

**Enforceable Undertakings to the Financial Markets
Authority**

Pursuant to s46 of the Financial Markets Authority Act 2011

Westpac New Zealand Limited

Date:

~~July~~ 2019

1 August 2019

1. Parties

- 1.1 Westpac New Zealand Limited (**WNZL**) a company incorporated in New Zealand having its registered address at Westpac on Takutai Square, 16 Takutai Square, Auckland.
- 1.2 The Financial Markets Authority, an independent Crown entity established under section 6 of the Financial Markets Authority Act 2011 (**FMA**).

2. Background

- 2.1 The FMA has regulatory oversight in relation to the Financial Markets Conduct Act 2013.
- 2.2 WNZL has given separate undertakings to the FMA and the Commerce Commission (**Commission**) by way of a document of today's date (**School Leavers Packages Undertaking Document**). As stated in the School Leavers Packages Undertaking Document:
 - 2.2.1 WNZL offers a series of banking package arrangements (**Banking Package Arrangements**) to a range of different customer groups. In addition to other benefits, Banking Package Arrangements typically include an agreement that WNZL will provide a fee waiver and/or other discounts in respect of certain financial products or services if a customer meets required eligibility conditions (**Specified Fees & Charges Benefits**).
 - 2.2.2 As a consequence of a self-initiated review of Banking Package Arrangements, WNZL identified that some eligible customers did not receive the Specified Fees & Charges Benefits agreed under the terms of their relevant Banking Package Arrangements (such customers being **Impacted Customers**).
 - 2.2.3 WNZL notified the FMA and the Commission of this issue and of its plan to refund all fees incorrectly charged to Impacted Customers with appropriate compensation added. When the issue first arose, WNZL also notified the FMA and the Commission that it was: (i) improving its systems and controls in relation to the ongoing implementation and monitoring of Banking Package Arrangements; and (ii) commencing a wider review of its material Banking Package Arrangements to ensure that all eligible customers were receiving their agreed Specified Fees & Charges Benefits (**Banking Package Review**).
 - 2.2.4 To the extent that there are any other issues concerning WNZL's Banking Package Arrangements that are identified which are of a similar nature as described at paragraph 2.2.2 above, and not covered by the School Leavers Package Undertaking Document, the Commission has agreed that the FMA shall be the lead regulator in respect of such issues and WNZL's primary point of contact.

- 2.3 As at the date of this document, WNZL has identified and notified the FMA that it has completed its review and identified further Banking Package Arrangements which have similar issues to those described at paragraph 2.2.2 above. These are: the Relationship Rewards Scheme; Family Benefits and Westpac Staff Package; Bizpac and Government Packages and Portfolio Package (each an **Identified Banking Package Arrangement**).
- 2.4 WNZL acknowledges that its conduct in respect of any Impacted Customers may have contravened Part 2 of the Financial Markets Conduct Act 2013 and has, accordingly, offered the undertakings set out in paragraphs 4.1 and 4.2 below to the FMA (**Undertakings**).

3. **Purpose and Effect of the Undertakings**

3.1 The Undertakings are offered to the FMA in relation to the remediation of any potential contravention referred to in paragraph 2.4 above and provide the FMA with a means to enforce that remediation.

3.2 The Undertakings:

3.2.1 are accepted by the FMA as court enforceable undertakings in terms of sections 46 and 47 of the Financial Markets Authority Act 2011; and

3.2.2 come into effect when executed by WNZL and signed as accepted by the FMA.

4. **Undertakings**

4.1 WNZL undertakes:

4.1.1 to provide a written confirmation to the FMA that it has completed a review of each Identified Banking Package Arrangement and taken all reasonable steps to identify all Impacted Customers;

4.1.2 to, as soon as reasonably practicable, to the extent that this has not already occurred,

4.1.2.1 refund all fees and charges that have been incorrectly charged to all such Impacted Customers (**Incorrect Charges**), together with a compensation amount in accordance with the refund methodology set out in paragraph 4.4 below, together with an explanation to each Impacted Customer of the reason for the refund, namely that they were incorrectly charged the Incorrect Charges in respect of the Identified Banking Package Arrangement; and

4.1.2.2 provide, as soon as reasonably practicable after the refunds have been made in respect of the Identified Banking Package Arrangement, a written report to the FMA confirming when it has

satisfied 4.1.2, including details of the total number and amount of refunds made.

4.2 In relation to the requirements in the undertakings in paragraph 4.1.1 for WNZL to take all reasonable steps to identify all Impacted Customers, this review period is to be limited to identifying Impacted Customers who qualified for the relevant Identified Banking Package Arrangement after 31 December 2011 or from whenever the relevant Identified Banking Package Arrangement came into effect (whichever is the latest).

4.3 In relation to the undertaking to provide a report in paragraph 4.1.2.2, this report is to be provided to the FMA prior to the FMA giving consent for any amounts to be paid to any of the Designated Charities under paragraph 5.2 below.

Refund methodology

4.4 For the avoidance of doubt, in determining the amount to be refunded to each of the Impacted Customers (**Refund Amount**), WNZL shall:

4.4.1 include in the calculation of the Incorrect Charges, all incorrectly charged fees and charges over the period in which the customer was part of the relevant Banking Package Arrangement and was eligible for the relevant agreed Specified Fees & Charges Benefits, except for any incorrectly charged fees and charges applied outside of the applicable review period under paragraph 4.2 above; and

4.4.2 calculate a compensation amount on the Incorrect Charges using WNZL's highest on call savings deposit rate, accrued daily and compounded monthly, over the period since the error occurred.

4.5 Subject to paragraph 4.9 below, if any Refund Amount is calculated to be an amount of \$20.00 or less,

4.5.1 For any relevant Impacted Customer who is: (i) a current WNZL customer (**Current Customer**); and (ii) holds a transactional account or has a similar banking product with WNZL into which funds can readily be transferred (**Relevant Account**), that Refund Amount shall be paid to that Impacted Customer; but

4.5.2 For any relevant Impacted Customer who does not have a Relevant Account (whether or not a Current Customer), that amount may be paid to one of the designated charities set out in paragraph 5 below (**Designated Charities**), rather than to the Impacted Customer.

Current Customers

- 4.6 Subject to paragraph 4.5 above, WNZL shall refund all Impacted Customers who are Current Customers and have a Relevant Account by directly crediting their accounts. For the avoidance of doubt, this may include crediting a customer's Refund Amount against any outstanding balance the customer may have on a credit contract with WNZL.

Impacted Customers without Relevant Accounts

- 4.7 Subject to paragraph 4.5 above, for all Impacted Customers who do not presently have a Relevant Account with WNZL (**Impacted Customers without Relevant Accounts**),
- 4.7.1 WNZL shall take reasonable steps using the information that it holds on such Impacted Customers to identify a current postal address for each customer. (For example, this may include contacting Impacted Customers by SMS Message or email to confirm postal address details.)
- 4.7.2 For those Impacted Customers without Relevant Accounts for whom WNZL can identify a current postal address, WNZL shall provide the Refund Amount by sending a cheque to the customer at that postal address.
- 4.7.3 To the extent that WNZL cannot identify a current postal address for any Impacted Customers without Relevant Accounts or Impacted Customers do not present cheques received within 6 months of the date they were posted, WNZL shall notify the FMA of the number of such customers and seek any further guidance from the FMA as to the further steps required, including whether:
- 4.7.3.1 any further address searches or public advertising should be undertaken; and/or
- 4.7.3.2 WNZL should donate any Refund Amounts that are unable to be credited to those Impacted Customers to the Designated Charities.

Bankrupt Customers

- 4.8 Notwithstanding paragraphs 4.6 and 4.7 above, if an Impacted Customer who is entitled to be paid a refund under paragraph 4.1 is bankrupt, the Refund Amount shall be paid to the Official Assignee, unless otherwise agreed with the Official Assignee.

Deceased Estates

- 4.9 Notwithstanding paragraphs 4.4 to 4.8 above, the following methodology shall apply if any Impacted Customer is deceased:

4.9.1 For any deceased Impacted Customers entitled to a Refund Amount of \$100.00 or more:

4.9.1.1 WNZL shall use reasonable endeavours to contact the representative(s) of the deceased customer and write to the representative(s) of the deceased customer informing them of the entitlement to the Refund Amount; and

4.9.1.2 pay the Refund Amount at the direction (if any) of the deceased Impacted Customer's representative(s); or

4.9.1.3 if the representative(s) of the deceased Impacted Customer has not contacted WNZL within 60 days of WNZL's last attempt to contact them, to pay the Refund Amount to one of the Designated Charities.

4.9.2 For any deceased Impacted Customer entitled to a Refund Amount less than \$100.00, WNZL shall pay the Refund Amount to one of the Designated Charities.

5. Designated Charities

5.1 The designated charities for the purposes of the undertakings in this document are: FinCap Trust, the Mental Health Foundation of New Zealand, the Auckland City Mission, the Christchurch City Mission and the Wellington City Mission.

5.2 Prior to making any payments to the Designated Charities, WNZL shall seek the FMA's consent, including as to the proposed split of funds between the Designated Charities.

5.3 For the avoidance of doubt, any payments that WNZL is required to make any of the Designated Charities pursuant to paragraphs 4.5.2; 4.7.3.2; 4.9.1.3; and 4.9.2 shall be subject to WNZL complying with any unclaimed monies obligations.

6. Miscellaneous

6.1 No amendment to the Undertakings will be effective unless in writing, executed by WNZL and signed as accepted by the FMA.

6.2 These undertakings are properly executed if WNZL signs the same copy, or identical copy of the execution page as the FMA. Where there are separate copies, signed on behalf of WNZL, the FMA, the signed copy can be the original document or an emailed copy.


6.3 WNZL acknowledges that:

6.3.1 the FMA may make the Undertakings and this document publicly available through publishing it on the FMA's website;

- 6.3.2 the FMA will also publish on its website a brief description of the circumstance and nature of the alleged contravention to which the Undertakings relate;
- 6.3.3 the FMA may make public reference to the Undertakings including in media statements or other publications;
- 6.3.4 in accepting the Undertakings, the FMA is not prevented from exercising its rights and powers under the relevant legislation to any contravention of the Undertakings or in relation to any other matter not the subject of these Undertakings; and
- 6.3.5 the Undertakings in no way limit the rights and remedies available to any other person or entity arising from any conduct described in the Undertakings or arising from future conduct.

Execution

Signed by and on behalf of **Westpac New Zealand Limited**



Attorney's signature

MARK BROUGHTON WEENINK
Name of Attorney

In the presence of:



Signature

Witness name:

Witness address:

Witness occupation:

Date:

Daniel Robinson
Solicitor
AUCKLAND

19 July 2019

Acceptance

Accepted by the Financial Markets
Authority by:



Authorised signatory



Name

In the presence of:



Signature

Witness name:

Brane Ketea

Witness address:

Wellington

Witness occupation:

PA

Date:

01/08/19

CERTIFICATE OF NON-REVOCATION OF POWER OF ATTORNEY

I, Mark Broughton Weenink of Auckland in New Zealand, Bank Officer

HEREBY CERTIFY -

1. **THAT** by Deed dated 6 September 2006 and there numbered PA 7032934.1 **WESTPAC NEW ZEALAND LIMITED** (Company Number 1763882), incorporated in New Zealand under the Companies Act 1993 and having its principal place of business in New Zealand at Westpac on Takutai Square, 16 Takutai Square, Auckland ("**Westpac**") appointed me its attorney on the terms and subject to the conditions set out in that Deed and the attached document is executed by me under the powers conferred by that Deed.
2. **THAT**, at the date of this certificate, I am a Tier One Attorney for Westpac.
3. **THAT**, at the date of this certificate, I have not received any notice or information of the revocation of that appointment by the winding up or dissolution of Westpac or otherwise.

SIGNED at Auckland on the 19th day of July 2019


Mark Broughton Weenink