

# Settlement Agreement

**Financial Markets Authority**

**Medical Assurance Society New Zealand Limited**

**Medical Life Assurance Society Limited**

**Medical Insurance Society Limited**

---

## **Parties**

**Financial Markets Authority**, a Crown entity established under section 6 of the Financial Markets Authority Act 2011 (**FMA**);

**Medical Assurance Society New Zealand Limited (MASNZ)** a company incorporated in New Zealand, having its registered office at 10 Waterloo Quay, Pipitea, Wellington, New Zealand;

**Medical Life Assurance Society Limited (MLA)** a company incorporated in New Zealand, having its registered office at 10 Waterloo Quay, Pipitea, Wellington, New Zealand; and

**Medical Insurance Society Limited (MIS)** a company incorporated in New Zealand, having its registered office at 10 Waterloo Quay, Pipitea, Wellington, New Zealand,

(together, the **Parties**).

## **1 Introduction**

---

- 1.1 Between May 2019 and July 2022, MASNZ advised the FMA of issues arising in relation to the misapplication of various discounts and benefits in relation to products administered by its subsidiaries, MLA and MIS (together, the **MAS Group**). Those discounts and benefits related to:
- (a) the incorrect application of inflation adjustments to customers' policies;
  - (b) the incorrect application of multi-policy discounts to customers' premiums charged;
  - (c) underpayments of life and disability claim benefits following claims made by customers; and
  - (d) the incorrect application of a "no claims bonus" to customers' policies.
- 1.2 The FMA carried out an investigation into the MAS Group for potential breaches of the Act in relation to the above conduct (**Investigation**).
- 1.3 Subsequently, the FMA filed proceedings in the High Court against the MAS Group alleging that it made false and/or misleading representations in connection with the supply of insurance.
- 1.4 In the Proceeding, the FMA seeks a pecuniary penalty and declarations that the conduct breached s 22 of the Act.
- 1.5 The Parties have reached a settlement regarding the matters to be determined in the Proceeding, on the terms set out in this Agreement.
- 1.6 This Agreement may be made public by the FMA (including by publication of it on the FMA's website) following the public release of the Penalty Judgment.
-

## 2 Interpretation

---

- 2.1 For the purposes of this Agreement:
- (a) **Act** means the Financial Markets Conduct Act 2013;
  - (b) **Admitted Causes of Action** means the causes of action contained in the Amended Statement of Claim;
  - (c) **Agreed Recommended Penalty** means the pecuniary penalty defined in clause 4.4(a);
  - (d) **Agreement** means this settlement agreement and the schedules attached to it;
  - (e) **Amended Statement of Claim** means the amended statement of claim annexed as Schedule 1 to this Agreement;
  - (f) **Court** means the High Court of New Zealand or, on appeal, the Court of Appeal of New Zealand or the Supreme Court of New Zealand;
  - (g) **Defaulting Party** has the meaning as set out in clause 8.1;
  - (h) Dollar amounts stated are New Zealand dollars;
  - (i) **Default Notice** means a written notice issued under clause 8.3 by one Party giving notice that the other Party is in breach of the Agreement;
  - (j) **Information** includes all information, documents, material and evidence of any kind whatsoever, including all oral, written and electronic material in relation to the Investigation and the Proceeding;
  - (k) **Investigation** has the meaning set out in paragraph 1.2;
  - (l) **Notice of Admissions** means the notice of admissions attached as Schedule 2 to this Agreement;
  - (m) **Notice of Discontinuance** means the notice of discontinuance attached as Schedule 4 to this Agreement;
  - (n) **Notifying Party** has the meaning set out in clause 8.1;
  - (o) **Party** means any party to this Agreement;
  - (p) **Penalty Hearing** means any hearing or fixture in the Proceeding at which the FMA and MASNZ will ask the Court to approve the order set out in clause 4.4;
  - (q) **Penalty Judgment** means the judgment of the Court determining the pecuniary penalty payable by MASNZ in the Proceeding. Where a Penalty Judgment of a particular Court is specified, it is the judgment of that Court;
  - (r) **Person** extends to non-natural persons and includes any association of persons whether incorporated or not;

- (s) **Proceeding** means the civil proceeding brought by the FMA in the High Court of New Zealand CIV-2023-485-251 as amended by the filing of the Amended Statement of Claim, and includes any appeals;
- (t) **Working Day** has the definition set out in r 1.3 of the High Court Rules 2016.

### **3 Resolution**

---

- 3.1 The Parties have reached a full and final settlement of:
  - (a) the claims against the MAS Group arising out of the Investigation and which are set out in the Proceeding; and
  - (b) any claims that could have been made by the FMA against the MAS Group, or any current or former officer, employee or director of any of the MAS Group Parties, under the Act in relation to the failures described in the Amended Statement of Claim.
- 3.2 The Parties agree to resolve the Proceeding and the Investigation by:
  - (a) each of the MAS Group Parties giving their written consent to the FMA discontinuing the Proceeding against MLA and MIS prior to the execution of this Agreement;
  - (b) the FMA filing the Amended Statement of Claim and Notice of Discontinuance within one Working Day of the execution of this Agreement;
  - (c) the next Working Day, MASNZ filing the Notice of Admissions;
  - (d) MASNZ paying any Penalty Judgment in accordance with clause 5; and
  - (e) otherwise on the basis set out in this Agreement.
- 3.3 The admissions made by the MAS Group are made only for the purposes, and in respect, of resolving the Proceeding, and are not made for the purposes, or in respect, of any other claims, actions, proceedings or investigations.
- 3.4 The FMA will not commence or continue further proceedings against the MAS Group or any current or former officer, employee or director of the MAS Group Parties, in connection with matters that are subject of the Proceeding and Investigation.
- 3.5 For the avoidance of doubt, nothing in this Agreement shall be construed as:
  - (a) resolving any past, continuing, or future contraventions of the Act about which the FMA does not have reasonable notice; or
  - (b) preventing the FMA from commencing or continuing any civil or criminal proceedings against any of the MAS Group Parties or any other person in respect of the matters described in clause 3.5(a).

## **4 Imposition of the Agreed Recommended Penalty**

---

### **Progression to Penalty Hearing**

- 4.1 On the same day as MASNZ files the Notice of Admissions referred to at clause 3.2(c) above, MASNZ and the FMA will file the joint memorandum requesting a penalty hearing in the form attached as Schedule 3 to this Agreement.
- 4.2 The FMA and MASNZ will cooperate and use all reasonable endeavours to ensure that the Penalty Hearing proceeds on the first available date that the Court proposes that is convenient to counsel.

### **Consultation on penalty submissions**

- 4.3 The FMA and MASNZ will:
- (a) circulate to the other a draft of any submissions or memorandum they propose to file in relation to the Agreed Recommended Penalty at least ten Working Days before that party is to file the submissions or memorandum with the Court;
  - (b) provide any comments on a submission or memorandum received in accordance with clause 4.3(a) not more than five Working Days after receiving those submissions or that memorandum; and
  - (c) consider in good faith any comments that the other Party may have in connection with the submission or memorandum.

### **Agreed Recommended Penalty and content of penalty submissions**

- 4.4 The FMA and MASNZ agree and undertake that:
- (a) the Agreed Recommended Penalty for the Admitted Causes of Action is a final penalty of \$2,100,000;
  - (b) the Agreed Recommended Penalty is an appropriate pecuniary penalty in view of the conduct and the circumstances;
  - (c) in their respective written and oral submissions, they will indicate that it is appropriate for the maximum amount of the pecuniary penalty for each contravention to be set under s 490(1)(a) of the Act
  - (d) they will make written and oral submissions recommending to the Court that it adopt a starting point of \$3 million;
  - (e) they will make written and oral submissions recommending to the Court that it apply a discount of 30 per cent to the starting point for all mitigating factors; and
  - (f) they will otherwise support the Agreed Recommended Penalty before the Court.
- 4.5 The Parties agree that all material facts for the purposes of the Proceeding are:

- (a) the matters relating to MASNZ's conduct are as described in the Amended Statement of Claim;
- (b) the following matters, which are not included in the Amended Statement of Claim but which may properly be the subject of submissions by either Party:
  - (i) details as to the MAS Group's size and profitability;
  - (ii) the fact MASNZ has not previously been found to have breached the Act;
  - (iii) the FMA acknowledges that the contraventions by MASNZ and/or its subsidiaries largely arose out of errors and deficiencies in its systems;
  - (iv) the FMA acknowledges that MASNZ, MIS and MLA have invested in system, process and control improvements; and
  - (v) that MASNZ (and the MAS Group) has co-operated with the FMA throughout the Investigation, acknowledged and accepted at the earliest possible stage that it had contravened the Act, and MASNZ agreed to settle the proceeding on terms acceptable to the FMA.

#### **Court Costs**

#### **4.6 The FMA and MASNZ:**

- (a) acknowledge that the final penalty ordered by the Court will be first applied to paying the FMA's actual costs in bringing the Proceeding, given the effect of s 493 of the Act; and
- (b) agree to ask the Court that there be no further order for costs.

#### **4.7 The Parties agree that no Party will seek any other costs award in the Proceeding, other than costs arising:**

- (a) from any breach of this Agreement; and/or
- (b) following the service of a Default Notice in accordance with clause 8.3.

## **5 Payment of Penalty**

---

- 5.1 If the High Court imposes the Agreed Recommended Penalty in the Penalty Judgment, MASNZ will pay the amount of the Agreed Recommended Penalty in cleared funds into the bank account nominated by the FMA within 15 Working Days of the Penalty Judgment.
  - 5.2 If the High Court does not impose the Agreed Recommended Penalty in the Penalty Judgment, then MASNZ will pay into the bank account nominated by the FMA any pecuniary penalty ordered by the High Court within 15 Working Days of the date of the Penalty Judgment unless, prior to the expiration of that period, a stay of the Penalty Judgment pending determination of an appeal is granted.
-

- 5.3 If a Penalty Judgment is issued by an appellate Court, MASNZ (on the one hand), or the FMA (on the other hand), as applicable, shall pay to the other any difference between any pecuniary penalty paid by MASNZ in accordance with clause 5.2 and the amount ordered by the appellate Court, together with any costs awarded by the appellate Court, into the bank account nominated by the FMA or MASNZ. For the avoidance of doubt, if no pecuniary penalty has been paid by MASNZ when a Penalty Judgment is issued by an appellate Court, this difference will be the total amount ordered by the appellate Court. The payment will be made within 15 Working Days of the date of the appellate judgment or within any other time period specified by the appellate judgment, whichever is later.
- 5.4 If a stay of the Penalty Judgment is granted pending determination of an appeal, MASNZ agrees to pay interest as prescribed by the Interest on Money Claims Act 2016 on any amount it has to pay to the FMA under clause 5.3. Interest will accrue from the date of the Penalty Judgment until payment is made in full.
- 5.5 For the avoidance of doubt, if the FMA is required to refund any amount under clause 5.3, the only interest to be paid is that actually earned, if any, on the amount to be refunded.

## **6 Confidentiality and comment**

---

### **Comment after release of Penalty Judgment**

- 6.1 Subject to clause 6.2, any Party may issue a media release or make a public comment in relation to this Agreement and/or the outcome of the Penalty Hearing after the public release of the Penalty Judgment.
- 6.2 MASNZ, MLA and MIS will not issue any media release or make any public comment permitted by clause 6.1 until after the FMA has made a media release or public comment as permitted by clause 6.1.

### **Principles applying to comments**

- 6.3 The Parties agree:
- (a) to make only media releases or public comments in good faith that are consistent with the Penalty Judgment and the content, spirit and intent of this Agreement including the schedules; and
  - (b) in relation to any media release made under clause 6.1, that the Party issuing the media release will provide a copy of the media release to the other Party at least one hour in advance of the release being published to allow the other party the opportunity to comment. The Parties agree that the purpose of providing an advance copy of a media release is to allow the other Party to have the opportunity to comment and provide advanced notice so as to inform its own position (and not for approval). A party is not obligated to accept the comments of the other party.

## **7 Appeals from the Penalty Judgment**

---

- 7.1 If the Court imposes the Agreed Recommended Penalty, no Party may appeal or apply to recall or set aside the Penalty Judgment on the basis that the Agreed Recommended Penalty should not have been imposed.
- 7.2 If, following submissions from the FMA and MASNZ consistent with clause 4.4, the Court imposes any penalty that differs from the Agreed Recommended Penalty, either the FMA or MASNZ may appeal the Penalty Judgment.
- 7.3 In the event that an appeal is brought under clause 7.2:
- (a) the terms of this Agreement will remain binding on the Parties, including, for the avoidance of doubt, clause 4.4; and
  - (b) the Parties will each bear their own costs on any appeal (subject to any order from the Court directing otherwise), and shall not apply for, or otherwise seek, costs to be ordered against the other.

## **8 Non-compliance with Agreement**

---

### **Default Notice for breaches of the Agreement**

- 8.1 If any Party (the **Notifying Party**) suspects or believes that the other Party (the **Defaulting Party**) is in breach of the Agreement, or will in the future breach the Agreement, the Notifying Party must notify the Defaulting Party in writing:
- (a) of the grounds for the Notifying Party's view that a breach of the Agreement has occurred or will likely occur; and
  - (b) that the Notifying Party is contemplating issuing a Default Notice.
- 8.2 After notifying the Defaulting Party, the Notifying Party must:
- (a) give the Defaulting Party a reasonable opportunity to:
    - (i) respond to the grounds for the Notifying Party's view that a breach of the Agreement has occurred or will occur; and
    - (ii) take steps to remedy any breach of the Agreement that has occurred or would otherwise occur; and
  - (b) have regard to the Defaulting Party's response, the nature of the suspected breach and the remedial action taken, if any.
- 8.3 If the Notifying Party has followed the process in clauses 8.1 and 8.2, and the Defaulting Party fails to comply with any term of this Agreement, the Notifying Party may give written notice that the Defaulting Party is in breach of the Agreement (a **Default Notice**).

### **Notifying Party may take steps or commence proceedings following a Default Notice**

- 8.4 Following service of a Default Notice, the Notifying Party may:



- (a) take any further steps in or relating to the Proceeding, including (without limitation) applying to set aside the Penalty Judgment or to appeal the Penalty Judgment in accordance with clause 7.2;
- (b) take any steps to enforce the obligations outlined in this Agreement;
- (c) seek an award of costs in respect of the matter giving rise to the Default Notice; and/or
- (d) terminate the Agreement.

8.5 Upon termination of the Agreement, the Parties shall be released from any further obligations in relation to it and the position of the Parties in the Proceedings shall be at large (including for the avoidance of doubt as to amendment of the pleadings inconsistent with the Amended Statement of Claim attached in Schedule One, the withdrawal of the admissions set out in the Notice of Admissions set out in Schedule Two, or the imposition of a pecuniary penalty or other orders inconsistent with this Agreement).

8.6 The Parties agree that it shall not constitute a breach of this Agreement for any of them to make submissions in any Court in any other proceedings with respect to the relevance, weight or precedent value to be attributed to the Penalty Judgment.

#### **Breach of obligation to pay pecuniary penalty**

8.7 If MASNZ or the FMA fails to make all or part of the payments referred to in clause 5 within the time specified, after first providing seven Working Days for the Party to rectify that breach, the other Party (the **Enforcing Party**) is:

- (a) entitled to enforce the Penalty Judgment;
- (b) entitled to claim interest as prescribed by the Interest on Money Claims Act 2016 on the balance payable until the penalty, or difference owing or any costs awarded under clauses 5.3 are paid in full; and
- (c) entitled to its costs, including its legal costs on a solicitor-client basis, arising from the failure to comply with clause 5.

8.8 Nothing in clause 8.7 limits the ability of the Enforcing Party to also issue a Default Notice in accordance with clauses 8.1 to 8.3 above.

## **9 General**

---

### **Entire agreement**

9.1 This Agreement constitutes the entire understanding and agreement between the Parties in relation to the Proceeding. It fully supersedes any and all prior agreements, arrangements, representations or understandings (whether orally or in writing) between the Parties pertaining to the Proceeding.

- 9.2 The Parties represent and agree that:
- (a) no oral contracts, arrangements, understandings, agreements or promises contrary to the terms of this Agreement exist;
  - (b) they have carefully read and fully understand all of the provisions of this Agreement, including the Schedules; and
  - (c) they are each voluntarily entering into this Agreement after having received independent legal advice.

**Use and disclosure of Information**

- 9.3 The FMA acknowledges that the MAS Group Information provided to the FMA may be confidential and/or commercially sensitive and/or subject to privilege.
- 9.4 The FMA may use Information provided by the MAS Group for the purpose of carrying out the FMA's functions or obligations under any enactment, but may not disclose such Information to any third party other than in accordance with clauses 9.5, 9.7 and 9.8 below.
- 9.5 Subject to legal professional privilege and privilege for without prejudice settlement negotiations, the FMA may disclose Information provided by the MAS Group in the following circumstances:
- (a) with the MAS Group's prior written consent;
  - (b) to witnesses, solicitors, barristers and other advisers or consultants retained by the FMA in the Proceeding, or proceedings instituted in accordance with clauses 7.2 and 8.4;
  - (c) to any Court in the Proceeding, or proceedings instituted in accordance with clauses 7.2 and 8.4;
  - (d) pursuant to section 30 of the Financial Markets Authority Act 2011; or
  - (e) as required by law (including, for the avoidance of doubt, to comply with a request made under the Official Information Act 1982 or the Privacy Act 2020). For the avoidance of doubt, the FMA may use any Information provided by the MAS Group for such purposes as are reasonably necessary to give effect to the Agreement.
- 9.6 The FMA or a MAS Group Party may use Information provided by the other Party in proceedings instituted in accordance with clause 8.4 except Information that has been provided by a Party on a without prejudice basis.
- 9.7 The FMA agrees that, if it receives a request pursuant to the Official Information Act 1982 that covers or might cover and/or record or reveal all or some of the Information that the MAS Group has provided to the FMA in relation to this Proceeding and Investigation, including voluntarily or under compulsion, it will notify the MAS Group of that request and consult with the MAS Group as to whether there are grounds for the requested material to be withheld under Part 1 of the Official Information Act 1982. The FMA will notify the MAS Group at least five Working Days before responding to the request, if notwithstanding such consideration, it determines no grounds exist on which it may refuse to comply with the request.

- 9.8 Subject to clauses 9.5 and 9.7, if the FMA wishes to disclose to a third party any Information provided to it by the MAS Group during the Investigation or in the Proceeding or if any third party requests from the FMA disclosure of such Information, the FMA will use its best endeavours to notify the MAS Group and provide the MAS Group with a reasonable opportunity to oppose such a request, including by Court action.

**Amendments in writing**

- 9.9 No amendment to this Agreement will be effective unless it is in writing and signed by all Parties.

**Authorities**

- 9.10 Each person executing this Agreement warrants that they have the full authority to enter into this Agreement and bind the Party for which they purport to enter into this Agreement.

**Severance**

- 9.11 Any provision in this Agreement that is unlawful will be severed and the remaining provisions remain enforceable, but only if the severed provision is not material to the purpose of this Agreement.

**Parties to bear their own costs**

- 9.12 Each Party will meet its own expenses incurred in the course of performing its obligations under this Agreement.

**Governing law**

- 9.13 This Agreement will be governed by, and construed in accordance with, the laws of New Zealand.

**Further assurances**

- 9.14 The Parties agree to make all applications, execute all documents and do all acts and things as may be necessary to give effect to its obligations under this Agreement.

**No waiver**

- 9.15 Failure by a Party to enforce any provision of this Agreement at any time will not operate as a waiver of that provision in respect of that act or omission or any other act or omission.

**Counterparts**

- 9.16 The Parties may enter into this Agreement by signing any number of counterparts, each of which will be treated as an original. All of the counterparts taken together will constitute a single, binding and enforceable Agreement.

## 10 Communications

---

10.1 Any notice or communication pursuant to this Agreement will be delivered as follows:

- (a) if addressed to the FMA, by hand delivery or email to the following address:

Financial Markets Authority  
Level 5, Ernst & Young Building  
2 Takutai Square, Britomart  
Auckland  
New Zealand

**Attention:** Margot Gatland, Head of Enforcement

**Email:** margot.gatland@fma.govt.nz

Copy to:

**Meredith Connell**  
Level 7, 8 Hardinge Street  
Auckland

**Attention:** Sam McMullan | Elizabeth Rutherford

**Email:** Sam.McMullan@mc.co.nz |  
Elizabeth.Rutherford@mc.co.nz

- (b) If addressed to MASNZ, MLA or MIS, by hand delivery or email to the following address:

Medical Assurance Society New Zealand Limited  
10 Waterloo Quay, Pipitea  
Wellington  
New Zealand

**Attention:** Nick Mereu, Head of Legal and Compliance

**Email:** nick.mereu@mas.co.nz

Copy to:

**Russell McVeagh**  
Vero Centre, 48 Shortland Street, PO Box 8  
Auckland 1140  
New Zealand

**Attention:** Emmeline Rushbrook

**Email:** Emmeline.Rushbrook@russellmcveagh.com

**Execution**

**Signed by and on behalf of  
Financial Markets Authority**



Authorised signatory

Margot Gatland, Head of Enforcement

.....  
Name

**Signed by and on behalf of  
Medical Assurance Society New Zealand Limited**



Authorised signatory

Signed by: Matthew Judge

.....  
Name

**Signed by and on behalf of  
Medical Life Assurance Society Limited**



Authorised signatory

Signed by: Matthew Judge

.....  
Name

**Signed by and on behalf of  
Medical Insurance Society**



Authorised signatory

Signed by: Matthew Judge

.....  
Name

## Schedule 1: Amended Statement of Claim

**In the High Court of New Zealand  
Wellington Registry**

**I te Kōti Matua o Aotearoa  
Te Whanganui-ā-Tara Rohe**

**CIV-2023-485-251**

**Under** The Financial Markets Conduct Act 2013

**Between** **Financial Markets Authority**  
Plaintiff

**And** **Medical Assurance Society New Zealand Limited**  
Defendant

---

## **Amended Statement of Claim**

**DD September 2023**

---

**MC.**

Counsel: Brian Dickey

Sam McMullan | Elizabeth Rutherford  
PO Box 90750, Victoria Street West, Auckland 1142  
DX CP24063  
T: +64 9 336 7500  
sam.mcmullan@mc.co.nz |  
elizabeth.rutherford@mc.co.nz

# Amended Statement of Claim

The Plaintiff by its solicitor says:

## The Parties

- 1 The Plaintiff, the Financial Markets Authority (Te Mana Tatai Hokohoko) (**FMA**), is a Crown Entity established under s 6 of the Financial Markets Authority Act 2011, having its offices at Level 2, 1 Grey Street, Wellington; and Level 5, Ernst & Young Building, 2 Takutai Square, Britomart, Auckland. Its functions include enforcement of the Financial Markets Conduct Act 2013 (**FMCA**).
- 2 The Defendant is an incorporated company, having its registered office at 10 Waterloo Quay, Pipitea, Wellington.
- 3 The Defendant (**MASNZ**):
  - (a) was incorporated on 14 December 1972;
  - (b) is in trade in New Zealand; and
  - (c) is owned by the Medical Assurance Society Members' Trust (**MAS Members' Trust**) (99.99%) and the Medical Assurance Society Foundation (**MAS Foundation**) (0.01%).
- 4 The "MAS Group", comprising the MAS Members' Trust, the MAS Foundation, MASNZ and MASNZ's subsidiaries, describes itself as a "mutual society" that provides membership-based insurance, investment and financial advice services.
- 5 The trustees of the MAS Members' Trust hold the shares of MASNZ on trust and for the benefit of Members.
- 6 A natural person:
  - (a) becomes eligible to be a Member of the MAS Members' Trust upon holding a product (or being an associate of someone holding a product) issued or promoted by MASNZ or any of its subsidiaries; and
  - (b) then becomes a Member on admission to membership by the trustees of the MAS Members' Trust.
- 7 The MAS Foundation is a charitable trust which provides funding for projects that support health and wellbeing equity.
- 8 MASNZ:
  - (a) is responsible for providing staff and resources to its subsidiaries in order for those businesses to operate;



- (b) owns the MAS brand and logo under which the MAS Group trades;
- (c) is governed by a Board of directors, who also each serve as the directors for most of MASNZ's subsidiary companies; and
- (d) receives distributions of certain surplus from its subsidiaries and retains capital to ensure the sustainability of the MAS Group operations.

### **MAS' insurance services**

- 9 Medical Life Assurance Society Limited (**MLA**):
- (a) was incorporated on 19 April 1973;
  - (b) is a licensed insurer under s 19 of the Insurance (Prudential Supervision) Act 2010;
  - (c) is an operational subsidiary of MASNZ; and
  - (d) is in trade in New Zealand.
- 10 Medical Insurance Society (**MIS**):
- (a) was incorporated on 18 September 1995;
  - (b) is a licensed insurer under s 19 of the Insurance (Prudential Supervision) Act 2010;
  - (c) is an operational subsidiary of MASNZ; and
  - (d) is in trade in New Zealand.
- 11 In the course of MLA and MIS' business they offer, promote and underwrite a range of insurance products.
- 12 MLA and MIS, as the licensed insurers, enter into contracts of insurance (**Policies**) with customers (**Customers**).
- 13 At all relevant times, the documents comprising the Policies:
- (a) utilised the MAS branding and logo;
  - (b) described that the policy document set out the contract of insurance with "us" and defined "us" as either MLA or MIS (depending on the policy type); and
  - (c) in some circumstances, referred to MIS as a "business division" of MASNZ.
- 14 MLA and MIS administer the Policies, including by:

- (a) communicating the terms of the Policies in the policy terms and conditions, policy schedules, and product descriptions;
- (b) issuing Policies;
- (c) advising each Customer of the premium payable (**Premium**) on new Policies by issuing policy notices with invoices (**Inception Invoices**);
- (d) annually renewing some Policies, including by issuing renewal packs which contained a renewal cover letter, updated policy schedule and an invoice (**Renewal Documents**);
- (e) advising each Customer of the Premium under their Policy and changes to the sum insured for the next yearly term (**Cover**) through information contained in the Renewal Documents;
- (f) calculating the benefit amounts to be paid to Customers as a result of claims made by Customers under their Policies (**Benefit Payments**);
- (g) informing Customers of the Benefit Payments amounts in remittance letters at the time Benefit Payments are made (**Remittance Letters**); and
- (h) promoting Policies to existing and prospective Customers, including through marketing material bearing the MAS branding and logo.

### **Policy Administration Systems**

- 15 At all material times, MLA and MIS have used computer systems to administer and manage the Policies, including by:
- (a) undertaking some automated actions in respect of its Policies; and
  - (b) relying on some manual tasks undertaken by employees within certain computer systems,
- (Policy Administration Systems).**
- 16 At all relevant times, MIS' and MLA's Policy Administration Systems, including manual actions performed by staff within its computer systems, have been responsible for:
- (a) calculating Premiums, Cover, and Benefit Payments;
  - (b) providing a trigger for Inception Invoices, Renewal Documents, and Remittance Letters to be sent to Customers; and
  - (c) generating and issuing Inception Invoices, Renewal Documents, and Remittance Letters to be sent to Customers.

- 17 The Inception Invoices, Renewal Documents, and Remittance Letters were generated by MLA or MIS, but:
- (a) utilised the MAS branding and logo;
  - (b) generally referred to “MAS” or “Medical Assurance Society”;
  - (c) generally did not refer to MLA or MIS;
  - (d) referred to Customers as “Members” (being, as above, Members of the MAS Members’ Trust); and
  - (e) with MASNZ’s actual or apparent authority.

### **The Multi-Policy Discount**

- 18 From April 2014 onwards, MIS has offered its Customers a discount on Premiums if they held multiple Policies with MIS (**Multi-Policy Discount**).
- 19 At various times, the Multi-Policy Discount has been marketed through various channels, including email, pamphlets, and on the MAS Group website.
- 20 The Multi-Policy Discount was available on the following categories of MIS Policies:
- (a) home insurance;
  - (b) contents insurance;
  - (c) motor vehicle insurance; and
  - (d) boat insurance, if the Customer held all three above Policy types, **(Eligible Policies)**.
- 21 Since April 2014, generally Customers have been eligible to receive the Multi-Policy Discount:
- (a) if they individually held two or more home, contents, or motor vehicle insurance policies; or
  - (b) in some circumstances, if together with another related Customer, they, in aggregate, held two or more home, contents, or motor vehicle insurance policies; and
  - (c) the qualifying Policies held were from different categories of Policies, not multiple policies within the same category, **(Eligible MPD Customers)**.
- 22 At all relevant times, the rate of the Multi-Policy Discount:

- (a) was not specified in Customers' Policies;
- (b) was communicated to Customers in limited circumstances; and
- (c) was set internally at MIS at either 10% or 20% of the Premiums, depending on whether Customers held two or three home, contents, or motor vehicle insurance Policies respectively.

#### **Invoices**

- 23 From approximately April 2014, MIS did not apply the Multi-Policy Discount or incorrectly applied a lower rate of the Multi-Policy Discount to the Premiums owed by some Eligible MPD Customers (**Affected MPD Customers**).
- 24 MIS failed to apply or correctly apply those Multi-Policy Discounts because of:
  - (a) errors in its sales and fulfilment systems, including data entry errors made by employees of MASNZ;
  - (b) a lack of processes, systems guidance, training, and quality assurance; and
  - (c) deficiencies in its Policy Administration Systems.
- 25 Where the Multi-Policy Discount had not been applied or incorrectly been applied to the Premiums owed by the Affected MPD Customers, the Inception Invoices and Renewal Documents issued to those Affected MPD Customers (**Affected MPD Invoices**) referred to amounts of Premiums that were not owed by them (**Incorrect MPD Premiums**), instead of the actual amounts that were in fact owed by them (**True MPD Premiums**).
- 26 The Affected MPD Invoices falsely represented that:
  - (a) the Incorrect MPD Premiums were the correct amounts owed by the Affected MPD Customers under their Policies; and
  - (b) it was entitled to charge the Incorrect MPD Premiums that appeared on the Affected MPD Invoices.

#### **Harm**

- 27 Between approximately April 2014 and November 2021:
  - (a) There were approximately 8,864 Affected MPD Customers.
  - (b) Affected MPD Customers were charged approximately \$71,563,988.98 million in Premiums, with approximately \$3,318,997.75 million in overcharged Premiums based on MIS' discounting approach (**MPD Overcharges**), being the difference between the Incorrect MPD Premiums and True MPD Premiums.

- (c) Approximately 16.12% of Eligible MPD Customers were Affected MPD Customers.
- 28 To address the issue, MIS and MASNZ:
- (a) introduced daily exception reporting in November 2021 to identify Incorrect MPD Premiums being charged;
  - (b) defined and documented new discounting rules, and communicated these internally;
  - (c) undertook data cleansing in relation to relationships to enable application of the discount and remediation; and
  - (d) designed and deployed a discounting training module and other guidance for staff.
- 29 MIS has reimbursed \$3,885,391.50 in MPD Overcharges paid by Affected MPD Customers.

**MIS' and MASNZ's knowledge of the MPD Overcharges**

- 30 From at least March 2014, a MASNZ employee (the General Insurance Product Manager at the time) was aware that some Multi-Policy Discounts under the Multi-Policy Discounts scheme being introduced from April 2014 were being misapplied. At the time these misapplications were considered to be isolated issues related to the introduction of the new Multi-Policy Discounts system, and "Q&A" documents were circulated to staff to address the misapplication issue. However:
- (a) the issues were not isolated; and
  - (b) the "Q&A" documents did not adequately address the misapplication issue and the problem persisted.
- 31 While aware of the misapplication issue, MASNZ's General Insurance Product Manager did not take steps to investigate the scale of the issue until approximately November 2015.
- 32 The issue of the misapplication of Multi-Policy Discounts was escalated internally within MIS or MASNZ in December 2015 when a paper was sent to MIS' Executive Committee in December 2015, which recorded that:
- (a) 20,200 Policies had been affected by the misapplication of the Multi-Policy Discount, with Customers having been both overcharged and undercharged; and
  - (b) the issue resulted both from errors relating to the introduction of the new Multi-Policy Discounts System in 2014 and data errors since that time.

**Particulars**

Email from MASNZ's General Manager, Risk & Compliance to various dated 6 December 2015, with attachment entitled "Paper for Consideration – Premium Leakage Multi-Product Discounts".

- 33 In January 2016, that paper was updated to record that approximately \$588,132 in refunds were due to affected Customers.

**Particulars**

Email from MASNZ's General Insurance Product Manager to various dated 28 January 2016, with attachment entitled "Paper for Consideration – Premium Leakage Multi-Product Discounts Revised".

- 34 However, in August 2016, MASNZ's General Manager Risk and Compliance communicated to the MASNZ's General Insurance Product Manager recommending that:
- (a) the Multi-Policy Discount issue should only be fixed at each Customer's next renewal date, with no remediation to be paid to customers who had been overcharged as a result of the issue; and
  - (b) the issue should be closed following confirmation of technology and process change.

**Particulars**

Email from MASNZ's General Manager Risk and Compliance to various dated 16 August 2016, with attachment entitled "Paper for Consideration – Premium Leakage Multi-Product Discounts Revised".

- 35 The issue was then closed in December 2016, and MIS did not seek to remediate customers, conduct any further investigation, or address the issue at a systems level.
- 36 No further reporting to MASNZ's Executive Team or Board was provided about the issue, including about the fact that the issue had been closed without a technology or process change.
- 37 Subsequently, the Multi-Policy Discount issue was re-identified as an issue as part of MIS' monthly reporting to the Executive Team in February 2019.
- 38 Between March 2019 and July 2021 MIS and MASNZ investigated the extent of the issue in order to identify affected policies and remediate customers. This process included:
- (a) In or around December 2019, MIS established an incident stakeholder group to urgently investigate the scale of the issue and develop a remediation plan and system enhancements to stop the issue reoccurring.

- (b) In February 2021, MASNZ restructured its Conduct project and engaged external consultants to assist with the remediation process.
  - (c) In or around May 2021, a Conduct and Remediation Committee, comprising of MASNZ's Chief Executive Officer, all members of MASNZ's Senior Leadership team, and external consultants, was established.
  - (d) In or around July 2021, the MASNZ Conduct and Remediation Committee agreed on the approach to correcting under and over discounting of customers impacted by the Multi-Policy Discount issue prior to commencing remediation.
- 39 The issue was reported to the FMA in August 2021.

### **The Inflation Adjustments**

- 40 From at least 1 April 2009, MLA has offered an inflation-adjusted cover option in relation to some of its income replacement and life Policies, which provides Customers with the option to increase Cover, with an equivalent uplift to the Premium in order to adjust for inflation each year (**Inflation Adjustments**).

#### **Particulars**

At various times, the Inflation Adjustments option has been offered with respect to the Income Security, Total and Permanent Disability, Professional Life Plan, Legacy L00 Dread Disease, Legacy L00 Recovery Insurance, Legacy L00 Life Insurance, Personal Health, and Income Protection products.

- 41 The Inflation Adjustments are applied from the date of renewal of the Policies, which is usually annually on the same date that each Policy was originally issued.
- 42 At all material times, the Inflation Adjustments were to be applied by reference to the Policy Documents. The terms of the Inflation Adjustments varied across the Policies, but was commonly set by reference to:
- (a) the change in the Consumer Price Index (**CPI**) over a 12 month period;
  - (b) an amount not in excess of the "Index of Wage Rates"; or
  - (c) the greater of 2% (or 5% for certain "inflation plus" Policies) or CPI.
- 43 CPI is calculated by Statistics New Zealand annually and stated as a percentage.

### Particulars

The Schedule sets out the CPI rates published for the year ending 31 March for the years 2009 through to 2017.

- 44 The Index of Wage Rates:
- (a) is not an index tracked by Statistics New Zealand; and
  - (b) was, at all material times, not defined internally within MLA.
- 45 The Inflation Adjustments, when applied, have the effect of increasing a Customer's Cover and Premium for the forthcoming year.

### Renewal Documents

- 46 The renewal notice in some Renewal Documents contained wording that: *"Where you have chosen to protect benefits under this policy from inflation, we have applied an inflation adjustment to those sums insured"* (**Inflation Wording**).

### Particulars

The Inflation Wording was contained in the Renewal Documents issued in relation to the Professional Life Plan and LOO Life policies, but not Income Security, Personal Health and Income Protection policies.

- 47 At all material times, the Renewal Documents did not otherwise:
- (a) inform Customers of the dollar value of the Inflation Adjustments;
  - (b) inform Customers of the proportion of any Premium or Cover increase that was attributable to an Inflation Adjustment; or
  - (c) refer to the Inflation Adjustment, save for the wording particularised at paragraph 44 above.
- 48 The Renewal Documents represent that the amount of the Cover and the Premium set out in it is the amount of Cover the Customer has, and the amount of the Premium owing, for each benefit under that Policy.

### MLA incorrectly applied Inflation Adjustments

- 49 From 2009 until 31 July 2017, the Policy Administration System automatically applied an Inflation Adjustment of 3% due to MLA's system settings, instead of the Inflation Adjustment specified in the Policies of Customers who had elected to receive an Inflation Adjustment (**Adjustment Error**).



## Particulars

The rates of the Inflation Adjustment specified in Policies are described in paragraphs 40 to 42 above.

- 50 Between 2009 and 2022, some Customers who were affected by the Adjustment Error were charged a higher Premium and received a corresponding greater level of Cover than they otherwise should have in accordance with the terms of their Policy Documents (**Affected Adjustment Customers**).
- 51 The Adjustment Error arose as a result of:
- (a) deficiencies in systems and controls in MLA's systems and processes; and
  - (b) a lack of knowledge, maintenance, and oversight of legacy policies.
- 52 The Affected Adjustment Customers received Renewal Documents (**Affected Adjustment Documents**) that referred to:
- (a) the incorrect Premiums for the forthcoming policy year (**Incorrect Adjustment Premiums**); and
  - (b) the incorrect Cover for the forthcoming policy year (**Incorrect Cover**).
- 53 The Affected Adjustment Documents falsely represented that:
- (a) the Incorrect Adjustment Premiums were the correct amounts owed by the Affected Adjustment Customers under their Policies; and
  - (b) MLA was entitled to charge the Incorrect Adjustment Premiums that appeared on the Affected Adjustment Documents.
- 54 The Affected Adjustment Documents that contained the Inflation Wording falsely represented that:
- (a) the Incorrect Cover and Incorrect Adjustment Premiums had the performance characteristics or benefits of protecting the Affected Adjustment Customers' Policies from inflation; and
  - (b) charging the Incorrect Adjustment Premiums were needed in order to protect the Affected Adjustment Customers' Policies from inflation.
- 55 Between approximately April 2014 and June 2022:
- (a) there were 6,267 Affected Adjustment Customers;
  - (b) the Incorrect Adjustment Premiums charged to Affected Adjustment Customers totalled approximately \$118,120,726;

- (c) the Affected Adjustment Customers were charged \$1,714,067 in overcharged Premiums, being the difference between the Incorrect Adjustments Premiums and the Premiums that should have been charged in accordance with the Affected Adjustment Customers' Policies (**Adjustment Overcharges**); and
  - (d) approximately 325 Affected Adjustment Customers made claims on their Policies and received approximately \$419,605 in Benefit Payments above what they otherwise would have received if the Adjustment Error had not occurred.
- 56 MLA has reimbursed \$797,329.37 in Adjustment Overcharges paid by Affected Adjustment Customers.

**MLA's and MASNZ's knowledge of the Adjustment Error**

- 57 MASNZ employees first identified the existence of some Affected Adjustment Customers in September 2012, and identified the Adjustment Error in 2017.
- 58 Although steps were taken in 2017 by MASNZ employees to address the Adjustment Error by correcting the Inflation Adjustment rate automatically applied by MLA's Policy Administration Systems no broader escalation or investigation was undertaken at the time, including as to whether or how the Adjustment Error had affected Customers.
- 59 In relation to paragraph 58, the lack of escalation or investigation by MAS employees was due to a lack of robust incident management processes.
- 60 The Adjustment Error, as it related to Income Security and Total and Permanent Disability products, was reidentified and escalated as an incident to senior MASNZ employees in March 2019. It was reported to MLA's Board by around May 2019.
- 61 Subsequently, MLA undertook a preliminary analysis into the issue and incorporated it into MASNZ's incident management processes. A further report on the issue via Incident Reports was provided to MASNZ's Executive and Board in around August 2019.
- 62 Funding for MLA's investigation into the issue (as it related to the Income Security and Total and Permanent Disability products) was approved in October 2019.
- 63 In June 2020, MLA decided that the scope of data gathering and analysis be extended to include all policies that were current at any time during 1 August 2009 to 31 July 2017 and received at least one inflation adjustment.
- 64 In September 2020 MASNZ approved further funding so that the investigation and remediation of the issue could be completed.
- 65 In February 2021, MASNZ engaged external consultants to support its assessment of the scale of the Adjustment Error and remediation required,

through which MASNZ identified that the Adjustment Error affected other product types.

- 66 The FMA was informed:
- (a) of the Adjustment Error as it related to the Income Security and Total and Permanent Disability products in May 2019;
  - (b) following investigation by MLA, of the scale of the Adjustment Error relating to the Income Security and Total and Permanent Disability product in August 2021; and

**Particulars**

MASNZ Conduct and Culture Programme of Work dated June 2019; MASNZ progress report February 2020; MASNZ progress report August 2020; MASNZ progress report February 2021; meeting between MASNZ and the FMA on 18 August 2021; letter from MASNZ to the FMA dated 20 August 2021; MASNZ progress report September 2021.

- (c) that the Adjustment Error also impacted multiple other product types in August 2021.

**Particulars**

Meeting between MASNZ and the FMA on 30 August 2021.

## **Benefit Payments Errors**

### **Benefit Payments are manually calculated**

- 67 Generally, when a Customer makes a claim under their Policy and the claim is approved, MASNZ employees are required to then manually calculate the amount of the Customer's Benefit Payments.
- 65 The calculation is performed by MASNZ employees using a Microsoft Excel spreadsheet.
- 68 The Remittance Letters generally contain information about the type of benefit being paid, the time period for the claim, and the amount of the Benefit Payments.

### **MLA incorrectly calculated Benefit Payments**

- 69 In or around June 2019, MLA undertook a review of its insurance claims processes in relation to its life and disability insurance products.
- 70 As a result of that review, MLA identified various claims calculation errors made by MASNZ employees when calculating a Customer's Benefit Payments (**Benefit Payment Errors**).

- 71 The Benefit Payment Errors included where:
- (a) MASNZ staff incorrectly calculated a Customer's weekly Benefit Payments, for example, where MLA incorrectly calculated a Customer's pre-disability income or other incorrect data entry.
  - (b) MLA incorrectly calculated a Customer's Benefit Payments by using a calculation method that was inconsistent with certain terms in the Customer's policy, including:
    - (i) the incorrect rate being applied for escalating benefits;
    - (ii) no escalating benefits being applied at all; and
    - (iii) failure to apply a waiver of a Customer's Premium that they were otherwise entitled to.
- 72 The Benefit Payment Errors arose as a result of:
- (a) manual data entry and calculation errors within spreadsheets;
  - (b) MLA's failure to adequately document processes relating to claims calculations and methodology; and
  - (c) (a lack of oversight of Benefit Payment calculations and insufficient guidance provided to staff performing the calculations.
- 73 The Benefit Payment Errors resulted in some Customers receiving lower Benefit Payments than they otherwise would have if the Benefit Payment Errors had not occurred (**Affected Benefit Customers**).
- 74 The Affected Benefit Customers received Remittance Letters (**Affected Remittance Letters**) that referred to the incorrect Benefit Payment amounts (**Incorrect Benefit Amounts**).
- 75 The Affected Remittance Letters falsely represented that:
- (a) the Incorrect Benefit Amounts were the correct benefits owed to the Affected Benefit Customers under their Policies; and
  - (b) the Incorrect Benefit Amounts were the full amounts owed to the Affected Benefit Customers in accordance with their rights under their Policies.
- 76 Between 1 April 2014 and 1 June 2022:
- (a) the Benefit Payment Errors have affected approximately 104 Affected Benefit Customers; and
  - (b) the Benefit Payment Errors have resulted in a total of \$1,047,059.90 in underpayments of Benefit Payments to the Affected Benefit Customers.

- 77 The Affected Benefit Customers had no way of knowing that the Benefit Payment Errors had occurred and that the Incorrect Benefit Amounts had not been calculated correctly.
- 78 MASNZ has reimbursed \$1,160,638.04 in underpayments to Affected Benefit Customers.

#### **MLA's and MASNZ's knowledge of the Benefit Payment Errors**

- 79 MLA identified the first instance of a Benefit Payment Error in August 2019. MLA proceeded to investigate further and identified further Benefit Payment Errors between August 2019 and June 2021.
- 80 Following implementation of improvements to the control environment in respect of life and disability claims processes between June 2019 and June 2021, the issue was reported to MASNZ's Audit & Risk Committee in June 2021.
- 81 The Benefit Payment Errors were reported to the FMA by MASNZ in August 2021.
- 82 MASNZ commenced remediation of the Affected Benefit Customers in September 2021.
- 83 Since discovery of the issue, MLA has introduced a number of enhancements to its systems and improvements to its controls between June 2019 and June 2021, including a peer review process of all Benefit Payment calculations and payment transactions, and updating the Microsoft Excel workbooks used to calculate Benefit Payments.

#### **The No Claims Bonus**

- 84 Since April 2014, MIS has offered a discount to Customers' Premium at renewal of their Policies if they meet certain criteria relating to the number of claims made under their Policies in the preceding five years (No Claims Bonus).
- 85 Customers are eligible to receive different levels of discount in accordance with the different grades of a No Claims Bonus depending on the specific criteria for each of those grades (**Eligible NCB Customers**).
- 86 The higher the grade of the No Claims Bonus, the higher the discount available on Customers' Premiums.
- 87 MIS and MASNZ did not publicly publish detailed eligibility criteria in relation to the No Claims Bonus and the different grades available, however that criteria:
- (a) was documented in internal MIS policies and processes; and
  - (b) was well understood by MASNZ employees.

88 At all material times, the existence of the No Claims Bonus was otherwise communicated to Customers through policy documents, pamphlets, or in conversations between MASNZ staff members and Customers.

**MIS incorrectly applied the No Claims Bonus**

89 Between approximately April 2014 and July 2022, MIS did not apply the correct No Claims Bonus grade to the Premiums owed by some Eligible NCB Customers who held domestic policy products (**Affected NCB Customers**).

90 MIS misapplied the No Claims Bonus in two scenarios, where a Customer's No Claims Bonus grade was downgraded as a result of:

- (a) A failure by MASNZ staff to reverse a selection on one of the Customer's lines of cover in MIS' Policy Administration System, in circumstances where that selection should have been reversed because the line of cover was no longer needed for the Customer's claim (**Line of Cover Issue**).
- (b) At the Customer's Renewal Date, their Policy was incorrectly flagged as having an open claim, in circumstances where the claim had been withdrawn, or the Customer had not been found to be "at fault" (**Flags Issue**).

91 The Line of Cover and Flags Issues arose as a result of:

- (a) MIS' over-reliance on manual processes to correctly apply the No Claims Bonus; and
- (b) deficiencies in its systems and controls.

**Renewal Documents**

92 Where the wrong No Claims Bonus grade had been applied, the Renewal Documents issued to Eligible NCB Customers (**Affected NCB Invoices**) referred to amounts of Premiums that were not owed by them (**Incorrect NCB Premiums**), instead of the actual amounts that were in fact owed by them had the no Claims Bonus been correctly applied (**True NCB Premiums**).

93 The **Affected NCB Invoices** falsely represented that:

- (a) the **Incorrect NCB Premiums** were the correct amounts owed by the **Affected NCB Customers** under their Policies; and
- (b) MIS was entitled to charge the **Incorrect NCB Premiums** that appeared on the **Affected NCB Invoices**.

94 Between approximately April 2014 and July 2022:

- (a) MIS issued **Affected NCB Invoices** to approximately 1235 **Affected NCB Customers** who were entitled to a higher grade of No Claims Bonus, but did not receive it;

- (b) the Incorrect NCB Premiums charged to Affected NCB Customers totalled approximately \$14,800,926.55, with approximately \$572,061 in overcharged Premiums, being the difference between the Incorrect NCB Premiums and the True NCB Premiums based on MIS' discounting approach (**NCB Overcharges**); and
  - (c) approximately 3% of Eligible NCB Customers were Affected NCB Customers.
- 95 MASNZ has reimbursed \$639,976.91 in NCB Overcharges paid by affected Customers.

**MIS' and MASNZ's knowledge of the NCB Overcharges**

- 96 MASNZ employees became aware of the Line of Cover Issue as early as May 2014, and it was raised a number of times between MASNZ employees in subsequent years, although:
- (a) no systemic fix was implemented to address the issue; and
  - (b) the issue was not escalated internally within MASNZ.
- 97 The Line of Cover Issue was reidentified in June 2019 and reported to MASNZ's Executive Committee as a conduct issue, and then reported to MASNZ's Board in September 2019.
- 98 Between November 2019 and April 2022 MIS proceeded to investigate the extent of the issue to identify affected policies and remediate affected customers. This included:
- (a) running reports and gathering data from around November 2019 to understand the extent of the issue and resources required to address it;
  - (b) developing exception reporting; and
  - (c) developing rules and guidance for application of the No Claims Bonus going forward.
- 99 In April 2022, MIS commenced remediating Customers affected by the Line Cover Issue.
- 100 Following its investigation into and remediation of the Line Cover Issue, MIS identified the Flags Issue in or around June 2022.
- 101 MIS introduced exception reporting in:
- (a) or around November 2021 to address the Line of Cover Issue; and
  - (b) August 2022 to address the Flags Issue.
- 102 The No Claims Bonus issue was reported to the FMA in:

- (a) November 2021, insofar as it relates to the Line of Cover Issue; and
- (b) July 2022, insofar as it relates to the Flags Issue.

### **The FMCA**

- 103 Section 22 of the FMCA came into force on 1 April 2014.
- 104 Pursuant to s 536 of the FMCA:
- (a) MIS was acting on behalf of MASNZ in issuing the Affected MPD Invoices and Affected NCB Invoices; and
  - (b) MLA was acting on behalf of MASNZ in issuing the Affected Adjustment Documents and Affected Remittance Letters,
- and this conduct is treated as conduct also engaged in by MASNZ.

### **First cause of action: the Multi-Policy Discounts**

- 105 The plaintiff repeats paragraphs 1 to 39, 103, and 104 above.
- 106 MASNZ issued the Affected MPD Invoices in connection with the supply of financial services, namely the supply of insurance services.
- 107 By issuing the Affected MPD Invoices dated on or after 1 April 2014, MASNZ made false and/or misleading representations:
- (a) with respect to the price to be paid for its insurance services, in breach of s 22(f) of the FMCA; and/or
  - (b) that it had a right to charge the Incorrect MPD Premiums to the Affected MPD Customers, in breach of s 22(h) of the FMCA.

#### **Accordingly, the Plaintiff seeks:**

- A. a declaration that MASNZ contravened ss 22(f) and/or (h) of the FMCA by issuing the Affected MPD Invoices dated on or after 1 April 2014;
- B. an order under s 489 of the FMCA that MASNZ pay a pecuniary penalty to the Crown; and
- C. an order under s 493 of the FMCA that the pecuniary penalty be first applied to the FMA's actual costs in bringing the proceedings.

### **Second cause of action: Inflation Adjustments**

- 108 The plaintiff repeats paragraphs 1 to 17, 40 to 66, 103, and 104 above.



- 109 MASNZ issued the Affected Renewal Documents in connection with the supply of financial services, namely the supply of insurance services.
- 110 By issuing the Affected Adjustment Documents dated on or after 1 April 2014, MASNZ made false and/or misleading representations:
- (a) with respect to the price to be paid for its insurance services, in breach of s 22(f) of the FMCA; and/or
  - (b) that MASZ had a right to charge the Incorrect Adjustment Premiums to the Affected Adjustment Customers, in breach of s 22(h) of the FMCA.
- 111 By issuing the Affected Adjustment Documents containing the Inflation Wording dated on or after 1 April 2014, MASNZ made false and/or misleading representations:
- (a) with respect to the performance characteristics or benefits being offered, in breach of s 22(d) of the FMCA; and/or
  - (b) as to the need for the services, in breach of s 22(g) of the FMCA.

**Accordingly, the Plaintiff seeks:**

- A. a declaration that MASNZ contravened ss 22(f) and/or (h) of the FMCA by issuing the Affected Adjustment Documents dated on or after 1 April 2014;
- B. a declaration that MASNZ contravened ss 22(d) and/or (g) of the FMCA by issuing the Affected Adjustment Documents that contained the Inflation Wording dated on or after 1 April 2014;
- C. an order under s 489 of the FMCA that MASNZ pay a pecuniary penalty to the Crown; and
- D. an order under s 493 of the FMCA that the pecuniary penalty be first applied to the FMA's actual costs in bringing the proceedings.

**Third cause of action: Benefit Payment Errors**

- 112 The plaintiff repeats paragraphs 1 to 17, 67 to 83, 103, and 104 above.
- 113 MASNZ issued the Affected Remittance Letters in connection with the supply of financial services, namely the supply of insurance services.
- 114 By issuing the Affected Remittance Letters dated on or after 1 April 2014, MASNZ made false and/or misleading representations:
- (a) with respect to the benefits Affected Benefit Customers were entitled to, in breach of s 22(d) of the FMCA; and/or
  - (b) with respect to the rights of the Affected Benefit Customers, in breach of s 22(h) of the FMCA.

**Accordingly, the Plaintiff seeks:**

- A. a declaration that MASNZ contravened ss 22(d) and/or (h) of the FMCA by issuing the Affected Remittance Letters dated on or after 1 April 2014;
- B. an order under s 489 of the FMCA that MASNZ pay a pecuniary penalty to the Crown; and
- C. an order under s 493 of the FMCA that the pecuniary penalty be first applied to the FMA's actual costs in bringing the proceedings.

**Fourth cause of action: No Claims Bonus**

- 115 The plaintiff repeats paragraphs 1 to 17, and 84 to 104 above.
- 116 MASNZ issued the Affected NCB Invoices in connection with the supply of financial services, namely the supply of insurance services.
- 117 By issuing the Affected NCB Invoices dated on or after 1 April 2014, MASNZ made false and/or misleading representations:
  - (a) with respect to the price to be paid for its insurance services, in breach of s 22(f) of the FMCA; and/or
  - (b) that it had a right to charge the Incorrect NCB Premiums to the Affected NCB Customers, in breach of s 22(h) of the FMCA.

**Accordingly, the Plaintiff seeks:**

- A. a declaration that MASNZ contravened ss 22(f) and/or (h) of the FMCA by issuing the Affected NCB Invoices dated on or after 1 April 2014;
- B. an order under s 489 of the FMCA that MASNZ pay a pecuniary penalty to the Crown; and
- C. an order under s 493 of the FMCA that the pecuniary penalty be first applied to the FMA's actual costs in bringing the proceedings.

This statement of claim is filed on behalf of the Plaintiff by its solicitor **Sam Stephen McMullan** whose address for service is at the offices of MC, Level 7, 8 Hardinge Street, Auckland.

Documents for service on the Plaintiff may be left at that address for service or may be:

- (a) posted to PO Box 90750, Victoria Street West, Auckland 1142; or
- (b) left at a document exchange for direction to DX CP24063; or
- (c) transmitted by facsimile to +64 9 336 7629; or
- (d) emailed to [sam.mcmullan@mc.co.nz](mailto:sam.mcmullan@mc.co.nz), with a copy to [elizabeth.rutherford@mc.co.nz](mailto:elizabeth.rutherford@mc.co.nz).

**Schedule: Published CPI rates - March 2009 to March 2017**

<b>Date</b>	<b>Annual percentage change</b>
Mar-09	3
Mar-10	2
Mar-11	4.5
Mar-12	1.6
Mar-13	0.9
Mar-14	1.5
Mar-15	0.3
Mar-16	0.4
Mar-17	2.2

## **Schedule 2: Notice of Admissions**

**IN THE HIGH COURT OF NEW ZEALAND  
WELLINGTON REGISTRY**

**I TE KŌTI MATUA O AOTEAROA  
TE WHANGANUI-Ā-TARA ROHE**

**CIV-2023-485-000251**

**UNDER THE FINANCIAL MARKETS CONDUCT ACT 2013**  
**BETWEEN FINANCIAL MARKETS AUTHORITY**  
**Plaintiff**  
**AND MEDICAL ASSURANCE SOCIETY NEW ZEALAND**  
**LIMITED**  
**Defendant**

---

**NOTICE OF ADMISSIONS**  
 **SEPTEMBER 2023**

---

---

**Russell  
McLeagh**

E J Rushbrook | T J Cooksley  
P +64 4 499 9555  
F +64 4 499 9556  
PO Box 10-214  
DX SX11189  
Wellington

**THE DEFENDANT BY ITS SOLICITOR SAYS:**

For the purpose of rr 15.15 and 15.16 of the High Court Rules 2016, the defendant admits the facts pleaded and causes of action in the amended statement of claim dated [x] September 2023.

Dated [x] September 2023

---

E J Rushbrook | T J Cooksley  
Counsel for the defendant

This document is filed by **Emmeline Julie Rushbrook**, solicitor for the defendant, of Russell McVeagh. The address for service of the defendant is Level 24, NTT Tower, 157 Lambton Quay, Wellington 6011.

Documents for service on the defendant may be left at that address for service or may be:

- (a) posted to the solicitor at PO Box 10-214, Wellington 6143; or
- (b) emailed to the solicitor at [emmeline.rushbrook@russellmcveagh.com](mailto:emmeline.rushbrook@russellmcveagh.com) or [tessa.cooksley@russellmcveagh.com](mailto:tessa.cooksley@russellmcveagh.com); or
- (c) left for the solicitor at a document exchange for direction to DX SX11189.

**Schedule 3: Joint Memorandum of Counsel**

**In the High Court of New Zealand  
Wellington Registry**

**I te Kōti Matua o Aotearoa  
Te Whanganui-ā-Tara Rohe**

CIV-2023-485-251

**Under** The Financial Markets Conduct Act 2013

**Between** **Financial Markets Authority**  
Plaintiff

**And** **Medical Assurance Society New Zealand Limited**  
Defendant

---

## **Joint memorandum of counsel requesting penalty hearing**

**DD September 2023**

---

**MC.**

Counsel: Brian Dickey

Sam McMullan | Elizabeth Rutherford  
PO Box 90750, Victoria Street West, Auckland 1142  
DX CP24063  
T: +64 9 336 7500  
sam.mcmullan@mc.co.nz |  
elizabeth.rutherford@mc.co.nz



# Joint memorandum of counsel requesting penalty hearing

## May it please the Court

- 1 The original parties to this proceeding entered into a settlement agreement for resolution of this proceeding. Since reaching that agreement, the following documents have been filed with the Court in this proceeding:
  - (a) a notice of discontinuance (in respect of the second and third defendants);
  - (b) an amended statement of claim; and
  - (c) a notice of admissions.
- 2 The plaintiff and the remaining defendant (MASNZ) (the **parties**) have agreed that initial disclosure following the filing of the Amended Statement of Claim is not required, in accordance with r 8.4(3) of the High Court Rules 2016.
- 3 As part of the resolution, the parties have agreed to jointly approach the Court seeking the imposition of a pecuniary penalty at an agreed level.
- 4 The parties therefore respectfully seek directions that:
  - (a) a one and a half hour fixture is scheduled for determination of the appropriate pecuniary penalty (in consultation with counsel as to their availability);
  - (b) the Plaintiff's submissions are filed 10 working days prior to the hearing; and
  - (c) the Defendant's submissions are filed five working days prior to the hearing.

Date: September 2023

.....  
Sam McMullan | Elizabeth Rutherford  
Counsel for the Plaintiff

.....  
Emmeline Rushbrook  
Counsel for the Defendant

**Schedule 4: Notice of Discontinuance**

**In the High Court of New Zealand  
Wellington Registry**

**I te Kōti Matua o Aotearoa  
Te Whanganui-ā-Tara Rohe**

CIV-2023-485-251

**Under** The Financial Markets Conduct Act 2013

**Between** **Financial Markets Authority**  
Plaintiff

**And** **Medical Assurance Society New Zealand Limited**  
First Defendant

**And** **Medical Life Assurance Society Limited**  
Second Defendant

**And** **Medical Insurance Society Limited**  
Third Defendant

---

## **Notice of discontinuance**

**DD September 2023**

---

**MC.**

Counsel: Brian Dickey

Sam McMullan | Elizabeth Rutherford  
PO Box 90750, Victoria Street West, Auckland 1142  
DX CP24063  
T: +64 9 336 7500  
sam.mcmullan@mc.co.nz |  
elizabeth.rutherford@mc.co.nz

# Notice of discontinuance

**To:** the Registrar of the High Court at Wellington

and

**To:** the Defendants

This document notifies you that –

- 1 The Plaintiff discontinues this proceeding against Medical Life Assurance Society Limited and Medical Insurance Society Limited.
- 2 A copy of the written consent of a defendant who is required under rule 15.20 of the High Court Rules to consent to this discontinuance is attached to this notice.
- 3 The parties are agreed that there is no issue as to costs.

**Date:** September 2023

.....  
Sam McMullan | Elizabeth Rutherford  
Counsel for the Plaintiff

---

**From:** Tessa Cooksley <tessa.cooksley@russellmcveagh.com>  
**Sent:** Wednesday, 20 September 2023 1:33 PM  
**To:** Yaren Fu  
**Cc:** Sam McMullan; 'Brian Dickey'; Elizabeth Rutherford; Emmeline Rushbrook

[REDACTED]

We confirm too that, consistent with clause 3.2(a) of the draft settlement agreement, Medical Assurance Society New Zealand Limited, Medical Life Assurance Society Limited, and Medical Insurance Society Limited ("MAS Group Parties") give their consent to the FMA discontinuing the proceeding filed on 28 April 2023 against Medical Life Assurance Society Limited and Medical Insurance Society Limited.

[REDACTED]

**Tessa Cooksley**

Senior  
Solicitor

RussellMcVeagh, 157 Lambton Quay, PO Box 10 211, Wellington 6143, New Zealand  
O +64 4 819 7250 F +64 4 499 9256

[tessa.cooksley@russellmcveagh.com](mailto:tessa.cooksley@russellmcveagh.com)

[www.russellmcveagh.com](http://www.russellmcveagh.com)

[REDACTED]