

SUBMISSION TO SENATE INQUIRY

BY JEFFREY MORRIS

WHISTLEBLOWER DON NGUYEN / COMMONWEALTH FINANCIAL
PLANNING / COMMONWEALTH BANK / ASIC

Opening Remarks

All the conduct in the Nguyen/CFP/CBA affair happened on ASIC's watch: it was the slack regulatory regime of ASIC that allowed Nguyen to operate as a Financial Planner in the way that he did and encouraged CFP and in turn CBA, to believe that they could, with impunity, cover up what had occurred and defraud the innocent victims of the compensation to which they were rightfully entitled.

Later, ASIC allowed CFP/CBA, even after their attempted cover up had been exposed, to play fast and loose with the "ASIC approved" compensation scheme and either to dupe the victims through ignorance or to bully them into submission in most cases. ASIC allowed CFP/CBA to buy the silence of Nguyen himself with a questionable income insurance payment. It allowed CFP/CBA to quietly pay off many of the executives involved in the attempted cover up with generous severance/ redundancy payments. Finally ASIC encouraged me, the whistleblower, to walk away "with what I had left". It would have been very convenient for CBA and ASIC if I had.

To this day, in their Initial Submission to this Inquiry of 2 August 2013, ASIC is still attempting to conceal the *full culpability* of CFP/CBA in this matter.

Why?

I submit that, as the ineffective regulator responsible for the industry, ASIC has a fundamental conflict of interest in exposing the *full extent* of the corruption and dishonesty of such a *major institution* such as CFP/CBA; as that would in turn be such a damning indictment of their own incompetence and abysmal failure in supervision that it must in turn have implications for ASIC itself.

ASIC has therefore chosen to ignore the full extent of CFP/CBA's malfeasance in favour of lauding itself for the easy wins of imposing an Enforceable Undertaking and banning seven crooked planners – all of whom were actually offered up by CFP/CBA rather than being caught by ASIC.

ASIC has for a long time propagated the myth, even to Parliament, that all was fine with the major players in the advice industry. Since the major players were the bulk of the industry, by implication all was well; except at the fringes, which ASIC would of course need far more resources to police. In reality, I think, ASIC believed everything was fine with the big players because that was what the major players were telling them. That explains to me their incredible reluctance to act on CFP, their willingness to accept whatever CFP told them despite evidence to the contrary and finally why they couldn't publicly slam the full extent CFP's corrupt conduct in this matter: to do so would have exploded the myth and eroded confidence in them as the regulator.

This submission will endeavour to lay out the factual matrix to support these assertions, in particular to reveal the full extent of CFP/CBA's culpability in this matter and ASIC's acquiescence in concealing same.

Professional Qualifications to make a statement

I have degrees in Economics and Law from the University of Sydney and am a Certified Financial Planner. I have worked in financial services since 1985 and among other things have been a Corporate Tax Manager for an Australia bank, an Executive Manager in the Private Bank of CBA and a Vice President of the investment bank Bankers Trust. I first worked as a Financial Adviser with the actuarial firm Towers Perrin in 1990. I have expertise in the fields of financial planning, taxation law, superannuation and corporate remuneration and a deep knowledge of investment markets and the funds management industry. I took a job as a Financial Planner with Commonwealth Financial Planning in 2008 for personal reasons.

Narrative of "Dodgy Don" Nguyen Affair

I joined Commonwealth Financial Planning ["CFP"] as a Financial Planner on 31 March 2008.

The ASIC review February 2007 – February 2008

During my induction course in April 2008 we were addressed by [REDACTED] General Manager and second in charge of CFP. He bragged that ASIC had just done a full review of the business and had given it a "clean bill of health". "Only a few minor issues" came out of it - in contrast to AMP who had "copped an Enforceable Undertaking".

This "full review" and "clean bill of health" must have been the "extensive surveillance" that ASIC claims it undertook between February 2007 and February 2008 at para 13 of ASIC's initial submission to this inquiry, that led ASIC to the "view that the quality of advice and standards of practice in CFPL were unacceptable."

Even allowing for a probable tendency on CFP's part to downplay the outcome of the review, it would seem that CFP management were not really as worried about this at the time as ASIC's latest claims in their preliminary submission would suggest they should have been.

This is confirmed by the experience of one of the financial planners involved in this ASIC review, [REDACTED]. He had some minor points to correct in some client files but when, a few months later, he told the compliance manager [REDACTED] that he had the corrected files ready for ASIC to review he was told that ASIC had lost interest and gone away!

I suspect that perusal of the actual ASIC “findings” of February 2008 and notes of the monthly meetings of the “steering committee” of their “CICP” process will show a fairly detached, theoretical and leisurely approach to any problems found.

ASIC’s greatest weakness in my opinion is its lack of practical knowledge and experience. In this case, even if they did, in their laboratory, discover problems in the business framework, structure and reporting, as they claim, they simply lacked the mindset, experience and drive to ask themselves two key questions:

1. What would actually happen on the ground if advisers like Don Nguyen actively set out to drive a coach and horses through these gaps in the system?
2. What would happen to the clients of people like Nguyen in this situation if markets were to meltdown, as they did immediately after the ASIC review?

Part of ASIC’s complacency may have been due to the fact that investment markets had been on an upward trajectory for five years at the time of their review. The ramifications of situations like Nguyen tend to be obscured during rising markets but as Warren Buffet said “When the tide goes out you get to see who has been swimming naked.” Markets were well overdue for a correction by 2007, which also meant that the correction was likely to be severe.

Had ASIC had a deeper understanding of the way investment markets work and also understood the possible ramifications of all those unticked boxes in their review and further, had they energetically *applied* that understanding to the situation they say they found at CFP in 2007 before the GFC hit, much of the misery for the clients/victims that followed could have been avoided ie with any normal organisation the situation would have been corrected when it was found in 2007 before the GFC kneecapped the exposed clients/victims.

It is not much comfort to the victims that ASIC finally got around to imposing an Enforceable Undertaking on CFP in October 2011. That they chose not to do so in April 2008, when they had imposed one on AMP, suggests either: that, despite what they now say, they had not found much in their year long surveillance of CFP; or that there was an inordinate delay in acting on their part, which is simply unconscionable given the suffering of the victims in the intervening years. Certainly, from my insiders perspective at CFP, nothing actually happened until after we marched in ASIC’s door in February 2010 to demand action.

First encounter with Don Nguyen

Not long after I started as the Branch Financial Planner at Mosman in April 2008, one of the staff, [REDACTED] spotted Don Nguyen meeting with [REDACTED] former ABC Newsreader/TV Personality. This puzzled her as he was a longstanding branch client with no known connection to Don Nguyen. She spoke to [REDACTED] afterwards and he said he had received a call out of the blue from Don Nguyen claiming [falsely] that he was the new Branch Planner at Mosman. [REDACTED] was horrified by Don Nguyen and his proposals and had no intention of dealing with him. We discovered that Don Nguyen had put through a number of false “self generated” referrals in respect of existing Mosman Branch clients who had never heard of him.

A woman called [REDACTED] stormed into the branch angry that Don Nguyen had rung her from Chatswood, telling her he was looking at her file as he spoke and claiming [falsely] to be her new financial planner. She was angry because she didn't want to see a planner at Chatswood, she wanted to deal with the planner based at Mosman. [REDACTED] was one of the clients who had been allocated to me when I started. Her file was indeed missing from the Branch, along with the files of the other 11 largest clients I had inherited.

The only inference I could draw was that both the client data and client files had been passed to Don Nguyen by the previous Branch Planner [REDACTED] [This indeed makes sense in light of the subsequent revelation of the \$50 cash backhanders Don Nguyen was paying staff at the Chatswood Branch.]

I spoke to the team Financial Planning Manager, [REDACTED] about Don lying to the clients and the stolen files. [REDACTED] rang me back to say that he'd had a stern talk to Don who would be sending me [REDACTED] file in the internal mail and Don would not be trying to poach any more Mosman clients in future.

Don had denied having the other 11 files. [REDACTED] had accepted this. It didn't seem to ring any alarm bells that 11 client files were now missing. Normally I would have thought this would be a major compliance issue. To this day I don't know what happened to those client files.

Incredulous, I asked [REDACTED] why he wasn't sacking Don Nguyen for his dishonesty. [REDACTED] clearly uncomfortable, dissembled, explaining that I didn't understand "the politics", that Don was a "big writer", that Don was "protected" and eventually that "[REDACTED] can't touch him and he knows it."

Welcome to CFP!

Flabbergasted, I could only reply that maybe I didn't know the politics but in any other organisation I'd ever worked at Don would be sacked for stealing client files and brazenly lying to clients.

Another financial planner, [REDACTED], then explained the "Dodgy Don" legend to me, part of which was the way he was protected by management because he was a big writer of business and that he had been known as a crook for years throughout CFP and even the broader Colonial group.

I include this background as I think it is crucial to realise that Nguyen was widely known as "Dodgy Don" for years *before* the events of 2008-9. This is an important comment on the culture at CFP/CBA, driven as it is by sales and a metricated short term remuneration/bonus structure *at all levels* and where ethics and propriety at best take a back seat.

The sales of "Dodgy Don" and other crooked planners [and for that matter in-house lenders and external mortgage brokers as well] did not just directly drive their own bonuses/remuneration but also those of all the tiers of managers above them. Understanding the behavioural impact of this remuneration structure for all the managers in the chain *above* the financial planners is a key aspect to understanding

what happened here and what continues to happen in the industry. I pointed this out to ASIC at the meeting of 24 February 2010 but I don't think it registered.

The "Dodgy Don" affair didn't come out of nowhere. Nor is it just a matter of "seven rogue planners" as CFP and ASIC would have it. There were far more than seven rogue planners but more importantly there was a system that nourished and protected them. How else did they survive? CFP may have provided that environment but they did so under ASIC's benevolent gaze.

██████████ *complaint re Don Nguyen – September 2008*

These clients came into the branch complaining that their current CFP Planner was crooked – the staff just assumed this was probably Nguyen, as indeed it was. I had several long meetings with these distressed clients - I remember ██████ voice breaking as he said he no longer played golf in his retirement as he couldn't afford it. They wanted to know how to pursue a formal complaint about Nguyen's advice and I explained the whole process to them, including their right to pursue a claim through the Financial Ombudsman's Service if dissatisfied by CBA's handling of their complaint.

As Lehmann Bros was in the process of melting down and the ██████ capital of \$1.1 million had already dropped by about \$400,000, an undertaking was sought and quickly given by ██████ in compliance, passed on by me and affirmed by Financial Planning Manager ██████, that they could switch their portfolio to cash without prejudicing their compensation claim. Somebody then changed their mind about this and ██████ simply renegeed on the undertaking given, much to the clients distress. ██████ had been very sympathetic to these clients but he disappeared from the scene soon afterwards.

The ██████ told me that they didn't know Don Nguyen before they went into the Branch, that they trusted CBA not him. Nevertheless Nguyen falsely put this through CommSee [client information system] as a "self generated" referral, thus avoiding the business rule requiring him as a Branch Planner to refer the ██████ to a Senior Planner. It seems likely this was one of the cases of "cash backhanders" [see below] that he paid to branch staff to give him referral details direct rather than through CommSee.

It was obvious to me from reviewing the ██████ client file, as it would have been to any competent financial planner, that there were serious problems with Don Nguyen's advice to the ██████. It was apparent that the risk profiling, fundamental in giving financial advice, had not been carried out properly.

I risk profiled the ██████ again, without telling them in advance my purpose for doing so or the implications of their answers. They achieved a significantly lower score in terms of risk tolerance [no mean feat as the CFP risk profile is clearly designed to push people into more aggressive portfolios to buttress the "need" for an "investment portfolio" through CFP rather than say cash or term deposits]. The ██████ were adamant they had never been through the process with Nguyen, ██████ even saying he would swear on his children's lives that this was the truth. [This was to become a recurring theme for the Nguyen clients.]

I then explained the impact of the risk profiling and also the bizarre specific investments chosen by Nguyen within the risk profile. They had been placed in a hyper aggressive investment portfolio that was clearly not appropriate to their situation and was plummeting in value during the GFC. They were among the first of many clients to discover their surprise that they had supposedly “specifically requested a 50% allocation to LPT’s [being Listed Property Trusts]” according to Nguyen’s fact find. They indignantly rejected this as absurd given that they already had a block of land as part of their broader portfolio. This fact was even recorded in the fact find completed by Nguyen.

The team manager, ██████████, consistently avoided these clients and never actually met with them. I advised the ██████ not to waste any more time with ██████ but to lodge a formal complaint and pursue it to resolution, not to allow themselves to be fobbed off by ██████ or anybody else and if need be to get a lawyer involved. They replied that their children were all lawyers. I gave them a copy of my concerns, noted in a new client fact find, signed and dated. I said that if they needed to pursue the matter they could call me as a witness. I sent the client file, notated with my concerns and including the attached File Notes from 5 to 15 September 2008, to “Customer Experience” as requested. My notes left a path a blind man could have followed.

Shortly thereafter I received a call from ██████████ in “Customer Experience”, looking for background on their complaint. By this time Don Nguyen was “suspended for fraud” in the words of the team manager ██████████. I asked ██████ ██████ if he was aware of this fact and he hurriedly cut me off with “I’m not interested in that, I’m just looking at the file in front of me.” He wasn’t particularly interested in any of the problems I had with Nguyen’s advice or his questionable documents on the file either.

I was deeply troubled by this conversation as by this time it was obvious that there was a systemic problem with Nguyen’s advice that needed to be addressed, client complaints were flooding in. From the evasive way the ██████ and other traumatised clients were being dealt with and the “Customer Experience” Manager’s determination not to hear about the larger problems surrounding Nguyen, I realised with certainty at that moment that *the organisation*, not just the bumbling ██████ ██████, was going to try and dud the clients out of proper compensation for Nguyen’s defective advice.

Rather than do the right thing and just put their hands up and compensate the victims, CFP management was going to force these non expert clients [and only the ones who actually formally complained] to prove their claims on an individual basis, all the time sitting on the certain knowledge that what the clients were struggling to prove was perfectly true. They were working on the basis that none of the clients would ever be able to “join up the dots” and could thus be fobbed off individually. I realised with a shock that the organisation would almost certainly get away with it unless somebody intervened and blew the whistle on them. Even with lawyers, the individual clients would be ground down by the corporation. This was actually the moment I decided I would have to become a whistleblower, even before the farce deepened with Nguyen’s triumphant return from “suspension for fraud” [below].

To complete the story of the [REDACTED] they were completely stonewalled by CBA on their compensation for another 18 months, despite the fact that the bank had full knowledge of the fraudulent and defective advice they had received, before they joined the Maurice Blackburn class action which began in March 2010. I think it still took about another year for them to get paid.

[REDACTED]
[REDACTED] phoned me before the final settlement conference. I told him frankly that I thought what had occurred was a disgrace, both in terms of the original advice and the delay in dealing with their complaint so that here we were talking about it years later. I told him I believed absolutely in the [REDACTED] integrity and what they had told me. We discussed the risk profile and I pointed out to him that the [REDACTED] held a block of land outside their super which could have been regarded as supplying the growth component of their portfolio as part of comprehensive advice. He was not interested in this sort of argument. I sent him copies of my file notes. He assured me that the matter “has to be settled but that doesn’t mean we will pay any more than we have to”.

I found this attitude sickening. It never seemed to occur to [REDACTED] and the others involved that the starting point should be ‘doing the right thing’ rather than ‘getting out of it as cheaply as possible’. There was also no recognition on his part of what these people had been put through in terms of delay and stress in securing their compensation over several years, after their retirement nest egg had been slashed by about 40% through no fault of their own.

I told [REDACTED] that I had seen a photo in the local paper of the [REDACTED] outside the Chatswood CBA Branch in relation to this matter and how I was shocked and saddened at the change in [REDACTED] appearance: he had aged at least 10 years since I had last seen him. Worse, in place of the jovial and friendly, if naturally disappointed, man I had first met, his facial expression was bitter and angry. This ordeal plainly took a lot out of him, as it did the other victims.

The proof of the absolute perfidy of CFP/CBA in this matter is that only *years later*, *after* fobbing the [REDACTED] and their lawyers off on an individual basis, *after* the whistleblowers leaks to the trade journal Investor Daily in mid 2009 frightened the CBA and probably helped to get the Maurice Blackburn class action underway, *after* the whistleblowers finally got ASIC moving and they seized some client files and announced a compensation scheme in November 2010, then and only then *in 2011* did CBA eventually paid up in the order of \$500,000, for a claim they had dismissed as baseless for years. As I understand it though, *even then*, the [REDACTED] were still out of pocket after paying legal expenses they should never have had to incur.

Don Nguyen First Unofficial Suspension September/October 2008

In September 2008 Team Manager [REDACTED] told myself and others that Don Nguyen had been “suspended for fraud” and wouldn’t be coming back.

This related to a number of issues:

1. He had failed his file audit. The auditors had finally stumbled onto the fact that almost all of his clients, no matter what their situation, seemed to have the same hyper aggressive risk profile and an amazing number seemed to have “specifically requested” that 50% of their portfolio be in Listed Property Trusts. In fact the auditors found that the risk profile questionnaires [crucial to giving proper advice based on each client’s individual circumstances] and other parts of the client fact find were identical in various files to the extent of being photocopied!
2. Client complaints were pouring in as this was at the height of the GFC when Lehman’s was melting down and Nguyen’s standardised aggressive portfolios left clients extremely exposed.
3. He had also been caught by the acting Manager at Chatswood Branch, [REDACTED], paying \$50 cash backhanders to staff to give him over \$400k client details direct rather than enter them into CommSee, where he would have had to refer them to a Senior Planner [like the [REDACTED] above]. He then put these deals through as “self generated”. The Retail Bank Area Manager, [REDACTED], had the problem of his branch staff taking cash bribes dumped in his lap. He let it be known that he wouldn’t have Don Nguyen in any of his branches but nobody got the sack over accepting these bribes – probably because Nguyen wasn’t sacked.
4. He had been caught red handed by the team’s compliance manager [REDACTED] defrauding a group company CommInsure by tendering multiple \$5,000 invoices for financial advice that was never provided. [Nguyen has never been pursued over this serious fraud on the shareholders, it suited management to keep it quiet and ASIC didn’t follow through in the end.]

Client complaints were being received by other planners by this time, notably by [REDACTED] and [REDACTED]. The latter raised his concerns with his Financial Planning Manager, [REDACTED], about Don Nguyen falsifying Statutory Declarations to extract money from super illegally, ie to get early release, so as to gear it up a la` Storm Financial, among other things but was told in no uncertain terms to drop it. He later raised this issue with Executive Manager [REDACTED] who also refused to act. **[I subsequently advised [REDACTED] of ASIC by email on 1 November 2011 (attached) about the false Statutory Declarations (plural), which is a criminal offence and provided Senior Planner [REDACTED] contact details after he left CBA. He was never contacted by ASIC. See ASIC answer to QoN 254. They took no action on the one file I was able to name because of the “age of the conduct” and “the lack of documentation on the file.”! Are they serious? Is it any wonder there was a “lack of documentation” on the file? This poor client was about to lose his house. Did they talk to him or did they rely on CFP’s assurances? Was he compensated? Did they look into the other clients of Nguyen with Statutory Declarations on file?]**

[REDACTED], who had been given Don Nguyen’s mobile phone when he was suspended and was offered the lucrative opportunity to take over his client book, received a number of complaints from distressed and uncomprehending clients who had seen their investments destroyed. He sent a file for [REDACTED] [who also later joined the Maurice Blackman class action] to compliance, marked up with his concerns. He later saw this file with all his comments removed. He also had a complaint from a client called [REDACTED] about an outrageous Storm Financial

style gearing scheme Nguyen had put his son into. Not comfortable with the soothing fob off line management wanted him to take with these clients and the way they were being dealt with by “Customer Experience”, he literally tossed the phone back to Executive Manager [REDACTED] and told him he could keep it.

This obviously posed a problem for management. They needed someone to dupe the clients out of making complaints.

Don Nguyen Reinstated and Promoted to Senior Planner 15 October 2008

[REDACTED] announced that Don Nguyen was not only back but that he had been promoted to Senior Planner! With this fresh endorsement he set about soft soaping the clients and cleaning up his delinquent files.

Three of us got together to discuss this management conspiracy to defraud the clients of their proper compensation, which even at this stage, we figured had to run into the tens of millions for all of Nguyen’s clients.

I was dissuaded by my two longer serving colleagues from going internally to [REDACTED], the head of the Colonial Group [whom I knew from previous mutual employment at Bankers Trust in the 90’s] on the basis that he had to be in on it, that he had to know all about it and that “at CBA” you would simply be sacked if you went up the line to complain about the CFP managers. More to the point, you would achieve nothing for the victims and merely alert CBA to the fact that they needed to drive the cover up deeper.

We then discussed going to ASIC. It is perhaps the most authentic comment on the regard in which ASIC is held in the financial services industry that one of my fellow whistleblowers, at this stage, said simply “The only problem with that, mate, is that ASIC is shit. They’ll never do anything.” We all felt strongly that we had to do something and ASIC seemed the only viable option. I said that they could hardly fail to act if we gift wrapped the whole thing and dropped it in their lap. If necessary, we would force ASIC to do their job by going to the press.

I warned my colleagues that we would not survive this process, that it would cost us our jobs and maybe a good deal more besides, that it was perhaps better I acted alone and they walked away but they demurred.

I wrote out a report of everything we knew at that time for ASIC [note, we did not know about point 4. above at that time, we learned about that later from [REDACTED]]. We decided to act anonymously as “The Three Ferrets” because of concerns about personal safety due to doubts about Nguyen’s mental stability [as we noted at the end] and also because of a lack of faith in ASIC’s security/confidentiality. We faxed the following to ASIC on 30 October 2008, marked for their “Urgent Action”:

Text of Whistleblowers Report to ASIC of 30 October 2008

***Report to ASIC of High Level Conspiracy at Commonwealth Financial Planning
To Conceal Repeated Material Breaches/ Corruption/ Gross Incompetence
of Planner Don Nguyen Resulting in Losses To Clients of Tens of Millions
of Dollars***

Background

Don Nguyen has a history, well known throughout Commonwealth FP, of dishonesty, breaches of business rules and questionable advice to clients. He has been regarded as a serious business risk by management for years however they have chosen to turn a blind eye due to his being the second highest business writer in the organization.

He is notorious for trying to steal the clients of other planners, to the extent of actual theft of client files and lying to the clients eg falsely claiming to have been appointed as their new advisor.

Recent Events

1. File Audit, Don Nguyen Suspended and Under Investigation

As a result of his last file audit [5 random files only] he was deemed non-compliant and a serious business risk. He was suspended and 80 files taken away for further examination. This revealed that segments of the fact finds were common to many clients, having been photocopied en masse. It also revealed an extraordinary commonality in the risk profiles of the clients, whereby all, including the retired, the disabled and the unemployed, opted for aggressive high growth strategies. An even more astonishing proportion supposedly “specifically requested” that 50% of their assets be held in LPTs. Including many clients who when questioned did not even know what an LPT is.

During this investigation another advisor, [REDACTED], was allocated Don’s client book by [REDACTED], Executive Manager, Northern Metro and [REDACTED], Financial Planning Manager [the immediate team manager], on the basis that Don would not be returning.

The compliance function duly reported that the above issues with the files were statistically unlikely in the extreme and indicated that the risk profiling of the clients had been fudged or not carried out at all.

Compliance recommended:

[i] That Don Nguyen be sacked; and

[ii] That all of his clients be contacted and offered compensation for the heavy losses they have recently incurred as a result of his non-compliant and defective advice.

██████████ and ██████████ were overheard discussing this advice in their open plan office. The problem was the massive cost of the potential payout and the need to find another solution. They decided to refer the matter up the line.

2. Complaints from Clients

At the same time complaints from clients started to come in, many of whom have seen their investments halved. ██████████ was recently overheard putting the number between 30 and 40.

██████████ fielded a number of these and shared his concerns with ██████████ in the open plan office. Two other planners, Jeffrey Morris and ██████████ also received complaints and apparently expressed similar concerns.

3. Cash Backhanders in Breach of Business Rules

Again, at virtually the same time, management became aware that Don Nguyen was paying cash backhanders to bank branch staff to divert client referrals from other planners to himself. [Over \$400,000 Branch referrals go to Senior Planners. By paying the backhanders to branch staff and not entering a Branch Referral in the system, Don Nguyen was able to divert these choice clients to himself as “Self Generated Referrals” which he could then retain.

Normally you would expect this corrupt conduct, in and of itself, to result in dismissal of the individual concerned. This was apparently the view of ██████████ ██████████, the Area Manager of the Retail bank responsible for the Chatswood bank branch in question. From a conversation overheard between ██████████ ██████████ and ██████████, it is clear that ██████████ absolutely refused to have Don Nguyen located in any of his branches again.

4. Don Nguyen Reinstated and Promoted to Senior Financial Planner & Conspiracy to Defraud Clients of Proper Compensation

The cost of dealing fairly and honestly with the losses suffered by Don Nguyen’s clients certainly runs into the tens of millions – enough to cost all the managers involved their jobs. Thus the following conspiracy was hatched:

[i] Don Nguyen reinstated and promoted to Senior Financial Planner. Promotion was necessary to get around ██████████ refusal to have him in any of his branches again. Senior Planners do not work from Branches. Don Nguyen has been moved to the open plan financial planning office in Chatswood.

[ii] Reinstatement was necessary for two reasons, firstly, none of the other planners receiving complaints from his clients would “play ball” and secondly, it was recognized that sacking Don in and of itself would place the organization in a very poor position to defend the complaints. Conversely,

promotion of Don Nguyen to Senior Financial Planner would tend to strengthen their position.

[iii] All of Don's clients were thus restored to him with the idea that he, acting together with ██████████ would be best placed and best motivated to dupe and discourage clients from pursuing their complaints. This would be the first line of defence.

[iv] The parties to the conspiracy realized that the key was to quarantine each individual complaint and deal with it separately, to ensure that nobody was able to join up the dots. It was recognized that they would not survive a class action ie one client making a claim that they had never been properly risk profiled, had never requested an aggressive asset allocation heavy in LPTs and had just signed what was put in front of them can be dismissed as sour grapes and defended simply on the basis that they signed both the fact find and SOA. However a large group of clients making exactly the same claims would be indefensible. This was clearly recognized by compliance in their file review.

[v] Compliance has been got at on a sufficiently senior level [probably above Commonwealth FP] to back off. Part of their problem is the issue of why they didn't find the problem sooner. [The answer to that is that their regular random audits of a very small number of files simply failed to pick up the wider systemic problem.]

[vi] The internal complaints handling area also appears to have been got at [again at a senior level, probably above Commonwealth FP] and agreed to deal with complaints about Don Nguyen on a purely individual basis, just looking at what is in front of them for each case and ignoring the wider systemic issues of which they are well aware. This is the second line of defence. Presumably the few cases that slip through this second line will be quietly paid off.

5. The Confession

The above was partly held together by speculation and deduction until it was, incredible as it may seem, completely confirmed by ██████████ expansive statements to ██████████ and others in the open plan office area. He bragged that he and ██████████ were in a conspiracy with senior management as above, that they had just returned from a meeting in the city with senior management where "██████ and I got a big tick for the way we've handled this."; that the key was to deal with each case individually and ensure that nobody was able to join up the dots and that compliance and complaints were both in on it.

Why Did Don Nguyen Do It – What Was His Motivation?

Afterall, what difference did a client's asset allocation make to him? In theory it should have made none at all. Don Nguyen was however a ferocious

business writer who sold off the back of the investment returns he claimed he could get for clients “with no risk”. He sold off recent strong historical returns. He also worked in a hurry and only wanted to spend the minimum time to get the business, so he didn’t want to waste his time or confuse or create doubt in client’s minds by explaining concepts like risk to them or going through a risk profiling exercise. He also had a penchant for charging high ongoing service fees [whilst not actually delivering any service] which were much easier to justify [or more likely to be overlooked by clients] with aggressive portfolios delivering high returns. It also seems that he may genuinely, if misguidedly, have believed that this approach was best for his clients and it would follow, if he believed that, that this would also have seemed the quickest way to build his book [on the back of higher returns]. He saw the benefit of aggressive gearing strategies in terms of more commission for himself.

General Points, Logistics Etc

[i] The conspiracy was highly likely to succeed as most, if not all, clients, although they may realize they have received very poor advice, do not understand the significance of the fact that they were not risk profiled. Moreover they are not aware that they are part of a large group in the same boat and that the evidence of what really occurred is thus overwhelmingly in their favour.

[ii] Although it has many pretensions to the contrary, Commonwealth FP under its existing management is nothing more than a low rent sales channel. In the current difficult climate planners are now being threatened with the sack if they don’t meet their sales targets [see recent memos from ██████████ ██████████ and ██████████]. The message is clearly “Do what you have to do – or else.” This management culture explains why people like Don Nguyen are tolerated, even valued and protected. The client’s interests don’t really get a look in. This is an issue with much broader implications than one dodgy planner.

[iii] ██████████ is the weakest link. His email history and paper files will contain much useful material, including actual client complaints.

[iv] His Assistant, ██████████, is however honest and efficient and would be an ideal administrative contact.

[v] Virtually everybody who works in the Chatswood open plan office will be able to give you some confirmation/ further information on this – the indiscretions have been manifold.

[vi] The client files will basically tell the story – as they did for the internal compliance people. There is some urgency in securing them as they are being “cleaned up.” They are currently located at:

- *Level 2, 799 Pacific Highway Chatswood [the open plan area FP office]*
- *Victoria Ave Chatswood CBA Branch*

- *L17 175 Pitt St Sydney*

Some clients are not on the current listing as they have changed advisors/dealer groups – the whereabouts of their files is unknown.

[vii] Apologies for acting anonymously. We are largely motivated by the fact that we consider Don Nguyen to be a very strange, unstable character who might turn up on our doorsteps with a gun or a knife. Although your investigators will no doubt be able to work out who we are, as we will give you much more detailed information under questioning, from our point of view, the less people who know definitely at any point in time, the better.

THETHREEFERRETS

After the fax to ASIC

After sending this fax we expected ASIC to turn up with a warrant to seize the files. We had after all mentioned the need to secure them as they were being “cleaned up” by Don Nguyen and his two assistants.

However as the days passed with no sign of a fire breathing regulator on the doorstep, we decided to follow up ASIC by email. Weeks turned into months. Email followed email. ASIC said they *were* investigating. But if that were so, why hadn’t they seized the files?

It was depressing to watch the vulnerable clients being hung out to dry, either duped by their newly promoted “Senior” Planner Don Nguyen into believing it was “just the GFC” or, for the few who persisted with their complaints, being hung out to dry by the CBA “Customer Experience” professionals.

The record will show that no compensation, or only derisory compensation in a few cases, was paid by CFP/CBA between October 2008 and March 2010, despite full knowledge by the institution of what had gone so badly wrong. This is confirmed by the experiences of Jan Braund, Merv and Robyn Blanch and [REDACTED] which are representative of what happened to all the clients.

The stench around Nguyen was growing inside the business though. He missed the team’s Christmas Party in 2008 - barefoot bowls - because he and his two servicing planners were busy trying to stitch up a 93 year old with \$1.6 million to invest for a \$32,000 [2% flat] advice fee. It goes without saying that no financial planner with a shred of decency to them would have contemplated acting in this way.

The Managers present, [REDACTED] and [REDACTED], however virtually ‘rang the bell’ – enthused to all those present about Nguyen’s bumper deal - no doubt thinking of the upstream impact of this little piece of initiative on their own bonuses.

Meanwhile Don Nguyen sanitised the client files, literally liquid paper bottle in hand, with a little help from his two servicing planners. He had been given a second servicing planner, ██████████ to help with this work. From 1 April 2009 I was in a position to personally observe this every day as I had been promoted to Senior Planner and relocated to the same floor in the Chatswood office, sitting about 6 metres from Nguyen.

The “Diary Note” of 15 October 2008 [Attachment 1]

The Ferrets, as we now called ourselves, were still fruitlessly chasing ASIC in April 2009 when we received a tip off from another planner, ██████████, about a document in the security bin that he thought we should have a look at. It was typical of CFP that ██████████ had gone through the security bin to recover documents that he needed to prove his expenses claims, documents he had given to ██████████ but that ██████████ claimed he had never received. Typical also that ██████████ found these non-existent documents where he expected to find them – in the security bin. Together with another document that was going to get ‘lost’.

After hours we retrieved the document from the security bin. It was an incriminating internal “Diary Note” dated 15 October 2008 recording the meeting whereby ██████████ was not only reinstated after his suspension for ‘fraudulent activity’ but promoted to Senior Planner and given a book of more clients to work his magic on.

We now had an internal document that confirmed key aspects of our fax to ASIC of 6 months earlier about the cover up by CFP management. Even the CommInsure fraud was referred to in veiled terms. The senior managers involved in the cover up were directly referred to: ██████████ and ██████████ both General Managers of CFP, as well as ██████████ and ██████████.

We considered abandoning anonymity and marching into ASIC armed with the “Diary Note” at this point but we had begun to be concerned that possibly a too cosy relationship, rather than mere incompetence, lay behind ASIC’s inertia.

Going Public – The InvestorDaily Articles

We decided therefore that the time had come to go public.

We calculated that going public would force CBA to act and go through the farce of a ‘voluntary disclosure’ to ASIC of what they had long known. That hot potato dumped in their lap should in turn force ASIC to act.

██████████ volunteered that he knew a journalist: Darin Tyson-Chan of Investor Daily, basically a trade journal for the industry. It seemed ideal for the purpose of getting ASIC’s attention and forcing them to act.

We knew it would not be hard for CBA or for that matter, Don Nguyen, to work out who we were but given ASIC’s feet of clay and the suffering of the victims we felt we no longer had a choice. Thus ASIC’s inertia forced us to run risks we would have preferred to avoid.

The first article ran on 18 May 2009 titled “ASIC slow to act on complaint.” That was pretty clear but for good measure the next article on 25 May 2009 named Don Nguyen. Further articles followed, in particular on 22 June 2009, spelling out in detail the matters we had reported to ASIC seven months earlier. (These three articles are attached.)

[ASIC makes *no mention whatsoever* of these Investor Daily articles in their Initial Submission to this Inquiry lodged on 2 August 2013. The existence of these articles casts a *very different light* on events to that portrayed on pages 8-9 of that ASIC submission, particularly para 32 concerning the breach report filed by CFP concerning Nguyen on 27 July 2009.

ASIC’s answer to Budget Estimates 4-6 June Questions on Notice [“QoN”] 192 given on 21 October 2013, concerning these articles, is disingenuous. Asked what their “reaction” was they say they “noted” the criticisms and decided not to discuss the matter in the media. In other words, they did not “react” at all to serious allegations of fraud and malpractice in the public domain, nor did these allegations cause them to dust off our fax of 30 October 2008 and act on it.]

Fallout from Investor daily articles

Don Nguyen disappeared from the office on 27 May 2009, 2 days after the article that named him. This was his second period of unofficial suspension from CBA. Before he left however he gave me a venomous glare of pure hatred as we passed in the corridor. I have no doubt he knew I would have been involved.

If the Investor Daily articles had no effect on ASIC they were like a bomb going off at CFP. As noted above, Nguyen was suspended again within days and a crisis meeting was convened, attended by a large group including the managers running CFP and [REDACTED] and an honest compliance manager named [REDACTED], who had been trying to get something done about Nguyen for a long time and who had been very open in his criticisms of Nguyen and who we had taken into our confidence.

He told us that little or no time had been wasted in the meeting debating Nguyen’s guilt or innocence – the Managers had been kicking this can down the road for a long time. Instead, the meeting focussed on the likely source of “the leak.” As expected, the three ferrets were top of the list of suspects.

My Interview With CBA Group Security

In response to the Investor Daily articles however [REDACTED] had, for forms sake, been forced to send a general email inviting staff to report anything they knew about the Nguyen matter to CBA Group Security.

Given that the matter was now in the public domain and our cover was blown anyway, involving Group Security might just mean that senior management at CBA would be forced to act on the conspiracy at CFP/Colonial.

On the morning of 2 June 2009 I therefore walked into CBA Group Security [REDACTED] & [REDACTED] and blew the whistle on the CFP Management's attempted cover up of the Don Nguyen affair. I didn't tell them everything because it was apparent that they were, at that initial stage, primarily on a Ferret hunt to catch the leakers to Investor Daily.

But I told them enough. They asked me, in particular, whether I knew anything about the "rumour" that Don had been suspended the previous year. I assured them that this was fact not rumour. It seemed that they hadn't got the truth about this from CFP Management. They asked me how many people knew. I explained that the whole team certainly knew but many people outside the team also knew; that the "Dodgy Don" sobriquet was well known in the business. After some further discussion about the Investor Daily articles they asked me how the team felt when Don was promoted after he'd been suspended. I said we were flabbergasted.

I told them about my experience with the [REDACTED] and clearly stated my concern that their compensation was not being handled appropriately, based on the approach being taken by [REDACTED]. I told them that, in my view, avoiding the cost of proper compensation for hundreds of clients was what the management conspiracy was all about.

By the end of that interview CBA Group Security knew that CFP Management had lied to them about Don Nguyen and the subsequent cover up. As I was leaving I asked who their report would be going to. [REDACTED] responded "At this rate it will be going right to the top."

Fairfax media have recently published a CBA email sent [a few hours after this interview concluded] at 2.51pm on 2 June 2009 stating:

"Don Nguyen Case

Group Security have asked that for any new information be forwarded through to [a CBA lawyer] in legal prior to being forwarded to them. This is so that we have legal privilege over the documents in the event of any legal proceedings.

...

...

[Redacted]

Snr Manager Operational Risk"

Presumably the legal proceedings they were concerned about were from the hapless clients whom they had been fobbing off for at least 8 months by that time. From this date of 2 June 2009, the sheer moral turpitude of the broader CBA group [as this email involved at least three departments beyond CFP] and its ruthless attitude towards the innocent victims of its rogue employee, is apparent from this email.

So as not to give CBA any excuse not to act, we followed up on 4 June 2009 with the anonymous email below, along the lines of the 'Report to ASIC' of 7 months earlier, sent to the most senior management of the bank and CBA Group Security. The latter, in the person of [REDACTED], acknowledged receipt the same day. [We got a bounceback from the [REDACTED] email address which was incorrect but it seems

inconceivable that it would not have been passed to him, at least as part of the Group Security report on the Nguyen matter.]

We also posted a hardcopy of the internal *Diary Note of 15 October 2008* [Attachment 1] to CBA Group Security a few days later. We know Group Security received it because they referred to it in interviews with [REDACTED] and [REDACTED].

Text of "Mallord" Email Sent to Senior CBA Management 4 June 2009

*From: mallord@live.com.au
To: [REDACTED]@cba.com.au; [REDACTED]@cba.com.au;
[REDACTED]@cba.com.au; fraudandunethicalbehaviour@cba.com.au
Subject: 'Dodgy' Don Nguyen Conspiracy
Date: Thu, 4 Jun 2009 14:16:52 +1030*

Despite the invitation from [REDACTED] to do so, nobody can openly come forward in this matter as [REDACTED] himself, [REDACTED], [REDACTED], [REDACTED] & others have all been actively engaged in a conspiracy since October 2008 to conceal the fraud, corruption and incompetence of 'Dodgy' Don Nguyen.

This conspiracy is what Group Security should really be investigating.

Instead of which, since the articles by Darin Tyson-Chan appeared in Investor Daily on 18 and 25 May [which really only scratch the surface of whats been going on], the focus of the conspiracy has shifted to try and hunt down the whistleblower purely in order to protect themselves - and I suspect they are using Group Security for this purpose.

Many people in CFP know about the fact that Dodgy Don was caught red handed and suspended for fraud in October 2008, supposedly not coming back, then strangely reinstated and promoted to Senior Planner. Many people know of the smelly details around this. But nobody will come forward while the above group are still running the place as it would be suicidal. A joint investigation with ASIC would probably bring it all out of the woodwork - people would feel safe to come forward.

For many years Dodgy Don has been infamous throughout CFP for dishonesty and questionable advice. He has been regarded as a serious business risk for years however management has chosen to turn a blind eye as he is a top business writer.

Don was suspended over three serious issues that came up at the same time:

File Audit

The October 2008 File Audit was not the first audit that Dodgy Don failed - [REDACTED] always intervened to protect him. This time Dodgy Don was deemed non-compliant and a serious business risk. When he was suspended more files were taken away for examination by compliance. This revealed that segments of the fact finds were common to many clients - even photocopied. All clients, even in vastly different circumstances, had the same aggressive risk profiles. An astonishing proportion also 'specifically requested 50% in LPTs'.

Compliance concluded that this was statistically unlikely in the extreme and that the risk profiling was fudged or not carried out at all. They recommended that Dodgy Don be sacked and the clients compensated.

[REDACTED] and [REDACTED] discussed the massive cost of the potential payout and the need to find another solution. They decided to refer the matter up the line.

At the same time complaints from clients started to roll in, many of whom had seen their investments halved.

Cash Backhanders

At this time management also became aware that Don was paying cash backhanders to branch staff to divert client referrals from other planners to himself. [Over \$400,000 these were meant to go to Senior Planners. By paying the backhanders to branch staff and not entering a Branch Referral in the system, Dodgy Don was able to divert these clients to himself as 'self generated'.] This cheated the clients of the services of a Senior Planner to which they were entitled under our business rules. It also cheated the Retail Bank out the revenue they were entitled to for the referrals.

Normally you would expect this corrupt conduct to result in the dismissal of the individual concerned. This was the view of [REDACTED], the Area Manager of the Retail Bank responsible for the Chatswood Branch in question - he refused to have Dodgy Don located in any of his branches again.

Fraud on CommInsure Trauma Policies

At the same time, Dodgy Don was also caught red handed perpetrating outright fraud on CommInsure. Since Trauma policies paid an additional \$5000 benefit to claimants for financial advice, Dodgy Don simply had a contact tip him off on the claimants & sent his invoices direct to CommInsure

for payment without ever meeting the clients concerned. [REDACTED] personally confirmed this with at least one client. CommInsures records and the absence of any genuine client files will confirm this.

*Dodgy Don reinstated, reprimanded and promoted to Senior Planner!
Conspiracy hatched to defraud clients of proper compensation.*

The cost of dealing fairly and honestly with the losses suffered by Dodgy Don's clients could run over \$10 million - enough to cost all the managers involved their bonuses if not their jobs. Thus the following conspiracy was hatched to defraud the clients:

** Instead of being sacked Dodgy Don was reinstated and promoted. Promotion was necessary because Don wasn't allowed in the Retail Branches by [REDACTED] but as a Senior Planner he could be located in the Chatswood financial planning office.*

** Sacking Dodgy Don would have put them in a poor place to defend client claims. On the other hand, promotion to Senior Planner tended to strengthen their position.*

** The idea was also that Don was best placed to dupe and discourage the clients from making complaints.*

** The key was to quarantine each case and deal with it separately. To stop the dots being joined up and the overwhelmingly similar fact situations of clients giving rise to a class action. One client claiming they were never risk profiled, with an aggressive portfolio they didn't understand with 50% LPTs can be dismissed as sour grapes but a whole group in the same position is a very different matter.*

** Compliance was got at on a sufficiently senior level to back off.*

** Complaints were also got at and agreed to deal with cases purely on an individual basis - even though they were well aware of the overall situation.*

Statements by [REDACTED]

The above has ALL been confirmed by [REDACTED] statements to numerous people. When Dodgy Don was suspended, being new to the organisation, he naturally assumed that being caught for fraud was probably the end of the road. He told everybody that Dodgy Don had been suspended for fraud and wouldn't be coming back. He thus felt safe in sharing the details about the trauma fraud, backhanders and non-compliant files. Nevertheless when the decision came back from on high to cover it up he was a willing

participant. He actually bragged about the fact that he and [REDACTED] were in the conspiracy with senior management. One comment was: 'Rog and I got a big tick for the way weve handled this.'

The conspiracy has been good to [REDACTED]. He is a laughing stock in the business but they cant get rid of him because hes part of it. Recently [REDACTED] wanted to sack him for expenses fraud but strangely dropped the matter.

Diary Note by [REDACTED] dated 15 October 2008

[REDACTED] has also been indiscreet with this document. He has a hardcopy but even if deleted from the system it should be recoverable electronically. It relates to the meeting between [REDACTED], [REDACTED], Dodgy Don and a Union Rep where Dodgy Don was reprimanded and then, in the next breath, promoted to Senior Planner and given a client book! In veiled terms it mentions the irregularities with his files, backhanders and the Trauma fraud. [REDACTED] and [REDACTED] are also mentioned as thinking that Don should be punished by not being allowed to attend an offshore sales conference! This confirms that they were in the loop.

General

Although it has many pretensions to the contrary, CFP under its current management is nothing more than a low rent, product flogging sales channel. Planners are threatened with the sack and actually sacked if they dont meet their sales targets. The message is clearly 'Do what you have to do - or else.' This management culture explains why people like Dodgy Don are tolerated, even valued and protected. The clients interests dont really get a look in. This is an issue with much broader implications than one dodgy planner.

The current management of CFP, focussed as they are on their annual bonuses, simply has no conception of the importance of protecting the CBA brand.

[I would submit that my Group Security interview, this 'Mallord' email to CBA Senior Management and Group Security, the copy of the *Diary Note of 15 October 2008* provided to Group Security in early June 2009, along with the earlier Investor Daily articles, were the *direct cause* of Nguyen's forced "resignation" on 2 July 2009 and CBA's filing of a Breach Report with ASIC regarding Nguyen on 27 July 2009.

ASIC's Initial Submission to this Inquiry of 2 August 2013 however makes *no reference whatsoever even to the existence of these documents*, despite a copy of both the above email and the Diary Note being provided to ASIC by the whistleblowers at the meeting of 24 February 2010 [now confirmed by the

answer to QoN 194] but rather gives the *entirely misleading impression* that CBA acted of their own volition.

At para 32 of their Initial submission ASIC recite an absolute fairy tale: that CFP lodged the Breach report “following a couple of major complaints from clients” and a review of 16 client files. No doubt CFP did do this “review” as a *pretext* for lodging the Breach Report [they had after all been receiving “major complaints” since at least September 2008] but the real, transparently obvious, reasons are as set out above.

Thus, even in their Initial Submission as recently as 2 August 2013, ASIC has sought to minimise CBA’s wilful culpability in this matter, to the point of rendering a distorted account to this Inquiry. Perhaps this was so as to minimise their own shortcomings as a regulator: the fact that a major player was so out of control on their watch and could only have behaved like this if they felt had little to fear from ASIC.

Note also the answer given by ASIC on 21 October 2013 to QoN 244:

“We understand that CFPL became aware of Mr Nguyen’s actions from at least as early as August 2008.”

This in itself raises the question of why the Breach Report was not filed by CFP until 11 months later.

I would infer that the ASIC Initial Submission to this Inquiry was lodged before the answers to the QoN were considered. The Initial Submission itself represented a significant step back from the statement by Mr Kell to the Senate at Budget Estimates two months earlier. Now I notice from para 31 of their Main submission of 31 October 2013 that ASIC intends to make a further submission on the CFPL matter later this year. Perhaps this will provide some much needed clarity.]

Jan Braund given to me as a client June 2009

Nguyen wouldn’t lie down. Although suspended, he continued to see clients secretly in a nearby shopping centre, brought over by one of his servicing planners, [REDACTED]. Despite this and helping Nguyen sanitise the files and perjuring herself at the AAT when she falsely claimed she had only worked for him for 2 weeks, [REDACTED] continues with the CBA to this day, unlike Don’s previous servicing planner Joe Chan, who is one of the 7 CFP advisers offered up to ASIC who were eventually banned as part of the fallout.

Apparently some of Nguyen’s client files ‘went missing’ at this time. They may have been in his car boot so he could see clients while suspended. Or they may have never existed. Or the missing files may have been some of the files that had been found non-compliant by CFP’s Compliance Department in September 2008, that Nguyen simply hadn’t had time to clean up.

One of the clients Nguyen saw while he was suspended was Jan Braund. He tried to explain away the vaporisation of her investments but she no longer trusted him.

Then an honest Colonial employee, [REDACTED], pointed Jan in the direction of the Investor Daily articles and she angrily demanded a new adviser. The team manager [REDACTED], after trying to tell Jan that “Don Nguyen was squeaky clean” gave her to me.

Jan had been having trouble with Don Nguyen and CFP for over a year. Her complaint that he had failed to act on her instructions in late 2007 to “safeguard” her portfolio was initially dismissed by CBA in the most condescending and insulting terms. Only after several debilitating years of conflict did they finally pay up.

The first time she spoke to me over the phone from New Zealand Jan Braund was angry, she had been fobbed off by the team manager, [REDACTED], and various ‘Customer Experience’ people. She threw in [REDACTED] face the fact that she knew Don Nguyen had been forging her instructions using a blank piece of paper with her signature on it.

CBA, through Colonial First State, were in the process of paying Jan Braund about \$100,000 in respect of a switch carried out in 2008 without any instruction from her. They refused to tell her who authorised the switch.

Jan Braund angrily told me that nobody at CBA would take her allegation of forgery seriously and asked “Do you take it seriously?” I said I did and gave her the contact details for CBA Group Security. Jan Braund sent a fax to CBA Group Security outlining her allegations of forgery on 2 July 2009. [It is important to note therefore that CBA has been aware of allegations of forgery since at least that time. ASIC is also aware of the fact that CBA has been aware of these allegations since that time and did not pass them onto ASIC. This allegation apparently did not feature in the CBA breach report to ASIC of 27 July 2009.]

Meanwhile I searched through Jan Braund’s client file. The blank piece of paper with the signature wasn’t there. By this time Nguyen had had 8 months to sanitize his files since we had tipped off ASIC.

Nevertheless, before I sent Jan Braund’s client file to CBA Group Security, knowing the file sanitation going on, I took a complete copy of her file and gave it to her.

Possession of this complete file and a demand by her representative, Financial Resolutions Australia [“FRA”], backed by her Federal MP Jill Hall, for CBA to produce a full copy of her file was also a key aspect of her unusually large, full payout: CBA had already suppressed a key document, a paraplanning instruction, helpful to her argument, from the documents they handed over under terms of the ASIC sponsored compensation scheme. The full file has never been handed over by CBA. Under pressure, even from ASIC in the end, to hand over these documents, CBA increased their offer suddenly from the \$330,000 it had crept up to over the years to \$880,000 in August 2012. The inference I would draw was that they did so to avoid handing over these documents.

In the absence of the signed sheet of paper in Jan Braund's client file, Group Security did not further investigate her allegations of forgery. A modicum of forensic work on the signatures would easily have proved that some were not genuine.

Don Nguyen Allowed to Resign from CFP and claim an income benefit from CBA

After the "Mallord" email more bombs exploded at CFP as the Group Security men started to interrogate the crooked CFP Managers.

I overheard one of these Managers, [REDACTED], in the open plan office, bleating to another Manager, [REDACTED], about the way he'd been worked over by CBA Group Security: "They had everything, [REDACTED], the File Note, every email I've ever written."

The CFP Managers were under more pressure than ever before and the time had come to quietly drop Don Nguyen over the side. I overheard [REDACTED] on Friday 26 June inviting Don Nguyen to come in for an 'update' meeting with [REDACTED], [REDACTED], at the Colonial Centre on Monday 29 June 2009 at 2pm.

I went in to the Colonial Centre to lodge some year end paper work at about the time I thought the meeting would be ending and at about 3.40pm came face to face with [REDACTED] and [REDACTED] as I walked up Martin Place. Their double takes and sheepish expressions sharpened my suspicion that something more than an 'update' meeting had been afoot.

The following Monday 6 July 2009 I found out what happened when [REDACTED] read out over the phone to [REDACTED] Don Nguyen's resignation letter, on grounds of ill health, dated 3 July 2009. Don also stated in this letter that the allegations against him were untrue.

[REDACTED], one of the Group Security men investigating Jan Braund's allegation of forgery, was present at that final meeting. He told her that Nguyen had walked in cocky and full of himself. After all Nguyen had, as a top business writer, been in this place many times before and had always been let off. As he was progressively confronted with the litany of his various sins however he apparently grew quieter until finally "he turned white."

At first we couldn't believe that the management hadn't sacked Nguyen on the spot. Then we reflected that it is tricky to sack someone over offences you have known about for at least 9 months, if not longer.

Then we started to hear 'Customer Experience' people based at Chatswood shamelessly telling the customers vainly seeking compensation from the bank that Don Nguyen had 'resigned'. 'Sacked' would have been such an ugly word in these circumstances.

Of course, the resignation on health grounds, which was stress and depression, all made sense when it emerged that Nguyen was allowed to claim under an income protection policy with the CBA group insurance company CommInsure, the same

company he had earlier defrauded. Thus Nguyen has been paid 75% of his former salary, \$70,000 per annum [possibly plus super], since he left CBA in July 2009 up to this day, while his victims and the whistleblowers for that matter, have been put through hell.

It is difficult to resist the conclusion that Nguyen's silence was bought as his revelations about what management encouraged him to do would have been too damaging to CFP.

That the claim is bogus and that CBA know it is bogus is shown by the fact that Nguyen was seeing clients whilst suspended right up to that final meeting. He would only have done so if he thought he would once again be reinstated and resume work. He walked into that meeting "cocky" no doubt thinking he would be reinstated and intending to resume work. The "inability" to work due to "stress and depression" only emerged *after* he was confronted with the fact of his forced resignation [although Nguyen would have been clever enough to have started setting it up beforehand as a backstop]. Nguyen's statement in his resignation letter that the allegations against him were untrue was a lie, as therefore was the claim that he was resigning because of ill health.

I believe the underwriting team at CommInsure were not happy about it but the payment was made on convenient "legal grounds". The underwriting team vented their disapproval by spreading the rotten story far and wide, which is something they wouldn't normally have done. Neither CBA nor ASIC saw fit to advise the Administrative Appeals Tribunal [AAT] who heard Nguyen's appeal against his banning order in March 2012, that financial hardship from not being able to work was hardly a relevant factor to be taken into consideration. I believe I advised [REDACTED] of ASIC about the income protection payment in early 2011.

[In the answer to QoN 292 ASIC claims they were not aware of Nguyen's income payment during the AAT proceedings and only became aware of this in August 2012. However in the answer to QoN 288 concerning a meeting that took place on 26 September 2011 [ie 6 months before the AAT Hearing] they state: "*The relevant ASIC officer...confirmed that ASIC would not take action in relation to allegations that Mr Nguyen...received an income protection benefit.*"

Recent revelations about the stress suffered by [REDACTED], at the hands of an alleged harasser [which by some convoluted process of logic peculiar to the CBA supposedly justified them in organising surveillance of this individual when he was attending a function Senator Williams was attending] makes me wonder if [REDACTED] is the next candidate for an income protection or workers compensation pension. [REDACTED], having overseen the thuggery towards the victims of Nguyen by the CBA, would seem to be an ideal candidate to take the fall for the CEO and Board of CBA, who have been conspicuously missing in action throughout this saga. My offers to meet with both CEO and the Board of CBA, to put them fully in the picture, have been declined.]

Despite the unfolding evidence of fraud and conspiracy on the part of CFP management, Group Security still went after the “leakers”, their original objective. The Ferrets were questioned on tape. ██████████ was accused by Group Security of being the “leaker”. He was accused of being in a conspiracy with Jeff Morris and ██████████ to get Don Nguyen. He was also asked questions about the amount of “liquid paper” in Nguyen’s files, whether he had sent Group Security the ‘Diary Note’ and whether he was “Mallord”. They had even figured out that “Mallord” related to the painter JMW Turner.

What was in the CBA Group Security Report of 2009 concerning the Don Nguyen scandal that went to senior management of CBA? Nobody knows, it remains buried in the CBA Chamber of Secrets, presumably along with the interview tapes. From the answers to QoN, ASIC accepted CBA’s claim to legal professional privilege over the Group Security report.

Whatever was in that report to CBA senior management, it didn’t seem to change what was going on. Aside from finally forcing Nguyen to walk the plank, nothing changed for the clients in 2009, still being fobbed off with little or no compensation, despite the usual CBA noises being made about ‘doing right by the clients’.

Another planner, ██████████, was brought in by CFP to replace Nguyen in soft soaping the clients from July 2009, wringing his hands and muttering “it’s the GFC” and persuading clients to accept the pitiful compensation, if any, offered by CFP/CBA. I spoke to him frequently about what he was doing. He knew it was wrong but he was being well paid to do it and he was being handed Nguyen’s client book on a plate.

A team was brought in to pick up where Nguyen left off on the files and the clients: Project Hartnett. Despite what ASIC seems to have been told by CBA, this operation began in June 2009 although it may not have been called Project Hartnett until later. Strangely, although the floor at Chatswood was only 10% occupied at most, separate premises were set up for the bulk of the Hartnett team, said in one internal adviser briefing by ██████████ to number as many as 40 people at one time. The secrecy surrounding Project Hartnett, the file sanitation by Nguyen that had gone before it, the sheer number and the demeanour of people working on it and the seemingly unnecessary and expensive off site location, all added to the impression that skulduggery was afoot. So did men in suits taking boxes of toxic files away from the Chatswood office.

To our increasing astonishment, senior management at CBA simply did not act on the CFP Managers conspiracy to dud the clients.

Nor, despite the Investor Daily articles that caused a furore in the industry, did ASIC. We inferred that they must now surely be involved in the background but it didn’t seem to make any difference to what was happening at CFP.

The answers to the QoN suggest that, while we were right in thinking that CFP/CBA would be forced to make a “voluntary” disclosure about Nguyen, which they did on 27 July 2009, we were wrong in thinking that either this

disclosure from CBA or the publicity from the Investor Daily articles would prod ASIC into action on our fax.

The cracks were starting to show through at CFP though. The [REDACTED], collected his hefty annual bonus a few months later in August of 2009 and no doubt seeing the writing on the wall, left for greener pastures: [REDACTED], where he remains as CEO to this day. [He has more recently recruited the infamous former [REDACTED], who were responsible for duping local councils into the CDO investments that went bad. Birds of a feather...]

He was allowed to do this by senior management of CBA, even though they knew, by then, what he had done. His equally complicit deputy, [REDACTED], was promoted to succeed him and left a year later in late 2010 with a hefty redundancy package.

Another manager intimately involved in the attempted cover up, [REDACTED], was protected - moved to another role in Colonial and then let go with a redundancy package reflecting his 15 years service only a few days before the Enforceable Undertaking was imposed on CFP by ASIC in October 2011.

Eventually the [REDACTED], who attended the meeting at CFP in May 2009 to identify the “leakers” to Investor Daily, also left with a generous payout.

The [REDACTED] who had been in this role for 6 years and received the ‘Mallord’ email of 4 June 2009, was transferred to another Group Executive role and continues to this day with CBA. Whether he knew about what was going on at CFP before the ‘Mallord’ email or not, he should have done. It happened on his watch and it caused untold misery to the victims. After the ‘Mallord’ email though, he was clearly on notice and a lot of bad things continued to happen in relation to the victims and the crooked managers paid off by CBA but he has not had to take responsibility. Despite what Mr Kell recently told the Senate, this part of the management team responsible for CFP is still at CBA.

The Ferrets survived for the time being. The hostility from CFP managers towards us was pretty clear. It was an incredibly stressful situation. Aside from trying to survive in a hostile environment to continue gathering information, ASIC’s indolence had forced us to basically expose ourselves [both CFP & Nguyen would easily work out who was behind the Investor Daily articles] and we had been concerned from the start about Nguyen’s mental state. I always took special care when walking to my car in the underground carpark.

[REDACTED] left CBA at the end of 2009, suffering acutely from the stress of the situation. In addition to everything else, the interrogation by Group Security had been particularly hard on him. But he still went with me into ASIC’s office in February 2010 to demand that they finally give their ‘urgent attention’ to the fax that had been sent to them 16 months before.

Whistleblowers Meeting With ASIC 24 February 2010

ASIC tries to imply that they instigated this meeting. Whilst it is literally true that they invited us to “come in from the cold” and meet with them, this invitation was only in response to persistent follow ups from us. We knew we could have gone in at any time. We did not do so earlier because of our concerns about Nguyen and ASIC’s ability to keep a secret. We would have preferred all along to remain anonymous. We went in when we did because we despaired of ever getting ASIC moving otherwise, because our cover was blown anyway and because not even our actions in mid 2009 had succeeded in getting through to them.

We met with [REDACTED] and [REDACTED] of ASIC.

[REDACTED] told me that I had “Whistleblower Protection” as from that day. He then went on to say, basically, that it wouldn’t be worth much. I said that didn’t bother me, we had kissed our jobs goodbye the day we decided to become whistleblowers, we wouldn’t want to stay in an organisation like that, we just wanted justice for the clients and for the people responsible to be driven out of the industry.

We handed over copies of the ‘Mallord’ email of 4 June 2009 and the CFP “Diary Note” of 15 October 2008 that should have shown them quite clearly how CBA had been snowing them – for a long time.

[REDACTED], who I don’t think had been at ASIC very long, was particularly taken aback by the ‘Mallord’ email sent to CBA senior management. In fact, she seemed outraged by it.

I explained various problems with the CFP model, including how the metricated bonus / remuneration structure for managers as well as planners, was a key part of the problem. How the planners, under pressure from sales targets just to keep their jobs, let alone earn a bonus, were hopelessly conflicted in the advice they gave and how managers were inclined to support this pressure and even to protect dodgy planners producing high sales for the sake of their own bonuses. In ASIC speak, conflicted remuneration extended further up the line than just the front line planners.

I remember [REDACTED] shocked expression as I explained how planners were given 2 weeks notice of the 4 client files selected for their annual audit, such that planners like Nguyen had 2 weeks to get 4 files into shape. This was possibly one of those nuances that they hadn’t picked up in their review.

We urged them to seize the client files, which were still being worked on. Despite this I said there would probably still be signs of the manipulation that had taken place and that we could probably help them to pick that up with our inside knowledge. [REDACTED] then said something about how their skilled investigators would be able to pick it up, no problem, basically brushing off our offer of assistance. I repeated that nonetheless we would come in and help them go through the files whenever they asked for our help, whatever it took: evenings, weekends. This offer was never taken up.

[Nor, in fact, did ASIC come back to us over the following months and years for help in verifying the information fed to them by CFP. Contact by emails, phone calls and

the two further meetings I had alone with ██████████ in early 2011 and 19 April 2012 were initiated by us.]

As I laid it all out for them and explained the management conspiracy that had been underway since October 2008 I said “I know you will find this hard to believe...”

██████████ interrupted me to say “Let me stop you right there Jeff, we don’t find it at all hard to believe, we know this sort of thing goes on all the time, it’s just that we don’t often get a chance to do anything about unless there’s someone like you on the inside.”

As we walked away from the meeting I vented to ██████████ about this comment:

“If they know this sort of thing goes on all the time, why the hell don’t they get off their arses and do something about it instead of sitting in their offices waiting for someone to drop it in their lap? It doesn’t seem to occur to them that they are the regulator who is *responsible* for what goes on in this industry.”

[It is noteworthy that ASIC makes no reference to what was discussed at this meeting [or the documents handed over – see above] at para 36. of their Initial Submission to this Inquiry and then go on to say at para 37. : “*Following the work carried out in 2008 and 2009, ASIC made a decision in March 2010 that the matter should be dealt with by its Enforcement team.*”

In the non-answer that they gave to QoN 180 ASIC asserts that it “...formed its own view that the CFPL matter needed to move from a cooperation based resolution of concerns to a formal enforcement action...” So after 17 months chasing them to seize the files they apparently “formed their own view.” ASIC’s position would seem to be that our visit in February 2010 had no bearing on what followed soon afterwards.]

Notice by ASIC 24 March 2010 to CFP requiring handover files on 9 April 2010

██████████ conveyed the news to the file sanitation team at the Chatswood office that ASIC had served a notice giving 2 weeks for the client files to be handed over. It stuck in my mind at the time because I thought “Great, they’ve given them 2 weeks to finish their clean up.”

One of the managers involved in the file clean up, ██████████, slumped in his chair when ██████████ gave him the news and said “We’re f---ed.”

One of the others on the file clean up stood up while talking on the phone and said:

“What I’m saying to you is that there’s 50 files missing, so we either need to reconstruct another 50 files or tell ASIC we don’t have them.”

[At para 38 of their Initial Submission [of 2 August] ASIC says they required “*immediate production of documents relating to Mr Nguyen*” on 24 March. At first I thought this must be what 2 weeks notice equates to in ASIC speak.

However, on 21 October, in the answers to QoN 200. f. & g., a slightly different picture emerges: ASIC reveals that only for *some* documents was immediate production required, CFP was given until 9 April 2010 to hand over the client files, just over 2 weeks notice.

Given the attention drawn by the Fairfax Media articles in June 2013 to ASIC's failure to secure the client files for 17 months after our initial fax of 30 October 2008 warned they were being "cleaned up", it may be that ASIC was reluctant to admit that they had then given CBA a further 2 weeks notice to finish the job. The bureaucratic form of words arrived at in para 38. is, I submit, whilst literally true also misleading in context. When the time came to answer the specific QoN some months later however presumably such devices no longer served.]

File Manipulation by Project Hartnett after the departure of Nguyen

CBA will no doubt try to argue that there is an innocent meaning to "reconstruct" in that existing documents on the COIN paraplanning system were simply printed out and placed on a hardcopy file.

[The answers to the QoN 187 and 188 would seem to confirm that ASIC has accepted this explanation uncritically. I guess after ignoring warnings about file sanitation for 17 months they really have no alternative but to accept this innocent explanation uncritically. Not to do so would indict ASIC.

It also seems highly likely that "reconstructed" files, whether "reverse engineered" or not and whether with or without client signatures scanned in, were passed off to unsuspecting clients as their "advice documents" with no reference to the fact that they had been "reconstructed". Many of the clients may have assumed they had been provided with these documents at the time they invested when in fact they had not been. This deficiency, if known to the clients, would affect the compensation payable. ASIC seems to have missed this point, that is about the *use* that "reconstructed" documents could be put to by CFP in their dealings with the victims, which of course they were left to do on their own. ASIC's answer to QoN 203 would suggest that it could have allowed CFP to pass off unsigned, "reconstructed" documents to clients with full credit: ASIC didn't review all the files and doesn't know how many documents are unsigned. It also doesn't seem to have monitored communication by CFP with the clients, rather just accepted what it was told.]

There was a large team of people *working on* those files from June 2009 to March 2010. They were not just "reviewing" the files to pay people compensation, because they weren't really interested in paying compensation at that stage, these people were *working on* the files. Most of this and I suspect the more clandestine work, took place in an office in the Sydney CBD set up for the purpose. There were a few people at Chatswood working closely with the planner [REDACTED] whose job it was to dupe the clients face to face but the main work took place in the city. A relay of contract staff were used for this work and some permanent staff on rotation.

██████████, a Servicing Planner and former Paraplanner, *thus skilled in putting these documents together from scratch, rather than just printing them out*, was involved for a month and he spoke of “reverse engineering” client fact finds and Statements of Advice to his Senior Planner ██████████. That is, you worked *backwards* from the investments actually made and other client data available on the bank’s CommSee client information system and from Colonial First State to compile fictitious advice documents. He gave more detail about this to ██████████, to whom he reported, than to me but he was clearly uncomfortable about what he was being told to do. Even knowing what I knew at the time, I frankly found this hard to believe as it seemed inconceivable to me that an organisation like CBA could be this stupid.

[The “modified” Statement of Advice given to the Robyn Blanch though is clear evidence of altering advice documents by CFP/CBA. Note that the original explanation given by ██████████ of CBA “Customer Experience” to the Blanch’s daughter Merilyn Swan for the different date on the “modified” Statement of Advice: that the document automatically updated when it was printed out again, is completely untrue. The opposite is in fact the case: the original Statement of Advice can always be reprinted and will retain the original date as long as the document has not been altered. The document *only* updates when it has been changed, as it had been in this case, self evidently to improve the CBA’s position in relation to the Blanch’s complaint. If ██████████ had just wished to give Robyn Blanch a copy of her original Statement of Advice, rather than a doctored version, all he had to do was push the “Print” button on the COIN software. He was caught out here because the Blanches’ played possum and did not admit to having a copy of the original document so CBA felt free to improve on it. I understand these issues will be covered in more detail in other submissions from other parties.]

I suspect that a lot of the *working on* the files would have also involved removing any evidence of malpractice such as signatures on blank pieces of paper, as occurred earlier in Mrs Braund’s case and also suppressing documents that would have been unhelpful to minimising compensation payable, such as the paraplanning instruction in her file.

The crucial client fact find documents, *of which the clients were not given a copy at the time they received their Statement of Advice*, could easily have been manipulated by liquid paper and photocopying or substituting blank pages in the 44 odd page document. I have seen pages from different versions of this document [which was updated periodically] spliced together. It is also noteworthy that to my knowledge CBA has not produced and has not been made by ASIC to produce, a single original document. Only photocopies have been provided, despite the fact that there would be no reason to retain anything other than original documents with original signatures in the client file.

Death of Whistleblower ██████████ June 2010

██████████ died in his sleep at 35 years of age, leaving a 16 day old baby. He had left CFP 6 months earlier. I can’t say that the stress I saw him endure caused his death

but I am sure it didn't help. Ever since his passing I have regretted not acting alone in this matter, I'll never know whether it contributed to his premature death.

Compensation before the ASIC Scheme

No more revealing illustration of the sheer immorality of the CBA corporate machine can be found than their contemptuous treatment of the victims of Nguyen from 2008 to 2010 when they thought they would be left completely to their own devices to determine what was "fair". That this continued even after the public exposure of Nguyen's activities in Investor Daily in mid 2009 is remarkable and in itself a telling indication of the contempt in which they held ASIC: they felt, with good reason that they had nothing to fear from this regulator.

The experiences related by Fairfax Media for Mrs Jan Braund, Mrs Robyn Blanch and Mrs Patricia Babbage bear this out.

[So too do the answers to QoN 227. In seeking to demonstrate the virtues of Project Hartnett and the ASIC approved compensation scheme, in reality all this answer shows is how ruthlessly the CBA sought to rip off the victims prior to the advent of the ASIC scheme. Case A shows compensation increasing by 244% over what CBA's paid in December 2009 - which may or may not have been their first offer, which could have been lower or even zero. Case B shows an increase of 625% over what the CBA considered to be "doing right by their customers" in October 2009. The victims were put through this misery while our fax to ASIC gathered dust and even after we alerted CBA senior management in June 2009.]

As her new adviser, I became involved in trying to resolve Mrs Braund's complaint for a few months, which gave me an insight into how the process was being corrupted. I had a series of meetings and teleconferences with various people from July to September 2010. After which, because of my unhelpful attitude and the fact that CBA Group Security blew my cover as the internal whistleblower, I was excluded.

I couldn't believe my ears at one teleconference when [REDACTED] from "Customer Experience" dismissed something Mrs Braund asserted on the basis that "Don wouldn't have done that." and there was a chorus of agreement. I couldn't see how, at that stage in late 2010 after ASIC had seized the files and Maurice Blackburn had commenced their class action, that you could blithely rule out the possibility of Don doing anything. There were various "Customer Experience" people on the line and a representative from in house legal. They all seemed to think it was good enough to just assume that Mrs Braund had made it up and dismiss it out of hand.

I got no support from my manager, [REDACTED] as I stated that I was the only person present who had met Mrs Braund and I was firmly of the view that she was being 100% truthful, that I didn't think we had any valid basis for disputing what she had said as, even if we could put Don on the stand to contradict her, which I imagined we couldn't, he would hardly be a witness of credit.

This went down like a lead balloon. Nobody wanted to hear it. There was some further discussion during which somebody, I think the in house lawyer, asked “Who put her onto Group Security in the first place?” After a few “Don’t knows” the original speaker said “I’ll find out.”

Shortly after this I overheard [REDACTED] talking on the phone to [REDACTED] [REDACTED]. We heard back from Group Security: it was exactly who you thought it was. They think it’s been him all along. [pause] Yeah, you’ve said that from the start.” [REDACTED] had denounced me as the leaker at the management meeting after the Investor Daily articles appeared.] Someone in CBA Group Security had breached my whistleblower confidentiality.

On page 6 of a letter dated 21 September 2010, Mrs Braund was basically called a liar by CBA “Customer Experience”. The problem was probably the magnitude of the damages: if you accepted Mrs Braund’s position these would have risen from \$200k to about \$700k. I personally had no trouble believing that Don’s arrogance would have led to him disregarding an instruction from a client, as Mrs Braund alleged, on the basis that he knew better.

ASIC Approved Compensation Scheme November 2010

I think ASIC lauded CBA’s “cooperative and consultative approach” when they announced this scheme, after 2 years of CBA trying to avoid taking responsibility for their employee Nguyen’s malpractice since at least September 2008.

In their answer to QoN 194, despite confirming that we gave ASIC copies of the Diary Note and Mallord email in our first meeting in February 2010, which demonstrated clearly CBA’s moral turpitude, ASIC go on to say that:

“CBA did demonstrate a cooperative and consultative approach throughout the Project Hartnett and Enforceable Undertaking process.”

In other words, after CBA were caught with their hand in the cookie jar they developed a whole new attitude, at least as far as ASIC were concerned.

If only it were true!

Sadly, it just demonstrates how ASIC was deceived, or deceived itself. Unsurprisingly CBA continued to behave with the same lack of good faith, though forced to operate with greater subtlety to conceal the fact. Nowhere is this demonstrated more clearly than in relation to the “ASIC sponsored” compensation scheme.

The methodology of this scheme at first glance seems quite reasonable:

- reassess the clients risk profiles [which it is common ground that Nguyen never did]
- invest in the standard investment portfolios for that risk profile [instead of the bizarre and overly aggressive products Nguyen used]
- from the same inception date

- so as to put clients in the position they should have been in had they received “proper” advice
- have this methodology verified by an “independent expert” and
- allow people \$5,000 to get “independent advice”.

The devil, of course, is in the detail - which ASIC are not good at. In any event they seem to have left the implementation of the scheme to CBA. **[The answers to QoN confirm this.]**

Weaknesses in the scheme partly reflect flaws in the CFP business model itself. Part of this is the “harvesting” of clients from the retail deposit base – “horizontal integration” if you like whereby retail bank clients, some of whom, should, in all conscience, simply have been left in cash and term deposits, were steered into a CFP product that provided no benefit for them, in fact gave a worse outcome. The whole CFP process, including the risk profiling, is designed to achieve this steering of people into products that will benefit the organisation, not the client. The compensation reconstruction above is based on the standard, mediocre, fee laden products whereas a reconstruction based on just leaving these people alone in their bank deposits would have provided a superior outcome. Unscrupulous planners like Nguyen would steer vulnerable people into unnecessary product where better people would have left them alone. It follows that many of Nguyen’s and the other planners clients should have been compensated on a pure cash basis but I don’t think the scheme allowed sufficiently for this as the emphasis by CFP was keeping people in “product”.

Who determines what the “appropriate” risk profile is under the scheme? CFP does. In some case this was done from the file without talking to the client, in contravention of the “know your client” principle. In other cases, it was [REDACTED] job as the clients “new” financial adviser to meet with them and do a new risk profile ostensibly for the purpose of giving them advice. The clients were *not advised* that this risk profile would be used for their compensation calculation. In this period, generally speaking, the more aggressive the risk profile, the less the compensation would be. Any financial adviser, if he wanted to, could nudge a client up one or two levels. In case there was any doubt as to what was expected of [REDACTED], as he related it to me at the time, the then [REDACTED], instructed him to “Make the risk profiles more conservative but try not to make them too conservative.”

Anyway, [REDACTED] was getting a lot of help with the risk profiles from the Project Hartnett team. From numerous comments he made to me in the tea room it was clear that the impact on the compensation payable of alternative risk profiles for each client was being modelled *before* the selection of a risk profile was made. That is, before he contacted any clients, [REDACTED] *knew* which risk profiles would give the CBA the best outcome. He would therefore endeavour from the start to get to the right outcome for the CBA rather than the client in an utter corruption of the risk profiling process.

Yet they were even more devious. In some cases, the modelling showed that, depending on factors such as time of entry into the market, amount invested and specific products chosen, giving someone a Conservative [30% Growth Assets] rather than say a Moderate [60% Growth Assets] reference portfolio would have only a negligible impact on the compensation amount. In such cases, where the lower risk

portfolio would not have much affect on the compensation payable, [REDACTED] was allowed, indeed encouraged to give clients the lower risk portfolio. The idea was to make the *overall picture* in terms of risk profile adjustments look rosier for the benefit of the independent expert, which allowed them to stick on higher risk profiles where the compensation costs were higher. I will never forget [REDACTED] sardonic smile as he explained this little trick to me. I think he was part ashamed, part wistful.

Because Nguyen's risk profiles and product choices were always so aggressive and the portfolios got vaporised during the GFC, even with a massaged risk profile and a mediocre product, the clients would almost invariably be receiving an offer of some compensation. This would come from their new adviser [REDACTED] or sometimes even just in the mail. Although normally the compensation would only reduce the losses the clients had made, it would naturally come as *manna from heaven*. Particularly as they were never told the full story about Nguyen by CBA, just that he had "resigned" and the advice they had received from him "may have been inappropriate".

The clients would thus naturally tend to jump at whatever they were first offered [with rare exceptions like Patricia Babbage, in which case the compensation would grudgingly be increased, with risk profiles closer to reality].

[Ironically, QoN 227 Case C is a good example of this, where the compensation increases nearly fourfold over the original Hartnett offer. The "additional information" supposedly provided by clients in this case should of course have been sought by CBA before Hartnett made their first compensation offer, it is nonsensical to be making offers without first gathering all the relevant information. From my knowledge of what went on though, I would strongly suspect that "providing additional information" is simply a euphemism for "refusing to accept the lowball offer".

Note that the risk profile in Case C drops *two levels* from "Growth" [80% growth assets] to "Conservative" [30% growth assets]. This is patently absurd and indicates only how ridiculous the original risk profile was and therefore how low was the original compensation offered. In this case the compensation was adjusted, nearly fourfold, because the clients kicked up, or on ASIC's version provided "additional information". My question is: what about the vast majority of clients who accepted Hartnett's *first* offer without quibbling as it came as *manna from heaven*?

In case the clients were in any doubt they could consult one of the "independent advisers" of which CFP had thoughtfully provided a list, of lawyers, at the end of one letter I saw. I don't know what a lawyer would have done, or could have done, for the \$5,000 on offer to review the fairness of the offer but they were no doubt able to advise on the legal effect of the Deed of Release the clients were forced to sign.

Whenever a client had the temerity to want to select their own independent "independent adviser" ie one not on the CBA approved list, CBA would then reserve the right to refuse to deal with them and not to pay them, particularly if they in turn had the audacity to question CBA's calculations or seek to increase the compensation for their client.

[FRA (Financial Resolutions Australia) paid the price for not rolling over. They believe that QoN 227 Case D, proudly cited by ASIC as yet another success story for Project Hartnett, is eerily similar to their first Nguyen case for a client called ██████████. It is thus more of a story about their advocacy in overturning the Growth risk profile and thus collapsing the inappropriate gearing structure. This resulted in a tripling of compensation over the Hartnett offer – and they believe it should have been higher still but the client was worn down and exhausted and couldn't go on any longer. FRA represented only a handful of clients and ASIC's Case D again raises the question: what about the other clients, particularly the other gearing clients, who were not represented by FRA and took the first Hartnett offer?

FRA then represented Jan Braund and with a lot of persistence, quadrupled her compensation on offer from CFP from \$220,000 under Hartnett (pre Hartnett of course CFP's first offer was zero) to \$880,000. This was enough for CFP and they have since refused to deal with FRA on spurious grounds or even to pay them for other clients where their work increased initial lowball Hartnett offers. ASIC is aware of all this but has done nothing about it and disingenuously states in the answers to the QoN that the relationship has “broken down”. ASIC has thus cravenly allowed CFP to dictate to people who their “independent” adviser will be.]

The “independent expert” seems to have been an “independent accounting firm” who seem to have confined themselves to checking the spreadsheet formula and conducting some spot checks. This simple formula did not take into account the fact that there is, or should be, more to financial planning than selecting a risk profile and flogging a product. **[I will address these issues in more detail in a separate submission on the answers received to the QoN.]**

Where gearing is involved for example, a reduction in the risk profile could actually remove the justification for the gearing strategy, indeed in some cases, for the whole strategy. This would vastly increase the level of compensation payable. In the ██████████ case, CBA tried very hard to avoid dropping the risk profile for this reason. I would imagine this was standard operating procedure, given the bad faith with which they approached the whole compensation question.

There is also the problem that the formula only compensated to a “product flogging” standard of advice, not to best practice or even good practice standard. Issues not covered by the formula such as the use of the wrong structures were not compensated.

Reliance was shamelessly placed by CFP on Nguyen falsely ticking of the box for “Defined Scope Advice” rather than “Comprehensive Advice” to avoid compensating for his other areas of malpractice. This issue came up in the AAT decision on his banning order where a client stated they had never requested defined scope advice. If asked, I have no doubt most of his clients never actually requested this but it got CBA off the hook for a lot of compensation; because, at the end of the day, they made the rules.

A compliance manager, ██████████, told me that the contract people doing the compensation were not qualified planners. He agreed with my suggestion that maybe

they were employed because they would not find any problems. [He also told me about attending “meetings that never happened, in an office in the city that did not exist” about the unbelievably bad stuff Nguyen did.]

Whilst the compensation scheme would have produced reasonable outcomes in some cases, given the above, I suspect it did not do so in the majority of cases. Furthermore, the victims who have been short changed under this *ASIC endorsed* scheme would, in almost all cases, be completely unaware of it. Many of these victims were elderly or vulnerable.

In the interests of justice, I submit that all compensation paid under this scheme should be reviewed by competent, independent professionals. I believe that the amount of compensation due to Nguyen victims is probably at least twice what has actually been paid by CBA ie another \$25 million.

Meeting With [REDACTED] of ASIC Early 2011

I sought a meeting with him to try to explain the bad faith underlying CBA’s conduct of the compensation program and to ask him to get involved, or get the independent expert involved, in looking at Mrs Braund’s case, which was just being stonewalled. I thought this was a perfect example of what was going wrong.

He elected not to hear me on the problems with the compensation program. He wouldn’t even tell me who the independent expert was and said ASIC would not get involved in individual cases at that stage. He suggested she get a lawyer. This would have cost her 30% of her compensation based on one offer she received from Maurice Blackburn. [She elected to go with FRA after this conversation: it was impossible for her to deal with CFP without representation.]

He told me that his objectives were:

Get compensation for the victims
That Don Nguyen never worked as a planner again.
Go after managers who’d tried to cover it up
Criminal charges for Don Nguyen

Ultimately he settled for a lot less.

Further submissions

I would propose to provide separate briefer submissions on the following matters:

- The later aspects of ASIC’s involvement in the Nguyen matter, for clarity dealing seriatim with points raised in both their Initial Submission to this Inquiry and answers to recent Questions on Notice.
- Our experience as ASIC whistleblowers.

- Problems with the vertically integrated model with particular reference to the CFP/ Colonial Mortgage Fund disaster and ASIC's FOFA reforms deleterious effect in driving further industry consolidation.
- CFP's "Standard Service" adviser fee swindle [referred to in another submission by the Cadawalladers].

and possibly other matters relevant to this Inquiry.

Closing Remarks

I have attempted to provide a narrative to explain what occurred, particularly in the earlier stages of the Nguyen/CFP affair, which seems to have been largely airbrushed from ASIC's own account. Hopefully this will assist to make sense of what happened and why.

I was incensed by Mr Kell's hollow rhetoric at the Senate Estimates in June and in opinion piece he wrote for the Fairfax press (attached). I hope I have provided an opportunity to benchmark ASIC's claimed "achievements" against reality.

My own belief is that ASIC's soft approach with major players is largely to blame for the state of the financial advice industry. I would suggest that their approach is diametrically wrong. ASIC had the opportunity here, by doing a thorough job, to send a shockwave through the industry.

Instead of which, perhaps for the reasons set out in my opening remarks or perhaps just influenced by their history of failures, ASIC chose to strike a fairly paltry plea bargain: an EU and 7 dodgy planners offered up *after, in some cases, years after*, they had left CFP.

The analogy that comes to mind is of the Police doing a deal with a drug cartel, a headline grabbing bust and 7 former low level street peddlers, in most cases now working for a rival cartel, handed over. The illusion of law enforcement and business goes on.

The more you examine ASIC's words the more internal inconsistencies arise. What strikes me about the Initial Submission from ASIC on CFP is the claim that they "were in there" in 2007-8 and supposedly found "significant and widespread problems with the quality of advice". Leaving aside for the moment the small elephant in the room that, if true, this would make their general tardiness even more unacceptable; such a finding is simply inconsistent with there being only seven "rogue" planners out of a revolving population of 750. All of the rogues of course offered up by CFP, not caught by ASIC. Because the answers to the Questions on Notice reveal ASIC did virtually no investigative work of their own but basically just added what CFP gave them to what the whistleblowers did. I have *no doubt* that a proper investigation would reveal *at least* 100 current or former planners of CFP whose clients should be compensated for dodgy/and or just plain incompetent, advice.

In reality I suspect CBA/CFP owes its clients more like \$500 million than \$25 million for the “significant and widespread problems with the quality of advice” to use ASIC’s words.

The opportunity to do the job properly and send a shock wave reverberating through the industry, as ASIC should have done, has not entirely disappeared. A judicial inquiry into the CFP/ASIC affair would have the time to investigate the matter thoroughly and get to the truth. I believe that a prima facie case will be made out in the course of this Inquiry to justify such a course of action.

Yours sincerely

Jeffrey Morris