

Commonwealth Bank Group

Commonwealth Bank of Australia

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Dr Kathleen Dermody
Committee Secretary
Senate Economics References Committee
PO Box 6100
Parliament House
Canberra ACT 2600

BY EMAIL: economics.sen@aph.gov.au

Dear Dr Dermody,

RE: Scrutiny of Financial Advice Inquiry – Questions on Notice

On behalf of the Commonwealth Bank Group, please find attached the responses to the Questions on Notice issued to Ian Narev and Annabel Spring at the Scrutiny of Financial Advice Inquiry on Tuesday 21 April 2015.

Yours sincerely,

David Cohen
Group General Counsel
Commonwealth Bank of Australia

Question on Notice: 01

Senator XENOPHON: I go to the rogue planner, Don Nguyen, who was previously suspended by the CBA, in 2008, and then reinstated and promoted. Perhaps on notice, can you explain to us how that occurred?

Answer

Commonwealth Bank has acknowledged that it took too long to identify and address Mr Nguyen's misconduct and we sincerely regret that this did not occur quickly enough.

In September 2008 Mr Nguyen was suspended and Group Security commenced an investigation into accusations of file tampering. Group Security found insufficient evidence to refer the matter for further investigation.

In October 2008 Mr Nguyen was reinstated in a new position of Senior Financial Planner and was placed on high supervision including the pre-vetting of all advice provided.

Managers who approved this decision are no longer employed by the Commonwealth Bank. A decision like this would not be made by the business today.

In May 2009 a request was made by Commonwealth Bank Legal Services to Group Security to conduct a formal investigation into Don Nguyen. Mr Nguyen was then placed on immediate special leave.

On 6 July 2009 Mr Nguyen resigned whilst this matter was still under investigation.

Commonwealth Bank has since reported Don Nguyen's behaviour to police.

Question on Notice: 02

Senator XENOPHON: Having been a lawyer for over 30 years and having done a lot of these claims, I find it incredible that it was not contested by the Commonwealth Bank. Is there a confidentiality clause in Mr Nguyen's agreement?

Mr Narev: I would need to take that on notice. I do not know.

Answer

There is no confidentiality clause in Mr Nguyen's insurance policy which would prevent Mr Nguyen from discussing his claim.

Question on Notice: 03

Senator XENOPHON: In terms of the pub test, I think many would say about the agreement or the payment to Mr Nguyen—without you contesting the claim that many lawyers would find suspect—that you basically paid him off with hush money. What would you say to that?

Mr Narev: You will appreciate with a legal background—indeed I have a legal background as well—that you look at these things very hard, you get legal advice saying you are required to make the payment and you make the payment. If you put yourself—

Senator XENOPHON: Is this internal advice or external?

Mr Narev: I would need to take that on notice. It is certainly internally and I think it is externally.

Answer

Both internal and external legal advice has been received in relation to this matter.

Question on Notice: 04

Senator CANAVAN: Can your financial advisers still take out your products?

Mr Narev: I think the answer would be yes but we would need to check that.

Answer

Yes, Commonwealth Bank staff can access Commonwealth Bank products.

Commonwealth Bank staff are entitled to access insurance products just like any other member of the community, except where there is a demonstrated conflict of interest.

An exclusion was added to the CommInsure personal insurance product suite in August 2013 so that customers would be excluded from the payment of a benefit in circumstances where the person was banned or disqualified.

That exclusion reads:

We won't pay a benefit (including a Permanent Disablement benefit, where applicable) for any condition which arises, directly or indirectly, as a result of:

- [...]
- [...]
- *A permanent or temporary banning, deregistration or disqualification which:*
 - *Arises solely from disciplinary action undertaken against the life insured and*
 - *Prevents them from pursuing, practising or engaging in their occupation or profession*

It's against the law for us to make certain payments because of legislation in connection with health insurance, including the Private Health Insurance Act 2007 (Cth). We won't make a payment if it would cause us to infringe this legislation.

Question on Notice: 05

Senator XENOPHON: So they can put in a claim for stress as a result of being fired or as a result of being struck off as a financial adviser and they can still get income protection?

Mr Narev: We would need to check that.

Answer

Mr Nguyen took out this insurance policy four years prior to ceasing employment with the Group. The contract was for income protection which pays in the event of a disablement.

Commonwealth Bank believes Mr Nguyen was treated the same as any customer and his claim was assessed objectively on the basis of the evidence available. It was on that basis that the claim payment was made. Under the contract CommInsure would still have to pay even if Mr Nguyen had been fired.

This is because at the time Mr Nguyen's contract was issued, like all similar Income Protection contracts of this type at that time, the contract did not allow the Insurer not to pay when an insured has lost their job because of breaches of Financial Services Laws or professional standards.

These contract clauses have since been updated and new policies would no longer allow payments in circumstances where the person was banned or disqualified.

Question on Notice: 06

Senator XENOPHON: Because of our time constraints, could you please take on notice: what have you done in respect of that [allegations of file sanitation] and has it been done externally; what are the processes and how robust are they; and what is the nature of the correspondence with those auditing that process, particularly in relation to the very serious allegations made by Mr Morris of file sanitation which I think are incredibly serious.

Answer

In 2009 Commonwealth Bank Group Security investigated allegations that files were “sanitised”. However these investigations did not substantiate any of these claims.

In light of these allegations, two other major initiatives have been undertaken.

Firstly, the Commonwealth Bank has previously outlined that record keeping for the period in question was poor and as such, Commonwealth Financial Planning underwent significant changes, including implementing an Electronic Document Management System for all salaried Advisers. This system now provides a central and secure repository for Advisers to store all advice related customer records.

In a report to ASIC in 2013, PwC reported that the significant improvements made have fundamentally reshaped the risk management framework of Commonwealth Financial Planning.

Secondly, McGrathNicol have been appointed as the Independent Forensic Expert to the Open Advice Review program. McGrathNicol is a leading Australian advisory firm with extensive experience in forensic investigation. McGrathNicol has a team of specialists on fraud investigation who have not had any involvement with past programs to remediate Commonwealth Bank's financial planning customers.

As an independent forensic expert, McGrathNicol's role will be to investigate any concerns raised by customers about possible fraud or forgery and independently investigate those concerns. In these cases, Commonwealth Bank will refer the case to McGrathNicol for investigation and, where applicable, escalate the case to relevant authorities.

Question on Notice: 07

Senator XENOPHON: But was [Brendan French] aware of Mr Nguyen's malfeasance from 2008?

Mr Narev: I would need to check in terms of when he became aware of that, but he certainly was not complicit and we have no evidence that he was complicit in that.

Senator XENOPHON: I have not asked you that question. I asked: was he aware of Mr Nguyen's malfeasance and when was he aware of it?

Mr Narev: I would need to check that with Brendan.

Senator XENOPHON: Right. In terms of Dr French's awareness of bad financial advice and fraudulent conduct by others, to what extent was he aware of it and what actions did he take at the time?

Mr Narev: That is something, again, I would need to check with Brendan French.

Answer

Brendan French is an experienced executive with considerable expertise in customer relations, dispute resolution and remediation.

Dr French has advised he had no knowledge of Mr Nguyen's activity while Mr Nguyen was a Commonwealth Financial Planning adviser. Dr French has never been involved in running the Commonwealth Financial Planning business.

At the time of the events in 2008, customer complaints were handled by customer experience / customer relations teams within individual Commonwealth Bank businesses. Complaints made about Don Nguyen were handled by a team within Colonial First State. Decisions made in relation to these complaints were those of the relevant Wealth Management executives.

At this time Dr French was in charge of a team which largely dealt with matters relating to the Retail Bank. He had no role in the investigation of Don Nguyen nor did he have decision-making or financial authority in relation to complaints by Mr Nguyen's clients.

Dr French advises he first became aware of allegations regarding Mr Nguyen's conduct in late 2009 around the time that public commentary began to focus on Mr Nguyen. In April 2010 he was invited by Colonial First State to join twelve other executives on the Project Hartnett steering committee (the project under which Mr Nguyen's clients were later remediated). Although Dr French was a member of the steering committee, the Project Hartnett remediation team and function were managed by the Colonial First State business, not by Dr French, who did not have day to day involvement in its work.

Project Hartnett concluded the remediation of Mr Nguyen's clients in March 2012 after the business had completed a review of over 1,500 such clients. In early 2013, a very small number of matters involving clients who were either dissatisfied with the outcome of the remediation process or who hadn't responded to contact were forwarded to Dr French, who then wrote to those clients.

Dr French was aware that, as well as conforming with an enforceable undertaking to ASIC from October 2011 to October 2013, Commonwealth Financial Planning was also remediating affected clients of some financial planners. This remediation was known as Project Baringa. However, as with Project Hartnett, Dr French did not have day to day involvement.

Question on Notice: 08

Senator XENOPHON: All I ask, in order to assure yourself and the victims of bad advice from your advisers, is: will there be a robust, independent assessment to deal with the allegations that were raised? Again, to be fair to Dr French, I do not know about the veracity of those allegations or concerns about a conflict of interest.

Mr Narev: Yes, there will be. There is already and there will continue to be.

Senator XENOPHON: Can you give the committee details in respect of that as a matter of some urgency?

Mr Narev: As I have said, there is a first 45-page report, which no doubt you will have seen at the end of last year. You will get another one in even greater detail in May from one of the world's leading, independent experts on programs of this nature to satisfy everybody that it is a program of good standing, including Mr French's involvement.

Senator XENOPHON: Could you provide the committee with the documents in respect of that, including what investigations have been held in respect of the allegations about this made in public forums, because there are many victims who feel that the system is stacked against them because of those allegations.

Answer

Promontory Financial Group Australasia (Promontory) has been engaged by Commonwealth Bank as an Independent Expert to oversee the Open Advice Review program. Promontory is responsible for monitoring, reviewing and reporting on the Program and its progress. These reports will be made public.

Please refer to the Initial Report by the Independent Expert Promontory Financial which is available here and which describes governance structures within the Open Advice Review:

<https://www.commbank.com.au/content/dam/commbank/about-us/who-we-are/open-advice-review/promontory-initial-report.pdf>

Promontory will continue to report on the program, with the next report expected in May. Promontory reports will be made publicly available on the Commonwealth Bank website.

As described in Question on Notice 07, Dr French is an experienced executive with considerable expertise in customer relations, dispute resolution and remediation.

Dr French's knowledge of and involvement in the remediation of financial advice customers is described in the answer to Question on Notice 07. Otherwise, his oversight of customer remediation for Commonwealth Financial Planning and Financial Wisdom clients commenced in July 2014 when the Open Advice Review program was announced.

It has been alleged that that Dr French had a conflict of interest insofar as he was, from July 2009 until June 2012, a director of the Financial Ombudsman Service, (FOS). Dr French had no such conflict. Due to his experience in dispute resolution and banking, he was proposed by the Australian Bankers' Association and his directorship was approved by the Chairman and Board of FOS in accordance with the FOS Constitution.

FOS, as with all industry ombudsman bodies in Australia across multiple sectors, operates via a representative board (usually comprised of half industry and half consumer representatives, together with an independent Chair). No FOS director has any involvement whatsoever with individual case assessments.

Question on Notice: 09

Senator CANAVAN: Mr Narev, I just wanted to follow on from Senator Xenophon on this income protection policy. I have downloaded the PDFs for what appears to be some of your income protection policies. Maybe Mr Nguyen had another one, but in that policy you have got an unemployment cover benefit that says that you will not pay the unemployment benefit if the life insured becomes unemployed directly or indirectly because of deliberate or serious misconduct. I think we all agree that Mr Nguyen engaged in deliberate or serious misconduct. Did he have a different kind of policy? How is he still able to get this protection?

Mr Narev: I will need to take that question on notice. As you will appreciate, it will depend on the specific policy he took out at the time that he took it out. That is what will be relevant, and I do not have those details in front of me.

Answer

See answers to Questions on Notice 04 and 05

Question on Notice: 10

CHAIR: I want to touch on one or two points with you. There is one particular case—Mr Kevin Day. He falls outside the Open Advice Review program, as I understand it, because his case goes back to 1989, I think. Please take this on notice. I believe an offer was made to his daughter on Friday. Is there a capacity to review the calculation? The information I have been provided comes to a much higher figure than the figure that was offered. I do not want to go into the details.

Mr Narev: We can take that on notice but I want to make one point of principle. His initial offer of \$232,000 was made back in 2008. That was upped; it is now a larger offer.

Answer

As noted, an additional offer of compensation was made in a letter to Mr Day on 17 April 2015. Commonwealth Bank is currently working with Mr Jeff Morris as Mr Day's authorised representative to review the assessment and this most recent offer. In light of Mr Day's circumstances a payment of \$ [REDACTED] was made in advance of receiving a response from Mr Morris.

Commonwealth Bank would be happy to review the information that has been provided to the Chair to ensure that the Bank has all the information required to make an appropriate assessment and offer of compensation.

Question on Notice: 11

Ms Spring: I want to be crystal clear with respect to that. We have no tolerance for this sort of behaviour. In fact, we have reported 12 advisers for this sort of behaviour to the police.

Senator WHISH-WILSON: Recently?

Ms Spring: Since 2011.

Senator WHISH-WILSON: Since 2011 you have reported advisers for fraudulent—

Ms Spring: For fraud and forgery.

Senator WHISH-WILSON: For forging signatures or other—

Ms Spring: For fraud and forgery.

Senator WHISH-WILSON: Have there been any convictions?

Ms Spring: I commit to the Senate that I will follow that up.

Answer

There have been no convictions to date in relation to the 12 advisers reported to police.

We are advised by authorities that two matters are currently still being investigated by police and that one other matter has been referred by the Queensland police to ASIC.