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NEWS

Westpac fined for charging fee for no service

Westpac subsidiaries BT Funds Management (BT) and Asgard Capital Management (Asgard) have been fined a total of \$3 million as part of ASIC's continuing post Royal Commission fees-for-no-service investigations. Lawyer Sarah Sherman reports.

KEY POINTS

- Several of Australia's largest banking and financial services institutions, including AMP, CBA, Macquarie and now Westpac, have paid or offered \$1.24 billion in compensation to customers as fees-for-no-service remediation.
 - ASIC sought pecuniary penalties of \$2.5 million for each of BT and Asgard for charging fees for no service. The Court said both companies had co-operated with ASIC's investigation and ordered fines of \$1.5 million each.
 - ASIC's new regulatory framework focuses heavily on the prompt identification, reporting, and remediation of systemic issues.
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BACKGROUND

BT and Asgard were the subject of a case study by the Royal Commission which found between 2001 and 2017 they charged 767 customers fees for financial product advice that was not provided. Following this, Westpac repaid \$634,490 to those customers.

In August 2020, ASIC commenced Federal Court proceedings against BT and Asgard alleging the conduct amounted to both false or misleading representations and misleading and deceptive conduct.

BT and Asgard did not dispute liability and agreed they contravened the law on at least 487 occasions. Therefore, the only question for the Court was what penalty to impose.

ASIC sought penalties of \$2.5 million for each defendant, and adverse publicity orders against BT and Asgard.

PECUNIARY PENALTIES

In many instances, BT and Asgard made the same representations to the same customer in both hard copy and online. ASIC tried to argue this was two separate contraventions. The Court disagreed, finding there was no reason to distinguish between different forms of communications and said it needed to avoid double punishment.

Ultimately, the Court took a balanced approach, having regard to the absence of deliberate conduct and dishonesty, the remedial action already taken by Westpac, and the level of co-operation by the defendants.

The Court imposed a \$1.5 million penalty for each defendant.

IMPORTANCE OF REPORTING BREACHES

One of the factors the Court considered when determining penalty was the timely self-reporting of the breaches by Westpac. With the new breach reporting regime and internal dispute resolution procedures commencing in October 2021, the timely identification, reporting, and remediation of breaches, including systemic issues, is all the more important.

NEXT STEPS?

AFS licensees should carefully review how they charge for providing ongoing financial advice to customers and take action to reduce the risk of fees being charged where no advice service has been provided.

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