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Friday 22 April 2022

## 22-097MR Westpac penalised \$113 million after multiple ASIC legal actions

The Federal Court has ordered Westpac to pay penalties in the amount of \$113 million for widespread compliance failures across multiple businesses, including Westpac's banking, superannuation, wealth management and insurance brands.

Justice Beach today handed down his decision in the last of six separate civil penalty proceedings filed by ASIC against Westpac in November 2021 ([21-320MR](#)), penalising Westpac \$40 million for charging advice fees to over 11,800 deceased customers.

ASIC Deputy Chair Sarah Court said, 'the breaches found by the Court in these six cases demonstrate a profound failure by Westpac over many years and across many areas of its business to implement appropriate systems and processes to ensure its customers were treated fairly. Westpac, like all licensees, has an obligation to be honest and fair in its provision of financial services. Despite this, Westpac failed to prioritise and fund the systems upgrades necessary to help fulfil this obligation.

'Over the course of 13 years, more than 70,000 customers have been affected by these failures, either by being incorrectly charged or given the wrong information. The sheer scale of this impact suggests that, at the time, Westpac had a culture that did not prioritise compliance.

'The Financial Services Royal Commission gave prominence to many of these issues across the banking industry and saw law reforms introduced to prevent harm, but Westpac's misconduct, including the charging of advice fees to deceased customers, continued.

'Consumer harm caused by systems failures is unacceptable. Financial institutions must invest in systems that allow them to meet their obligations to customers. ASIC expects the industry to do this work quickly and efficiently. Consumers are entitled to be confident that the compliance systems of the financial services firms they trust with their financial security are up to standard,' concluded Deputy Chair Court.

Across all six matters, Justice Beach noted that systems and compliance failures were a common feature and the misconduct by Westpac was considered serious. Regarding the charging of deceased customers, Justice Beach commented that Westpac and the related entities 'utterly failed to address the issues systematically'.

In all matters other than Debt onsale and Insurance in super, ASIC alleged and the Court found that Westpac failed to ensure that its financial services were provided efficiently, honestly and fairly.

Westpac admitted to the allegations in each of the proceedings and will remediate more than \$80 million to customers. Westpac consented in each of the matters to the orders made and to the penalties and cooperated with ASIC in resolving the matters.

The six matters against Westpac concern:

### **Fees for no service – deceased customers:**

Over a 10-year period, Westpac and related entities within the Westpac group, charged over \$10.9 million in advice fees to over 11,800 deceased customers for financial advice services that were not provided due to their death.

Penalty handed down by the Court: \$40 million

### **General insurance:**

Westpac distributed duplicate insurance policies to over 7,000 customers for the same property at the same time, including 3,899 customers since 30 November 2015, causing customers to pay for two (or more) insurance policies where they had no need for the additional policies. Westpac also issued insurance policies to 329 customers who had not consented to entering into an insurance policy.

Penalty handed down by the Court: \$15 million

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#### **Inadequate fee disclosure:**

Westpac, Securitor and Magnitude (advice businesses) charged ongoing contribution fees for financial advice to retail customers without disclosing, or properly disclosing those fees. It is estimated that over eight years, at least 25,000 customer accounts were charged at least \$10.6 million in fees that were not disclosed, or properly disclosed.

Penalty handed down by the Court: \$6 million

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#### **Deregistered company accounts:**

Westpac allowed approximately 21,000 deregistered company accounts, holding approximately \$120 million in funds, to remain open and continued to charge fees on those accounts. Westpac allowed funds to be withdrawn from these accounts that should have been remitted to ASIC or the Commonwealth. Justice Beach found that Westpac knew its systems were inadequate, did not fix those systems in a timely fashion and benefitted from its own conduct.

Penalty handed down by the Court: \$20 million

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#### **Debt onsale:**

Westpac sold consumer credit card and flexi-loan debt to debt purchasers with incorrect interest rates. These interest rates were higher than Westpac was contractually allowed to charge on at least part of the debts, resulting in more than 16,000 customers, who were likely to be in financial distress, being overcharged interest.

Penalty handed down by the Court: \$12 million

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#### **Insurance in super:**

Westpac subsidiary, BT Funds Management charged members insurance premiums that included commission payments, despite commissions having been banned under the Future of Financial Advice reforms.

Some members also paid commissions to financial advisers via their premiums even though they had elected to have the financial adviser component removed from their account. Over 9,900 BT Funds members were affected.

Penalty handed down by the Court: \$20 million

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[Judgment \(971 KB\)](#)

## Background

The Westpac businesses involved in the proceedings include:

- Westpac Banking Corporation
- Advance Asset Management Limited
- Asgard Capital Management Limited
- BT Funds Management Limited
- BT Funds Management No. 2 Limited
- BT Portfolio Services Limited
- Securitor Financial Group Pty Limited
- Magnitude Group Pty Ltd

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