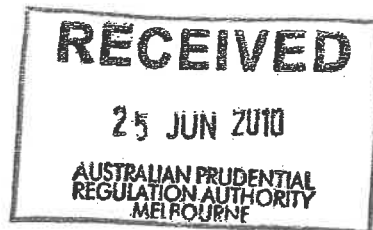




24 June 2010

Mr Bradley Johnstone
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Dear Brad,

Foster's Group Superannuation Fund Member Complaints - Mr Sweeney

We refer to your letter of 10 May 2010 and apologise for our delay in responding.

You will be aware that Mr Sweeney has complained about the Foster's Group Superannuation Fund ("the *Fund*") benefit he has received on his retrenchment by his employer. At the heart of his complaint is the assertion that the benefit should have been calculated in accordance with his total remuneration rather than his "Salary" for the purposes of the Rules relating to the Fund. In particular Mr Sweeney seems to think the definition of "Salary" should have included at least the value of his salary-sacrificed motor vehicle.

Mr Sweeney has made many different complaints and enquiries about the matter, has complained on at least three occasions to the Superannuation Complaints Tribunal ("*SGT*"), to the ATO, to various Ombudsmen, the Directors of Foster's Group Limited ("*Foster's*"), the Directors of CCSL Limited ("*CCSL*"), APRA, ASIC and various Ministers. Most of his complaints and enquiries are completely misconceived. It should be noted, that the three SGT complaints were withdrawn or deemed to be misconceived.

You are aware that CCSL became Trustee of the Fund on 3 April 2006 and at that time received a copy of the Rules relating to the Fund which were represented to CCSL to be complete and in full force and effect. Subsequent enquiries have satisfied CCSL that the Rules that CCSL are administering have, at least in relation to the issue of what is perceived to be Mr Sweeney's complaint, been in place during his entire membership of the Fund.

We have now established that Mr Sweeney was admitted to the Fund from 1 July 1990 and not March 1985, when he commenced employment with Carlton and United Breweries Limited. Enclosed (Appendix 1) is a copy of a letter dated 3 July 1990 which establishes that Mr Sweeney was offered non-contributory membership of the IXL Elders Superannuation Fund (a previous name for the Fund) from 1 July 1990, as a result of a promotion. We are informed that Mr Sweeney accepted that offer and no amount was transferred to the Fund in respect of membership of any prior fund.

CCSL Limited
ACN 104 967 964

Document Registration
Number: *Docu/4711*

Further enquiries have established that Mr Sweeney was fully informed about how the Fund operated in the context of Foster's remuneration arrangements and he had, in fact, completed elections as to his Salary for the purposes of the Rules in accordance with those employment arrangements. So far as we can ascertain, this process was conducted at least annually. Enclosed (Appendix 2) are templates of some of the Election forms Mr Sweeney has completed. These forms clearly show that Salary for superannuation purposes excluded the value of a leased motor vehicle. It is very clear to us that Mr Sweeney was fully informed about how these arrangements worked.

At the time of searching for documents, CCSL assumed Mr Sweeney was a contributory Member of the Fund in March 1985, because Mr Sweeney has demanded a copy of the Rules at this date in several items of correspondence. Had CCSL been aware that he joined the Fund only from 1 July 1990, we could have made it clear to him that the Rules in force at the time of his joining were available for inspection. It is the earlier Rules (applicable as at March 1985, as requested by him) that have not been located until very recently. However, on any reasonable view, those earlier (March 1985) Rules did not govern Mr Sweeney's membership of the Fund or the benefits payable to or in respect of him. We enclose (Appendix 3) a copy of his employment letter dated 25 March 1985, (provided by Mr Sweeney to us in a letter dated 5 July 2007), and note that he was ineligible to join the Elders IXL Superannuation Fund (a predecessor of the Fund) for the first six months of his employment, i.e. before September 1985.

We now deal with the particular questions you have raised.

1. When CCSL was dealing with Mr Sweeney's complaint, the earliest deed we had been able to locate is a set of Rules dated 19 August 1985. We sent a copy of this document to Mr Sweeney in a letter dated 21 August 2009. We enclose a copy of this letter (Appendix 4). However, as a result of additional requests of parties such as Foster's, the previous Fund Administrator ("*Mercer*") the previous Fund Trustee (Foster's Group Superannuation Limited), the previous lawyers for the Fund (Corrs Chambers Westgarth) and the previous Fund Actuary (Mitchell & Co), we have been provided with a set of deeds dating back to 1913. The version of the Rules that was in place when Mr Sweeney joined the Fund in July 1990 comprises the Rules dated 19 August 1985 and two amendments dated 26 August 1986 and 15 December 1989. Enclosed is a copy of a set of these three documents, together with a register of all deeds and amendments since August 1985 (Appendix 5). Executed versions of all documents on this register are available for inspection at the offices of CCSL or alternatively available on CD upon request.
2. Various Rules and amendments that have been located date from 19 August 1985 when the Rules were adopted by the Directors of Elders Superannuation Ltd, as trustee of the IXL Elders Superannuation Fund. That resolution was adopted on the basis that, as certified by Actuary, Mr J M Newman of ES Knight & Co that it did "*not substantially prejudice the value of the rights secured for or in respect of any Member by contributions paid to the Fund prior to the date of amendment.*" A copy of this actuarial certification dated 12 August 1985 is enclosed (Appendix 6).

This wording was in accordance with the ongoing requirements in the Rules in relation to alteration of such rules and currently enshrined in Rule 1.22. For all amendments executed since CCSL assumed trusteeship in April 2006 such actuarial certifications have

been obtained. CCSL understands that its predecessor trustees also obtained such actuarial certifications. Indeed, for each amendment located since 19 August 1985, CCSL holds a copy of the corresponding actuarial certification that members' rights secured to the date of the amendment have not been substantially prejudiced by that amendment. In a letter dated 9 March 2007 to Mr Sweeney we explained this inbuilt protection mechanism in the Rules for member's accrued benefits. A copy of this letter is enclosed (Appendix 7).

We are happy to provide APRA and Mr Sweeney with access to the copies of the Rules that have been located and their accompanying actuarial certificates. So far as we can ascertain, for the reasons outlined above, there has been no adverse alteration to the Rules during his period of employment from March 1985 to October 2006 as suggested by Mr Sweeney. For practical purposes, the definition of Salary has remained the same (being as advised by the Employer to the Trustee) since May 1980. Moreover, it is evident that all amendments to the Rules (at least since August 1985) have been made in accordance with the amending power and duly certified by the Fund's Actuary that members' benefits accrued to the date of amendment have not been substantially prejudiced. It appears that legal and actuarial advice was obtained on each occasion the Rules were changed. We therefore are confident that Mr Sweeney's allegations about the activities of Foster's, the former trustee and CCSL are unfounded.

3. CCSL has made enquiries of Foster's and is satisfied that the information provided in relation to Mr Sweeney's Salary is in accordance with the arrangements Foster's has entered into with its employees since moving to a total remuneration policy in July 1991 first for senior executives being progressively rolled out to salaried staff in descending order of seniority, reaching Mr Sweeney in about August 1992.

Under this new arrangement, employees were given some flexibility as to the amount of the Total Fixed Remuneration (excluding short term incentives (performance bonuses) and long term incentives (grants of employee shares)) that was taken as "Salary" for the purposes of the Fund, with the balance being available to package items such as motor vehicles, additional voluntary superannuation contributions and (before recent changes to FBT rules) notebook computers and other personal expenses. We are of the understanding that Mr Sweeney completed at least annual elections as to his "Salary" for the purposes of the Rules. Appendix 2 contains templates of election forms for various years that were completed by Mr Sweeney. These documents clearly show that the salary used to calculate the 18% superannuation contributions did not include packaged items, such as motor vehicles or private expense accounts. We understand there are signed versions of these election forms contained on file within Foster's HR records, however have not requested copies of these forms due to concerns about privacy and Mr Sweeney's personal information.

4. The CCSL complaints file is available for inspection at the office of CCSL. All amendments to the Rules since 1913 and corresponding actuarial certifications from August 1985 are also available for inspection.

You should be informed that CCSL has taken legal advice as to its obligations in responding to Mr Sweeney's enquiries and complaints and our files deals only with complaints and enquiries made

to CCSL formally. The many letters written to the Directors of CCSL and others have not been dealt with. Moreover, CCSL has not engaged in detailed correspondence in relation to all of Mr Sweeney's allegations or misconceptions as to the operation of the relevant legislation and trust principles.

Further, the Board of CCSL determined that it will not expend any further time or resources on responding to the stream of correspondence Mr Sweeney sends to CCSL Directors, service providers and others associated with the Fund or employed in the broader community. This position has been communicated to both APRA and ASIC.

CCSL has considered the various allegations Mr Sweeney has made and is satisfied that the benefit paid has been calculated in accordance with the Rules. CCSL has attempted to deal with Mr Sweeney's enquiries and complaints that have been the subject of several complaints to the Superannuation Complaints Tribunal and other Regulators. CCSL has also responded to the enquiries by the Regulators about Mr Sweeney's complaints.

Mr Sweeney is no longer a beneficiary of the Fund and has not been for some considerable period. CCSL considers that it has complied with its statutory and common law duties and has reached a stage where further correspondence with him is pointless.

It is always open to Mr Sweeney to commence an action against the Trustee and/or his Employer if he believes the Trustee has failed to comply with its obligations or the Employer has failed to notify Salary in accordance with its contract with him. CCSL may consider taking legal action against Mr Sweeney.

Please do not hesitate to contact me if you wish to discuss the matter further or require any more information.

Yours sincerely



Nicholas Brookes
Chief Executive
CCSL Limited
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Encl Appendix;

1. Letter dated 3 July 1990 from Ken Bannan, CUB Limited to Mr P Sweeney
2. Templates of Total Remuneration Election forms in use in, September 1994, March 1998 and December 2004
3. Letter dated 25 March 1985 from B Callaghan, CUB Limited to Mr P Sweeney
4. Letter dated 21 August 2009 from M O'Halloran, Foster's Group Superannuation Fund, to Mr P Sweeney
5. a) Rules dated 19 August 1985.
b) Amendments dated 26 August 1986
c) Amendments dated 15 December 1989
d) Register of executed deeds
6. Actuarial certificate dated 12 August 1985 in respect of the Rules dated 19 August 1985
7. Letter dated 9 March 2007 from M O'Halloran, Foster's Group Superannuation Fund to Mr P Sweeney