



ASIC
Australian Securities &
Investments Commission

Ending grandfathered conflicted remuneration

June 2021

About this report

We have prepared this report in response to the direction issued to ASIC under s14 of the *Australian Securities and Investments Commission Act 2001* on 21 February 2019.

As required under the direction, we investigated the steps taken by industry participants from 1 July 2019 to 31 December 2020 (review period) to:

- › end the payment of grandfathered conflicted remuneration (GCR) ahead of the commencement of the legal requirement to end GCR
- › pass previously grandfathered benefits on to product holders.

This report sets out our key findings.

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Executive summary

In its final report, the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (Financial Services Royal Commission) recommended an end to the grandfathering of conflicted remuneration paid to financial advisers as soon as practicable: see [recommendation 2.4](#).

The Australian Government accepted this recommendation. On 14 October 2019, The *Treasury Laws Amendment (Ending Grandfathered Conflicted Remuneration) Act 2019* was passed and had the effect of ending GCR arrangements from 1 January 2021. Consequently, previously grandfathered benefits that are given from 1 January 2021 are subject to the ban on conflicted and other banned remuneration in Divs 4 and 5 of Pt 7.7A of the Corporations Act, including where the legal obligation to pass the benefits on to product holders accrued before 1 January 2021.

A framework was also established for mandating the rebate of any conflicted remuneration paid on or after 1 January 2021 to affected product holders.

Under the rebating framework, conflicted remuneration for advice that remains payable on or after 1 January 2021 must be rebated by a product issuer to a product holder instead of being paid to an Australian financial services (AFS) licensee or its representatives. The conflicted remuneration can be rebated to a product holder by making a payment or providing a monetary benefit: see s963N. The amount paid, or the amount of monetary benefit provided, to a product holder under a rebating scheme must be:

- › rebated to a product holder no later than one year after the date by which the product issuer is legally obliged (but for the ban on conflicted remuneration) to give the conflicted remuneration to another person: see reg 7.7A.15AK(1) of the Corporations Regulations
- › an amount that is just and equitable in the circumstances: see reg 7.7A.15AK(2).

On 21 February 2019, ASIC received a direction under s14 of the *Australian Securities and Investments Commission Act 2001* [see [Australian Securities and Investments Commission \(Investigation into Grandfathered Conflicted Remuneration for Financial Advice\) Direction 2019](#)] to investigate the extent to which persons who were involved in giving or accepting GCR as at 1 July 2019 were:

- › changing their arrangements to end the payment of GCR before 1 January 2021
- › passing on the benefits of ending the payment of GCR to product holders, whether through direct rebates or some other method.

Summary of key findings

In response to the Direction, ASIC undertook a comprehensive investigation which found that:

- › before the review period (the 2018-19 financial year), 93 product issuers paid \$816.1 million in GCR relating to 1,323 products and at least 2.5 million client accounts

- › during the review period, 89 product issuers paid \$760.5 million in GCR relating to 1,273 products. This amount is reflective of the fact that most arrangements were only terminated towards the end of the review period
- › during the review period, product issuers fully terminated 96% of GCR arrangements (1,227 products). Product issuers did not fully terminate 4% of GCR arrangements (46 products)
- › for GCR arrangements terminated in the review period, product issuers took steps to rebate product holders in relation to 755 products
- › product issuers estimated that \$266.7 million was rebated to product holders over the review period, mostly through fee reductions. During the review period, there was no mandatory requirement to rebate to product holders
- › financial advisers changed the way they charged clients over the review period. Where appropriate, they moved clients to other fee arrangements – for example, charging an ongoing fee, an hourly rate, a fixed price or an asset-based fee
- › eight product issuers had arrangements in place as at 1 January 2021 that require them to rebate previously grandfathered benefits on 46 products. All eight product issuers plan to rebate product holders an amount equal in value to the amount of GCR the issuer would have otherwise paid. This amount is estimated to be \$24.4 million. These product issuers are listed in Table 1 in Appendix 1.

Overall, the findings of our investigation were very pleasing. Nearly all product issuers ended GCR arrangements before 1 January 2021. As noted above, a small number of product issuers have arrangements in place that require them to rebate previously grandfathered benefits from 1 January 2021. These product issuers plan to rebate product holders an amount equal in value to the amount of GCR the issuer would have otherwise paid.

Next steps

We will contact the eight product issuers that have arrangements in place that require them to rebate previously grandfathered benefits from 1 January 2021 to ensure that they understand their legal obligations. They must ensure that:

- › rebates are provided no later than one year after the date by which they are legally obliged (but for the ban on conflicted remuneration) to give the conflicted remuneration to another person
- › rebates to product holders are just and equitable in the circumstances.

This is consistent with the law and our guidance in [Regulatory Guide 246 Conflicted and other banned remuneration](#) (RG 246): see RG 246.204–RG 246.214.

If we find that product issuers are not properly complying with their legal obligations, we will consider taking enforcement action.

Our review methodology

Our review involved a periodic survey of product issuers known to pay GCR to AFS licensees or their representatives (the surveyed population). The surveyed population was identified from data obtained from the 10 largest AFS licensees. We asked these AFS licensees to provide a list of all products on which they received GCR.

The surveyed population included 93 product issuers responsible for 1,323 products.

Data we requested

We required the surveyed population, under compulsory notice, to provide data including:

- › the dollar amount paid during the relevant period, and what percentage commission this represented
- › whether for the relevant period, the product issuer fully or partially terminated arrangements that required them to pay GCR
- › if the product issuer had not ended their GCR arrangements, why not
- › whether the product issuer had passed the benefits of ending GCR arrangements on to product holders and if so, how the pass-through mechanism operated (i.e. rebate to product holders, fee reduction or other)
- › if the product issuer had not fully terminated arrangements that require them to pay GCR, whether the product issuer intended to terminate the arrangements prior to 1 January 2021.

We required the surveyed population to provide data:

- › initially for a 12-month period (2018–19 financial year)
- › on a quarterly basis from 1 July 2019 to 31 December 2019
- › for one final 12-month period from 1 January 2020 to 31 December 2020.

Note: We stopped collecting quarterly data in March 2020 to reduce the regulatory burden for product issuers during the COVID-19 pandemic. We conducted a final round of data collection in January 2021 to obtain data for the remainder of the review period.

We also sought to understand the extent to which financial advisers changed their arrangements as a result of the ending of GCR. To do this, we engaged with the two largest financial advice industry associations – the Financial Planning Association (FPA) and the Association of Financial Advisers (AFA). The FPA and AFA surveyed a sample of their members to identify how they changed their arrangements in the review period.

Limitations of the data

While we sought to make our review methodology as robust as possible, a potential limitation of our review is that we may not have identified all of the GCR arrangements in place in industry. We took various measures to mitigate this risk. We engaged an external consultant to assist with the

administration and data broking of the recurrent data collection, we issued pilot notices to test the reliability of the data requested and we issued notices to the top 10 AFS licensees to obtain the names of the product issuers known to pay GCR. Our view is that the surveyed population represents the vast majority of the product issuers who paid GCR during the review period.

It is important to further note that the data collected in our review was self-reported. While every effort has been made to resolve errors and inconsistencies in the data submitted to ASIC, there may still be errors in the data which may affect the accuracy of our findings in this report.

Note: Errors and inconsistencies in the data reported to ASIC included:

- › contradictory responses
- › a lack of visibility of and insufficient or incomplete data on client accounts and benefits passed through to product holders
- › a lack of consistency and reliability in product-level reporting.

Where we have identified errors or inconsistencies in the data, we have requested that the data be resubmitted. If the resubmitted data did not solve the identified issues, we have endeavoured to improve the quality of the data ourselves.

Findings from our review

GCR paid before the review period

Ninety-three product issuers paid at least \$816.1 million in GCR to AFS licensees or their representatives in the 2018–19 financial year. They paid this in relation to 1,323 products. This does not include conflicted remuneration paid under other permitted exemptions (i.e. exemptions from the ban on conflicted remuneration other than grandfathering). Other permitted exemptions include:

- › commissions paid on life risk insurance or general insurance products
- › other excluded conflicted remuneration (e.g. commissions to timeshare advisers)
- › commissions paid to persons other than financial advisers (e.g. mortgage brokers).

Our review also identified that product issuers paid GCR relating to at least 2.5 million client accounts. However, in responding to the review, some product issuers did not provide information about the number of client accounts for products, so this figure is likely to be understated.

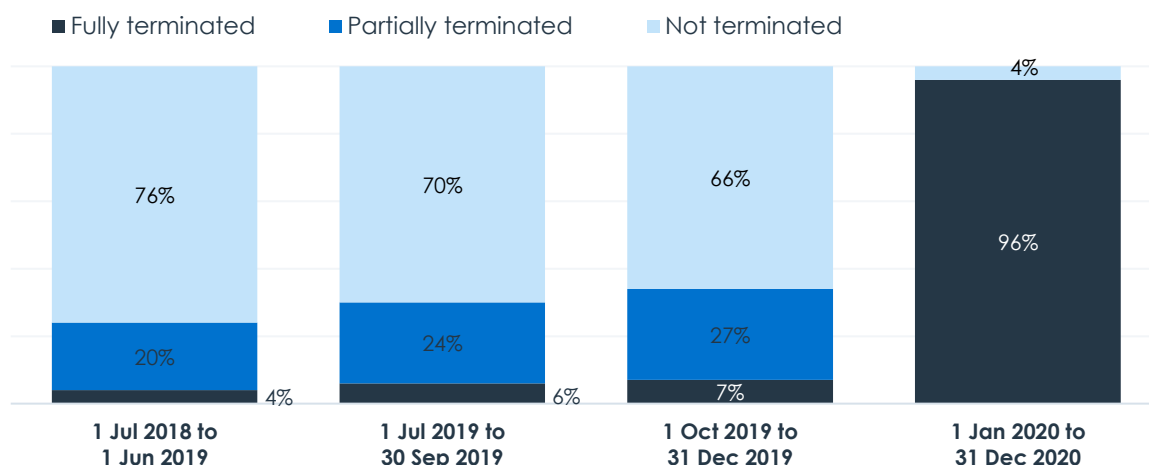
GCR paid in the review period

Eighty-nine product issuers paid at least \$760.5 million in GCR to AFS licensees or their representatives in the review period. They paid this in relation to 1,273 products. On an annualised basis, and for comparative purposes, this equates to \$507 million. The majority of this GCR was paid early in the review period, and decreased over the course of the period as product issuers terminated GCR arrangements.

Termination of GCR arrangements during the review period

Over the course of the review period, product issuers fully terminated GCR arrangements for 1,227 products (representing 96% of GCR arrangements): see Figure 1. Nearly all of these arrangements (1,185 products) were terminated during 2020, with the majority (837 products) terminated in the December quarter: see Figure 2.

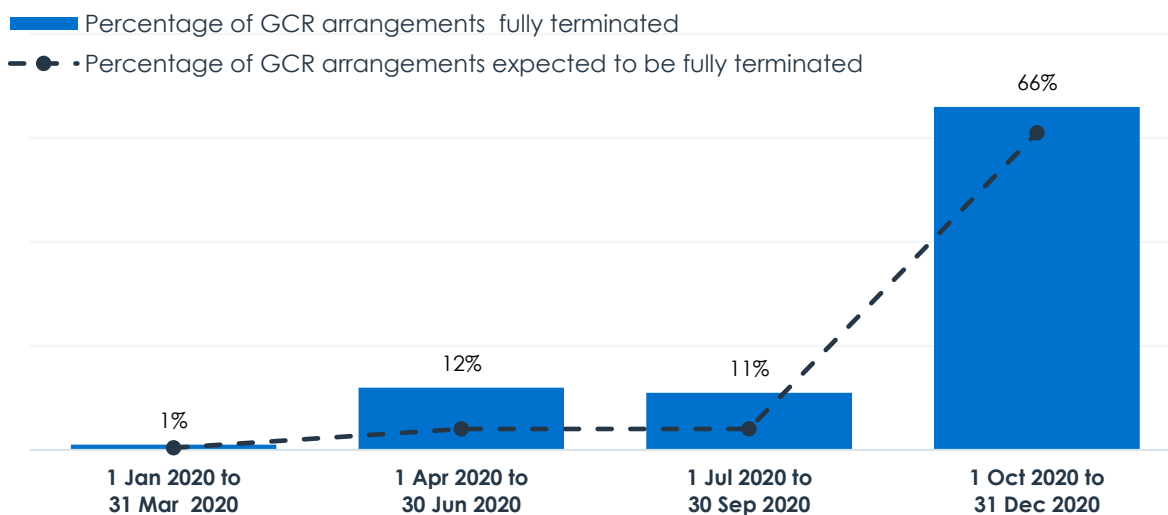
Figure 1: When arrangements were terminated (including arrangements terminated before review period)



Note 1: See Table 4 in Appendix 2 for the data shown in this figure (accessible version).

Note 2: We derived the figures for the 2018–19 financial year and quarters 1 and 2 of 2019–20 by tracking interim reports. We determined the figures for 2019–20 from final results reported directly by product issuers.

Figure 2: Arrangements fully terminated during the 2020 calendar year (excluding arrangements terminated before review period)



Note: See Table 5 in Appendix 2 for the data shown in this figure (accessible version).

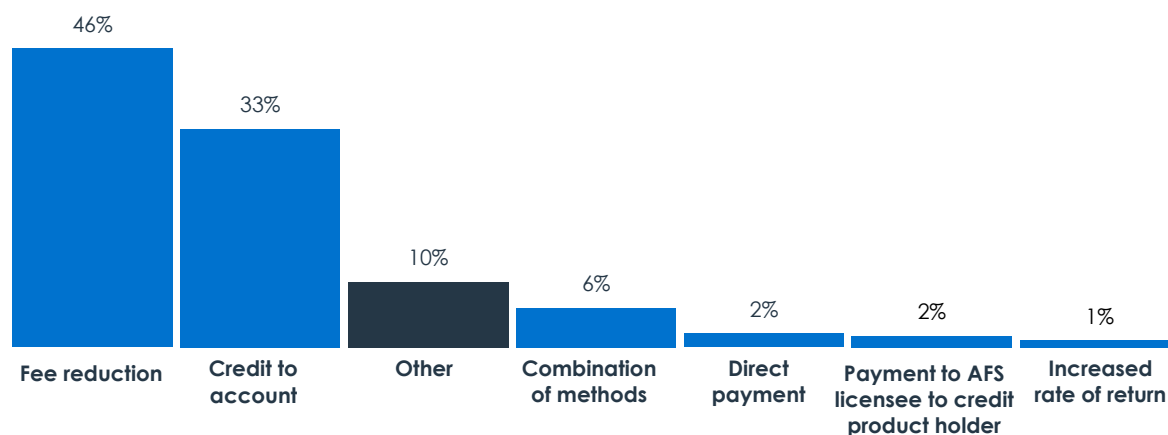
Voluntary rebate of previously grandfathered benefits during the review period

'Previously grandfathered benefits' are those benefits that would otherwise have been paid to AFS licensees or their representatives under GCR arrangements. For arrangements terminated in the review period, product issuers took steps to voluntarily rebate previously grandfathered benefits to product holders in relation to 755 products.

Product issuers estimate that they rebated \$266.7 million to product holders (\$177.8 million annualised). The most popular method of rebating previously grandfathered benefits to product holders was by a fee reduction, followed by a credit to holders' accounts.

For a full list of the methods of rebate, see Figure 3.

Figure 3: Methods of rebate



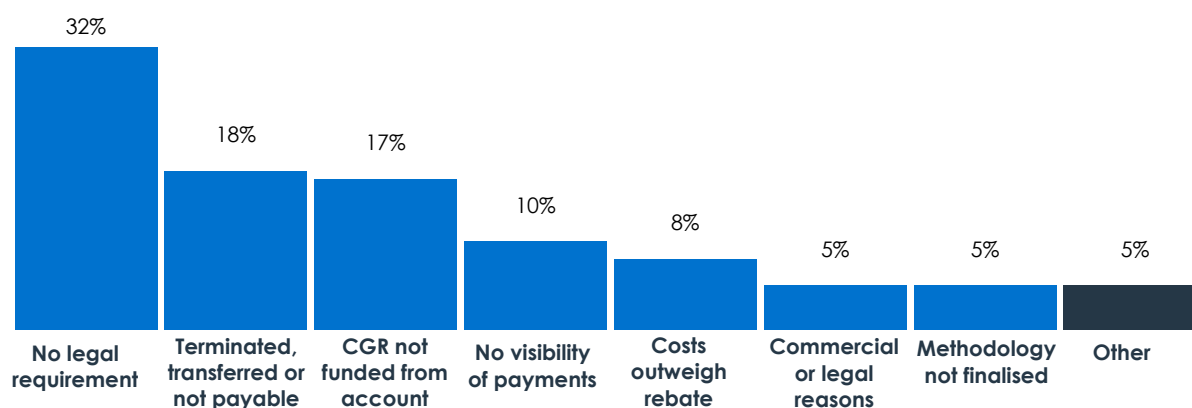
Note: See Table 6 in Appendix 2 for the data shown in this figure (accessible version).

Reasons for not passing on benefits to product holders during the review period

Product issuers provided several reasons for not providing a rebate to product holders under terminated GCR arrangements. The principal reasons were that there was no legal requirement to do so (32% of products in relation to which benefits were not passed on), that the products were terminated, transferred or there was no rebate payable (18% of products), and that the GCR was not funded from client accounts (17% of products).

For a full list of reasons, see Figure 4.

Figure 4: Reasons for not rebating



Note: See Table 7 in Appendix 2 for the data shown in this figure (accessible version).

Products with arrangements in place on 1 January 2021 that require the rebate of previously grandfathered benefits

Eight product issuers had arrangements in place on 1 January 2021 that require them to rebate previously grandfathered benefits. These arrangements apply to 46 products that paid \$48.2 million in GCR in 2020. These eight product issuers estimate that they will rebate \$24.4 million to product holders in the 2021 calendar year.

The eight product issuers indicated that for two thirds of their products (67%) rebates would occur by fee reductions. The next most popular method was a direct payment to product holders (17% of products). All eight product issuers indicated that they plan to rebate to product holders an amount equal in value to the amount of GCR that would have otherwise been paid to AFS licensees: see Table 1 in Appendix 1.

As mentioned above, we will contact these eight product issuers to ensure that they understand their legal obligations. They must ensure that:

- › rebates are provided no later than one year after the date by which they are legally obliged (but for the ban on conflicted remuneration) to give the conflicted remuneration to another person
- › rebates to product holders are just and equitable in the circumstances.

How recipients of GCR changed their arrangements

The FPA and AFA surveyed a sample of their members to identify how they changed their arrangements in the review period. The following was reported to ASIC.

GCR funded ongoing advice relationships between advisers and product holders before 1 January 2021

Most of the FPA members surveyed (93%) indicated that before 1 January 2021 they were using payments of GCR to fund an ongoing advice relationship with product holders. The AFA indicated that surveyed members were providing some form of service to approximately 75% of product holders for whom the member was receiving GCR. AFA and FPA members provided a range of services to product holders. These services included holistic and specific financial product advice, periodic and ad-hoc reviews, administrative assistance, investment updates and newsletters.

Surveyed members made many changes to business models and fee arrangements before 1 January 2021

Some FPA members stopped accepting GCR during the review period. Approximately half of these surveyed members were able to transition affected product holders to an alternate fee arrangement – for example, ongoing fee arrangements, charging hourly rates, fixed price agreements and asset-based pricing. Those who were unable to transition product holders to an alternate fee arrangement stopped providing services to these product holders.

Surveyed AFA members transitioned an average of 25% of product holders to an ongoing fee arrangement. They either transitioned other product holders to a transactional advice arrangement, provided services to them on a pro-bono basis, or no longer deemed them a client.

Surveyed AFA members generally focused on moving their higher value clients to ongoing fee arrangements. Respondents to the AFA's survey said that the economics of continuing to provide services to lower value clients has become challenging. They stated the cause of this was the ban on GCR and various compliance obligations, including the new requirement for annual fee disclosure statements and consent forms (imposed as a result of recommendation 2.1 of the Financial Services Royal Commission). Some AFA members have moved their lower value clients onto ongoing fee arrangements. However, they consider that this is not a sustainable position.

The AFA reported that many businesses have suffered a material reduction in income (15–20%) as a result of the ban on GCR. Both the AFA and the FPA said that some surveyed members were looking to exit arrangements with lower value clients.

Most surveyed members stopped accepting GCR before 1 January 2021

Two thirds of surveyed FPA members (approximately 66%) stopped accepting GCR before 1 January 2021. Many indicated that they were forced to do so by their AFS licensee or the product issuer. Others did so in order to make proactive changes to their business models.

The AFA did not receive any feedback on this issue. However, in their experience, AFA members had been moving product holders out of products paying GCR where appropriate.

Members did not generally play a role in rebating previously grandfathered benefits to product holders

The AFA and FPA noted that some members did rebate GCR payments to product holders. However, once product issuers ceased GCR payments, members did not generally play a role in rebating previously grandfathered benefits to product holders.

Appendix 1: Key statistics

Table 1: Product issuers with arrangements in place at 1 January 2021 that require the rebate of previously grandfathered benefits

Product issuers	Corresponding GCR paid in 2020	Estimated rebate amount for 2021	Rebate equal in value to the amount of GCR that would otherwise have been paid	Number of product holders entitled to rebate	Number of products
Asgard Capital Management Limited	\$1.05 million	\$0.63 million	Yes	3,197	1
BT Funds Management Limited	\$1.45 million	\$1.45 million	Yes	4,954	1
Legg Mason Asset Management Australia Ltd	\$2.38 million	\$2.07 million	Yes	Not reported	6
Macquarie Bank Limited	\$29.13 million	\$0.59 million	Yes	767,637	1
OnePath Life Limited	\$1.78 million	\$3.31 million	Yes	9,553	16
Pendal Fund Services Limited	\$0.18 million	\$0.03 million	Yes	6	5
Westpac Life Insurance Services Limited	\$9.86 million	\$13.98 million	Yes	20,943	7
Zurich Australia Limited	\$2.38 million	\$2.33 million	Yes	8,368	9

Note 1: The data in the column 'Rebate equal in value to the amount of GCR that would otherwise have been paid' is derived from the product issuer's response to ASIC's notices.

Note 2: The number of product holders entitled to a rebate is 'Not reported' for Legg Mason Asset Management Australia Ltd (Legg Mason) because Legg Mason indicated that due to the third party nature of the arrangements they do not have visibility over the underlying product holders.

Note 3: Product issuers are listed in alphabetical order and inferences should not be drawn from where the entity is listed in the table.

Table 2: The top 10 product issuers that paid the largest amount of GCR paid in the period 1 July 2018 to 31 December 2020

AFS licensee	Number of products	GCR paid	Percentage of total GCR in period	Cumulative percentage
N.M. Superannuation Proprietary Limited	37	\$266.6 million	17%	17%
Ipac Asset Management Limited	58	\$245.5 million	16%	33%
Colonial First State Investments Limited	14	\$221.2 million	14%	47%
NULIS Nominees (Australia) Limited	18	\$106.1 million	7%	54%
BT Funds Management Limited	38	\$81.5 million	5%	59%
OnePath Custodians Pty Limited	13	\$79.0 million	5%	64%
Macquarie Bank Limited	4	\$76.7 million	5%	69%
IOOF Investment Management Limited	30	\$50.4 million	3%	72%
AMP Life Limited	67	\$36.0 million	2%	74%
Macquarie Investment Management Limited	10	\$32.6 million	2%	76%
Remaining 83 AFS licensees	1,034	\$381.1 million	24%	100%
Total	1,323	\$1,576.7 million	100%	Not applicable

Note 1: N.M. Superannuation Proprietary Limited is an AMP company.

Note 2: The column headed "percentage of total GCR in period" shows the GCR paid by product issuers in the period 1 July 2018 to 31 December 2020 as a percentage of the total GCR paid.

Note 3: The column headed "cumulative percentage" shows a running total of the percentage of the total GCR paid in the period 1 July 2018 to 31 December 2020.

Table 3: The top 10 products with the largest amount of GCR paid in the period 1 July 2018 to 31 December 2020

Product	Product issuer	GCR paid	Percentage of total GCR in period	Cumulative percentage
AMP Flexible Lifetime Super	N.M. Superannuation Proprietary Limited	\$155.1 million	10%	10%
FirstChoice Personal Super	Colonial First State Investments Limited	\$103.9 million	7%	17%
CMH Cash Management Account	Macquarie Bank Limited	\$76.6 million	5%	22%
OnePath OneAnswer Super and Pension	OnePath Custodians Pty Limited	\$43.0 million	3%	25%
MLC MasterKey Superannuation – Gold STAR	NULIS Nominees (Australia) Limited	\$36.4 million	2%	27%
Summit Select Trust – Index Balanced Class I	Ipac Asset Management Limited	\$29.4 million	2%	29%
MLC Navigator Retirement Plan	NULIS Nominees (Australia) Limited	\$28.5 million	2%	31%
FirstChoice Pension	Colonial First State Investments Limited	\$25.0 million	2%	33%
Suncorp Brighter Super	Suncorp Portfolio Services Limited	\$24.4 million	2%	35%
BT SuperWrap Personal Super Plan	BT Funds Management Limited	\$23.8 million	2%	37%
Remaining 1,313 products	Not applicable	\$1,030.6 million	63%	100%
Total		\$1,576.7 million	100%	Not applicable

Note 1: The column headed “percentage of total GCR in period” shows the GCR paid by the product in the period 1 July 2018 to 31 December 2020 as a percentage of the total GCR paid.

Note 2: The column headed “cumulative percentage” shows a running total of the percentage of the total GCR paid in the period 1 July 2018 to 31 December 2020.

Appendix 2: Accessible versions of figures

Table 4: When arrangements were terminated (including arrangements prior to the review period)

Time period	Fully terminated	Partially terminated	Not terminated
1 Jul 2018 to 30 Jun 2019	4%	20%	76%
1 Jul 2019 to 30 Sep 2019	6%	24%	70%
1 Oct 2019 to 31 Dec 2019	7%	27%	66%
1 Jan 2020 to 31 Dec 2020	96%	0%	4%

Note: This is the data shown in Figure 1.

Table 5: Arrangements fully terminated during the 2020 calendar year

Time period	Percentage of GCR arrangements expected to be fully terminated	Percentage of GCR arrangements fully terminated
1 Jan 2020 to 31 Mar 2020	0.4%	1%
1 Apr 2020 to 30 Jun 2020	4%	12%
1 Jul 2020 to 30 Sep 2020	4%	11%
1 Oct 2020 to 31 Dec 2020	61%	66%

Note: This is the data shown in Figure 2.

Table 6: Methods of rebate

Method	Percentage
Fee reduction	46%
Credit to account	33%
Other	10%
Combination of methods	6%
Direct payment	2%
Payment to AFS licensee to credit product holder	2%
Increased rate of return	1%

Note: This is the data shown in Figure 3.

Table 7: Reason for not rebating

Reason	Percentage
No legal requirement	32%
Terminated, transferred or not payable	18%

Reason	Percentage
CGR not funded from account	17%
No visibility of payments	10%
Costs outweigh rebate	8%
Commercial or legal reasons	5%
Methodology not finalised	5%
Other	5%

Note: This is the data shown in Figure 4.

Key terms and related information

Key terms

AFA	Association of Financial Advisers
AFS licensee	A person who holds an AFS licence under s913B of the Corporations Act
conflicted remuneration	<p>A benefit given to an AFS licensee, or a representative of a licensee, who provides financial product advice to clients that, because of the nature of the benefit or the circumstances in which it is given, could reasonably be expected to influence:</p> <ul style="list-style-type: none">› the choice of financial product recommended to clients by the licensee or its representative, or› the financial product advice given to clients by the licensee or its representative. <p>In addition, the benefit must not be excluded from being conflicted remuneration by the Corporations Act or Corporations Regulations</p>
Corporations Act	<i>Corporations Act 2001</i> , including regulations made for the purposes of that Act
Corporations Regulation	<i>Corporations Regulations 2001</i>
financial adviser	<p>A natural person providing personal advice to retail clients on behalf of an AFS licensee who is either:</p> <ul style="list-style-type: none">› an authorised representative of a licensee, or› an employee representative of a licensee <p>Note: This is the person to whom the obligations in Div 2 of Pt 7.7A of the Corporations Act apply: see the definition of 'advice provider' in the 'key terms' in Regulatory Guide 175 <i>Licensing: Financial product advice conduct and disclosure</i> (RG 175).</p>
financial product advice	<p>A recommendation or a statement of opinion, or a report of either of these things, that:</p> <ul style="list-style-type: none">› is intended to influence a person or persons in making a decision about a particular financial product or class of financial product, or an interest in a particular financial product or class of financial product, or› could reasonably be regarded as being intended to have such an influence. <p>This does not include anything in an exempt document or statement</p> <p>Note: This is a definition contained in s766B of the Corporations Act.</p>
Financial Services Royal Commission	Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry
FPA	Financial Planning Association
GCR	Grandfathered conflicted remuneration – Any benefit to which the conflicted or other banned remuneration provisions did not apply because of certain transitional provisions in the Corporations Act and Corporations Regulations 2001
GCR arrangement	An arrangement that requires a product issuer to pay GCR to an AFS licensee or their representative.

previously grandfathered benefits	Benefits that would otherwise have been paid to AFS licensees or their representatives under GCR arrangements
product issuer	An AFS licensee that issues a financial product
product holder	A person who holds a financial product or has another person hold a financial product on their behalf
review period	1 July 2019 to 31 December 2020

Related information

Headnotes

Australian financial services (AFS) licensees, financial adviser, financial product advice, GCR arrangements, grandfathered conflicted remuneration, product holders, product issuers

Legislation

Australian Securities and Investments Commission Act 2001

Corporations Act

Corporations Regulations 2001

Treasury Laws Amendment (Ending Grandfathered Conflicted Remuneration) Act 2019

Treasury Laws Amendment (Ending Grandfathered Conflicted remuneration) Regulations 2019

Other documents

[Australian Securities and Investments Commission \(Investigation into Grandfathered Conflicted Remuneration for Financial Advice\) Direction 2019](#) issued by authority of the Treasurer under s14 of the *Australian Securities and Investments Commission Act 2001 (Cth)*, 21 February 2019

Financial Services Royal Commission, [Final report: Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry](#), February 2019

[RG 246](#) *Conflicted and other banned remuneration*