**IN THE DISTRICT COURT**
**AT HAMILTON**

**I TE KŌTI-Ā-ROHE**
**KI KIRIKIRIROA**

**CRI-2025-019-004788**
**[2026] NZDC 4285**

**COMMERCE COMMISSION**
Prosecutor

v

**TECH VAULT ENTERPRISES LIMITED T/A HOUSE SMILE**
Defendant

| | |
|---|---|
| Hearing: | 10 February 2026 |
| Appearances: | J Barry and O Kazmierow for the Prosecutor<br>No appearance by or for the Defendant |
| Judgment: | 10 February 2026 |

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# NOTES OF JUDGE R G MARSHALL ON SENTENCING

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[1] Tech Vault Enterprises Limited trading as House Smile has pleaded to one charge under the s 7 of the Fair Trading Act 1986. The plea was entered by notice on 9 October 2025.

[2] The particulars of the charge are that the defendant company sold goods to the public on layby between 25 September 2022 and 20 February 2024, the company engaged in unconscionable conduct in relation to its sale or attempted sale of products to the victim on layby including the following calls. A call to the victim on 25 September 2022, a call to the victim on 19 September 2023, calls with the victim's daughter on 10 October 2023, calls to the victim on 20 December 2023 and/or a call to the victim on 20 February 2024.

[3] The charge is a representative charge and has a maximum penalty of $600,000. It is a category 1 charge.

[4] The position today is that the Commerce Commission have appeared and counsel are Mr Barry and Ms Kazmierow appear for the Commission. There is no appearance from the defendant company although a joint memorandum involving the company's former counsel was filed which attached an agreed summary of facts.

[5] Since that time there has been some developments in that the defendant company is now in liquidation and on 5 February 2026 a licensed insolvency practitioner was appointed as liquidator. They were aware that today at the Hamilton District Court a sentencing hearing had been scheduled. The liquidator has confirmed to the Commerce Commission and they have presented documentation that the liquidator gives consent for the proceedings to continue against the defendant company pursuant to s 248(1)(c) of the Companies Act 1993.

[6] On that basis the sentencing proceeds today in light of the fact that the company has now been placed in liquidation and is not represented at this hearing.

[7] I draw on a summary of the summary of facts extensively from the Commerce Commission's counsel's helpful submissions and also I direct that an anonymised summary of facts be attached or appended to these sentencing notes. Mr Barry has undertaken to make one available for that purpose.

[8] The defendant company was a small direct sales trader at the time of the offending. Its business involved layby sales via telemarketing and over nearly a four year period between 2020 and 2024, it maintained a customer relationship with the victim selling and attempting to sell her various products through uninvited direct sales. Throughout that entire time, the victim was afflicted by dementia and other health issues and received a limited income from her pension.

[9] Between the charge period of 25 September 2022 when the legislation came into force to 20 February 2024, the defendant company engaged in the continuing course of conduct through a series of interactions with the victim and her daughter.

They were individually and collectively unconscionable. During calls with the victim and her daughter, the defendant company through its agents ignored the victim's diminished mental capacity and limited financial means, misrepresented or failed to disclose important facts in essential contract terms to her, applied undue pressure to her and ultimately acted in a manner that exploited the victim's known vulnerabilities. The prospect was of financial gain through sales at a time when she had no ability to protect her own interest.

[10] The defendant company through its guilty plea accepts its conduct was unconscionable in terms of the legislation under the Fair Trading Act 1986.

[11] As indicated, the defendant company is a New Zealand registered company which sells predominantly household goods exclusively on layby. Primarily the system of payment appeals to customers who do not have financial liquidity to pay for the full cost of an item up front. The defendant company was established in April 2020 and its business model based on direct selling rather than traditional retail. It had moved from a door to door sales type business to a telemarketing business in 2022.

[12] The conduct at issue in this case involves uninvited calls to a prior customer on the defendant company's contact list, inviting them to purchase products. It operates from Hamilton where it has a warehouse and transitional office space. The defendant company employed one additional employee and three customer facing contractors. During the charge period it employed three telemarketing agents.

[13] The defendant company's unconscionable conduct relates to the victim, an 84 year old retiree. During the charge period she resided independently but was supported by her daughter due to the onset of dementia and other health issues. As a result of her condition, the victim suffered from memory loss and required assistance with financial and other practical matters. She was and still is not in a position to protect her own interest.

[14] The victim did not have internet access and had difficulties using digital products, for example, she was unable to use a computer or send texts from her phone. Her first interaction with House Smile was August 2022 when she agreed to purchase

a tablet and blue tooth speaker with a free earphone following a door to door sales pitch from the defendant company's sales agent.

[15] The victim cancelled the sale within the 14 day cooling off period. Almost two years later on 7 April 2022 the victim was contacted by the company uninvited and she agreed to purchase the same tablet she had originally purchased and cancelled in 2020. That phone call featured clear indications of the victim's diminished mental capacity but the sales agent used multiple false statements, inducements and pressure to secure the victim's agreement to a layby sale. Furthermore, relevant sales terms such as cancellation rights were not adequately disclosed to her.

[16] As a result of this sale, the victim's daughter who assisted her mother, intervened via two phone calls to the defendant company. She explicitly advised the defendant company of her mother's vulnerabilities including her age, dementia and inability to work a computer. The company made clear and accessible notes of this on the victim's customer profile indicating she would not be contacted again. With the victim's agreement the contract was cancelled and after a cancellation fee was charged, a partial refund was issued to the victim.

[17] The unconscionable conduct provisions of the Fair Trading Act were introduced on 16 August 2022. After that date, the following conduct ensued which constitutes the offending and this is acknowledged by the defendant company's guilty pleas.

[18] Firstly, 25 September 2022 there was an uninvited contact by the defendant company to the victim to try and sell her a phone. During the call the agent discovered, presumably by reading the customer profile notes, that the victim's prior tablet sale had been cancelled two months prior by her daughter. Despite this, the agent then sought the victim's agreement to restart her payments for the tablet. The agent employed misrepresentations and ignored the victim's obvious reluctance, lack of clear and informed consent as well as signs of mental incapacity. The defendant company's administrative team did not process the attempt to restart payments.

[19] On 19 September 2023, uninvited, the defendant company once again contacted the victim offering her $100 credit and sold her another tablet. By contacting the victim the agent either failed to check her customer profile notes or ignored them. The agent employed unfair pressure and undue influence during the sale and misled the victim about her prior representations with the defendant company. The agent used misleading pricing tactics and induced the purchase with a $100 credit and free gifts. The agent also ignored signs of the victim's mental incapacity. Although the call would have been listened to by the defendant company's administrative team and should have been stopped, it was not and the sale was processed.

[20] On 10 October 2023 the victim's daughter contacted the defendant company to cancel the order as she had noticed payments coming out of the victim's account. The defendant company did not facilitate this and advised the daughter to sort it out with the victim's bank. The daughter's request for a refund was not progressed, instead the amount that the victim had paid was kept by the defendant company as a cancellation fee. During the calls, the daughter again reiterated to the defendant company that [redacted] had diminished mental capacity and the defendant company should not have contacted her.

[21] On 20 December 2023 once again there was uninvited contact by the defendant company with the victim. The victim stated her previous sale was cancelled as her daughter said she could not afford it. She also said she was having memory issues but nevertheless the agent offered her electronic products and free gifts once again. The agent employed misrepresentations and unfair pressure to attempt to make a sale and ignored [redacted] lack of clear and informed consent as well as signs of diminished mental capacity.

[22] The defendant company's administrative team listened to the call and did not process this phone sale. The defendant company again made a note on their system that the victim was not to be contacted. However, on 20 February 2024 once again the defendant company contacted the victim about restarting her payments for the tablet that was cancelled by her daughter four months prior. The agent did not explore any reasons for the cancellation and once again employed unfair pressure or influence

to attempt to restart the payments. The agent ignored the victim's lack of clear and informed consent as well as signs of mental incapacity. It is only when it became apparent that the victim could not remember any key payment details that the agent gave up on the attempt.

[23] There were two further calls the victim made on 6 March 2024 and 8 May 2024 but these were disconnected before any substantive interaction could take place.

[24] The submissions on behalf of the Commerce Commission referred to Commerce Commission v Auckland Academy of Learning where this Court stated "a company does not have a conscious. In the vast majority of cases the company exists as a device to make profit. There is nothing wrong with that, but in providing deterrence to a company, the main lever is a financial penalty at a level that will both deter the current defendant and others like it from breaching their obligations". That approach is reflected in the high maximum penalties that are provided for breaches of the Fair Trading Act.[1]

[25] The Commission submits that the deterrence in this particular case is a key sentencing factor in the public interests when dealing with offending against s 7 of the Act. Here it submits that the conduct was especially egregious and deserving of social and commercial condemnation.

[26] The unconscionable conduct is not defined in the Act but a finding of such conduct is guided by factors in s 8 of the Act. In short form, that deals with the relative bargaining powers of the parties, here that is obviously, that the company had skilled sales agents and the victim was labouring under diminished mental capacity that was obvious and can clearly be seen in a more detailed way in the summary of facts which reproduces exchanges between the victim and the sales agent.

[27] The next factor is the extent to which the trader and the effected persons acted in good faith. The salesperson on behalf of the defendant company employed misleading information to the victim, unfair pressure and withheld key information at times only disclosing that at the end of conversations. Also, misrepresenting the

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[1] *Commerce Commission v Auckland Academy of Learning* [2017] NZDC 27148 at [54]-[55].

position of the terms under which the product would be supplied or the gifts given and the pricing.

[28] The next factor is the particular characteristics of the effected person and whether they were reasonably able to protect their interest. As I say at all times the victim acted in good faith on her part as she had diminished mental capacity and was in no position to protect her own interest and that would have been obvious to any salesperson.

[29] The next factor is whether the effected person was able to understand any documents provided by the trader. No documents, as such, were provided but as I indicated, the terms of sale prices et cetera were misrepresented to the victim in what could be characterised as a dishonest way.

[30] The next factor is whether the trader subjected an effected person to unfair pressure or tactics or unduly influenced an effected person and I have already probably covered that and that is certainly was the approach to the victim in this case.

[31] The next factor is whether the trader unreasonably failed to disclose any intended conduct that might adversely affect the effected person's interests or risk to the effected person's interest. Once again there was a failure to disclose key information often until the end of conversations where the full price was kept from the victim and the terms.

[32] Finally, whether the conduct involved a contract and if so, the Court could have regard to various things. Here, the contract was an oral contract but once again, misrepresented.

[33] The maximum penalty in this case is $600,000 and as it is a representative charge, it is submitted that the facts could have supported five separate charges which would have led to a very much higher overall maximum penalty.

[34] As there are no previous decisions under this particular provision of the Fair Trading Act, this is the first case to attract a conviction under s 7 and so there is

little guidance as to what the parameters are as far as any bands or categories are of offending; however, it is inappropriate for this Court to set any bands as such. That would be best left to the Higher Courts to eventually settle on guidance by way of bands if that was considered appropriate.

[35] For an approach to sentencing, this Court can be guided by the purposes and principles of sentencing as set out in the Sentencing Act 2002 and also the submissions of the Commerce Commission also refer to the *Commerce Commission v Steel and Tube Holdings*.[2] There the Court of Appeal said at paragraph [91]:

> Customary sentencing methodology applies.

This is for sentencing under the Fair Trading Act.

> Factors affecting seriousness and culpability of the offending may include the nature of the goods and service and the use to which it is put; the importance, falsity and dissemination of the untrue statement; the extent and duration of any trading relying on it; whether the offending was isolated or systemic, the state of mind of any servants or agents whose conduct is attributed to the defendant; the seniority of those people; any compliance systems and culture and the reasons why they failed; any harm done to consumers and other traders; and any commercial gain or benefit to the defendant.

[36] Here, just considering those factors the seriousness and culpability of offending may include firstly the nature of the good or service and the use to which it is put, here it is electronic goods which are of a modest value; the importance, falsity and dissemination of the untrue statement, here dealing with falsity and untruths that was certainly prevalent and a tactic employed by salespersons on behalf of the defendant company; the extent and duration of any trading relied on, the charge period extends from September 2022 to February 2024; whether the offending was isolated or systemic, here there is one victim so it seems isolated to that extent. The company is a first offender and there is no other charges the Court is dealing with involving other victims at the same time.

[37] The next factor is the state of mind of any servants or agents whose conduct is attributed to the defending company. Here they were salespersons and two have been identified. The seniority of those people, as I say the salespeople are a bit lower down

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[2] *Commerce Commission v Steel and Tube Holdings* [2020] NZCA 549 at [83]–[84].

in the rung than management. Any compliance, systems and culture in the reasons why they failed. The compliance systems, as I say were effective in part; however, not totally effective as obviously the 19 September 2023 approach to the victim was processed and should not have been and that showed a failure of the system or the fact that salespersons deliberately ignored that system and there is further evidence in the summary of facts that a salesperson who was non-compliant with the system was subsequently re-employed and had dealings with the victim; and finally any commercial gain or benefit to the defendant. Here it is accepted by the Commerce Commission that it was fairly minimal involving just a few hundred dollars at the most.

[38] Given those factors contained in s 8 and the factors referred to in *Commerce Commission v Steel and Tube Holdings*, the Commerce Commission submit that an appropriate starting point due to the existence of deliberate persistent conduct against a highly vulnerable victim and substantial failings in the system processes justifies the starting point at now lower than 50 per cent of the maximum penalty for a single charge, that is an appropriate starting point of at least $300,000.

[39] The Commerce Commission through their submissions emphasise the need for deterrence in this particular case. It is accepted that by way of mitigating factors there is the guilty plea which has an allowance of 25 per cent which would be available. The co-operation and previous good character, the Commission accepts the defendant company was co-operative in its approach regarding the investigation including its admissions at voluntary interview and the subsequent payment to the victim of all cancellation fees charged. This is the first appearance of the defendant company before a court in New Zealand, and a submitted discount of no more than 10 per cent would be appropriate.

[40] Taking all those discounts into account being the credit of 25 per cent available for the guilty plea, 10 per cent for co-operation and previous good character, that is around 35 per cent which would reduce the starting point to $195,000.

[41] Reparation is also sought by way of emotional harm. Mr Barry on behalf of the Commerce Commission also accepts that in this case and under the Sentencing Act

2002 where the means of a defendant company must be taken into account and payment of any fine that is imposed due to its liquidation could entitle up to a 50 per cent allowance which would then reduce the final end fine to somewhere around just short of $100,000.

[42] I characterise this as a moderately serious case. Certainly it was egregious conduct against one of the most vulnerable members of our community, an elderly lady that suffered from dementia. I have already indicated and accept the aggravating and mitigating factors that I have set out and explained.

[43] In my view the appropriate starting point for a fine would be $200,000. Obviously it would have been a lot higher if there had been more victims. In this particular case I am of the view that that is an appropriate starting point.

[44] Also there is no personal aggravating factors relating to the defendant company. The guilty plea attracts 25 per cent allowance. I also allow 10 per cent for co-operation and previous good character, I think that is appropriate. I also intend to make an emotional harm payment and will reduce the amount further by five per cent taking that into account. That is a 40 per cent allowance from the $200,000 fine which is $80,000 which leaves an end fine of $120,000.

[45] In a discussion with Mr Barry who appears on behalf of the Commerce Commission, it is submitted that I can take into account the fact that to a certain extent the fine may well be academic due to the fact that the defendant company is now in liquidation and that prospect of it meeting the equity to meet that fine is certainly very questionable. A 50 per cent reduction submitted would not be out of the way in cases of this kind and I reduce the final fine to one of $60,000 otherwise it would have been $120,000.

[46] I order an emotional payment of $7,500 to the victim.

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Judge RG Marshall
District Court Judge | Kaiwhakawā o te Kōti ā-Rohe
Date of authentication | Rā motuhēhenga: 26/03/2026

## Caption Summary

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| **Commerce Commission** | v | **Tech Vault Enterprises Limited t/a HouseSmile** |
| (Prosecutor) | | (Defendant) |

| | | |
|---|---|---|
| **Charge 1** | **Offence:** | Engaging in conduct that is unconscionable |
| | **Act:** | Sections 7 and 40(1) of the Fair Trading Act 1986 |
| | **Penalty:** | $600,000 |

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## Summary of Facts

# 1 Introduction

1.1 The defendant, Tech Vault Enterprises Limited (trading as **HouseSmile**), faces one charge under section 7 of the Fair Trading Act 1986 (**FTA**), for having engaged in unconscionable conduct.

1.2 HouseSmile is a telemarketing company registered in New Zealand which sells homewares, including electronic appliances, children's products and whiteware, exclusively on layby. The prices for its products are typically well in excess of the prices for equivalent products at other New Zealand retailers.[1]

1.3 The charge relates to calls between agents of HouseSmile and [the victim], an elderly woman who suffered from dementia, and/or [the victim's daughter], on five dates between 25 September 2022 and 20 February 2024 for the purpose of selling [the victim] electronic products, restarting payments on cancelled orders, or dealing with requests for cancellations. HouseSmile's calls to [the victim] were unsolicited. Its conduct during those calls was unconscionable, and far exceeded the bounds of acceptable or even 'sharp' business conduct. It generally included:

(a) Making and continuing calls to [the victim] in circumstances that amounted to bad faith given HouseSmile's awareness that [the victim] was elderly, had dementia, had no use for electronic products; had previously cancelled her orders; and otherwise was clearly hesitant to enter the contracts or did not provide her clear, voluntary, and informed consent.

(b) Ignoring indications on the calls that [the victim]'s memory and/or cognition were impaired, and she may not have been competent to agree to the sale.

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[1] A Commission analysis of 10 products sold by HouseSmile indicated that HouseSmile prices are on average 255% higher across the product group, with a range of between 61% and 413%.

(c) Ignoring indications that [the victim] did not have the financial means to agree to the sale.

(d) Utilising sales tactics that placed unfair pressure on [the victim] or unduly influenced her.

(e) Providing limited disclosure of the essential terms of the contract, including descriptions of the product and the full contract price; and

(f) Charging her a $100 cancellation fee (taken from two $50 instalments paid by [the victim]) on a cancelled order that should never have been processed.

## 2 Unconscionable conduct

2.1 The unconscionable conduct provisions of the FTA came into force on 16 August 2022. Section 7 prohibits traders from engaging in conduct that is unconscionable, whether or not there is a system or pattern of such conduct, or a particular individual is disadvantaged or is likely to be disadvantaged, or a contract is entered into.

2.2 In introducing the relevant amendment bill, Hon David Clark stated:

> ... Unconscionable conduct is serious misconduct that goes beyond what is commercially necessary or appropriate. The bill does not define exactly what is unconscionable; however, the prohibition is based on provisions in the Australian Competition and Consumer Act 2010. The bill is designed to make clear that the prohibition goes beyond the narrow concept of unconscionability that currently exists in the New Zealand courts. In Australia, the courts have said that conduct is unconscionable if it goes against conscience by reference to the norms of society. The courts have stated that such norms include honesty and fairness. The bill provides a list of factors for determining whether the conduct is unconscionable, such as whether parties acted in good faith, whether a trader used any unfair pressure or tactics, and whether the person affected was in a position to protect their own interests.
>
> Unconscionable conduct will be an offence subject to penalties of up to $200,000 for individuals and $600,000 for bodies corporate. This prohibition is necessary to deal with a very small minority of businesses that take advantage of the vulnerabilities and lack of bargaining power of consumers or other businesses. However, any business that acts fairly and reasonably should have no reason to be concerned that they are in danger of breaching this new prohibition.

## 3 The Defendant

### Business model

3.1 HouseSmile is a New Zealand registered company which sells predominantly household goods, exclusively on layby.

3.2 HouseSmile was established in April 2020 and moved from being a door-to-door sales business to a telemarketing business in 2022. Its current business model invites potential customers to contact HouseSmile via their Facebook advertisements or directly through the company website www.housesmile.co.nz. Once HouseSmile has their contact details, a HouseSmile sales agent contacts the consumer by phone.[2]

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2 Note: HouseSmile appears to have recently modified their website so that customers can enter layby arrangements online by entering their card payment details.

3.2 During the charge period, HouseSmile would also make unsolicited calls to customers on its customer database.

3.3 The sole director and shareholder of HouseSmile is Rahil Munir Tharani, however the day-to-day running of the company is managed by its Senior Manager Abhi Bora. It operates from Hamilton, where it has a warehouse and transitional office space. HouseSmile currently employs one additional employee and three customer-facing contractors. During the charge period, it employed three telemarketing agents, [Mr K], [Mr D], and [Mr S], two of whom (Messrs [K and D]) were based in India.[3]

**Systems and processes**

3.4 HouseSmile advised the Commission during its investigation that its expected sales process during the charge period was as follows:

(a) HouseSmile's agents would make sales over the phone, primarily in response to consumer contacts from their website or Facebook channel, with some proactive calls to their customer base. This included some customers who had previously cancelled their orders.

(b) Before the sales call to customers who are already part of their existing base, the agent would have checked the database, Customer Relationship Management system (**CRM**), which provides the customer's contact details, date of birth and notes of prior dealings with them, including any contracts or correspondence.

(c) After all calls in which a sale was made, HouseSmile's Office Manager had to listen to the call to confirm it met their requirements. The direct debit company (**Flo2Cash**) also listened to portions of the calls.

(d) HouseSmile's office staff emailed the customer a welcome letter, an invoice, and the layby terms and conditions. This is the only documentation the customer received following a purchase.

(e) HouseSmile received weekly or fortnightly layby payments via direct debit. The product would be delivered when a set percentage of total payments were made (normally 30%).

(f) Customers had 14 working days to cancel their order at no charge, otherwise there was a $150 cancellation fee.

3.5 Where a customer requested not to be contacted by HouseSmile, the expected process was that a note would be made on their file on CRM, their name was highlighted in red in House Smile's customer spreadsheet, and the sales and administrative teams were informed of this fact, for example at team meetings. If the sales agents did contact one of those customers, it was expected that HouseSmile did not accept the sale during the process described at paragraph 3.4(c) above.

**Complaints and cancellations**

3.6 As at 9 August 2024, HouseSmile had 537 customers with active layby arrangements and a customer database of 5,663 people. In the 2022-23 financial year HouseSmile reported turnover of $678,453 and a net loss of $181,170.

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3 Although [Mr D] had previously worked in door-to-door sales in New Zealand prior to moving overseas.

3.7 In April 2025, HouseSmile provided the following complaint and cancellation rate summary:[4]

| Year | Total sales | Complaints | Cancellations |
|---|---|---|---|
| 2022 | 1,467 | 58 (3.90%) | 499 (34.01%) |
| 2023 | 2,273 | 93 (4.09%) | 887 (39.02%) |
| 2024 | 806 | 24 (2.90%) | 266 (33.00%) |
| 2025 (- April 2025) | 223 | 4 (1.70%) | 39 (17.48%) |

3.8 Of the cancelled orders, almost 50% were cancelled within the 14 day cancellation period, with the remainder cancelled outside that period (in which a $150 cancellation fee is typically incurred). It is estimated that 4 – 5% of HouseSmile's income was generated by cancellation fees.

**Sales agent training and remuneration**

3.9 HouseSmile advised the Commission that its training process for telemarketing agents included two weeks of training (which did not expressly cover the FTA), and agents are also provided with the Telesales Guidelines and a training manual. The Telesales Guidelines provided advice to agents about "overcoming objections" (including concerns about not keeping up with payments), and "closing the sale" (including by creating urgency, and using a confident approach to ask for the sale). The two weeks of training covered product knowledge, sales techniques (such as how to build rapport and create need), and call ethics (such as being honest about the total price, product description, and delivery terms). Staff are trained to go through the CRM notations prior to contacting customers so that they can "drive the call" with knowledge of what has happened previously. Staff are given further training if complaints are received.

3.10 HouseSmile would also provide rewards for sales staff on top of their base salary. HouseSmile advised the Commission that prior to 2024 it would pay the customer's first instalment payment to the sales agent as a bonus. The sales agent would receive that bonus as long as the sale wasn't cancelled within the first 14 days. From early 2024 onwards, that approach has changed to a $10 commission for each active sale.

## 4 The Commission Investigation

4.1 By October 2023, when the Commission received [the victim's daughter]'s complaint, it had received a total of eight other complaints about HouseSmile since 2020.

4.2 [The victim's daughter]'s complaint was made on behalf of her elderly mother, [the victim]. [The victim's daughter] advised the Commission that her mother had received an unsolicited phone call from HouseSmile in 2022 and had agreed to purchase a tablet by payment instalments. [The victim's daughter] subsequently discovered the purchase and intervened as it was not a suitable product for her mother. The sale was cancelled, with a cancellation fee charged by HouseSmile. [The victim's daughter] said she had told HouseSmile that her mother had dementia, and not to contact her again. However, since then, her mother had received a further unsolicited sales call from HouseSmile and again agreed to purchase a tablet. [The victim's daughter] alleged that no sales documentation had been provided, and HouseSmile had refused to refund further payments made by her mother.

4 The information HouseSmile provided during the investigation on rates of cancellation and complaints was not always consistent, however, this table is the most recent information provided to the Commission.

4.3 It is HouseSmile's conduct in relation to [the victim] that forms the basis of the charge.

## 5 Background to the conduct

**[The victim]**

5.1 [The victim] is an 84-year old retiree, who receives a pension. During the charge period, she resided independently in [redacted] but was supported by her daughter, and received services such as Meals on Wheels, due to the onset of dementia and other health issues. As a result of her condition, [the victim] suffers from memory loss, and requires assistance with financial and other practical matters. She was not in a position to protect her own interests. [The victim] did not have internet access and has difficulties using digital products – for example she is unable to use a computer or send texts from a phone.

**[The victim] makes a layby purchase from HouseSmile in August 2020**

5.2 [The victim] first became a customer of HouseSmile on 2 August 2020. On that date, following a door-to-door sales pitch, [the victim] agreed to purchase a tablet and Bluetooth speaker for $756.96. The purchase came with a free Air Fryer. In the course of this sale, [the victim] provided her bank account number, income, Total Mobility Card details as her ID (a card used by people who are unable to use public transport to travel because of some disability), phone number and postal address contact details to HouseSmile. Also written on the layby sales agreement was an email address, ostensibly for [the victim]: "[redacted]@gmail.com". [The victim's daughter] advised the Commission that her mother has never had email, and that the email address did not belong to her ([the victim's daughter]) either.

5.3 [The victim] cancelled this sale within the 14 day cool-off period and no cancellation fee was charged.

**[The victim] makes a further layby purchase from HouseSmile in April 2022**

5.4 On 7 April 2022, a HouseSmile agent introducing himself as ['H'] contacted [the victim] via phone.[5] [The victim] agreed to purchase the same tablet and Bluetooth speaker for $756.90. In the course of that call the sales agent:

(a) Falsely stated he was calling [the victim] as she had requested he call her back after a year had passed.

(b) Falsely told [the victim] she has "a super gold card with my company [which did not exist]... because you shopped with my company before... [and] you will get anything you want now you will grab a free goods from my company" and "a gold account with my company", describing her as "a very good customer" even though he acknowledged that "last time" she had cancelled her order.

(c) Continued to pressure [the victim] into a purchase in the face of her saying she'll "think it over", "I'm not looking for anything really" and that she's "not clued up with all these gadgets".

(d) In response to [the victim] expressing concerns that she was no good with technology and "you'll have to show me how to use the frigging thing", the agent falsely told [the victim] he would "deliver the product by myself", that when he

5 CC.01.0126 (call), and CC.01.0370 (transcript). The agent has subsequently been identified as [Mr D].

delivered it he would show her how to use it, and that he "will definitely come to see you". The sales agent was in fact based in India, and HouseSmile did not offer a personal delivery and instruction service.

(e) Ignored indications [the victim] was cognitively or otherwise impaired, including:

(i) her lack of recall of any previous interactions (stating she "can't remember" cancelling her previous order) with the company, which she said she had "never heard of;

(ii) her repeating questions, such as asking where the company was based. She indicated she was unfamiliar with the city of Hamilton;

(iii) her repeated assertions that she did not know her bank account number;

(iv) that she did not know where her ID was, or what her ID was until prompted by HouseSmile to use either her Super Gold Card or Total Mobility Card; and

(v) she did not know her postcode.

(f) Did not tell [the victim] the total cost ($756.90) or the fortnightly payment cost until she had agreed to purchase the product and given him her bank account details;

(g) Did not advise [the victim] of her ability to cancel the order within 14 days for free, or of the $150 cancellation charge thereafter;

(h) Told [the victim] the Bluetooth speaker was provided free of charge when the product invoice grouped the speaker and tablet under the same product code (indicating it was a part of the tablet purchase).[6]

5.5 Following this call HouseSmile emailed sales documentation to the email address written on the 2 August 2020 layby sales agreement, despite [the victim] saying in the call she didn't have an email. As noted above, [the victim's daughter] has stated that this email address did not belong to either her or [the victim].

**HouseSmile is specifically put on notice that [the victim] has dementia in July 2022**

5.6 On 13 July 2022, [the victim's daughter] called HouseSmile to enquire about payments being taken out of [the victim]'s account.[7] The customer service agent, [Mr N], informed [the victim's daughter] that [the victim] was "one of our regular paying customer" and that she had a "good account" with them previously so they contacted her again to "get her on board again and she agreed to be onboard". This was false as [the victim] had cancelled her first order with HouseSmile within the 14 day cancellation period.

5.7 The agent advised [the victim] had purchased a "tablet and speaker combo", and would also receive two free gifts, being a pair of Bluetooth headphones and a smartwatch.

5.8 [The victim's daughter] told the sales agent her mum had forgotten what she did, that she had dementia, that she can't work a computer, and advised that she would call back with her mum to cancel the order.

5.9 Notes were then recorded in HouseSmile's CRM system following that call which stated:

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6 CC.01.0141. In later calls the tablet and speaker were referred to as a "combo" which [the victim] had paid for, however other free gifts were to be provided upon final payment.

7 CC.01.0118 (call), and CC.01.0176 (transcript).

> Customer's daughter called ... and said what her mum is paying for. I told her that she is paying for a tablet combo. She said she cant afford and want to cancel her account. ... She said her mother is old, and has dementia, and can't use electronic...

**[The victim and her daughter] call HouseSmile to cancel the order in July 2022**

5.10 On 15 July 2022 [the victim's daughter], together with [the victim], called HouseSmile to cancel the order.[8] They spoke with [Mr N] again. At that point [the victim] had paid $201.84 in instalments and still hadn't received the products.

5.11 [The victim's daughter] advised the agent her mother was 81 years old, "vulnerable", "senile", didn't know how to work a computer and "doesn't know what she's doing". [The victim's daughter] advised HouseSmile that:

> ...you need to make sure people are eligible and not, of sound of mind when they order these things. Like you targeted an 81-year-old lady. She doesn't know what she's doing.

5.12 The agent agreed and stated he would put a note onto the file saying the customer is too old and shouldn't be contacted again for sales.

5.13 HouseSmile cancelled the order and charged a $150 cancellation fee. The remaining $51.84 was refunded to [the victim]'s account, but the cancellation fee was not refunded until 6 May 2025, following HouseSmile's interview with the Commission.

5.14 The following note was inputted into HouseSmile's CRM system the same day:

> As per daughter, she dont [sic] want customer to be contacted again as she is old and dont [sic] need these products.

5.15 Despite this, following this call, HouseSmile proceeded to contact [the victim] a further six times, the details of which are included in the next two sections.

## 6 The Conduct

6.1 The unconscionability provisions of the FTA came into force on 16 August 2022. Between 25 September 2022 and 20 February 2024 HouseSmile engaged in a continuing course of conduct through a series of interactions with [the victim] and her daughter that was overall unconscionable. This conduct is laid out in the following calls:

(a) Call on 25 September 2022 to [the victim];

(b) Call on 19 September 2023 to [the victim];

(c) Calls on 10 October 2023 with [the victim's daughter];

(d) Calls on 20 December 2023 to [the victim]; and

(e) Call on 20 February 2024 to [the victim].

6.2 This conduct is set out in more detail below. Although the conduct underpinning each call would, on its own, amount to unconscionable conduct, in this case HouseSmile faces only one charge for the continuing course of conduct across all calls made on all five dates.

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[8] CC.01.0119 (call), and CC.01.0372 (transcript).

**Call on 25 September 2022**

6.3 On 25 September 2022, after HouseSmile had been put on notice regarding [the victim]'s condition and that she was not to be contacted, she was again contacted by ['H'] (Mr D).[9] The sales agent said he was calling [the victim] "because you are looking for the phone as well for your, phone for yourself as well so that's why I call." There is no evidence that [the victim] ever contacted HouseSmile to enquire about purchasing a phone. The sales agent offered [the victim] a phone with a $350 discount and described her as "a good customer, paying very well".

6.4 During the call, the sales agent told [the victim] she had already "got" a tablet from HouseSmile. When [the victim] said "I haven't got a tablet. I haven't received a tablet", he initially told her she would "receive it very soon" but then realised she hadn't received it because her payments stopped and advised her:

> AGENT: Okay. So, your daughter called to cancel account because you told you don't want the tablet anymore. If you're looking for the tablet so you can restart your payment mam.
>
> [THE VICTIM]: Oh yeah.
>
> AGENT: Do you want to restart it?
>
> [THE VICTIM]: Oh, I don't know really.
>
> AGENT: If you want to restart it, you can just tell me which bank are you with.
>
> [THE VICTIM]: [Pause] The same bank.
>
> AGENT: Do you know the bank number?
>
> [THE VICTIM]: No.
>
> AGENT: Bank account number, the same bank as old like [redacted]. [Long pause] Hello? Hello? Hello? Hello? [redacted]?
>
> [THE VICTIM]: Yeah?
>
> AGENT: And your address is [redacted]?
>
> [THE VICTIM]: Yeah.
>
> AGENT: New Zealand. Your date of birth is [redacted] mam?
>
> [THE VICTIM]: Yeah.
>
> AGENT: Yeah so, your email address is [redacted] right?

9 CC.01.0120 (call), and CC.01.0175 (transcript).

[THE VICTIM]: Huh?

AGENT: Your mobile number is [redacted] right?

[THE VICTIM]: Yeah.

AGENT: Okay. And you are using ID that is mobility card?

[THE VICTIM]: Ah, I don't know.

AGENT: Yeah. Okay mam, okay I will restart your account with that $25 weekly.

[THE VICTIM]: No, I don't think (mumbling).

AGENT: For your tablet. Okay.

[THE VICTIM]: Okay.

AGENT: Okay mam thank you, bye

6.5 The duration of the call was four minutes and 14 seconds.

6.6 Through its sales agent, HouseSmile engaged in conduct that was unconscionable, including by:

(a) Making and continuing the call to [the victim] in circumstances that amounted to bad faith given HouseSmile's internal CRM notes recorded [the victim] should not be contacted by the company (including because she had dementia) and that the agent was specifically aware that [the victim]'s previous order had been cancelled by her daughter;

(b) Seeking to unfairly influence [the victim] by:

(i) advising her that the sales call was made because she was looking to buy a phone, when there was no evidence [the victim] had contacted HouseSmile to express interest in buying a phone; and

(ii) misleading her about her prior interactions with HouseSmile by advising her that she is a "good customer, paying very well" when all her previous orders were cancelled;

(c) Ignoring indications [the victim] was cognitively impaired, including her:

(i) inability to recall her bank account number; and,

(ii) inability to recall which ID she used.

(d) Seeking to restart [the victim]'s tablet payments despite [the victim]'s obvious hesitation and lack of clear consent; and/or

(e) Providing limited disclosure of the essential terms of the contract in the call, including by failing to:

(i) describe the product offered for purchase;

(ii) disclose the full contract price to her or the details of the instalments due; and

(iii) advise [the victim] of her ability to cancel the order within 14 days for free, or of the $150 cancellation charge thereafter.

6.7 The order was ultimately not processed by the office management team as, due to the information provided by [the victim's daughter] in July 2022, the administrative team had been informed not to process any current sales for [the victim].

**Call on 19 September 2023**

6.8 On 19 September 2023, a HouseSmile agent introducing himself as [D] called [the victim] offering a $100 credit and a suite of HouseSmile products:[10]

> AGENT: Yeah, I was just giving you a quick call [redacted]. You have been a really good customer of our company. Like you have paid us really well in the past. So, you've got a $100 credit here. You can go for any product you like, and you will receive the item asap. It is only for you. You can go for phone, tablet, speaker, anything you want because Christmas is coming so we would just like to give you something before that and you've got a credit as well so, yeah.
>
> [THE VICTIM]: How much have I got credit?
>
> AGENT: $100.
>
> [THE VICTIM]: Oh, that's not bad I suppose.
>
> AGENT: Yeah, it's really cool so you can go for anything you like. You can go for a phone, TV, laptop.
>
> [THE VICTIM]: What have you got valued at $100?
>
> AGENT: So, $100 will be deducted from the total price of whatever you go for. So, you can go for a tablet, phone, whatever you like. So, you'll get that delivery very soon. So yeah, just to confirm, which product are you after [redacted]?
>
> [THE VICTIM]: Eh?
>
> AGENT: Which product do you want to go for?
>
> [THE VICTIM]: Ooh I wouldn't know. I don't know. I've had two cameras and they've both conked out, so I don't know whether they don't like me or something, I don't know.
>
> AGENT: Maybe a new phone now aye?
>
> [THE VICTIM]: Eh?

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10 HouseSmile has identified this agent as [Mr S]. CC.01.0127 (call), and CC.01.0172 (transcript).

AGENT: New phone?

[THE VICTIM]: Oh no, this is the phone that I'm using is fairly new. I just not so long ago got it.

AGENT: Yep, yep, what about the tablet?

[THE VICTIM]: No, I haven't got a tablet. How much is a tablet worth?

AGENT: Um, so, with the tablet you will get the [inaudible 01.51.2] so the tablet is, just give me 2 seconds, so I can get you the, [long pause] so the tablet I can give, its only $200 for you.

[THE VICTIM]: Oh okay, that sounds fair enough.

AGENT: Yep, I can get you the calling tablet, the 3G calling tablet. Just to confirm your delivery address. Are you still at the same address?

6.9 Towards the end of the call the total price is mentioned only once, and was in fact $679. However, soon after stating that was the total price, the agent also advises delivery would be soon and states "it's only 230 dollars, five payments".

6.10 [The victim] was also offered free gifts, being Bluetooth headphones, a speaker, and a smart watch.

6.11 When [the victim] was asked about an email address she replied she did not have one. Despite that, the agent said "that's all good we'll just keep this one" and sent an email confirmation to the address on file, which did not belong to [the victim].

6.12 The duration of the call was six minutes and 11 seconds.

6.13 Through its sales agent, HouseSmile engaged in conduct that was unconscionable, including by:

(a) Making and continuing the call to [the victim], and processing the sale and accepting instalment payments in circumstances that amount to bad faith given HouseSmile's internal CRM notes recorded [the victim] should not be contacted by the company (including because she had dementia) and because of the order that was not processed following the call on 25 September 2022.

(b) Utilising unfair pressure or otherwise unduly influencing [the victim] by:

(i) misleading her about her prior interactions with HouseSmile, including that she was a "really good customer" who had paid the company "really well in the past", when all of [the victim]'s previous orders were cancelled;

(ii) using 'bait and switch' tactics by initially representing the price of the product was "only $200" for [the victim], and only clarifying once at the end of the call that the product's total price was $679; and

(iii) inducing [the victim] to purchase the tablet by promoting a $100 credit[11] and offering free gifts.

(c) Ignored indications [the victim] was cognitively impaired, including:

(i) asking when the free tablet would be sent to her, even though the agent did not suggest it was free; and

(ii) saying she doesn't know her bank account number.

(d) Providing limited disclosure of the essential terms of the contract, including by failing to:

(i) adequately describe the product offered for purchase;

(ii) clearly disclose the full contract price to her;

(iii) send any documentation to her by a method she could receive (such as post or a correct and accessible email address) regarding her purchase and/or payments, including the layby contract terms and conditions; and,

(iv) advise [the victim] in the call of her ability to cancel the order within 14 days for free, or of the $150 cancellation charge thereafter.

6.14 HouseSmile explained that by the time of this sales call its customer service team had been informed in a monthly meeting that [the victim] was not to be contacted, and a note had been placed on the CRM system to this effect, but this was "missed" by the team in respect of the 19 September 2023 communication and the sale was processed.

**Calls on 10 October 2023**

6.15 On 10 October 2023 [the victim's daughter] called HouseSmile after noticing more money was going to HouseSmile from [the victim]'s account.[12] [The victim's daughter] reiterated that her mother was "senile", suffered from Alzheimer's, had "lost her marbles" and that HouseSmile had been told not to contact [the victim], who had already paid a fee for cancelling a previous order. The call agent told [the victim's daughter] she would be put through to a manager, but the call terminated at that point.

6.16 Later that day, after [the victim's daughter] again called asking to speak to a manager,[13] she received a call back from a HouseSmile agent.[14] The agent said there were no notes on [the victim]'s file regarding [the victim's daughter's] previous warnings to the company. He also suggested that [the victim's daughter] could use the tablet if her mum didn't want to.

6.17 [The victim's daughter] requested the outstanding payments be cancelled and the money refunded into [the victim]'s account. The agent recommended [the victim and her daughter] stop the payments with the bank, "from your end" and said HouseSmile would "see what they can do" about the payments already made by [the victim], and would get back to her. [The victim's daughter] was dissatisfied with this response, and the agent responded that

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11 Which HouseSmile advised the Commission at interview may have been applied to the total price of the product as it is offered to some customers who have previously cancelled their orders and paid a $150 cancellation fee. However, the invoice for this order (CC.01.0140) does not mention any credit applied.

12 CC.01.0196 (call) and CC.01.0200 (transcript).

13 CC.01.0197 (call) and CC.01.0201 (transcript).

14 CC.01.0198 (call) and CC.01.0202 (transcript).

"your mum should be telling you [about the payments]". [The victim's daughter] reiterated that her mother had dementia.

6.18 The call ended with [the victim's daughter] saying she would take her mother to the bank to cancel the payments and asking that HouseSmile call her back regarding a refund. The agent said that they would "note it" regarding the call-back. It is unclear whether any call-back occurred, however [the victim] was not refunded the $100 she had paid towards the order at that time.

6.19 HouseSmile advised the Commission "As standard procedure a cancellation fee of $150 was charged. However for this account we agreed to charge only $100 and waive $50 from the cancellation fee." At interview, HouseSmile stated that [the victim's daughter's] request for a refund was not raised with management. Following the interview, the $100 fee was refunded to [the victim].

6.20 Through its agents, HouseSmile engaged in conduct that was unconscionable, including by:

(a) Denying that notes about [the victim]'s situation had been placed on her CRM file;

(b) Despite [the victim]'s circumstances being known to HouseSmile:

(i) Charging [the victim] a cancellation fee;

(ii) Failing to take action to cancel the remaining instalments and instead advising [the victim's daughter] to take action on her end; and

(iii) Failing to issue a refund for instalments paid.

(c) Failing to take adequate steps to ensure that [the victim] could not be contacted by any sales agents going forward, such as ensuring her name was added to the no-call list.

6.21 At interview with the Commission, HouseSmile advised that following this call it "did have a word with everyone about not contacting them [the victim]". However, HouseSmile had already informed its team of the same instruction prior to the sales call on 19 September 2023, yet that sale had proceeded.

**Calls on 20 December 2023**

6.22 On 20 December 2023 [the victim] again received a phone call from HouseSmile agent ['H'] [(Mr D)].[15]

6.23 [The victim] advised the agent that she cancelled the previous order of a tablet because her daughter said she couldn't afford it:

AGENT: You cancelled it?

[THE VICTIM]: Yeah, well my daughter said I couldn't afford it.

AGENT: Okay, cause now you can get that same deal with $25 only.

[THE VICTIM]: How much more do I have to pay on it?

15 CC.01.0195 (call), and CC.01.0203 (transcript).

AGENT: Nothing.

[THE VICTIM]: Nothing, oh good.

AGENT: I don't know actually, actually I don't know I'm from the sales team, I'm here to give you another gift, another deal like you are looking for speaker as well. Remember?

[THE VICTIM]: Um, my memory is going fast, makes it hard for me.

AGENT: Okay no worries. Anything else you are looking for mam?

[THE VICTIM]: No I don't think so.

AGENT: Like a phone, Tablet, Laptop, kitchen stuff for cookers, rice maker, sandwich maker? Anything?

[THE VICTIM]: Oh and it won't cost me anything?

AGENT: $25 only, weekly.

[THE VICTIM]: Um –

AGENT: Yeah, because you are a good customer so you can get a wee gift as well.

[THE VICTIM]: I can have a free gift?

AGENT: Yeah.

[THE VICTIM]: Okay.

AGENT: So you can just tell me what are you looking for?

[THE VICTIM]: Okay.

AGENT: We have everything in our company now.

[THE VICTIM]: Do you?

AGENT: Yeah. Last time, you know we have Tablet, so we have everything.

[THE VICTIM]: Oh okay.

AGENT: Tell me. Just grab one thing mam, I called you up after a long time, a years' time.

[THE VICTIM]: Oh okay.

AGENT: That's not a good thing, you can just tell me what are you looking for, air fryer?

[THE VICTIM]: What's that?

AGENT: Air fryer.

[THE VICTIM]: I've got an air fryer.

AGENT: You've got it?

[THE VICTIM]: Yeah I've got one of those.

AGENT: Oh that's nice, you've got everything. What about a phone?

[THE VICTIM]: What sort of phone is it?

AGENT: I have all the phones, Smart Phone comes with the warranty and guarantee, an iPhone. I have one best deal for you, Blackview A80, comes with a Smart Watch, Bluetooth Headphones and a Bluetooth Speaker for you. And it will only cost you only $25 that's all. I will do that deal for you mam cause you are a very good customer that's why, okay?

[THE VICTIM]: Okay

6.24 At this point, [Mr D] seeks to confirm [the victim]'s phone number, date of birth, address and bank account details. Only after this, is the full price of the phone ($749.25) disclosed.

6.25 During the conversation, and in attempting to obtain her consent to set up the direct debit payments, the agent ignored [the victim]'s hesitation and signs of confusion:

AGENT: Okay. So mam are you happy to proceed with these payments to debit from your account?

[THE VICTIM]: What do you want me to do?

AGENT: [11:29.5] so the $25 weekly or 50 fortnightly for your phone, so are you happy to proceed these payments to debit from your account next year on the, your payday is – Monday night, right?

[THE VICTIM]: I'll see what I can do.

AGENT: Yeah. So yeah it will be on the 15th of January so your payment will go on 15th of January, are you happy with that?

[THE VICTIM]: 15th of January.

AGENT: Yeah.

[THE VICTIM]: oh, okay.

AGENT: And mam, I need to ask you a few questions to setup that direct debit. This call is recording and this is a verbal agreement to apply that direct debit payment to [12:20.3] by you the part of the call has been recording, are you happy with that?

[THE VICTIM]: I suppose so.

6.26 The call ended partway through the agent's attempt to record the verbal agreement to the direct debit payment as [the victim] became confused about providing her bank account number, and stopped responding to the agent.

6.27 The call duration was 13 minutes and 42 seconds.

6.28 [Mr D] then called [the victim] back to continue arranging the direct debit.[16] The call duration was 2 minutes and 50 seconds.

6.29 The order was ultimately not processed by the HouseSmile office team. On 21 December 2023, a note was placed on the CRM system as follows:

> "AS ADVISED PLEASE DO NOT CONTACT [THE VICTIM] ANYMORE. HER SALES ARE NOT GETTING STARTED AS SHE DOESNT WANT THE PRODUCTS. SPECALLY [MR D] YOU SHOULD NOT CALL THIS CUSTOMER ANYMORE, SHE HAS A CONDITION BECAUSE OF WHICH SHE IS NOT MAKE DECESIONS.." [sic]

6.30 Through its sales agent, HouseSmile engaged in conduct that was unconscionable, including by:

(a) Making and continuing the call to [the victim] in circumstances that amount to bad faith given HouseSmile's internal CRM notes recorded [the victim] should not be contacted by the company (including because she had dementia), that the agent was specifically advised that [the victim]'s previous order had been cancelled due to poor financial circumstances, and owing to the knowledge that HouseSmile otherwise had of [the victim]'s circumstances from previous interactions with [the victim] and her daughter;

(b) Utilising unfair pressure or otherwise unduly influenced [the victim] by:

(i) misleading her about her prior interactions with HouseSmile, including that she was a "very good customer" despite all of her previous orders having been cancelled, and that she had previously been looking for a speaker to purchase, when [the victim] had not mentioned that in prior calls;

(ii) in response to [the victim] stating her daughter told her she could not afford the product, inducing her to purchase by offering what would seem to be a better deal – "Okay, cause now you can get that same deal with $25 only"[17] and by offering a free gift;

(iii) using 'bait and switch' tactics by misleading [the victim] about the price of the product by initially stating she would pay "$25 only" and only later clarifying this was just the weekly payment, and only once mentioning the full price of the product being $749.25, well after [the victim] had already committed to the sale; and

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16 CC.01.0122 (call), and CC.01.0173 (transcript).

17 [Mr D] indicates later in the call that he is offering various HouseSmile products, including a tablet, for $25 weekly. Accordingly, the deal offered is the same as the previous 19 September 2023 payment arrangement of $50 fortnightly, so would be just as unaffordable for [the victim].

(iv) repeatedly pushing a stream of different electronic goods for [the victim] to purchase, stating she should "just grab one thing" as he had called her "after a long time" which was "not a good thing".

(c) Attempting to form a contract with [the victim] despite her clear hesitation and lack of clear, voluntary, and informed consent;

(d) Ignoring indications [the victim] was cognitively impaired, including:

(i) [the victim] advising [Mr D] that "my memory is going fast, makes it hard for me";

(ii) conflicting answers around whether she has an email address;

(iii) an inability to recognise her bank account number when read to her, difficulties in accurately repeating it to the agent, followed by her stating she doesn't know what her account number is;

(iv) the fact that she has no ID like a passport, drivers licence, birth certificate, or community services card; and

(v) [the victim] stating "I haven't got a bank card at the moment".

(e) Providing limited disclosure of the essential terms of the contract, including by failing to:

(i) adequately describe the product offered for purchase;

(ii) clearly disclose the full contract price to her or provide adequate details of the instalments due; and

(iii) advise [the victim] of her ability to cancel the order within 14 days for free, or of the $150 cancellation charge thereafter.

6.31 At interview, HouseSmile admitted the sales approach in this call was "completely wrong" and that following [the victim]'s initial affordability disclosure, the call should have been terminated. HouseSmile also advised that following the call, it added her name to the "no-call list". Her name had been retained on the customer list despite the preceding events due to a "glitch".

**Call on 20 February 2024**

6.32 On 20 February 2024 [the victim] received another sales call from ['H'] [(Mr D)]:[18]

> AGENT: [H] here from HouseSmile, for your tablet. I'm [H] from HouseSmile for your tablet.
>
> [THE VICTIM]: Oh yeah.
>
> AGENT: Yeah. Actually, mam you just need to restart the payments and then the tablet will be delivered [inaudible 00.25.7] and this time you will get a free smart watch and Bluetooth speaker. Okay?

[18] CC.01.0121 (call) and CC.01.0174 (transcript).

[THE VICTIM]: Okay.

AGENT: Yeah, so, can you confirm the details to me again?

[THE VICTIM]: What's that?

AGENT: Your details. Like, just a verification for your bank account number, your name [the victim], the delivery address.

[THE VICTIM]: Oh, I guess....

AGENT: Can we do it. It will take only one minute, can we do it. I have your older details. Can you please tell me are you still with the [redacted] bank?

[THE VICTIM]: Oh okay.

AGENT: Are you still with the [redacted] bank?

[THE VICTIM]: What's that?

AGENT: [redacted] bank. Are you still with that bank?

[THE VICTIM]: I haven't got my eftpos card anymore. My daughter's got my card.

AGENT: Okay. So, you know your bank account number?

[THE VICTIM]: I wouldn't have a bloody clue.

AGENT: Okay. So, it starts from [redacted]. Do you remember that?

[THE VICTIM]: Ah no. I haven't got a very good memory.

AGENT: Okay mam, no worries. Thank you for your time.

6.33 The call duration was one minute and 51 seconds.

6.34 Through its sales agent, HouseSmile engaged in conduct that was unconscionable, including by:

(a) Making and continuing the call to [the victim] in circumstances that amounted to bad faith given HouseSmile's internal CRM notes recorded [the victim] should not be contacted by the company (including because she has dementia), that the agent was specifically aware that [the victim]'s previous order had been cancelled by her daughter, and owing to the knowledge that HouseSmile otherwise had [the victim]'s circumstances from previous interactions with [the victim] and her daughter;

(b) Utilising unfair pressure or otherwise unduly influenced [the victim] by:

(i) applying pressure to her by stating that she "need[ed]" to restart her payments, and stating it would only take "one minute"; and

(ii) attempting to induce her to restart her payments by offering free gifts "this time" if she restarted her payments, when in fact they had been offered previously.

(c) Providing limited disclosure of the essential terms of the contract, including by failing to:

(i) adequately describe the product offered for purchase (only described as a 'tablet');

(ii) adequately disclose the full contract price to her or the details of the instalments due; and

(iii) advise [the victim] of her ability to cancel the order within 14 days for free, or of the $150 cancellation charge thereafter.

(d) Proceeding despite indications [the victim] was cognitively impaired, including:

(i) [the victim]'s inability to confirm which bank she was with;

(ii) the fact that she no longer had her EFTPOS card, as it was held by her daughter; and

(iii) only terminating the call following [the victim]'s inability to communicate her bank account number, even when prompted, stating she "wouldn't have a bloody clue" and "I haven't got a very good memory".

(e) Attempting to restart [the victim]'s payments despite [the victim]'s hesitation and lack of clear, voluntary, and informed consent from the outset.

6.35 At interview with the Commission, HouseSmile stated that they "might not have been aware" of this call occurring given it did not result in a sale, therefore the office administrative team may not have listened to it.

## 7 Additional calls

7.1 ['H'] [(Mr D)] called [the victim] once more, on 6 March 2024. [The victim] terminated that call after "hello's" were exchanged.

7.2 A different HouseSmile agent, [Mr K], called [the victim] on 8 May 2024. HouseSmile has informed the Commission that he was intending to call another customer named [redacted]. While the phone was ringing he read her notes and disconnected the call.

## 8 Response to the Commission's investigation

8.1 HouseSmile cooperated with the Commission's investigation, including by:

(a) responding to voluntary information requests issued by the Commission; and

(b) attending a voluntary interview with Commission staff in April 2025.

8.2 During the course of its written responses and at interview HouseSmile advised:

(a) HouseSmile indicated remorse and accepted that errors had been made in relation to their treatment of [the victim]. Mr Bora admitted that, because of her condition and limitations, [the victim] "is actually not an ideal customer that should be taken on board". Mr Tharani stated that the conduct has been "constantly not appropriate" and he felt that "we are in a breach".[19] However, Mr Tharani explained that the conduct was not intentional, and "one of those mistakes that has happened".

(b) HouseSmile largely attributed the conduct to the poor behaviour of two tele-sales agents- [Mr D and Mr S], which was contrary to their expectations and training. HouseSmile explained that [Mr D ('H')], was trying to increase his sales volume. It was also aware his sales cancellation rate was "much higher" than other agents and a few of his sales were rejected by the administration team (presumably after they listened to the calls). HouseSmile thought he was "not following the guidelines and practices" and had previously provided misinformation to customers. He had previously been warned (on unknown date(s)) by HouseSmile for his conduct, but he "didn't change". [Mr D] first worked for HouseSmile between 1 April 2022 to 16 February 2023, during which time HouseSmile was aware of issues with his conduct and had warned him. However, HouseSmile subsequently re-hired [Mr D] on 7 December 2023. HouseSmile has since dismissed both [Mr D] (on 10 May 2024) and [Mr S] (in December 2023).

(c) HouseSmile also explained that there was a "glitch" that resulted in [the victim] not being highlighted in red (indicating no contact) on the customer list which tele-sales agents use to initiate new sales.[20] HouseSmile advised that this glitch was only temporary and did not affect other customers.

8.3 Despite HouseSmile's explanation that this conduct was largely attributable to the poor behaviour of two tele-sales agents, the conduct was also a result of HouseSmile's poor systems, including:

(a) Processes to censure, re-train, and monitor sales agents that attempted to enter contracts with [the victim] were inadequate to prevent the conduct occurring again.

(b) Reliance on the office manager and administrative team to block unwanted or non-compliant sales to [the victim], when this mechanism was fallible and did not prevent [the victim] being contacted in the first place.

(c) CRM notes were seemingly not sufficiently visible. This meant sales agents could overlook important notes, such as a consumer who had expressed their wish not to be contacted.

(d) The failure to remove [the victim] from its customer list or otherwise indicate by highlighting that [the victim] was not to be contacted.

(e) The lack of fulsome training for sales agents on compliance with the FTA.

## 9 Steps taken to address the issue

9.1 The following steps have been taken by HouseSmile to help remedy the conduct:

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19 Interview transcript (CC.01.0409) at 91.

20 In the interview, HouseSmile explained the 'glitch' was that customers who have cancelled a contract are listed on a excel spreadsheet. If they do not want to be contacted they are highlighted in red. This was missed in [the victim's] case.

(a) [Mr D and Mr S], the two telemarketing agents who sold products to [the victim], have been dismissed.

(b) [The victim] was refunded $100 cancellation fee charged in respect of the 19 September 2023 sales call, as well as the $150 cancellation fee charged in respect of the 7 April 2022 sale.

(c) HouseSmile's tele-sales agents' remuneration has changed, so that they now receive $10 commission per active sale rather than the customer's first payment instalment.

(d) HouseSmile has set up a new verification system whereby customers receive a follow up call after the sales call, to check that they understand what they have bought, confirm the instalment amounts, payment term, and are able to afford the purchase.

(e) HouseSmile is currently working with its IT team to make important CRM notes (such as 'do not call' requests), more visible to agents by highlighting them with a 'red flag' or similar.

9.2 At interview, after discussing the layby and uninvited direct sale disclosure requirements with Commission staff, HouseSmile indicated a willingness to make changes to its documentation.

## 10 Detriment to consumers

10.1 [The victim's daughter] was angered by HouseSmile's conduct towards her mother, and stated "HouseSmile target people, and they certainly targeted my mum".[21] [The victim's daughter] stated her mum couldn't afford the tablet and in any event would have been unable to operate it. She advised [the victim] is technically challenged (to the point where she can't send text messages) and also experiences some visual impairment.

10.2 [The victim's daughter] had to call HouseSmile multiple times to cancel the payments, as well as taking her mother to the bank to cancel the direct debit at the source.

10.3 [The victim] received a full refund of the cancellation fees charged by HouseSmile after the matter was raised with HouseSmile by the Commission in the voluntary interview.

10.4 While this charge relates only to conduct in respect of [the victim], HouseSmile's general failure to maintain adequate quality assurance processes to ensure its customers understood the essential terms of its contract, and to appropriately monitor its agents' conduct for compliance with the FTA placed HouseSmile's customers at an inherent disadvantage by lessening their relative bargaining power and inhibiting their ability to protect their interests when engaging with HouseSmile. Consequently, although the Commission's investigation only focused on the conduct relating to [the victim], other customers were at risk of being subjected to the same conduct.

## 11 Defendant's history

11.1 HouseSmile has no prior convictions.

11.2 Besides [the victim's daughter's] complaint, the Commission has received 14 complaints about HouseSmile's conduct. Eight of these had been received by the time of [the victim's daughter's] complaint, in October 2023, and dated between 2020 and 2023. These enquiries

[21] Formal statement of [the victim's daughter] dated 16 July 2024 (CC.01.0108).

raised concerns about delays in product delivery, non-delivery, providing different products than those contracted for, misrepresentations, sales to vulnerable consumers, and possible non-compliance with credit laws.

11.3 Following the receipt of [the victim's daughter's] complaint, the Commission received a further five complaints, as well as one Commission initiated enquiry. These complaints included concerns about delayed or non-delivery of goods, misrepresentations about delivery, issues around charging of the cancellation fee, and whether HouseSmile was acting as a mobile trader without certification.

11.4 The Commission dealt with the above complaints and Commission initiated enquiry in a variety of ways, including engagement with the trader over the issues raised. A decision to investigate and prosecute was only taken in respect of [the victim's] daughter's complaint.