.*

Member: *Okay. ...*

CFSIL: *.... So you're in FirstChoice and one of the benefits of FirstChoice is that you have a very large number of investment choices. There's over 110 in total. But ourselves being the fund managers, we can't give you investment advice as to, you know, what would be suitable for you in the circumstances... all we can do is suggest you have a look at our website where all the different investment options are listed...*

Member: *Alright. Well, I may have a review then and are you able to sort of come back in a week or something like that?*

CFSIL: *Okay. So, for the present time, are you comfortable with your investment selection?*

Member: *Yeah, for now.*

CFSIL: *Okay. Alright. So I'll just update your account. So, on your behalf I'll put a notation on your account, on your behalf to say that you're comfortable with your investment options for the present time...*

8. On 27 March 2014, during a call with FirstChoice Fund member Person 8, CFSIL employee Yasser [REDACTED] said words to the following effect (among others) [Audio ID: CBA.5970.0170.0201]:

CFSIL: *Now, the only reason we're calling today is just recent legislation changes. It means we basically have to confirm if you're happy with the current investment option you're in. ... So the legislators have been onto us, saying at the time we should have given you an option of investments, but unfortunately that wasn't the case. So, what we can do to kind of fix that up is give you a call now just to kind of touch base and make sure you are kind of happy to keep things as they are, because I won't be changing anything on your superannuation account at all.*

Member: *Yeah. Well, as a retiree, is there better options for me or is that the best performing?*

CFSIL: *You're in a moderate option. ... Kind of general kind of consensus is the closer you are to retirement, the more conservative the option is because you are more likely to access your funds. ... Can I note that on your account? Are you happy to leave things as they are?*

Member: *Yeah. If you think that's the best option, there's no better option?*

CFSIL: *I mean – what I can do – I mean, as I said, all I'm doing is just confirming things as they are. But, I can send you the list of options we offer...*

9. On 17 April 2014, during a call with FirstChoice Fund member Person 9, CFSIL employee Martin [REDACTED] said words to the following effect (among others) [Audio ID: CBA.5970.0007.0290]:

CFSIL: *Your adviser gave me a call just before just saying to give you a bell just about this new legislative change, that I just needed to give you a quick run through just to tick you off the list. Would that be all right? ... Now, recent changes in legislation require us to confirm that you're comfortable with your employer contributions, so that if your employer paid some money into your account, to continue to go into those same options that they're going into at the moment. So that's essentially the purpose of our call...*

Member: *Yeah... Everything's fine...*

CFSIL: *So I can mark you off the list there if you don't mind... So what I'll do is I'll leave a note on your account on your behalf that you're comfortable with your current investment selection*

10. On 21 April 2014, during a call with FirstChoice Fund member Person 10, CFSIL employee Ben [REDACTED] said words to the following effect (among others) [Audio ID: CBA.5970.0007.0197]:

CFSIL: *The reason for my call today was just in regards to your superannuation account that you hold with us. It's quite an important call but shouldn't take longer than a couple of minutes... So just to confirm, the reason for my call: there's been a legislative change which has required us to get in contact with our clients, just to ensure they're happy with how their super is currently being invested and managed here at Colonial First State.*

... So your current account balance is \$... This was last paid as at 19th of April this year and is currently invested in our Colonial First State diversified option. Now in terms of the account – are you happy to leave it as is for now?

Member: *Yeah...*

11. On 28 April 2014, during a call with FirstChoice Fund member Person 11, CFSIL employee Martin [REDACTED] said words to the following effect (among others) [Audio ID: CBA.5970.0007.0203]:

CFSIL: *Now recent changes in legislation require us to confirm with members like yourself that you're comfortable for your employer contributions to continue to go into those options, because the way the regulator's looking at it, is that it was that former employer of yours that made that choice on your behalf, it wasn't yourself. So we just want to check, let's say for example if an employer makes a deposit into your account in about a week or day or month's time, are you comfortable for that money to continue to go into the same investment options of growth or high growth?*

Member: *Well is that the best option or –*

CFSIL: *Well there's 125 different options that you can choose from and it really depends about how much risk you're looking to take on. For example the one you're in, high growth has performed at 15% over the last one year and growth has performed at 12% over the last one year. So obviously past performance doesn't mean it's going to perform like that in the past, in the future sorry, but it does give you an idea that that person, that manager has been able to perform well and get those levels of returns previously. So at least that is something to consider there.*

Member: *Ok, so basically what you're saying maybe I should take a smaller percentage on the growth and a higher percentage on the high growth?*

CFSIL: *No, I'm not saying that at all. Unfortunately I'm not an adviser so I can't tell you what to do with that, I'm just giving you the facts about how they've performed and things like that. If you're looking at maybe moving around the options, which lots of people do do, and it is a valid thing to have a look at, I can send you a link out to our website and it's got a list of all options and also how they've performed ... So what I'll do is I'll send you a link to the public website but in the interim so we can accept contributions, if for example your employer made a contribution to you in the next week or so, for the time being until you've had a read and got back to us, are you comfortable to those two options as it is now?*

Member: *Yep.*

CFSIL: *Beautiful...*

12. On 1 May 2014, during a call with FirstChoice Fund member Person 12, CFSIL employee Violet [REDACTED] said words to the following effect (among others) [Audio ID: CBA.5970.0007.1266]:

Member: *Hey I'm just ringing up about a letter that you sent out me about my contribution investment direction. You want me to sign it and send it back to ya?*

CFSIL: *Well, if you are content with it all, what we can do is I can take your confirmation over the phone and that way you don't have to send it back to us. Would that be easier? Are you comfortable with that investment selection?*

Member: *Looks pretty good to me – you tell me.*

CFSIL: *Unfortunately I'm not a financial adviser. I can tell you what your account balance is.. ... at the end of the day superannuation is a long term investment so it's hard to say within a couple of months or just 1 or 2 years the growth because we'll greatly see a return within 5 years or more. Does that make sense?*

Member: *Yeah well I know the last 5 years have been pretty sad, it's gone backwards. It did go backwards. Well I've got mine here from 2012 and that went down to 93. In December actually in June 2012 it was 83. So it's sort of kicked up a bit in the last 2 years.*

CFSIL: *That's not bad.*

Member: *Prior to that it was getting a hammering. Alright well I'll leave it as it is.*

CFSIL: *Okay. So I'll just confirm with you, you're leaving your investment selection as it is.*

Member: *Mmm-hmm.*

13. On 1 May 2014, during a call with FirstChoice Fund member Person 13, CFSIL employee Mike ██████ said words to the following effect (among others) [Audio ID: CBA.5970.0007.0580]:

CFSIL: *Basically, what the legislation is saying and what the super regulator is saying is that you didn't really choose your own investment option, it was done as a default set up by your employer. So that's really the fact of the letter, just to let you know that, obviously, within the product you're in, you can choose any investment option you want. We've got 120 different investment options for the product you're in. So, just because the employer actually set up the FirstChoice moderate one ... doesn't meant that you have to stay in that option...*

[further discussion of FirstChoice products]

Member: *Yeah. Okay. All right. Well, if you could send me out some more information – when do I have to have this back? 16th May. All right. So I've got another couple weeks to have a look at this.*

CFSIL: *Well, if you like, I can – I can certainly put a note on your account that we've had the conversation, and you wouldn't need to come back to us on that letter. If you wanted to change your investment option, you could certainly come back to us at any time. But, just as far as the legislation's concerned, if you like, I'll just put a note on your account that, obviously, you're aware that you can change your option at any time. And that basically covers off that letter as well.*

Member: *Yeah. Okay, so until I make any changes, it'll stay as FirstChoice moderate?*

CFSIL: *I'll leave it as it is. Exactly as it is.*

14. On 5 May 2014, during a call with FirstChoice Fund member Person 14, CFSIL employee Michael ██████ said words to the following effect (among others) [Audio ID: CBA.5970.0007.0384]:

Member: *I just got a letter from you guys saying that I needed to find some paperwork and I really don't understand the thing so I'm just wondering if you could help me with that.*

CFSIL: *Now I know that it is a bit of a complicated wording letter so I'll give you a bit of a rundown. You might recall that quite some time ago your super account with us was actually set up by a former*

employer of yours. Now in those cases it's actually the employer that chooses the investment option your money goes into. Which is just like you said the moderate one. Now when you left that employer we moved you to a personal super account and that's just an account that has no link to your employer. Now we kept you as well in the same investment option. Now there's been a recent change in legislation that requires us to confirm with members like yourself that you're comfortable for your employer contributions to continue to go into the moderate option. The way the regulator's looking on it is that former employer of yours made that choice for you. Not yourself. So they just want us to check with people like yourself that you're comfortable with your you know current investment selection.

Member: *Okay. So what would be my other options, other than that?*

CFSIL: *There's 120 different options you can choose to invest in. You know ranging from low risk to high risk and things like that. So you're in a moderate one at the moment which has a moderate level of risk ... And it has been performing at about 9.66% per annum.*

Member: *Okay. So what's the average?*

CFSIL: *Of the 120 options it totally depends on you know how much risk you're looking to take. Like we have options that have performed much better than that but they are in an inherently much higher level of risk. We do have options that have performed lower than that but they have no risk at all. If you'd like I can email you out some information on all the 120 options so you can also look at their performance as well, their 1, 3, 5, 7 and 10 year performance as well if you'd like.*

Member: *So it's all related to Colonial First State?*

CFSIL: *Yeah it's all in Colonial, yeah it's all within Colonial.*

Member: *God. Okay. They really make it easy, don't they? 120 just through you?*

CFSIL: *Yeah just through us. Well that's the thing it's to give people a very wide variety because you know some people want a high level of risk, some people only want a moderate level of risk. There's like what you're in, there's a wide range of different things you can choose to invest in. You know we even offer term deposits which carry no risk at all but obviously like, as I mentioned yours got about 9.66% over the last 1 year that's because there is a level of risk associated with that. If for example you just invested in a term deposit, all you'd get is about 3% because you know there's no risk in a term deposit.*

[Discussion with respect to different options continues, then:]

Member: *Yeah. So how has that risk been so far, like, do you know what I mean? Like have I lost money because I'm accepting a little bit more of a risk?*

CFSIL: *No, no well that's, your account has made money so you know even over, if you look at the performance over 5 years, like so a longer term performance, let's have a look. Yeah like over 5 years the average is 9.07%. So your account's been getting roughly 9.07% over the last five years on average.*

Member: *Right. But am I paying higher fees because of that, or not?*

CFSIL: *No. All you pay is that management cost which is 1.87%.*

Member: *And is that the same for everyone?*

CFSIL: *No - depending what investment option you're in. So for example if you're in growth or high growth ...*

Member: *Yeah.*

CFSIL: *Which is more riskier than what you're in, you'd probably pay a higher management cost because we need to do ...*

Member: *Ahhh. Alright , so you, I know you're probably not allowed to give like personal ideas but so you're saying that I'm doing well just staying where I am?*

CFSIL: *Well yeah it's been going at like 9 ... it depends what you consider as well, but ... If you're expecting more than that then that's fine, but as I said, the banks are only getting 4, 3 or 4%, so here you're more than doubling in some cases tripling the level of growth you'd be getting if your money was in the bank, and you're only needing to take on a moderate level of risk rather than you know a really really high level of risk which is good.*

Member: *Okay , alright , okay, well I'll stick with it then.*

CFSIL: *Yeah, the account you're on is fine at the moment but what I'll do is, I've already emailed you that link to our website as well, so if you do want have a read about some of the different options that are available to you , you most certainly can. But what I'll do for you I'll make a note on your account on your behalf that you're comfortable with that investment selection and we'll leave it as it is for the moment and you can file that letter away because you've spoken to me now over the phone.*

15. On 6 May 2014, during a call with FirstChoice Fund member the mother of Person 15 (who had authorised CFSIL during the call to speak with her), CFSIL employee Michael [REDACTED] said words to the following effect (among others) [Audio ID: CBA.5970.0007.0374]:

CFSIL: *There's been a recent legislation change that requires us to confirm with members like him that he's comfortable with his employer contributions going into those 2 options. Because the way the regulator is looking on it is that it was that former employer that made the choice. So we're just checking. If for example contribution came into his account tomorrow or the next day, is he comfortable for it to continue to go into those options as it is at the moment.*

Member's mother: *OK. So, are those options, are they just the normal every day super?*

CFSIL: *Yeah. They are. The options that he's in are.... And we essentially just want you to confirm that if he's comfortable with them or not?*

Member's mother: *So what I'm trying to get, those options that he has ... is that just a normal sort of options or is it like, I have a super account and I'm not quite sure what options mine is but, you know?*

CFSIL: *It's hard to say like, what it's like, I can't provide advice so what is normal but if you know what I mean like these are the options that were given to him by that former employer. There's 120 different options he can choose. Plenty of reading. So that's the thing. So you know it really depends but he's invested in a balanced one and this, the option he's in was a relatively common one and then the other one is a diversified one. So he's got balanced and diversified are the 2 options that he's in there. So you know I'll give you their performance. Balanced over 1 year's performed at 10.8% and diversified over one year's performed at 7.71%. So that's how they've performed you know, whether you think that's good or bad, it depends on what your expectations are. Like, if you think about it, if your money's in the bank, it's only getting 4% so you've nearly doubled that in or more in both cases. So yes, that's something to take on board as well. Obviously past performance doesn't mean it's going to perform like that again in the future. But at least it gives you an idea that the fund manager's been able to get a good level of return in the past.*

...

Member's mother: *Alright. Thank you. I think he'd be happy with that.*

CFSIL: *Yeah. Perfect.*

Member's mother: *Yeah. Just to leave it the way things are.*

CFSIL: *I'll make a note on his account on his behalf that he's comfortable with the current investment selection.*

16. On 6 May 2014, during a call with FirstChoice Fund member Person 16, CFSIL employee Michael [REDACTED] said words to the following effect (among others) [Audio ID: CBA.5970.0007.0371]:

Member: *Hi. I just need to check – I was sent some letter in regards to my Super, I think it's because I have just returned to work, so...*

CFSIL: *I know the one you are talking about... that letter is actually not due to that but it is due to a recent change in legislation. So you might recall that quite some time ago this account was actually set up for you by a former employer of yours, now when in that scenario it is that employer that chooses the investment option that your money goes into which is what is written on that page and that was [Company]. Now when you left that employer we moved you to a personal Super Account that is an account that has no link to your employer and we kept you in the same investment option.*

Member: *Okay.*

CFSIL: *Now there has been a recent change in legislation that requires us to confirm with members like yourself that you're comfortable for your employer contributions to keep going into that option because the way regulators are looking on it, is that it was that former employer that made that choice not yourself. So that is what we wanted to check: are you comfortable remaining in growth and with your employer contributions continuing to go into growth?*

Member: *Yes, that's fine.*

CFSIL: *That's what I like to hear. So what I will do for you: I will make a note on your account, on your behalf, that you are comfortable with that current investment selection.*

17. On 6 May 2014, during a call with FirstChoice Fund member Person 17, CFSIL employee Michael [REDACTED] said words to the following effect (among others) [Audio ID: CBA.5970.0007.0373]:

Member: *Sorry I can't stay on the phone for very long. I'm at work. Just a quick call – basically to let you know that I received a letter saying an urgent response is required.*

CFSIL: *Yep. Are you comfortable with your current investment selection with the options that you are in at the moment?*

Member: *At the moment, I thought the – I've got a letter here just to say [the annual review of her insurance premium]*

CFSIL: *They are two totally separate things. So the urgent response required is about the investment selection you are in, which is moderate, and that's been going at about 9.66% per annum.*

Member: 9.66?

CFSIL: *Yep. So that's the moderate one. So that's the purpose of that letter there. Are you comfortable with that one?*

Member: *For the moment I am. For the moment I will stay as is.*

CFSIL: *In regard to that I will make a note on your behalf that you are comfortable with that investment selection, and you can actually file that letter away now. Which is good because you've called up, so that's good. Now in regard to the insurance...*

18. On 6 May 2014, during a call with FirstChoice Fund member Person 18, CFSIL employee Michael [REDACTED] said words to the following effect (among others) [Audio ID: CBA.5970.0007.0370]:

CFSIL: *My colleague's just transferred you through here. Just said you had some queries in regard to that letter – .. what can I do for you?*

Member: *Well, yeah. I was just wondering, sorry, I don't know, I'm pretty – um – clueless when it comes to my super. Like, I haven't even looked at it or thought much about it.*

CFSIL: *Well, how about I give you a bit of a rundown? So you might recall with this account, that quite some time ago it was actually set up by [Company]. ... Now in those situations, it's the employer that chooses the investment option that your money goes into. So it was [Company] that chose that. Now, when you left them in '09, we just moved you to a Personal Super account. That's just an account that doesn't have a link to your employer. And we kept you in the same investment option.*

Member: *Okay.*

CFSIL: *Now, there's been a recent change in legislation that requires us to confirm with members like yourself that you're comfortable for your employer contributions to continue to go into the Moderate option as they are at the moment. So pretty much all we're checking is that you're comfortable for your employer contributions to continue to going into the Moderate option as they are at the moment. So pretty much all, all we're checking is that you are all right for everything to remain the same as it is at the moment?*

Member: *Oh, yeah. If it's the sort of, like – to tell you – I don't know anything about what it is, or what it's in.*

CFSIL: *Yep. It's in a moderate level of risk. So that's been performing at about 10% per annum.*

Member: *And is that fairly good, or is that average?*

CFSIL: *Yeah. That's, that's, in my view, I – I can't really say whether it's good or bad, but it's above – it's, like, when the banks are only giving you 4% on your money in a bank account, 10% isn't too bad.*

Member: *Yep.*

CFSIL: *So what I'll do is then, I'll make a note in your account on your behalf that you're comfortable with the current investment selection.*

Member: *Yep. That's fine.*

19. On 7 May 2014, during a call with FirstChoice Fund member Person 19, CFSIL employee Michael [REDACTED] said words to the following effect (among others) [Audio ID: CBA.5970.0007.1677]:

CFSIL: *There was a slight legislation change and it did affect your account. I'll explain a bit of the background. Now, the regulators have looked at this in – in regards to the MySuper legislation and now they've just asked us to get a consent from our clients that, at this stage, they're still comfortable with that particular investment option. Given that, in their eyes, you didn't actively chose it. Does that make sense?*

.... Now, basically, it does sound like a little bit more of a formality than anything else, but we're just required to get a verbal consent, written consent from our clients, that at this stage, you're still comfortable with that particular investment option. You do have over 120 that you can potentially invest in. All right? If you'd like more information about them I can send you a link....

[Discussions about growth of member's account]

... you started with \$31,500 and you've, you made approximately \$3,146. So – look. It does seem to be, you know, returning quite positively ---

Member: *In twelve months.*

CFSIL: *That was in six months.*

Member: *In six months. Okay.*

CFSIL: *That's right. So, you know, what I can do here, I can just make a note on your account on your behalf that at least, at this stage, you're still comfortable with this investment option.*

Member: *Yeah. Do you still need this form back?*

CFSIL: *No.*

20. On 7 May 2014, during a call with FirstChoice Fund member Person 20, CFSIL employee Michael [REDACTED] said words to the following effect (among others) [Audio ID: CBA.5970.0007.0358]:

CFSIL: *I gather you've got a copy of that letter there?*

Member: *I do, yeah.*

CFSIL: *Perfect. Are you comfortable with your current investment selection?*

Member: *Yeah, that's correct.*

CFSIL: *Perfect... I'll make a note on your account, on your behalf, that you're comfortable with that investment selection. ... Now that you've called up, you can file that letter away and don't need to submit that in to us and, from the regulator's point of view, you're ticked off the list.*

Member: *No worries...*

21. On 8 May 2014, during a call with FirstChoice Fund member Person 21, CFSIL employee Sonia [REDACTED] said words to the following effect (among others) [Audio ID: CBA.5970.0007.0365]:

CFSIL: *What details do you need?*

Member: *I've received a contribution investment direction letter from you guys.*

CFSIL: *Okay I'll look into it. ... So this FirstChoice Personal Super account, the balance was originally transferred from an account set up by your previous employer so that's what happened before. As soon as you stop working for an employer the funds from the employer account will be sent to the Personal Super one, which it has. As that letter states, you will just, if you like everything the way it is at his point, we can just save your investment direction as it is, and I can save that.*

Member: *Why are you moving it?*

CFSIL: *It's not moved – it's just how the structure of the account was before*

Member: *So when was that moved?*

CFSIL: *So this account was established on the second of the third 2009. Just so, that, we're informing you of that, your investment information, this is how your contributions are currently in place.*

Member: *So that happened in 2009. So five years later you're asking me to [indistinct] direction?*

CFSIL: *No, so, um yeah essentially that was how it was allocated. I was just basing that on that correspondence that you have received. ... We just need to ensure that you're happy with your investment selection. We've sent out this correspondence and if you like how, how your account is structure now...*

Member: *... I have no problem with the investment selection.*

CFSIL: *Okay. So did you want me to leave everything as is and save your investment direction?*

Member: *Yes.*

22. On 8 May 2014, during a call with FirstChoice Fund member Person 22, CFSIL employee Michael [REDACTED] said words to the following effect (among others) [Audio ID: CBA.5970.0007.0342]:

CFSIL: *My colleagues have transferred this through, just said you had a call from one of our colleagues about there's a new super legislation, is that right?*

Member: *Yeah – I wasn't sure what it was all about, but I did get the call, but I was at work and busy.*

CFSIL: *That's all right.... I'll give you a run down. So you might recall, with this account, that quite some time ago it was actually set up by a former employer of yours. Now that employer – it was them who chose the investment option your money goes into, which is the moderate option, and that was when you were work for [Company]. Now when you left them, we just moved you to a personal super account. Now, that system account has no link to the employer and we kept you in the same investment option. Now there's been a recent change in legislation that requires us to confirm with members like yourself that you're comfortable for your employer contributions to continue to go into that option. Because the way the regulator's looking on it, that it was [Company] that made that choice for you, not yourself.*

Member: *Yes.*

CFSIL: *So they just want to make sure that you've got, you know, that you've made an active choice in the matter and things like that.*

Member: *Yep for sure, fair enough.*

CFSIL: *So you are comfortable with being in Moderate?*

Member: *Well, I have been – I haven't had any problems and it looks like it seems to be going okay.*

CFSIL: *Perfect. So what I'll do is, I'll make a note on your account on your behalf, that you're comfortable with the current investment selection and you're marked off the list from the regulator's point of view, which is good.*

Member: *That's good.*

23. On 8 May 2014, during a call with FirstChoice Fund member Person 23, CFSIL employee Michael [REDACTED] said words to the following effect (among others) [Audio ID: CBA.5970.0007.0366]:

CFSIL: *I'm just returning your call in regards to the current investment options that you're in. What can I do for you today?*

Member: *Well – I got this letter saying I need to change stuff.*

CFSIL: *That's correct. Well – it's not actually saying change it, it's saying, yeah, are you comfortable with the current investment selection that you're in?*

Member: *I'm not. I actually wrote down what I was going to do; I've misplaced it. I could do that online but the thing is, am I going to be charged any fees for doing a refit?*

CFSIL: *No, no there's not.*

[Discussion between CFSIL and Member in relation to changing options]

Member: *... Basically I want to change some of the options and make a couple of them a little bit bigger, that kind of thing. So my only worry was, one, whether it was going to be fee associated, or two, if I did switch it around and did a redistribution, that I would actually lose money.*

CFSIL: *No, no, no. So the amount of units you'll have will obviously change because you're selling down one unit and buying the other unit at a different price...*

Member: *But my total won't change, correct?*

CFSIL: *No, that's right.*

... Um so even for the time being just in regards to that letter that originally prompted this call, I know you are going to be making some changes in the future but just from, for the regulator's point of view, just to get you marked off on a list – Are you comfortable if I just put you down as, yes you're comfortable with your current investment selection for the time being until you've done a change?

Member: *That's correct.*

CFSIL: *Perfect, so I'll make a note in your account on your behalf that you're comfortable with that selection. We'll just mark you off the list for the regulator and you can now file away that letter...*

24. On 8 May 2014, during a call with FirstChoice Fund member Person 24, CFSIL employee Michael [REDACTED] said words to the following effect (among others) [Audio ID: CBA.5970.0007.0331]:

CFSIL: *My colleague has just transferred you through. I see you have received my voicemail. Is it about your investment selection?*

Member: *Yes, actually --*

CFSIL: *You have received the letter from us. Are you comfortable in your current investment selection in Moderate?*

Member: *Moderate – I don't know how it works, because I was looking into my account details – so is it okay to keep it on Moderate?*

CFSIL: *Yes, so you are currently in Moderate. That is a moderate level of risk, and it performed at about 9.66% per annum. Are you comfortable with that?*

Member: *Yes, I am comfortable.*

CFSIL: *I will leave a note on your account on your behalf that you are comfortable with the current investment selection and because I have done that, you can now file away that letter because you have called up, which is good.*

Member: *Okay. The letter says that if you go for that, you aren't able to contribute, is it right?*

CFSIL: *No, no, you can. If you had not called us up, or if you hadn't have sent that letter, then on 16 May there might have been some issues, but because you have called us up, that is really good, and you don't need do anything else.*

Member: *Okay, okay, thank you.*

25. On 8 May 2014, during a call with FirstChoice Fund member Person 25, CFSIL employee Michael [REDACTED] said words to the following effect (among others) [Audio ID: CBA.5970.0007.0339]:

CFSIL: *So with that letter you've got. ... There has been a recent change in legislation and it requires us to confirm with members like yourself that you're comfortable for your employer contributions to continue to go into that option into growth. The way the regulator's sort of looking on it is, they're looking that it was your former employer that made that choice , not yourself? They just want us to check with people like yourself that you're comfortable for your employer contributions to continue to go in there?*

Member: *Oh ok, I'm sure I am, but I'm not sure what the other choices are.*

CFSIL: *So there's 120 different options that you can choose from ranging from everything , from shares, property, cash, term deposits and all kinds of stuff like that. You can choose from them but that's the thing, I can send you a link with some information on them but obviously there's a lot of reading, but the one that you're in, performs at about 9.66% over the last one year, which is good. So when you think about it you only get 3 or 4% in the bank this has 9.66% which is good, and obviously just because it did that in the past doesn't mean it will do that in the future, but it does give you an idea that they have been able to get that return before. But if you like, I can still send you a link to our website that has all that information?*

Member: *Yes, can you and then I'll just have a quick peruse and just make a final decision if I'm happy to do that.*

CFSIL: *The good news is you can just take your time at have a look at that and give us a call whenever you want and you an do a switch with us. But for the interim if we were to receive a contribution into your account let's say tomorrow or the next day, are you comfortable for it to continue as it is for the time being?*

Member: *Oh, yeah absolutely.*

CFSIL: *Ok , perfect. So I'll just make a note on your account on your behalf that you're comfortable with that.*

26. On 12 May 2014, during a call with FirstChoice Fund member Person 26, CFSIL employee Michael [REDACTED] said words to the following effect (among others) [Audio ID: CBA.5970.0007.0318]:

Member: *You guys are calling me because I was calling you.*

CFSIL: *About a confusing letter we sent you I gather.*

Member: *Yeah absolutely ... What's that about?*

CFSIL: *Now there's been a recent legislation change that requires us to confirm with members like yourself that you're comfortable in that option because the way the regulator's looking at it is that it was the former employer that shows is that they made the choice for you and they just want to make sure if some money came into your account tomorrow or the next day are you comfortable for it to continue going into those same options*

Member: *Yeah so what does that option actually mean?*

CFSIL: *What investment option does it say halfway down that letter?*

Member: *Choice moderate.*

CFSIL: *Thank you very much. So that's what you're invested in. It's the moderate option and that means you're carrying a moderate level of risk. ... It's been performing at about 9.66% per annum which is good to see... So obviously past performance is no indicator of future performance, just because it performed like that previously doesn't mean like it will do that again but you know at least it's performed better than what you'd get in a bank. ... Are you comfortable in that option?*

Member: *Yeah that's absolutely fine, no problem at all.*

27. On 14 May 2014, during a call with FirstChoice Fund member Person 27, CFSIL employee Michael [REDACTED] said words to the following effect (among others) [Audio ID: CBA.5970.0007.0274]:

CFSIL: *My colleague's just left me a request to give you a call back about the letter we sent you dated the 23rd of April. So yeah, it's just in regard to the investment selection there. Are you comfortable for your employer contributions to continue to go into the growth option as they are?*

Member: *Well, my employer has changed, so I'm wondering why, like –*

CFSIL: *Let me give you – I'll give you a rundown because I know it's a bit of a confusing letter. Do you recall that when you originally started with us your account was set up for you by a former employer of yours? Now in that case, it's actually the and it's actually [Company] that put you into the Growth option. They chose that for you. Now when you left [Company], we just moved you to a personal super account, and that's just a super account that has no link to an employer, it doesn't have any link to an employer, and we kept you in the same investment option. Now there's been a recent change in legislation that requires us to confirm with members like yourself, that you're comfortable for your employer contributions to continue to go into that current investment option. So that's all ... nothing's changing, we're just checking that.. and that's because*

the way the regulator's looking at it is, that it was that former employer that made that choice for you , not yourself, so we're just checking that you're comfortable with that?

Member: *Okay.*

CFSIL: *So are you comfortable with that?*

Member: *Well I just want to know, 'cause I was trying to look through all the different superannuation funds , and there's heaps, so I'm not sure like if the one that I have currently is the best option for me.*

CFSIL: *Yeah , so there's actually 120 different options that you can choose from. And it's all essentially comes down to how much risk you're willing to take.*

...

Member: *Yeah, so you're telling me there's over a hundred and how many?*

CFSIL: *There's 120 different investment options that you can choose to invested in. ... you're currently invested in First Choice Growth.*

Member: *Okay, and what does that one entail?*

CFSIL: *80% of your money's in growth assets, like shares, property and infrastructure, and 40% of your money's in defensive assets like ... oh no sorry, and 20% of your money's in defensive assets like cash and fixed interest.*

Member: *Okay, so then it's not really, it doesn't sound like it's really working to my advantage.*

CFSIL: *Why do you say that?*

Member: *Well I don't know exactly .. what does that mean, what type of investments is it in, in the growth?*

CFSIL: *80% is in growth assets, like shares, property and infrastructure. And 20% in defensive assets, like cash, fixed interest and term deposits. So for example, over the last 6 months, your employer put in \$3,500, your account made profit on top of that \$3,110, over a 6 month period.*

Member: *It's doubled.*

CFSIL: *That's 10% gain, your account made a 10% gain over 6 months in the current option that it's in.*

Member: *Okay. Alright, I don't have a problem... well then that sounds okay.*

CFSIL: *Obviously, yeah, that was a good growth, but past performance is no indicator of future performance, so just because it performed like that in the past, unfortunately it doesn't mean it's going to*

perform like that in the future. Like as you've probably seen on the news is what happened on the GFC and things like that, like anything can happen, so that's just something to take into consideration as well. But you are relatively young, like in super years. You know unfortunately you still may have 35 years of contributing left to this account, so that's what needs to be taken into consideration as well, so a bit of risk is something that's sort of, in a way, recommended to be taken on board, so you can get a bit of growth.

Member: *Okay. Well I can leave it for now and visit it later on. ...*

CFSIL: *... What I'll do is I'll make a note on your account on your behalf that you're comfortable with that investment selection...*

28. On 15 May 2014, during a call with FirstChoice Fund member Persons 28, CFSIL employee Michael [REDACTED] said words to the following effect (among others) [Audio ID: CBA.5970.0007.0236]:

CFSIL: *[M]y colleague has just transferred you through here. Just said you have received a letter from us is that correct?*

Member: *Yes.*

CFSIL: *So are you comfortable with your current investment selection?.*

Member: *I don't know, what's the difference, because that is why I was trying to talk to the adviser but I am never able to talk to her or him....*

CFSIL: *There are 120 different investment options you can choose from. So this previous option was chosen for you by a former employer of yours and it is a moderate option so it means that you take on a moderate level of risk. Now there is 120 different options that you can choose from, this one over the last 12 months has performed at about 9.66% per annum which is good to see. Obviously past performance is no indicator of future performance so just because an adviser – sorry an investment option – has performed like that in the past doesn't mean it is going to perform like that in the future, but it does give you a good understanding, it does give you a good understanding that they have been able to get that level of return in the past.*

Member: *Yes. Okay, I am happy to keep it because we're going to get super, we're going to retain for so many years.*

CFSIL: *Yes exactly, so what I will do is I will make a note on your account, I'll make a note on your account on your behalf that you are comfortable with the current investment selection and we will leave you in the moderate option if you do want to change that at any point in the future feel free to give us a call.*

29. On 20 May 2014, during a call with FirstChoice Fund member Person 29, CFSIL employee Fadi [REDACTED] said words to the following effect (among others) [Audio ID: CBA.5970.0007.0419]:

Member: *I received a phone call from your organisation a few weeks ago. But um I also just received a letter and have just noticed – I just want to make sure that everything had been actioned. Contribution Investment Direction form that was asking me to, um, sign and date something and send it back?*

CFSIL: *Oh yes... Have you given consent for leaving things they way they are for the initial phone call, or you haven't, when they called you?*

Member: *So, when they called me, I said ,just leave it as it is... Cause they asked me if I was happy to continue and I said yes. I have this letter that's saying that I need to return the form by 16 May, which has past. Otherwise you know, I might be charged fees or something, I don't know, so I just wanted to confirm that I am happy to just continue with the existing fund. Do you need anything further?*

CFSIL: *Well, they would have put it in the system by now, but I might just do it anyway to make sure because we are able to extend the deadline from the 16th, so it's good, we have a few more weeks now. So, I might just put it on my end to make sure as well. I will leave your investment selection as is, and I will make a note on your account, that you are comfortable with the current option and that's fine, you don't have to send a letter back to us.... This is the second time we are going to put it on that you have given us consent and the account can stay exactly as it is, nothing is going to change at all.*

30. On 29 May 2014, during a call with FirstChoice Fund member Person 30, CFSIL employee Austin [REDACTED] said words to the following effect (among others) [Audio ID: CBA.5970.0007.1052]:

CFSIL: I understand you got a letter in regard to – your urgent response required. Is that correct?

Member: Yeah. I got an email saying there's a letter got sent to me. I haven't received the letter though.

CFSIL: Excellent. OK.... [discussion of updating address details] *Just with that one, though, obviously you wouldn't have actually received that letter. But regardless there, did you understand the purpose by the letter? Did you want me to explain anything else to you?*

Member: *Yeah. So, what was it – basically just about some outstanding super or something, or...?*

CFSIL: *No, No. So, this is something so different The reason for our letter and why it says "urgent response required": basically, we've just been asked by the regulators to get in touch with our clients in your situation. I'll explain a little bit of background. [discussion of the member's account] ... it does look to be ticking along at this stage, and it is good to see that, if you haven't looked at it for a little while, it hasn't gone in the other direction, I guess.*

Member: *That's the main thing, isn't it.*

CFSIL: *Yeah, that's right. For the time being, we can keep it exactly the way it is and if you wanted to have a chat to a financial advisor, you know, over the next x amount of months or days or years, you'd certainly be able to do that. We're not looking to change anything in regards to your account, so I want to make that clear. But, for the time being, are you satisfied with that particular investment option?*

Member: *Yeah. Yep. Yep. Yep.*

CFSIL: *Yeah, excellent.*

31. On 11 June 2014, during a call with FirstChoice Fund member Person 31, CFSIL employee Fadi [REDACTED] said words to the following effect (among others) [Audio ID: CBA.5970.0007.0412]:

Member: *Apparently a couple of weeks ago I received a letter in the mail but it got sent to an old address that I'm no longer at about my investment selection needed to be changed and my urgent response was required. And I had until the 16th May to get a letter sent back to you, which obviously I completely missed.*

CFSIL: *That's ok, I've got good news, it has been extended by a few weeks. So you don't actually have to send it back I can take the instruction over the phone now as well if you like.*

Member: *OK cool....*

CFSIL: *So basically do you understand why we wrote to you in relation to your investment selection, or...?*

Member: *Not really, to be honest,*

CFSIL: *I'll help you to understand the letter. What is was is the account that you have with us this was established by an old employer of yours and they were the ones who chose which investment selection for you to go into. Now, when you left that employer it got moved over to just a personal super account then the way legislation is changing we just have to confirm with you that you are still comfortable to be part of the same investment option which in*

this case is the first choice moderate. And if not, of course you can change it now, you can change it later as well if you wanted to.

Member: I'm happy to just roll it into the obvious choice. Is there a simple way I can look at what other options there are. Because admittedly the whole idea of super to me at the moment, it's sort of years and years, I'm not going to start worrying about that but maybe I should start.

CFSIL: I probably would, yeah I definitely would. Look what I can do is I can send you a few things to your email just like a link to the available investments and their performance and all that. From there you can change where you want your super to be invested and all that.

Member: Yeah, that would be great.

CFSIL: Now the moderate you're in at the moment, it's sort of like the middle of the road, we're talking 60% in shares and property and the other 40% is in cash and fixed interest. A lot of employers put their employees on it by default and then it's up to you whether you want to go more conservative or more risk. So what I'll do is I'll send you a link to the booklet and some performance figures as well. Now if you do want to change it you can either do it on line by logging into your First State Account or alternatively you can just give us a call and you can just do it on the phone. ... So for the meantime do you want to just leave it as it is until you change it, like do you want to give a consent notification or did you want to make a choice first, what do you want to do?

Member: Just put it into the moderate one for now, I'll look at it at some point. Obviously I don't want to put it off for too long but it's not like I'm going to go home tonight and work it all out.

CFSIL: Ok, what I'll do is I'll leave your investment selection as it is and I'll make a note on your account on your behalf that you're comfortable with the current option. ...

32. On 12 June 2014, during a call with FirstChoice Fund member Person 32, CFSIL employee Michael [REDACTED] said words to the following effect (among others) [Audio ID: CBA.5970.0007.0361]:

Member: I just have a letter saying that I need to confirm my investment option with you guys.

CFSIL: Are you comfortable with the current investment selection you have on your account?

Member: Ahh – I guess so.

CFSIL: Yes, perfect.

Member: *Is that the one I've used the whole time?*

CFSIL: *Yes, that's correct so you might recall some time ago this account was actually set up for you by a former employer of yours. Now it was actually that employer that chose the investment option which your currently in, that your money goes into. Now, when you left that employer we just moved you to a personal Super account and we kept you in the same investment option. Now there has been a recent change in legislation that requires us to confirm members like yourself that you are comfortable for your contributions to continue to go into that option because the way the regulator looks on it is that they are sorta looking at that it was that former employer that made that choice not yourself, so that is just what we wanted to check.*

Member: *I'm not good with Super. I don't know what is a good choice, so –*

CFSIL: *This has been going at 9.66% per annum over the last year which is good and it is a moderate level of risk so.*

Member: *Yes, that sounds like me.*

CFSIL: *Perfect, so what I'll do, I will leave a note on your account on your behalf that you are comfortable with the current investment selection and if you do want to make any changes at any point in the future, feel free to give us a call.*

33. On 25 June 2014, during a call with FirstChoice Fund member Person 33, CFSIL employee Storme [REDACTED] said words to the following effect (among others) [Audio ID: CBA.5970.0007.0069]:

CFSIL: *My colleague just put you through there. I understand that you are complaining about fees and things on your account.*

Member: *Yep.*

CFSIL: *Now with regards to the fees on your account. Let's have a look. You don't have any ... There is no direct fee with the First Choice account. The only cost to yourself is the Management cost. Obviously, that is an indirect fee. It is already built into the unit price. So, that also depends on the investment option that you have. You're currently invested in a First-Choice moderate. The Management cost for that investment option is 1.87% and now that's ... we don't deduct 1.87 from your balance. That Management cost is for managing the funds. So, your balance is in a pool of funds and that is 1.87% of that pool of funds. And you also have insurance. You've got life insurance, and total permanent disability. Both of those are for 63,977.81.*

...

CFSIL: *I was just going to mention the reason my colleague originally gave you a call was due to the letter that we sent you. Did you receive that letter?*

Member: *Yep, you did send me that letter and I just, in the past 6 months, I have just been snowed under with too many things. So I probably received it...*

CFSIL: *Okay. What I might do then is just email a copy of it to you. Basically... there was a legalisation change in June 2013 because your account was originally set up by an employer. That employer put everyone on a default investment option. Then when you ceased employment with them the account automatically transferred to a personal account, and the same investment option came across. So, now our regulators have requested that we get a verbal or written confirmation from clients to basically just say that you are still okay with the investment option for now. Unfortunately, though ...*

Member: *That last lady, I gave her a yes.*

CFSIL: *Oh okay. Fantastic. So, I will put a note on your account on your behalf confirming that you are still comfortable with that option.*

34. On 5 September 2014, during a call with FirstChoice Fund member Person 34, CFSIL employee Mike [REDACTED] said words to the following effect (among others) [Audio ID: CBA.5970.0007.0556]:

CFSIL: *Basically – in relation to what the call was about – because you came through that previous employer plan, basically there's been a change in legislation called MySuper that requires us to make phone calls to people that have been in that situation such as yourself. So with that MySuper legislation one of the requirements was that anybody in the situation such as yourself who came from an employer planning your own personal super plan, what the regulator was saying to us we needed to confirm with those people that the investment selection they have on their account is still ok, as far as that going forward because with that previous employer plan what they're saying is that that option was selected by the employer rather than by the investor. So that's really the nuts and bolts of it we just need to confirm with you that you're ok with the investment option on your account, bearing in mind that in this product you're in there's about 120 different investment options so if at any time you felt that you wanted to make a change you can do that over the phone with us or you can do it online as well. So really that was just the thrust of the conversation just so we can tick that box as far as compliance is concerned that you and I have had this conversation.*

Member: *Sure, so what investment plan have I got.*

CFSIL: *You are actually invested in the First Choice Moderate option , all your money goes into moderate. So for a person of your age you could possibly look at something a little bit more aggressively suited I would think. I can certainly shoot you out some information in relation, as I say there's over 120 different investment options in the First Choice personal super products so if you wanted me to shoot out some information to you to have a look at it you can make that change yourself ...*

[Later in the call, without first obtaining a direction from the member:]

CFSIL: *That's about it. I've got that compliance ticked off on your account so that's good. If you have any other questions, you know, shoot.*

Member: *No worries. You are going to send me out some documentation to look at the other funds or changing the mix?*

CFSIL: *Yeah. I'll shoot that out to that email address for you.*

35. On 5 September 2014, during a call with FirstChoice Fund member Person 35, CFSIL employee Mike [REDACTED] said words to the following effect (among others) [Audio ID: CBA.5970.0007.0579]:

CFSIL: *It's just a call in relation to your super account if you have a couple of minutes? We just need to confirm with you that you are comfortable with your current investment selection? ... I can get that confirmation from you over the phone if you're comfortable with that?*

Member: *Oooh – honestly, I'm not sure.*

CFSIL: *Today's the last day we can actually do them over the phone. So it's fairly important and urgent that we get that done if possible.*

Member: *Oh, okay. What is, like, what's it in currently?*

CFSIL: *Basically it just refers to a change in legislation, that requires us to give people a call that have been transferred from an employer plan into their own personal super plan. The one you're in from the previous employed plan – the investment option that your contributions were put into – basically was set up by the employer and that legislation just implies that you didn't choose that yourself, it was chosen for you by the employer. So we just need to confirm with you you're still comfortable to have that investment option going forward, bearing in mind that in the product you're in, you can have up to 120 different options.*

Member: *Yeah, I haven't spoken to anyone on that. Is there anybody there like in your office to see whether I can understand which is the best options or not, because I'm not being put in that?*

CFSIL: *I could send you out some information in relation to the investment options so you can have a bit of a look at those... Just for now so we can get the legislation and our compliance with that legislation ticked off for your account: Are you okay if I just put a note on your account that we've had our conversation and you can always change it in the future anyway, that's no problem?*

Member: *Yep.*

CFSIL: *It's just that we need to get your confirmation verbally today. Today's the last we can do it really.*

Member: *So I can't change it, like --?*

CFSIL: *Oh, you can change it in the future. Yes, yes. I'm just going to put a note on your account that I've had the conversation with you, so you are aware that if you want to change your investment options, you most certainly can do so at any time.*

Member: *Okay.*

36. On 5 September 2014, during a call with FirstChoice Fund member Person 36, CFSIL employee Mike ██████ said words to the following effect (among others) [Audio ID: CBA.5970.0007.0608]:

CFSIL: *Just in relation to your account, we're just trying to get what's called your confirmation of investment selection. We had written out to you a couple of times, we just need to get that because this is the last week we can take it, but I can get it done over the phone with you now if you like.*

Member: *Yep.*

CFSIL: *... So just in relation to your account then – just need to confirm with you that you're still OK with the investment option that you're in. You're currently invested in the First Choice Moderate option, and that option would have been chosen for you by your previous employer... and when you left that employer we simply transferred all your details over into your own personal super account, including that investment option, so just, that legislation that went through requires us to give people in that situation a call, that transferred from those employer accounts to personal super accounts, just to confirm that you are OK with that investment option, bearing in mind that in this product you're in, if at anytime you wanted to make a change, there's about 120 different investment options, you can do it over the phone with us or you can go online and get it done through the online system as well.*

Member: *No problems, nothing changes.*

CFSIL: *Nothing will change. You'll stay with Colonial First State and then we'll stay exactly the same on your account, it's just that we needed to make that call so we can say that we have contacted you and you are aware that that is the case.*

Annexure B – Summary of Subset of ADA Calls

[Note: Minor drafting matters JWS and junior counsel will finalise over the weekend. Member surnames to be redacted in copy filed]

1. On 3 October 2014, during a call with FirstChoice Fund member Person 37, CFSIL employee Mike [REDACTED] said words to the following effect (among others) [Audio ID: CBA.5970.0164.0021]:

CFSIL: *Just in relation to your super account, there's been some legislation that gone through that just requires us to give you a call just to confirm that you are still comfortable with the investment options into which you contributions are being invested, and for us to put a note on your account to the effect that we've had that conversation, basically.*

... In relation to your investment options, just for the time being, are you okay if I just put a note on your account to the effect that we've had the conversation. It won't change anything. I'll leave it exactly as it is, but at least that sort of, ticks the box as far as the legislation is concerned.

2. On 7 October 2014, during a call with FirstChoice Fund member Person 38, CFSIL employee Imelda [REDACTED] said words to the following effect (among others) [Audio ID: CBA.5970.0164.0076]:

CFSIL: *I'm calling regarding your current employer super contributions and the option that they are being deposited into. There has been recent changes in the legislation just require us to confirm that you're comfortable having your contributions continue going into these investment options... So, you're invested in the FirstChoice Moderate at the moment. That's where you're invested. Now, FirstChoice Moderate is a medium to high fund. So, are you happy to stay there?*

Member: *I don't really know any other options.*

CFSIL: *Yeah. Do you have a financial advisor?*

Member: *No.*

CFSIL: *No. If you wanted to speak with one – I mean, there's 130 options you could go into, right? There other 129 are on our website, if you wanted to have a look. You can speak to a financial adviser. You can visit any Commonwealth Bank branch... Completely up to you.*

Member: *Right.*

CFSIL: *Okay. Though, if you're happy for the moment to stay where you are, I'll just put a note on your account on your behalf basically saying that you're comfortable with where you are right now...*

3. On 13 October 2014, during a call with FirstChoice Fund member Person 39, CFSIL employee Pamela [REDACTED] said words to the following effect (among others) [Audio ID: CBA.5970.0164.0086]:

CFSIL: *The reason I'm calling is regarding your employer's super contributions and which investment options they are currently being deposited into. There's been some changes in the legislation which require us to ask whether you are still comfortable with your investment options. So, pretty much for the purpose of this call – we just need a statement from you that it is okay for us to leave your investment selection as it is for the time being. Does that sound good?*

Member: *I don't know. I didn't understand hardly any of it.*

[CFSIL employee speaks with member's husband:]

CFSIL: *Ok, so the reason I'm calling right now is because we just need to confirm [your wife's] happy with the options that she's currently invested in. There's a new legislation change basically saying that the client has to have a say in their own option and since [your wife] has had this superannuation account ever since 2008 with the previous employer we just need to confirm whether she's, like, to continue on with the current option that she currently has.*

Member's husband: *The current plan at the moment?*

CFSIL: *Yeah. So are you happy with everything with your – with your Colonial First State account?*

Member's husband: *Yeah. Yeah.*

CFSIL: *Yeah. ... Okay. Perfect. No worries. So, we'll just keep the option as is.*

4. On 15 October 2014, during a call with FirstChoice Fund member Person 40, CFSIL employee Pamela [REDACTED] said words to the following effect (among others) [Audio ID: CBA.5970.0164.0119]:

CFSIL: *So the reason I'm calling is in regard to your employer's contributions, and which investment options they have been deposited into. There have been some changes in the legislation which require us to confirm whether you are comfortable with your investment option. So pretty much the purpose of this call – we just*

need a confirmation from you that you're happy with your investment options and how everything is set up for you and it's okay for us to leave your investment selection as it is.

Member: *So – you just got to confirm that everything is ok?*

CFSIL: *Yeah. Yeah. Yeah. We're just confirming that.*

Member: *Yeah. Fine.*

CFSIL: *Okay. No worries at all.*

5. On 20 October 2014, during a call with FirstChoice Fund member Person 41, CFSIL employee Pamela ██████ said words to the following effect (among others) [Audio ID: CBA.5970.0164.0067]:

CFSIL: *I'm calling regarding your employee super contributions, and which investment options they are being deposited into. There has been recent changes in the legislation which require us to confirm whether you are still comfortable with your investment options... The legislation change is basically saying that the client has to have a say in their own option, whether they're comfortable to continue on with the ones they currently have, or would they like to change it to something else?*

Member: *Okay. How much is actually in the account?*

CFSIL: [States amount].

Member: *Okay. All right.*

CFSIL: *Yeah. But, I'll also send you a confirmation email regarding this call.*

6. On 23 October 2014, during a call with FirstChoice Fund member Person 42, CFSIL employee Mike ██████ said words to the following effect (among others) [Audio ID: CBA.5970.0164.0047]:

CFSIL: *We've kind of got a bit of a deadline on this. It's all some legislation that we just need to get, basically, your verbal confirmation that you're okay with the investment option that your contributions go into. ... the way the legislation is written, it just requires us to give you a call because – the legislator for super is saying that you didn't actively choose that yourself, it was set up by your employer. So, they just want us to confirm that you are comfortable with that particular investment option.*

Member: *Well, I think at the time, as you said, that was chosen by my employer at the time...*

CFSIL: *Yeah. So, that's – that's why we needed to make these phone calls, just to confirm with you that you are still comfortable with that option. Bearing in mind, as I said, there's about 120 different investment options in the product you're in. So if at anytime you wanted to make a change, you could do it over the phone ...*

Member: *I'm at work. ... I need my own time to understand... I'll have a look at it tonight...*

CFSIL: *No, that's okay. Yeah, there's no rush. If you like, I can just put a note on your account that we've had the conversation. That'll tick the box as far as the legislation is concerned. Obviously, I'm not going to make any changes at all to your account apart from just sort of ticking the box that you're okay with the current investment option.*

7. On 18 February 2015, during a call with FirstChoice Fund member Person 43, CFSIL employee Sarah [REDACTED] said words to the following effect (among others) [Audio ID: CBA.5970.0164.0909]:

CFSIL: *...regarding a deposit that was recently made into the account. ... Now, there's been some recent changes in the government legislation and that requires us to confirm that you're happy with the investment option that your contributions go into... what the legislation states is that we now have to contact you and because the deposit's gone in there recently, just to check that you are happy where it's invested and that if any future contributions go in there you're happy for them to go into this investment option.*

.... Would you like me to leave it as it is or is it something you want to have a bit of a think about?

Member: *No, just leave it as it is.*

CFSIL: *Yeah. Okay. No worries.*

8. On 24 February 2015, during a call with FirstChoice Fund member Person 44, CFSIL employee Sarah [REDACTED] said words to the following effect (among others) [Audio ID: CBA.5970.0164.0927]:

CFSIL: *The reason I'm giving you a call is because there's been some recent changes in government legislation, and it just requires us to confirm that you're still happy with the investment option that your contributions are being paid into and where it's invested at the moment....*

Member: *I'm not unhappy. I'm afraid I'm not the kind of person who – who pursues any attempt to, as it were, improve on things. So – I am content.*

CFSIL: *Yeah. So, are you just happy for the account to remain as it is for the moment?*

Member: *Yes.*

CFSIL: *Yeah. No problem. That was all that this was regarding.*

9. On 4 June 2015, during a call with FirstChoice Fund member Person 45, CFSIL employee Michael [REDACTED] said words to the following effect (among others) [Audio ID: CBA.5970.0164.0127]:

CFSIL: *Now, due to recent legislation changes, we've been asked to contact members to confirm if they are comfortable with their super and how it's been invested. ...*

Member: *I don't really know what I should be doing with it. I don't know what, you know, what's the best investment. I don't know.*

CFSIL: *Okay. Well, I can tell you what you're currently invested in now. And – yes. Just confirm if you're happy with the investment option. If not, you'll need to, perhaps, speak to a financial advisor. ...*

10. On 21 April 2016, during a call with FirstChoice Fund member Person 46, CFSIL employee Nathan [REDACTED] said words to the following effect (among others) [Audio ID: CBA.5970.0170.0071]:

CFSIL: *I'm not sure if you received the correspondence or not. It just outlines some government legislative changes that are going to be impacting your superannuation here with us. So, it just requires us to get in contact with you and our other members to confirm that they are happy with how this account's being managed and invested.*

Member: *... To be honest, I haven't worked for some time because – I'm a housewife at home; I suppose I've got, a few different supers all over the place and I haven't really sat down and sort of, really, looked through them. So I'm not sure actually what I'm getting at the moment.*

CFSIL: *Yeah, that's fair enough I guess – I might just leave your account maybe as is for now and then if you get, you know, around to it or something that's definitely something I can assist you with. ... So I'll just put a note on your account then just to leave things as they currently are until you, obviously, get around to it.*