

# Westpac Banking Corporation – Submissions on Financial Advice Case Study

Royal Commission into Misconduct in the  
Banking, Superannuation and Financial  
Services Industry

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# Submissions of Westpac Banking Corporation on the financial advice case study

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## Submissions of Westpac Banking Corporation on the financial advice case study

### INTRODUCTION

1. These submissions address the possible findings that were identified by Counsel Assisting<sup>1</sup> as open findings in relation to the case study concerning Westpac's financial advisers, Mr Mahadevan and Mr Smith.
2. The submissions are structured as follows:
  - a. Part A addresses whether the Commission should make findings of misconduct in relation to Mr Mahadevan;
  - b. Part B addresses whether the Commission should make findings of misconduct in relation to Mr Smith;
  - c. Part C addresses whether the Commission should make findings of misconduct in relation to Westpac;
  - d. Part D addresses whether the Commission should make findings of conduct falling below community standards and expectations; and
  - e. Annexure A sets out the factual findings that Westpac submits the Commission should make with respect to the case study concerning Westpac's financial advisers, Mr Mahadevan and Mr Smith.
3. Westpac will address the three broader policy questions identified by Counsel Assisting,<sup>2</sup> on which all parties have leave to make submissions, in its separate submission to be provided on 7 May 2018.

#### **A. Whether the Commission should make findings of misconduct in relation to Mr Mahadevan**

##### ***Whether Mr Mahadevan's conduct, in connection with the advice that he gave to Mr and Mrs McDowall, might amount to misconduct: T1957.4-6.***

4. Westpac accepts that the advice given by Mr Mahadevan to Mr and Mrs McDowall was poor<sup>3</sup> and was inappropriate to Mr and Mrs McDowall's circumstances.<sup>4</sup> The McDowalls had approached Westpac for advice about whether it was possible to use their superannuation to buy a Bed and Breakfast (**B&B**) that would be both their business and their home.<sup>5</sup> Possible purchase prices of \$1.4 million and \$1 million were discussed.<sup>6</sup> The McDowalls had superannuation of around \$200,000, and some equity in their home.<sup>7</sup>
5. Mr Mahadevan should have clearly communicated the limited scope of the advice<sup>8</sup> he was to provide, namely, that it would not cover the overall viability of the McDowalls' proposed purchase of a B&B property using a SMSF structure and/or the sale of the house.<sup>9</sup> Having not sufficiently limited the scope of his advice, Mr Mahadevan addressed the McDowalls' inquiry as to whether their plan was possible using a Self Managed Super Fund (**SMSF**), but did not address whether their plan was practicable at

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<sup>1</sup> T1957.4-1959.16.

<sup>2</sup> T1959.18-32.

<sup>3</sup> T1394.39.

<sup>4</sup> T1400.29-34.

<sup>5</sup> Ex 2.102 Second Wright Statement, Ex MW-2, Tab 4 [WBC.503.001.1330]; Ex 2.98, Statement of Mrs McDowall, [6]; T1355.30-35.

<sup>6</sup> T1358.39-41; T1359.25-30.

<sup>7</sup> Ex 2.102 Second Wright Statement, MW-2, Tab 2 [WBC.503.003.1148].

<sup>8</sup> See Statement of Advice, section "What we agreed": Ex 2.102 Second Wright Statement, Ex MW-2, Tab 2 [WBC.503.003.1148] at [1149].

<sup>9</sup> Ex 2.102 Second Wright Statement, [36].

that time given their resources.<sup>10</sup> Assuming a Loan to Value Ratio (**LVR**) of 80% and a purchase price of \$1 million,<sup>11</sup> Mr and Mrs McDowall would need to contribute the entirety of their \$200,000 superannuation towards the purchase of the property, which would then leave nothing to fund the start-up of the business or pay for other expenses out of the SMSF (such as the contemplated insurance or stamp duty).<sup>12</sup> The subsequent change in the bank's LVR requirements for a loan of this type from 80% to 70% in the period between the first consultation and the time at which the McDowalls sought to implement the advice made the proposal unachievable.<sup>13</sup>

6. The failure to address whether their plan was achievable at that time had serious consequences for the McDowalls. Westpac accepts that it is responsible for that advice, both as licensee<sup>14</sup> of the Australian Financial Services Licence (**AFSL**) under which the advice was given and as Mr Mahadevan's employer.<sup>15</sup>
7. Given the circumstances outlined above, and for the reasons outlined below, Westpac accepts that Mr Mahadevan's conduct in giving the advice he gave to Mr and Mrs McDowall was "misconduct" within the broad meaning given to that term in this Commission's letters patent.
8. While the advice was plainly inadequate, there is no basis to conclude that it involved either deliberate misconduct or dishonest conduct on Mr Mahadevan's part:
  - a. In particular, the Commission should not find that Mr Mahadevan sought to implement an unrealistic strategy for the McDowalls in order to increase his own share of revenue. Mr Wright was cross-examined on this topic at T1401.1-32, where he explained the reasons for his opinion that Mr Mahadevan was unlikely to have been motivated by any impact the transaction might have on his remuneration. First, the insurance cover put in place was not an unreasonable level of cover if the B&B plan proceeded. Secondly, any bonus that Mr Mahadevan stood to receive by virtue of commissions on the insurance would be clawed back on a tiered basis if the insurance was cancelled within 12 months. Thirdly, having conducted a thorough review of Mr Mahadevan's Performance Statements for the previous 12 months, Mr Wright was of the view that they did not suggest that Mr Mahadevan had been motivated by maximising his share of revenue.
  - b. Mr Mahadevan recommended to Mr and Mrs McDowall on multiple occasions before they sold their home and purchased insurances that they seek legal and taxation advice in relation to establishing a SMSF and running a business.<sup>16</sup>

***Whether Mr Mahadevan may have breached s. 961B(1) of the Corporations Act in relation to the advice: T1957.7-9.***

9. For the reasons outlined above, Westpac accepts that Mr Mahadevan may have breached his statutory obligation under s. 961B(1) of the *Corporations Act* to act in the best interests of Mr and Mrs McDowall.

***Whether Mr Mahadevan may have breached s. 961G of the Corporations Act: T1957.9-12.***

10. Westpac accepts that Mr Mahadevan may have breached his obligation under s. 961G in providing advice to Mr and Mrs McDowall. In particular, Westpac accepts that the advice given to Mr and Mrs

<sup>10</sup> Ex 2.102 Second Wright Statement, [36].

<sup>11</sup> T1358.40-41.

<sup>12</sup> After the McDowalls made their complaint, Mr Mahadevan himself identified that it would "not be feasible" for them to purchase a \$1 million property: Ex 2.102 Second Wright Statement, Ex MW-2, Tab 9 [WBC.503.001.1383].

<sup>13</sup> Ex 2.102 Second Wright Statement, Ex MW-2, Tab 9 [WBC.503.001.1383] and Tab 18 [WBC.503.006.0020].

<sup>14</sup> Westpac Banking Corporation, holder of AFSL 233714.

<sup>15</sup> Westpac Financial Consultants Limited.

<sup>16</sup> Ex 2.102 Second Wright Statement, Ex MW-2, Tab 5 [WBC.503.001.1375] and Tab 6 [WBC.503.001.1377].

McDowall may have been inappropriate for them within the meaning of s.961G<sup>17</sup> for the reasons identified above.

11. While Westpac accepts that Mr Mahadevan may have contravened s. 961G, for the reasons addressed above, any contravention did not involve dishonesty.

**B. Whether the Commission should make findings of misconduct in relation to Mr Smith**

***Whether aspects of Mr Smith’s conduct, in connection with the advice that he gave whilst employed with Westpac, might amount to misconduct: T1957.14-16.***

12. Westpac accepts that Mr Smith may have engaged in misconduct in connection with the giving of financial advice by: failing adequately to investigate clients’ circumstances, needs and objectives; failing to identify and take steps that were in the clients’ best interests; recommending investments or strategies that were inappropriate for clients because they were inconsistent with those clients’ risk profiles; and transacting without clients’ authority.

***Whether Mr Smith may have breached s. 961B(1) of the Corporations Act: T1957.17-19.***

13. Westpac accepts that Mr Smith may have breached his statutory obligation under s. 961B(1). In particular, Mr Smith failed to adequately investigate some clients’ circumstances, needs and objectives before providing advice and recommending investments or strategies that were too risky for some clients constituted inappropriate advice.

***Whether Mr Smith may have breached s. 961G of the Corporations Act: T1957.19-22.***

14. Westpac accepts that Mr Smith may have breached his statutory obligation under s. 961G by providing advice to some clients that was inappropriate for them. The available documentation does not permit a detailed analysis of the advice given by Mr Smith in the way that is possible for the advice given by Mr Mahadevan to the McDowalls. Instead, the relevant evidence largely comprises internal reports recording the conclusions of Westpac’s investigations into Mr Smith’s advice and conduct. However, based on those conclusions, Westpac accepts that Mr Smith may have breached s. 961G by recommending certain investments or strategies that were inappropriate for clients because they were inconsistent with those clients’ risk profiles.

**C. Whether the Commission should make findings of misconduct in relation to Westpac**

15. Commencing at T1957.26, Counsel Assisting submitted that there were four ways in which it was open to the Commission to find that Westpac’s conduct might amount to misconduct in the period considered by the case study involving Mr Mahadevan and Mr Smith. The first three of those four ways involved suggested contraventions of s. 912A(1)(a), s. 912A(1)(ca) and s. 961L, respectively. Those possible findings are essentially similar, in that the core of each of them suggests that Westpac did not do enough to ensure that its financial advisers did the right thing. It is convenient to deal with the three of them together. The other possible findings identified in relation to Westpac’s conduct are addressed after that.

***Whether Westpac may have breached s. 912A(1)(a), s. 912A(1)(ca) and s. 961L of the Corporations Act***

16. The obligation in s. 912A(1)(a) to do “all things necessary” to ensure that financial services are provided efficiently, honestly and fairly should be construed as an obligation to do all things *reasonably* necessary. That follows, at least in part, from the subjective judgment invited and required by the goal (“efficiently, honestly and fairly”), and also from the inclusion of “efficiency” among the standards for performance (satisfaction of an absolute standard to “do all things necessary” likely being incompatible with the efficiency obligation). It also follows from the fact that a licensee bound to comply with

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<sup>17</sup> Or, in the words of s. 961G, it would not be reasonable to conclude that the advice given to Mr and Mrs McDowall was appropriate to them.

s. 912A(1)(a) must consider its obligations prospectively, which requires a consideration of the future, which is necessarily uncertain. If s. 912A(1)(a) were construed as applying an absolute standard, untempered by a requirement of reasonableness, then it would be an impossible standard to meet. It is unlikely that that is what the legislature intended.

17. The Commission should not find that Westpac failed to do all things necessary to ensure that the financial services covered by its licence were provided efficiently, honestly and fairly (s. 912A(1)(a)), nor that Westpac failed to take reasonable steps to ensure that its representatives complied with the financial services laws (s. 912A(1)(ca)), nor that Westpac failed to take reasonable steps to ensure that its representatives complied with s. 961B and s. 961G (s. 961L). Throughout the relevant period, Westpac had in place systems, policies and procedures that were directed to ensuring its financial advisers gave appropriate advice that was in their clients' best interests. Those systems, policies and procedures are described in detail in Mr Wright's first statement at paragraphs 34-55 and 105-205.<sup>18</sup> They include the following (with respect to Westpac's employed advisers).

#### *Risk governance model*

18. Westpac had in place a risk governance model designed to protect against the risk of financial advisers giving inappropriate advice or otherwise not complying with their obligations under the financial services laws.<sup>19</sup> First, employees within BT Advice itself were at all times required to identify, escalate and record incidents and help manage risks and compliance obligations. Second, a structurally separate team, reporting to the BTFG Chief Risk Officer, was in place to monitor and advise on the overall control framework, including giving advice on the design of new controls when required. Third, Westpac's group audit function provided an independent assurance function that evaluates and considers the adequacy and effectiveness of the first and second functions. This risk governance model was enhanced in early 2017, in particular with the formal embedding of a dedicated risk and compliance team within the BT Advice business (the first line of defence) in alignment with the Group's Three Lines of Defence model, to enhance the management of the operational risk framework, and to provide a consolidated view of risk and compliance management for the BT Advice business.

#### *Paraplanning*

19. Since around November 2014, all financial advisers employed by Westpac have been required to have complex advice documents prepared using a paraplanning team.<sup>20</sup> The paraplanning process requires advisers to submit a plan request and supporting documentation including the customer profile book (which contains the customer's risk profile) and relevant product analyses. Requests and documentation submitted to paraplanning are reviewed against a number of criteria and, if those criteria are not met, a flag is raised. Paraplanning thus involves advice documentation being prepared in draft, and the proposed advice being assessed, by a qualified employee.
20. In the case of the advice given to Mr and Mrs McDowall, Mr Mahadevan considered but did not adopt some of the paraplanner's recommendations, giving reasons for doing so.<sup>21</sup> However, that does not mean that paraplanning controls did not properly function or were or can be easily circumvented.<sup>22</sup>
21. Financial advisers must give adequate reasons where they do not agree with the recommendations of paraplanners. However, if a paraplanner identifies potential risks associated with the Statement of Advice the paraplanner must raise those concerns with the adviser and discuss solutions or alternative strategies to alleviate those risks.<sup>23</sup> There are also escalation processes, pursuant to which the paraplanner and, if necessary, his or her leader can escalate a case where they are of the view that the

<sup>18</sup> Ex 2.101 First Wright Statement.

<sup>19</sup> Ex 2.101 First Wright Statement, [109]-[110].

<sup>20</sup> Ex 2.101 First Wright Statement, [141]-[144].

<sup>21</sup> T1403.22; T1404.22.

<sup>22</sup> T1404.24-42.

<sup>23</sup> Ex 2.101 First Wright Statement, Ex MW-1, Tab 17 [WBC.502.002.0515].

advice is potentially not in the customer's best interest or the adviser's behaviour is inappropriate.<sup>24</sup> Depending on the concern, this may involve the paraplanner's leader discussing the concerns with the adviser and their people leader, or direct further escalation to upper management including the State Manager and National Manager and potentially the Head of Advice Service Delivery, Head of BTFA & Head of BT Customer Operations. The adviser is also recorded on the Incident Report Register. In an appropriate case, escalation by the paraplanner can lead to a rejection of the paraplanning request (i.e. a Statement of Advice not being prepared by the paraplanning team)<sup>25</sup> pending resolution of the request or may feed into an adviser investigation to determine if there has been inappropriate advice or misconduct (the result of which could at its most serious include termination of the adviser's employment).<sup>26</sup>

22. As an example, in Mr Mahadevan's case, subsequent to receiving the issues raised by the paraplanner regarding the Statement of Advice, Mr Mahadevan:
  - a. considered the paraplanner's concerns and alternative strategies and provided adequate reasons as to why he was not adopting the alternative strategies put forward by the paraplanner;<sup>27</sup> and
  - b. obtained a Pricing Variation Approval from his Regional Manager for charging OAS fees above the standard OAS fees charged for a Navigate Review package.
23. As a result of this response, the paraplanner determined that those issues raised with respect to the Statement of Advice had been resolved. Therefore the paraplanner in these circumstances would not have seen a need to seek to escalate the matter.

#### *Best Interest Duty Policy*

24. Since 1 July 2013, Westpac has had in place a Best Interest Duty Policy, the purpose of which is to assist financial advisers to comply with their statutory duty to act in the best interests of their clients.<sup>28</sup> The Policy sets out a series of steps, formulated by reference to the safe-harbour provision in s. 961B(2), which financial advisers are required to take to ensure that they comply with their best interests obligations under ss. 961B to 961J. Compliance with the policy is mandatory and monitoring of compliance occurs through the operation of Westpac's control environment. Additionally, where non-compliance with this policy is identified, this results in the loss of consequence management points and further disciplinary action such as suspension or termination. The policy expressly requires financial advisers to take any step that, at the time the advice is provided, would be regarded as being in the best interests of the customer. That includes considering whether there is anything about the customer's circumstances that requires action (or further action) on the part of a financial adviser.

#### *Planner Risk Insights system*

25. In October 2013, Westpac developed and introduced a data analytics system known as Planner Risk Insights (**PRI**).<sup>29</sup> That system uses data extracted from a number of Westpac's product, payment and other systems. That data is automatically analysed and, where the PRI system identifies an outlier or potential high risk adviser, that issue is flagged for review by an employee who then assesses whether the matter requires escalation. That escalation may, in turn, prompt a review of further files. It was the PRI system that detected Mr Smith as a high risk adviser in December 2014, which then led to the urgent compliance audit of his files in January 2015 and brought Mr Smith's conduct to the attention of

<sup>24</sup> T1481.7-31; Ex 2.101 First Wright Statement, [143].

<sup>25</sup> Ex 2.101 First Wright Statement, [95].

<sup>26</sup> T1481.25-26.

<sup>27</sup> Ex 2.102 Second Wright Statement, Ex MW-2, Tab 41 [WBC.503.003.1200].

<sup>28</sup> Ex 2.110 [WBC.506.001.0160]; T1399.29-37.

<sup>29</sup> Ex 2.101 First Wright Statement, [182]-[190].

his regional manager.<sup>30</sup> Since it was implemented in 2013, the PRI system has been enhanced by the addition of 15 additional metrics for advice given by Westpac’s employed financial advisers.<sup>31</sup>

#### *Compliance audits*

26. Westpac has in place a compliance audit program, which is conducted by the Monitoring and Supervision team within the Capability and Conduct function of BT Advice.<sup>32</sup> That program involves auditing selected files against a compliance checklist (which includes both regulatory and business requirements). Audits are scheduled to occur at least annually for each adviser, but may occur more frequently for advisers identified as having higher risk ratings. At the conclusion of the audit process an adviser is given an overall audit outcome ("effective", "qualified" or "requires improvement"), a report shared with the adviser's supervisor and a debrief of the action plan contained in the report to ensure that appropriate actions are put in place to address any issues identified.<sup>33</sup> The audit program was substantially improved in November 2017, including by increasing the focus on the adviser’s best interest obligation.<sup>34</sup>

#### *Consequence management framework*

27. Compliance audits are linked to Westpac’s consequence management framework.<sup>35</sup> Poor audit results (as well as other incidents, such as complaints or breaches of business rules and policies) result in advisers accruing demerit points. An adviser commences with 60 consequence management points and demerit points are then deducted from that total. The number of points deducted for a “Requires Improvement” result on a compliance audit has increased over time – prior to 1 April 2017 10 points were deducted; between April and October 2017 15 points were deducted; and, since November 2017, 30 points have been deducted.<sup>36</sup> The deduction of consequence management points affects an adviser’s risk rating, which, in turn, can result in performance management and disciplinary action, including additional supervision and the deferral or cancellation of an adviser’s monthly bonus.<sup>37</sup>
28. Westpac accepts that there were failings in its consequence management system, some of which were illustrated by the case study involving Mr Smith. In particular, notwithstanding that audits of Mr Smith’s files from 2008 onwards regularly identified areas that required improvement, Mr Smith did not receive any increase in supervision or adverse remuneration consequences prior to the audit of his files undertaken in January 2015.<sup>38</sup> That was because, under the consequence management system, not enough points were lost for poor compliance audit results and Mr Smith’s compliance audits were not conducted as frequently as they should have been given his poor audit results. This meant that he did not have multiple audits conducted before his demerit points “refreshed” after six months.<sup>39</sup> Westpac has taken steps to improve its consequence management system. It has increased the demerit points for a “requires improvement” result on a compliance audit from 10 to 15 per file (in around April 2017) and from 15 to 30 per file (in around November 2017). In addition, Westpac has now put in place a monthly review conducted by Mr Wright, his State Managers and representatives of the first and second line risk teams, in which advisers’ consequence management points are reviewed over a longer (two year) period.<sup>40</sup> Conducting a review over that longer period is designed to identify problematic trends with advisers’ audit results and conduct.

<sup>30</sup> See paragraph 71 and 72 below.

<sup>31</sup> Ex 2.101 First Wright Statement, [186]-[188].

<sup>32</sup> Ex 2.101 First Wright Statement, [194]-[195].

<sup>33</sup> Ex 2.101 First Wright Statement, [61].

<sup>34</sup> Ex 2.101 First Wright Statement, [195].

<sup>35</sup> Ex 2.101 First Wright Statement, [149]-[160]; Ex 2.101 First Wright Statement, Ex MW-1, Tab 30 [WBC.500.027.1387] and Tab 31 [WBC.100.146.2364].

<sup>36</sup> Ex 2.101 First Wright Statement, [153].

<sup>37</sup> Ex 2.101 First Wright Statement, [155]; Ex 2.101 First Wright Statement, Ex MW-1, Tab 30 [WBC.500.027.1387] and Tab 31 [WBC.100.146.2364].

<sup>38</sup> See paragraph 70 below.

<sup>39</sup> Ex 2.101 First Wright Statement, [398]; T1391.3-11; T1391.27-36.

<sup>40</sup> T1423.1-20.

29. While acknowledging the failings in the consequence management system identified in the case study involving Mr Smith, Westpac submits that it should not be assumed that its compliance controls and consequence management system did not generally operate effectively. Mr Wright gave evidence to this effect.<sup>41</sup> Indeed, various aspects of Westpac’s compliance controls ultimately worked together to identify and take action in respect of Mr Smith’s non-compliance in late 2014 and early 2015 (see paragraphs 71 and 72 below).

#### *Other measures*

30. The systems, policies and procedures identified above are only a small number of those that Westpac has in place to prevent and detect instances of its financial advisers giving inappropriate advice or otherwise failing to comply with the financial services laws. Some of the other measures described in Mr Wright’s evidence include enhanced Regional Manager supervision of financial advisers;<sup>42</sup> improved record-keeping, including a requirement that all customer advice files be stored electronically in Westpac’s Customer File Management (**CFM**) system (so that they are accessible to supervisors);<sup>43</sup> an induction program that educates advisers about their obligations, both under the financial services laws and under Westpac’s own policies and procedures;<sup>44</sup> pre-vetting processes, which require draft advice documents to be reviewed for consistency with Westpac’s standards and requirements before the advice is finalised and presented to the customer;<sup>45</sup> and targeted investigations into advice matters where concerns have been raised and/or where remediation of customers requires input from the investigations team.<sup>46</sup>

#### *Variable remuneration*

31. The variable remuneration paid by Westpac to its employed, non-partner financial advisers means that those advisers can, in certain circumstances, receive a bonus calculated based on a share of the revenue generated above specified thresholds attributable to those advisers’ customers. Many advisers do not meet these thresholds and are thus not eligible to receive a bonus. That may be contrasted with the position of self-employed financial advisers in the industry generally, who can receive 100% of the revenue generated from their customers in circumstances where self-employed advisers may not be subject to the same eligibility criteria and level of compliance controls as Westpac advisers.
32. Westpac’s variable remuneration structures do not exist in isolation. Variable remuneration is paid to employees who are subject to all of the systems, policies and procedures referred to above. Those policies include Westpac’s Best Interest Duty Policy, which expressly requires financial advisers to act in their customers’ best interests. While the majority of Westpac’s financial advisers provide good advice and act in their customers’ best interests,<sup>47</sup> Westpac accepts that one of the reasons Mr Smith may have given inappropriate advice appears to have been to increase his share of revenue.<sup>48</sup>
33. Westpac’s variable remuneration structures include compliance and behavioural “gate openers” that are designed to ensure financial advisers give appropriate advice.<sup>49</sup> In addition to these eligibility criteria, the revenue contributing to the calculation of an adviser’s variable remuneration may be reduced (including to zero) by deductions for “good value claims” (complaints where the adviser is determined to be at fault) and clawbacks of commissions from life insurance products which lapse or are cancelled

<sup>41</sup> T1456.17-20.

<sup>42</sup> Ex 2.101 First Wright Statement, [174]-[177].

<sup>43</sup> Ex 2.101 First Wright Statement, [178]-[181].

<sup>44</sup> Ex 2.101 First Wright Statement, [44]-[49].

<sup>45</sup> Ex 2.101 First Wright Statement, [129].

<sup>46</sup> Ex 2.101 First Wright Statement, [193].

<sup>47</sup> Ex 2.101 First Wright Statement, [76], [83].

<sup>48</sup> Ex 2.101 First Wright Statement, [388]; T1469.38-41.

<sup>49</sup> T1386.25-38; T1389.10-46; T1391.9-47; Ex 2.107 [WBC.506.002.0828] at 0833.

within two years (on a tiered basis).<sup>50</sup> The compliance gate opener depends on the operation of Westpac's consequence management system.

34. Westpac has been involved in a continuous project to review and improve the control systems it has in place to ensure advisers provide appropriate advice that is in customers' best interests.<sup>51</sup> Those changes have been informed by deficiencies that Westpac has identified through discovering inappropriate advice, including Mr Smith's conduct.<sup>52</sup> One example of that relates to changes introduced by Westpac in relation to stamping fees on offers of new securities. The investigation into Mr Smith's conduct identified an incident involving 20 of Mr Smith's customers seeking to participate in a single issuance of NAB capital notes, in respect of which Mr Smith would have been entitled to receive stamping fees (these stamping fees being exempt from FOFA's conflicted remuneration regulation). As a consequence, in July 2015, Westpac amended its variable remuneration structure to exclude stamping fees received as part of a primary issuance from an adviser's share of revenue.<sup>53</sup> Instead, those stamping fees are now paid into a fund that supports adviser training and capability initiatives. The Commission should find that, where Westpac has identified deficiencies in controls, it has proactively taken steps to fix them. Those steps are ongoing, including through the Control Environment Review Program.<sup>54</sup>
35. The variable remuneration paid by Westpac to employed financial advisers was similar to the share of revenue structures used by other employers in the financial advice industry at the time.<sup>55</sup> Viewed in isolation, it could potentially have created an incentive for advisers to prefer their own interests over those of their customers (albeit a far lower incentive than applied to other, self-employed advisers). However, that variable remuneration needs to be considered in the context of the controls put in place by Westpac to ensure its financial advisers provide appropriate advice in their customers' best interests. While some of Westpac's compliance controls, in particular consequence management and regional manager supervision, did not operate as intended, Westpac took action to remedy these issues when they were identified. In those circumstances, it should not be concluded that Westpac breached s. 912A(1)(a), s. 912A(1)(ca) or s. 961L of the *Corporations Act* by reason of the payment of variable remuneration by Westpac, the operation of the consequence management system and/or the operation of the paraplanning function.

*Limitations involved in considering alleged systemic breaches by reference to a case study*

36. In Westpac's submission, the present case studies, involving Mr Mahadevan and Mr Smith, do not provide a sound basis on which to conclude that Westpac may have failed to do all things necessary, or may have failed to take reasonable steps, to achieve the ends identified in s. 912(1)(a), s. 912(1)(ca) or s. 961L. The question of what was reasonably necessary, or what were reasonable steps to take, would require consideration of a number of factors that the evidence before the Commission does not address, including: what the steps are; the difficulty of taking them; what a reasonable licensee, in the position of Westpac, would have concluded (and when) about whether its existing systems, policies and procedures needed to be improved; and the effectiveness of Westpac's systems, policies and procedures when compliance by its financial advisers was measured across the whole of Westpac's business. Consideration of those issues would require an assessment of the conduct of Westpac over a period of time, rather than with a focus on a particular incident.<sup>56</sup>

<sup>50</sup> Ex 2.101 First Wright Statement, Ex MW-1, Tab 31 [WBC.100.146.2364] at 2366; T1454.21-23.

<sup>51</sup> Ex 2.101 First Wright Statement, [212].

<sup>52</sup> Ex 2.101 First Wright Statement, [58]-[60], [65], [146], [417].

<sup>53</sup> Ex 2.101 First Wright Statement, [416].

<sup>54</sup> Ex 2.101 First Wright Statement, [212].

<sup>55</sup> Ex 2.101 First Wright Statement, [76].

<sup>56</sup> *Commonwealth Bank of Australia v Doggett & Ors* [2014] VSC 423 at [165].

***Whether Westpac may have breached its obligation under s. 912D to report a significant breach to ASIC within 10 business days after becoming aware of it in relation to the conduct of Mr Smith: T1957.37-39.***

37. For the reasons addressed above, Westpac does not accept that it has contravened ss. 912A(1)(a) or 912A(1)(ca) on account of Mr Smith's conduct. Further, even if there had been a breach, it should not be concluded that that breach was 'significant' for the purposes of s. 912D(1)(b), which would require a consideration of the number or frequency of similar previous breaches by Westpac as licensee, as well as the impact of the breach on Westpac's ability to provide the financial services covered by its AFSL, amongst other things: s. 912D(1)(b)(i)-(ii). In any event, Westpac did give notice to ASIC on 17 November 2015: see paragraph 44 below. That was 10 business days after the matter was considered by Westpac's Breach Determination Forum. The Breach Determination Forum is the body within Westpac responsible for considering that issue and making a determination.<sup>57</sup>

**D. Whether the Commission should make findings of conduct falling below community standards and expectations**

***Whether Westpac's conduct fell below community standards and expectations in that, having identified that Mr Mahadevan provided advice to Mr and Mrs McDowall that left them in a worse off position, Westpac made inadequate offers of compensation resulting in Mr and Mrs McDowall needing to make a complaint to the Financial Ombudsman Service to obtain appropriate redress, and Westpac did not impose any disciplinary consequences on Mr Mahadevan until almost 2 years after Mrs McDowall made her complaint: T1958.4-11.***

38. Westpac accepts that its offers of compensation to Mr and Mrs McDowall were inadequate and that this resulted in Mr and Mrs McDowall needing to make a complaint to the Financial Ombudsman Service (FOS) in order to obtain appropriate redress. In that regard, its conduct fell below community standards and expectations.
39. Westpac made offers of compensation to Mr and Mrs McDowall relatively promptly following their complaint on 22 November 2015. On 27 January 2016, Westpac made a first settlement offer to close the SMSF and assess a formal loan application against Westpac's borrowing criteria. Westpac also offered to pay Mr and Mrs McDowall \$15,677, being a refund of all fees and insurance payments made to that date.<sup>58</sup> On 25 February 2016, Westpac made a second settlement offer, under which it offered to wind up the SMSF, commenced the process of rolling back Mr and Mrs McDowalls' superannuation benefits to their previous providers and make a payment of \$17,988.<sup>59</sup> A third offer was made in March 2016, which included an offer to pay an amount of \$50,988.<sup>60</sup> This offer included an ex gratia payment of \$33,000, \$30,000 of which was made on the basis that Westpac was mindful of the difficulties Mr and Mrs McDowall were now in.<sup>61</sup>
40. The main reason those offers of compensation were inadequate was that the Westpac employees responsible for formulating the offers did not factor into their estimates the loss suffered by Mr and Mrs McDowall as a result of selling their house.<sup>62</sup> That loss was excluded because the relevant employees took the view that there was evidence that the McDowalls had decided to sell their house before they approached Mr Mahadevan for advice,<sup>63</sup> and Mr Mahadevan was not authorised to provide direct property advice and had informed the McDowalls of this. There was evidence to indicate both.<sup>64</sup>

<sup>57</sup> Ex 2.101 First Wright Statement, [363].

<sup>58</sup> Ex 2.102 Second Wright Statement, [54].

<sup>59</sup> Ex 2.102 Second Wright Statement, Ex MW-2, Tab 36 [WBC.503.001.1190]; Ex 2.102 Second Wright Statement, [55].

<sup>60</sup> T.1367.1-2.

<sup>61</sup> Ex 2.102 Second Wright Statement, Ex MW-2, Tab 16 [WBC.503.001.1453].

<sup>62</sup> Ex 2.102 Second Wright Statement, [57]; Ex 2.102 Second Wright Statement, Ex MW-2, Tab 16 [WBC.503.001.1453].

<sup>63</sup> Ex 2.102 Second Wright Statement, Ex MW-2, Tab 16 [WBC.503.001.1453].

<sup>64</sup> Ex 2.102 Second Wright Statement, Ex MW-2, Tab 4 [WBC.503.001.1330], Tab 13 [WBC.104.003.7371] (second bullet point) and Tab 18 [WBC.503.006.0020 at 0021 and 0024].

However, that was the wrong approach to take towards the question of compensation. It was wrong because the relevant question was not whether Mr and Mrs McDowall had already decided to sell their house but, rather, whether they would have aborted that sale (and avoided the consequent loss) if Mr Mahadevan had given them appropriate advice. If that question had been asked, then it may have been concluded that Mr and Mrs McDowall should be offered compensation for the loss they suffered as a result of selling their house. Westpac accepts that aspects of the approach taken to compensate the McDowalls in this case may have fallen below community standards.

41. Westpac accepts that, other than the fact that in 2016 Mr Mahadevan's Regional Manager had numerous discussions with him about the McDowalls' complaint in which he also received further relevant guidance, the imposition of formal disciplinary consequences on Mr Mahadevan took a material amount of time. Those consequences included the loss of demerit points and the deduction of the compensation amount from Mr Mahadevan's revenue measures. However, pursuant to the consequence management policy, the consequences to be imposed on Mr Mahadevan, including the consequence management demerit points allocated to Mr Mahadevan and the amount of the deduction from Mr Mahadevan's revenue measures, were to be calculated having regard to the final compensation amount.<sup>65</sup> As such, in the case of the McDowalls the imposition of these consequences did not occur until the conclusion of the FOS proceedings. The timeline for the FOS process was not determined by Westpac. Nevertheless, Mr Mahadevan should have known that consequences would be imposed once the claim had been resolved.<sup>66</sup> Westpac submits rather that an appropriate finding on the evidence would be that while Westpac took certain steps to deal with Mr Mahadevan's conduct soon after Mrs McDowall's complaint was made, formal consequences were not imposed until Mrs McDowall's complaint was resolved, almost two years later. This is because those consequences were tied to the outcome of the external FOS complaints process. Westpac accepts that in this instance formal disciplinary consequences could have been commenced sooner after Westpac accepted liability for aspects of the McDowall's complaint.

***Whether Westpac's conduct fell below community standards and expectations in that, having identified Mr Smith as having received consistently poor audit ratings and as having breached a number of internal Westpac policies, and also having made serious allegations of misconduct against Mr Smith, Westpac failed to report Mr Smith to ASIC in response to a notice given by ASIC under s. 912C of the Corporations Act in July 2015 and failed to provide adequate information about those matters to Dover Financial Services, Mr Smith's new licensee: T1958.13-18.***

42. Westpac submits that its conduct did not fall below community standards and expectations in not specifically addressing Mr Smith's conduct in its response to ASIC's 6 July 2015 notice. The proposed finding appears to accept (with respect, correctly) that Westpac did not contravene s. 912C by failing to identify Mr Smith in its response to the 6 July 2015 notice. The notice did not require identification of Mr Smith as an "Other Compliance Concern", because that part of the notice was expressly restricted to financial advisers authorised by Westpac as at the date of the notice (6 July 2015) and Mr Smith had resigned in March 2015.<sup>67</sup> Nor did the notice require identification of Mr Smith as a "Serious Compliance Concern" because, as at the date of the notice, Westpac's investigations into Mr Smith were continuing.<sup>68</sup> In responding to the 6 July 2015 notice, Westpac made it clear that it had not reached a final view in relation to the conduct of advisers still under investigation and that it would deal

<sup>65</sup> Ex 2.109 [WBC.500.012.8550].

<sup>66</sup> T1409.19-27.

<sup>67</sup> Ex 2.101 First Wright Statement, Ex MW-1, Tab 115 [WBC.500.021.8896] at 8901; T1440.21-23.

<sup>68</sup> The Supplementary Investigations Report was not delivered until 24 July 2015: Ex 2.101 First Wright Statement, [357]; Final legal advice had not yet been provided: Ex MW-1, Tab 90 [WBC.100.004.5690] at 5692; The remediation programme for Mr Smith's clients was still compiling files and information given Mr Smith's poor record keeping practices: Ex 2.101 First Wright Statement, Ex MW-1, Tab 93 [WBC.500.019.8356] at 8356.

- with those cases as part of its ordinary reporting process.<sup>69</sup> Westpac acted in accordance with that indication (see paragraph 44 below). That is, at all times, Westpac made clear to ASIC its position in relation to Mr Smith.
43. It was not a departure from community standards or expectations not to identify Mr Smith in response to a notice that did not require him to be identified.
  44. Further, Mr Smith was reported to ASIC by Westpac in response to the 11 September 2015 notice.<sup>70</sup> Mr Smith was also the subject of Westpac’s notification to ASIC of 17 November 2015.<sup>71</sup> By 7 March 2016, ASIC was treating Mr Smith as an adviser who had been notified by Westpac as a Serious Compliance Concern.<sup>72</sup> The Commission should not conclude that Westpac withheld anything from ASIC concerning Mr Smith’s conduct.
  45. Westpac does not believe that its dealings with Dover Financial Services (**Dover**) in relation to Mr Smith fell below community standards or expectations at the time (in 2015, prior to the adoption of the ABA Banking Industry Conduct Background Check Protocol).<sup>73</sup>
  46. Westpac told Dover that Westpac had concerns about Mr Smith’s conduct and that there was an ongoing investigation.<sup>74</sup> In the context of the questions asked by Dover, Westpac’s reference to an investigation could only have been understood as an investigation concerning Mr Smith’s character, competence or conduct.<sup>75</sup> In circumstances where the investigation was in relatively early stages, community standards did not require Westpac to pre-judge the ultimate outcome of that investigation, nor did they require Westpac to convey that pre-judgment to a potential employer or licensor of Mr Smith. Westpac accepts that it declined to provide a written or further response to Dover’s enquiry. Further, it was reasonable for Westpac to assume that Dover had required Mr Smith to provide it with details of the circumstances under which Mr Smith had left Westpac, which was, in fact, the case.<sup>76</sup> Given the information which was in fact provided by Mr Smith to Dover, it is difficult to imagine that any additional information provided by Westpac would have caused Dover to reconsider its decision to take on Mr Smith as an authorised representative.<sup>77</sup>
  47. Westpac informed ASIC on 20 October 2015 that Mr Smith’s current licensee had requested and been provided an employment reference in relation to Mr Smith,<sup>78</sup> and drew ASIC’s attention to Mr Smith’s status as an authorised representative of Dover when it referred Mr Smith to ASIC on 17 November 2015.<sup>79</sup>

<sup>69</sup> [WBC.050.029.6811] (at 6812), provided to Royal Commission under cover of letter from Gilbert + Tobin to Solicitor Assisting the Royal Commission dated 20 April 2018; Ex 2.111 [WBC.507.003.1303] at [4].

<sup>70</sup> Ex 2.101 First Wright Statement, Ex MW-1, Tab 116 [WBC.300.023.1786] (notice); Ex 2.101 First Wright Statement, Ex MW-1, Tab 101 [WBC.501.004.1152] and Tab 102 [WBC.501.004.0857] (response), which identified issues relating to the advice Mr Smith gave, including “*whether reasonable basis for the product use or replacement / whether appropriate*”.

<sup>71</sup> Ex 2.101 First Wright Statement, Ex MW-1, Tab 84 [WBC.102.001.3506].

<sup>72</sup> ASIC.0015.0001.3864.

<sup>73</sup> T1458.15; Ex 2.117 [RCD.0021.0003.0009].

<sup>74</sup> Ex 2.118 [DOV.0001.0001.0098]; Ex 2.119 [DOV.0001.0001.0670]; Ex 2.120 [DOV.0001.0001.0288].

<sup>75</sup> Ex TM-36 [DOV.0005.0001.2382] at 2402.

<sup>76</sup> Ex TM-36 [DOV.0005.0001.2382 at 2390-2391]; Ex TM-61 [DOV.0005.0001.2105 at 2106].

<sup>77</sup> Ex 2.119 [DOV.0001.0001.0670]; Ex TM-61 [DOV.0005.0001.2105] at 2106; Ex TM-65 [DOV.0005.0001.2382] at 2390-2391; T1875.1-20; T1880.1-11; T1885.4-39.

<sup>78</sup> Ex 2.101 First Wright Statement, Ex MW-1, Tab 101 [WBC.501.004.1152] and Tab 102 [WBC.501.004.0857] (see columns AC and AD, rows 102-105).

<sup>79</sup> Ex 2.101 First Wright Statement, Ex MW-1, Tab 84 [WBC.102.001.3506].

## ANNEXURE A

### Mr Mahadevan

48. Mr and Mrs McDowall had been customers of Westpac since 2003.<sup>80</sup>
49. On 20 April 2015, Mrs McDowall telephoned Westpac's Berwick branch in order to speak to someone about the possibility of using a SMSF to buy a B&B that she and Mr McDowall could live in and run as a business.<sup>81</sup> Mrs McDowall said that she and her husband were interested in buying a B&B for \$1.4 million.<sup>82</sup> The branch manager, who took Mrs McDowall's call, referred her enquiry to Mr Ramakrishnan Mahadevan, who was then a senior financial planner with Westpac.<sup>83</sup>
50. Mr Mahadevan returned Mrs McDowall's call. Mrs McDowall's recollection was that Mr Mahadevan returned the call a few days after she had called the branch, but Ex. 2.127 establishes that Mr Mahadevan returned her call on the same day, 20 April 2015.<sup>84</sup> During that call, Mrs McDowall explained to Mr Mahadevan that she and Mr McDowall wanted to establish a SMSF for the purpose of buying a B&B to operate as a business and live in.<sup>85</sup> Mrs McDowall said that they proposed to use their existing superannuation of around \$200,000 to fund the purchase, and borrow the balance of the purchase price.<sup>86</sup> She wanted to know if it was possible to use their superannuation to do this. Mr Mahadevan arranged to meet with Mr and Mrs McDowall on 29 April 2015.
51. Following the call on 20 April 2015, Mr Mahadevan found a link to the ATO's then current ruling SMSFR 2009/1 in relation to self-managed superannuation funds.<sup>87</sup> That ruling indicated that it was possible for the McDowalls to live in a B&B purchased through a SMSF, provided their residential use of the premises was incidental and relevant to its operation as a B&B: see paragraphs 291-295 of the ruling. He sent an email to Mrs McDowall with this information.
52. Mr Mahadevan met with the McDowalls on 29 April 2015. At the meeting, Mr and Mrs McDowall explained again that they wanted to purchase a B&B using their superannuation, which was around \$200,000.<sup>88</sup> They said they were looking at a purchase price of around \$1 million.<sup>89</sup> According to Mrs McDowall, "We just wanted to know how we would go about it".<sup>90</sup> They provided Mr Mahadevan with information about their financial position, including their liabilities, which Mr Mahadevan either then or subsequently recorded in a Customer Profile Booklet.<sup>91</sup> Mr Mahadevan's note of the meeting records that he provided the McDowalls with information about operating a SMSF and advised the McDowalls that he was not able to provide advice in respect of the purchase of direct property.<sup>92</sup> The same note records that Mr and Mrs McDowall specifically requested income protection insurance for both of them and \$1 million of life insurance plus \$150,000 of TPD cover.
53. During the 29 April 2015 meeting, Mr Mahadevan introduced Mr and Mrs McDowall to a Westpac business lender, Mr Karl Sleiman.<sup>93</sup> Mr Sleiman discussed with the McDowalls their plan to purchase a B&B through a SMSF using borrowed moneys. Mrs McDowall recalls Mr Sleiman describing himself as "the money man" and saying that he could lend them "up to" \$2 million for a property, without having

<sup>80</sup> Ex 2.102 Second Wright Statement, [7].

<sup>81</sup> Ex 2.102 Second Wright Statement, Ex MW-2, Tab 4 [WBC.503.001.1330]; Ex 2.98 Statement of Mrs McDowall [6]; T1355.30-35.

<sup>82</sup> Ex 2.102 Second Wright Statement, Ex MW-2, Tab 4 [WBC.503.001.1330]; T1392.13-29.

<sup>83</sup> Ex 2.102 Second Wright Statement, Ex MW-2, Tab 4 [WBC.503.001.1330].

<sup>84</sup> Ex 2.102 Second Wright Statement, Ex 2.127 [WBC.104.003.7507].

<sup>85</sup> T1356.1-3.

<sup>86</sup> T1355.9-13; Ex 2.98 Statement of Mrs McDowall, [6]-[7].

<sup>87</sup> Ex 2.102 Second Wright Statement; Ex 2.127 [WBC.104.003.7507] and [WBC.104.003.8323]. The email [WBC.104.003.7507] is a dated copy of the email that appears at Tab 4 of Ex MW-2, being [WBC.503.001.1330].

<sup>88</sup> Ex 2.98 Statement of Mrs McDowall, [10].

<sup>89</sup> T1358.40-41.

<sup>90</sup> T1357.1-4. This consistent with Mr Mahadevan's note: Ex 2.102 Second Wright Statement, Ex. MW-2, Tab 5, [WBC.503.001.1375], first paragraph.

<sup>91</sup> Ex 2.98 Statement of Mrs McDowall, [11], [16].

<sup>92</sup> Ex 2.102 Second Wright Statement, Ex MW-2, Tab 5 [WBC.503.001.1375].

<sup>93</sup> Ex 2.102 Second Wright Statement, Ex MW-2, Tab 5 [WBC.503.001.1375].

asked any questions about their finances or looked at any documents.<sup>94</sup> Objectively, it is unlikely that Mr Sleiman conveyed a lending approval at the 29 April 2015 meeting to lend Mr and Mrs McDowall \$2 million without having reviewed their finances. That is particularly the case given the McDowalls were yet to identify the property they intended to purchase and their ability to service any loan could only be known once the actual property, its cost and the potential income from it had been identified. The \$2 million may have referred to the maximum loan amount for a SMSF. Mr and Mrs McDowall are unlikely to have understood it as an unconditional approval for a \$2 million loan because, when they showed Mr Sleiman information about a \$1.4 million property, he said it was unsuitable and the bank could not lend against it.<sup>95</sup> However, the point of substance, which Westpac does not dispute, is that when she left the meeting on 29 April 2015 Mrs McDowall believed, based on what had been said to her at the meeting, that it was possible for she and her husband to achieve their goal of using their superannuation to purchase a B&B.<sup>96</sup> She had that understanding in circumstances where a purchase price in the order of \$1 million had been discussed.<sup>97</sup>

54. Mr Mahadevan's note records that Mr Sleiman discussed Westpac's lending policies at the 29 April 2015 meeting.<sup>98</sup> Mrs McDowall did not recall Mr Sleiman mentioning an 80% LVR, which was the bank's then current LVR requirement for a loan of that type, but the discussion at the meeting was consistent with that.<sup>99</sup>
55. There are inconsistencies in the evidence about the advice that Mr Mahadevan gave, or did not give, on the issue of the McDowalls selling their home. An email sent by Mr Mahadevan on the day of his first telephone conversation with Mrs McDowall suggests that Mrs McDowall told Mr Mahadevan during that conversation that they were planning to sell their home.<sup>100</sup> In her first email of complaint, Mrs McDowall said that Mr Mahadevan had advised them at the meeting on 29 April 2015 to sell their home as soon as possible.<sup>101</sup> In her witness statement and her oral evidence, Mrs McDowall said that Mr Mahadevan had advised her to put their house on the market during the initial telephone call of 20 April 2015.<sup>102</sup> A file note of a meeting between the McDowalls and Westpac in January 2016 suggests that the real complaint was not that Mr Mahadevan had advised them to sell the house but, rather, that he had not advised against doing so.<sup>103</sup> During Westpac's investigation of the McDowalls' complaint, Mr Mahadevan maintained that the McDowalls were already planning to sell their home when they came to him and he had not advised them to do so.<sup>104</sup> For the purpose of considering the open findings identified by Counsel Assisting, it is sufficient to conclude that, at the time he gave his advice, Mr Mahadevan knew that the McDowalls were proceeding on the basis that they would sell their home in order to proceed with their B&B plan and at no time did Mr Mahadevan advise the McDowalls not to sell, or to defer selling, their home (which he was not authorised to do).
56. On 7 May 2015, the McDowalls met with Mr Mahadevan a second time. At that meeting they reiterated their goal to purchase a B&B by establishing a SMSF. They also told Mr Mahadevan that they were seeking assistance from a buyers' agent to sell their home.<sup>105</sup>
57. Mr Mahadevan began to prepare his advice for Mr and Mrs McDowall sometime before 26 May 2015. That is apparent because, on that day, a BT paraplanner assigned to review the advice to be provided

<sup>94</sup> Ex 2.98 Statement of Mrs McDowall, [12]; T1359.15; T1372.14-15; T1372.27; T1372.32.

<sup>95</sup> Ex 2.98 Statement of Mrs McDowall, [13] – [14].

<sup>96</sup> T1360.1-3.

<sup>97</sup> Ex 2.98 Statement of Mrs McDowall, [14]; T1358.40-41.

<sup>98</sup> Ex 2.102 Second Wright Statement, Ex MW-2, Tab 5 [WBC.503.001.1375].

<sup>99</sup> T1372.21-43. As to 80% being the current LVR requirement for a loan of that type at the date of the 29 April 2015 meeting, see Ex 2.102 Second Wright Statement, Ex MW-2, Tab 9 [WBC.503.001.1383].

<sup>100</sup> Ex 2.102 Second Wright Statement, Ex MW-2, Tab 4 [WBC.503.001.1330].

<sup>101</sup> Ex 2.102 Second Wright Statement, Ex MW-2, Tab 2 [WBC.503.001.1142].

<sup>102</sup> Ex 2.98 Statement of Mrs McDowall, [8]; T1356.5-12.

<sup>103</sup> Ex 2.102 Second Wright Statement, Ex MW-2, Tab 13 [WBC.104.003.7371] at 7371 (second bullet point).

<sup>104</sup> Ex 2.102 Second Wright Statement, Ex MW-2, Tab 18 [WBC.503.006.0020]; Ex 2.102 Second Wright Statement, Ex MW-2, Tab 23 [WBC.503.001.1322].

<sup>105</sup> Ex 2.102 Second Wright Statement, Ex MW-2, Tab 18 [WBC.503.006.0020] at 0022.

- to the McDowalls raised several questions with Mr Mahadevan. They included whether the establishment of the SMSF and provision of insurances could be delayed until the B&B property had been identified for purchase (and insurance reconsidered in light of any loans), as well as the cost of the Ongoing Advice Service fee.<sup>106</sup>
58. Mr Mahadevan considered those comments and responded to them. He said that, at that stage, the McDowalls wanted advice on insurance “as per their specific needs requested by them” and that they were confident that the levels of insurance would be sufficient to manage their debts and fund part of any medical expenses.<sup>107</sup> Further, that the higher Ongoing Advice Service fee was warranted due to the increased complexity involved with SMSF advice. The paraplanner requested that Mr Mahadevan obtain a Pricing Variation Approval for the increased fee, which was obtained from the Regional Manager via email on 2 June 2015.
59. Mr Mahadevan subsequently prepared a Statement of Advice dated 27 May 2015,<sup>108</sup> which he presented to the McDowalls at a meeting on 2 June 2015.<sup>109</sup> The Statement of Advice recommended that the McDowalls establish a SMSF and rollover their existing superannuation accounts into that SMSF.<sup>110</sup>
60. The Statement of Advice also recommended that Mr and Mrs McDowall take out life insurance of \$1 million each, as well as income protection and TPD insurance.<sup>111</sup> The total annual premiums for the insurance recommended under the Statement of Advice were \$26,976.<sup>112</sup> The McDowalls did not take out insurance in accordance with that recommendation.<sup>113</sup> The McDowalls discussed the insurance policies with Mr Mahadevan at the meeting of 2 June 2015 and decided to reduce their TPD cover and change the waiting period on their income protection insurance, as well as changing their income protection insurance from “agreed value” to “indemnity value.”<sup>114</sup> That had the effect of reducing the premiums on the insurance to around \$16,000 per year.<sup>115</sup>
61. The Statement of Advice recorded that the McDowalls wanted to purchase and operate a B&B using their SMSF and, further, that they did not have any surplus funds outside their superannuation (of around \$200,000) to contribute to the purchase of the B&B.<sup>116</sup> The Statement of Advice did not expressly record the contemplated purchase price for the B&B as being in the order of \$1 million, but that was the figure that had previously been discussed with Mr and Mrs McDowall and was consistent with the life insurance contemplated by the Statement of Advice (\$1 million each). The Statement of Advice did not include any statement questioning the present viability of the B&B plan, nor did it say that Mr Mahadevan had excluded the question of viability from the scope of his advice.
62. The Statement of Advice did not advise that the establishment of the SMSF and purchase of the insurances could or should be delayed until a suitable B&B property had been identified,<sup>117</sup> or until they had additional savings. The Statement of Advice noted that Mr Mahadevan had considered delaying the establishment of the SMSF until a B&B property had been found but had rejected that approach “because you want to establish the SMSF now as you do not want to leave the establishment of the SMSF to the last minute.”<sup>118</sup>

<sup>106</sup> Ex 2.102 Second Wright Statement, Ex MW-2, Tab 41 [WBC.503.003.1200] at 1201.

<sup>107</sup> Ibid.

<sup>108</sup> Ex 2.102 Second Wright Statement, Ex MW-2, Tab 2 [WBC.503.003.1148].

<sup>109</sup> Ex 2.102 Second Wright Statement, Ex MW-2, Tab 6 [WBC.503.001.1377].

<sup>110</sup> WBC.503.003.1148 at 1154-1155.

<sup>111</sup> Ex 2.102 Second Wright Statement, Ex MW-2, Tab 2 [WBC.503.003.1148] at 1160, 1171-1172.

<sup>112</sup> Ex 2.102 Second Wright Statement, Ex MW-2, Tab 2 [WBC.503.003.1148] at 1171.

<sup>113</sup> T1397.24-27.

<sup>114</sup> Ex 2.102 Second Wright Statement, Ex MW-2, Tab 6 [WBC.503.001.1377].

<sup>115</sup> T1397.29-34.

<sup>116</sup> Ex 2.102 Second Wright Statement, Ex MW-2, Tab 2 [WBC.503.003.1148] at 1152.

<sup>117</sup> See Ex 2.102 Second Wright Statement, [36].

<sup>118</sup> Ex 2.102 Second Wright Statement, Ex MW-2, Tab 2 [WBC.503.003.1148] at 1163.

63. The Statement of Advice identified the potential payments that Westpac and Mr Mahadevan could receive if Mr and Mrs McDowall adopted the advice contained in it.<sup>119</sup> In particular, the Statement of Advice identified that Westpac stood to receive 110% of the first year's premiums on the insurance taken out by the McDowalls (or their SMSF).<sup>120</sup> At the level of insurance contained in the Statement of Advice, that corresponded to a commission of \$27,180,<sup>121</sup> although Mr and Mrs McDowall did not proceed with that proposal. At the level of insurance actually adopted by Mr and Mrs McDowall Westpac 'received' an initial commission of around \$17,600.<sup>122</sup> Westpac also stood to 'receive' trail (or ongoing) commissions of 10% of the annual insurance premiums. All of those commissions involved the transfer of funds by one Westpac entity (the insurer) to another Westpac entity.
64. The Statement of Advice also identified that Mr Mahadevan stood to receive a payment from Westpac personally in the event that Mr and Mrs McDowall implemented his advice.<sup>123</sup> Mr Mahadevan stood to receive the payment because, as a senior financial planner employed by Westpac, he was eligible for a monthly bonus that was calculated by reference to the amount of revenue received by BTFA on account of his customers (provided he satisfied certain requirements or "gate openers"). In essence, Mr Mahadevan could receive a payment equal to 20% of revenue above a certain threshold and 40% of revenue above a second, higher threshold.<sup>124</sup> Each of those figures of 20% and 40% was able to be "dialled up" or "dialled down" by 4 percentage points.<sup>125</sup> The figure of \$16,690 that appears in the Statement of Advice was the highest payment that Mr Mahadevan could receive, being 44% of all advice fees, implementation fees, upfront commissions and trail commissions receivable in the first 13 months following implementation of the advice.<sup>126</sup> It was a theoretical maximum.<sup>127</sup> In fact, the total bonus received by Mr Mahadevan as a result of the insurances taken out by Mr and Mrs McDowall was around \$2,500-\$3,000.<sup>128</sup>
65. At the end of the meeting on 2 June 2015, Mr and Mrs McDowall signed an Authority to Proceed<sup>129</sup> confirming they read and understood its contents and instructed Mr Mahadevan to proceed to establish the SMSF and put in place the insurance, with the changes that had been discussed that day.<sup>130</sup>
66. The McDowalls subsequently sold their home in July 2015 and moved into rental accommodation. Westpac accepts that the McDowalls sold their home in order to proceed with their B&B plan. The McDowalls would not have sold their home if they had been advised by Mr Mahadevan in June 2015 (or earlier) that their plan was not achievable.
67. On 17 November 2015, Mr and Mrs McDowall met with Mr Mahadevan and Mr Sleiman to discuss a loan to purchase a B&B property.<sup>131</sup> The McDowalls brought to the meeting information regarding two B&B properties on the market, one for \$900,000 and one for \$699,000.<sup>132</sup> Mr Sleiman told them that they could not borrow enough to purchase either property. In particular, he said that they could not borrow enough to purchase even the cheaper property.<sup>133</sup> There is an inconsistency in the evidence as to the amount that Mr Sleiman said that the McDowalls could borrow. In her evidence in chief, Mrs

<sup>119</sup> Ex 2.102 Second Wright Statement, Ex MW-2, Tab 2 [WBC.503.003.1148] at 1172.

<sup>120</sup> Ex 2.102 Second Wright Statement, Ex MW-2, Tab 2 [WBC.503.003.1148] at 1172.

<sup>121</sup> Ex 2.102 Second Wright Statement, Ex MW-2, Tab 2 [WBC.503.003.1148] at 1172.

<sup>122</sup> T1397.44-45.

<sup>123</sup> Ex 2.102 Second Wright Statement, Ex MW-2, Tab 2 [WBC.503.003.1148] at 1172.

<sup>124</sup> T1387.35-46.

<sup>125</sup> T1388.3-19.

<sup>126</sup> The figure of \$37,931 that appears in [WBC.503.003.1148] at 1172 is the sum of the figures of \$5280, \$3000, \$27,180 and \$2471 that appear on pages 1170 and 1172.

<sup>127</sup> T1398.18-39.

<sup>128</sup> T1399.1-24.

<sup>129</sup> Ex 2.102 Second Wright Statement, [37].

<sup>130</sup> T.1363:34-41; Ex 2.102 Second Wright Statement, Ex MW-2, Tab 6 [WBC.503.001.1377].

<sup>131</sup> Ex 2.102 Second Wright Statement, Ex MW-2, Tab 8 [WBC.503.001.1379].

<sup>132</sup> Ex 2.98 Statement of Mrs McDowall, [29]-[30]; Ex 2.102 Second Wright Statement, Ex MW-2, Tab 3 [WBC.503.001.1142] at 1143.

<sup>133</sup> T1365.1-33.

McDowall remembered Mr Sleiman saying that the bank could only lend them about \$200,000.<sup>134</sup> In cross-examination, Mrs McDowall accepted that it was consistent with her recollection of the meeting that the amount that the bank would lend against the contribution of \$200,000 had come down from \$800,000 (at the April meeting) to around \$450,000.<sup>135</sup> Given that the bank's LVR requirement for a loan of that type at the time of the November 2015 meeting was 70% (having been reduced from 80% in April), and given that Mr Sleiman certainly had no incentive to understate the amount the bank could lend to Mr and Mrs McDowall, the likelihood is that the McDowalls were told at the November meeting that the bank could lend no more than around \$450,000.<sup>136</sup> Either way, Westpac accepts that the amount that Mr and Mrs McDowall were advised they could borrow in November 2015 was insufficient to allow them to proceed with their planned purchase of a B&B.

68. Mr and Mrs McDowall submitted a written complaint to Westpac on 22 November 2015, shortly after the meeting with Mr Sleiman and Mr Mahadevan.<sup>137</sup> The manner in which Westpac dealt with that complaint is addressed above in the context of the possible findings in relation to Westpac's conduct.

### Mr Smith

69. Mr Andrew Smith was employed as a Senior Financial Adviser with St George Financial Planning between 2007 and 2015.<sup>138</sup>
70. From 2008 onwards, audits of Mr Smith's files regularly identified areas that required improvement.<sup>139</sup> From 2011 onwards, Westpac had in place a consequence management system, under which financial advisers were given demerit points for unsatisfactory audit results (amongst other things), which were, in turn, reflected in a risk rating calculated for each financial advisor.<sup>140</sup> However, prior to 2015, although audits had identified deficiencies in Mr Smith's files, none of them had any effect on his variable remuneration, or caused Mr Smith to be placed outside a "low" or "moderate" risk rating.<sup>141</sup> That was because not enough points were lost for poor compliance audit results and Mr Smith's compliance audits were not conducted as frequently as they should have been given his poor audit results. This meant that he did not have multiple audits conducted before his demerit points "refreshed" after six months. Westpac has since increased the number of points lost for a "requires improvement" audit (as well as other incidents).<sup>142</sup>
71. As a result of receiving multiple "requires improvement" results in his September 2014 audit, Mr Smith's subsequent audit fell due in mid-December 2014 and was due for completion in January 2015. At the same time, Mr Smith was identified as a risk by Westpac's PRI system, an automated system that analyses data to identify potential problems with advice provided by financial advisers.<sup>143</sup> That led to a request for the auditor to target specific files as part of the January 2015 audit. In that audit, Mr Smith received the lowest possible grading ("Requires Improvement") on 3 of the 4 files audited.<sup>144</sup> That led to Mr Smith losing 33 consequence management points and being given a "Mandated Improvement" risk rating.<sup>145</sup>
72. Mr Smith was then discussed at the next Westpac and St George Financial Planning Risk Forum, in February 2015, which approved a recommendation to consider Mr Smith's suitability to remain as a

<sup>134</sup> T1365.13.

<sup>135</sup> T1373.19-23.

<sup>136</sup> Assuming an LVR of 70%, the maximum loan possible against a contribution of \$200,000 is \$466,666.

<sup>137</sup> Ex 2.102 Second Wright Statement, Ex MW-2, Tab 2 [WBC.503.001.1142].

<sup>138</sup> Ex 2.101 First Wright Statement, [333].

<sup>139</sup> Ex 2.101 First Wright Statement, [398], [400]-[405].

<sup>140</sup> Ex 2.101 First Wright Statement, [63]-[68], [149]-[160].

<sup>141</sup> Ex 2.101 First Wright Statement, [398]; T1416.28-1422.34.

<sup>142</sup> Ex 2.101 First Wright Statement, [153].

<sup>143</sup> Ex 2.101 First Wright Statement, [337].

<sup>144</sup> Ex 2.101 First Wright Statement, [337].

<sup>145</sup> Ex 2.101 First Wright Statement, [337].

financial adviser.<sup>146</sup> Immediately following the February 2015 Risk Forum, Westpac commenced an investigation into Mr Smith's conduct.<sup>147</sup>

73. As a result of that investigation and subsequent investigations, including steps taken to compensate Mr Smith's customers, Westpac identified a number of problems with Mr Smith's customer files, some of which may involve misconduct by Mr Smith. The problems identified by the conclusion of Westpac's investigation of Mr Smith included the following:<sup>148</sup>
- a. Some files suggested that Mr Smith may have conducted an inadequate investigation into the client's circumstances, needs and objectives.
  - b. Some files suggested that Mr Smith may have failed to identify and take steps that were in the best interests of the client.
  - c. Some files suggested that Mr Smith may have failed to give proper consideration to alternative strategies.
  - d. Some files suggested that Mr Smith had recommended replacing one financial product with another when he may not have had an adequate basis for doing so.
  - e. In the case of some files, Mr Smith had failed to evidence compliance with Westpac's Best Interest Duty / Better Position requirements.
  - f. In the case of some files, Mr Smith had charged an ongoing advice fee without evidence of the service having been provided.
  - g. Some files suggested that capital notes issued by Westpac or CBA had been sold in order to purchase NAB capital notes, which raised concerns as to the motive for the transactions and whether churning was involved.
74. Further, there were numerous failures by Mr Smith to comply with Westpac's policies and procedures. Although it does not necessarily follow in each instance that Mr Smith's failure to comply with a policy or procedure resulted in inappropriate financial advice, Westpac's investigations established that Mr Smith failed to comply with Westpac's policies and procedures by: using old template advice documents stored on his computer and not using BTFA's paraplanning team;<sup>149</sup> not uploading his advices into BTFA's CFM system;<sup>150</sup> failing to retain adequate records to support the basis for his advice;<sup>151</sup> failing to clearly identify and record the subject matter and scope of his advice;<sup>152</sup> and failing to comply with policies concerning product replacement, file noting, overseas clients, conflicts of interest, wholesale clients, financial product advice and SMSF advice.<sup>153</sup> Subsequent investigation reports prepared in May 2015 and July 2015 described Mr Smith's files as being the worst the investigators had seen in recent times.<sup>154</sup>
75. Mr Smith resigned soon after investigations were commenced. He had been suspended from providing financial advice on 16 March 2015 (shortly after the investigation commenced) and a number of

<sup>146</sup> Ex 2.101 First Wright Statement, [338]-[339].

<sup>147</sup> Ex 2.101 First Wright Statement, [340].

<sup>148</sup> Ex 2.101 First Wright Statement, Ex MW-1, Tab 85 [WBC.501.003.5001] at 5001, 5006-5010; Ex 2.101 First Wright Statement, Ex MW-1, Tab 86 [WBC.100.104.9464] at 9464, 9468-9472.

<sup>149</sup> Ex 2.101 First Wright Statement, [335e].

<sup>150</sup> Ex 2.101 First Wright Statement, [335e], [345b], [357g].

<sup>151</sup> Ex 2.101 First Wright Statement, [351a].

<sup>152</sup> Ex 2.101 First Wright Statement, [351d], [357h].

<sup>153</sup> Ex 2.101 First Wright Statement, [351j].

<sup>154</sup> Ex 2.101 First Wright Statement, Ex MW-1, Tab 85, WBC.501003.5001 at 5002 (May 2015); Ex 2.101 First Wright Statement, Ex MW-1, Tab 86, WBC.100.004.9464 at 9465 (July 2015).

- allegations of inappropriate conduct had been put to him on 25 March 2015.<sup>155</sup> Mr Smith had resigned two days later, on 27 March 2015.<sup>156</sup>
76. Mr Smith's conduct was subject to review and consideration by a number of different organs within Westpac, having distinct functions and responsibilities. The BT Investigations Team, being part of the Capability and Conduct section,<sup>157</sup> investigated Mr Smith's conduct and delivered reports in March 2015,<sup>158</sup> April 2015,<sup>159</sup> May 2015<sup>160</sup> and late July 2015.<sup>161</sup>
  77. The reports of the Investigations Team were delivered to BT Legal in order for it to provide advice to BT about the consequences of Mr Smith's conduct.<sup>162</sup> The contents of that legal advice are privileged and are not in evidence, but it is apparent that BT Legal did not finalise its advice until 4 August 2015 or later (following finalisation of the supplementary investigation report in late July 2015).<sup>163</sup>
  78. In July 2015, prior to the above legal advice being finalised, Westpac received and responded to a notice issued to it by ASIC under s. 912C seeking particulars of the financial advisers in respect of whom Westpac held Serious Compliance Concerns and those authorised by Westpac at the date of the notice in respect of whom it held Other Compliance Concerns.<sup>164</sup> Prior to Westpac responding to this notice, Westpac and ASIC met to discuss the notice (amongst other things). At a meeting on 24 July 2015, Westpac informed ASIC that the categorisation of advisers in response to the notice was not complete given ongoing investigations and that re-assessment and further identification would be handled through the usual breach reporting process.<sup>165</sup> In its response to the July notice, Westpac reiterated that investigations were ongoing in relation to several advisers and that these advisers would be notified to ASIC if necessary following completion of those investigations.<sup>166</sup>
  79. On 11 September 2015, ASIC issued a notice of direction under s. 912C to Westpac seeking particulars of former advisers in respect of whom Westpac held Other Compliance Concerns.<sup>167</sup> On 20 October 2015, Westpac responded to the September notice, identifying Mr Smith as a former adviser in respect of whom it held Other Compliance Concerns, and listing a number of concerns it had relating to the advice he had provided.<sup>168</sup>
  80. On 26 October 2015, BT's Risk and Compliance Team completed a compliance assessment in relation to Mr Smith.<sup>169</sup> The purpose of such a compliance assessment is to review the materiality and significance of a compliance-related incident or breach in order to, amongst other things, make a recommendation to the relevant organ (in this case, the Breach Determination Forum) as to whether the conduct is required to be notified to ASIC.<sup>170</sup> The compliance assessment recommended that Mr Smith's conduct be voluntarily reported to ASIC, particularly given Mr Smith was still working as a financial adviser.<sup>171</sup>

<sup>155</sup> Ex 2.101 First Wright Statement, [343], [345].

<sup>156</sup> Ex 2.101 First Wright Statement, [347].

<sup>157</sup> Ex 2.101 First Wright Statement, [51g], [193].

<sup>158</sup> Ex 2.101 First Wright Statement, Ex MW-1, Tab 87 [WBC.100.004.9484]; Ex 2.101 First Wright Statement, [348].

<sup>159</sup> Ex 2.101 First Wright Statement, Ex MW-1, Tab 88 [WBC.100.004.9491]; Ex 2.101 First Wright Statement, [349].

<sup>160</sup> Ex 2.101 First Wright Statement, Ex MW-1, Tab 85 [WBC.501.003.5001]; Ex 2.101 First Wright Statement, [351].

<sup>161</sup> Ex 2.101 First Wright Statement, Ex MW-1, Tab 86 [WBC.100.094.9464]; Ex 2.101 First Wright Statement, [357].

<sup>162</sup> Ex 2.101 First Wright Statement, Ex MW-1, Tab 86 [WBC.100.004.9464] at 9464 (second paragraph); Ex 2.101 First Wright Statement, [349], [351], [357].

<sup>163</sup> Ex 2.101 First Wright Statement, Ex MW-1, Tab 90 [WBC.100.004.5690] at 5692-5693.

<sup>164</sup> Ex 2.101 First Wright Statement, Ex MW-1, Tab 115 [WBC.500.021.8896].

<sup>165</sup> [WBC.050.029.6811] (at 6812), provided to Royal Commission under cover of letter from Gilbert + Tobin to Solicitor Assisting the Royal Commission dated 20 April 2018.

<sup>166</sup> Ex 2.111 dated 27/07/2015 [WBC.507.003.1303] at 1304.

<sup>167</sup> Ex 2.101 First Wright Statement, Ex MW-1, Tab 116 [WBC.300.023.1786].

<sup>168</sup> Ex 2.101 First Wright Statement, Ex MW-1, Tab 101 [WBC.501.004.1152] and Tab 102 [WBC.501.004.0857].

<sup>169</sup> Ex 2.101 First Wright Statement, Ex MW-1, Tab 90 [WBC.100.004.5690]; Ex 2.101 First Wright Statement, [363].

<sup>170</sup> Ex 2.101 First Wright Statement, [363]; Ex MW-1, Tab 90 [WBC.100.004.5690] at 5690 (fourth bullet point) and see also the recommendation at 5700.

<sup>171</sup> Ex 2.101 First Wright Statement, Ex MW-1, Tab 90 [WBC.100.004.5690] at 5700.

81. On 3 November 2015, Westpac’s Breach Determination Forum considered Mr Smith’s conduct.<sup>172</sup> The Breach Determination Forum is the body within Westpac that has responsibility for considering the significance and reporting consequences of conduct determined to constitute a breach of financial services laws or Westpac’s AFSL.<sup>173</sup> Westpac gave notice to ASIC of Mr Smith’s conduct on 17 November 2015, which was the tenth business day after 3 November 2015.<sup>174</sup>
82. To date, Westpac has paid over \$1.6 million in compensation to customers who suffered loss as a result of inappropriate advice or conduct by Mr Smith.<sup>175</sup> A further \$578,997 has been provisioned for compensation yet to be paid.<sup>176</sup> The compensation paid to date has been paid pursuant to customer complaints, a remediation programme established by Westpac in June 2015 and an expanded remediation programme that commenced in August 2016 so as to include a review of all of Mr Smith’s past advice files.<sup>177</sup> Those remediation programmes involve Westpac proactively reviewing files and contacting customers who it identifies as having potentially suffered loss (as opposed to waiting for customers to complain).<sup>178</sup>
83. After Mr Smith resigned from Westpac, he became an authorised representative of Dover. On 6 May 2015, Dover wrote to Westpac and sought a reference in respect of Mr Smith.<sup>179</sup> Dover’s letter asked, amongst other things, whether Westpac was aware of any circumstances or actions that might affect Mr Smith’s ability to provide advice honestly and fairly and whether Mr Smith had been subject to any investigation concerning his character, competence or conduct. Dover’s letter said that Dover had been approached by Mr Smith to be licensed through its AFSL.<sup>180</sup> (In fact, Dover had already authorised Mr Smith to act as its representative on 27 April 2015.)<sup>181</sup> Westpac declined to provide a written response to Dover’s request for a reference. Instead, in answer to the question whether Westpac was aware of any circumstances or actions that might affect Mr Smith’s ability to provide advice honestly and fairly, Westpac told Dover orally (over the telephone) that it had concerns with Mr Smith’s conduct; and in relation to whether Mr Smith had been subject to any investigation concerning his character, competence or conduct that there was an ongoing investigation taking place.<sup>182</sup> Those answers conveyed quite a deal of information to Dover. Nevertheless, it is not the approach that Westpac takes today.<sup>183</sup> Westpac has since adopted the ABA Protocol.

<sup>172</sup> Ex 2.101 First Wright Statement, Ex MW-1, Tab 103 [WBC.501.025.4989] at 4990 and 4998; Ex 2.101 First Wright Statement, [364].

<sup>173</sup> Ex 2.101 First Wright Statement, [364].

<sup>174</sup> Ex 2.101 First Wright Statement, Ex MW-1, Tab 84 [WBC.102.001.3506]; Ex 2.101 First Wright Statement, [366].

<sup>175</sup> Ex 2.101 First Wright Statement, [436].

<sup>176</sup> Ex 2.101 First Wright Statement, [429].

<sup>177</sup> Ex 2.101 First Wright Statement, [354], [371]-[373].

<sup>178</sup> Ex 2.101 First Wright Statement, [374].

<sup>179</sup> Ex 2.118 [DOV.0001.0001.0098].

<sup>180</sup> Ex 2.118 [DOV.0001.0001.0098].

<sup>181</sup> T1459.33-34.

<sup>182</sup> Ex 2.119 [DOV.0001.0001.0670]; Ex 2.120 [DOV.0001.0001.0288]; T1456-1463.

<sup>183</sup> T1460.38-39; T1462.28-29.