

Federal Court of Australia

District Registry: SOUTH AUSTRALIA

Division: GENERAL

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION

Plaintiff

MOBISUPER PTY LIMITED (ACN 613 581 981)

First Defendant

ZIB FINANCIAL PTY LIMITED (ACN 609 197 971)

Second Defendant

ANDREW RICHARD GROVER

Fourth Defendant

DRAFT SHORT MINUTES OF ORDER

JUDGE: Justice Charlesworth

DATE OF ORDER: [date]

WHERE MADE: Adelaide

THE COURT NOTES THAT:

1. The Plaintiff, the Australian Securities and Investments Commission (**ASIC**) and the First Defendant, MobiSuper Pty Limited (**Mobi**), the Second Defendant, ZIB Financial Pty Limited (**ZIB**), and the Fourth Defendant, Mr Andrew Richard Grover, have agreed to jointly propose orders to the Court on the basis of the Statement of Agreed Facts and Admissions between ASIC, Mobi and ZIB, set out in **Annexure B (SAFA)**.
2. Mobi and ZIB undertake to the Court not to pay the pecuniary penalties and costs referred to in orders 12 and 14.a below from funds of members of the MobiSuper Division of the Tidswell Master Superannuation Plan (the **Fund**).

DEFINITIONS

In relation to the following declarations:

- a. “**Act**” means the *Corporations Act 2001 (Cth)*;
- b. “**ASIC Act**” means the *Australian Securities and Investments Commission Act 2001 (Cth)*;
- c. “**CSO**” means Customer Service Operator(s) employed by Mobi during the Relevant Period;
- d. “**Federal Court Act**” means the *Federal Court of Australia Act 1976 (Cth)*;
- e. “**licence**” means ZIB’s Australian Financial Services Licence (licence numbered 482464);
- f. “**Relevant Consumers**” means Consumer 1, Consumer 4, Consumer 6, Consumer 8, Consumer 10, Consumer 11 and Consumer 14, as identified in Annexure A, being a subset of the Relevant Consumers defined and referred to in ASIC’s Second Further Amended Statement of Claim filed on 8 October 2021 (**Second FASOC**);
- g. “**Admitted Consumer Calls**” means Consumer 1 Call, Consumer 4 Call, Consumer 6 Call, Consumer 8 Call, Consumer 10 Call, Consumer 11 Call and Consumer 14 Call;
- h. “**Relevant Period**” means the period from 30 November 2016 to 14 February 2018.

Otherwise, terms that follow are defined in the Second FASOC, or otherwise in the SAFA set out in Annexure B.

BY CONSENT, THE COURT DECLARES THAT:

AGAINST THE FIRST DEFENDANT:

3. Pursuant to section 21 of the Federal Court Act, in respect of the Admitted Consumer Calls, Mobi (via CSOs) provided personal advice within the meaning of section 766B(3) of the Act to each of the Relevant Consumers (as referred to in Annexure A), each of whom was a retail client and on each of the dates identified in Annexure A.
4. Pursuant to section 21 of the Federal Court Act, in respect of the Admitted Consumer Calls, Mobi, as the providing entity, contravened section 946A of the Act by failing to provide a Statement of Advice in relation to the provision of personal advice to each of

the Relevant Consumers, each of whom was a retail client and on each of the dates identified in Annexure A.

5. Pursuant to section 21 of the Federal Court Act, in respect of each of the Admitted Consumer Calls, Mobi, as the providing entity, contravened section 947D of the Act by failing to provide a Statement of Advice meeting the requirements of section 947D in relation to the provision of personal advice to each of the Relevant Consumers, each of whom was a retail client and on each of the dates identified in Annexure A.
6. Pursuant to section 21 of the Federal Court Act, in respect of each of the Admitted Consumer Calls, Mobi contravened section 12DB(1)(g) of the ASIC Act:
 - a. in trade or commerce;
 - b. in connection with the supply or possible supply of financial services or in connection with the promotion by any means of the supply or use of financial services;
 - c. by making false or misleading representations to each of the Relevant Consumers (on each of the dates identified in Annexure A) with respect to the price of services, that is, to the effect that consumers could save fees in the relevant amount by opening an account with the Fund and consolidating or rolling over their superannuation into a Fund account (**Fee Saving Representations**), where those representations were with respect to a future matter and Mobi did not have reasonable grounds to make any of those representations.

AGAINST THE SECOND DEFENDANT:

7. Pursuant to section 1317E of the Act, ZIB contravened section 961K(2) of the Act by reason of it being responsible licensee for the contravening conduct of certain of its representatives (being the CSOs who conducted the Admitted Consumer Calls), who contravened section 961B of the Act by failing to act in the best interests of clients in the provision of personal advice to each of the Relevant Consumers in the Admitted Consumer Calls on each of the dates identified in Annexure A.
8. Pursuant to section 1317E of the Act, ZIB contravened section 961K(2) of the Act by reason of it being responsible licensee for the contravening conduct of certain of its representatives (being the CSOs who conducted the Admitted Consumer Calls), who contravened section 961H of the Act by failing to warn clients in the provision of personal advice to each of the Relevant Consumers in the Admitted Consumer Calls (where the

advice was based on incomplete or inaccurate information relating to the clients' relevant personal circumstances) in accordance with the requirements of section 961H of the Act, on each of the dates identified in Annexure A.

9. Pursuant to section 1317E of the Act, during the Relevant Period, ZIB contravened section 961L of the Act by failing to take reasonable steps to ensure that certain of its representatives (being the CSOs who conducted the Admitted Consumer Calls), complied with sections 961B and 961H of the Corporations Act in the provision of personal advice to each of the Relevant Consumers in the Admitted Consumer Calls identified in Annexure A.
10. Pursuant to section 21 of the Federal Court Act, in relation to Mobi's promotion of the Fund, ZIB contravened section 912A(1)(a) of the Act, by failing to do all things necessary to ensure that the financial services covered by the licence, provided by Mobi (including by the CSOs), were provided efficiently, honestly and fairly, in that during the Relevant Period, in respect of the Admitted Consumer Calls, ZIB:
 - a. failed to ensure that no false or misleading representations were made by CSOs to consumers;
 - b. failed to ensure that no personal advice was given by CSOs to consumers;
 - c. failed to ensure that CSOs acted in the best interests of consumers in relation to the provision of personal advice, in accordance with section 961B of the Act;
 - d. failed to ensure that CSOs provided the warning required by section 961H of the Act to consumers;
 - e. failed to ensure that Mobi gave to consumers Statements of Advice in accordance with section 946A of the Act and Statements of Advice meeting the requirements of section 947D of the Act.
11. Pursuant to section 21 of the Federal Court Act, ZIB contravened section 912A(1)(a) of the Act, by failing to do all things necessary to ensure that the financial services covered by the licence, provided by Mobi (including by the CSOs), were provided efficiently, honestly and fairly, in that during the Relevant Period ZIB contravened sections 961K(2) and 961L of the Act as declared in paragraphs 7 to 9 above.

BY CONSENT, THE COURT ORDERS THAT:

12. Within 60 days of the date of this order:
 - a. pursuant to section 12GBA(1)(a) of the ASIC Act, Mobi pay to the Commonwealth of Australia total pecuniary penalties of \$125,000, in respect of

the contraventions by Mobi of section 12DB(1)(g) of the ASIC Act, declared in paragraph 6 above;

- b. pursuant to section 1317G(1E) of the Act, ZIB pay to the Commonwealth of Australia total pecuniary penalties of \$125,000, in respect of the contraventions by ZIB of sections 961K and 961L of the Act, declared in paragraphs 7 to 9 above.
13. These proceedings, so far as they concern each of Mobi, ZIB and Mr Grover, are otherwise dismissed.
 14. Pursuant to section 43 of the Federal Court Act:
 - a. ZIB and Mobi, within 60 days of the date of this order, pay ASIC its costs of the claims against them fixed in the sum of \$50,000; and
 - b. each of ZIB, Mobi and Mr Grover bear their own costs, including the costs of the dismissed claims.

Date 7 December 2021



Cynthia Di Blasio
Solicitor for the Plaintiff



Peter Hodges
Solicitor for the First, Second and Fourth
Defendants

Annexure A

Consumer	Indicative date of call	CSO involved in call
1	23 October 2017	JR
4	26 October 2017	NS
6	26 October 2017	MZ
8	23 October 2017	MS
10	18 October 2017	JV
11	18 October 2017	NS
14	21 November 2017	NS

Annexure B

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

Australian Securities and Investments Commission

Plaintiff

MobiSuper Pty Limited (ACN 613 581 981)

First Defendant

ZIB Financial Pty Limited (ACN 609 197 971)

Second Defendant

Andrew Richard Grover

Fourth Defendant

STATEMENT OF AGREED FACTS AND ADMISSIONS

A. INTRODUCTION

1. This Statement of Agreed Facts and Admissions (**SAFA**) is made for the purposes of section 191 of the *Evidence Act* 1995 (Cth) jointly by the Plaintiff - the Australian Securities and Investments Commission (**ASIC**), the First Defendant - MobiSuper Pty Limited (**Mobi**), and the Second Defendant - ZIB Financial Pty Limited (**ZIB**). Together, Mobi, ZIB, and the Fourth Defendant - Andrew Richard Grover (**Mr Grover**), are collectively referred to below as the **Mobi Defendants**.
2. The SAFA relates to Proceedings SAD 237/2019 commenced by ASIC against the Mobi Defendants and the former Third Defendant - Tidswell Financial Services Ltd (**Tidswell**) - on 6 November 2019 (**Proceedings**). On 27 July 2021, Jackson J granted declaratory relief (by consent) as against Tidswell.¹

¹ See *Australian Securities and Investments Commission v MobiSuper Pty Ltd* [2021] FCA 855.

Filed on behalf of (name & role of party) Australian Securities and Investments Commission, Plaintiff
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3. The Proceedings concern the promotion of a division of the Tidswell Master Superannuation Plan (**Tidswell Plan**) known as the 'MobiSuper Fund' (the **Fund**). Mobi was the promoter, and Tidswell was the trustee, of the Fund.
4. In the Proceedings, ASIC has sought declarations that the Mobi Defendants contravened particular provisions of the *Corporations Act 2001* (Cth) (**Corporations Act**) and the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**), that the Mobi Defendants pay pecuniary penalties to the Commonwealth and ASIC's costs, and other orders.²
5. This document identifies the facts relevant to the contraventions between November 2016 and February 2018 (**Relevant Period**) admitted by Mobi and ZIB for the purpose of the Proceedings. The facts agreed to, and the admissions made, are solely for the purpose of the Proceedings and do not constitute any admission for any purpose other than the Proceedings.
6. For the purposes of the Proceedings, Mobi and ZIB admit that they contravened certain provisions of Chapter 7 of the Corporations Act and that Mobi also contravened section 12DB(1)(g) of the ASIC Act, in each case in the particular respects set out below. The parties have reached agreement as to the terms of the relief to be sought from the Court to resolve the Proceedings insofar as they concern the Mobi Defendants.

B. PARTIES AND BACKGROUND

B.1 ASIC

7. ASIC is a body corporate under section 8(1)(a) of the ASIC Act. It is entitled to commence and maintain the Proceedings in its corporate name under section 8(1)(d) of the ASIC Act and may apply to the Court for relief including declarations of contraventions, pecuniary penalties and costs.

B.2 Mobi and ZIB

8. ZIB is, and at all material times was:
 - (a) the holder of Australian Financial Services (**AFS**) licence numbered 482464 (the **ZIB AFS Licence**);
 - (b) carrying on a financial services business in Australia within the meaning of Chapter 7 of the Corporations Act under the ZIB AFS Licence;

² Originating Process filed by ASIC on 6 November 2019 [1]-[4], [8]-[10], [12]-[14].

- (c) a related body corporate of Mobi within the meaning of section 50 of the Corporations Act; and
- (d) part of a shared group management structure with Mobi.

9. Mobi is, and at all material times was:

- (a) a related body corporate of ZIB within the meaning of section 50 of the Corporations Act;
- (b) carrying on a financial services business in Australia within the meaning of Chapter 7 of the Corporations Act;
- (c) an authorised representative (within the meaning of that term under section 761A of the Corporations Act) under the ZIB AFS Licence;
- (d) part of a shared group management structure with ZIB; and
- (e) since 22 November 2016, the promoter of the Fund.

C. ESTABLISHMENT AND PROMOTION OF THE FUND

C.1 Establishment of the MobiSuper Fund

10. Prior to 1 November 2016, Mobi undertook the process of establishing the Fund. Mobi approached a number of entities that offered professional trustee services, including Tidswell, with a proposal to establish and promote a new superannuation fund. Mobi and Tidswell discussed and commenced planning the establishment of a business relationship in relation to the proposed superannuation fund, whereby:
- (a) Tidswell, as trustee, would provide professional trustee services to Mobi and would launch the fund as a division of the Tidswell Plan; and
 - (b) Mobi would act as promoter of the fund.
11. On 22 November 2016, Mobi and Tidswell executed an agreement, pursuant to which (and subject to satisfaction of certain conditions precedent) Tidswell created the Fund and Mobi was appointed the promoter of the Fund (**Promoter Agreement**).
12. Pursuant to the Promoter Agreement, Mobi's roles and responsibilities at all material times included:
- (a) general marketing and sales for promotion of the Fund to prospective members with a view to introducing members to the Fund and, therefore, growing the funds under management in the Fund;
 - (b) providing member 'on-boarding' and retention services to Tidswell in relation to all matters relating to the Fund;

- (c) advising Tidswell in respect of the ongoing management and public promotion of the Fund;
- (d) creating and operating a marketing website for the Fund that included a functionality of members joining the Fund;
- (e) creating and preparing communication and marketing material and operating marketing campaigns for the Fund;
- (f) establishing and operating a telephone call centre for the Fund, in accordance with the 'Call Centre Service Standards' (as defined in the Promoter Agreement);
- (g) ensuring that any promotional, marketing or other communication material (including but not limited to the website and other online marketing material) issued by it that referred to Tidswell or the Fund had been approved in writing by Tidswell;
- (h) ensuring that any financial product advice it provided to members of the Fund was given in compliance with the relevant laws and any instruction notified by Tidswell;
- (i) complying with the 'Promoter Service Standards' (as defined in the Promoter Agreement);
- (j) providing insurance administration services in relation to the Fund, including establishing appropriate group insurance policies in respect of death, total and permanent disablement and income protection, and handling call centre queries from members in relation to insurance; and
- (k) reporting to Tidswell as follows:
 - (i) prior to the launch of the Fund and thereafter annually, providing an updated detailed marketing plan to Tidswell;
 - (ii) annually, providing an updated business plan to Tidswell;
 - (iii) half yearly, reporting to Tidswell on performance against business plan and marketing plan objectives;
 - (iv) recording and acknowledging complaints received and reporting to Tidswell for further action;
 - (v) quarterly, providing Tidswell with a compliance declaration;
 - (vi) quarterly, providing written reports to Tidswell in relation to:

- (A) its sales and marketing activities;
- (B) the performance of the call centre and compliance with the 'Call Centre Service Standards' (as defined in the Promoter Agreement);
- (C) its compliance with the 'Promoter Service Standards' (as defined in the Promoter Agreement); and
- (D) its provision of financial advice to members of the Fund.³

C.2 Promotion of the Fund

13. From 22 November 2016, Mobi promoted the Fund. In its dealings with members of the public, Mobi provided 'financial services' within the meaning of Chapter 7 of the Corporations Act and Part 2 Division 2 of the ASIC Act, in the manner set out in paragraphs 14 and 15 below.
14. Mobi arranged for consumers to apply for interests in the Fund (to which rights and/or benefits attached that were conferred by way of policies of death, total and permanent disablement and income protection insurance owned by Tidswell and offered on an automatic basis to eligible members of the Fund (**Fund Insurance**), unless consumers opted out of those rights and/or benefits).⁴ This constituted 'dealing' by Mobi in one or more financial products, namely interests in a superannuation fund (to which rights and/or benefits conferred by way of insurance attached unless consumers opted out), within the meaning of section 766C of the Corporations Act and section 12BAB of the ASIC Act.
15. On occasion (and in the circumstances described below), Mobi made recommendations and/or statements of opinion that were intended to influence consumers in making decisions in relation to interests in the Fund (as that term is described in paragraph 14 above) or could reasonably be regarded as being intended to have such an influence. This constituted providing 'financial product advice' by Mobi in relation to one or more financial products, namely interests in the Fund (to which rights and/or benefits conferred by way of Fund Insurance may attach), within the meaning of section 766B of the Corporations Act and section 12BAB of the ASIC Act.

³ The terms 'Call Centre Service Standards' and 'Promoter Service Standards' are defined in cll 2.16 and 2.36 of, and set out in Schedules 1 and 2 to, the Promoter Agreement, respectively.

⁴ Such interests in the Fund, including any rights and/or benefits conferred by way of Fund Insurance, are referred to in this SAFA as **interests in the Fund**.

16. Tidswell, in its capacity as trustee, issued the relevant units in the Fund, being superannuation interests. Superannuation interests are ‘financial products’ within the meaning of the Corporations Act and the ASIC Act.⁵
17. One of the ways in which Mobi promoted the Fund was by online marketing, through which Mobi offered consumers a search to identify 'lost' superannuation held in accounts operated by other superannuation providers or the Australian Taxation Office (each an **Existing Fund**). This search is referred to as a **Lost Super Search**. This offering involved consumers entering certain personal details online.⁶ A website through which Mobi offered the Lost Super Search, which was established and operated by Mobi, is referred to as the **Lost-Super Website**.
18. From time to time, Mobi also obtained consumers’ personal details through co-registration lead generation arrangements (**Co-reg Arrangements**), some of which involved:
- (a) when consumers visited participating websites, they were offered the opportunity to win a prize;
 - (b) in order to take up that opportunity, consumers were required to provide certain personal details and select one or more content boxes, which contained descriptions of services offered. Until December 2017, the text of Mobi’s content box included:

“Australians have over \$14 Billion in Lost, Inactive & Unclaimed Super, could some of this be yours?”

MobiSuper can help you locate and consolidate all your super into one fund. Plus we offer advice, rewards and a personal touch. Click yes to get started”;
 - (c) a company, for example Mobi, whose content box was selected by a consumer was then sent the personal details provided by that consumer.
19. Mobi marketed and sold interests in the Fund (including the rights/benefits conferred by way of cover provided by Fund Insurance) by operating an outbound call centre (**Call Centre**) from which customer service operators (**CSOs**) telephoned consumers, including those who had entered their contact details via a request for a Lost Super

⁵ A ‘financial product’ includes, by operation of section 764A(1)(g) of the Corporations Act, a ‘superannuation interest’ as defined in section 10 of the *Superannuation Industry (Supervision) Act 1993* (Cth) (**SIS Act**), which in turn defines ‘superannuation interest’ to mean ‘a beneficial interest in a superannuation entity’, and ‘superannuation entity’ to include ‘a regulated superannuation fund’. ‘A regulated superannuation fund’ is defined in section 19 of the SIS Act as a superannuation fund in respect of which certain sub-sections of section 19 have been compiled with. Superannuation interests are also ‘financial products’ within the meaning of the ASIC Act, as a ‘financial product’ includes, by operation of section 12BAA(7)(f) of the ASIC Act, a ‘beneficial interest in a superannuation fund’ as defined in section 10 of the SIS Act.

⁶ For example, in relation to the Lost Super Search offered on the Lost-Super Website, the personal details elicited before a consumer submitted the request were the consumer’s employment status, date of birth, gender, first name, last name, mobile number, and email address.

Search through the avenues described in paragraphs 17 and 18 above. The Call Centre also accepted inbound calls. The Call Centre ceased operating in February 2018.

20. Between at least 12 May 2017 and 21 November 2017, CSOs took part in telephone calls with consumers in respect of the Fund and Fund Insurance (**Telephone Advice Calls**).
21. Each CSO was:
 - (a) employed by Mobi;
 - (b) a 'representative' within the meaning of section 910A of the Corporations Act of ZIB (when making each of the relevant Telephone Advice Calls);
 - (c) engaged in conduct on behalf of Mobi and ZIB for the purposes of section 769B of the Corporations Act within the scope of their actual or apparent authority (in the course of making each of the relevant Telephone Advice Calls).
22. At all relevant times, Mobi provided the CSOs with, and instructed them to use, telephone scripts in the Telephone Advice Calls (**Call Scripts**).
23. The Call Scripts were created by Mobi and approved by ZIB.
24. It was Mobi's usual practice that a CSO would follow a Call Script in conducting a conversation with a consumer.
25. The Call Scripts included references to the consumer:
 - (a) disposing of interests in his or her Existing Funds;
 - (b) obtaining a beneficial interest in the Fund; and
 - (c) acquiring cover by way of Fund insurance.
26. In relation to the Telephone Advice Calls, it was the usual practice of the CSOs that they:
 - (a) called the consumer, took a return call from the consumer, or were transferred a call with the consumer, including in response to the consumer's request for a Lost Super Search (including through participation in Co-reg Arrangements), or initial inquiry made in relation to superannuation;
 - (b) obtained from or confirmed with the consumer during the relevant call some of the consumer's personal details, including some or all of the consumer's full name, date of birth, address, occupation, his or her average working pattern

and working hours both at that time and in the preceding three months, and his or her estimated annual income;

- (c) asked the consumer for the reason he or she had requested the Lost Super Search or had otherwise made contact with Mobi, and confirmed that the consumer wished to proceed with the enquiry;
- (d) offered to open a Fund account and if the consumer so wished, opened one on their behalf;
- (e) offered to search for any Existing Funds that the consumer held. For an immediate search to be conducted by Mobi (**Instant Search**), the consumer was required to agree to join the Fund and be allocated a member number, for the CSO to then determine whether the consumer had any accounts with Existing Funds, and for the consumer to be provided with the results at the time of the call;
- (f) offered to roll over any superannuation funds held in some or all of those Existing Funds into the newly opened Fund account; and
- (g) determined the types of cover through Fund Insurance for which the consumer was eligible (which depended on his or her personal details) and the premium payable, and offered the consumer such cover.

27. Sixteen of the Telephone Advice Calls are the subject of pleading in ASIC's Second Further Amended Statement of Claim (**2FASOC**) and are referred to as the **Specifically Pleaded Calls**.

C.3 Admitted Consumer Calls - Consumer 1, 4, 6, 8, 10, 11 and 14 Calls

28. Mobi and ZIB make admissions in this SAFA in respect of seven of the Specifically Pleaded Calls, namely the Consumer 1 Call, the Consumer 4 Call, the Consumer 6 Call, the Consumer 8 Call, the Consumer 10 Call, the Consumer 11 Call and the Consumer 14 Call (**Admitted Consumer Calls**). The consumers subject of the Admitted Consumer Calls are referred to in the SAFA as the **Relevant Consumers**.

29. The circumstances of the Admitted Consumer Calls (date of call and CSO involved therein) are summarised in the table below.

Relevant Consumer	Indicative date of call	CSO	Key Document References
1	23 October 2017	JR	Transcript of call: TB Tab 1 (MST.0003.0025.0001) Audio of call: TB Tab 2 (SR8.0016.0001.0001)
4	26 October 2017	NS	Transcript of call: TB Tab 3 (MST.0003.0025.0060) Audio of call: TB Tab 4 (SR8.0016.0001.0121)
6	26 October 2017	MZ	Transcript of call: TB Tab 5 (MST.0003.0025.0102) Audio of call: TB Tab 6 (SR8.0016.0001.0134)
8	23 October 2017	MS	Transcript of call: TB Tab 7 (MST.0003.0025.0148) Audio of call: TB Tab 8 (SR8.0018.0001.0015)
10	18 October 2017	JV	Transcript of call: TB Tab 9 (MST.0003.0025.0187) Audio of call: TB Tab 10 (MST.0003.0023.0005)
11	18 October 2017	NS	Transcript of call: TB Tab 11 (MST.0003.0025.0207) Audio of call: TB Tab 12 (MST.0003.0023.0006)
14	21 November 2017	NS	Transcript of call: TB Tab 13 (MST.0003.0025.0260) Audio of call: TB Tab 14 (MST.0003.0023.0008)

C.3.1 Personal Financial Product Advice

30. In each of the Admitted Consumer Calls, Mobi (through the CSOs):
- (a) provided certain recommendations and/or statements of opinion to the Relevant Consumers; and
 - (b) encouraged the Relevant Consumers to make decisions about superannuation and insurance during the course of the calls.
31. In each of the Admitted Consumer Calls:
- (a) the financial product advice provided by the CSO could reasonably be regarded as being intended by Mobi, including through the CSOs, to influence the Relevant Consumer to:
 - (i) dispose of interests in his or her Existing Funds;

- (ii) acquire a beneficial interest in the Fund; and
 - (iii) take up Fund Insurance; and
- (b) a reasonable person might expect the CSO to have considered one or more of the Relevant Consumer's objectives, financial situation and needs.

32. The circumstances of the provision of personal advice in each of the Admitted Consumer Calls is set out below.

Consumer 1 Call

33. On or prior to 23 October 2017, Consumer 1 requested help to locate and consolidate her superannuation into one fund.
34. In response to her request, on 23 October 2017, CSO JR had a telephone conversation with Consumer 1 (the **Consumer 1 Call**).
35. During the Consumer 1 Call, JR offered:
- (a) to search for any Existing Funds Consumer 1 held;
 - (b) to open a Fund account;
 - (c) to roll over any superannuation funds held in some or all of those Existing Funds into a newly opened Fund account; and
 - (d) insurance coverage through Fund Insurance.
36. It was a consequence of the matter set out in paragraph 35(c) above that Consumer 1's existing accounts with Existing Funds would be closed, causing Consumer 1 to lose any insurance cover associated with those Existing Funds.
37. During the Consumer 1 Call, JR provided recommendations and/or statements of opinion to Consumer 1. Such recommendations and/or statements of opinion included:
- (a) the express statement of opinion that Consumer 1 rolling over her Existing Funds into a Fund account could save her account fees, and the amount of fees she could potentially save was \$78; and
 - (b) the implied recommendation that Consumer 1 should roll over her Existing Funds into a Fund account.
38. The totality of the Consumer 1 Call and the recommendations and/or statements of opinion made could reasonably be regarded as being intended by JR to influence Consumer 1 into making a decision or decisions in relation to a financial product, namely a **Rollover Decision** (being to open a new superannuation account with the

Fund, close any accounts they held with Existing Funds and/or transfer any funds in the Existing Funds into the Fund).

39. By reason of the matters set out in paragraph 38 above, each of the recommendations and/or statements of opinion made by JR to Consumer 1 in the Consumer 1 Call including those referred to in paragraph 37 above constituted 'financial product advice' within the meaning of section 766B(1) of the Corporations Act.
40. The recommendations and/or statements of opinion made by JR to Consumer 1 in the Consumer 1 Call including those referred to in paragraph 37 above were provided in circumstances where a reasonable person might expect JR to have considered one or more of Consumer 1's objectives, financial situation and needs. Consumer 1's objectives, financial situation and needs included:
- (a) Consumer 1's objective to locate her lost superannuation;
 - (b) Consumer 1's financial situation and/or needs as a person with one or more insurances attached to one of her three Existing Funds;
 - (c) Consumer 1's needs as a person who finds superannuation 'confusing' and 'mind-boggling';
 - (d) Consumer 1's needs as a New Zealand citizen and Australian permanent resident who is concerned she is not eligible for a pension in Australia;
 - (e) Consumer 1's needs as a single parent suffering from financial stress and job insecurity;
 - (f) Consumer 1's needs as a person who works as a long-haul courier and does not have time to review her superannuation decisions within the 72-hour cooling-off period;⁷
 - (g) Consumer 1's financial situation and needs as a person who, on transferring superannuation held in her Existing Funds to a Fund account, would lose the insurance cover associated with her Existing Funds and would be left with no insurance cover associated with her superannuation unless she took up Fund Insurance;
 - (h) Consumer 1's financial situation as a person with a superannuation balance of around \$1,386;

⁷ Mobi instituted a 'cooling-off' period of 72 hours after the end of a call, during which period it did not begin the process of rolling over to the Fund the member's balances in any Existing Funds.

- (i) Consumer 1's financial situation and needs as a person who was around 45 years old during the Consumer 1 Call;
- (j) Consumer 1's financial situation as a self-employed person; and
- (k) Consumer 1's financial situation as a person who was not benefitting from any employer contributions to superannuation on her behalf.

41. By reason of the matters set out above, JR provided personal advice to Consumer 1, for the purposes of section 766B(3)(b) of the Corporations Act.

Consumer 4 Call

42. On or prior to 26 October 2017, Consumer 4 requested a Lost Super Search on the Lost-Super Website.
43. In response to her request, on or about 26 October 2017, CSO NS had a telephone conversation with Consumer 4 (the **Consumer 4 Call**).
44. During the Consumer 4 Call, NS offered:
- (a) to search for any Existing Funds Consumer 4 held;
 - (b) to open a Fund account;
 - (c) to roll over any superannuation funds held in some or all of those Existing Funds into a newly opened Fund account; and
 - (d) insurance coverage through Fund Insurance.
45. It was a consequence of the matter set out in paragraph 44(c) above that Consumer 4's existing accounts with Existing Funds would be closed, causing Consumer 4 to lose any insurance cover associated with those Existing Funds.
46. During the Consumer 4 Call, NS provided recommendations and/or statements of opinions to Consumer 4. Such recommendations and/or statements of opinion included:
- (a) the express statement of opinion that Consumer 4 rolling over her Existing Funds into a Fund account could save her account fees, and the amount of fees she could potentially save was \$78; and
 - (b) the implied recommendation that Consumer 4 should roll over her Existing Funds into a Fund account.
47. The totality of the Consumer 4 Call and/or one or more of the recommendations and/or statements of opinion made could reasonably be regarded as being intended

by NS to influence Consumer 4 into making a decision or decisions in relation to a financial product, namely a Rollover Decision.

48. By reason of the matters set out in paragraph 47 above, each of the recommendations and/or statements of opinion made by NS to Consumer 4 in the Consumer 4 Call including those referred to in paragraph 46 above constituted 'financial product advice' within the meaning of section 766B(1) of the Corporations Act.
49. The recommendations and/or statements of opinion made by NS to Consumer 4 in the Consumer 4 Call including those referred to in paragraph 46 above, were provided in circumstances where a reasonable person might expect NS to have considered one or more of Consumer 4's objectives, financial situation and needs. Consumer 4's objectives, financial situation and needs included:
- (a) Consumer 4's objective to locate her lost superannuation;
 - (b) Consumer 4's financial situation as being a person who had been offered a redundancy package by her employer and had ceased working at the time of the Consumer 4 Call;
 - (c) Consumer 4's financial situation and needs as a person whose employer had informed her that she had to change her superannuation provider on ceasing employment;
 - (d) Consumer 4's stated objective to consolidate her superannuation into one account;
 - (e) Consumer 4's financial situation and needs as a person with an Existing Fund forming part of a defined benefits superannuation scheme;
 - (f) Consumer 4's financial situation and needs as a person with one or more insurances attached to two of her three Existing Funds;
 - (g) Consumer 4's financial situation as a person with a superannuation balance of around \$49,278;
 - (h) Consumer 4's financial situation and needs as a person who was around 38 years old during the Consumer 4 Call;
 - (i) Consumer 4's financial situation as a person with little knowledge of the relationship between superannuation and insurance;
 - (j) Consumer 4's financial situation as person wanting to invest in low risk investments;

- (k) Consumer 4's financial situation and needs as a person who, on transferring superannuation held in her Existing Funds to a Fund account, would lose the insurance cover associated with her Existing Funds and would be left with no insurance cover associated with her superannuation unless she took up Fund Insurance; and
- (l) Consumer 4's financial situation and needs as a person who, having declined Fund Insurance, was left with no insurance under her superannuation.

50. By reason of the matters set out above, NS provided personal advice to Consumer 4, for the purposes of section 766B(3)(b) of the Corporations Act.

Consumer 6 Call

51. On or prior to 26 October 2017, Consumer 6 requested a Lost Super Search on the Lost-Super Website.

52. In response to her request, on or about 26 October 2017, CSO MZ had a telephone conversation with Consumer 6 (the **Consumer 6 Call**).

53. During the Consumer 6 Call, MZ offered:

- (a) to search for any Existing Funds Consumer 6 held;
- (b) to open a Fund account;
- (c) to roll over any superannuation funds held in some or all of those Existing Funds into a newly opened Fund account; and
- (d) insurance coverage through Fund Insurance.

54. It was a consequence of the matter set out in paragraph 53(c) above that Consumer 6's existing accounts with Existing Funds would be closed, causing Consumer 6 to lose any insurance cover associated with those Existing Funds.

55. During the Consumer 6 Call, MZ provided recommendations and/or statements of opinion to Consumer 6. Such recommendations and/or statements of opinion included:

- (a) the express statement of opinion that Consumer 6 rolling over her Existing Funds into a Fund account could save her account fees, and the amount of fees she could potentially save was \$156; and
- (b) the implied recommendation that Consumer 6 should roll over her Existing Funds into a Fund account.

56. The totality of the Consumer 6 Call and the recommendations and/or statements of opinion made could reasonably be regarded as being intended by MZ to influence Consumer 6 into making a decision or decisions in relation to a financial product, namely a Rollover Decision.
57. By reason of the matters set out in paragraph 56 above, each of the recommendations and/or statements of opinion made by MZ to Consumer 6 in the Consumer 6 Call including those referred to in paragraph 55 above constituted financial product advice within the meaning of section 766B(1) of the Corporations Act.
58. The recommendations and/or statements of opinion made by MZ to Consumer 6 in the Consumer 6 Call including those referred to in paragraph 55 above were provided in circumstances where a reasonable person might expect MZ to have considered one or more of Consumer 6's objectives, financial situation and needs. Consumer 6's objectives, financial situation and needs included:
- (a) Consumer 6's objective to locate her lost superannuation;
 - (b) Consumer 6's stated objective to consolidate her superannuation into the one account for her 'peace of mind';
 - (c) Consumer 6's financial situation as a person with 'no idea' about the current balance of and current contribution towards her superannuation accounts;
 - (d) Consumer 6's needs as a person who had apparently suffered recent personal hardship, including family violence and the loss of her home to fire, and was at the time of the Consumer 6 Call living in a refuge;
 - (e) Consumer 6's stated objective to withdraw money from her superannuation on hardship grounds to meet her immediate needs;
 - (f) Consumer 6's financial situation and needs as a person with one or more insurances attached to one of her three Existing Funds;
 - (g) Consumer 6's financial situation as a person with a superannuation balance of less than \$15,000;
 - (h) Consumer 6's financial situation and needs as a person who was around 49 years old during the Consumer 6 Call;
 - (i) Consumer 6's financial situation and needs as a person who was not working at the time of the Consumer 6 Call;
 - (j) Consumer 6's stated objective to provide for her daughter, including through her life insurance; and

- (k) Consumer 6's financial situation and needs as a person who, on transferring superannuation held in her Existing Funds to a Fund account, would lose the insurance cover associated with her Existing Funds and would be left with no insurance cover associated with her superannuation unless she took up Fund Insurance.

59. By reason of the matters set out above, MZ provided personal advice to Consumer 6, for the purposes of section 766B(3)(b) of the Corporations Act.

Consumer 8 Call

60. On or prior to 23 October 2017, Consumer 8 requested help to locate and consolidate her superannuation into one fund.

61. In response to her request, on 23 October 2017, CSO MS had a telephone conversation with Consumer 8 (the **Consumer 8 Call**).

62. During the Consumer 8 Call, MS offered:

- (a) to search for any Existing Funds Consumer 8 held;
- (b) to open a Fund account;
- (c) to roll over any superannuation funds held in some or all of those Existing Funds into a newly opened Fund account; and
- (d) insurance coverage through Fund Insurance.

63. It was a consequence of the matter set out in paragraph 62(c) above that Consumer 8's existing accounts with Existing Funds would be closed, causing Consumer 8 to lose any insurance cover associated with those Existing Funds.

64. During the Consumer 8 Call, MS provided one or more recommendations and/or statements of opinion to Consumer 8. Such recommendations and/or statements of opinion included:

- (a) the express statement of opinion that Consumer 8 rolling over her Existing Funds into a Fund account would save her account fees, and the amount of fees she would save was \$78; and
- (b) the implied recommendation that Consumer 8 should roll over her Existing Funds into a Fund account.

65. The totality of the Consumer 8 Call and the recommendations and/or statements of opinion made could reasonably be regarded as being intended by MS to influence Consumer 8 into making a decision or decisions in relation to a financial product, namely a Rollover Decision.

66. By reason of the matters set out in paragraph 65 above, each of the recommendations and/or statements of opinion made by MS to Consumer 8 in the Consumer 8 Call including those referred to in paragraph 64 above constituted financial product advice within the meaning of section 766B(1) of the Corporations Act.
67. The recommendations and/or statements of opinion made by MS to Consumer 8 in the Consumer 8 Call including those referred to in paragraph 64 above were provided in circumstances where a reasonable person might expect MS to have considered one or more of Consumer 8's objectives, financial situation and needs. Consumer 8's objectives, financial situation and needs included:
- (a) Consumer 8's objective to locate her lost superannuation;
 - (b) Consumer 8's financial situation and needs as a person who was not employed at the time of the Consumer 8 Call;
 - (c) Consumer 8's financial situation as a person with a superannuation balance of around \$21,200;
 - (d) Consumer 8's financial situation and needs as a person who was around 56 years old during the Consumer 8 Call;
 - (e) Consumer 8's financial situation and needs as a person who, on transferring superannuation held in her Existing Funds to a Fund account, would lose any insurance cover associated with her Existing Funds and would be left with no insurance cover associated with her superannuation unless she took up Fund Insurance; and
 - (f) Consumer 8's financial situation and needs as a person who, having declined Fund Insurance, was left with no insurance under her superannuation.
68. By reason of the matters set out above, MS provided personal advice to Consumer 8, for the purposes of section 766B(3)(b) of the Corporations Act.

Consumer 10 Call

69. On or prior to 18 October 2017, Consumer 10 requested a Lost Super Search on the Lost-Super Website.
70. In response to his request, on 18 October 2017, CSO JV had a telephone conversation with Consumer 10 (the **Consumer 10 Call**).
71. During the Consumer 10 Call, JV offered:
- (a) to search for any Existing Funds Consumer 10 held;

- (b) to open a Fund account;
 - (c) to roll over any superannuation funds held in some or all of those Existing Funds into a newly opened Fund account; and
 - (d) insurance coverage through Fund Insurance.
72. It was a consequence of the matter set out in paragraph 71(c) above that Consumer 10's existing accounts with Existing Funds would be closed, causing Consumer 10 to lose any insurance cover associated with those Existing Funds.
73. During the Consumer 10 Call, JV provided one or more recommendations and/or statements of opinion to Consumer 10. Such recommendations and/or statements of opinion included:
- (a) the express statement of opinion that Consumer 10 rolling over his Existing Funds into a Fund account could save him account fees, and the amount of fees he could potentially save was \$234; and
 - (b) the implied recommendation that Consumer 10 should roll over his Existing Funds into a Fund account.
74. The totality of the Consumer 10 Call and the recommendations and/or statements of opinion made could reasonably be regarded as being intended by JV to influence Consumer 10 into making a decision or decisions in relation to a financial product, namely a Rollover Decision.
75. By reason of the matters set out in paragraph 74 above, each of the recommendations and/or statements of opinion made by JV to Consumer 10 in the Consumer 10 Call including those referred to in paragraph 73 above constituted financial product advice within the meaning of section 766B(1) of the Corporations Act.
76. The recommendations and/or statements of opinion made by JV to Consumer 10 in the Consumer 10 Call including those referred to in paragraph 73 above were provided in circumstances where a reasonable person might expect JV to have considered one or more of Consumer 10's objectives, financial situation and needs. Consumer 10's objectives, financial situation and needs included:
- (a) Consumer 10's objective to locate his lost superannuation;
 - (b) Consumer 10's financial situation as being a person who had worked a number of different jobs over the course of his career;
 - (c) Consumer 10's financial situation as being a person who was earning approximately \$80,000 per annum at the time of the Consumer 10 Call;

- (d) Consumer 10's financial situation as being a person who worked in a white collar occupation in a particular industry and who was planning to shift to a blue collar occupation in a different industry in the months to follow;
- (e) Consumer 10's stated objective and need to place his superannuation in a fund that was appropriate for his upcoming change of industry;
- (f) Consumer 10's stated objective to consolidate his superannuation into the one account so that he could better keep track of his superannuation;
- (g) Consumer 10's stated objective and need to consolidate his superannuation in a competitive fund;
- (h) Consumer 10's financial situation and implied objective as being a person sensitive to fees payable in connection with his superannuation;
- (i) Consumer 10's financial situation and needs as being a person with one or more insurances attached to three of his four Existing Funds;
- (j) Consumer 10's financial situation as a person with a superannuation balance of around \$54,000-55,000;
- (k) Consumer 10's financial situation and needs as a person who was around 31 years old during the Consumer 10 Call;
- (l) Consumer 10's financial situation and stated objective as being a person with an interest in obtaining income protection insurance;
- (m) Consumer 10's implied objective and need to minimise the premium payable for his insurance; and
- (n) Consumer 10's financial situation and needs as a person who, on transferring superannuation held in his Existing Funds to a Fund account, would lose the insurance cover associated with his Existing Funds and would be left with no insurance cover associated with his superannuation unless he took up Fund Insurance.

77. By reason of the matters set out above, JV provided personal advice to Consumer 10, for the purposes of section 766B(3)(b) of the Corporations Act.

Consumer 11 Call

78. On or prior to 18 October 2017, Consumer 11 requested a Lost Super Search on the Lost-Super Website.
79. In response to his request, on 18 October 2017, CSO NS had a telephone conversation with Consumer 11 (the **Consumer 11 Call**).

80. During the Consumer 11 Call, NS offered:
- (a) to search for any Existing Funds Consumer 11 held;
 - (b) to open a Fund account;
 - (c) to roll over any superannuation funds held in some or all of those Existing Funds into a newly opened Fund account; and
 - (d) insurance coverage through Fund Insurance.
81. It was a consequence of the matter set out in paragraph 80(c) above that Consumer 11's existing accounts with Existing Funds would be closed, causing Consumer 11 to lose any insurance cover associated with those Existing Funds.
82. During the Consumer 11 Call, NS provided one or more recommendations and/or statements of opinion to Consumer 11. Such recommendations and/or statements of opinion included:
- (a) the express and implied statement of opinion that Consumer 11 rolling over his Existing Funds into a Fund account could save him account fees, and the amount of fees he could potentially save was \$312; and
 - (b) the implied recommendation that Consumer 11 should roll over his Existing Funds into a Fund account.
83. The totality of the Consumer 11 Call and the recommendations and/or statements of opinion made could reasonably be regarded as being intended by NS to influence Consumer 11 into making a decision or decisions in relation to a financial product, namely a Rollover Decision.
84. By reason of the matters set out in paragraph 83 above, each of the recommendations and/or statements of opinion made by NS to Consumer 11 in the Consumer 11 Call including those referred to in paragraph 82 above constituted 'financial product advice' within the meaning of section 766B(1) of the Corporations Act.
85. One or more of the recommendations and/or statements of opinion made by NS to Consumer 11 in the Consumer 11 Call including those referred to in paragraph 82 above were provided in circumstances where a reasonable person might expect NS to have considered one or more of Consumer 11's objectives, financial situation and needs. Consumer 11's objectives, financial situation and needs included:
- (a) Consumer 11's objective to locate his lost superannuation;

- (b) Consumer 11's financial situation and needs as a person employed as a coal mine worker;
- (c) Consumer 11's financial situation as a person who earns approximately \$150,000 per annum;
- (d) Consumer 11's financial situation and needs as a person who was around 49 years old during the Consumer 11 Call;
- (e) Consumer 11's stated objective to consolidate his superannuation into one account;
- (f) Consumer 11's financial situation and needs as a person with one or more insurances attached to four of his five Existing Funds;
- (g) Consumer 11's financial situation and needs as a person who, on transferring superannuation held in his Existing Funds to a Fund account, would lose the insurance cover associated with his Existing Funds and would be left with no insurance cover associated with his superannuation unless he took up Fund Insurance;
- (h) Consumer 11's needs as a person who is unsure what existing coverage he has under his existing insurance, including life insurance; and
- (i) Consumer 11's stated objective to retain life insurance, or alternatively not to lose life insurance cover.

86. By reason of the matters set out above, NS provided personal advice to Consumer 11, for the purposes of section 766B(3)(b) of the Corporations Act.

Consumer 14 Call

87. On or prior to 21 November 2017, Consumer 14 requested a Lost Super Search on the Lost-Super Website.
88. In response to her request, on 21 November 2017, CSO NS had a telephone conversation with Consumer 14 (the **Consumer 14 Call**).
89. During the Consumer 14 Call, NS offered:
- (a) to search for any Existing Funds Consumer 14 held;
 - (b) to open a Fund account;
 - (c) to roll over any superannuation funds held in some or all of those Existing Funds into a newly opened Fund account; and
 - (d) insurance coverage through Fund Insurance.

90. It was a consequence of the matter set out in paragraph 89(c) above that Consumer 14's existing accounts with Existing Funds would be closed, causing Consumer 14 to lose any insurance cover associated with those Existing Funds.
91. During the Consumer 14 Call, NS provided one or more recommendations and/or statements of opinion to Consumer 14. Such recommendations and/or statements of opinion included:
- (a) the express statement of opinion that Consumer 14 rolling over her Existing Funds into a Fund account could save her account fees, and the amount of fees she could potentially save was \$156; and
 - (b) the implied recommendation that Consumer 14 should roll over her Existing Funds into a Fund account.
92. The totality of the Consumer 14 Call and the recommendations and/or statements of opinion made could reasonably be regarded as being intended by NS to influence Consumer 14 into making a decision or decisions in relation to a financial product, namely a Rollover Decision.
93. By reason of the matters set out in paragraph 92 above, each of the recommendations and/or statements of opinion made by NS to Consumer 14 in the Consumer 14 Call including those referred to in paragraph 91 above constituted 'financial product advice' within the meaning of section 766B(1) of the Corporations Act.
94. One or more of the recommendations and/or statements of opinion made by NS to Consumer 14 in the Consumer 14 Call including those referred to in paragraph 91 above were provided in circumstances where a reasonable person might expect NS to have considered one or more of Consumer 14's objectives, financial situation and needs. Consumer 14's objectives, financial situation and needs included:
- (a) Consumer 14's objective to locate her lost superannuation;
 - (b) Consumer 14's financial situation as a person who was not employed at the time of the Consumer 14 Call;
 - (c) Consumer 14's financial situation and needs as a person who had at least one dependant;
 - (d) Consumer 14's implied objective to consolidate her superannuation into one account so that she could better manage her superannuation;
 - (e) Consumer 14's financial situation and needs as a person with one or more insurances attached to two of her three Existing Funds;

- (f) Consumer 14's financial situation as a person with a low superannuation balance;
- (g) Consumer 14's financial situation and needs as a person who was around 25 years old during the Consumer 14 Call;
- (h) Consumer 14's stated objective to obtain life insurance;
- (i) Consumer 14's stated objective and need to take up 'the safest' superannuation investment option; and
- (j) Consumer 14's financial situation and needs as a person who, on transferring superannuation held in her Existing Funds to a Fund account, would lose the insurance cover associated with her Existing Funds and would be left with no insurance cover associated with her superannuation unless she took up Fund Insurance.

95. By reason of the matters set out above, NS provided personal advice to Consumer 14, for the purposes of section 766B(3)(b) of the Corporations Act.

C.3.2 Best Interests and Failure to Warn

96. In each of the Admitted Consumer Calls:

- (a) each CSO was a 'provider' for the purposes of section 961 of the Corporations Act and a 'representative' of ZIB within the meaning of section 910A of the Corporations Act;⁸ and
- (b) ZIB was a 'responsible licensee' in respect of the CSOs' contraventions of sections 961B and 961H of the Corporations Act (described below).

97. In each of the Admitted Consumer Calls:

- (a) the CSO did not identify the Relevant Consumer's objectives, financial situation and needs that would reasonably be considered as relevant to the advice provided during the call;
- (b) the CSO did not assess whether the CSO had the expertise required to provide the Relevant Consumer advice on the subject matter sought and, if not, did not decline to provide the advice;

⁸ At all material times, each CSO involved in the Personal Advice Calls was an employee of a related body corporate of ZIB, being a financial services licensee, and/or a person acting on behalf of ZIB, for the purposes of paragraphs (a)(iii) and/or (a)(iv) of the definition of 'representative' in section 910A of the Corporations Act.

- (c) the CSO did not conduct a reasonable investigation into financial products that might achieve the Relevant Consumer's objectives and meet the Relevant Consumer's needs that would reasonably be considered as relevant;
 - (d) the CSO did not base all judgments in advising the Relevant Consumer on the 'client's relevant circumstances';
 - (e) the CSO failed to consider the merits of the Relevant Consumer rolling their superannuation account into an Existing Fund or a superannuation product in which they did not have an account, rather than a Fund account;
 - (f) the CSO failed to consider or compare the respective features and benefits of the Relevant Consumer's Existing Funds and the Fund;
 - (g) the CSO failed to consider or compare the respective features and benefits of any insurance associated with the Relevant Consumer's Existing Funds and Fund Insurance;
 - (h) the CSO failed to ensure that they did not advise the Relevant Consumer to transfer his or her superannuation out of Existing Funds which were better suited to the Relevant Consumer's personal objectives, financial situation and needs than a Fund account; and
 - (i) the CSO failed to ensure that they did not advise the Relevant Consumer to take steps that had the effect of cancelling insurance associated with an Existing Fund which were better suited to the Relevant Consumer's personal objectives, financial situation and needs than Fund Insurance.
98. On each occasion that a CSO provided personal advice to a Relevant Consumer, it was reasonably apparent to each CSO during the relevant Admitted Consumer Call that the information available to that CSO relating to the Relevant Consumer's objectives, financial situation and needs was incomplete or inaccurate, including that the CSOs lacked information as to (as the case may be):
- (a) the fees payable for each of the Relevant Consumer's Existing Funds;
 - (b) the historical rate of investment return for each of the Relevant Consumer's Existing Funds;
 - (c) the risk orientation of each of the Relevant Consumer's Existing Funds;
 - (d) the type of insurance and scope of cover the Relevant Consumer held under one or more insurances in connection with his or her Existing Funds;
 - (e) the premiums payable for insurance the Relevant Consumer held in connection with his or her Existing Funds;

- (f) the Relevant Consumer's complete state of health, including whether or not the Relevant Consumer had any pre-existing medical conditions that might disentitle the Relevant Consumer from cover under Fund Insurance, and in particular any that had arisen in the preceding five years; and
- (g) the consequences that might follow from the Relevant Consumer's loss of insurance cover held in connection with his or her Existing Funds, or by substituting that insurance cover with cover provided by Fund Insurance.

99. As a result of the matters referred to above, the CSO in each Admitted Consumer Call was required to warn the Relevant Consumer during the call that:

- (a) by reason of one or more of the matters in paragraph 98 above, the personal advice provided on the call was based on incomplete or inaccurate information relating to the Relevant Consumer's relevant personal circumstances; and
- (b) because of that, the Relevant Consumer should, before acting on the personal advice, consider the appropriateness of the advice, having regard to the Relevant Consumer's objectives, financial situation and needs.⁹

C.3.3 Statements of Advice

100. Mobi was the 'providing entity' for the purposes of section 944A of the Corporations Act in respect of each of the Admitted Consumer Calls.¹⁰

101. Mobi did not provide any Statement of Advice at all to any Relevant Consumer in respect of any personal advice provided during the relevant Admitted Consumer Call, within the meaning of Division 3 of Part 7.7 of the Corporations Act.

102. The advice provided by Mobi (through the CSOs) during each Admitted Consumer Call was, or included, a recommendation that the Relevant Consumer dispose of, or reduce the Relevant Consumer's interest in, all or part of a particular financial product and instead acquire all or part of another financial product. In this regard, in each Admitted Consumer Call, Mobi (through the CSOs) advised the Relevant Consumer to:

- (a) dispose of or reduce his or her superannuation interests (to which rights and/or benefits conferred by way of insurance may attach) in one or more of his or her Existing Funds, each such interest being a 'financial product' within

⁹ The requirement arises under section 961H(1).

¹⁰ Mobi provided the advice comprised in each Admitted Consumer Call as each call was conducted by a CSO employed by Mobi, and Mobi was an authorised representative of a financial services licensee, namely ZIB.

the meaning of the Corporations Act, and instead acquire an interest in the Fund, also being a ‘financial product’; and

- (b) by consequence of (a) above, dispose of any rights and/or benefits conferred by way of insurance associated with one or more of their Existing Funds and instead take up Fund Insurance (being the rights and/or benefits conferred and as attached to interests in the Fund).

103. Mobi did not provide any Statement of Advice to any of the Relevant Consumers that included information about, to the extent Mobi knew or could reasonably have found out:

- (a) any charges the Relevant Consumer would or might incur in respect of the disposal or reduction of the consumer’s interest in all or part of a particular financial product;¹¹
- (b) any charges the Relevant Consumer would or might incur in respect of the acquisition of all or part of a particular financial product;¹²
- (c) any pecuniary or other benefits that the Relevant Consumer would or might lose (temporarily or otherwise) as a result of taking the recommended action;¹³ and
- (d) any other significant consequences for the Relevant Consumer of taking the recommended action that the CSO (and therefore Mobi) ought reasonably to have known were likely.

C.3.4 Fee Savings Misrepresentations

104. In respect of each of the Admitted Consumer Calls:

- (a) Mobi’s conduct was in trade or commerce;
- (b) Mobi’s conduct was in connection with the supply or possible supply of financial services or in connection with the promotion by any means of the supply of financial services, in that:

¹¹ Such charges included exit fees the Relevant consumer was liable to pay on transferring superannuation from any Existing Funds.

¹² Such charges included any fees associated with a Fund account, including any administration or account-keeping fees, and any fees and premiums associated with any Fund Insurance.

¹³ Such pecuniary or other benefits the Relevant Consumer would or might lose included by way of example any difference in the fees payable by a consumer in respect of an Existing Fund and a Fund account that would leave the consumer liable for greater fees overall, and the loss of insurance cover for medical conditions that a consumer may have had under insurance associated with an Existing Fund, and that the CSO knew or ought reasonably to have known would be excluded by operation of the five-year pre-existing condition exclusion from Mobi’s coverage policies, or excluded from Fund Insurance on some other ground.

- (i) Mobi was providing 'financial product advice' (as referred to in paragraph 15 and Section **C.3.1** above) within the meaning of section 12BAB(1)(a) of the ASIC Act;
- (ii) Mobi was 'dealing' in a financial product (being a beneficial interest in a superannuation fund) within the meaning of section 12BAB(1)(b) of the ASIC Act (as referred to in paragraph 14 above); and
- (c) Mobi made representations, as described in paragraph 105 below, with respect to the price of services (the 'price' being the administration and other fees charged in connection with interests in the Fund), within the meaning of section 12DB(1)(g) of the ASIC Act.

105. In each of the Admitted Consumer Calls, Mobi (via the CSO in question) made a representation to the effect that the Relevant Consumer could save fees in the relevant amount by opening an account with the Fund and consolidating or rolling over their superannuation into that Fund account (**Fee Saving Representation**). The particular express statements made are set out in the table below.

Relevant Consumer	Key Documents	Substance of Representation(s) (emphasis added)
Consumer 1	Transcript of call: TB Tab 1 (MST.0003.0025.0001) Audio of call: TB Tab 2 (SR8.0016.0001.0001)	<ul style="list-style-type: none"> CSO: "We can also do a free consolidation service for you, so as we are a super fund we're able to open up a fresh new account." "...We can also do that consolidation for you, so they can get everything over for you into that new fund..." (T2/L4-9) CSO: "I just need you to confirm, ah, that you agree to join MobiSuper..." "Do you agree?" Consumer: "Yeah." (T4/L1-5) CSO: "Okay, so I'll just read you out – and by, just by rolling over two funds, I'll let you know by rolling over the two into one account you can be saving about \$78 per year, and that's just on fees alone because obviously your super funds do have fees with them. Um, so it's quite good." (T6/L25-29)
Consumer 4	Transcript of call: TB Tab 3 (MST.0003.0025.0060) Audio of call: TB Tab 4 (SR8.0016.0001.0121)	<ul style="list-style-type: none"> CSO: "so we do a free account set-up for them as well as a free consolidation service. Inside that we actually do a live search with you on the phone to find..." "...how many accounts you do have out there as well as how much you could be potentially saving." (T2/L2-7) CSO: "But we can roll over your AustralianSuper and your Hostplus account. Not a problem. And by rolling over those four, um, those two funds into your Mobisuper account, you can be potentially saving \$78 per year on fees." (T11/L24-27)

Relevant Consumer	Key Documents	Substance of Representation(s) (emphasis added)
Consumer 6	Transcript of call: TB Tab 5 (MST.0003.0025.0102) Audio of call: TB Tab 6 (SR8.0016.0001.0134)	<ul style="list-style-type: none"> CSO: “By rolling over three funds into one MobiSuper account, you can potentially save \$156 per year.” “Um, that’s in, yeah, in fees alone. So that’s, so at least we’ve been able to find that for you, which is great news.” (T13/L5-9)
Consumer 8	Transcript of call: TB Tab 7 (MST.0003.0025.0148) Audio of call: TB Tab 8 (SR8.0018.0001.0015)	<ul style="list-style-type: none"> CSO: “What we do, we can find all the supers and combine them all into one.” “Into a MobiSuper account and then we tell you how much you’ve saved, how much is in your balance, what we see, what super you’re with, what is still valid in your super...” “...all that is set up.” (T2/L15-22) CSO: “So, um, so by rolling over those two funds, I’m saving you \$78 per year. So how does that sound for you, is that pretty good?” Consumer: “How Much? What was it?” CSO: “Yeah, \$78 per year” (T8/L14-18).
Consumer 10	Transcript of call: TB Tab 9 (MST.0003.0025.0187) Audio of call: TB Tab 10 (MST.0003.0023.0005)	<ul style="list-style-type: none"> CSO: “Once I have your tax file number, I can do a live instant online search for you. I’ll be able to explain to you today all the different accounts that you have, how much money you’ve got left in each one of them, which one’s you’re paying for insurance policies out of, and potential fee savings as well.” (T2/L22-26) CSO: “So, we’re a super fund, from our point of view, we get a new customer, from our customer’s point of view they’ve got an easy way to be able to consolidate. So every, single super fund there’s generally some type of a management fee. Um, and if you’ve got multiple lots of insurances as well, and that’s why we’ve got like this little thing that shows potential savings.” (T7/L4-9) CSO: “Um, just so you know, when you combine the super accounts into the one MobiSuper account, you’re potentially saving \$234 a year and that’s just in fees. That’s not even looking at the multiple insurance policies that you’re paying” (T13/L13-16)
Consumer 11	Transcript of call: TB Tab 11 (MST.0003.0025.0207) Audio of call: TB Tab 12 (MST.0003.0023.0006)	<ul style="list-style-type: none"> CSO: “Now, firstly, the fresh start includes a free account setup, plus a free consolidation services, and inside that we actually do a live search to find how many accounts you do have out there, as well as how much you can be potentially saving. And then we roll it all over into a fresh MobiSuper account...” (T2/L2-6) CSO: “So what we’ll be able to do for you is, and mind you, by rolling over these five funds into one MobiSuper account, you could be potentially saving \$312 per year on fees alone.” (T11/L6-8)
Consumer 14	Transcript of call: TB Tab 13 (MST.0003.0025.0260) Audio of call: TB Tab	<ul style="list-style-type: none"> CSO: “So how we actually help you is we offer you a fresh start with us, so we do a free account setup, as well as a free consolidation service and inside that consolidation service we actually do a live search with you on the phone...” “...to find how many accounts you do have out there, as

Relevant Consumer	Key Documents	Substance of Representation(s) (emphasis added)
	14 (MST.0003.0023.0008)	<p>well as how much you can be potentially saving and then we get it all consolidated into the fresh, new MobiSuper account..." (T2/L11-19)</p> <ul style="list-style-type: none"> • CSO: "...by rolling over these three funds into your one MobiSuper account, you can be potentially saving \$156 per year on fees alone." (T8/L15-17) • CSO: "Like I said, you were paying, you can potentially be saving \$156 per year, by just rolling it all into the one, so you, you're saving quite a bit of money there." (T13/L11-14)

106. Each Fee Saving Representation was a representation as to a future matter within the meaning of section 12BB of the ASIC Act. The CSO, and therefore Mobi, did not have reasonable grounds upon which to make the representations, because:

- (a) the relevant CSO, and therefore Mobi, did not at the time of the relevant Admitted Consumer Call have information as to the fees that the Relevant Consumer's Existing Fund(s) were charging; and
- (b) the figure cited:
 - (i) was not calculated on the basis of any information known to Mobi as to the fees in fact charged by the Relevant Consumer's Existing Fund(s); and
 - (ii) was calculated on the basis of assumptions as to the fixed administration fees typically charged by superannuation funds.

Further, Mobi did not disclose the matters referred to above to the Relevant Consumer.

107. Each Fee Saving Representation was therefore false or misleading.

C.3.5 Licensee Obligations

108. The financial services authorised by the ZIB AFS Licence included:

- (a) providing financial product advice in respect of superannuation and certain life products; and
- (b) dealing in, by applying for, acquiring, varying or disposing of, superannuation and certain life products,

to retail and wholesale clients.

109. By virtue of it being an authorised representative of ZIB, Mobi was a representative of ZIB within the meaning of section 910A of the Corporations Act. Mobi (including by its CSOs) provided the financial services described in this SAFA, including 'dealing' and providing 'financial product advice' as described in paragraphs 14 and 15 above, which financial services were covered by the ZIB AFS Licence.
110. ZIB, as a financial services licensee:
- (a) and as responsible licensee, is liable under section 961K(2) of the Corporations Act for contraventions by its representatives, namely the CSOs, of sections 961B and 961H of the Corporations Act;
 - (b) was required by section 961L to take reasonable steps to ensure that representatives of ZIB, namely the CSOs, complied with sections 961B and 961H of the Corporations Act;
 - (c) was required by section 912A(1)(a) to do all things necessary to ensure that the financial services covered by the ZIB AFS Licence were provided efficiently, honestly and fairly.
111. Contrary to section 961L of the Corporations Act, ZIB did not take reasonable steps to ensure that representatives of ZIB, namely the CSOs, complied with sections 961B and 961H of the Corporations Act. In this regard, in respect of the Admitted Consumer Calls:
- (a) the CSOs failed to comply with sections 961B and 961H of the Corporations Act, in the manner described in paragraphs 96 to 99 above;
 - (b) ZIB failed to take steps to ensure the CSOs took the 'best interests' steps set out in paragraph 97 above; and
 - (c) ZIB failed to take steps to ensure the CSOs gave the warnings set out in paragraph 99 above.
112. In relation to Mobi's promotion of the Fund, the financial services covered by the ZIB AFS Licence, provided by Mobi (including through the CSOs), were not provided efficiently, honestly and fairly, as ZIB, in relation to the Admitted Consumer Calls:
- (a) failed to ensure that no false or misleading representations were made by CSOs to consumers;¹⁴

¹⁴ Consequential to admitted contraventions of section 12DB(1) ASIC Act.

- (b) failed to ensure that no personal advice was given by CSOs to consumers;¹⁵
- (c) failed to ensure that CSOs acted in the best interests of consumers in relation to the provision of personal advice, in accordance with section 961B of the Corporations Act;¹⁶
- (d) failed to ensure that CSOs provided the warning required by section 961H of the Corporations Act to consumers;¹⁷ and
- (e) failed to ensure that Mobi gave to consumers Statements of Advice in accordance with section 946A of the Corporations Act and meeting the requirements of section 947D of the Corporations Act.¹⁸

D. FORMAL ADMISSIONS OF CONTRAVENTIONS

- 113. By reason of the matters set out above including in paragraphs 96 and 97, the relevant CSO in each Admitted Consumer Call did not act in the best interests of the Relevant Consumer in relation to the personal advice provided to that consumer during the relevant call in contravention of section 961B(1) of the Corporations Act.
- 114. By reason of the matters set out above including in paragraphs 96, 98 and 99, the CSO in each Admitted Consumer Call failed to warn the Relevant Consumer during the relevant call, or at all, of the matters set out in paragraph 99 above, in contravention of section 961H of the Corporations Act.
- 115. By reason of the matters set out above including in paragraphs 100 and 101, Mobi contravened section 946A of the Corporations Act on each occasion personal advice was provided to a Relevant Consumer during an Admitted Consumer Call.
- 116. By reason of the matters set out above including in paragraphs 100 and 102 to 103, Mobi contravened section 947D of the Corporations Act on each occasion personal advice was provided to a Relevant Consumer during an Admitted Consumer Call.
- 117. By reason of the matters set out above including in paragraphs 104 to 107, Mobi contravened section 12DB(1)(g) of the ASIC Act, by the relevant CSO in each Admitted Consumer Call making a false or misleading representation (or representations) with respect to the price of services.
- 118. By reason of the matters set out above including in paragraphs 96 to 99, 108, 109 and 110(a), ZIB contravened section 961K(2) of the Corporations Act in relation to

¹⁵ Consequential to admitted contraventions pertaining to the giving of personal financial product advice within the meaning of section 766B(3) Corporations Act.

¹⁶ Consequential to admitted contraventions of section 961B of the Corporations Act.

¹⁷ Consequential to admitted contraventions of section 961H of the Corporations Act.

¹⁸ Consequential to admitted contraventions of sections 946A and 947D of the Corporations Act.

each contravention of section 961B and section 961H of the Corporations Act by a CSO.

119. By reason of the matters set out above including in paragraphs 96 to 99, 108, 109, 110(b) and 111, ZIB contravened section 961L of the Corporations Act by failing to take reasonable steps to ensure that the CSOs, each of whom was a representative of ZIB, complied with sections 961B and 961H of the Corporations Act.
120. By reason of the matters set out above including in paragraphs 108, 109, 110(c) and 112, ZIB did not do all things necessary to ensure that the financial services covered by the ZIB AFS Licence, provided by Mobi (including through the CSOs), were provided efficiently, honestly and fairly, and as a consequence, ZIB contravened section 912A(1)(a) of the Corporations Act.
121. Further, in consequence of the conduct which gave rise to ZIB's contraventions of sections 961K(2) and 961L of the Corporations Act (described in this SAFA), ZIB failed to ensure the financial services covered by the ZIB AFS Licence were provided efficiently, honestly and fairly within the meaning of section 912A(1)(a) of the Corporations Act.

E. FURTHER FACTS RELATING TO PENALTY

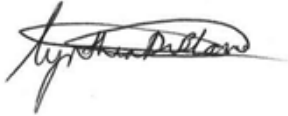
122. As noted at paragraph 19 above, the Call Centre from which the CSOs made the Telephone Advice Calls (including the Admitted Consumer Calls) ceased operating in February 2018. The Call Centre has not operated since that date.
123. During the period the Call Centre operated, Mobi and ZIB took the following steps in relation to the conduct of CSOs on Telephone Advice Calls:
 - (a) CSOs were required to conduct Telephone Advice Calls in accordance with the Call Scripts referred to at paragraphs 22-24 above. The Call Scripts were developed following legal advice from Mobi and ZIB's solicitors, Mills Oakley. The Call Scripts had also been approved by Tidswell and by TAL Life Ltd (which provided insurance to members of the Fund);
 - (b) all CSOs were provided with training when they joined Mobi, including as to the difference between factual information, general advice, and personal advice, prior to commencing calls with consumers. CSOs were also given ongoing, *ad hoc*, training from time to time, including on compliance issues. CSOs were specifically trained not to give personal advice (though, personal advice was in given in the Admitted Consumer Calls);
 - (c) all calls made by CSOs in which a consumer agreed to join the Fund were reviewed by a member of Mobi's compliance team, including with a view to

determining whether compulsory parts of the Call Scripts had been read out, and whether personal advice or misleading information had been given to consumers. It was the role of the compliance team to identify what were, from Mobi's perspective, compliance issues arising from the calls.

124. Mobi and ZIB took the following further steps:
- (a) a consumer's funds were not rolled over into the Fund until the compliance team had listened to the call as set out at paragraph 123(c) above and the consumer's application had been considered and finally approved by Mobi;
 - (b) there was a minimum 72 hour cooling-off period following admission as a member of the Fund, pursuant to which consumers could elect not to proceed with the roll over of their Existing Funds into the Fund and/or cancel their membership of the Fund.
125. On the Admitted Consumer Calls, a specific fee saving figure was read out by the CSO to the Relevant Consumer (see Section **C.3.4** above). In each case, the figure was a multiple of \$78. There was no requirement in the Call Scripts that such a figure be read out.
126. The \$78 figure (or a multiple thereof) appeared on the 'Middleware' system, available to the CSO, which had been provided for Mobi's use by Tidswell. The system stated (where there were two funds identified in an Instant Search): 'By rolling over 2 funds into one MobiSuper account you could potentially save \$78 per year'. Neither Mobi nor ZIB had any involvement in the set up of the Middleware system or the inclusion of such a statement in it. Tidswell has also stated that it was not responsible for the programming of Middleware in this regard.
127. At certain points during the Relevant Period, CSOs in Sydney were specifically trained not to read out the \$78 figure when it appeared on the Middleware system. When Mobi's senior managers became aware that some CSOs in Melbourne had read out the specific fee saving figure, on or about 29 January 2018 they directed CSOs not to read out a specific figure in the future. Further, Mobi requested that Tidswell ensure that the relevant text was removed from the Middleware system.

128. As noted at paragraph 106(b)(ii) above, the \$78 figure was calculated on the basis of assumptions as to the fixed administration fees typically charged by superannuation funds. It appears that the \$78 figure was based on industry data suggesting that the average fixed administration fee charged by superannuation funds was \$1.50 a week (i.e. \$78 a year).

Date 30 November 2021



Cynthia Di Blasio
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Defendants