

## OPT OUT NOTICE

### FEDERAL COURT OF AUSTRALIA

#### *OnePath Superannuation Class Action*

*Ian Edo Janssen & Anor v OnePath Custodians Pty Ltd (ACN 008 508 496) & Ors (VID 9/2021)*

#### **THIS NOTICE IS IMPORTANT**

#### **PLEASE READ IT CAREFULLY, AS IT MAY AFFECT YOUR LEGAL RIGHTS**

- You are receiving this notice (**Notice**) because you are likely to be a Group Member in the OnePath Superannuation Class Action.
- The class action is brought against OnePath Custodians Pty Ltd (**OPC, or the Trustee**) the former trustee of a public offer superannuation fund known as the OnePath MasterFund (**Master Fund**) and the trustee of a public offer superannuation fund known as the Retirement Portfolio Service Fund (**RPS Fund**). The class action is also brought against an entity which was until 31 May 2019 a related entity of the Trustee, previously known as OnePath Life (**OPL**) and, since 2022, known as Zurich Australia Limited (**ZAL**). The class action is also brought against ANZ Banking Group Limited (**ANZ**), which was the parent company of the Trustee and OPL for certain periods relevant to the claims. OPC, ZAL (formerly OPL) and ANZ are the **Respondents** to the class action.
- **The class action relates to two types of claims:**
  - First, it relates to interest rates paid on cash investment options called “ANZ Cash Advantage”, “ANZ SmartChoice Cash” and “ANZ Term Deposits” in pension and superannuation products offered in the Master Fund and RPS Fund between 1 September 2011 and 31 January 2020 (Cash Claims).
  - Second, it relates to fees charged to members of the Master Fund and RPS Fund which the Applicants allege funded payment of commissions to financial advisers. The relevant fees are alleged to have been charged to members who joined OneAnswer Super or Pension, Integra Super or Pension, ANZ Super Advantage or Optimix Super or Pension prior to 1 July 2013, and remained members on or after 1 July 2013 (Commissions Claims).
- The Federal Court has ordered that this Notice be published for the information of persons who might be Group Members on whose behalf the action is brought and may be affected by the action.
- If you are a Group Member, you may do one of two things in response to this notice:
  1. **Do nothing.** You will remain part of the class action and may receive compensation if it is successful.
  2. **Opt out** of the class action by completing the attached form and sending it to the Federal Court before 4:00pm AEST on 24 June 2024. If you opt out, you will not receive any compensation from the class action if it is successful (but you will keep your right to try and get compensation in an action you may start yourself).
- You may be receiving this Notice because you are the executor or contact for the estate of a former member of the Master Fund or RPS Fund. In that case, you should provide a copy of this Notice to each beneficiary of the estate.

**If you have any questions about this notice or the class action, you can seek further information from Slater and Gordon**, the lawyers conducting the class action for the Applicants, by visiting their website at <https://www.slatergordon.com.au/onepath>, or contacting them on 1800 071 827, or you can seek your own legal advice. Any questions you have concerning this notice should **not** be directed to the Court.

**You can also register your details with Slater and Gordon (not the Court)** to provide information about your claim and receive updates about the case. This is voluntary and is not required in order to remain a Group Member.

## 1. WHAT IS A CLASS ACTION?

- 1.1. A class action is a legal proceeding brought by a person (**Applicant**) on their own behalf, and on behalf of a number of persons (referred to as **Group Members**), who have similar claims against the same person (**Respondent**).
- 1.2. The Applicant in a class action does not need to seek the consent of Group Members to commence a class action on their behalf. Group Members will be bound by the outcome of the class action unless they choose to opt out of the class action before the deadline. An explanation of how Group Members can opt out is set out in section 5 below.

## 2. WHAT IS THE ONEPATH SUPERANNUATION CLASS ACTION?

- 2.1. The OnePath Superannuation Class Action was commenced on 23 December 2020. The claim is brought by the Applicants under Part IVA of the *Federal Court of Australia Act 1976* (Cth) on their own behalf and on behalf of all persons who are 'Group Members' as defined in the proceeding, set out at Schedule A and summarised in section 3 below.
- 2.2. The Applicants allege claims arising on two bases. First, in relation to interest rates paid on members' investments in some cash investment options within superannuation and pension products (**Cash Claims**) and second, in relation to fees charged within superannuation and pension products which are said to have funded commission payments to financial advisers (**Commissions Claims**).
- 2.3. In relation to the Cash Claims, the First Applicant alleges, in summary, that OPC invested, or arranged for OPL to invest, Group Members' money that was invested in the "ANZ Cash Advantage", "ANZ SmartChoice Cash" and "ANZ Term Deposits" options (**Cash Investment Options**) within the OneAnswer (including Frontier) and ANZ Smart Choice products in the Master Fund and RPS Fund with ANZ at interest rates lower than the rates that ought to have been obtained by the Trustee acting in the best interests of members.
- 2.4. In relation to the Commissions Claims, the Second Applicant alleges, in summary, that:
  - a) prior to 1 July 2013, OPC invested all contributions into
    - . the following retail products (**Retail Products**):
      - (1) "ANZ OneAnswer Personal Super (including //Select)", "ANZ OneAnswer Allocated Pension (including //Select)" and "ANZ OneAnswer Term Allocated Pension (including //Select)" ANZ OneAnswer Products (**ANZ OneAnswer Products**);
      - (2) "OnePath OneAnswer Personal Super (including //Select)", "OnePath OneAnswer Allocated Pension (including //Select)" and "OnePath OneAnswer Term Allocated Pension (including //Select)" (**OnePath OneAnswer Products**);
      - (3) "OptiMix Allocated Pension" or "OptiMix Superannuation" or "OptiMix Term Allocated Pension" (**OptiMix Products**); and
    - i. the following employer products (Employer Products):
      - (1) "Integra Super" or "Integra Pension" (**Integra Products**); and
      - (2) "ANZ Super Advantage" (**ANZ Super Advantage Product**);

in one or more invested linked life policies issued by OPL to OPC (**Commission Products Life Policies**).

- b) Prior to 1 July 2013, OPC and OPL entered into arrangements with financial advisers, under which OPL paid commissions to financial advisers whose clients joined the Retail Products or the Employer Products.
- c) OPC arranged for OPL to charge fees to members invested in those products to fund the commissions paid to the advisers.
- d) Following the commencement of the Future of Financial Advice (**FOFA**) reforms to the *Corporations Act 2001* (Cth), from mid-2013, OPC and OPL continued to charge fees for funding commission payments to certain members who had joined the Retail Products or the Employer Products before the FOFA reforms (**pre-FOFA members**).
- e) After 1 July 2013, OPC and OPL directed new members to alternative products within the Master Fund and RPS Fund that did not pay commissions to financial advisers and charged them lower fees (**post-FOFA members**).
- f) The Second Applicant alleges that it was not in the members' best interests for OPC to continue to allow OPL to charge fees to pre-FOFA members in order to fund the payment of those commissions.

2.5. The Applicants allege that:

- a) OPC acted in contravention of various obligations it has under the Superannuation Industry (Supervision) Act 1993 (Cth) and the general law;
- b) ZAL (OPL) was involved in some (but not all) of the allegations alleged against OPC; and
- c) ANZ was involved in some (but not all) of the Cash Claims allegations (but not the Commissions Claims allegations) alleged against OPC.

2.6. The Respondents to the class action are OPC, ZAL (formerly OPL) and ANZ. The Respondents are defending the class action. The Respondents deny the allegations made in the class action and maintain that the interest rates paid on the Cash Investment Options, and the charging of fees to pay commissions to financial advisers, did not contravene their general law or statutory obligations.

### 3. ARE YOU A GROUP MEMBER?

- 3.1. You are a Group Member if you satisfy the definition of 'Group Member' contained in **Schedule A** to this Notice.
- 3.2. If you are unsure whether you are a Group Member, please access the additional information at <https://www.slatergordon.com.au/onepath> or seek your own legal advice.

### 4. WILL YOU BE LIABLE FOR LEGAL COSTS IF YOU REMAIN A GROUP MEMBER?

- 4.1. You will **not** be required to pay anything out of pocket by remaining a Group Member.

#### Legal costs

- 4.2. You are **not required** to pay any 'out of pocket' legal costs. If the OnePath class action is unsuccessful, you will **not** be liable for any legal costs.
- 4.3. The Applicants have entered into a Conditional Legal Costs Agreement with Slater and Gordon Lawyers (**Costs Agreement**). The costs of the class action are covered by Slater and Gordon under the Costs Agreement, and Slater and Gordon will only recover costs at the end if there is a successful outcome.

- 4.4. The Applicants' legal costs must be approved by the Federal Court. The Court will assess the legal costs incurred in the proceeding and will only make an order for costs for an amount that the Court considers appropriate given the nature of the proceeding.
- 4.5. If the OnePath class action is successful, (i.e., if it results in the payment of compensation following a judgment or an out-of-court settlement), the Applicants have agreed under the Costs Agreement to apply for legal costs to be deducted from the resolution sum. At that stage, Slater and Gordon will confirm instructions from the Applicants to make an application to the Court for approval that Slater and Gordon be paid for legal costs by way of a solicitors' common fund order, based on a percentage of up to 24% of any resolution sum. Any solicitors' common fund order, including the percentage of the deduction for legal costs, must first be approved by the Court. If approved, this would be deducted from the resolution sum, prior to distribution to eligible Group Members.
- 4.6. If the Court does not approve a solicitors' common fund order for legal costs to be paid as a percentage of any resolution sum, Slater and Gordon will seek to be paid professional fees charged in accordance with the agreed rates under the Costs Agreement, which includes an uplift of 25% to those rates as compensation for the risk of undertaking *no-win-no-fee* litigation. If approved, these legal costs would be deducted from the resolution sum prior to distribution to eligible Group Members.

#### **Adverse Costs and Security for costs**

- 4.7. If the class action is **unsuccessful**, you will not have to pay anything.
- 4.8. In litigation, the Court will typically order the losing party to pay a proportion of the legal costs of the successful party (**adverse costs**), or order that costs be paid to the Court as 'security' against a future adverse costs order (**security for costs**).
- 4.9. Only the Applicants face the risk of an adverse costs order or an order for security for costs, so these costs do not apply to you as a Group Member. On the basis that a solicitors' common fund order will be sought in this proceeding, Slater and Gordon has agreed to pay any adverse costs and security for costs ordered against the Applicants in the class action.

### **5. WHAT DO YOU NEED TO DO?**

- 5.1. If you are a Group Member, you have two options.

#### **OPTION 1 – REMAIN A GROUP MEMBER – DO NOTHING**

- 5.2. If you wish to remain a Group Member in the OnePath Superannuation Class Action, there is **nothing you need to do**.
- 5.3. If the class action is successful, Group Members may be entitled to receive money awarded in their favour or as part of any settlement that might be agreed. Money may either be paid directly to Group Members or into superannuation accounts held by Group Members – this will be determined at the conclusion of the class action.
- 5.4. Regardless of the outcome of the class action, Group Members will be bound by any judgment or settlement in the proceeding. This means that, if you remain a Group Member, you will not be able to pursue the same claim against the Respondents even if the class action is not successful or not as successful as you might have wished.

#### **OPTION 2 – OPT OUT OF THE CLASS ACTION**

- 5.5. If you do not wish to remain a Group Member in the class action, you may opt out. If you opt out of the class action, you will:

- ) not be bound by any orders made in the class action;
  - a) not be permitted to receive any money awarded in the class action or paid as part of any settlement that might be agreed; and
  - b) be entitled to commence your own legal proceedings in relation to the matters the subject of the class action if you so wish, provided that you issue Court proceedings within the time limit applicable to your claim.
- 5.6. If you wish to opt out of the class action, you may wish to seek independent legal advice before you do so.
- 5.7. If you wish to opt out, complete the 'Opt Out Notice' form contained in **Schedule B** to this notice and send the completed 'Opt Out Notice' form to the Victorian District Registry of the Federal Court of Australia (Level 7, Commonwealth Law Courts, 305 William Street, Melbourne VIC 3000) or by email to [vicreg@fedcourt.gov.au](mailto:vicreg@fedcourt.gov.au) on or before 4:00pm AEST on 24 June 2024.
- 5.8. Any Opt Out Notices received after this time will be invalid and, subject to further order, you will remain as a OnePath Superannuation Class Action Group Member.

## **6. WHERE CAN YOU OBTAIN COPIES OF RELEVANT DOCUMENTS OR FURTHER INFORMATION?**

- 6.1. If you wish to obtain copies of relevant documents about the class action including a copy of the pleadings (which may be subject to change), or seek further information about the class action, you can:
- a) visit <https://www.slatergordon.com.au/onepath>;
  - b) contact Slater and Gordon on 1800 071 827;
  - c) visit the website of the Federal Court: <https://www.fedcourt.gov.au/law-and-practice/class-actions/class-actions>; or
  - d) contact the Victorian Registry of the Federal Court to inspect the file following the payment of an inspection fee (contact details are available at [www.fedcourt.gov.au](http://www.fedcourt.gov.au)).
- 6.2. Please consider the above matters carefully. If there is anything of which you are unsure, you should access the additional information found at <https://www.slatergordon.com.au/onepath>, or seek your own legal advice. In making your decision, please be aware of the timeframes set out in this notice.

## SCHEDULE A

### GROUP MEMBER DEFINITION

A 'Group Member' is a person who satisfies the definition of a 'Group Member' contained in paragraphs 2 and 3 of the Amended Statement of Claim in the proceedings.

2. The First Applicant and the persons whom he represents (**Cash Investment Group Members**) are persons who:

2.1. satisfy both of the following paragraphs:

- (a) were, as at 13 April 2019 (**Master Fund End Date**), or any time between 1 September 2011 (**Master Fund Start Date**) and the Master Fund End Date (**Master Fund Period**), members of the OnePath Master Fund (**Master Fund**); and
- (b) at any time during the Master Fund Period had units or rights in respect of investment options in the Master Fund titled (in whole or part) "Cash Advantage", "ANZ Term Deposit" or "ANZ SmartChoice Cash";

OR

2.2. satisfy both of the following paragraphs:

- (a) were, as at 31 January 2020 (**RPS End Date**), or any time between 14 April 2019 (**RPS Start Date**) and the RPS End Date (**RPS Period**), members of the Retirement Portfolio Service Fund (**RPS Fund**); and
- (b) at any time during the RPS Period had units or rights in respect of investment options in the RPS Fund titled (in whole or in part) "Cash Advantage", "ANZ Term Deposits" or "ANZ SmartChoice Cash";

OR

2.3. at any time during the Master Fund Period received payment from the Master Fund of all or part of the benefits of a deceased member who satisfied paragraph 2.1;

OR

2.4. at any time during the RPS Period received payment from the RPS Fund of all or part of the benefits of a deceased member who satisfied paragraph 2.2;

OR

2.5. satisfy both of the following paragraphs:

- (a) were the Spouse of a member of the Master Fund who satisfied paragraph 2.1; and
- (b) at any time during the Master Fund Period received a transfer from the Master

Fund of all or part of the member's account in the Master Fund pursuant to an order or settlement in a *Family Law Act 1975* proceeding or a superannuation agreement within the meaning of Part VIII B of the *Family Law Act 1975*;

OR

2.6. satisfy both of the following paragraphs:

- (a) were the Spouse of a member of the RPS Fund who satisfied paragraph 2.2; and
- (b) at any time during the RPS Fund Period received a transfer from the RPS Fund of all or part of the member's account in the RPS Fund pursuant to an order or settlement in a *Family Law Act 1975* (Cth) proceeding or a superannuation agreement within the meaning of Part VIII B of the *Family Law Act 1975* (Cth);

AND

2.7. are not:

- (a) a Justice, Registrar, District Registrar or Deputy District Registrar of the High Court of Australia or the Federal Court of Australia; or
- (b) a legal representative of the Applicants in this proceeding.

3. The Second Applicant and the persons whom he represents (**Commissions Group Members**) are persons who:

3.1. satisfy all of the following paragraphs:

- (a) became members of the Master Fund prior to 30 June 2013;
- (b) at any time on or after 1 July 2013 (**FOFA Start Date**) were members of the Master Fund who were invested in the following products:
  - (i) "ANZ OneAnswer Personal Super (including //Select)" or "ANZ OneAnswer Allocated Pension (including //Select)" or "ANZ OneAnswer Term Allocated Pension (including //Select)" (**ANZ OneAnswer Members**); or
  - (ii) "OnePath OneAnswer Personal Super (including //Select)" or "OnePath OneAnswer Allocated Pension (including //Select)" or "OnePath OneAnswer Term Allocated Pension (including //Select)" (**OnePath OneAnswer Members**); or
  - (iii) "ANZ Super Advantage" (**ANZ Super Advantage Members**); or
  - (iv) "Integra Super" or "Integra Pension" (**Integra Members**); or
  - (v) "OptiMix Allocated Pension" or "OptiMix Superannuation" or "OptiMix

Term Allocated Pension” (**OptiMix Members**); and

- (c) were charged one or more Contribution Fees or Excess Ongoing Fees (as defined in this Amended Statement of Claim<sup>[\*]</sup>) in the period after the FOFA Start Date;

OR

- 3.2. at any time after the FOFA Start Date received payment from the Master Fund or the RPS Fund as successor fund to the Master Fund of all or part of the benefits of a deceased member who satisfied paragraph 3.1;

OR

- 3.3. satisfy both of the following paragraphs:

- (a) were the Spouse of a member of the Master Fund or RPS Fund who satisfied paragraph 3.1; and
- (b) at any time after the FOFA Start Date received a transfer from the Master Fund or RPS Fund of all or part of the member’s account in the Master Fund or RPS Fund pursuant to an order or settlement in a *Family Law Act 1975* proceeding or a superannuation agreement within the meaning of Part VIII B of the *Family Law Act 1975*;

AND

- 3.4. are not:

- (a) a Justice, Registrar, District Registrar or Deputy District Registrar of the High Court of Australia or the Federal Court of Australia; or
- (b) a legal representative of the Applicants in this proceeding.

\* The term ‘Contribution Fees’ is defined in paragraph 151 of the Amended Statement of Claim, and includes fees described in the product disclosure statements (**PDSs**) for the relevant products as “contribution fees” or “entry fees”. The term “Excess Ongoing Fees” is defined in paragraph 182 of the Amended Statement of Claim, and includes fees described in the PDSs for the relevant products as “ongoing fees” or “administration fees”.



**SCHEDULE B**

Form 21 Rule 9.34

**OPT OUT NOTICE**

**IMPORTANT:** You should only complete this form if you do **NOT** want to participate in the OnePath Superannuation Class Action

VID9 of 2021

Federal Court of Australia  
District Registry: Victoria  
Division: General

**IAN EDO JANSSEN and DEAN TOBIN REEVES**  
Applicants

**ONEPATH CUSTODIANS PTY LTD (ACN 008 508 496)**  
First Respondent

**ZURICH AUSTRALIA LIMITED (ABN 92 000 010 195)**  
Second Respondent

**AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED (ACN 005 357 522)**  
Third Respondent

To: The Registrar  
Federal Court of Australia, Victoria District Registry  
Owen Dixon Commonwealth Law Courts Building  
305 William Street  
Melbourne VIC 3000

.....(*print name of Group Member*), a Group Member in this class action, gives notice under section 33J of the *Federal Court of Australia Act 1976*, that they are opting out of the class action.

Date: .....

Signed by: .....  
Group Member/Lawyer for the Group Member (*circle as applicable*)

**\*\*\*PLEASE ALSO COMPLETE CONTACT DETAILS OVER THE PAGE\*\*\***

<b>1.1 Group Member Details</b>	
<b>1.2 Full Name:</b>	
<b>1.3 Email:</b>	
<b>1.4 Address:</b>	
<b>1.5 Telephone number:</b>	
<b>1.6 Master Fund or RPS Fund account number (if known):</b>	

<b>1.7 Details of person signing on behalf of Group Member (if applicable):</b>	
<b>1.8 Full Name:</b>	
<b>1.9 Capacity: (e.g. legal practitioner)</b>	
<b>1.10 Email:</b>	
<b>1.11 Address:</b>	
<b>1.12 Telephone number:</b>	