

2 September 2022

By email: [REDACTED]

Dear [REDACTED]

Official Information Act 1982 Request (OIA)

Thank you for your email dated 10 August 2022 (sent to the Financial Markets Authority (“FMA”) on 11 August 2022), requesting information about the recent Cigna Life Insurance case and the number of “prosecutions and fines” the FMA has succeeded in pursuing.

We have considered your requests for information held by the FMA under the Official Information Act 1982, and we respond to each of your points respectively below.

You asked: “How many executive staff or accounting staff are going to jail for this fraud of \$13.5 million from the public and will the obligatory lecture from some judge about stealing from the public and taking food from the mouths of babies etc etc be on the front pages of the newspapers ...or even better on the six pm news? If not why not?.....”

The proceedings against Cigna are civil proceeding under the Fair Dealing provisions in the Financial Markets Conduct Act 2013 and as such are not allegations of fraud. Please note that the Fair Dealing provisions do not provide for the possibility of a sentence of imprisonment being imposed by the Court and instead a contravention may result in a (monetary) pecuniary penalty.

In the Court proceedings against Cigna a hearing is scheduled for 17 October 2022 at which the judge will consider the amount of pecuniary penalty to be imposed. The Court’s judgment setting out the amount of the penalty, will become publicly available in due course (after the penalty hearing).

You asked: “How many pensioners starved by not having their share of \$15 Million dollars? Have you asked this question? If not why not?”

The FMA does not have information on the breakdown of policy holders in terms of their retirement status (and accordingly refuses this request pursuant to section 18(e) of the OIA, namely that the document alleged to contain the information requested does not exist). However, we note that as per the media release, there were 52,363 life insurance policies affected. By way of general comment, we

note the FMA is concerned about the impact of overcharging of premiums on all policy holders and this is one of the reasons for pursuing the case against Cigna.

You asked: *“how many prosecutions and fines you have issued in the last 15 years ...and how many white-collar workers you have put in jail in that time.”*

The FMA was established in May 2011. We provide below the number of cases pursued by the FMA since our establishment that have resulted in a sentence of imprisonment, or monetary penalties. For completeness we also set out the number of cases that have resulted in a: sentence of home detention; fine; pecuniary penalty (including payments in lieu of pecuniary penalties); and infringement fees.

Nature of enforcement action	Number from May 2011 to August 2022 ¹
Criminal prosecutions resulting in a sentence of imprisonment being imposed by the Court	7
Number of individuals sentenced to imprisonment as a consequence of the criminal prosecutions (noting that one prosecution may result in a number of defendants being charged, found guilty and sentenced)	11
Criminal prosecutions resulting in a sentence of home detention being issued by the Court	4
Number of individuals sentenced to home detention	11
Criminal prosecutions resulting in a fine being imposed by the Court. Note that this figure does not include cases where compensation or reparation was ordered.	5
Civil proceedings resulting in a pecuniary penalty being imposed by the Court. Again this figure does not include cases where compensation was paid or ordered to be paid.	4
Enforceable undertakings entered into by the FMA and a financial market participant which provided for a payment in lieu of a pecuniary penalty by the market participant. Again, this figure does not include cases where compensation was paid.	3
Infringement fees imposed by the FMA	5

In addition to the enforcement actions recorded above the FMA has successfully pursued cases resulting in compensation, reparation and recovery of funds for consumers. As compensation payments, or reparation paid to victims are not in the nature of a penalty imposed on the market participant, we have not provided numbers of these successful cases as we understand your request focusses on penalty information.

Finally, it should be noted that the FMA works with other agencies and refers matters to those agencies (for example to the Police, the Serious Fraud Office, the Companies Office, the Financial Advisors

¹ Please note that these numbers only include resolved cases.

Disciplinary Committee or Commerce Commission) as appropriate. Consequently, not all FMA matters investigated end in criminal prosecutions issued by the FMA.

Please note that the FMA has a broad range of regulatory tools to respond to market conduct and further information regarding our enforcement processes can be found on this link <https://www.fma.govt.nz/assets/Policies/160824-Regulatory-response-guidelines-policy.pdf>. There is also further information about FMA's enforcement approach in self-reported cases (like the current Cigna case) on this link: <https://www.fma.govt.nz/library/speeches-and-presentations/karen-chang-speech-to-minter-ellison-clients/>

In responding to your OIA request we also note you have the right to complain to the Ombudsman regarding our assessment of your OIA request, in accordance with section 28 of the Official Information Act. Information about how to make a complaint is available at www.ombudsman.parliament.nz or phone 0800 802 602.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Nath', with a stylized flourish underneath.

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Senior Solicitor, Governance