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Thursday 17 February 2022

22-023MR Aware Financial Services Australia fined \$20 million for charging fees for no service: Royal Commission case study

Aware Financial Services Australia Limited (Aware FS), formerly State Super Financial Services Australia Limited (StatePlus), has been ordered by the Federal Court to pay a \$20 million penalty for charging over 25,000 customers fees for financial services it did not provide, in contravention of the ASIC Act.

ASIC Deputy Chair Sarah Court said, 'Aware FS charged fees to tens of thousands of customers for financial services it had grounds to believe it would not be able to provide. As a result, over \$50 million in fees was charged to customers who have nothing to show for it.'

'Financial services providers should treat the penalty imposed today as an important reminder to maintain robust internal controls and compliance systems. Firms are responsible for ensuring they only charge consumers for services they provide. If they fail in this obligation, they face significant penalties.'

Between 21 August 2014 and 30 June 2018, Aware FS charged approximately 25,300 customers a total of \$50 million in fees for advice services included as part of the superannuation product offered by Aware FS, which at that time was also a superannuation trustee. The firm provided at least 17,500 customers with written disclosure documents advising them that they would receive an annual financial planning review called an Annual Review Service. Another 7,800 customers entered into ongoing advice service arrangements that included provision of an Annual Review Service. However, Aware FS did not provide the promised services.

The Court found that by charging fees for no service and failing to have internal procedures, measures and controls in place to monitor compliance, Aware FS also breached its obligations as an Australian financial services licence holder to act efficiently, honestly and fairly and to comply with financial services laws.

The Court also ordered that Aware FS publish an adverse publicity notice on its website for one year.

In handing down his *ex tempore* decision, Justice Moshinsky concluded that Aware FS's conduct was serious and systematic, with thousands of similar contraventions having occurred repeatedly over an extended period of time. His Honour also highlighted the large number of Aware FS customers affected by this misconduct, noting that remediation of \$105 million for this and related conduct has been paid.

Aware FS admitted liability and joined ASIC in submitting to the Court that a penalty of \$20 million was appropriate.

Aware FS's conduct was the subject of a case study by the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry – see [Volume 2](#) (part 13) of the Final Report. This civil penalty is another outcome arising from [a number of 'Fees for No Service' cases brought by ASIC](#).

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Background

Aware FS has remediated approximately \$105 million in fees, interest and lost earnings to customers who did not receive and did not decline their annual review entitlements.

ASIC continues to monitor remediation for fees for no service failures by financial services institutions including Aware FS ([22-020MR](#)).

ASIC commenced proceedings against Aware FS, then known as StatePlus, on 20 August 2020 against ([20-189MR](#)). Aware FS admitted the allegations.

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