

FEDERAL COURT OF AUSTRALIA

Australian Securities and Investment Commission v A&M Group Pty Ltd trading as Debt Negotiators [2022] FCA 1534

File number: NSD 1188 of 2021

Judgment of: **BROMWICH J**

Date of judgment: 16 December 2022

Catchwords: **CORPORATIONS** – application for declaratory relief and pecuniary penalties for contravening conduct – where defendant administered registered debt agreements under Part IX of the *Bankruptcy Act 1966* (Cth) – where defendant engaged in conduct in relation to financial services that was misleading or deceptive or likely to mislead or deceive, in contravention of s 12DA of the *Australian Securities and Investments Commission Act 2001* (Cth) (*ASIC Act*) and used undue harassment or coercion in connection with the supply or possible supply of financial services in contravention of s 12DJ of the *ASIC Act* – where ASIC seeks relief in relation to the defendant’s conduct under s 12GBA of the *ASIC Act* (as it stood before 13 March 2019) – where contravening conduct is admitted – whether the quantum of the proposed pecuniary penalties is appropriate in reflecting principles of general and specific deterrence – Held: application granted, penalties of \$650,000 be imposed upon the defendant; defendant to pay legal costs and investigation expenses totalling \$150,000 (court order \$80,000; ASIC order \$70,000); total payments of \$800,000; initial substantial payment and then payments to be made over time as agreed or adjudicated

Legislation: *Australian Securities and Investments Commission Act 2001* (Cth) Subdivs C, D, GC; ss 1(2)(a), 1(2)(b), 1(2)(g), 12DA, 12GBA, 12GBA(2), 12GBA(3), 12GBCA(2)(a), 12DJ
Bankruptcy Act 1966 (Cth) Pt IX
Evidence Act 1995 (Cth) s 191
Federal Court of Australia Act 1976 (Cth) ss 21, 22, 23
Australian Consumer Law (being Sch 2 to the Competition and Consumer Act 2010) (Cth), s 50
Treasury Laws Amendment (2019 Measures No.3) Act

2020 (Cth) Sch 3 item 2 and 9

Cases cited:	<i>Australian Building and Construction Commissioner v Construction, Forestry, Mining and Energy Union</i> [2017] FCAFC 113; 254 FCR 68 <i>Australian Building and Construction Commissioner v Pattinson</i> [2022] HCA 13; 314 IR 301 <i>Australian Competition and Consumer Commission v ACM Group Limited (No 3)</i> [2018] FCA 2059 <i>Australian Competition and Consumer Commission v Reckitt Benckiser (Australia) Pty Ltd</i> [2016] FCAFC 181; 340 ALR 25 <i>Australian Securities and Investments Commission v Commonwealth Bank of Australia</i> [2020] FCA 790 <i>Commonwealth v Director, Fair Work Building Industry Inspectorate</i> [2015] HCA 46; 258 CLR 482 <i>Crescendo Management Pty Ltd v Westpac Banking Corporation</i> (1988) 19 NSWLR 40 <i>Forrest v Australian Securities and Investments Commission</i> [2012] HCA 39; 247 CLR 486 <i>Minister for the Environment v Northern Seafoods Pty Ltd</i> [2022] FCA 656 <i>viagogo AG v Australian Competition and Consumer Commission</i> [2022] FCAFC 87
Division:	General Division
Registry:	New South Wales
National Practice Area:	Commercial and Corporations
Sub-area:	Regulator and Consumer Protection
Number of paragraphs:	114
Date of hearing:	17 August 2022
Counsel for the Plaintiff:	Mr P Herzfeld SC and Mr H Cooper
Solicitor for the Plaintiff:	Australian Securities and Investments Commission
Counsel for the Defendant:	Mr A J Weinstock
Solicitor for the Defendant:	Adam & Dean Lawyers

Table of Corrections

20 December 2022	Declaration 2 is inserted, and order 4 is deleted.
20 December 2022	In paragraph 1, “12DA” is replaced with “12DJ”.
20 December 2022	In paragraph 20, declaration 2 is inserted.
20 December 2022	In paragraph 112, “has been directed to pay” is replaced with “is going to be directed to pay”.

ORDERS

NSD 1188 of 2021

BETWEEN: **AUSTRALIAN SECURITIES AND INVESTMENT
COMMISSION**
Plaintiff

AND: **A&M GROUP PTY LTD ACN 138 457 520**
Defendant

ORDER MADE BY: BROMWICH J

DATE OF ORDER: 16 DECEMBER 2022

THE COURT DECLARES THAT:

Pursuant to s 21 of the Federal Court of Australia Act 1976 (Cth):

1. The defendant:
 - (a) between 4 May 2018 and 26 November 2018 in relation to Debtor HC;
 - (b) between 30 January 2019 and 15 April 2019 in relation to Debtor TB;
 - (c) between 30 January 2018 and 11 February 2019 in relation to Debtor JD;
 - (d) between 25 October 2018 and 8 October 2019 in relation to Debtor LH;
 - (e) between 25 July 2018 and 28 November 2018 in relation to Debtor RL;
 - (f) between 20 February 2018 and 19 February 2020 in relation to Debtor DM,
engaged in conduct in relation to financial services that was misleading or deceptive or
was likely to mislead or deceive by representing to the 6 debtors for whom the
defendant was the registered debt agreement administrator that:
 - (g) creditors had contacted the defendant and that they were, or might be,
considering terminating their debt agreement and pursuing legal action; and/or
 - (h) creditors had placed their debt agreement under review for termination; and/or
 - (i) creditors had requested that their debt agreement be terminated in order to
commence legal action; and/or
 - (j) their debt agreement was about to be terminated or was in the process of being
terminated; and/or

- (k) creditors were assessing their account history and payments and would advise if they wished to terminate their debt agreement to start looking into proceeding with legal action such as bankruptcy and fraud charges; and/or
- (l) creditors had demanded payment within a specified time period, failing which creditors would terminate their debt agreement; and/or
- (m) if their debt agreement was terminated and they were forced into bankruptcy, their financial situation would be examined to determine if they had been able to make payments under their debt agreement; and/or
- (n) they could be charged with fraud and sentenced to imprisonment for failing to make payments under their debt agreement or selling their assets; and/or
- (o) creditors intended to contact their family, friends or work colleagues to recover their debts; and/or
- (p) creditors wanted the defendant to start contacting a debtor's family and friends to recover debts; and/or
- (q) if they were subject to a garnishee order, the creditors would be entitled to take 80 percent of the debtor's income until their debts were fully repaid,

when none of this was true and/or, in so far as any of those representations were made as to any future matter, the defendant did not have reasonable grounds for making those representations, thereby separately contravening s 12DA of the *ASIC Act* in relation to each of the 6 debtors.

2. The defendant:

- (a) between 26 February 2018 and 4 March 2019 in relation to Debtor HC;
 - (b) between 10 January 2019 and 15 April 2019 in relation to Debtor TB;
 - (c) between 30 January 2018 and 4 April 2019 in relation to Debtor JD;
 - (d) between 20 September 2018 and 8 October 2019 in relation to Debtor LH;
 - (e) between 16 March 2018 and 29 November 2018 in relation to Debtor RL;
 - (f) between 20 February 2018 and 19 February 2020 in relation to Debtor DM,
- used undue harassment or coercion in connection with the supply or possible supply of financial services to a consumer, or the payment for financial services by a consumer, in relation to the 6 debtors for whom the defendant was the registered debt agreement administrator by:

- (g) engaging in the conduct set out in paragraph 1 above; and/or
- (h) threatening to contact uninvolved family members, friends, work colleagues or landlords; and/or
- (i) contacting or attempting to contact uninvolved family members, friends and work colleagues; and/or
- (j) pressuring debtors to seek the assistance of family and friends to make payments due under their debt agreements; and/or
- (k) communicating with debtors in a demeaning, condescending and/or offensive manner,

thereby separately contravening s 12DJ of the ASIC Act in relation to each of the 6 debtors.

THE COURT NOTES THAT the plaintiff has directed the defendant to pay, and the defendant has agreed to pay, \$70,000 towards the plaintiff's investigative costs.

THE COURT ORDERS THAT:

3. The defendant pay to the Commonwealth a pecuniary penalty of \$650,000, with that sum to be paid as follows:
 - (a) \$200,000 to be paid within 35 days or such further time as may be allowed by the Court;
 - (b) the balance of \$450,000 to be paid:
 - (i) by way of instalments upon a schedule agreed upon by the parties and furnished to the associate to Justice Bromwich by email within 35 days (or such further time as may be allowed by the Court) and approved by the Court; or
 - (ii) as ordered by the Court in default of an agreement being reached for payment by instalments that is acceptable to the Court.
4. The defendant pay the plaintiff \$80,000 towards its costs within 35 days, or such further time as may be allowed by the Court.

Note: Entry of orders is dealt with in Rule 39.32 of the *Federal Court Rules 2011*.

REASONS FOR JUDGMENT

BROMWICH J:

1 These are reasons for the penalties that I have concluded should be imposed for contraventions of civil penalty provisions of the *Australian Securities and Investments Commission Act 2001* (Cth) (*ASIC Act*) which proscribe:

- (a) conduct in relation to financial services that was misleading or deceptive, or likely to mislead or deceive: s 12DA; and
- (b) undue harassment or coercion in connection with the supply or possible supply of financial services or the payment for financial services: s 12DJ.

For the reasons that follow, a civil penalty is only payable in respect of the contraventions of s 12DJ of the *ASIC Act*.

2 The plaintiff is the Australian Securities and Investments Commission (**ASIC**). The defendant is A&M Group Pty Ltd trading as **Debt Negotiators**. An important part of Debt Negotiators' business involves administering registered debt agreements entered into between debtors and their creditors under Part IX of the *Bankruptcy Act 1966* (Cth), especially and typically consumer debtors with multiple creditors and few assets. Such debt agreements are an important and innovative alternative to bankruptcy. Debt Negotiators is the second largest registered debt agreement administrator in Australia, being one of 34 such administrators. It administers some 5,000 debt agreements, being approximately 14% of the market as at October 2021. Its contravening conduct was directed towards debtors who were failing to comply with the debt agreements they had entered into. The penalty response to Debt Negotiators' conduct is important in relation to its future behaviour and that of the other registered debt agreement administrators, in their dealings with a highly vulnerable part of our society operating with the licence and sanction of the State.

3 On 16 November 2021, ASIC commenced this proceeding against Debt Negotiators in relation to its conduct towards six debtors during the period 30 January to 19 February 2020 (**relevant period**). As will be seen, the way in which ASIC brought its case is of some importance in determining the penalty response formulation. The proceeding was commenced by an originating application and concise statement. Initially, Debt

Negotiators denied all of the allegations by a concise statement in response dated 25 February 2022.

4 Subsequently, after a successful mediation on 17 May 2022, Debt Negotiators filed an amended concise statement in response admitting to the contraventions alleged by ASIC about its conduct towards the six debtors, but still denying two allegations which go to the characterisation of those contraventions. Debt Negotiators also implemented substantial remedial changes to the way in which it conducts the administration of debt agreements and dealings with debtors under those agreements. This took place after the contravening conduct was detected. ASIC fairly acknowledged they were robust changes, appropriately tailored to address the contravening conduct.

5 Debt Negotiators agrees to the declarations of contravention sought by ASIC and to pay an agreed sum towards legal and investigation costs. The live issues remaining in dispute concern:

- (a) the quantum of the penalties necessary to meet the dual objectives of specific and general deterrence; and
- (b) a related dispute as to whether ASIC has a sufficient basis for certain characterisations it gives for the contravening conduct going beyond the pleaded admissions and agreed facts which, if accepted, elevate the seriousness of the contraventions.

6 In the final analysis, the admissions of contravention and the remedial program introduced by Debt Negotiators have been highly influential in determining the level of penalty required for both specific and general deterrence. The penalties would have been considerably higher if either of those steps had not been taken and much higher again if both had not been taken. In short, that ultimate response, well before any trial had been listed, constitutes the right kind of sorry and thus reduced risk of repeat contraventions. But it does not remove the continued need for a substantial, albeit much reduced, penalty. The objective of the exercise is to eliminate this sort of behaviour from the registered debt agreement administration industry.

7 The parties have furnished an agreed statement of facts made pursuant to s 191 of the *Evidence Act 1995* (Cth), tendered by ASIC without objection. Additionally, ASIC has tendered a bundle of documents without objection, including materials apparently obtained

in the course of the investigation, being training materials, a list of questions to be asked of debtors, a sample of an impugned communication to a debtor by email, and financial documents for the financial years ended in 2019 to 2022 as a forecast, as well as the email sent to my chambers on 2 May 2022 recording the settlement that had been reached and attaching draft short minutes of order to reflect that and to prepare the matter for the penalty hearing.

8 Debt Negotiators read two affidavits without objection, sworn by Mr Ahmed Ibrahim, the director of Debt Negotiators and by Mr Mahdy Dennaoui, the director of MD Group of Companies Pty Ltd, the registered accountant for Debt Negotiators.

9 Mr Ibrahim deposes to:

- (a) the extensive remedial steps that he took on behalf of Debt Negotiators to address the contravening conduct, and to prevent it recurring, as detailed further below;
- (b) the cooperation with ASIC;
- (c) the absence of profit made from the contraventions in relation to all six debtors, as opposed to profit made from the transactions, of which the contraventions were only a part; and
- (d) the absence of any prior conduct by Debt Negotiators amounting to allegations of the kind raised in ASIC's concise statement.

10 As to the point at [9](c) above, there is a dispute between the parties, but it seems to me to be of little real moment. ASIC submits that this is not a case in which the contravener made a very significant profit directly from the contravening conduct, referring to just over \$20,000 in revenue from the six debtors, less \$7,500 paid in compensation to one of the debtors from whom just over \$2,000 was obtained, producing a net figure of just over \$14,000. Debt Negotiators submits that ASIC does not say how much of that sum is profit attributable to the contraventions, being only a part of the conduct in administering the agreements, such that the Court cannot be satisfied that any profit or benefit can be attributed to the contraventions. What matters in the end is that in this case, the actual profit derived is not a useful measure of the seriousness or otherwise of the contraventions.

11 As submitted by ASIC, the appropriate framework in a case like this was described in *viagogo AG v Australian Competition and Consumer Commission* [2022] FCAFC 87 (Yates, Abraham and Cheeseman JJ) at [161]:

First, while there are authorities which, in assessing penalty, relate specific deterrence to the profit derived from contravening conduct, they should not be construed as laying down an immutable principle that the appropriate penalty to secure specific deterrence is necessarily pegged to, or limited by, the amount of profits derived from the contravening conduct. Nor should the authorities be construed as requiring, in point of principle, that there be some linear relationship between the appropriate penalty and profit or that the penalty should only exceed the profit by a certain amount: *VW [Volkswagen Aktiengesellschaft v Australian Competition and Consumer Commission]* [2021] FCAFC 49; 151 ACSR 407], 431 at [148] – [149]. Profit is merely one factor that may be relevant among many others: *ABCC v CFMEU [Australian Building and Construction Commissioner v Construction, Forestry, Mining and Energy Union]* [2017] FCAFC 113; 254 FCR 68], 89 at [103]. In many cases, including the present, reported profit may not reflect the objective seriousness of the contravention. Objective seriousness is frequently more a function of the character of the conduct, the harms caused (monetary and otherwise) by the conduct, and the deliberateness of the conduct. Indeed, reported profit may not even be the most useful measure of benefits accruing to the contravener and such benefits may include growth of business, market recognition, advancement over competitors, and savings in compliance costs.

- 12 Mr Dennaoui deposes to Debt Negotiators' current financial position in the lead up to the penalty hearing, as detailed below.
- 13 The contravening conduct was initially detected by the Australian Financial Security Authority (AFSA) investigating an anonymous tip off. But for that taking place, it is unlikely that the contravening conduct would have been detected. Debt Negotiators had no regime in place either to detect or to prevent such conduct. It does now.
- 14 ASIC contends that an appropriate penalty necessary to give effect to the objective of deterrence is \$3.25 million. Debt Negotiators submits that this amounts to an attempt to drive them out of business, and contends that the penalty should be no more than \$190,000, based on a \$2,000 penalty for each of 95 of the 149 communications with debtors or persons close to them relied upon by ASIC. For the following reasons, I have decided that the appropriate penalty in all the circumstances is \$650,000, arrived at by a penalty of \$100,000 for each of five of the debtors, and \$150,000 for the sixth debtor. With the agreed payment towards legal and investigative costs of \$150,000 (\$80,000 to be ordered to be paid by order of this Court for legal costs, and \$70,000 ordered to be paid by order of ASIC under s 91 of the *ASIC Act* for investigation costs), the overall cost to Debt Negotiators will be \$800,000. This means that neither side's position has substantially prevailed over the other, being much more than Debt Negotiators sought, and much less than ASIC sought. In

explaining that sum, after resolving several disputes in some detail below, it is important to expose my reasoning.

15 First, I do not accept that that a penalty per communication as urged by Debt Negotiators is a defensible approach. The conduct was directed, over time, to each of the six debtors, and the penalty imposed needs to reflect that, as it is the debtors who were meant to be protected from such conduct. Secondly, this has the collateral effect that the resolution of a dispute as to the effect of a change in the legislation, addressed in some detail below, ends up being of little practical importance, given the focus on deterrence that is required. Thirdly, I have taken into account the differential impact on the object of deterrence, both specific and general, of the counterfactual scenario of Debt Negotiators either not admitting to the contraventions, or not implementing a serious and genuine remedial program, or not doing either of those things.

16 Had Debt Negotiators done neither of those things and taken the case to trial, and ASIC had succeeded in proving most if not all of its case, it is likely that the penalty required to deter it and to deter other registered debt administrators determined to take the same approach would have been a high proportion of the \$3.25 million sought by ASIC. Indeed with the usual additional preparation and investigation that takes place in the lead up to the trial, it is possible an even worse picture could have emerged, and the penalty might even have been higher.

17 Had Debt Negotiators either only admitted the contraventions, but not implemented the remedial program, or maintained a denial of the contraventions, and ASIC succeeded in proving most if not all of its case, but still implemented the remedial program, the overall penalty would have been less, based on a penalty less than the \$3.25 million sought by ASIC. But it would have been at least \$1.3 million, and likely quite a bit more if the matter had gone to trial and Debt Negotiators' defence had failed, with a working basis for calculation of \$200,000 for each of five debtors and \$300,000 for the sixth debtor, plus agreed legal costs ordered by the Court of \$80,000 and agreed investigation costs ordered by ASIC of \$70,000. The total bill to be paid by Debt Negotiators would have been no less than \$1.45 million, and potentially quite a lot more.

The contraventions

18 Most aspects of the facts and circumstances constituting the contraventions have been agreed by a combination of admissions to the concise statement, agreed facts, and evidence

adduced without objection, aided by submissions advanced by ASIC that are not contested. There is also uncontested evidence as to capacity to pay, which requires some further consideration later in these reasons. There remains a number of contextual and characterisation facts concerning, in substance, the nature and the motivation for the contraventions, which are pleaded by ASIC and said to be established by inference from the facts that are agreed, but expressly denied by Debt Negotiators. The determination as to whether those facts can be inferred as urged by ASIC does not breach the strictures imposed upon departing from agreed facts.

- 19 The approach taken below is to set out the declarations agreed to, the pleaded allegations admitted to, the key aspects of the agreed facts, and the characterisation by ASIC of what has taken place which is not contested by Debt Negotiators. I then turn to the contested contextual and characterisation facts, and a dispute about the effect of legislative changes on the conduct for which penalties can be imposed.

The declarations consented to

- 20 It is convenient to set out in full the concise declarations that it is agreed ought to be made, which will in substance ultimately be made when the final penalty orders are made. Those declarations provide a concise overview of the contravening conduct that has taken place, as follows:

Pursuant to s 21 of the *Federal Court of Australia Act 1976* (Cth) (**FCA Act**):

1. The defendant:

- (a) between 4 May 2018 and 26 November 2018 in relation to Debtor HC;
- (b) between 30 January 2019 and 15 April 2019 in relation to Debtor TB;
- (c) between 30 January 2018 and 11 February 2019 in relation to Debtor JD;
- (d) between 25 October 2018 and 8 October 2019 in relation to Debtor LH;
- (e) between 25 July 2018 and 28 November 2018 in relation to Debtor RL;
- (f) between 20 February 2018 and 19 February 2020 in relation to Debtor DM,
engaged in conduct in relation to financial services that was misleading or deceptive or was likely to mislead or deceive by representing to the 6 debtors for whom the defendant was the registered debt agreement administrator that:
 - (g) creditors had contacted the defendant and that they were, or might be, considering terminating their debt agreement and pursuing legal action; and/or
 - (h) creditors had placed their debt agreement under review for termination; and/or

- (i) creditors had requested that their debt agreement be terminated in order to commence legal action; and/or
- (j) their debt agreement was about to be terminated or was in the process of being terminated; and/or
- (k) creditors were assessing their account history and payments and would advise if they wished to terminate their debt agreement to start looking into proceeding with legal action such as bankruptcy and fraud charges; and/or
- (l) creditors had demanded payment within a specified time period, failing which creditors would terminate their debt agreement; and/or
- (m) if their debt agreement was terminated and they were forced into bankruptcy, their financial situation would be examined to determine if they had been able to make payments under their debt agreement; and/or
- (n) they could be charged with fraud and sentenced to imprisonment for failing to make payments under their debt agreement or selling their assets; and/or
- (o) creditors intended to contact their family, friends or work colleagues to recover their debts; and/or
- (p) creditors wanted the defendant to start contacting a debtor's family and friends to recover debts; and/or
- (q) if they were subject to a garnishee order, the creditors would be entitled to take 80 percent of the debtor's income until their debts were fully repaid,

when none of this was true and/or, in so far as any of those representations were made as to any future matter, the defendant did not have reasonable grounds for making those representations, thereby separately contravening s 12DA of the *ASIC Act* in relation to each of the 6 debtors.

2. The defendant:

- (a) between 26 February 2018 and 4 March 2019 in relation to Debtor HC;
 - (b) between 10 January 2019 and 15 April 2019 in relation to Debtor TB;
 - (c) between 30 January 2018 and 4 April 2019 in relation to Debtor JD;
 - (d) between 20 September 2018 and 8 October 2019 in relation to Debtor LH;
 - (e) between 16 March 2018 and 29 November 2018 in relation to Debtor RL;
 - (f) between 20 February 2018 and 19 February 2020 in relation to Debtor DM,
- used undue harassment or coercion in connection with the supply or possible supply of financial services to a consumer, or the payment for financial services by a consumer, in

relation to the 6 debtors for whom the defendant was the registered debt agreement administrator by:

- (g) engaging in the conduct set out in paragraph 1 above; and/or
- (h) threatening to contact uninvolved family members, friends, work colleagues or landlords; and/or
- (i) contacting or attempting to contact uninvolved family members, friends and work colleagues; and/or
- (j) pressuring debtors to seek the assistance of family and friends to make payments due under their debt agreements; and/or
- (k) communicating with debtors in a demeaning, condescending and/or offensive manner,

thereby separately contravening s 12DJ of the ASIC Act in relation to each of the 6 debtors.

The pleaded allegations admitted to

21 In the 24 month period between 30 January 2018 and 19 February 2020, ASIC alleges that Debt Negotiators engaged in the following conduct:

- (a) made misleading or deceptive representations to the six debtors concerning the current status of their debt agreements, (**Defaulting Debtor Representations**). The majority of the Defaulting Debtor Representations were based on templates created and/or used by Debt Negotiators' Customer Support Officers. Annexure A of ASIC's concise statement, (partially reproduced below) contains the particulars of these allegations;
- (b) in addition to making the Defaulting Debtor Representations, Debt Negotiators threatened to contact and repeatedly contacted or attempted to contact uninvolved family members, friends and work colleagues of the six debtors (**Third Party Conduct**), conduct of which illustrative examples are also partially reproduced below; and
- (c) in light of that conduct, which is admitted to by Debt Negotiators, ASIC further alleges that the Defaulting Debtor Representations were a tactic illegitimately used against customer debtors by Debt Negotiators so they would make payments under their debt agreements and that, in all of the circumstances pertaining to the Third Party Conduct, Debt Negotiators intended to embarrass and intimidate the six debtors and illegitimately pressure them into contacting them and/or making payments. In its amended concise

statement in response, Debt Negotiators denies this characterisation of the contravening conduct, a point I return to later in these reasons.

22 The concise statement has annexed to it a detailed table setting out the contravening communications by Debt Negotiators' Customer Support Officers to the six debtors by way of text message (SMS), email and telephone calls, which is partially reproduced as a schedule to this judgment. Without detracting from the totality of the contravening conduct, the effect of this table is summarised in ASIC's submissions, without dispute, as follows.

23 In total, there were 39 instances of Defaulting Debtor Representations (**DDR**) and 110 instances of the Third Party Conduct (**TPC**), the content of which are summarised below. The effect of the of the Defaulting Debtor Representations, in summary, related to the asserted consequences of defaulting under their debt agreements and communications which were said to have been received by Debt Negotiators from the creditors of the debtors. These representations were comprised of the following, which was false, and in so far as any of them were made as to any future matter, were not based on reasonable grounds, which is admitted to by Debt Negotiators:

- (a) creditors had contacted Debt Negotiators and that they were, or might be, considering terminating their debt agreements to pursue legal action;
- (b) creditors had demanded payment within a specified time period, failing which would cause creditors to terminate their debt agreement. ASIC reproduces illustrative examples of this conduct by submitting that on at least five occasions, a message in one of the following terms was sent to debtors by Debt Negotiators' Customer Support Officers:

I have been contacted by your creditors and they may be looking at terminating your account as you have not made consistent payments towards your debt agreement. To avoid any legal action that maybe [sic] occur, please contact us to [sic] we can work together.

[or]

Your creditor have contacted me and are looking at terminating your account, if they proceed they may force you to bankruptcy and take legal action against you.

[or]

Could you please contact Debt Negotiators as a matter of EXTREME urgency. Your creditors have requested to terminate the contract in order to commence legal action. Please contact us as soon as possible as they have demanded action to begin this week.

[or]

Your Debt Agreement will be terminated and your travel will be restricted and legal action may be taken against you.

[or]

I don't think one payment is going to stop them cancelling your agreement.

On one occasion, a debtor received an SMS message which stated the following: "Your creditors want us to start contacting your family and friends to recover the funds."

- 24 As noted above, some of the Defaulting Debtor Representations were made via telephone. One example is a conversation between a Customer Support Officer and Debtor LH on 7 December 2018, relevantly reproduced as follows:

It's about to be terminated ... I'm going to need you to send bank statements for the last 3 months. So where did those funds go? ... If this gets terminated, and they force you into bankruptcy, someone is literally going to go through your expenses with a fine tooth comb, they aren't going to leave anything unturned, without looking into every cent that you've spent. If they feel that you had the means to pay your debt agreement, if you made purchases at McDonald's, if you made pointless purchases, you know things you don't need, you can potentially be sent to prison. That is a very real situation, that you need to take in ... On the flipside, if they don't force you into bankruptcy and decide to go with legal action, they can apply for a garnishee, which is a court order, where your payroll have to pay them before you pay you. They are entitled to take 80% of your income - you will be left with 20% to survive on, and there is nothing you can do about it.

- 25 For the most part, the Defaulting Debtor Representations were based on templates. A prominent example of these templates is as follows, which was sent to debtors on no less than 10 occasions:

Your debt agreement is now under review for termination. Your creditors will now be assessing your account history and payments and will advise if they wish to terminate the contract in order to look into proceeding with legal action such as bankruptcy and fraud charges.

- 26 ASIC reproduced the following relevant instances of Third Party Conduct (TPC):

- (a) From 16 March 2018 to 16 July 2019, Debt Negotiators contacted each of the six debtors by SMS or email asking that they be contacted that day and stating: *"Unfortunately if we do not hear from you we will need to extend our searches to get in contact with you. This means we may need to contact friends, family, Neighbours, work places or even landlords"*.
- (b) From 31 October 2018 to 14 November 2018, Debt Negotiators contacted and spoke to Debtor RL's parents, called and sent an SMS message to four uninvolved friends or

acquaintances asking them to tell Debtor RL to “call A&M Group urgently”, and called and spoke to Debtor RL’s listed employer.

- (c) From 19 February 2019 to 19 March 2019, Debt Negotiators called Debtor LH’s employer on eight occasions, contacted her sister by phone or SMS on nine occasions, and contacted her mother by phone or SMS on seven occasions. One of these SMS messages to Debtor LH’s sister, on 22 February, said “[a]fter the 01/03/2019 i cant help any further and she may be investigated for other charges. This is extremely serious”. On 5 March, Debt Negotiators told Debtor LH’s sister that \$1,000 needed to be paid that day, and told her to “ask her father to call me to make the payment on her behalf”.
- (d) SMS messages were sent to Debtor TB on 22 January 2019, 1 March 2019 and 10 April 2019. Between 9.15 am and 11.00 am on 25 March 2019, Debt Negotiators sent SMS messages to six family members or acquaintances of Debtor TB, saying “[Debtor TB] has provided your phone number as an emergency contact. Can you please pass a msg on for her to call A&M Group URGENTLY on 1300351008”. In fact, Debtor TB had not provided these contact details, and Debt Negotiators had obtained them through its own searches of outside databases, including Facebook.

27 Those communications are further summarised in ASIC’s submissions as follows, indicating the period and number of communications for each debtor, using the abbreviation above of **DDR** to mean Defaulting Debtor Representations and the abbreviation **TPC** to mean Third Party Conduct, and noting that because of a number of communications in which there was both types, the combination is more than the total number of communications:

Debtor	Conduct period (Months)	Total Communications	Total DDR	Total TPC	Combined DDR & TPC
HC	12	16	16	8	24
TB	3	19	8	14	22
JD	14	19	12	13	25
LH	12	60	26	48	74
RL	8	17	8	13	21
DM	24	18	10	14	24
TOTAL		149	80	110	190

The key aspects of the agreed facts

28 The agreed facts are quite detailed and include some helpful background matters which do not need to be reproduced. The key facts agreed to are as follows.

29 The conduct giving rise to this proceeding was engaged in by individuals within Debt Negotiators' Customer Care Team, comprised of Customer Support Officers. Their identities were anonymised and they were referred to as XP, KD, SG, SN and RF. In addition, JD who was a Customer Support Manager (and also performed the duties of a Customer Support Officer), also engaged in the contravening conduct during the relevant period. Customer Support Officers had the authority to communicate with Debt Negotiators' customers, for the following purposes:

- (a) to explain to them their payment obligations under debt agreements and the potential consequences of failure to comply with those obligations; and
- (b) to arrange for debtors to make payments in accordance with their debt agreement and rectify any defaults.

30 As at October 2019, Debt Negotiators administered 6,424 debt agreements, representing about 13% of the market at the time and by May 2022, they were the second largest of 21 registered debt agreement administrators in Australia.

31 During the relevant period, Debt Negotiators' financial position was as follows:

- (a) during the financial year ended 30 June 2018, Debt Negotiators made a net profit of \$678,465 and surplus of liabilities over assets of \$307,112;
- (b) the following financial year ending 30 June 2019, Debt Negotiators made a net profit of \$610,273 and had a surplus of liabilities over assets of \$621,839; and
- (c) during the financial year ending 30 June 2020, Debt Negotiators made a net profit of \$1,598,476 and had net assets of \$905,072.

32 Debt Negotiators operated on an incentive bonus structure, which applied to the Customer Support Team. This operated on both an individual and a team basis. Bonuses were paid to staff members monthly so that each Customer Support Officer had a pecuniary interest in a debtor making a prompt payment under their debt agreement. The bonus structure had three components, relevantly:

- (a) a bonus payable based on the total value of payments made by debtors over the phone for their debt agreements during the month, with a team component and an individual component;
- (b) an individual bonus of \$1,000 for reducing the arrears of debtors in default by between \$0 and \$5,000, \$1,250 for reducing arrears between \$5,001 and \$20,000, and \$1,750 for reducing the arrears of debtors in default by \$20,001 or more; and
- (c) a team and individual bonus based on the collection of set-up fee payments by credit card when a debtor initially engaged Debt Negotiators.

33 On or about 12 April 2022, Debt Negotiators discontinued bonus payments to the Customer Support Team.

34 Staff within the Customer Support Team received two training and instruction documents titled, “*Debt Negotiators – Training & Reference Material*” and “*Questions To Be Asked*”. The documents did not do any of the following:

- (a) address whether the contact staff in the Customer Support Team were permitted or not permitted to make with family members, friends and colleagues of customer debtors or refer to any training pertaining to this; or
- (b) address the statements staff in the Customer Support Team were permitted and not permitted to make to customer debtors in having them reduce any arrears due under their debt agreements or refer to any training pertaining to this.

35 During the relevant period, Debt Negotiators were advised that:

- (a) Debtor HC was “*in a very bad cashflow situation*” and their family and friends were unable to assist them in meeting their repayments;
- (b) Debtor TB was struggling financially, not able to meet their payments towards their debt agreement and that they were experiencing domestic violence and had to flee their home;
- (c) Debtor LH had been suffering from mental health issues attributable to the domestic violence they suffered. As a consequence, they had been seeing a psychologist and living in safe housing and Debt Negotiators’ threats of sending her to jail had exacerbated their mental health condition, leading to suicidal thoughts;
- (d) Debtor DM had lost their job, wanted to file for bankruptcy, and was attempting to sell their property to make payments due under their debt agreement; and

(e) Debtor RL had applied to have their superannuation released to make a payment to Debt Negotiators.

36 The earliest record of Debt Negotiators' senior management becoming aware of conduct similar to the contravening conduct was in June 2018. This was by way of an email sent to a debtor by Customer Support Officer **XP** which relevantly stated:

I am unaware if you ended up getting your super, but if you did you will be charged with fraud and face up to 12 months imprisonment. I hope for your sake that you didn't get it out".

On 14 June 2018, Mr Thomas, the General Manager of Debt Negotiators replied to the email from XP, copying in Customer Support Manager JD, and stated:

the below is not an acceptable email to send to clients. You cannot tell a client they will be charged with fraud. Please confirm who gave you permission to write an email indicating the client will be charged with fraud?

On the same day, XP replied stating:

I sent it as a client had told us she was approved for her super release in December and that she go [sic] the funds to pay her DA. Isn't this what could happen?? I have been under the impression that that [sic] would be a likely reason

In response, Mr Thomas stated:

It could happen but is not guaranteed to happen, you cannot state that a client will be charged with fraud. It is very rare that a client does have legal action taken against them by Bankruptcy Regulation. It generally only occurs with referrals from creditors, trustees, or debt agreement administrators.

37 Following this exchange, Mr Thomas and Customer Support Manager JD held informal one-on-one meetings with the Customer Support Officers to tell them they were not to "threaten" debtors. No disciplinary action was taken against XP. In a management meeting held about a month later on 31 July 2018, XP was singled out as the minutes noted that "[XP] is the star performer collecting \$100,000 for the month". It was otherwise left unclear from the minutes whether there was any correlation between the unauthorised approach by XP and their success in reducing arrears.

38 The following year in June 2019, an email was sent by AFSA relating to an anonymous tip-off in relation to the administration of Debtor TB's debt agreement. The email contained excerpts of communications relating to the debt agreement. Those excerpts included:

- (a) an email from Customer Service Officer KD sent on 5 April 2019 which contained a statement as follows:

Your creditors have done an investigation into your finances and have advised if your Debt Agreement terminates and payments continue to be missed they will be looking to charge you with fraud.

We do need to let you know that once fraud charges have been placed on your criminal record this can hold up to 12 months jail.

and

- (b) an email from Customer Support Officer SG sent on 15 April 2019 in the same terms as the SMS message.

39 On 16 December 2019, debtor LH filed a complaint to the Australian Financial Complaints Authority due to her treatment by Debt Negotiators. The complaint was settled on 18 April 2021, Debt Negotiators agreed to pay \$7,500, about four times the \$2,016.50 she owed and was released from any further liability.

40 From around January 2020, Debt Negotiators took the following remedial steps:

- (a) implemented a “*compliance register*” that each manager must keep a log of all such audits to check compliance with the prescribed templates and to administer any necessary retraining;
- (b) created and adopted a new training program for its staff, and following the identification of the Defaulting Debtor Representations, also introduced regular training on communication standards and ethical considerations for dealing with vulnerable clients;
- (c) upgraded their record keeping systems, to ensure record keeping of templates, SMS, and other documents sent to debtors and implemented a telephone recording system which monitors for certain words like “*prison*”, “*fraud*”, and swear words, including any abrupt changes in tone.
- (d) changed some of its personnel, including appointing a Compliance Manager, who had the responsibility to ensure all communications external and internal met the company’s standards and that Debt Negotiators complied with their statutory obligations; and
- (e) adopted an internal whistle-blower policy.

41 Debt Negotiators earned \$14,057.62 net of the compensation paid to Debtor LH from administering the contravening debt agreements. Of the debt agreements described in the

concise statement, the only debt agreement that remains in force is with Debtor DM, of which \$2,520.00 remains to be paid to Debt Negotiators.

42 Prior to this proceeding, Debt Negotiators had never been found to have engaged in any conduct like that described above.

The characterisation of what has taken place which is not contested by Debt Negotiators

43 The written submissions by ASIC characterise aspects of the facts set out above in a way that is not contested as follows:

(a) Debt Negotiators admits that it has contravened ss 12DA and 12DJ of the *ASIC Act*. Section 12DA(1) of the *ASIC Act* has at all relevant times provided:

A person must not, in trade or commerce, engage in conduct in relation to financial services that is misleading or deceptive or is likely to mislead or deceive.

(b) Section 12DJ(1) of the *ASIC Act* has at all times provided:

A person contravenes this subsection if:

- (a) the person uses physical force or undue harassment or coercion; and
- (b) the person uses such force, harassment or coercion in connection with the supply or possible supply of financial services to a consumer, or the payment for financial services by a consumer.

(c) by admitting the contraventions alleged, and consenting to the relief sought in the originating process, Debt Negotiators thereby admits that it made the representations listed at [20]-[22] above, collectively defined as Defaulting Debtor Representations;

(d) these representations were untrue (or if made as to future matters, there was no reasonable grounds) and therefore contravened s 12DA of the *ASIC Act* “*separately ... in relation to each of the six debtors*” (i.e. six separate contraventions);

(e) Debt Negotiators’ conduct was “*in relation to financial services*” and;

(f) in respect of Debt Negotiators’ admission of contravening s 12 DJ of the *ASIC Act*, the contravening conduct is constituted by both Defaulting Debtor Representations and the Third Party Conduct as described at [23] above. The contraventions of s 12DJ therefore involve the same date range as those for the s 12DA contraventions. Debt Negotiators consents to declarations that it “*separately contravened s 12DJ ... in relation to each of the 6 debtors*” (i.e. six separate contraventions).

The contested facts

44 The factual contest between the parties largely, but not entirely, turns on whether [11] and [14] of ASIC’s concise statement, or some lesser version of what is alleged, can and should properly be drawn from the facts that have been admitted to in one of the ways set out above. There is a related issue as to who suffers any detriment in the inference drawing process from not having adduced evidence from the six consumer debtors, or from the Debt Negotiators employees (most of whom are no longer employees).

45 ASIC asserts and Debt Negotiators denies the allegations in [11] and [14] of the concise statement:

[11] the Defaulting Debtor Representations were a tactic illegitimately used by Debt Negotiators to pressure debtors to contact Debt Negotiators and/or make payments under their debt agreements and;

[14] in all circumstances, the Third Party Conduct was calculated to embarrass or intimidate the six debtors and illegitimately to pressure them into contacting Debt Negotiators and/or making payments.

46 In respect of the above pleaded and denied allegations, ASIC submits that the Court should be comfortably satisfied to make this finding on the basis of the evidence before the Court alone. While ASIC concedes that there is a lack of direct evidence before the Court of the subjective motivations of the Customer Support Office who made the Defaulting Debtor Representations, they submit that there is an “*irresistible inference*” to be drawn from the evidence that:

- (a) the Defaulting Debtor Representations were illegitimate;
- (b) they were intended to place pressure on the debtors; and
- (c) the purpose of that pressure was ultimately to have the Debtor make payments under their debt agreement (to the advantage of the Customer Support Officer and Debt Negotiators itself).

In support of this submission, ASIC relies on Debt Negotiators’ admission in a formal response to AFSA where Debt Negotiators said the following via email: “*This was a technique to attempt to have the debtor contact us due to delinquency on the account*” (**the July 2019 admission**).

47 In respect of the allegation raised by [14] of the concise statement, ASIC submits that the tactic employed by Debt Negotiators of indiscriminately contacting (or threatening to contact) uninvolved friends, family members and work colleagues and informing them that the debtor was pursued by creditors was clearly intended to embarrass and intimidate. ASIC submits that

this Court should be prepared to make a similar finding, placing further reliance on the July 2019 admission. While Debt Negotiators submits that the July 2019 admission was directed to Defaulting Debtor Representations rather than Third Party Conduct, the point is that this sort of behaviour was a manifestation of a business strategy evidently designed to force debtors to comply with their agreements, including by illegitimate means. It is an admission as to an attitude and motivation as well as to particular conduct.

48 Debt Negotiators submits that both of ASIC's allegations should never have been included in the concise statement, as they do not constitute any element of any of the causes of action alleged. It submits that both these statements concern the subjective motivation of the Customer Support Officers who made the Defaulting Debtor Representations and engaged in the Third Party Conduct and that accordingly the Court should look at the content of the representations themselves and avoid drawing any inferences of what their subjective motivations were, especially in circumstances where ASIC knows at least four out six of the customer support officers' evidence.

49 With respect to [11] of the concise statement, Debt Negotiators also submits that the language used in this allegation is lifted from the language of economic duress, which in itself is not a cause of action, but a vitiating factor of consent in the law of contracts, citing *Crescendo Management Pty Ltd v Westpac Banking Corporation* (1988) 19 NSWLR 40 per McHugh JA (as his Honour then was) at 45, where his Honour said the following:

[t]he rationale of the doctrine of economic duress is that the law will not give effect to an apparent consent which was induced by pressure ... when the law regards that pressure as illegitimate.

Debt Negotiators submits that no such thing is alleged in this proceeding.

50 I am unable to accept Debt Negotiators' submissions on this issue. This is not about ASIC asserting some different or more serious contravention, but rather characterising the very nature of what took place, both by reference to what was done (including the words deployed) and by reference to the admission relied upon made directly in relation to Defaulting Debtor Representations. The question is whether, read objectively, the communications in question can fairly be said to reflect the Defaulting Debtor Representations being illegitimate, and intended on their fact to place pressure on the debtors with the purpose of that pressure being to have each debtor make payments under their debt agreement, aided by the admission specifically referable to the Defaulting Debtor Representations as to this being a technique deliberately deployed against delinquent debtors. The related question is whether the Third

Party Conduct of contacting or threatening to contact the uninvolved friends, family members and work colleagues of debtors and informing them that they were being pursued by creditors was clearly intended to embarrass and intimidate. No other purpose is evident, let alone plausible.

51 I have no particular difficulty in finding that each of the characterisations advanced by ASIC at [11] and [14] of the concise statement is amply supported by the evidence as to what actually took place, significantly supported by the July 2019 admission as to the Defaulting Debtor Representations, and being more generally supportive of that conclusion being drawn for the Third Party Conduct in the absence of any credible alternative explanation. Nor was there anything wrong with this being pleaded, as it served the legitimate purpose of letting Debt Negotiators know the case that it had to meet, not so much as to liability, but rather as to characterisation for the purposes of penalty imposition, noting that this issue would have been conveniently dealt with at trial in terms of evidence being adduced. I would go further in observing that it is difficult to see how the conduct as described and summarised above can sensibly be regarded in any other way.

52 In relation to the contest as to which side should bear an adverse inference from not calling any of the six debtors or any of the (mostly former) employees, that is not really a live issue in this case. I would not readily draw an inference against either side for not calling a particular witness of either kind, but even if I did, it could only be to the effect that a witness was not called because they would not help the party who did not call them, which in this case really does not take things anywhere useful. A subjective account of what the experience was of an individual debtor and the subjective impact upon them, or individual asserted subjective motives of the employees, was always going to be largely secondary to what, objectively ascertained, took place. A debtor's statement as to the impact of the things said and done might have added to that in some evocative and ultimately unsurprising way, but the technique itself and the content of what was said at the time, is generally a more valuable and reliable basis for assessing what took place, reflective in the substantial agreement in that regard between the parties.

53 To the extent it matters, ASIC's case without such evidence is perhaps less evocative than it might otherwise have been, but beyond that, not much of any use can be said. Correspondingly, the real likelihood that any of the employees will recall anything specific in relation to any particular debtor a relatively long time ago, going much beyond the recorded words in

evidence, seems to me to be contrary to ordinary experience. To the extent that ASIC misses out on anything that makes the situation worse than it already appears, or that Debt Negotiators misses out on anything that makes the situation less bad than it appears, does not much advance the situation, and could not materially be changed by any *Browne v Dunn* inference that could be drawn.

54 A part of ASIC's submissions also seek to characterise the content of the representations that were made to debtors as dishonest and constituting or involving repeated lies to debtors. Debt Negotiators submit that this goes too far, asserting that this amounts to allegations of fraud, calling in aid the statement of principle in *Forrest v Australian Securities and Investments Commission* [2012] HCA 39; 247 CLR 486 at [26] that allegations of fraud must be pleaded specifically and with particularity. That principle is not in doubt, but the characterisations of state of mind in doing the contravening acts on behalf of Debt Negotiators are not allegations of fraud in terms of the conduct. The starting point of most if not all civil penalty provisions is that no state of mind is necessary to be pleaded or established to make an alleged contravener liable. But the fact that state of mind is not ordinarily an element, does not make it irrelevant. Far from it. In many if not most cases, state of mind will be important, either from the point of lessening or of elevating the seriousness of what has taken place.

55 The question of state of mind in relation to civil penalty provision contraventions was addressed in *Reckitt Benckiser*:

- (a) The primary judge in that case had found that the contravener's conduct should be regarded as innocent because the regulator had not pleaded any state of mind and had not made any submission as to any such state of mind existing: [117].
- (b) The Full Court found that his Honour had erred in concluding that because the regulator did not plead any state of mind, the penalty was to be assessed upon the basis that the conduct was innocent, because the contravener was on notice by the bringing of the proceeding that state of mind was potentially in issue: [121].
- (c) The deliberateness (or otherwise) of contraventions has always been a matter relevant for contraventions of consumer protection laws, a proposition no less apposite for the contraventions in this case: [124]. The same reasoning can apply to the presence or absence of any other state of mind in carrying out a contravention, such as dishonesty or telling lies. Such a state of mind may be pleaded, but it does not have to be.

56 In this case, as in *Reckitt Benckiser*, state of mind, which is ordinarily if not invariably inferred, but can also be directly proven, was always potentially going to be important. That said, I am not materially assisted in this case by making any finding that an individual making these communications was being dishonest or lying, and if that is not of much assistance, I would choose not to take that step. It is more than sufficient for present purposes to record the fact that there was a practice – or to use the words of the admission, technique – deployed by employees in relation to Defaulting Debtor Representations, and for the Third Party Conduct on the face of it, and not just rogue employees, to place illegitimate pressure on debtors to make payments under their debt agreements, and to do so by representations that were at best misleading and at worse simply false or otherwise wrong. Although there was a live dispute on this issue, in the end that conclusion is far from surprising. That is especially so when the contraventions admitted to are engaging in conduct in relation to financial services that was misleading or deceptive, or likely to mislead or deceive (s 12DA) and undue harassment or coercion in connection with the supply or possible supply of financial services or the payment for financial services (s 12DJ). The additional characterisations relied upon by ASIC do not take things that much beyond the admissions made as to contravention.

The principles for penalty imposition

57 Section 12GBA(2) of the *ASIC Act* prior to 13 March 2019 provided:

In determining the appropriate pecuniary penalty, the Court must have regard to all relevant matters including:

- (a) the nature and extent of the act or omission and of any loss or damage suffered as a result of the act or omission; and
- (b) the circumstances in which the act or omission took place; and
- (c) whether the person has previously been found by the Court in proceedings under this Subdivision to have engaged in any similar conduct.

58 A number of relatively recent Full Court decisions provide some guidance as to the task of ascertaining the appropriate penalty in the exercise of a broad discretionary penalty imposition power. What is required is to identify and balance the competing relevant factors and to synthesise them into a value judgement as to what is appropriate in light of the protective and deterrent purposes of imposing a civil penalty: *Australian Building and Construction Commissioner v Construction, Forestry, Mining and Energy Union* [2017] FCAFC 113; 254 FCR 68 (*Queensland Children's Hospital*) per Dowsett, Greenwood and Wigney JJ at [100] and the cases there cited, a set of findings not challenged on appeal to the High Court by the

regulator. They were also more recently quoted with approval by the Full Court in *viagogo* at [149]. The primary, if not sole purpose, of penalty imposition is the promotion of the public interest in compliance with the regulatory scheme in question by deterrence of future or further contraventions both by the instant contravener and by others in a like position: *Pattinson* at [9], and at [15] citing and quoting *Commonwealth v Director, Fair Work Building Industry Inspectorate* [2015] HCA 46; 258 CLR 482 (*Agreed Penalties Case*) at [55].

59 In *Minister for the Environment v Northern Seafoods Pty Ltd* [2022] FCA 656, Stewart J summarised the principles stated in *Pattinson*, identifying their source in the majority judgment of Kiefel CJ, Gageler, Keane, Gordon, Steward and Gleeson JJ as follows at [49]:

- (1) The purpose of a civil penalty is primarily, if not solely, the promotion of the public interest in compliance with the provisions of the relevant statute by the deterrence of further contraventions of the statute: [9] and [15];
- (2) “Insistence upon the deterrent quality of a penalty should be balanced by insistence that it ‘not be so high as to be oppressive’. Plainly, if deterrence is the object, the penalty should not be greater than is necessary to achieve this object; severity beyond that would be oppression” (citing *NW Frozen Foods* at 293): [40];
- (3) It is incorrect to set a penalty with reference to what is proportionate to the seriousness of the conduct that constituted the contravention: [10];
- (4) The penalty should be “proportionate” in the sense that it strikes a reasonable balance between deterrence and oppressive severity: [41];
- (5) It is incorrect to view the maximum penalty as being reserved for only the most serious examples of offending conduct; what is required is that there be “some reasonable relationship between the theoretical maximum and the final penalty imposed” (citing *ACCC v Reckitt Benckiser (Australia) Pty Ltd* [2016] FCAFC 181; 340 ALR 25 at [156] per Jagot, Yates and Bromwich JJ): [10];
- (6) The object of imposing a penalty is to attempt to put a price on contravention that is sufficiently high to deter repetition by the contravener and by others who might be tempted to contravene the statute: [15];
- (7) “Retribution, denunciation and rehabilitation have no part to play” (citing *Construction, Forestry, Maritime, Mining and Energy Union v Australian Building and Construction Commissioner (The Non-Indemnification Personal Payment Case)* [2018] FCAFC 97; 264 FCR 155 at [19] per Allsop CJ, White and O’Callaghan JJ): [16];
- (8) A civil penalty “must be fixed with a view to ensuring that the penalty is not such as to be regarded by [the] offender or others as an acceptable cost of doing business” (citing *Singtel Optus Pty Ltd v Australian Competition and Consumer Commission* [2012] FCAFC 20; 287 ALR 249 at [62] per Keane CJ, Finn and Gilmour JJ): [17];
- (9) Relevant factors in the assessment of a penalty of appropriate deterrent value include the following (citing, at [18], *Trade Practices Commission v CSR Ltd* [1990] FCA 762; (1991) ATPR ¶41–076 at [42] per French J):

- (a) The nature and extent of the contravening conduct.
- (b) The amount of loss or damage caused.
- (c) The circumstances in which the conduct took place.
- (d) The size of the contravening company.
- (e) The degree of power it has, as evidenced by its market share and ease of entry into the market.
- (f) The deliberateness of the contravention and the period over which it extended.
- (g) Whether the contravention arose out of the conduct of senior management or at a lower level.
- (h) Whether the company has a corporate culture conducive to compliance with the Act, as evidenced by educational programs and disciplinary or other corrective measures in response to an acknowledged contravention.
- (i) Whether the company has shown a disposition to co-operate with the authorities responsible for the enforcement of the Act in relation to the contravention.

60 The above are considerations that are mostly to be treated as no more than a helpful guide, albeit with certain mandatory constraints. It remains an exercise of discretionary judgment to arrive at the appropriate penalty.

The application of the penalty imposition principles

61 ASIC relies upon the overall statutory scheme, and its objects, of which the provisions breached were an important part. In particular, ASIC points to the objects of the *ASIC Act*, including in particular to maintain, facilitate and improve the performance of the financial system and the entities within it in the interests of commercial certainty, reducing costs and aiding in the efficiency and development of the economy; promoting the confident and informed participation of investors and consumers in the financial system; and taking whatever action ASIC can take and is necessary to enforce and give effect to the Commonwealth laws that confer functions and powers upon it: see s 1(2)(a), (b) and (g). By reference to paragraph (b) in particular, ASIC points to the treatment by Debt Negotiators of the six debtors as consumers of financial services, referring to how they were treated and intimidated to further its business objectives, noting the disparity of power and vulnerability of those debtors. It is important to note that this disparity will also be the situation of debtors whose agreements are administered by other licenced operators in this market, and is an important thing to keep in mind when it comes to general deterrence.

62 ASIC points out that s 12DJ is a consumer protection provision, performing an important function in that area, with an evident primary objective of ensuring consumers are able to receive and pay for financial services with confidence and free of proscribed undue harassment or coercion. But unlike the parallel provision in s 50 of the *Australian Consumer Law*, it is not solely concerned with consumer protection, but extends to the broader performance and integrity of the financial system and its participants.

63 I accept that an important aspect of the deterrence required to be addressed in this case is to be considered in that broader context. It is in the public interest not only that debtors be protected as consumers, but that this aspect of the financial system operates with integrity as an important part of the legislative and practical response to personal insolvency. These debtors and others in their position are ordinarily going to be experiencing financial stress, because that is what has got them to this position in the first place. It is simply unacceptable that this be unnecessarily and improperly exacerbated rather than being helped.

64 The legislative objectives reflected in the Explanatory Memorandum by which the amendments were made to the *Bankruptcy Act 1966* (Cth) to which ASIC refers and relies upon were intended to ensure that there were high calibre debt agreement administrators available to assist debtors to assess their options and that such administrators also meet high standards in relation to handling money and administering agreements: see Explanatory Memorandum, *Bankruptcy Legislation Amendment (Debt Agreements) Bill 2007* (Cth) at [27].

65 ASIC points out that the conduct in this case was contrary to the objectives identified above, systematic, deliberate and took place over almost two years, and by multiple communications by SMS, email and telephone to each of the six debtors, albeit not by anyone in senior management. However, the conduct was predictably fuelled by incentives provided by Debt Negotiators' senior management to customer service staff to procure payments under debt agreements. With that context, far from there being anything in the evidence to suggest that this was aberrant or rogue behaviour reducing the need for deterrence both general and specific, while giving due credit for the corrective steps taken by Debt Negotiators, the contraventions were, as a practical matter, encouraged. Even though it seems that was not the intention, it was a highly predictable outcome.

66 Further, as ASIC points out, Debt Negotiators were squarely put on notice of the vulnerability of many of the debtors, as acknowledged in the agreed facts. Debtors TB and LH told Debt Negotiators about domestic violence and mental health issues affecting their ability to meet their

payments; and debtors HC, TB, LH and DM advised that they had either lost their jobs or had their shifts reduced, affecting their ability to meet their payments.

67 I agree with ASIC's submission that the contraventions admitted to were serious and called for substantial penalties to be imposed. However, just what that means in the approach to be taken is the subject of a substantial dispute, especially as to the number of contraventions and what is truly necessary to achieve the objective of deterrence.

The number of contraventions

68 ASIC relies upon Annexure A to the concise statement, which as noted above details a total of 149 individual SMS messages, emails and telephone calls by which the Defaulting Debtor Representations were made and the Third Party Conduct took place, and constituting an aggregate of 190 such representations with more than one such representation sometimes taking place in a single communication. This took place in a period of just over two years in relation to the six debtors. ASIC describes the conduct as being consistent in some ways and different in others. The similarities turn on the means of communication, while the differences turn on contact with the debtors as against contact with third parties as a source of indirect and humiliating pressure. ASIC submits that the conduct should not be treated as a single course of conduct, but rather as six sets of contraventions directed to the six debtors who had their rights infringed on an individual basis.

69 ASIC also submits that it would not be appropriate to proceed upon there being a contravention for each communication (149 on ASIC's argument; fewer on Debt Negotiators' stance, turning on a statutory issue addressed below). The argument in that regard is that each communication produces an absurdly high number of contraventions, and also artificially separates what was really a series of related communications to each debtor, with a cumulative effect upon each of them. ASIC also points to the admissions made by Debt Negotiators as being upon the basis of the formulation of six separate contraventions. While I would not agree that 149 communications is an absurdly large number, the focus on the debtors is the main point advanced by ASIC.

70 In support of those arguments, ASIC relies upon the following authority:

(a) the observations of Beach J in *Australian Securities and Investments Commission v Commonwealth Bank of Australia* [2020] FCA 790:

[72] It is important to ensure that a respondent is not sanctioned more than

once for what is in substance one episode of contravention. It is appropriate to consider whether, and the extent to which, the contravening conduct should be regarded as a single course of conduct and penalised as one offence in relation to each category of contravention, on the principle that a contravener should not be penalised more than once for the same conduct.

[73] Further, where there is an interrelationship between the legal and factual elements of a contravention, the course of conduct principle may be able to be applied to group contraventions. But it represents a tool of analysis only.

[74] Further, where there have been discrete episodes each involving deliberation, then such a grouping may be inapposite, even if they reflected a common theme, strategy or model.

[75] Further, even a single strategy involving a single or substantially consistent form of conduct might deny such a grouping where the conduct is directed towards numerous recipients.

- (b) the observations by the Full Court in *Queensland Children's Hospital* at [145] to the effect that it may be permissible and appropriate to impose a single pecuniary penalty for multiple contraventions, having regard to a joint approach to that effect by the parties in terms of pleadings, agreed facts, and submissions. However, in this case, ASIC's pleaded case and submissions advance six contraventions organised by debtors, such that the following observations in that case should guide the exercise:

[148] The important point to emphasise is that, contrary to the Commissioner's submissions, neither the course of conduct principle nor the totality principle, properly considered and applied, permit, let alone require, the Court to impose a single penalty in respect of multiple contraventions of a pecuniary penalty provision. There is no doubt that, in an appropriate case involving multiple contraventions, the Court should consider whether the multiple contraventions arose from a course or separate courses of conduct. If the contraventions arose out of a course of conduct, the penalties imposed in relation to the contraventions should generally reflect that fact, otherwise there is a risk that the respondent will be doubly punished in respect of the relevant acts or omissions that make up the multiple contraventions. That is not to say that the Court can impose a single penalty in respect of each course of conduct. Likewise, there is no doubt that in an appropriate case involving multiple contraventions, the Court should, after fixing separate penalties for the contraventions, consider whether the aggregate penalty is excessive. If the aggregate is found to be excessive, the penalties should be adjusted so as to avoid that outcome. That is not to say that the Court can fix a single penalty for the multiple contraventions.

[149] In an appropriate case, however, the Court may impose a single penalty for multiple contraventions where that course is agreed or accepted as being appropriate by the parties. It may be appropriate for the Court to impose a single penalty in such circumstances, for example, where the pleadings and facts reveal that the contraventions arose from a course of conduct and the precise number of contraventions cannot be ascertained, or the number of contraventions is so large that the fixing of separate penalties is not feasible, or there are a large number of relatively minor related contraventions that are

most sensibly considered compendiously. As revealed generally by the reasoning in *Commonwealth v Director, FWBII*, there is considerably greater scope for agreement on facts and orders in civil proceedings than there is in criminal sentence proceedings. As with agreed penalties generally, however, the Court is not compelled to accept such a proposal and should only do so if it is considered appropriate in all the circumstances. It is also at the very least doubtful that such an approach can be taken if it is opposed or the proceedings are defended.

71 ASIC points to the approach taken by Griffiths J in *Australian Competition and Consumer Commission v ACM Group Limited (No 3)* [2018] FCA 2059, in which a debt collection agency was found, after trial, to have contravened s 50 of the *Australian Consumer Law* by engaging in undue harassment or coercion towards two debtors, with his Honour arriving at a specific figure attributable to each of the debtors. ASIC urges the same approach be taken here, by reference to the six debtors.

72 Debt Negotiators contend that the approach that should be taken is to penalise each communication and suggests a uniform penalty for each contravention of, say, \$2,000. As the discussion below reveals, Debt Negotiators contend that only 95 of the communications can be penalised, and accordingly suggests a total penalty not exceeding \$190,000.

73 I will return to the quantum of penalty later in these reasons. However, at this stage it suffices to say that I reject the notion that the penalty should be imposed by reference to each separate communication. That is a wholly artificial exercise. It would have the perverse effect of making it less serious to make a smaller number of more serious communications, and pay no effective heed to the cumulative effect on each debtor. But more importantly it would not properly reflect what has really taken place, and the proscriptions that were breached, from the perspective of those who were meant to be protected. The number and content of the communications, and who they were directed to, informs the seriousness of what has taken place in relation to each debtor, whether the communication was directly to each, or indirect to someone close to them to achieve the same end, or by way of a combination. I am firmly of the view that the penalties should be imposed per debtor, such that there are six contraventions.

The competing cases for the parties on penalty

74 There is a live contest as to the extent to which of the admitted contraventions can be the subject of penalties, both as a matter of statutory construction and as a matter of pleading in the originating application. The dispute arises because of amendments to the *ASIC Act* that took effect on 13 March 2019, being 13 months into the 24 month contravention period.

75 ASIC's case is that penalties may be imposed for the entire 24 month period, alleging six courses of conduct corresponding to the communications with each of the six consumer debtors, seeking a penalty of \$500,000 for the conduct directed to five of the debtors and a penalty of \$750,000 for conduct directed to the remaining debtor, a total of \$3.25 million. The contravening conduct in relation to four of the debtor consumers straddled the change in the legislative regime. The contravening conduct in relation to the remaining two debtor consumers all took place prior to 13 March 2019, so only remains in issue as to the contested approach of imposing penalties by reference to the conduct directed to each consumer, rather than to each contravening communication, because on either approach the pre-13 March 2019 penalty regime applies to all of those contraventions.

76 Debt Negotiators' case is that penalties may only be imposed for the period from 30 January 2018 to 12 March 2019. As noted above, Debt Negotiators submits that penalties should be imposed for the 95 admitted contravening communications that took place in that period, and seeks a flat penalty of \$2,000 per contravention, to arrive at a total penalty of \$190,000. It describes the penalty sought by ASIC as going far beyond what is necessary for general deterrence, and that it is calculated to ruin the company. Given that this argument has already been rejected, the real point of the argument is whether any contravening conduct directed towards a given debtor can be penalised after the change in the legislation.

The legislative penalty regime

77 It is convenient to start with the objective position as to the legislative regime for seeking and imposing penalties for the provisions that have been contravened as it existed up to 12 March 2019, and as it has existed since then. Within both the periods before and after 13 March 2019, this Court had the power to award pecuniary penalties, and there were maximum penalties specified.

78 ASIC relies on the Court's power that was found in s 12GBA of the *ASIC Act* (as it stood prior to 13 March 2019), and the maximum that was set out in s 12GBA(3) of 10,000 penalty units for a body corporate. After the 13 March 2019 amendment, the maximum penalty that could be awarded for a contravention of a civil penalty provision such as s 12DJ was prescribed by s 12GBCA(2)(a). However, as originally enacted, the 13 March 2019 amendment contained a drafting error, such that there was no applicable penalty specified for the civil penalty provisions for the purposes of s 12GBCA(2)(a). Accordingly, on 23 July 2020, with retrospective effect from 13 March 2019, s 12GBCA(2)(a) was repealed and replaced by

schedule 3, items 2 and 9 of the *Treasury Laws Amendment (2019 Measures No.3) Act 2020* (Cth) so as to prescribe the relevant penalty, being a substantially higher penalty than the amount allowable under s 12GBA(3) of 50, 000 penalty units for a body corporate.

79 The power to award pecuniary penalties under s 12GBA during the relevant period was limited only to contravening conduct that fell within Subdivision C, D or GC of the *ASIC Act*. While s 12DA as pleaded falls under the consumer protection provisions in Subdivision D, the award of a pecuniary penalty was prohibited by the operation of s 12GBA(1)(a) of the *ASIC Act* (as it stood prior 13 March 2019). As such, in the circumstances of what is alleged in this case, it is only conduct which contravened s 12DJ that this Court may order Debt Negotiators to pay pecuniary penalties under the *ASIC Act*.

The pleading of the concise statement as to penalty

80 The originating application commences by the following:

This application is made under section 21 of the *Federal Court of Australia Act 1976* (Cth) and section 12GBA (as it stood prior to 13 March 2019) of the *Australian Securities and Investments Commission Act 2001* (Cth) (*ASIC Act*).

The plaintiff claims that the defendant contravened sections 12DA and 12DJ of the *ASIC Act* by making representations that were misleading or deceptive or likely to mislead or deceive and using undue harassment or coercion in relation to six of its debtor clients, and seeks declarations against the defendant in respect of each contravention, pecuniary penalty orders and ancillary orders, including costs.

81 The first dispute for resolution is whether ASIC, by referring only to s 12GBA as it stood up to 12 March 2019, confines the Court to imposing penalties only up to 12 March 2019. Closely related to this are the competing arguments as to imposing penalty by conduct directed to each of the debtor consumers, or by contravening communication.

The competing arguments on the penalty regime and transaction approach to penalty

82 ASIC emphasises the complexity in ascertaining the applicable maximum penalties to the contravening conduct during the relevant period. This is due to the fact, as explained above, the conduct occurred over a lengthy period, during which the provision that provided for the applicable maximum penalty changed to one that ceased to provide for any penalty until it was repealed and replaced as described at [75]. The resultant effect was that, with respect to two of the debtors (Debtor HC and RL), the contravening conduct relating to them occurred wholly prior to 13 March 2019, and therefore is subject only to the earlier maximum penalty imposed by the *ASIC Act* as it stood then. It follows that the four remaining debtors (Debtors TB, JD,

LH and DM) were subjected to contravening conduct for a period both before and after 13 March 2019.

83 Nonetheless, ASIC maintains that in determining the maximum penalty for the conduct concerning these four debtors, the Court must have regard to s 322 of the *ASIC Act*, which provides with respect to the 2019 amendment:

322 Application—civil penalty provisions

Subject to this Part, the amendments made by Schedule 2 to the amending Act apply in relation to the contravention of a civil penalty provision if the conduct constituting the contravention of the provision occurs wholly on or after the commencement day.

84 ASIC in both its written and oral submissions emphasises the significance of the word “*wholly*” in this provision. It submits that where the contravening communications spanned before and after 13 March 2019, the approach the Court must take is to treat the contraventions by each of the six debtors as if they involved a single contravention of s 12DJ of the *ASIC Act*. ASIC submits that if the Court is to take this approach, where the contravening conduct of the four debtors spanned before and after 13 March 2019, it cannot be said that the contravening conduct “*occurred wholly on or after*” 13 March 2019. Further, in making this submission, ASIC refers to the Court’s obligation to grant all remedies entitled in respect to a claim, so that all matters in controversy may be finally determined to avoid multiplicity in proceedings: see ss 22 and 23 of the *Federal Court of Australia Act 1976* (Cth).

85 Debt Negotiators argues that the operation of the penalty provision after 12 March 2019 should be construed differently. In its written submissions and later developed in its oral submissions, it submits that penalties under s 12GBA cannot continue to be imposed after the form of this provision that is provided for any penalty which ceased to operate on 12 March 2019 while the provisions contravened continued in force. The effect of this submission is that any admitted contravention from 13 March 2019 to the end of the relevant period can only be considered in the imposition of penalties insofar as they are relevant to the question of deterrence (which perhaps, in a practical sense, renders the argument somewhat barren, especially given the approach I regard as appropriate of considering the contraventions per debtor, and the predominance of deterrence). Further, in response to ASIC’s submission regarding the Court’s obligation to grant complete relief, Debt Negotiators argues that if the Court applied penalties only to the admitted contraventions before 13 March 2019, relief would be complete on the

originating process that is before this Court, being the originating process when this case was settled.

86 I have carefully considered the competing arguments, and concluded that the argument advanced by ASIC is correct and should be adopted. I am satisfied that penalties are able to be imposed for the whole period, but note that this a legal conclusion rather than a practical one. Given that conduct taking place after the change in the legislation can be taken into account in the determination of the penalty needed for deterrence purposes, even if Debt Negotiators' argument had prevailed on this issue, it would not have made any material difference to the outcome.

Capacity to pay

87 In considering the imposition of an appropriate pecuniary penalty it is necessary for the Court to have regard to certain financial and market considerations pertaining to Debt Negotiators, including the relative size and market share of them as a business, as well as any evidence of loss or damage caused by the contravening conduct.

88 ASIC submits that this is not a case where tangible loss or damage was suffered by the debtors, which is commonplace in a case concerning the use by a provider of financial services of undue harassment or coercion. Instead, the likely effects of such conduct are apt to be mostly intangible, including stress and embarrassment and harm to the informed and confident participation by consumers in the financial system, a core function promoted by the *ASIC Act*.

89 Moreover, ASIC also submits that this not a case where Debt Negotiators have made a significant profit as a direct result of the contravening conduct. ASIC attributes this to the very nature of debt agreements, as they tend to involve relatively smaller sums of money. In any view, it must be borne in mind that while total net profits of \$14,057.62 do not seem especially high in the context of Debt Negotiator's revenue and the maximum penalty figures prescribed by the *ASIC Act*, this is not a trivial sum of money to customer debtors who were under a degree of financial hardship and distress. That is so even if, as I accept is likely, the conduct in question only went to a part of the administration of each agreement.

90 In ASIC's submission, the relatively small profit as a direct result of the contraventions ought not to result in a heavily reduced penalty, as to do so would be to fail to recognise the important value in protecting the type of consumers harmed by this conduct, who tend to be relatively

impecunious, and therefore vulnerable consumers of financial products or services: see the quote from *viagogo* reproduced above at [11].

91 When regard is had to the figures in relation to Debt Negotiators’ financial position and market share, which ranks them as the second largest registered debt agreement administrator in Australia, occupying some 13 to 14% of the market, the figures reflect in ASIC’s submission, “*a large-scale business consistently making substantial profits*”. ASIC relevantly reproduces the figures relative to Debt Negotiators’ financial position as follows:

Financial Year	Net Profit (\$)	Revenue (\$)
2018	678,456	8,758,097
1019	610,273	9,616,368
2020	1,598,476	9,681,505
2021	1,075,712	8,510,590
2022 (projected)	888,337	6,271,970

92 ASIC submits that the Court ought to have regard to these figures to ensure that the penalty figures arrived at adequately achieve the element of specific deterrence, so as to ensure the penalties are not seen as an “*acceptable cost of doing business*”. Further, in response to Debt Negotiators’ submission that the amount ASIC sought by ASIC would “*ruin the company*” by way of insolvency, ASIC submits that the Court should not pay substantial regard to this, as any possibility that Debt Negotiators might become insolvent as a result of the quantum of the penalties, would undermine the object of general deterrence. As already noted, the option of a limited number of instalment payments, if shown to really be needed, addresses this concern in any event. The combination of the penalties and the costs and expenses are still less than the projected net profit for last financial year.

Mitigating aspects

93 ASIC accepts that there are potential mitigating factors in this case which should be taken into account in the calculating of pecuniary penalties. In its written submissions it points to a series of mitigating factors as follows.

94 First, the contravening conduct was not engaged in with the participation or knowledge of Debt Negotiators’ senior management. As explained above, at [26], the conduct was engaged in by Customer Support Officers and a Customer Support Manager, JD. However, the fact that JD was in a management position and directly participated in the conduct lessens the weight of this mitigating factor. The evidence is that when Mr Thomas identified XP making a

representation to a debtor that they could be charged with fraud and face 12 months' imprisonment for withdrawing their superannuation to meet the payments due under their debt agreement, he disapproved of that conduct in an email exchange with XP as explained above at [33]. There is no evidence that Mr Ibrahim as the sole director of the company was personally aware or personally involved in the contravening conduct until 7 June 2019, when he learnt that on 15 April 2019, a communication had occurred in the same terms as the contravening communications.

95 However, in ASIC's submission, a lack of direct participation by senior management in contravening conduct does not translate to an absence of culpability from those persons, or support a finding that the conduct was engaged by rogue employees in the abstract. There was a very significant failure by Debt Negotiators to train and oversee the Customer Support Officers and thereby prevent, mitigate or detect the contravening conduct. Senior management's culpability is apparent from the lack of adequate safeguards in place, detailed above at [31], and the evidence that the contravening conduct continued even after Mr Thomas detected similar conduct in June 2018, and after the AFSA investigation concluded in July 2019. ASIC submits that it is also highly relevant that Debt Negotiators incentivised the contravening conduct through its bonus structure, as explained at [29] above.

96 Secondly, Debt Negotiators has taken some important remedial steps since the contravening conduct was detected. These measures are set out in the reproduced form of the SOAF at [37]. As noted above, ASIC accepts that these measures are robust and appropriately tailored to address the contravening conduct.

97 Thirdly, prior to the detection of the contravening conduct, Debt Negotiators had not been found to have engaged in the same or similar conduct; and fourthly, Debt Negotiators admitted the contraventions and cooperated with ASIC's investigations. ASIC submits, and I accept as set out in my introductory comments, that there is a clear utilitarian value in the making of such admissions, which should be reflected in the penalties imposed, citing *Queensland Children's Hospital* where the Full Court observed at [163]:

From a public policy perspective, it is important to encourage such cooperation by reflecting it in the penalties imposed. It also shows a willingness on the part of the [contravenor] to accept responsibility for its actions and to facilitate the course of justice. The fact that the proceeding was not defended saved the community the expense of a potentially lengthy contested hearing.

98 Debt Negotiators' relatively early admission to the alleged contraventions was important. Not only did it amount to a telling acceptance of responsibility, but such an acceptance is almost always an important threshold to cross when it comes to assessing the ongoing need for specific deterrence, but does not necessarily eliminate the need. A person who admits to wrongdoing is almost always on a pathway going away from the risk of repetition, while a person in denial is generally more likely to see no error in their ways and thus more likely to repeat some version of the contravening conduct. That said, general deterrence cannot be set at nought because the need for specific deterrence has greatly diminished. General deterrence in an area such as this remains a most important consideration.

99 However, it should be noted that while Debt Negotiators admitted to the contravening conduct, the admissions made were not "*at the earliest reasonable opportunity*". Rather, they were made only after Debt Negotiators filed a concise statement in response denying all key allegations made by ASIC, other than the bare fact that the contravening communications occurred. The admissions ultimately made were the product of mediation. Further, Debt Negotiators continues to deny the allegations at paragraph 11 and 14 of the concise statement, reproduced above at [26].

100 From the perspective of specific deterrence, a genuine and substantial remedial program, as detailed below and accepted by ASIC to be robust, is of considerable importance. It means much more than assurances and expressions of regret. It is a tangible and practical indication of not just saying sorry, but of genuinely being sorry. And the manifestation of genuine regret in that way is of itself a better predictor that the conduct will not be repeated, although ongoing vigilance is required as institutional memories fade, personnel change and financial benefits and other incentives to contravene again start to be factored in. Other registered debt administrators, and their advisors need to see that proper systems and procedures to prevent contraventions taking place is acknowledged and rewarded.

Penalty assessment

101 This case was not brought by ASIC as a representative proceeding on behalf of customer debtors arising out of the circumstances of the contravening conduct. Rather, it was brought by reference to Debt Negotiators' dealings with the six individual customer debtors, and this very fact is reflected in the manner in which I impose the penalty. Taking into account all of the evidence and submissions, both consistent and completing, to arrive at a final figure for each contravention, I have decided that the demands of general deterrence, and to a much lesser

extent, those of specific deterrence, are met by a total penalty of \$650,000, comprising of \$100,000 for each of five of the debtors, and \$150,000 for the sixth debtor. On any view that is a substantial sum both for the individual contraventions, and overall, but in my view that is warranted by the serious nature of the contravening conduct, the continued although lesser need to deter Debt Negotiators from ever doing this again, and the particular and substantial need for general deterrence in relation to conduct directed at a financially vulnerable part of the community by statute sanctioned commercial operators. That is so despite the absence of clear evidence of any profit directly attributable to the revenue obtained from the six debtors of just over \$20,000.

102 As will be apparent, I have arrived at these individual figures and the overall figure, considering the residual aspect of specific deterrence and the dominant aspect of general deterrence, taking into account the relatively early admission to the alleged contraventions, the robust remedial program that has been implemented, and the substantial impact of both on the need for specific deterrence, but also keeping a weather eye on the most important consideration of general deterrence. Although the need for specific deterrence has been greatly reduced, that has not gone away as a consideration. There needs to be a strong incentive placed upon Debt Negotiators to ensure that there is no relapse, and in particular that the financial benefits, although small for any given individual debtor, but substantial overall and over time, do not in future result in succumbing to temptation.

103 In terms of specific deterrence, two considerations are clearly at play. First, the penalty per debtor is vastly greater than any gain that was made or capable of being made per debtor, remembering that specific deterrence is directed to the greater pool of debtors with agreements administered by Debt Negotiators at any point in time. Secondly, Debt Negotiators is squarely on notice that any future contraventions would likely be met with a considerably harsher penalty by reason of repeated contraventions, and because of the substantial increase in the minimum penalty. In terms of general deterrence, in an industry with a relatively small number of registered debt administrators, the same deterrent aspects remains in play, especially if ASIC takes steps to ensure this judgment is brought to the attention of the other registered debt administrators, both at present and in the future.

104 I am satisfied there is no proper basis for concluding that the overall penalty is oppressive in the sense of being any greater than presently needed to deter Debt Negotiators and other registered debt administrators.

105 This penalty represents the absolute minimum that can be imposed to achieve the primary objective of deterrence when regard is had to the aforementioned remedial actions taken by Debt Negotiators and such predatory and flagrant conduct without going against the dominant consideration of general deterrence. This should be treated as a caution to other commercial debt administrators. The message to them, to put it bluntly, is that if they engage in such contravening conduct, and do not admit to the contravening conduct at the first opportunity without taking any remedial steps, the penalty that will be imposed will be well in excess of any minimum provided by statute. All participants in the business of administering registered debt agreements must be given the clearest and most forceful incentive not to behave in this way. It must be viewed by those industry participants as simply not being worth the candle to do so: see by analogy *Australian Securities and Investments Commission v Vizard* [2005] FCA 1037; 145 FCR 57 per Finkelstein J at [48], citing McDermid JA in the Canadian Alberta Supreme Court, Appellate Division case of *R v Jaasma* (1976) 1 AR 553 at [5]; see also the Full Court case of *R v Tait* (1979) 46 FLR 386 per Brennan, Deane and Gallop JJ at 399.

106 Debt Negotiators raised a concern about substantial penalties being imposed, and their capacity to be impermissibly oppressive, in the sense of being more than is needed to achieve the objective of deterrence, as well as in a more general sense of being crushing and unduly burdensome for Debt Negotiators. As noted and explained above, I am unable to accept either concern as being well founded. I have already addressed the need for this level of penalty to address properly the primary objective of deterrence. In terms of the second aspect of Debt Negotiators' financial viability, if needed that can be met by either an agreed, or adjudicated upon, regime for an initial substantial penalty payment, then the payment of costs, and then the payment of the balance by instalments over an extended period of time to help to ensure that Debt Negotiators can remain in business.

107 In reaching this conclusion about penalty, I observe, as will already be obvious, that Debt Negotiators was well-advised to admit to the contraventions, and that this, coupled with the remedial actions taken, admitted by ASIC to be robust, has substantially reduced the penalty required to be imposed to meet the objectives of general deterrence and even more importantly, specific deterrence. While never a foregone conclusion, it is highly likely that ASIC would have succeeded in proving the contraventions at trial given the evidence that was able to be presented at the penalty hearing, in particular the text of the contravening communications, which are extracted in a lengthy and detailed schedule to the concise statement.

108 The combination of the admissions made, the facilitation of the course of justice that this entailed (including saving the time and resources of a most important regulator to be deployed elsewhere and of this Court to hear and determine other cases), the contrition and remorse that this demonstrated to my satisfaction, and the robust changes implemented to prevent recurrence of the contravening conduct, has gone a very long way to reducing the need for specific deterrence. The dominant consideration has been general deterrence, with that also being moderated by the need to encourage such a sensible approach by other contraveners.

109 However, there still remains a need to encourage continued vigilance, such that this remains a lesser part of the penalty equation. That is because the penalty is imposed on a company, but the conduct is always by individuals, such that the company must implement, update, and maintain its compliance systems as the workforce changes over time or becomes complacent, including for detection of untoward conduct that may also constitute a contravention.

110 As was observed on the topic of deterrence in a marketplace context like the present in *Australian Competition and Consumer Commission v Reckitt Benckiser (Australia) Pty Ltd* [2016] FCAFC 181; 340 ALR 25 at [152] per Jagot, Yates and Bromwich JJ, quoted with approval in *Australian Building and Construction Commissioner v Pattinson* [2022] HCA 13; 314 IR 301 at [41] per Kiefel CJ, Gageler, Keane, Gordon, Steward and Gleeson JJ:

If it costs more to obey the law than to breach it, a failure to sanction contraventions adequately de facto punishes all who do the right thing. It is therefore important that those who do comply see that those who do not are dealt with appropriately. This is, in a sense, the other side of deterrence, being a dimension of the general deterrence equation. This is not to give licence to impose a disproportionate or oppressive penalty, which cannot be done, but rather to recognise that proportionality of penalty is measured in the wider context of the demands of effective deterrence and encouraging the corresponding virtue of voluntary compliance.

111 The maximum penalties for the present civil penalty provisions were substantially increased from \$2.1 million to \$10.5 million on 23 June 2020, with retrospective effect from 13 March 2019, being about half way through the relevant period. That is likely to lead to much higher penalties for similar conduct in the future, not only because a jurisdictional limit has been substantially increased, but because the penalties imposed in this and any other case will not have achieved the objective of deterrence. The maximum penalty constrains the exercise of the penalty imposing discretion both by the jurisdictional limit and by requiring a reasonable relationship between the maximum and the final penalty imposed, which may be established by reference to the circumstances of both the contravener and the conduct involved, both of

which may have a bearing upon the extent of the need for deterrence: *Pattinson* at [10], [55], referencing what was said in *Reckitt Benckiser* at [155]-[156]. The maximum penalty is no longer reserved for the most serious category of contravention: *Pattinson* at [59].

Conclusion

112 For the foregoing reasons, I am satisfied that penalties of \$650,000 should be imposed upon Debt Negotiators, being \$100,000 for each of debtors HC, TB, JA, RL and DM and \$150,000 for debtor LH. Debt Negotiators should also be ordered to pay \$80,000 towards ASIC's legal costs, and is going to be directed to pay, and has agreed to pay, \$70,000 towards ASIC's investigative costs, bringing the total sum payable to \$800,000. I will allow time for that sum to be paid, with an initial substantial penalty payment of \$200,000 (just above the penalty sought by Debt Negotiators' of \$190,000) and the payment of costs and investigative expenses of \$150,000. Perhaps ironically, this instalment regime is not unlike the debt instalment payments required to be made under debt agreements administered by Debt Negotiators.

113 If (and only if) those payments totalling \$350,000 are made within 35 days (that is, by 20 January 2023), or such other time as may be allowed, then payment of the balance of \$450,000 of the penalty may be made by substantial monthly instalments as agreed and approved, or ordered if agreement cannot be reached.

114 As a general guide to the parties, I would have thought that payment of \$90,000 per month would be reasonable, enabling the remaining \$450,000 to be paid within the current financial year, but there may be some compelling reason able to be established why that is not feasible.

I certify that the preceding one hundred and fourteen (114) numbered paragraphs are a true copy of the Reasons for Judgment of the Honourable Justice Bromwich.

Associate:



Dated: 16 December 2022

SCHEDULE

Particulars of the Defaulting Debtor Representations (DDR) and Third Party Conduct (TPC)

Debtor HC (communications 1 to 16)

	Date	Time	Type	Staff	Communication	DDR/TPC
1.	26/02/2018	10:55 AM	SMS	JD	Hi [W], Please pass the message for [Debtor HC] to call [Staff JD] from Debt Negotiators on 1300 351 008 option 2. Thank you	TPC
2.	26/02/2018	10:55 AM	SMS	JD	Hi [L], Please pass the message for [Debtor HC] to call [Staff JD] from Debt Negotiators on 1300 351 008 option 2. Thank you	TPC
3.	04/05/2018	5:32 PM	SMS	SN	Please call [Staff SN] from Debt Negotiators on 1300351008 in regards to your arrears. Your creditors have contacted me and are looking at terminating your account, if they proceed they may force you to bankruptcy and take legal action against you. Kind Regards	DDR
4.	07/05/2018	12:35 PM	SMS	SN	Please call [Staff SN] from Debt Negotiators on 1300351008 in regards to your arrears. Your creditors have contacted me and are looking at terminating your account, if they proceed they may force you to bankruptcy and take legal action against you. Kind Regards	DDR
5.	02/08/2018	9:47 AM	SMS	SG	Your Debt Agreement is now in the process of being terminated. You have not made any payments so your creditors are looking to force you into bankruptcy. Once you have been terminated your trustee will closely examine all of your financial situation and if they feel that you in actual fact	DDR

Debtor HC (communications 1 to 16)

	Date	Time	Type	Staff	Communication	DDR/TPC
					had the ability to service your debt, then you could be charged with fraud, facing up to 12 months imprisonment. We really want to avoid this even being a possibility, so we kindly ask that you contact us on 1300351008 to discuss what we should do together to make this work. regards, DEBT NEG	
6.	02/08/2018	9:48 AM	Email	SG	Hi [Debtor HC], Your Debt Agreement is now in the process of being terminated. You have not made any payments so your creditors are looking to force you into bankruptcy. Once you have been terminated your trustee will closely examine all of your financial situation and if they feel that you in actual fact had the ability to service your debt, then you could be charged with fraud, facing up to 12 months imprisonment. We really want to avoid this even being a possibility, so we kindly ask that you contact us on 1300351008 to discuss what we should do together to make this work.	DDR
7.	17/09/2018	1:19 PM	SMS	JD	Hi [W], Please pass the message for [Debtor HC] to call [Staff JD] from Debt Negotiators on 1300 351 008 option 2. Thank you	TPC
8.	17/09/2018	1:20 PM	SMS	JD	Hi [L], Please pass the message for [Debtor HC] to call [Staff JD] from Debt Negotiators on 1300 351 008 option 2. Thank you	TPC
9.	17/09/2018	1:21 PM	SMS	JD	called and spoke with female she said that she is the clients friend - told her that i will send a text with my details - advised that it is	TPC

Debtor HC (communications 1 to 16)

	Date	Time	Type	Staff	Communication	DDR/TPC
					urgent!	
10.	03/10/2018	10:58 AM	SMS	SG	Hi [Debtor HC], Your debt agreement is now under review for termination. Your creditors will now be assessing your account history and payments and will advise if they wish to terminate the contract in order to look into proceeding with legal action such as bankruptcy & fraud charges. The only way to safely stop this process is by clearing your arrears in full. Please contact the office if you wish to do so. We will be in contact with you on the 31/10/2018 to notify you of the outcome. Kind Regards, Management Debt Negotiators 1300 351 008	DDR
11.	03/10/2018	10:58 AM	Email	SG	Hi [Debtor HC], Your debt agreement is now under review for termination. Your creditors will now be assessing your account history and payments and will advise if they wish to terminate the contract in order to look into proceeding with legal action such as bankruptcy & fraud charges. The only way to safely stop this process is by clearing your arrears in full. Please contact the office if you wish to do so. We will be in contact with you on the 31/10/2018 to notify you of the outcome. Kind Regards, [Staff SG]Customer Support Officer Debt Negotiators	DDR
12.	10/10/2018	12:01 PM	SMS	JD	Hi [W] Please pass the message for [Debtor HC] to call [Staff JD] from Debt Negotiators. on 1300 351 008 option 2. Thank you.	TPC

Debtor HC (communications 1 to 16)

	Date	Time	Type	Staff	Communication	DDR/TPC
13.	10/10/2018	12:02 PM	SMS	JD	Hi [L], Please pass the message for [Debtor HC] to call [Staff JD] from Debt Negotiators. on 1300 351 008 option 2. Thank you.	TPC
14.	26/11/2018	4:10 PM	SMS	JD	Hi [Debtor HC], This is [Staff JD] again. Can you please respond to this text and let me know what you want to do, You say you want to pay but you never do. Please look into bankruptcy as this is where you unfortunately are headed. All the best to you. Your Debt Agreement will be terminated and your travel will be restricted and legal action may be taken against you.	DDR
15.	26/11/2018	4:11 PM	Email	JD	Hi [Debtor HC], This is [Staff JD] again. Can you please respond to this text and let me know what you want to do, You say you want to pay but you never do. Please look into bankruptcy as this is where you unfortunately are headed. All the best to you. Your Debt Agreement will be terminated and your travel will be restricted and legal action may be taken against you. Kind regards [Staff JD] Customer Support Manager	DDR
16.	04/03/2019	2:49 PM	SMS	KD	Can you please ensure you contact DEBT NEGOTIATORS today on 1300351008. Unfortunately if we do not hear from you we will need to extend our searches to get in contact with you. This means we may need to contact friends, family, Neighbours, work places or even landlords. We do not like going to these lengths, however if that's	TPC

Debtor HC (communications 1 to 16)

Date	Time	Type	Staff	Communication	DDR/TPC
				what it requires we will have to resort to that. Kind Regards, DEBT NEG 1300351008	

Debtor DB (communications 17 to 35)

Date	Time	Type	Staff	Communication	DDR/TPC	
17.	10/01/2019	8:53 AM	SMS	KD	Hi [M], [Debtor TB] has provided your phone number as an emergency contact. Can you please ask her to call A&M group URGENTLY on 1300351008.	TPC
18.	10/01/2019	8:53 AM	Phone Call	KD	ACCELEON SEARCH USING ADDRESS - DID NOT FIND CLIENT HOWEVER FOUND HER MOTHER - CALLED NO ANSWER. [MB] [Details specified for address, date of birth, email address and phone number]	TPC
19.	22/01/2019	1:47 PM	SMS	KD	Can you please ensure you contact DEBT NEGOTIATORS today on 1300351008. Unfortunately if we do not hear from you we will need to extend our searches to get in contact with you. This means we may need to contact friends, family, Neighbours, work places or even landlords. We do not like going to these lengths, however if that's what it requires we will have to resort to that. Kind Regards, DEBT NEG 1300351008	TPC
20.	30/01/2019	8:45 AM	SMS	SG	Could you please contact Debt Negotiators as a matter of EXTREME urgency. Your creditors	DDR

Debtor DB (communications 17 to 35)

Date	Time	Type	Staff	Communication	DDR/TPC
				have requested to terminate the contract in order to commence legal action. PLEASE contact us as soon as possible as they have demanded action to begin this week. Regards, [Staff SG] (02) 87087 207	
21.	01/02/2019	4:59 PM	SMS	SG	DDR
				Could you please contact Debt Negotiators as a matter of EXTREME urgency. Your creditors have requested to terminate the contract in order to commence legal action. PLEASE contact us as soon as possible as they have demanded action to begin this week. Regards, [Staff SG] (02) 87087 207	
22.	01/03/2019	3:25 PM	SMS	KD	TPC
				Can you please ensure you contact DEBT NEGOTIATORS today on 1300351008. Unfortunately if we do not hear from you we will need to extend our searches to get in contact with you. This means we may need to contact friends, family, Neighbours, work places or even landlords. We do not like going to these lengths, however if that's what it requires we will have to resort to that. Kind Regards, DEBT NEG 130035100	
23.	21/03/2019	2:09 PM	SMS	KD	DDR
				Hi [Debtor TB], do you want to continue with your Debt Agreement or not? I am happy to have it terminated and you can go bankrupt. Your creditors want us to start contacting your family and friends to recover the funds.	
24.	25/03/2019	9:25 AM	SMS	KD	DDR
				Hi [Debtor TB], can you please get back to us	

Debtor DB (communications 17 to 35)

Date	Time	Type	Staff	Communication	DDR/TPC	
				regarding your Debt Agreement. I'm sure it will be easier to speak with us then for your creditors to start calling your family and friends to recover your debts. 1300351008.		
25.	25/03/2019	9:27 AM	Phone Call	KD	ACCELEON SEARCH USING ADDRESS - FOUND CLIENTS MOTHER - NUMBER HAS INCOMING CALL RESTRICTIONS. [MB] [Details specified for address, date of birth, emailaddress and phone number]	TPC
26.	25/03/2019	9:33 AM	SMS	KD	Hi [M], [Debtor TB] has provided your phone number as an emergency contact. Can you please pass a msg on for her to call A&M Group URGENTLY on 1300351008.	TPC
27.	25/03/2019	9:43 AM	SMS	KD	Hi [T], [Debtor TB] has provided your phone number as an emergency contact. Can you please pass a msg on for her to call A&M Group URGENTLY on 1300351008.	TPC
28.	25/03/2019	9:59 AM	SMS	KD	Hi [B], [Debtor TB] has provided your phone number as an emergency contact. Can you please pass a msg on for her to call A&M Group URGENTLY on 1300351008.	TPC
29.	25/03/2019	10:01 AM	Phone Call	KD	ACCELEON SEARCH USING FRIEND FOUND – CALLED NUMBER NO ANSWER - SENT SMS. [BN] [Details specified for address, date of birth, emailaddress and phone number]	TPC
30.	25/03/2019	10:05 AM	SMS	KD	Hi [R], [Debtor TB] has provided your phone number	TPC

Debtor DB (communications 17 to 35)

Date	Time	Type	Staff	Communication	DDR/TPC	
				as an emergency contact. Can you please pass a msg on for her to call A&M Group URGENTLY on 1300351008.		
31.	25/03/2019	10:55 AM	SMS	KD	Hi [B], [Debtor TB] has provided your phone number as an emergency contact. Can you please pass a msg on for her to call A&M Group URGENTLY on 1300351008.	TPC
32.	25/03/2019	10:57 AM	Phone Call	KD	ACCELEON SEARCH USING FACEBOOK FRIENDS – CALLED CLIENTS COUSIN - NO ANSWER - SENT SMS. [DS] [Details specified for address]	TPC
33.	25/03/2019	10:57 AM	SMS	KD	Hi [D], [Debtor TB] has provided your phone number as an emergency contact. Can you please pass a msg on for her to call A&M Group URGENTLY on 1300351008.	TPC
34.	10/04/2019	3:50 PM	SMS	KD	Can you please ensure you contact DEBT NEGOTIATORS today on 1300351008. Unfortunately if we do not hear from you we will need to extend our searches to get in contact with you. This means we may need to contact friends, family, Neighbours, [sic] work places or even landlords. We do not like going to these lengths, however if that's what it requires we will have to resort to that. Kind Regards, DEBT NEG130035100	TPC
35.	15/04/2019	2:44 PM	SMS	SG	Hi [Debtor TB], Your debt agreement is now under review for termination. Your creditors are assessing your	DDR

Debtor DB (communications 17 to 35)

Date	Time	Type	Staff	Communication	DDR/TPC
				account history and payments. They will advise if they wish to terminate the contract to start looking into proceeding with legal action such as bankruptcy & fraud charges! Please call me ASAP to stop this from happening, I have already received your termination papers so it's not looking good. We will be in contact with you on the 30/04/2019 to notify you of the outcome. I suggest you call me before this date to avoid further action.	

Debtor JD (communications 36 to 54)

	Date	Time	Type	Staff	Communication	DDR/TPC
36.	30/01/2018	2:51 PM	SMS	SN	Hi [Debtor JD], [Staff SN] here from Debt Negotiators. Please call us URGENTLY on 1300351008 in regards to your account. I have been contacted by your creditors and they may be looking at terminating your account as you have not made consistent payments towards your debt agreement. To avoid any legal action that maybe occur, please contact us to we can work together. Kind Regards.	DDR
37.	01/03/2018	5:13 PM	SMS	SN	Hi [Debtor JD], [Staff SN] here from Debt Negotiators. Please call us URGENTLY on 1300351008 in regards to your account. I have been contacted by your creditors and they may be looking at terminating your account as you have not made	DDR

Debtor JD (communications 36 to 54)

	Date	Time	Type	Staff	Communication	DDR/TPC
					consistent payments towards your debt agreement. To avoid any legal action that maybe occur, please contact us to we can work together. Kind Regards.	
38.	28/09/2018	11:31 AM	SMS	JD	Hi [L] Please pass the message for [Debtor JD] to call [Staff JD] from Debt Negotiators. on 1300 351 008 option 2. Thank you.	TPC
39.	28/09/2018	11:32 AM	SMS	JD	Hi [D] Please pass the message for [Debtor JD] to call [Staff JD] from Debt Negotiators. on 1300 351 008 option 2. Thank you.	TPC
40.	09/10/2018	9:56 AM	SMS	SG	Hi [Debtor JD], Your debt agreement is now under review for termination. Your creditors will now be assessing your account history and payments and will advise if they wish to terminate the contract in order to look into proceeding with legal action such as bankruptcy & fraud charges The only way to safely stop this process is by clearing your arrears in full. Please contact the office if you wish to do so. We will be in contact with you on the 09/11/2018 to notify you of the outcome. Kind Regards,	DDR
41.	16/10/2018	3:03 PM	SMS	KD	Can you please ensure you contact DEBT NEGOTIATORS today on 1300351008. Unfortunately if we do not hear from you we will need to extend our searches to get in contact with you. This means we may need to contact friends, family, Neighbours, work places or even landlords. We do not like going to these lengths, however if that's	TPC

Debtor JD (communications 36 to 54)

	Date	Time	Type	Staff	Communication	DDR/TPC
					what it requires we will have to resort to that. Kind Regards, DEBT NEG 1300351008	
42.	22/10/2018	3:23 PM	SMS	KD	Can you please ensure you contact DEBT NEGOTIATORS today on 1300351008. Unfortunately if we do not hear from you we will need to extend our searches to get in contact with you. This means we may need to contact friends, family, Neighbours, work places or even landlords. We do not like going to these lengths, however if that's what it requires we will have to resort to that. Kind Regards, DEBT NEG 1300351008	TPC
43.	29/10/2018	12:40 PM	SMS	KD	Can you please ensure you contact DEBT NEGOTIATORS today on 1300351008. Unfortunately if we do not hear from you we will need to extend our searches to get in contact with you. This means we may need to contact friends, family, Neighbours, work places or even landlords. We do not like going to these lengths, however if that's what it requires we will have to resort to that. Kind Regards, DEBT NEG 1300351008	TPC
44.	31/12/2018	9:41 AM	SMS	SG	Hi [Debtor JD] Your debt agreement is now under review for termination. Your creditors will now be assessing your account history and payments and will advise if they wish to terminate the contract in order to look into proceeding with legal action such as	DDR

Debtor JD (communications 36 to 54)

Date	Time	Type	Staff	Communication	DDR/TPC	
				bankruptcy & fraud charges The only way to safely stop this process is by clearing your arrears in full. Please contact the office if you wish to do so. We will be in contact with you on the 25/01/2019 to notify you of the outcome. Kind Regards, [Staff SG]		
45.	31/12/2018	9:41 AM	SMS	SG	Hi [Debtor JD]Your debt agreement is now under review for termination. Your creditors will now be assessing your account history and payments and will advise if they wish to terminate the contract in order to look into proceeding with legal action such as bankruptcy & fraud charges The only way to safely stop this process is by clearing your arrears in full. Please contact the office if you wish to do so. We will be in contact with you on the 25/01/2019 to notify you of the outcome. Kind Regards, [Staff SG]	DDR
46.	21/01/2019	2:58 PM	SMS	KD	Can you please ensure you contact DEBT NEGOTIATORS today on 1300351008. Unfortunately if we do not hear from you we will need to extend our searches to get in contact with you. This means we may need to contact friends, family, Neighbours, work places or even landlords. We do not like going to these lengths, however if that's what it requires we will have to resort to that. Kind Regards, DEBT NEG 1300351008	TPC

Debtor JD (communications 36 to 54)

	Date	Time	Type	Staff	Communication	DDR/TPC
47.	06/02/2019	4:28 PM	SMS	JD	Hi [L], please pass the message for [Debtor JD] to call [Staff JD] from Debt Negotiators urgently. Ph 1300 351 008 option 2.	TPC
48.	06/02/2019	4:29 PM	SMS	JD	Hi [D] please pass the message for [Debtor JD] to call [Staff JD] from Debt Negotiators urgently. Ph 1300 351 008 option 2.	TPC
49.	11/02/2019	2:09 PM	SMS	SG	Could you please contact Debt Negotiators as a matter of EXTREME urgency. Your creditors have requested to terminate the contract in order to commence legal action. PLEASE contact us as soon as possible as they have demanded action to begin this week. Regards, [Staff SG]	DDR
50.	12/03/2019	1:30 PM	SMS	JD	Hi [L] please pass the message for [Debtor JD] to call [Staff JD] from Debt Negotiators urgently. Ph 1300 351 008 option 2.	TPC
51.	12/03/2019	1:31 PM	SMS	JD	Hi [D] please pass the message for [Debtor JD] to call [Staff JD] from Debt Negotiators urgently. Ph 1300 351 008 option 2.	TPC
52.	26/03/2019	12:12 PM	SMS	KD	Can you please ensure you contact DEBT NEGOTIATORS today on 1300351008. Unfortunately if we do not hear from you we will need to extend our searches to get in contact with you. This means we may need to contact friends, family, Neighbours, work places or even landlords. We do not like going to these lengths, however if that's what it requires we will have to resort to that. Kind	TPC

Debtor JD (communications 36 to 54)

	Date	Time	Type	Staff	Communication	DDR/TPC
					Regards, DEBT NEG 1300351008	
53.	04/04/2019	11:04 AM	SMS	JD	Hi [L] please pass the message for [Debtor JD] to call [Staff JD] from Debt Negotiators urgently. Ph 1300 351 008 option 2.	TPC
54.	04/04/2019	11:05 AM	SMS	JD	Hi [D], please pass the message for [Debtor JD] to call [Staff JD] from Debt Negotiators urgently. Ph 1300 351 008 option 2.	TPC

Debtor LH (communications 55 to 114)

	Date	Time	Type	Staff	Communication	DDR/TPC
55.	20/09/2018	6:57 PM	SMS	XP	Hi [L], If you could please ask [Debtor LH] to call me as soon as she possibly can on 1300351008.	TPC
56.	21/09/2018	11:11 AM	SMS	XP	Hi [K], Could you please ask [Debtor LH] to contact me on 1300351008 as soon as she possibly can. I am trying to avoid her situation being taken further.	TPC
57.	25/10/2018	12:44 PM	SMS	XP	Hi [Debtor LH], Please call the office back as a matter of urgency. You missed a payment on the 10/10/18 and never contacted us about it. We have reached the end of our generosity. You are required to fix this payment, so please contact friends and family if you can't afford to do so without assistance. I have added this payment to your next instalment. You are required to pay\$794 to ensure the account is moving forward. If you have an issue with this amount you need to call the office. DEBT NEG	DDR ([8] CS)
58.	07/12/2018	12:39 PM	SMS	XP	Hi [Debtor LH], It is [Staff	DDR

Debtor LH (communications 55 to 114)

Date	Time	Type	Staff	Communication	DDR/TPC
				XP] from Debt negotiators. I am calling/texting to advise you of your termination details. You will need these for Court, so please call me back on 02 8708 7244. Please note that you may be charged with fraud if a government trustee feels that you had the ability to pay your debt agreement. They will go through your finances for the last 5-10 years. A jail term of up to 12 months may be applied.	
59.	07/12/2018	N/A	Call Notes (ASIC)	XP	DDR
				Consumer - "what happens now, it's been terminated has it?" Staff - "It's about to be terminated..." (0.37 s) ...Staff (8 min 30s) - "I'm going to need you to send bank statements for the last 3 months. So where did those funds go?" Consumer - "ahhh living expenses really.. um, can't even tell you. My son's basketball, all that sort of stuff. That's it." Staff - "Mkay. Well I'm going to advise your creditors of all of this, um, I need to be really honest with you. If this gets terminated, and they force you into bankruptcy, someone is literally going to go through your expenses with a fine tooth comb, they aren't going to leave anything unturned, without looking into every cent that you've spent. If they feel that you had the means to pay your debt agreement, if you made purchases at McDonald's, if you made	

Debtor LH (communications 55 to 114)

Date	Time	Type	Staff	Communication	DDR/TPC
				<p>pointless purchases, you know things you don't need, you can potentially be sent to prison. That is a very real situation that you need to take in, you have little kids, I feel this is not a joke situation. On the flipside, if they don't force you into bankruptcy and decide to go with legal action, they can apply for a garnishee, which is a court order, where your payroll have to pay them before you pay you. They are entitled to take 80% of your income - you will be left with 20% to survive on, and there is nothing you can do about it. That court order follows you from job to job, until every single one of your debts is paid off. Right now you have a 34 - wow you have the highest discount I've never seen on an account, you are only paying 34% of your debts. If this gets cancelled, your debts return to the full amounts, all the interest that was frozen while you are in a debt agreement get added back on, your debts end up more than when you came to us. You can't enter another debt agreement for 10 years, so unfortunately you are stuck paying that. This isn't a joke - this isn't something to be taken lightly, and the fact you have such a small amount of payments, indicates to me that you think this is a joke..."</p>	
60.	07/12/2018	12:51 PM	Phone Call	XP [DH] [Details specified for address and phone number] CALLED, No answer Left message to call back [LH]	TPC

Debtor LH (communications 55 to 114)

Date	Time	Type	Staff	Communication	DDR/TPC	
				[Details specified for address, date of birth, email address and phone numbers] CALLED - no answer // SENT TEXT Last Confirmation > 90 Days [KH] [Details specified for address and phone number] [KH] [Details specified for address, date of birth, email address and phone numbers] called, Disconnected called, Disconnected. CLIENTS BROTHER INLAW - [TJ] [TJ] [Details specified for address, date of birth, email address and phone numbers] Not Available CALLED - Disconnected		
61.	07/12/2018	1:10 PM	SMS	XP	Hi [K], can you please ask [Debtor LH] to call the office on 02 8708 7244 as soon as possible. An issue that is VERY serious has arisen.	TPC
62.	21/12/2018	3:04 PM	SMS	XP	Hi [Debtor LH], Can you please make it priority to contact me on 02 8708 7244. Your payment has failed, as i am sure you are aware. I dont know what more we can do to express the importance of making your payments. Once this is cancelled your creditors will each contact your HR department at work and commence legal action from there. Honestly, if you dont want that to happen, call me today and we can sort something out. If you are not fussed then thats fine i will lodge the termination on monday. Regards, [Staff XP] - DEBT NEG	DDR
63.	21/12/2018	3:08 PM	SMS	XP	Hi [K], Can you please ask [Debtor LH] to contact us again on 02 8708 7244.	TPC

Debtor LH (communications 55 to 114)

	Date	Time	Type	Staff	Communication	DDR/TPC
64.	04/01/2019	Unknown	Call Notes (ASIC)	XP	4 min 45s - Staff: "Like I said, your creditors can literally call any second, and say enough is enough, then you don't have the option. If you sell the car after they say that, then you can be charged with fraud, and face prison. It's a very very serious situation. Talk to them [parents] can get back to me Monday morning, I'm happy for the payment arrangement to stay in place, but there needs to be something in the background to fix the arrears than that \$300 a fortnight is going to..."	DDR
65.	17/01/2019	12:39 PM	Email	XP	Hi [Debtor LH], A payment went out yesterday. Is that one going to dishonour? If I am honest with you at this stage [Debtor LH], I don't think one payment is going to stop them cancelling your agreement. I honestly PRAY that your bank statements don't show any silly purchases, Like afterpay, fast food, clothes shops or anything like that. We can talk more when you call in about what will happen next. Kind Regards	DDR
66.	23/01/2019	11:08 AM	Phone Call	XP	CALLED WORK - F adv she is hoping client will return next week. adv she has been off due to issues at home.	TPC
67.	24/01/2019	10:47 AM	Phone Call	XP	ACCELEON SEARCH - FOUND RELATIVE USING FACEBOOK - CALLED NO ANSWER - SENT SMS. [CS] [Details specified for address, date of birth, email address and phone	TPC

Debtor LH (communications 55 to 114)

	Date	Time	Type	Staff	Communication	DDR/TPC
					number]	
68.	19/02/2019	11:44 AM	Phone Call	XP	EMPLOYMENT - CALLED - [Details specified for phone number] - No answer	TPC
69.	21/02/2019	11:43 AM	Phone Call	XP	CALLED WORK - [Details specified for phone number] - No answer	TPC
70.	21/02/2019	11:46 AM	SMS	XP	Hi [K], Can you please ask [Debtor LH] to call me as soon as possible on 0287087244. The matter she has with us is being closed on the 01/03/2019 and this will make her personal situation much harder to manage. Please stress the importance to call so we can try to resolve this.	TPC
71.	21/02/2019	11:48 AM	SMS	XP	Hi [L], can you please ask [Debtor LH] to call me as soon as possible on 0287087244. The matter she has with us is going to be terminated on the 01/03/2019, which in turn will make her personal situation much harder. Please ask her to call us as soon as possible to provide the most chance of being able to stop this termination.	TPC
72.	21/02/2019	11:49 AM	Phone Call	XP	CALLED WORK - No answer SECONDARY CONTACTS [KH] (SISTER) [Details specified for phone number] - CALLED NA [LH] (MOTHER) [Details specified for phone number] - CALLED Left message	TPC
73.	22/02/2019	2:15 PM	Phone Call	XP	CALLED BOTH SEC CONTACTS - Went to VM – Left VM on both numbers	TPC
74.	22/02/2019	2:17 PM	SMS	XP	Hi [K], can you PLEASE ask [Debtor LH] to call me to	TPC

Debtor LH (communications 55 to 114)

	Date	Time	Type	Staff	Communication	DDR/TPC
					provide authorisation for yourself. If not, to call in herself. After the 01/03/2019 i cant help any further and she may be investiagted for other charges. This is extremely serious.	
75.	22/02/2019	2:19 PM	Phone Call	XP	CALLED EMPLOYMENT - [Details specified for phone number]- Rang out	TPC
76.	25/02/2019	12:00 PM	Phone Call	XP	CALLED SECONDARY CONTACTS - No answer	TPC
77.	26/02/2019	12:07 PM	Phone Call	XP	CALLED [K] MOBILE - M answer and adv [K] is in the shower. he will get [K] to call me back.	TPC
78.	26/02/2019	12:07 PM	Phone Call	XP	CALLED [LH] - FROM MOBILE - no answer	TPC
79.	26/02/2019	12:08 PM	Phone Call	XP	CALLED WORK - Spoke with F, f adv that client is not in as she has been unwell. adv that i called two weeks ago and she wasnt in apparently for the same reason. F adv she can take a message but that is all	TPC
80.	26/02/2019	3:49 PM	Phone Call	XP	CALLED [K] MOBILE - Straight to VM	TPC
81.	26/02/2019	3:54 PM	Phone Call	XP	[LH] [Details specified for address, date of birth and phone number] CALLED - No answer (Clients partner) [RK] [Details specified for address, date of birth, email address and phone number] CALLED – Disconnected	TPC
82.	28/02/2019	6:11 PM	SMS	XP	Hi [Debtor LH], I am going to try and negotiate the \$400, but can you please try and cross paths with your father tonight, or speak on the phone because im not confident on the \$400. If you have a lump sum then i am confident that i can get that approved. They are really	DDR

Debtor LH (communications 55 to 114)

	Date	Time	Type	Staff	Communication	DDR/TPC
					persuaded by lump sum payments and it shows good faith. PLEASE try and speak tonight and then email me by 9am tomorrow. If i cant get it approved unfortunately the account is cancelled on the spot and there is no reversing that. DEBT NEG	
83.	05/03/2019	12:08 PM	Phone Call	XP	CALLED WORK - NO answer	TPC
84.	05/03/2019	12:14 PM	SMS	XP	Hi [K], Could you please ask [Debtor LH] to call me on 0287087244. We have been able to get the issue on her account reversed, on the bases that she pays the \$1,000. She advised her father was able to assist ehr with this. I am on a strict time limit and today is the final day that payment can come through. If [Debtor LH] is unwilling to call or unable to , could you please ask her father to call me to make the payment on her behalf. Thank you so much for your assitance.	TPC
85.	05/03/2019	12:16 PM	Phone Call	XP	CALLED SECONDARY CONTACTS - No answer	TPC
86.	05/03/2019	12:08 PM	SMS	XP	Hi [Debtor LH], I really need you to call me to pay the \$1,000. They have withdrawn the termination, however they have FULL intentions to relodge the termination if the \$1000 is not paid today. Please dont ignore this. DEBT NEG 0287087244	DDR
87.	06/03/2019	9:33 AM	Phone Call	XP	CALLED WORK - F answered, adv that client starts at 10.30	TPC
88.	18/03/2019	5:52 PM	Phone Call	XP	CLLED WORK - Spoke with female who adv client would not be in until tomorrow.	TPC

Debtor LH (communications 55 to 114)

	Date	Time	Type	Staff	Communication	DDR/TPC
89.	18/03/2019	5:54 PM	Phone Call	XP	CALLED CLIENT MOTHER - Straight to VM	TPC
90.	19/03/2019	9:14 AM	Phone Call	XP	CALLED WORK - Spoke with f, she adv client has called in sick.	TPC
91.	19/03/2019	9:20 AM	SMS	XP	Hi [K], Its [Staff XP] from Debt Negotiators. I am having a lot of trouble contacting [Debtor LH], and have not been able to get in contact with her since saving her account. I am a little bit frustrated because i put in a lot of hours (unpaid) because i beleived she wanted the help. Could y ou possibly provide a number for someone who can talk on her behalf, or someone who may be able to shed some light as to why this situation keeps coming up?	TPC
92.	14/05/2019	4:36 PM	SMS	KD	Can you please contact debt negotiators on 1300351008, as your debt agreement is about to be terminated. If this happens your creditors can then look at forcing you into bankruptcy. In the process of this you will be investigated to see if you had the capabilities to service your debt agreement/debts, if they determine that you did have the ability to do so then you could be charged with fraud and face up to 12 months imprisonment. Can you please contact the office on 1300351008 so we can avoid this even being a possibility entirely. Regards, [Staff XP] – DEBT NEGOTIATORS	DDR
93.	28/05/2019	12:08 PM	Phone Call	XP	CALLED WORK - SPoke with female, asked for Client - Client came to the phone. Adv that she will	TPC

Debtor LH (communications 55 to 114)

	Date	Time	Type	Staff	Communication	DDR/TPC
					call me on her lunch break which will be about 1.30. Adv ok	
94.	28/05/2019	2:26 PM	Phone Call	XP	CALLED WIORK - F adv that client is on her lunch break and will be for the next hour.adv ok	TPC
95.	09/07/2019	2:39 PM	Phone Call	XP	CALLED WOK - F adv client is not in today.	TPC
96.	10/07/2019	10:20 AM	Phone Call	XP	CALLED EMPLOYER - Client has not started yet.	TPC
97.	10/07/2019	2:48 PM	Phone Call	XP	CALLED EMPLOYMENT - They adv client is on her lunch break and to try her mobile	TPC
98.	10/07/2019	2:50 PM	SMS	XP	Hi [K],Could you please call me on 0287087244 when you have the chance?	TPC
99.	16/07/2019	4:23 PM	SMS	XP	Can you please ensure you contact DEBT NEGOTIATORS today on 1300351008. Unfortunately if we do not hear from you we will need to extend our searches to get in contact with you. This means we may need to contact friends, family, Neighbours, work places or even landlords. We do not like going to these lengths, however if that's what it requires we will have to resort to that. Kind Regards, DEBT NEG 1300351008	TPC
100.	27/08/2019	1:21 PM	Phone Call	XP	called the work number female advised that client doesnt work there any more.	TPC
101.	09/09/2019	12:16 PM	SMS	KD	Hi [L], [Debtor LH] has asked me to give you a call regarding her Debt Agreement. Can you please give me a call back on 1300351008 when you are free?	TPC

Debtor LH (communications 55 to 114)

	Date	Time	Type	Staff	Communication	DDR/TPC
102.	12/09/2019	8:56 AM	SMS	KD	Hi [L], [Debtor LH] had advised you will be making a \$9000 contribution to her Debt Agreement. Can you please call me as soon as possible on 1300351008.	TPC
103.	12/09/2019	9:07 AM	Phone Call	KD	Called clients mother [L] - sent email due to no answer - [Debtor LH] PROVIDED AUTHORITY FOR US TO SPEAK TO [L] AND [D] HER PARENTS.	TPC
104.	12/09/2019	9:07AM	Email	KD	Good Morning [L], My name is [Staff KD], [Debtor LH] has provided authority for our company to speak with you regarding her Debt Agreement. We had spoken to [Debtor LH] on Monday 09/09/2019 in this conversation she advised her father, [D] would be paying a lump sum of \$9000.00 toward the arrears on her account to try and help her get back up to date. We have been trying to contact you to discuss this with you however we have been unsuccessful. Do you have a contact number for [D]? I can contact him directly if you would prefer that.	TPC
105.	24/09/2019	12:55 PM	SMS	KD	Hi [L], it's [Staff KD] from Debt Negotiators. My manager has asked me to follow up with you today regarding [Debtor LH]'s Debt Agreement. Please give me a call when you are free, I am here until 6:30pm tonight.	TPC
106.	30/09/2019	10:14 AM	SMS	KD	Good Morning [Debtor LH], Your Debt Agreement is now under review for termination. Your creditors are assessing your account history and payments. They will advise if they wish to	DDR

Debtor LH (communications 55 to 114)

	Date	Time	Type	Staff	Communication	DDR/TPC
					terminate the Debt Agreement and start looking into proceeding into legal action which may include Bankruptcy or potentially fraud charges. Please call us as soon as possible to stop this from happening. Thank you.	
107.	30/09/2019	10:18 AM	SMS	KD	Good Morning [L], it's [Staff KD] from Debt Negotiators. I just need to follow up with you again regarding [Debtor LH]'s Debt Agreement. We have tried contacting her again but she does not answer our calls. We need to know if she wants to account terminated as we are sending another report to the Creditors to let them know. Thank you. 1300351008	TPC
108.	30/09/2019	10:43 AM	Phone Call	KD	ACCELEON SEARCH USING FAMILY MEMBER FOUND ON FACEBOOK - CALLED NO ANSWER - SENT SMS [EH] [Details specified for address and phone numbers]	TPC
109.	30/09/2019	10:43 AM	SMS	KD	Hi [E], [Debtor LH] has provided your phone number as a secondary contact. Can you please pass on a msg for her to call A&M Group urgently on 1300351008. Thank you.	TPC
110.	30/09/2019	10:45 AM	SMS	KD	Hi [G], [Debtor LH] has provided your phone number as a secondary contact. Can you please pass on a msg for her to call A&M Group urgently on 1300351008. Thank you.	TPC
111.	30/09/2019	10:52 AM	Phone Call	KD	ACCELEON SEARCH USING FAMILY MEMBER FOUND ON FACEBOOK - CALLED NO ANSWER SENT SMS TO PASS ON	TPC

Debtor LH (communications 55 to 114)

	Date	Time	Type	Staff	Communication	DDR/TPC
					MSG [GH] [Details specified for address, date of birth and phone number]	
112.	03/10/2019	4:20 PM	SMS	KD	Good Afternoon [Debtor LH], Your Debt Agreement is now under review for termination. Your creditors are assessing your account history and payments. They will advise if they wish to terminate the Debt Agreement and start looking into proceeding into legal action which may include Bankruptcy or potentially fraud charges. Please call us as soon as possible to stop this from happening. Thank you.	DDR
113.	03/10/2019	4:30 PM	Phone Call	KD	Called client and her mother - no answer.	TPC
114.	08/10/2019	5:08 PM	SMS	KD	Good Afternoon [Debtor LH], Your Debt Agreement is now under review for termination. Your creditors are assessing your account history and payments. They will advise if they wish to terminate the Debt Agreement and start looking into proceeding into legal action which may include Bankruptcy or potentially fraud charges. Please call us as soon as possible to stop this from happening. Thank you.	DDR

Debtor RL (communications 115 to 131)

	Date	Time	Type	Staff	Communication	DDR/TPC
115.	16/03/2018	12:42 PM	SMS	RF	Can you please ensure you contact DEBT NEGOTIATORS today on 1300351008. Unfortunately if we do not hear from you we will need to extend our	TPC

Debtor RL (communications 115 to 131)

Date	Time	Type	Staff	Communication	DDR/TPC
				searches to get in contact with you. This means we may need to contact friends, family, Neighbours, work places or even landlords. We do not like going to these lengths, however if thats what it requires we will have to resort to that. Kind Regards, DEBT NEG 1300351008	
116.	25/07/2018	11:23 AM	SMS	SG	DDR
				Your Debt Agreement is now in the process of being terminated. You have not made any payments so your creditors are looking to force you into bankruptcy. Once you have been terminated your trustee will closely examine all of your financial situation and if they feel that you in actual fact had the ability to service your debt, then you could be charged with fraud, facing up to 12 months imprisonment. We really want to avoid this even being a possibility, so we kindly ask that you contact us on 1300351008 to discuss what we should do together to make this work. regards, DEBT NEG	
117.	25/09/2018	4:22 PM	E-mail	SN	DDR
				Could you please contact Debt Negotiators as a matter of EXTREME urgency. Your creditors have requested to terminate the contract in order to commence legal action. PLEASE contact us as soon as possible as they have demanded action to begin this week. Regards, DEBT NEG 1300351008	
118.	25/09/2018	4:22 PM	SMS	SN	DDR
				Could you please contact Debt Negotiators as a matter	

Debtor RL (communications 115 to 131)

Date	Time	Type	Staff	Communication	DDR/TPC	
				of EXTREME urgency. Your creditors have requested to terminate the contract in order to commence legal action. PLEASE contact us as soon as possible as they have demanded action to begin this week. Regards, DEBT NEG 1300351008		
119.	17/10/2018	12:27 PM	SMS	KD	Can you please ensure you contact DEBT NEGOTIATORS today on 1300351008. Unfortunately if we do not hear from you we will need to extend our searches to get in contact with you. This means we may need to contact friends, family, Neighbours, work places or even landlords. We do not like going to these lengths, however if that's what it requires we will have to resort to that. Kind Regards, DEBT NEG 1300351008	TPC
120.	17/10/2018	12:31 PM	Phone Call	KD	FOUND CLIENTS MOTHER AND FATHER - CALLED NUMBER THEY ADVISED TO CALL BACK IN 5 MINUTES.	TPC
121.	17/10/2018	12:45 PM	Phone Call	KD	Called client on home phone - client is currently living with her parents - client was yelling and screaming at her father while he took the phone call. [J] her father apologised and advised to call back an hour when he and his wife get home.	TPC
122.	31/10/2018	4:24 PM	Phone Call	KD	Called clients parents - they advised they dont know where client went and confirmed her mobile is the same. They think is she staying with someone in [Details specified for	TPC

Debtor RL (communications 115 to 131)

	Date	Time	Type	Staff	Communication	DDR/TPC
					address].	
123.	05/11/2018	1:00 PM	SMS	KD	Can you please ensure you contact DEBT NEGOTIATORS today on 1300351008. Unfortunately if we do not hear from you we will need to extend our searches to get in contact with you. This means we may need to contact friends, family, Neighbours, work places or even landlords. We do not like going to these lengths, however if that's what it requires we will have to resort to that. Kind Regards, DEBT NEG 1300351008	TPC
124.	05/11/2018	1:31 PM	SMS	KD	Hi [C], [Debtor RL] has provided your phone number as an emergency contact. Can you please ask her to call A&M Group urgently on 1300351008 thank you	TPC
125.	05/11/2018	1:32 PM	Phone Call	KD	FACEBOOK FRIEND - CALLED NO ANSWER - SENT SMS.	TPC
126.	05/11/2018	1:37 PM	Phone Call	KD	Called listed employer - they do not have anyone by that name.	TPC
127.	05/11/2018	1:44 PM	SMS	KD	Hi [S], [Debtor RL] has provided your phone number as an emergency contact. Can you please ask her to call A&M Group urgently on 1300351008 thank you	TPC
128.	14/11/2018	10:48 AM	SMS	KD	Hi [L], [Debtor RL] has provided your phone number as an emergency contact, can you please ask her to call A&M Group urgently on 1300351008.	TPC
129.	14/11/2018	10:53 AM	SMS	KD	Hi [C], [Debtor RL] has provided your phone number as an emergency contact. Can you please ask her to call A&M Group urgently on	TPC

Debtor RL (communications 115 to 131)

	Date	Time	Type	Staff	Communication	DDR/TPC
					1300351008 thank you	
130.	28/11/2018	3:51 PM	SMS	KD	Can you please contact debt negotiators on 1300351008, as your debt agreement is about to be terminated. If this happens your creditors can then look at forcing you into bankruptcy. In the process of this you will be investigated to see if you had the capabilities to service your debt agreement/debts, if they determine that you did have the ability to do so then you could be charged with fraud and face up to 12 months imprisonment. Can you please contact the office on 1300351008 so we can avoid this even being a possibility entirely. Regards, [Staff XP] – DEBT NEGOTIATORS	DDR
131.	29/11/2018	2:41 PM	Phone Call	XP	EMPLOYMENT LSITED AS : [Details specified for employer and phone number] - CALLED - Spoke with female. F adv client has not worked there for a while. Not sure where she left too. [RW] [Details specified for address and phone number] CALLED Spoke with M, He adv that client does not live at the address on file. He adv client lives in [Details specified for address]. M adv he doesnt know the address off by heart. He adv to call back in 30 minutes to speak with his wife. adv ok ..	TPC

Debtor DM (communications 132 to 149)

	Date	Time	Type	Staff	Communication	DDR/TPC
132.	20/02/2018	2:04 PM	SMS	SN	Hi [Debtor DM] [Staff SN] here from Debt Negotiators. Please call us URGENTLY on 1300351008 in regards to your account. I have been contacted by your creditors and they may be looking at terminating your account as you have not made consistent payments towards your debt agreement. To avoid any legal action that maybe occur, please contact us to we can work together. Kind Regards.	DDR
133.	24/10/2018	3:58 PM	SMS	KD	Can you please ensure you contact DEBT NEGOTIATORS today on 1300351008. Unfortunately if we do not hear from you we will need to extend our searches to get in contact with you. This means we may need to contact friends, family, Neighbours, work places or even landlords. We do not like going to these lengths, however if that's what it requires we will have to resort to that. Kind Regards, DEBT NEG 1300351008	TPC
134.	24/10/2018	3:59 PM	SMS	KD	Hi [D], [Debtor DM] has provided your phone number as an emergency contact. Can you please ask her to call A&M Group urgently on 1300351008.	TPC
135.	24/10/2018	4:00 PM	SMS	KD	Hi [T], [Debtor DM] has provided your phone number as an emergency contact. Can you please ask her to call A&M Group urgently on 1300351008.	TPC
136.	24/10/2018	4:02 PM	Phone Call	KD	ACCELEON SEARCH - FOUND CLIENTS HUSBAND – NEW HOME NUMBER - LEFT	TPC

Debtor DM (communications 132 to 149)

	Date	Time	Type	Staff	Communication	DDR/TPC
					MSG. [DM] [Details specified for address and phone number]	
137.	27/12/2018	2:46 PM	SMS	KD	Can you please ensure you contact DEBT NEGOTIATORS today on 1300351008. Unfortunately if we do not hear from you we will need to extend our searches to get in contact with you. This means we may need to contact friends, family, Neighbours, work places or even landlords. We do not like going to these lengths, however if that's what it requires we will have to resort to that. Kind Regards, DEBT NEG 1300351008	TPC
138.	02/01/2019	11:27 AM	Email	XP	Can you please ensure you contact DEBT NEGOTIATORS today on 1300351008. Unfortunately if we do not hear from you we will need to extend our searches to get in contact with you. This means we may need to contact friends, family, Neighbours, work places or even landlords. We do not like going to these lengths, however if that's what it requires we will have to resort to that.	TPC
139.	25/03/2019	1:38 PM	SMS	XP	Hi [D], My direct number is 0287087244. I will await your phone call. Kind regards, [Staff XP]	TPC
140.	25/03/2019	1:46 PM	Phone Call	XP	Spoke with clients partner - [D] - he adv client is not working and this has made it hard to keep up with payments. He adv that Ezidebit take their dishonour fee's from the account BEFORE the actual payment. Asked why client doesnt call	TPC

Debtor DM (communications 132 to 149)

Date	Time	Type	Staff	Communication	DDR/TPC	
				when that happens and pays the remaining \$130 ? M had no answer. Adv client to find out how much is remaining on the car loans, and we will need to see if it is a better idea to forfeit/sell the cars to pay off the loan.		
141.	11/04/2019	2:33 PM	SMS	KD	Can you please ensure you contact DEBT NEGOTIATORS today on 1300351008. Unfortunately if we do not hear from you we will need to extend our searches to get in contact with you. This means we may need to contact friends, family, Neighbours, work places or even landlords. We do not like going to these lengths, however if that's what it requires we will have to resort to that. Kind Regards, DEBT NEG 1300351008	TPC
142.	07/05/2019	3:10 PM	SMS	KD	Hi [Debtor DM], Can you please contact debt negotiators on 1300351008, as your debt agreement is about to be terminated. If this happens your creditors can then look at forcing you into bankruptcy. In the process of this you will be investigated to see if you had the capabilities to service your debt agreement/debts, if they determine that you did have the ability to do so then you could be charged with fraud and face up to 12 months imprisonment. Can you please contact the office on 1300351008 so we can avoid this even being a possibility entirely. Regards, [Staff XP] – DEBT NEGOTIATORS	DDR

Debtor DM (communications 132 to 149)

	Date	Time	Type	Staff	Communication	DDR/TPC
143.	12/06/2019	10:43 AM	Phone Call	KD	Called clients secondary contact - no answer - sent sms.	TPC
144.	12/06/2019	10:43 AM	SMS	KD	Hi [T], [Debtor DM] has provided your phone number as a secondary contact. Can you please pass on a msg for her to call A&M Group urgently on 1300351008.	TPC
145.	12/06/2019	10:53 AM	Phone Call	KD	ACCELEON SEARCH USING CLIENTS SECONDARY - [D] - CALLED LANDLINE NO ANSWER [DM] [Details specified for address, date of birth, email address and phone numbers]	TPC
146.	01/10/2019	3:42 PM	SMS	KD	Hi [D], [Debtor DM] has provided your phone number as a secondary contact. Can you please pass on a msg for her to call A&M Group urgently on 1300351008.	TPC
147.	14/01/2020	10:44 AM	SMS	KD	Good Morning [Debtor DM], your Debt Agreement is now under review for termination. Your creditors are assessing your account history and payments. They will advise if they wish to terminate the Debt Agreement and start looking into proceeding into legal action which may include Bankruptcy or potentially fraud charges. Please call us as soon as possible to stop this from happening.	DDR
148.	14/01/2020	10:45 AM	SMS	KD	Hi [D], can you please pass on a msg for [Debtor DM] to call Debt Negotiators urgently regarding the termination of her Debt Agreement?	TPC
149.	19/02/2020	1:32 PM	SMS	KD	Good Afternoon [Debtor DM], your Debt Agreement is now under review for	DDR

Debtor DM (communications 132 to 149)

Date	Time	Type	Staff	Communication	DDR/TPC
				termination. Your creditors are assessing your account history and payments. They will advise if they wish to terminate the Debt Agreement and start looking into proceeding into legal action which may include Bankruptcy or potentially fraud charges. Please call us as soon as possible to stop this from happening. Thank you.	