

## **Retainer Agreement and Disclosure Overview**

### **The Case**

- A. You: The person whose details are described in the Retainer Agreement and Funding Agreement.
- B. Respondent: Westpac Banking Corporation ABN 33 007 457 and any of its subsidiaries or related entities that are joined as Respondents in these Proceedings.
- C. Proceedings: NSD1812 of 2017 brought by Gregory John Lenthall & Ors against the Respondent in relation to the pricing of life insurance products issued Westpac Life Insurance Services Limited ABN 31 003 149 157 and includes the Claim against the Respondent.
- D. Claim: Any claim that You may have against the Respondent for loss and damage caused to You by the conduct of the Respondent which claim is the same as or similar to the claims the subject matter of the Proceedings.
- E. Funding of Case: A litigation funder is partly funding the Proceedings. Since the Date of Commencement of the Funding Agreement entered into by the Representative Applicant, the litigation funder has been paying and continues to pay 80% of Shine's Professional Fees, 100% of disbursements and is providing protection against an Adverse Costs Order. 100% of Preliminary Work prior to the commencement of Proceedings and the balance of Shine's Professional Fees since the Date of Commencement of the Funding Agreement entered into by the Representative Applicant and any unpaid disbursements will be payable on a conditional basis, which means they are only payable if there is a Successful Outcome.

### **Conditional Costs Arrangements**

- F. The retainer agreement between You and Shine is partly conditional.
- G. That part of the retainer agreement that is conditional is as follows:
  - (i) 100% of the Professional Fees and Disbursements incurred prior to the Funding Agreement being entered into by the Representative Applicant; and
  - (ii) 20% of the Professional Fees are conditional on a Successful Outcome.
- H. An uplift fee is payable on those Professional Fees that are conditional on a Successful Outcome. The uplift fee is 25% of the on the conditional component only.
- I. Our costs will never exceed the Outcome Sum.

### **Funding**

- J. The litigation funder is JustKapital Litigation Pty Ltd (ACN: 168 872 606)

### **Governing Law**

- K. This retainer agreement is governed by the laws of New South Wales.

## **YOUR RIGHTS**

You have the right to:

- Negotiate a costs agreement with us
- Receive bills before you pay for legal work
- Request an itemised bill, when you have received a summary of the bill, that must be provided within 28 days of your request
- Receive information in relation to any substantial changes about your costs as soon as possible
- Receive progress reports on your case including the legal costs incurred in total and since your last bill
- Challenge your legal costs if you are unhappy – time limits apply in making such challenges and further information is provided in detail in the attached documents
- Seek independent legal advice before entering into this retainer agreement
- Terminate this retainer agreement under a 21 day cooling off period.



**SHINE**  
LAWYERS

RIGHT WRONG.

# RETAINER

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Westpac Life Insurance Class Action

**CONDITIONAL COSTS AGREEMENT AND COSTS DISCLOSURE**  
**("THE WESTPAC RETAINER")**

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BETWEEN Shine Lawyers Pty Ltd of Level 13, 160 Ann Street Brisbane QLD 4000  
**("Shine")**

AND The Applicant whose details are described in the Funding Agreement  
**("You")**

**OVERVIEW**

- (A) You wish to engage Shine to prosecute the Claim pursuant to Part IVA of the *Federal Court of Australia Act 1976* (Cth) against Westpac Banking Corporation ABN 33 007 457 141 (the **"Proceedings"**).
- (B) Shine has negotiated a Funding Agreement with JustKapital Litigation Pty Limited (**"JKL"**) which is annexed to this Retainer. The Funding Agreement governs matters such as the costs of the Proceedings, the management of the Proceedings and the distribution of any Settlement Sum or Outcome Sum achieved from settling or prosecuting the Claims.
- (C) Shine offers to act for You as a Funded Applicant in the Proceedings on the terms set out in this Retainer that reflect consistent terms and conditions set out in the Funding Agreement, including but not limited to the JKL's agreement with Shine Lawyers referred to in Clause 18.1 of the Funding Agreement and set out in Schedule 1 to the Funding Agreement.
- (D) You agree to the terms in this Retainer and retain Shine on the basis that JKL will pay Shine's professional fees, costs, disbursements and interest incurred by the Representative Applicants and Group Members in connection with this Retainer (save any Remaining Speculative Costs), on terms and conditions that reflect the terms and conditions set out in the Funding Agreement.
- (E) This is an offer by Shine to enter into a costs agreement with You under the provisions of the *Legal Profession Uniform Law (NSW)* (**"LPUL"**). This document sets out the terms of our offer to provide legal services to you and constitutes our costs agreement and costs disclosure.
- (F) You have been informed that you have the right to obtain independent legal advice before entering this Retainer and Shine recommend you do that.
- (G) If you wish to terminate this conditional costs agreement, you may do so by giving us written notice within 21 Business Days in accordance with clause 34. If not signed, we will only charge you for the costs incurred for work done that was performed on your instructions and with your knowledge up to termination and you will not be charged an uplift fee.

(H) This Retainer is entered into on an arms' length basis. Neither the Applicant nor JKL are or shall be agents, partners, joint venturers or fiduciaries of or towards one another.

## Operative Conditions

### 1. Definitions

1.1 In this Retainer, unless the contrary intention appears:

**“Adverse Costs Order”** means any costs order made in favour of the Respondent against the Representative Applicants and/or JKL in the Proceeding in respect of costs of the Respondent incurred during the term of this Agreement.

**“Alternative Dispute Resolution Process”** means any form of negotiation, discussions, mediation, conciliation, expert determination or other form of consensual dispute resolution process which seeks to settle the Claims and/or the Proceedings.

**“Business Day”** means any day, other than a Saturday, Sunday or public holiday in New South Wales.

**“Claim”** means the claim or claims that a Funded Applicant has or may have against the Respondent for loss and damage caused to the Funded Applicant by the conduct of the Respondent, which claim is the same as or similar to the claims the subject matter of the Proceedings.

**“Common Fund Order”** means an order of the Court that each Group Member pay a portion of the Group Member’s share in any Outcome Sum or Settlement Sum to JKL as compensation and consideration for JKL paying the Costs of the Proceedings, irrespective of whether the Group Member has entered into a funding agreement with JKL.

**“Costs of the Proceedings”** means those costs and expenses incurred at any time from the Date of Commencement up to the conclusion of this Agreement comprising:

- (a) the costs and expenses associated with the investigation of the Claims;
- (b) the management, and funding, of the Proceedings, including the individual Claims after any liability judgment in favour of the Funded Applicants which JKL elects to fund in accordance with clause 9.1 of the Funding Agreement;
- (c) the costs of any adverse costs order insurance obtained by JKL or You, including any costs associated with obtaining such insurance;
- (d) any security for costs paid by JKL including any costs associated with providing such security;
- (e) any Adverse Costs Order paid by JKL;
- (f) the costs incurred by JKL in quantifying any Adverse Costs Order;
- (g) the reasonable Legal Costs incurred for the purpose of preparing for, prosecuting and resolving the Proceedings;
- (h) any costs paid by JKL pursuant to the Funding Agreement;
- (i) all of JKL’s out of pocket costs and expenses paid or incurred in relation to the Proceedings, including in relation to any consultants and experts engaged by JKL (other than those costs and expenses already referred to in this definition); and

(j) any GST payable as a result of the above costs or expenses being incurred.

**"Costs Order"** means an order made by a Court requiring one or more parties to the Proceedings and/or JKL to pay the costs incurred by another party to the Proceedings.

**"Court"** means the court in which the Proceedings are conducted.

**"Date of Commencement"** means 22 September 2017.

**"Funding Agreement"** means the agreement between the Applicant and JKL pursuant to which JKL has agreed to pay the Costs of the Proceedings.

**"Funded Applicant"** means:

- (a) where the Court has made a Common Fund Order, all Group Members; or
- (b) in any case, any person who has entered, or enters, into the Funding Agreement which has not been terminated.

**"Group Member"** means any person or entity that matches the definition of Group Member as stated in the Statement of Claim as amended from time to time and includes the Representative Applicants and the Applicant.

**"JKL"** means JustKapital Litigation Pty Limited (A.C.N: 168 872 606).

**"JKL Representative"** means any Director(s), Officer(s), Employee(s), Independent Contractor(s), Agent(s), Consultant(s), Advisor(s) or any other person, body corporate or organisation appointed to conduct affairs (or held out as having been appointed to conduct affairs) on behalf of JKL.

**"Judgment"** means any judgment of the Court against the Respondent in respect of any Claim, any Group Member claim or the Proceedings as a whole.

**"Legal Costs"** means Shine's professional fees and disbursements taken together and incurred in performing the Legal Work.

**"Legal Work"** means any advice and any other legal services which Shine consider reasonably necessary to prosecute the Proceedings.

**"Liability Judgment"** means a judgment or decision of the Court which means that the Respondent is liable to all or any of the Representative Applicants for any contraventions of the various statutes, or general law, as pleaded in the Statement of Claim from time to time.

**"Opt Out Notice"** means a written notice (in the form to be provided during the Proceedings) to the Court stating the Funded Applicant's intention to opt out of the Proceedings.

**"Originating Application"** means the originating application to be filed in the Federal

Court of Australia to commence the Proceedings, and which may be amended from time to time during the conduct of the Proceedings.

**“Outcome”** means when all or any part of the Outcome Sum is received.

**“Outcome Sum”** means any money or financial benefit which any Respondent pays or makes available to the Applicant or any other Group Member and includes: (a) an award of damages on a Judgment by the Court in the Proceedings or any amount awarded or agreed as part of a claims resolution process, interest (including interest earned on money held in a trust account) and any costs recovered from the Respondent pursuant to a Costs Order or by agreement, and (b) any compensation, remediation payment, lump sum amount or ex gratia payment, whether as a result of an out-of-court settlement or a compensation or remediation scheme established by the Respondent or otherwise, and (c) any other form of cash payment or financial benefit whatsoever.

**“Preliminary Work”** means Legal Work undertaken by Shine in investigating and developing the Claims that is of common benefit to You, and Group Members prior to execution of this Retainer, the Funding Agreement or the Terms of Engagement.

**“Proceedings”** means the proceeding brought in the Federal Court of Australia pursuant to Part IVA of the *Federal Court of Australia Act 1976* (Cth) against the Respondent as pleaded in the Statement of Claim, in relation to the pricing of insurance products issued by Westpac Life Insurance Services Limited ABN 31 003 149 157 and includes all related, replacement and ancillary proceedings, any Alternative Dispute Resolution Process and any proceedings or process to prosecute and/or resolve the Applicant’s individual Claims after any Liability Judgment which JKL elects to fund in accordance with clause 11 of the Funding Agreement.

**“Project Estimates”** means the set of estimates for the conduct of the Proceedings as referred to in clause 7 (herein).

**“Professional Fees”** means Shine’s professional fees incurred in performing the work.

**“Remaining Speculative Costs”** means those Legal Costs that have not been paid by JKL pursuant to the Funding Agreement, including any uplift payable in respect of those Legal Costs.

**“Representative Applicant”** means the Group Members who have consented to be named as the lead applicants in the Statement of Claim and Originating Application for the Proceedings from time to time.

**“Respondent”** means, jointly and severally, Westpac Banking Corporation ABN 33 007 457 141 and any of its subsidiaries or related entities that are joined as a respondent in the Proceedings, and includes Westpac Life Insurance Services Limited ABN 31 003 149 157.

**“Retainer”** means the costs agreement initially entered into between the Representative Applicants and the Lawyers in respect of the Proceedings and to be entered into with the Applicant, as amended from time to time.

**“Settlement”** means written agreement being reached in respect of the Proceedings for the payment of a Settlement Sum, and approved by the Court, which compromises or resolves the Claims and/or any other Group Member claims and/or the Proceedings.



**“Settlement Sum”** means any money or financial benefit received by You or any other Group Member from any Respondent to settle, compromise or otherwise resolve the Claims and/or any other Group Member Claims and/or the Proceedings and includes any cash payment, a lump sum amount or an ex gratia payment, whether inclusive of costs or otherwise, and includes any interest (including interest earned on money held in a trust account).

**“Shine”** means Shine Lawyers Pty Ltd ACN 134 702 757.

**“Statement of Claim”** means the statement of claim filed in the Proceedings, as amended from time to time.

**“Terms of Engagement”** means the agreement between Shine and JKL at Schedule 1 of the Funding Agreement. The Terms of Engagement may be amended, as agreed by JKL and the Lawyers, from time to time. The Applicant will be informed of any amendment.

**“Successful Outcome”** means:

- (a) Judgment of a Court or a tribunal in Your favour;
- (b) Resolution by settlement agreement where compensation or damages or costs are payable to You or to Your benefit, or You will receive a sum of money, an interest in an asset or some other benefit; or
- (c) A reasonable offer of settlement is made which either Counsel, JKL or Shine, acting reasonably, recommend You accept; or
- (d) If You obtain compensation or obtain a benefit from a statutory or other compensation scheme or by way of an ex gratia payment.

**“You” and “Your”** means you, the entity or individual whose details are described in the Funding Agreement being a person entitled to pursue the Claims.

1.2 Save as set out in Clause 1.1 or where otherwise indicated, terms defined in the Funding Agreement and the Shine/JKL Agreement shall have the same meaning when used in this Retainer.

## **2. Offer to enter into a costs agreement**

2.1 This Retainer is conditional upon You entering into the Funding Agreement with JKL and that Funding Agreement remaining in effect.

2.2 This Retainer incorporates the terms contained in the Funding Agreement including Schedule 1 of the Funding Agreement.

2.3 This Retainer is an offer made by Shine to enter into a costs agreement with You. You have the right to negotiate the costs agreement with Shine. You accept this offer by

signing and returning this Retainer to Shine.

2.4 If entered into, this Retainer will be a legally binding agreement in relation to the provision of Legal Work and Legal Costs.

2.5 You agree that Shine are instructed to provide You with Legal Work in relation to:

- (a) the Proceedings issued by or on behalf of You against the Respondent; and/or
- (b) other legal advice or work in relation to the Proceedings as requested by You or JKL from time to time.

2.6 This Retainer is limited to Claims against the Respondent and its associated entities and can only be amended by written agreement of each party.

### 3. Independent Legal Advice

3.1 Pursuant to Overview F above, You acknowledge that You have been informed that You have the right to seek independent legal advice before entering into this Retainer.

### 4. Scope of Work

4.1 This Retainer is strictly limited to the Claims against the Respondent. It does not extend to possible claims against any other persons or entities. This Retainer does not impose any obligation upon Shine to provide any legal advice or other legal service to You other than in relation to the Claims against the Respondent.

4.2 Subject to later instructions received from the Representative Applicants or JKL, Shine agrees to provide such advice and legal services to You as Shine may consider reasonably necessary to prosecute the Proceedings or to negotiate a settlement of the Claims, including as appropriate:

- (a) Legal Work for the common benefit of all Funded Applicants who have Claims (**Common Benefit Work**); and
- (b) Legal Work solely in connection with the specific Claims of individual Funded Applicants who have such Claims, including You (**Applicants' Individual Legal Work**);
- (c) obtaining insurance against Adverse Costs Orders for which JKL may obtain at its discretion, to provide an indemnity pursuant to clause 10 of the Funding Agreement.

4.3 The Legal Work will be carried out by people filling the positions specified in clause 9 and such other persons as may be nominated from time to time by Shine in accordance with clause 3 of the Terms of Engagement.

## 5. The Funding Agreement and Remaining Professional Fees

- 5.1 Shine confirms that it is aware of the terms and conditions of the Funding Agreement entered into, or contemplated, between You and JKL.
- 5.2 Pursuant to the Funding Agreement and the Terms of Engagement, JKL will pay the Costs of the Proceedings including 80% of the Professional Fees and 100% of the disbursements that are reasonably incurred pursuant to this Retainer.
- 5.3 You agree that JKL will be reimbursed for all of those fees, costs and disbursements paid by JKL from the Settlement Sum or Outcome Sum in accordance with Clauses 13 and 15 of the Funding Agreement.
- 5.4 Shine will incur the Remaining Professional Costs on a speculative basis. This means that Shine will not charge You for the Remaining Professional Costs unless there is a Successful Outcome.

### Uplift Fee

- 5.5 As consideration for incurring the Remaining Professional Costs on a speculative basis, if there is a Successful Outcome, Shine will also charge You an Uplift Fee of 25% of the total Remaining Professional Fees (excluding GST). We are entitled to charge an uplift fee pursuant to section 182 of the LPUL.

## 6. Costs incurred to date

- 6.1 You acknowledge that, prior to signing this costs agreement, Shine has incurred Legal Costs in performing Preliminary Work.
- 6.2 The Legal Costs of the Preliminary Work are as follows:

Incurring costs	Amount (including GST)
Professional costs	\$244,910.94
Uplift fee	\$61,227.74
Disbursements	\$87,132.86
Total	\$393,271.54

- 6.3 You agree that the costs of the Preliminary Work are part of the Legal Costs and that Shine can recover those costs pursuant to the terms of this Retainer, the Funding Agreement and the Terms of Engagement.

## 7. Estimate of Total Legal Costs

- 7.1 Shine will prepare a set of estimates for the likely Legal Costs that will be reasonably incurred in the prosecution of the Proceedings, including for the Preliminary Work.
- 7.2 A summary of the estimate of the total Legal Costs up to trial, including GST is as follows:

<b>Estimate (including GST)</b>	<b>Low Range</b>	<b>High Range</b>
Shine Professional Fees	\$5,000,000	\$6,500,000
Disbursements	\$1,500,000	\$2,500,000
Total	\$6,500,000	\$9,000,000

On this basis, the estimate of the total Legal Costs is the highest end of the range of costs detailed above being \$9,000,000 inclusive of GST.

These estimates are based on information presently available to Shine and assumes only one Respondent (i.e. Westpac Banking Corporation). The estimates are subject to review if additional parties are joined to the Proceedings or as required to meet the circumstances of the Proceedings.

7.3 You acknowledge that You have been made aware that:

- (a) The above Estimates are made on the basis of information available to Shine at the date of preparing the above Estimates and that they may change as more information becomes available to Shine and as the Proceedings progress; and
- (b) The major variables that will affect the Estimates for the total Legal Costs are:
  - (1) how far the matter proceeds before it is concluded;
  - (2) the amount of evidence required to be gathered;
  - (3) the strategy/tactics adopted by the Respondent;
  - (4) the length of the trial, in the event that the matter does not conclude prior to trial;
  - (5) the number of witnesses required to provide reports, information and evidence; and
  - (6) unexpected problems, the co-operation of other persons and administrative and other delays beyond the control of Shine.

7.4 If there is a significant change to anything disclosed in this Retainer including these estimates, Shine will provide You with information disclosing such change as soon as practicable.

## **8. Reporting**

8.1 Shine will keep You and JKL fully informed of all matters concerning the Proceedings, including any Alternative Dispute Resolution Process. Shine will ensure that the You and JKL are given all necessary information and advice in order

to facilitate your informed instructions.

- 8.2 Without limiting clause 8.1 if, after the date of this Agreement, Shine becomes aware of any information which has or may have a material impact on the Claims, the Proceedings, the estimated costs of conducting the Proceedings or the potential for any Outcome Sum to be recovered, Shine will immediately inform You and JKL of that information.
- 8.3 Shine will comply with any reasonable request from You and/or JKL for information or for copies of documents and will co-operate with You and JKL at all times in this regard.
- 8.4 You will be informed in writing as soon as reasonably practicable of any substantial changes to anything contained in this Retainer.
- 8.5 Shine will inform You of significant developments in the Proceedings by means of update reports which JKL will email or post to each Funded Applicant and, if requested in writing by You or JKL, will provide a report to You and JKL which:
- (a) Identifies any change to any previous report provided under this Term and any significant developments in the Proceedings;
  - (b) Reviews the issues relevant to liability and quantum; and
  - (c) Provides advice in respect of any proposed changes to the Claims' percentage chance of success and any changes to the Project Estimates and essential dates and costs.

## 9. Basis of Calculation of Fees and Disbursements

- 9.1 Shine will charge for the Legal Work provided by reference to the time reasonably and properly spent at the hourly rates below subject to an annual revision in those rates which is acceptable to JKL, the Lead Applicant and Shine.

<b>Role</b>	<b>Standard Hourly Rates (GST exclusive)</b>	<b>Plus GST</b>	<b>Hourly Rates (inclusive of GST)</b>
Partner	\$750.00	\$75.00	\$825.00
Senior Lawyer / Associate / Accredited Specialist / Legal Manager / Department Manager	\$560.00	\$56.00	\$616.00
Junior Lawyer	\$425.00	\$42.50	\$467.50
Paralegal	\$320.00	\$32.00	\$352.00
Law Clerk / Articled Clerk	\$240.00	\$24.00	\$264.00

- 9.2 Shine will charge for:
- (a) Internal photocopying and scanning services, at cost;

- (b) Mobile, local, STD and ISO telephone calls and facsimiles, at cost; and
- (c) All other reasonable disbursements as supported by invoices.

9.3 The rates currently charged by Shine are as set out below:

<b>Disbursement Type</b>	<b>Rate inclusive of GST</b>
Emails	No charge
Faxes	0.30
Photocopying	0.27
Colour Copying	0.90
Printing of Documents	0.17
Printing of Documents - Colour	0.33
Scanning of Documents	0.13

9.4 Shine will not charge or render accounts in respect of any time taken dealing with any queries from You or JKL in respect of accounts rendered by Shine.

## **10. Goods and Services Tax**

10.1 Shine has to pay Goods and Services Tax (GST) on the legal services they provide to You (including on most disbursements) which will be included on each invoice issued to the You and JKL. The GST to be paid is in addition to the fees and relevant disbursements otherwise payable under this Retainer.

10.2 Shine will provide a tax invoice for each billing period indicating the amount of GST being charged for the Legal Work and on all relevant disbursements.

## **11. Your Rights**

11.1 It is your right to:

- (a) negotiate a costs agreement with us;
- (b) negotiate the method of billing (e.g. task based or time based);
- (c) request and receive an itemised bill within 30 days after a lump sum bill or partially itemised bill is payable;
- (d) seek the assistance of the designated local regulatory authority (the NSW Commissioner) in the event of a dispute about legal costs;
- (e) be notified as soon as is reasonably practicable of any substantial change to any matter affecting costs;
- (f) accept or reject any offer we make for an interstate costs law to apply to your matter; and
- (g) notify us that you require an interstate costs law to apply to your matter.

11.2 If you request an itemised bill and the total amount of the legal costs specified in it exceeds the amount previously specified in the lump sum bill for the same matter, the additional costs may be recovered by us only if:

- (i) when the lump sum bill is given, we inform you in writing that the total amount of the legal costs specified in any itemised bill may be higher than the amount specified in the lump sum bill, and
- (ii) the costs are determined to be payable after a costs assessment or after a binding determination under section 292 of the LPUL.

11.3 Nothing in these terms affects your rights under the Australian Consumer Law.

11.4 If you have a dispute in relation to any aspect of our legal costs you have the following avenues of redress:

- (a) in the first instance we encourage you to discuss your concerns with us so that any issue can be identified and we can have the opportunity of resolving the matter promptly and without it adversely impacting on our relationship;
- (b) you may apply to the Manager, Costs Assessment located at the Supreme Court of NSW for an assessment of our costs. This application must be made within 12 months after the bill was provided or request for payment made or after the costs were paid.

## **12. Invoices and Payment**

12.1 Shine will render invoices to JKL, by the 20th day of each month, or some other time agreed between Shine and JKL. Each invoice will be accompanied by the details specified by term 6(b) and 6(c) of the Terms of Engagement.

12.2 Provided invoices from Shine comply with the terms of this Retainer, the Terms of Engagement and the Funding Agreement, JKL will pay them within 30 days from the end of the month in which Shine's invoice is received by JKL.

12.3 JKL may at its discretion require that Shine submit any one or more of their invoices for assessment.

## **13. Advice**

13.1 All advices given or prepared by Shine or by counsel retained by Shine shall be provided to and addressed for the benefit of You, the Representative Applicants and JKL.

13.2 Shine will as soon as reasonably practicable confirm in writing to You and JKL all oral advice given by them or counsel retained by them.

## **14. Costs Orders and estimates of likely costs recovered or payable**

14.1 A court can, and usually will, make a Costs Order in favour of a successful party to litigation against the unsuccessful party or parties. If a Costs Order is made against You in the Proceedings, JKL has undertaken to pay any such Costs Order pursuant to clause 9.2 of the Funding Agreement.

14.2 You acknowledge that, if a Costs Order is made in Your favour in the Proceedings, the amount that You recover from the Respondent in respect of such Costs Order will not necessarily cover the whole of, and may be considerably less than, the total amount of the legal costs and disbursements payable under the terms of this Retainer.

14.3 Shine estimates that the amount recoverable from the Respondent in respect of such a Costs Order would be between 50% (approximately \$3,250,000) and 60% (approximately \$5,400,000) of the total legal costs and disbursements payable under the terms of this Retainer. Under the Funding Agreement any costs recovered from the Respondents form part of the Outcome Sum to be distributed between JKL and the Funded Applicants in accordance with the clauses 12, 13, 14 and 15 of the Funding Agreement.

## **15. Adverse costs insurance**

15.1 You and Shine acknowledge and agree that, as part of JKL agreeing to pay any Adverse Costs orders pursuant to clause 10 of the Funding Agreement:

- (a) JKL may, at its sole discretion, apply for, obtain, and pay for insurance providing You with an indemnity against an Adverse Cost Order on terms agreeable to JKL; and
- (b) any Adverse Cost insurance obtained by JKL under sub-clause 14.1(a) is for the sole benefit of JKL;
- (c) You and Shine will do all things reasonable to assist JKL in any application for Adverse Cost insurance;
- (d) any legal fees and disbursements paid by JKL that are associated with applying for or obtaining Adverse Cost insurance will be included in the Costs of the Proceeding to be paid to JKL from any Settlement Sum or Outcome Sum in accordance with clauses 13.1.1 and 15.1.1 of the Funding Agreement.

## **16. Settlements and Settlement Negotiations**

16.1 Settlement of the Proceedings will only occur in accordance with clause 18 of the Funding Agreement and will be subject to the relevant legislation governing the settlement of representative actions.

16.2 No negotiations or communications in relation to settlement of the Proceedings are to be entered into by Shine or counsel without prior notification to, and approval of JKL and the Representative Applicants.

## **17. Authority to receive and apply Outcome Sum or Settlement Sum**

17.1 You irrevocably authorise Shine to receive any Outcome Sum or Settlement Sum on Your behalf and:

- (a) upon receipt, immediately to pay the Outcome Sum or Settlement Sum into an account kept for that purpose;



- (b) combine in the one account amounts received in respect of the Claims made by more than one Funded Applicant (in which case separate records will be kept identifying any amounts received which are specific to particular Funded Applicants); and
- (c) pay amounts from the Outcome Sum or Settlement Sum in accordance with clauses 13.1 and 15.1 of the Funding Agreement as appropriate .
- (d) distribute the balance of the Outcome Sum or Settlement Sum in accordance with the clauses 12.3 and 14.3 of the Funding Agreement as appropriate.

## **18. Confidential Information**

- 18.1 You agree that all information, communication or documents provided to You at any time by Shine, its officers, servants or agents in relation to the Proceedings is or may be treated as, confidential information within the meaning of equity and "confidential communications " or "confidential documents " within the meaning of Part 3.10 of the *Evidence Act 1995* (Cth) and may be subject to joint interest privilege that You are not at liberty to waive.
- 18.2 Due to the special nature of representative proceedings, namely, that all claims of all Group Members will be affected by the future progress of the Proceedings, You and Shine agree that strict compliance with clause 18.1 is required to maintain the confidentiality of information provided to You about the Proceedings.
- 18.3 The obligation in clause 18.1 above is a continuing obligation and survives any Termination of this Retainer and/or the Funding Agreement. You agree not to attempt to adduce evidence of any such information, communications or documents without the express written authority of Shine.

## **19. Your Authorities and Obligations**

- 19.1 You authorise and direct Shine to:
- (a) provide JKL with confidential updates of the progress of the Proceedings and, in doing so, You do not intend to waive any privilege between You and Shine which may attach to such communications;
  - (b) conduct the Proceedings as a representative action;
  - (c) take and act upon instructions from You and/or JKL, save where in the reasonable professional opinion of Shine separate instructions are required from You; and
  - (d) do anything reasonable and proper to facilitate the effective performance of the Funding Agreement according to its terms.
- 19.2 You must:

- (a) provide full and honest instructions when required to do so;
- (b) cooperate in the preparation of the Claims and do all that Shine reasonably ask;
- (c) accept and follow Shine's reasonable legal advice;
- (d) inform Shine promptly of any changes to Your residential address, postal address, email address, phone number or name;
- (e) act in a manner consistent with the prosecution of the Claims that are the subject of the Proceedings and consistent with your obligations under the Funding Agreement;
- (f) comply with the terms of the Funding Agreement; and
- (g) not discuss any aspect of the Claims, the Proceedings or related issues with the media without the prior approval of Shine.

19.3 If You breach of any of the obligations under this Retainer, Shine may terminate this Retainer immediately.

## **20. Termination of Retainer**

20.1 This Retainer may be terminated:

- (a) By Shine:
  - (1) if You breach clauses 18 or 19 of this Retainer;
  - (2) upon 7 days' written notice to You, if JKL fails to pay any costs in accordance with the Terms of Engagement after JKL has been given 30 days' written notice to do so;
  - (3) upon 7 days' written notice to You, if there is a notice of termination of the Funding Agreement pursuant to the terms of the Funding Agreement;
  - (4) upon 7 days' written notice, if there is a notice terminating the Shine/JKL Agreement pursuant to the terms of the Terms of Engagement;
  - (5) if You or JKL terminate the Funding Agreement;
  - (6) if Shine form the opinion that there are no longer reasonable prospects of success.
- (b) By You:
  - (1) By filing an Opt Out Notice;

- (2) If there is a Settlement that affects You, by being removed from the effect of the Settlement;
- (3) By effecting a Settlement other than through the Representative Proceedings;
- (4) By agreement with Shine;
- (5) Upon 7 days' written notice to Shine in the event of professional misconduct or negligence by Shine or any of Shine' professional staff that has or is likely to cause material loss to You or JKL;
- (6) By providing written notice in accordance with the Funding Agreement or this Retainer during the cooling-off period.

20.2 In the event of a termination:

- (a) Pursuant to clauses 20.1(a) or 20.1(b)(1)-(4), Shine shall be and shall remain entitled to:
  - (1) Payment of all reasonably incurred legal fees for work performed up to the effective date of termination; and
  - (2) If there is a Settlement Sum or Outcome Sum, payment of the all outstanding Legal Costs in accordance with this Retainer that were incurred up to the effective date of termination and subject to the priorities set out in clause 13 and/or 15 of the Funding Agreement.
- (b) Pursuant to clause 20.1(b)(5), Shine shall be entitled to payment in accordance with clause 20.2(a) subject to a deduction of the amount of the material loss caused by Shine' professional misconduct or negligence.

20.3 You irrevocably agree that Shine will notify JKL of any Opt Out Notice or other Termination of this Retainer by You or on Your behalf.

20.4 You agree, at Shine's expense, to take all reasonable steps to recover any outstanding costs payable to Shine by JKL under the Funding Agreement.

20.5 You agree that You will notify Shine if You take any of the steps set out in this clause to terminate this Retainer.

## 21. Lien

Shine acknowledge it is not entitled to claim a lien in respect of documents in its possession relevant to the Proceedings if there are no fees payable pursuant to the Funding Agreement.

## **22. Your and JKL's Consent**

Any approval or consent required from You may be given or refused in the absolute discretion of JKL as the case may be without the need to give a reason.

## **23. Conflicts of Interest**

23.1 Shine warrant that it has made all necessary enquiries and they have no actual or apparent conflicts of interest, including commercial conflicts, which prevent them from acting for You in the Proceedings.

23.2 In the event that Shine is required (or seek to) cease acting for You because of an actual or potential conflict of interest, Shine agrees that they are not entitled to claim a lien in respect of documents in their possession relevant to the Proceedings if there are no fees payable pursuant to Term 5 of the Terms of Engagement .

## **24. Waiver**

A waiver by You or Shine in respect of a breach of this Retainer:

- (a) must be in writing;
- (b) does not constitute a waiver with respect to any other breach;
- (c) does not constitute an estoppel with respect to any previous or successive waivers that are made or granted; and
- (d) the failure by a party at any time to enforce this Retainer is not a waiver by that party of that breach.

## **25. Governing Law**

25.1 The laws of the State of New South Wales govern any legal costs assessment in this matter, being the State where Shine have created and issued this Retainer to You.

25.2 The laws of New South Wales shall govern this Retainer and You and Shine submit to the jurisdiction of the Courts of competent jurisdiction located in the capital city of that State.

25.3 You have the right to sign this Retainer under a corresponding law or to advise Shine that You require the law of another State or Territory to apply if this matter has a substantial connection with that State or Territory. If Shine receives notification by You of this within 21 days of Shine sending this Retainer to You, Shine will disclose their costs as they are applicable in that State or Territory.

## **26. Costs**

You and Shine must pay their own costs of:

- (a) The negotiation, preparation and execution of this Retainer;
- (b) The enforcement or attempted enforcement of this Retainer; and
- (c) Any amendment to or consent, waiver or release of or under this Retainer.

## 27. Severance

The invalidity or unenforceability of any one or more of the provisions or sub-clauses hereof will not invalidate or render unenforceable the remaining provisions of this Retainer. Any illegal or invalid provision in this retainer will be severable and all other provisions will remain in full force and effect.

## 28. Notice

- 28.1 A notice or other communication under this Agreement (**Notice**) must be in writing and delivered by hand or sent by pre-paid post, fax or email, to the other party at the address or fax number or email address specified below for that party (or as otherwise specified by a party by Notice).
- 28.2 A Notice sent by post sent within Australia is regarded as given and received on the second Business Day following the date of postage.
- 28.3 A fax is regarded as given and received on production of a transmission report by the machine from which the fax was sent in its entirety to the recipient's fax number, unless the recipient informs the sender that the Notice is illegible or incomplete within two Business Days of it being transmitted.
- 28.4 An email is regarded as given and received on the day it is sent provided the sender does not receive any report from the sender's email system indicating that the email was not transmitted or was not received by the recipient.
- 28.5 The time at which Notices are deemed to be given and received is the recipient's time. A Notice delivered or received other than on a Business Day or after 4.00pm (recipient's time) on a Business Day is regarded as received at 9.00am on the following Business Day. A Notice delivered or received before 9.00am (recipient's time) on a Business Day, is regarded as received at 9.00am.
- 28.6 The address for service of a Notice on Shine is:
  - Post: Level 13, 160 Ann Street, Brisbane, QLD 4000
  - Fax: (07) 3229 1999
  - Email: [jsaddler@shine.com.au](mailto:jsaddler@shine.com.au)
- 28.7 The address for service of a Notice on the Applicant is as given under the Applicant's Details and Contact Details on the last page of this Retainer.

28.8 A party may from time to time change its address or facsimile number for service by notice in writing to the other parties.

## **29. Internet E-mail Communication**

29.1 Shine use internet e-mail access as a further means of communication with You. However, Shine advises that it cannot guarantee the total security of this form of communication due to the internet being a public unregulated network. Shine take steps to preserve confidentiality but want to bring this fact to Your attention. Subject to Your direction, any correspondence which is ultra-sensitive or confidential will be sent using a more secure form of communication.

29.2 Any loss/damage incurred to Your computer system as a result of using material sent to You by Shine via the internet is not Shine's responsibility. In any event Shine's entire liability will be limited to resupplying the material and no warranty is made that this material is correct, free from computer virus or defect.

## **30. Storage of Records**

Shine undertakes to store files for seven years after the completion of a matter, after which they destroy those files unless otherwise specifically requested.

## **31. Receipt of Recoveries**

Shine agree that they will deposit any Settlement Sum or Outcome Sum received in or as a result of the Proceedings into their trust account and apply those monies in the order of priority set out in the Funding Agreement.

## **32. Privacy**

32.1 Shine is required and committed to protecting Your personal information in accordance with Shine's obligations under the *Privacy Act 1988 (Cth)* and the *National Privacy Principles*.

32.2 Shine will collect personal information from You in the course of providing our legal services. Shine may also obtain personal information from third party searches, other investigations and, sometimes, from adverse parties.

32.3 Your personal information will only be used for the purposes for which it is collected or in accordance with the *Privacy Act 1988 (Cth)*. For example, Shine may use Your personal information to provide advice and recommendations that take into account Your personal circumstances.

32.3 If You do not provide Shine with Your full name and address information required, Shine cannot act for You. If You do not provide Shine with the other personal information that Shine requests, any advice given by Shine may be wrong for You or misleading.

- 32.4 Depending on the nature of Your matter, the types of bodies to whom Shine may disclose Your personal information include the courts, the other party or parties to the Proceedings, experts and barristers and third parties involved in the completion or processing of a transaction.
- 32.4 Shine does not disclose Your information overseas unless your instructions involve dealing with parties located overseas. If Your matter involves parties overseas, Shine may disclose select personal information to overseas recipients associated with that matter in order to carry out Your instructions.
- 32.5 Shine will manage and protect Your personal information in accordance with Shine's privacy policy. Shine's privacy policy contains information about how You can access and correct the personal information Shine hold about You and how You can raise any concerns about Shine's personal information handling practices. For more information, please contact Shine in writing, or visit Shine's website at [www.shine.com.au/privacy-policy/](http://www.shine.com.au/privacy-policy/).

### **33. Contact Person**

If You have any concerns about Shine's costs, please contact Jan Saddler of Shine on 13 11 99 who will be happy to discuss any issues with you.

### **34. Entering into this Retainer and Cooling-Off Period**

- 34.1 The Applicant may enter into this Retainer by:
- (a) Signing a copy of this Retainer and sending the signed copy, by email, fax or post (see clause 28), to the Shine; or
  - (b) If the Applicant is a company or other non-natural entity, by executing a copy of this Retainer in accordance with the relevant law and sending the executed copy, by email, fax or post (see clause 28); or
  - (c) By clicking on the link "Register Now" on the Westpac Life Insurance Class Action" page of the Shine Lawyers website and following the directions to enter into the Retainer (including making the Retainer Declaration) set out there.
- 34.2 You may terminate this Retainer in writing within 21 Business Days.
- 34.3 If You exercise Your right to terminate under clause 34.2 Shine will not charge You for the any Legal Costs incurred for work done up to termination. Any obligation of confidence or privilege in respect of information received by You prior to termination is continuing and survives any such termination.

**EXECUTED as an Agreement**

Executed by **Shine Lawyers Pty Ltd** (ACN 134 702 757) by:

  
\_\_\_\_\_

Solicitor for and on behalf of Shine Lawyers Pty Ltd

Please acknowledge your acceptance of these Terms of Engagement by executing the following page



**Acceptance of Terms of Engagement**

I/We have read and understood and agree to the above terms of the engagement. I/We acknowledge that I/we have:

1. received, read, understand and approved the attached disclosure statement and the conditional costs agreement;
2. been information of your right to get independent legal advice before entering into this Agreement;
3. the right to negotiate a costs agreement and the right to independent advice and representation in relation to the negotiation;
4. been advised that there is a "cooling off" period of 21 Business Days, during which you have the right to terminate this Agreement by giving Shine written notice of the termination after signing this Agreement; and
5. agreed that where one or more individuals and/or non-individuals are signing this letter then each agrees and acknowledges that those signatories are jointly and severally covenanting for all rights and obligations under the above terms of the engagement.

**Applicant(s)**

Name: \_\_\_\_\_

Postal Address: \_\_\_\_\_

\_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

Email: \_\_\_\_\_

**SIGNED** by: \_\_\_\_\_ )  
 \_\_\_\_\_ )  
 \_\_\_\_\_ )

Print Name  
 \_\_\_\_\_

**SIGNED** by: \_\_\_\_\_ )  
 \_\_\_\_\_ )  
 \_\_\_\_\_ )

Print Name  
 \_\_\_\_\_

**Dated** this \_\_\_\_\_ day of \_\_\_\_\_ 2020

## **Annexure 1**

1. Shine Lawyers Conflict of Interest Disclosure Statement

## Westpac Life Insurance Class Action

### Shine Lawyers: Conflict of Interest Disclosure Statement

Shine Lawyers Pty Ltd (Shine Lawyers) offers to provide legal services to the Representative Applicant(s) and the Group Members in relation to their claims in a class action against Westpac Banking Corporation ABN 33 007 457 141 and Westpac Life Insurance Services Limited ABN 31 003 149 157 in respect of routine charging of higher premiums on life insurance policies obtained at the recommendation of independent financial advisors (Westpac Life Insurance Class Action). Shine Lawyers offer is set out in the Retainer Agreement and Disclosure.

JustKapital Litigation Pty Ltd (JKL) offers to provide litigation funding to the Representative Applicant(s) and Group Members for the Westpac Life Insurance Class Action. That offer is set out in the Funding Agreement.

#### 1. Managing Conflicts of Interest

1.1 The Australian Securities and Investments Commission's Regulatory Guide ("ASIC Regulatory Guide 248"), "*Litigation schemes and proof of debt schemes: Managing conflicts of interest*", notes that the nature of a litigation funding arrangement has the potential to lead to a divergence between the interests of the Group Members, the interests of the funder and lawyers because:

- (a) the funder has an interest in minimising costs, and maximising their return;
- (b) lawyers have an interest in receiving fees and costs; and
- (c) Group members have an interest in minimising costs and remuneration paid to the funder and in doing so, maximising any return.

1.2 While these interests are aligned in most cases, conflicts (whether real or potential, present or future) can emerge in Representative Actions.

1.3 Shine Lawyers:

- (a) Will act in the best interests of group members, and not JKL if a conflict was to emerge;
- (b) Will ensure that the interests of existing and prospective group members are not adversely affected by any potential conflicts that might arise;
- (c) Is required by legislation and professional conduct rules to put our client's interests ahead of our Shine's financial interest. This applies in all cases that Shine conduct, including Representative Actions;
- (d) Has put in place practices and procedures to ensure the appropriate monitoring and management of conflicts of interest occurs in every

Representative Action that Shine run: and

- (e) Will make clear, timely and accurate disclosure of any actual or potential conflicts of interest to existing and prospective Group Members.

1.4 Any Group Member in this Representative Action who is not satisfied by our response to a conflict, has the following dispute resolution mechanisms available them:

- (a) Under clauses 19.9 or 25 of the Funding Agreement: and
- (b) Under the general terms of this Retainer, a dispute can be referred to Shine Lawyers' General Manager. If the dispute is not resolved, then it may be referred to the Legal Services Commissioner of Queensland.

In accordance with these principles, this notice sets out the following matters relevant to the present proceeding.

## **2. Competing Duties**

2.1 Shine Lawyers will only be retained by the Representative Applicant and Group Members as their solicitors under a legal costs agreement (**Retainer**).

2.2 Shine Lawyers has not been, and will not be, retained by JKL. Shine and JKL have entered into a separate contract (the Shine/JKL Agreement), which is annexed as Schedule 1 to the Funding Agreement. The terms do not grant JKL control of, or the ability to control, the conduct of the proceedings, however JKL may provide day-to-day instructions to Shine Lawyers and assist with the investigation and management of the proceedings, by virtue of the Funding Agreement.

2.3 Shine Lawyers owes fiduciary duties to Group Members and contractual duties to the JKL. If any conflict was to arise as between these duties, then it will be resolved in the favour of Group Members.

2.4 Shine Lawyer's duties to the Court will prevail over all other duties

## **3. Relationship between Shine Lawyers and JKL**

3.1 Shine Lawyers has no financial interest in the JKL. The only financial benefit that Shine Lawyers (or any of its employees) will receive from this class action is through the payment of its reasonable legal costs under the Shine/JKL Agreement and the Retainer.

3.2 To our knowledge, no officer of JKL:

- (a) is a group member in this proceeding; and
- (b) will otherwise receive any remuneration, distribution or benefit from this proceeding except as provided for in the JKL.

3.3 Shine Lawyers works with a number of litigation funders. It is also anticipated that JKL may provide litigation funding to other class actions that Shine Lawyers may conduct in the future.

**4. Other Relationships**

4.1 JKL has conducted a review of its business operations that relate to the funded litigation and have not identified any relationships that are relevant to its management of potential conflicts of interest.

4.2 JKL has previously funded other class actions conducted by Shine Lawyers. It is unlikely that JKL will fund any other class actions to be conducted by Shine Lawyers in the future as JKL no longer undertakes litigation funding as part of its business.