



Federal Court of Australia
District Registry: New South Wales
Division: General

No: NSD1812/2017

GREGORY JOHN LENTHALL and others named in the schedule
Plaintiffs

WESTPAC BANKING CORPORATION ABN 33 007 457 141 and another named in the
schedule
Defendants

JUSTKAPITAL LITIGATION PTY LIMITED
Intervener

ORDER

JUDGE: JUSTICE LEE

DATE OF ORDER: 17 May 2021

WHERE MADE: Sydney

THE COURT ORDERS THAT:

Timing and mode of distribution of Settlement Notice

- 1 Pursuant to ss 33X and 33Y(2) of the *Federal Court of Australia Act 1976 (Act)*, the form and content of:
 - a. the notice to group members of the Settlement Approval Application and to inform group members of the requirement to register which is Annexure A to these orders (**Settlement Notice**); and
 - b. the notice to group members of the Settlement Approval Application and to inform group members whom have not previously received an Opt Out Notice pursuant to s 33X of the Act, of their right to opt out of the proceeding or the requirement to register which is Annexure B to these orders (**Modified Settlement Notice**),

are approved.

- 2 Pursuant to s 33Y(3) of the Act, the Settlement Notice and Modified Settlement



Notice be distributed according to the following procedure:

- a. by 4pm on 19 May 2021, the respondents are to provide to the Court and Computershare, a third party distribution agent (**Distribution Agent**), a schedule containing, according to the respondents' records (and in so far as such information is able to be retrieved by that date from the respondents' records), the last known names, email addresses and/or postal addresses of persons and entities who are likely to fall within the terms of the group member definition in paragraph 9 of the fifth further amended statement of claim filed on 5 November 2020, but not including those persons or entities who were not included on the "Updated Group Member Schedule" referred to in order 3 of the Court's orders dated 15 April 2020 (**Omitted Group Members**) (**Group Member Schedule for the Settlement Notice**);
- b. by 4pm on 19 May 2021, the respondents are to provide to the Court and the Distribution Agent a schedule containing, according to the respondents' records (and in so far as such information is able to be retrieved by that date from the respondents' records), the last known names, email addresses and/or postal addresses of persons and entities who are likely to fall within the terms of the group member definition in paragraph 9 of the fifth further amended statement of claim filed on 5 November 2020, but only to the extent that those persons or entities were Omitted Group Members (**Group Member Schedule for the Modified Settlement Notice**);
- c. the solicitors for the respondents are to instruct the Distribution Agent to cause the distribution of:
 - i. the Settlement Notice by 21 May 2021, to be sent by email to the email addresses (to the extent that such email addresses have been provided) of the group members referred to in the Group Member Schedule for the Settlement Notice; and
 - ii. the Modified Settlement Notice by 21 May 2021, to be sent by email to the email addresses (to the extent that such email addresses have been provided) of the group members referred to in the Group Member Schedule for the Modified Settlement Notice; and



- d. to the extent that there is not an email address recorded in the Group Member Schedule for the Settlement Notice or the Group Member Schedule for the Modified Settlement Notice, the respondents are to instruct the Distribution Agent to send the Settlement Notice or the Modified Settlement Notice by prepaid ordinary post to the group member at the address recorded for that customer as listed in the Group Member Schedule for the Settlement Notice or the Group Member Schedule for the Modified Settlement Notice, respectively;
- e. to the extent that any email referred to in order 2(a) or 2(b) above experiences a delivery failure, the respondent shall cause the Distribution Agent to send the Settlement Notice or the Modified Settlement Notice (as the case may be) by prepaid ordinary post to that group member at the address recorded for that group member in the either the Group Member Schedule for the Settlement Notice or the Group Member Schedule for the Modified Settlement Notice (whichever is relevant);
- f. the solicitors for the respondents are to instruct the Distribution Agent to inform the solicitors of the responses to any notices that are returned to the Distribution Agent undelivered;
- g. the solicitors for the applicants have liberty to apply for access to the Group Member Schedule for the Settlement Notice or the Group Member Schedule for the Modified Settlement Notice, giving the respondents 3 days' written notice of such application, for the purpose of the applicants discharging their role as representatives for the group members;
- h. continuously throughout the period from 21 May 2021 to 2 July 2021, the solicitors for the applicants are to display the Settlement Notice and the Modified Settlement Notice on their website at <https://www.shine.com.au/service/class-actions/westpac-class-action>; and
- i. the District Registrar of the New South Wales District Registry of the Federal Court of Australia shall cause the Settlement Notice and the Modified Settlement Notice to be posted on the Federal Court of Australia Website.

3 The costs of and incidental to the procedure set out in Order 2 shall be paid by the



applicants in the first instance or on their behalf, but otherwise shall be costs in the proceeding. For the avoidance of doubt, answering enquiries by class members and members of the public in relation to the Settlement Notice or the Modified Settlement Notice is work incidental to Order 2.

Further date for opt out for Omitted Group Members

4 Pursuant to ss 33J(1) and (3), and 33ZF of the Act, the date by which an Omitted Group Member may opt out of the proceeding is extended to 2 July 2021.

Costs

5 All of the applicants' costs arising from these orders will be dealt with by the Court as part of the applicants' costs of the proceeding and shall be deducted from the Settlement Sum prior to any distribution of the Settlement Sum to group members if the settlement is approved by the Court.

Other

6 The parties have liberty to apply on two days' notice to the Court.

Date that entry is stamped: 17 May 2021

Sia Lagos
Registrar



Schedule

No: NSD1812/2017

Federal Court of Australia

District Registry: New South Wales

Division: General

Second Plaintiff SHARMILA LENTHALL

Third Plaintiff SHANE THOMAS LYE

Fourth Plaintiff KYLIE LEE LYE

Second Defendant WESTPAC LIFE INSURANCE SERVICES LIMITED ABN 31
003 149 157



Annexure A

NOTICE OF PROPOSED SETTLEMENT

WESTPAC LIFE INSURANCE CLASS ACTION

THIS IS AN IMPORTANT NOTICE ISSUED TO YOU BY THE FEDERAL COURT OF AUSTRALIA

This notice has important information you need to know about a proposed settlement of the WESTPAC LIFE INSURANCE CLASS ACTION.

It is sent to you because you may be a group member and therefore may be eligible to receive a distribution from the settlement fund.

A. WHY IS THIS NOTICE IMPORTANT?

1. This is being sent to you because you may be a group member in the class action against Westpac Banking Corporation and Westpac Life Insurance Services Limited (**Westpac Life**), (together, **Westpac**).
2. The action arises because of allegations made in respect the amount of premiums paid by people (or their superannuation fund) who purchased a life insurance policy (known as a Protection Plan) issued by Westpac Life on the recommendation of financial advisers at Westpac, St George Bank, Bank of Melbourne, BankSA or BT Advice (**Westpac Advisers**) after 21 February 2011 (**Westpac Life Insurance Class Action**). In the class action, the Applicants allege that group members were charged more for insurance policies obtained as a result of advice from Westpac Advisers, than would have been charged if the policies were obtained as a result of advice from independent financial advisers.
3. Westpac denies the allegations made by the Applicants.
4. The solicitors acting for the applicants are Shine Lawyers.
5. As you may have read or heard, settlement terms have been agreed. But because this is a class action, a judge of the Federal Court must decide whether it is a fair and reasonable settlement for the group members. The judge will have a hearing to decide whether the settlement is fair and reasonable at 10.15am on 16 July 2021. Alternatively, you may watch the hearing online or by telephone by emailing the Court on nswdr@fedcourt.gov.au to obtain the link or phone number for you to call.



6. This notice is approved by the Court and explains some things about the settlement to allow you to work out whether you agree or disagree with it. If you have any other questions in relation to the information below, **do not contact Westpac or Westpac Life**. Contact details that you can use to obtain further information can be found in Section I below, under the heading "Where can you get further information?".

B. WHAT IS THE SETTLEMENT?

7. Under the proposed settlement of the Westpac Life Insurance Class Action, Westpac will pay up to \$30 million for compensation, legal fees and disbursements, without admission of any liability. That is called the "**settlement fund**".
8. Westpac will pay a maximum of 50% of the value of all "Eligible Claims" (see Section C below) up to \$21 million, plus fixed amounts towards the legal costs (\$7.5 million) and the costs of administering the settlement (\$1.5 million). More details about the costs proposed to be deducted are set out in Section F below under the heading "The legal costs and other costs in this proceeding".
9. Please note group members will not receive the full value of the claims under the settlement (as it is a compromise, and has to take into account the risk the class action might lose, as well as the benefit to group members in receiving money now rather than later).
10. How the settlement will be administered, including the process to work out if you have an "Eligible Claim" will be set out in a "**settlement scheme**", which is the plan prepared by Shine Lawyers to determine to who compensation will be paid and how that compensation will be paid. The person responsible for administering the settlement scheme is called the "**administrator**". The settlement scheme will need to be approved by the Court.

C. AM I ELIGIBLE TO PARTICIPATE IN THE SETTLEMENT?

11. You are a group member and eligible to register to participate in the settlement if after 21 February 2011, you were given financial advice by Westpac from its financial advisers in Westpac Financial Planning (including St George Bank Financial Planning, Bank of Melbourne Financial Planning, BankSA Financial Planning or BT Advice) on insurance and the premiums payable on that insurance, and you obtained from Westpac Life policies of insurance by reason of that advice.
12. If you are unsure whether you are a group member, please make contact using the details at the end of this notice, or seek legal advice. You should not contact Westpac or Westpac Life.



13. Westpac will only pay money in respect of group members who have “Eligible Claims”. Some people, however, will not be eligible to participate in the settlement, including if they had premium “loadings” of 50% or more shaved on one or more of their policies, or received a 20% staff discount, or received certain other discounts (such as a commission sacrifice discount) of 5% or more of their premium. The settlement scheme contains more details as to eligibility.
14. Shine Lawyers expect that the majority of group members will have Eligible Claims. The administrator will work out whether you have an eligible claim. Even if you don’t know if you have an eligible claim, **you should register because if you do not then you will not have the opportunity to recover any money if you do have an eligible claim.**
15. This notice is being sent to all persons who may be group members and who have not opted out of the class action. If you have validly opted out of the class action, this notice has been sent to you by mistake. All opt-out notices lodged before 30 June 2020 are valid, unless the Court has ordered otherwise. If you have validly opted out, you are not eligible and may disregard this notice.

D. HOW DO I REGISTER?

16. If you already (a) entered into a funding and retainer agreement with Shine Lawyers or (b) previously submitted your claim details to Shine Lawyers, you do not need to take any further step to register your claim and interest in participating in the settlement. The administrator may ask you for more information.
17. If you have not previously registered with Shine Lawyers, you will need to register before you can receive any compensation. To register you must **complete and submit an online registration form** on the Shine Lawyers website **<https://westpacinsurance.shine.com.au/SettlementRegistration>** (the “Registration Form”). Alternatively, if you do not have access to a computer, you can contact Shine Lawyers on 1800 066 105 and ask for the Registration Form to be mailed to you.
18. The Registration Form asks you to provide information about any insurance policies you obtained by reason of receiving advice from a Westpac Adviser, and asks you other questions designed to work out what your claim is and whether it is an “Eligible Claim”. The form also asks for your bank details so that if you are eligible to receive part of the settlement the amount you are owed can be transferred to you. After receiving your details, the administrator may ask you for more information. By submitting the Registration Form you expressly consent to Westpac sharing your confidential information with the administrator and the administrator sharing your confidential information with Westpac.



E. HOW MUCH WILL I RECEIVE UNDER THE SETTLEMENT?

19. If you have an Eligible Claim, Westpac will pay a maximum of 50% of it (up to the cap), **and so it is in your interest to register.**
20. The dollar amount you actually receive will be worked out following a process set out in the settlement scheme, and which will be published on the class action website (<https://www.shine.com.au/service/class-actions/westpac-class-action>). The precise amount that will be payable to each individual group member is not yet known and cannot yet be accurately estimated, including because it depends on information which has not yet been provided by group members who have not yet registered.
21. Below is a **summary only** of how the administrator will work out how much group members with eligible claims will receive in accordance with the settlement scheme.
 - (a) First, the administrator will **review whether a claim is eligible to receive compensation**. That may depend upon factors such as whether you are defined as a group member or received a discount on your life insurance premiums which exceeds the amount of any compensation you could otherwise claim. Some of this information will be sought from you in the Registration Form. The administrator might also seek further information from either you or Westpac if they consider it necessary. There is no need for you to work out whether you are eligible to participate in the settlement scheme before you register. Once you register, the administrator will do the work of determining whether you are eligible to receive compensation.
 - (b) Secondly, once the administrator determines that a group member is eligible to participate in the settlement, they will **calculate the maximum value of that group member's claim**. The maximum amount that a group member can recover is 50% of the difference between what they paid in premiums for their life insurance policies obtained through Westpac Advisers, and what they would have paid if they obtained those same life insurance policies from an independent financial adviser, and interest on that amount.
 - (c) Thirdly, the administrator will work out whether or not, having regard to the maximum claim value, Westpac needs to pay more money up to the \$30 million cap (as Westpac is not paying the full amount until it knows whether enough group members have come forward).
 - (d) Fourthly, the administrator will work out whether any further legal costs are allowed to be deducted (see Section F below).
 - (e) Fifthly, the administrator will work out individual entitlements and distribute the settlement proceeds.



22. If all group members register, group members with Eligible Claims will receive less than 50% of their claim value because what Westpac will pay is capped at \$30 million. **It is in your interest to register, because if you do not then you will not have the opportunity to recover any money from Westpac if you do have an eligible claim.**
23. Based on what is currently known, if you have an Eligible Claim, the maximum amount you will receive from the settlement is approximately 50% of your claim. If all group members with Eligible Claims register (which Shine Lawyers consider to be unlikely), group members will still receive at least 20% of their claim value, that is if all costs are allowed.

F. THE LEGAL COSTS AND OTHER COSTS IN THIS PROCEEDING

24. In a Notice you may have received in around May 2020, you were told that Shine Lawyers was running the case, and litigation funding was being provided by a company called JustKapital Litigation Pty Ltd (**JKL**), and that at the end of the class action an order might be sought requiring group members who do not opt out and benefit from a settlement to contribute to the costs and the funding. Some group members signed up with JKL and agreed to pay it a commission.
25. The total costs incurred by the applicants in running the proceeding has been approximately \$13,521,000.00. Some of these were paid by JKL, but the rest were borne by Shine Lawyers (including because JKL ran out of money and stopped paying Shine Lawyers). Because this happened, Shine Lawyers agreed to keep running the case on a no win no fee basis, and put in place an agreement where:
 - (a) JKL does not receive any commission at all, including from group members who signed funding agreements with it;
 - (b) costs will only be sought to be recovered to the extent they are less than 50% of the total amount paid by Westpac ("**costs cap**"); and
 - (c) JKL will only get back the costs it paid after all other costs have been paid.
26. The only amounts which are proposed to be deducted from the settlement are for:
 - (a) **legal costs**, the total amount of which is approximately **\$10,013,030.00** (for legal fees and disbursements incurred in running the class action, primarily comprised of fees paid to the solicitors, barristers and experts who were involved in the case). The Court has put in place a process by which the reasonableness of these legal costs will be reviewed by a third-party expert. Westpac has agreed to pay \$7.5 million towards these and the



balance of approximately **\$2,513,030.00** will only be recovered if the costs cap is not exceeded;

(b) **insurance costs**, the total amount of which is **\$3,507,970.00**, which was incurred in order to ensure that the applicants were protected from adverse costs and that security for costs could be provided to enable the class action to continue. These will be recovered only to the extent the costs cap is not exceeded;

(c) **administration costs**, in an estimated amount of **\$1,500,000.00**, the reasonableness of which the Court will consider. Westpac has agreed to pay this amount towards that cost. If less is spent than the estimate, the surplus will increase the amount to be distributed to group members, and if more is spent it will only be recovered if the Court approves it.

27. The Court will need to approve deduction of any of these costs in advance and may approve lesser amounts than what is proposed. If you have a concern about the costs proposed to be deducted, you are free to tell the Court your concerns.

G. CONSEQUENCES OF THE COURT APPROVING OR NOT APPROVING THE SETTLEMENT

28. If the Court approves the settlement and you did not opt out, you will be bound by the settlement and will no longer have the right to pursue any claims against Westpac or their related entities of the kind made in the Westpac Life Insurance Class Action (even if you have not registered to participate in the settlement). You will be bound if you are a group member, even if your claim is not an "Eligible Claim".

29. If the Court does not approve the settlement, there will be no distribution of monies under the proposed settlement and the trial of the class action will need to be determined by the Court, unless some other agreement can be reached. There might need to be trials of many or all group members' claims, even if the applicants win. This will take a long time and be expensive. There is no guarantee that there will be another settlement.

H. YOUR OPTIONS

Option 1: If you <u>support</u> the proposed settlement	<ul style="list-style-type: none">• You do not need to do anything.• You should take steps to <u>register</u> to participate in the settlement by completing a Registration Form as soon as possible (see Section D above).
Option 2: If you	<ul style="list-style-type: none">• You should tell the Judge and parties why.



disagree with the proposed settlement (or any aspect of how it is proposed to be distributed, including the amounts proposed to be paid to Shine Lawyers, the administrator, and/or the applicants)

- This is best done by completing and submitting the form called “Objection to Settlement Form” on the Shine Lawyers website at: <https://www.shine.com.au/service/class-actions/westpac-class-action> by 4.00 pm on **2 July 2021**. Alternatively, you can contact Shine Lawyers for a physical copy of the Objection to Settlement Form on 1800 066 105, which should be completed and sent to the address on that form by 4.00 pm on **2 July 2021**.
- You can also tell the Court your concerns at the hearing at 10:15am on 16 July 2021 in the Federal Court of Australia. Arrangements can be made to do this if you want. Due to the coronavirus pandemic, a hearing may not happen in a courtroom where people come along in person. If you want to speak, you may be provided with a videolink or telephone link. If you want to speak to the Judge about the settlement at the hearing this can be arranged for you by sending an email to nswdr@fedcourt.gov.au.

Please note, that even if you are objecting, if the settlement is approved you will still be able to receive a distribution as long as you register your claim (Section D above).

I. WHERE CAN YOU GET FURTHER INFORMATION?

30. If you want more information or documents, you should download documents from the Westpac Life Insurance Class Action website at <https://www.shine.com.au/service/class-actions/westpac-class-action>. The documents available on that website include the applicants’ Fifth Further Amended Statement of Claim, which contains detailed allegations made by the Applicants in the class action. **You should not contact the Court, Westpac or Westpac Life for any general enquiries about the Westpac Life Insurance Class Action.**
31. You can also request information from Shine Lawyers on 1800 066 105 or wpacsettlement@shine.com.au.
32. The proposed settlement distribution scheme, which includes detail of how the administrator intends to determine group member entitlements is published online at <https://www.shine.com.au/service/class-actions/westpac-class-action>.



Please consider the above matters carefully. If there is anything of which you are unsure, you should contact Shine Lawyers or seek your own legal advice. We cannot provide you with a precise estimate of the amount payable to you at this stage, so please do not contact us to request this information.

Please bear in mind that while you should contact Shine Lawyers for further information as necessary, if you do not require further assistance, it is in the interests of all group members that you do not contact Shine Lawyers to keep any further costs to a minimum.



Annexure B

NOTICE OF PROPOSED SETTLEMENT

WESTPAC LIFE INSURANCE CLASS ACTION

THIS IS AN IMPORTANT NOTICE ISSUED TO YOU BY THE FEDERAL COURT OF AUSTRALIA

This notice has important information you need to know about a proposed settlement of the WESTPAC LIFE INSURANCE CLASS ACTION.

It is sent to you because you may be a group member and therefore may be eligible to receive a distribution from the settlement fund.

A. WHY IS THIS NOTICE IMPORTANT?

1. This is being sent to you because you may be a group member in the class action against Westpac Banking Corporation and Westpac Life Insurance Services Limited (**Westpac Life**), (together, **Westpac**).
2. The action arises because of allegations made in respect the amount of premiums paid by people (or their superannuation fund) who purchased a life insurance policy (known as a Protection Plan) issued by Westpac Life on the recommendation of financial advisers at Westpac, St George Bank, Bank of Melbourne, BankSA or BT Advice (**Westpac Advisers**) after 21 February 2011 (**Westpac Life Insurance Class Action**). In the class action, the Applicants allege that group members were charged more for insurance policies obtained as a result of advice from Westpac Advisers, than would have been charged if the policies were obtained as a result of advice from independent financial advisers.
3. Westpac denies the allegations made by the Applicants.
4. The solicitors acting for the applicants are Shine Lawyers.
5. As you may have read or heard, settlement terms have been agreed. But because this is a class action, a judge of the Federal Court must decide whether it is a fair and reasonable settlement for the group members. The judge will have a hearing to decide whether the settlement is fair and reasonable at 10.15am on 16 July 2021. Alternatively, you may watch the hearing online or by telephone by emailing the Court on nswdr@fedcourt.gov.au to obtain the link or phone number for you to call.



6. This notice is approved by the Court and explains some things about the settlement to allow you to work out whether you agree or disagree with it. If you have any other questions in relation to the information below, **do not contact Westpac or Westpac Life**. Contact details that you can use to obtain further information can be found in Section I below, under the heading “Where can you get further information?”.

B. WHAT IS THE SETTLEMENT?

7. Under the proposed settlement of the Westpac Life Insurance Class Action, Westpac will pay up to \$30 million for compensation, legal fees and disbursements, without admission of any liability. That is called the “**settlement fund**”.
8. Westpac will pay a maximum of 50% of the value of all “Eligible Claims” (see Section C below) up to \$21 million, plus fixed amounts towards the legal costs (\$7.5 million) and the costs of administering the settlement (\$1.5 million). More details about the costs proposed to be deducted are set out in Section F below under the heading “The legal costs and other costs in this proceeding”.
9. Please note group members will not receive the full value of the claims under the settlement (as it is a compromise, and has to take into account the risk the class action might lose, as well as the benefit to group members in receiving money now rather than later).
10. How the settlement will be administered, including the process to work out if you have an “Eligible Claim” will be set out in a “**settlement scheme**”, which is the plan prepared by Shine Lawyers to determine to who compensation will be paid and how that compensation will be paid. The person responsible for administering the settlement scheme is called the “**administrator**”. The settlement scheme will need to be approved by the Court.

C. AM I ELIGIBLE TO PARTICIPATE IN THE SETTLEMENT?

11. You are a group member and eligible to register to participate in the settlement if after 21 February 2011, you were given financial advice by Westpac from its financial advisers in Westpac Financial Planning (including St George Bank Financial Planning, Bank of Melbourne Financial Planning, BankSA Financial Planning or BT Advice) on insurance and the premiums payable on that insurance, and you obtained from Westpac Life policies of insurance by reason of that advice.



12. If you are unsure whether you are a group member, please make contact using the details at the end of this notice, or seek legal advice. You should not contact Westpac or Westpac Life.
13. Westpac will only pay money in respect of group members who have “Eligible Claims”. Some people, however, will not be eligible to participate in the settlement, including if they had premium “loadings” of 50% or more shaved on one or more of their policies, or received a 20% staff discount, or received certain other discounts (such as a commission sacrifice discount) of 5% or more of their premium. The settlement scheme contains more details as to eligibility.
14. Shine Lawyers expect that the majority of group members will have Eligible Claims. The administrator will work out whether you have an eligible claim. Even if you don’t know if you have an eligible claim, **you should register because if you do not then you will not have the opportunity to recover any money if you do have an eligible claim.**
15. This notice is being sent to all persons who may be group members and who have not opted out of the class action. If you have validly opted out of the class action, this notice has been sent to you by mistake. All opt-out notices lodged before 30 June 2020 are valid, unless the Court has ordered otherwise. If you have validly opted out, you are not eligible and may disregard this notice.

D. HOW DO I REGISTER?

16. If you already (a) entered into a funding and retainer agreement with Shine Lawyers or (b) previously submitted your claim details to Shine Lawyers, you do not need to take any further step to register your claim and interest in participating in the settlement. The administrator may ask you for more information.
17. If you have not previously registered with Shine Lawyers, you will need to register before you can receive any compensation. To register you must **complete and submit an online registration form** on the Shine Lawyers website at **<https://westpacinsurance.shine.com.au/SettlementRegistration>** (the “Registration Form”). Alternatively, if you do not have access to a computer, you can contact Shine Lawyers on 1800 066 105 and ask for the Registration Form to be mailed to you.
18. The Registration Form asks you to provide information about any insurance policies you obtained by reason of receiving advice from a Westpac Adviser, and asks you other questions designed to work out what your claim is and whether it is an “Eligible Claim”. The form also asks for your bank details so that if you are eligible to receive part of the settlement the amount you are owed can be transferred to you. After receiving your details, the administrator



may ask you for more information. By submitting the Registration Form you expressly consent to Westpac sharing your confidential information with the administrator and the administrator sharing your confidential information with Westpac.

E. CAN I OPT OUT?

19. Group members have already had a chance to “opt out” of the proceeding and keep their legal rights against Westpac (in June 2020). If you have already had the chance to opt out, you cannot choose to opt out now. Most group members were directly sent a notice about this right, but some group members had not been identified by Westpac at that time and so did not receive that notice.
20. If you are receiving this notice, it is likely that you did not receive the previous notice about your opt out rights in June 2020, and can do so now if you want to. Details of where to obtain the opt out form are set out at the end of this notice.
21. If you opt out of the class action, this means you will not be “bound” by the orders the Court makes if it approves the settlement and will be free to run your own case against Westpac (but because some of the relevant conduct of Westpac occurred a long time ago, if this class action had not been brought, then some claims may have been lost from around October 2017 onwards. This class action “stopped the clock” on those claims being lost and if you are one of these class members, and you opt out, you may only have a very short period of time to take your own action before your claim is lost).
22. But if you opt out, it also means that you will not get any money from the proposed settlement, and so if you want to participate in the settlement you should not opt out.
23. You should seek legal advice before opting out. To opt out is to take a serious step – you should not do it unless you understand what it means.

F. HOW MUCH WILL I RECEIVE UNDER THE SETTLEMENT?

24. If you have an Eligible Claim, Westpac will pay a maximum of 50% of it (up to the cap), **and so it is in your interest to register.**
25. The dollar amount you actually receive will be worked out following a process set out in the settlement scheme, and which will be published on the class action website (**<https://www.shine.com.au/service/class-actions/westpac-class-action>**). The precise amount that will be payable to each individual group member is not yet known and cannot yet be accurately estimated, including



because it depends on information which has not yet been provided by group members who have not yet registered.

26. Below is a **summary only** of how the administrator will work out how much group members with eligible claims will receive in accordance with the settlement scheme.
- (a) First, the administrator will **review whether a claim is eligible to receive compensation**. That may depend upon factors such as whether you are defined as a group member or received a discount on your life insurance premiums which exceeds the amount of any compensation you could otherwise claim. Some of this information will be sought from you in the Registration Form. The administrator might also seek further information from either you or Westpac if they consider it necessary. There is no need for you to work out whether you are eligible to participate in the settlement scheme before you register. Once you register, the administrator will do the work of determining whether you are eligible to receive compensation.
 - (b) Secondly, once the administrator determines that a group member is eligible to participate in the settlement, they will **calculate the maximum value of that group member's claim**. The maximum amount that a group member can recover is 50% of the difference between what they paid in premiums for their life insurance policies obtained through Westpac Advisers, and what they would have paid if they obtained those same life insurance policies from an independent financial adviser, and interest on that amount.
 - (c) Thirdly, the administrator will work out whether or not, having regard to the maximum claim value, Westpac needs to pay more money up to the \$30 million cap (as Westpac is not paying the full amount until it knows whether enough group members have come forward).
 - (d) Fourthly, the administrator will work out whether any further legal costs are allowed to be deducted (see Section F below).
 - (e) Fifthly, the administrator will work out individual entitlements and distribute the settlement proceeds.
27. If all group members register, group members with Eligible Claims will receive less than 50% of their claim value because what Westpac will pay is capped at \$30 million. **It is in your interest to register, because if you do not then you will not have the opportunity to recover any money from Westpac if you do have an eligible claim.**
28. Based on what is currently known, if you have an Eligible Claim, the maximum amount you will receive from the settlement is approximately 50% of your claim. If all group members with Eligible Claims register (which Shine Lawyers consider to be unlikely), group members will still receive at least 20% of their claim value, that is if all costs are allowed.



G. THE LEGAL COSTS AND OTHER COSTS IN THIS PROCEEDING

29. In a Notice you may have received in around May 2020, you were told that Shine Lawyers was running the case, and litigation funding was being provided by a company called JustKapital Litigation Pty Ltd (**JKL**), and that at the end of the class action an order might be sought requiring group members who do not opt out and benefit from a settlement to contribute to the costs and the funding. Some group members signed up with JKL and agreed to pay it a commission.
30. The total costs incurred by the applicants in running the proceeding has been approximately \$13,521,000.00. Some of these were paid by JKL, but the rest were borne by Shine Lawyers (including because JKL ran out of money and stopped paying Shine Lawyers). Because this happened, Shine Lawyers agreed to keep running the case on a no win no fee basis, and put in place an agreement where:
- (a) JKL does not receive any commission at all, including from group members who signed funding agreements with it;
 - (b) costs will only be sought to be recovered to the extent they are less than 50% of the total amount paid by Westpac (“**costs cap**”); and
 - (c) JKL will only get back the costs it paid after all other costs have been paid.
31. The only amounts which are proposed to be deducted from the settlement are for:
- (a) **legal costs**, the total amount of which is approximately **\$10,013,030.00** (for legal fees and disbursements incurred in running the class action, primarily comprised of fees paid to the solicitors, barristers and experts who were involved in the case). The Court has put in place a process by which the reasonableness of these legal costs will be reviewed by a third-party expert. Westpac has agreed to pay \$7.5 million towards these and the balance of approximately **\$2,513,030.00** will only be recovered if the costs cap is not exceeded;
 - (b) **insurance costs**, the total amount of which is **\$3,507,970.00**, which was incurred in order to ensure that the applicants were protected from adverse costs and that security for costs could be provided to enable the class action to continue. These will be recovered only to the extent the costs cap is not exceeded;
 - (c) **administration costs**, in an estimated amount of **\$1,500,000.00**, the reasonableness of which the Court will consider. Westpac has agreed to pay this amount towards that cost. If less is spent than the estimate, the surplus will increase the amount to be distributed to group members, and if more is spent it will only be recovered if the Court approves it.



32. The Court will need to approve deduction of any of these costs in advance and may approve lesser amounts than what is proposed. If you have a concern about the costs proposed to be deducted, you are free to tell the Court your concerns.

H. CONSEQUENCES OF THE COURT APPROVING OR NOT APPROVING THE SETTLEMENT

33. If the Court approves the settlement and you did not opt out, you will be bound by the settlement and will no longer have the right to pursue any claims against Westpac or their related entities of the kind made in the Westpac Life Insurance Class Action (even if you have not registered to participate in the settlement). You will be bound if you are a group member, even if your claim is not an “Eligible Claim”.

34. If the Court does not approve the settlement, there will be no distribution of monies under the proposed settlement and the trial of the class action will need to be determined by the Court, unless some other agreement can be reached. There might need to be trials of many or all group members’ claims, even if the applicants win. This will take a long time and be expensive. There is no guarantee that there will be another settlement.

I. YOUR OPTIONS

Option 1: If you <u>support</u> the proposed settlement	<ul style="list-style-type: none">• You do not need to do anything.• You should take steps to <u>register</u> to participate in the settlement by completing a Registration Form as soon as possible (see Section D above).
Option 2: If you <u>disagree with</u> the proposed settlement (or any aspect of how it is proposed to be distributed, including the amounts proposed to be paid to Shine Lawyers, the administrator, and/or the applicants)	<ul style="list-style-type: none">• You should tell the Judge and parties why.• This is best done by completing and submitting the form called “Objection to Settlement Form” on the Shine Lawyers website at: https://www.shine.com.au/service/class-actions/westpac-class-action by 4.00 pm on 2 July 2021. Alternatively, you can contact Shine Lawyers for a physical copy of the Objection to Settlement Form on 1800 066 105, which should be completed and sent to the address on that form by 4.00 pm on 2 July 2021.• You can also tell the Court your concerns at the hearing at 10:15am on 16 July 2021 in the Federal Court of Australia. Arrangements can be made to do this if you want. Due to the coronavirus pandemic, a hearing may not happen in a courtroom where people come along in person. If you want to speak, you may be provided with a videolink or telephone link. If you want to speak to the Judge about the



	<p>settlement at the hearing this can be arranged for you by sending an email to nswdr@fedcourt.gov.au.</p> <p>Please note, that even if you are objecting, if the settlement is approved you will still be able to receive a distribution as long as you <u>register</u> your claim (Section D above).</p>
Option 3: If you want to opt out of the proceedings	<ul style="list-style-type: none">• You must send an “Opt Out Form” directly to the New South Wales District Registry of the Federal Court of Australia before 4:00pm on 2 July 2021. A copy of the Opt Out Form is attached to this notice.

J. WHERE CAN YOU GET FURTHER INFORMATION?

35. If you want more information or documents, you should download documents from the Westpac Life Insurance Class Action website at <https://www.shine.com.au/service/class-actions/westpac-class-action>. The documents available on that website include the applicants’ Fifth Further Amended Statement of Claim, which contains detailed allegations made by the applicants in the class action. **You should not contact the Court, Westpac or Westpac Life for any general enquiries about the Westpac Life Insurance Class Action.**
36. You can also request information from Shine Lawyers on 1800 066 105 or wpacsettlement@shine.com.au.
37. The proposed settlement distribution scheme, which includes detail of how the administrator intends to determine group member entitlements is published online at <https://www.shine.com.au/service/class-actions/westpac-class-action>.

Please consider the above matters carefully. If there is anything of which you are unsure, you should contact Shine Lawyers or seek your own legal advice. We cannot provide you with a precise estimate of the amount payable to you at this stage, so please do not contact us to request this information.

Please bear in mind that while you should contact Shine Lawyers for further information as necessary, if you do not require further assistance, it is in the interests of all group members that you do not contact Shine Lawyers to keep any further costs to a minimum.



Form 21
Rule 9.34

OPT OUT NOTICE

Federal Court of Australia
No. NSD1812/2017
District Registry: New South Wales
Division: General

GREGORY JOHN LENTHALL and others named in the schedule

Applicants

WESTPAC BANKING CORPORATION ABN 33 007 457 141 and another named in the schedule

Respondents

To: The Registrar
Federal Court of Australia
New South Wales District Registry
Level 17, Law Courts Building
Queens Square
Sydney NSW 2000

..... (print name), a group member in this representative proceeding, gives notice under section 33J of the *Federal Court of Australia Act 1976*, that he, she or it is opting out of the representative proceeding.

Date:.....

Signed by

..... (signature)

(please complete the next page)



..... (print name)
Group Member / Lawyer for the Group Member

Address of group member:

.....
.....

ACN/ABN:(if a company or trustee)

If you are signing as the solicitor or representative of the group member:

Name:

Capacity in which you are signing:

Address:

.....
.....