

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION  
ANSWERS TO QUESTIONS ON NOTICE

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<b>Question No</b>	ASIC01QON
<b>Topic</b>	Scaled financial product advice
<b>Committee Member</b>	Falinski
<b>Reference</b>	Hansard page reference 4-5

### Question

**CHAIR:** We've gone through a number of matters in our hearing, with witnesses as part of this inquiry raising a series of questions that fall within the remit of ASIC. One of them was the recent appearance by IFS before this committee. Have you read that transcript or are you aware of that transcript?

**Mr Shipton:** I, personally, have not, but I will ask my colleague Commissioner Press if she has.

**Ms Press:** I have seen that transcript, yes.

**CHAIR:** There was follow-up media with people questioning whether IFS was acting consistent with the law. I'll read a brief bit of the transcript from. Mr Falinski asked:

*Do you think the limited scope financial planners that you have can fulfil their best interest duties if they only give advice on superannuation?*

Then the witness from IFS said:

*Yes, we believe so. I know that some in the industry have thought that the advent of the best interest duty and the code of ethics might see the end of limited scope or intrafund advice. We believe there's absolutely a place for it. We have the benefit of licensing advisers that sit in both unlimited scope and in a holistic advice sense. It comes down to appropriate scoping and then understanding when you need to decline providing advice ...*

Mr Falinski then went on to ask whether they had consulted ASIC on this, and they said they had spoken to ASIC and they got the sign-off based on what was being said by ASIC at conferences. Can you give some clarity: has ASIC actually signed off on the approach?

**Ms Press:** We have not signed off on the statements of advice that are provided by IFS advisers. We have on several occasions said and continue to believe that scaled advice, of which intrafund is a component, is appropriate and is able to be delivered under the best interests duty. The delivery of intrafund advice is something that is allowable and defined by the SI(S) Act but still must meet the best interests duty and the other duties of a financial adviser.

**CHAIR:** Mr Falinski, do you have a follow-up question on this?

**Mr FALINSKI:** Yes, I do. What I don't understand about the approach that they're taking is how you can give personal advice if you're not asking about a person's personal circumstances.

**Ms Press:** The intrafund advice that we're talking about is very limited in its scope, and it's limited scope advice.

**Mr FALINSKI:** I'm utterly confused by this. When does limited personal advice become personal advice?

**Ms Press:** Intrafund advice does take into consideration some personal circumstances, but it is limited in its scope, and that limitation in its scope is defined by the statement of advice.

**Mr FALINSKI:** So then wouldn't the consumer assume that they're getting personal advice?

**Ms Press:** They are getting—

**Mr FALINSKI:** The law is meant to be applied as to what a reasonable person would assume that they are [inaudible] and how that is presented. It seems to me that they're being presented with personal advice and it's not being made clear to them in any way, shape or form that it's general advice. And now there seems to be this hybrid kind of advice which is limited personal advice, which I didn't know existed at all.

**Ms Press:** So, to be clear, intrafund advice is personal advice; it is not general advice. It is subject to—

**Mr FALINSKI:** So then why weren't they providing that under the general advice provisions?

**Ms Press:** They're not providing it under the general advice provisions. They're providing it under the provision of the intrafund carve-out in the SI(S) Act, which is a matter for government to allow that.

**Mr FALINSKI:** I know many union backed publications reflect on my intelligence, but can I be blunt and say to you that I really don't understand what it is that is going on here. I believe you to be a competent, reasonable, intelligent person who is across the law, and you can't explain this to me in a manner and form that makes sense.

**Ms Press:** Well, I apologise that it doesn't make sense to you.

**Mr FALINSKI:** No, I don't mean it's your fault—

**Ms Press:** Intrafund advice is personal advice. It is subject to a statement of advice.

**CHAIR:** Sorry, I'm going to interrupt here. What I think would be useful is that, if ASIC could reflect on the transcript of the hearing, it could give a reflection on the transcript of this hearing as well and provide a formal written advice to this committee about the consistency between the position that IFS has taken and the issues and matters that Mr Falinski has raised, because there is clearly a lack of clarity about the extent to which certain types of advice can be provided.

### Answer

Advice providers can provide scaled personal advice or limited scope personal advice (including intra-fund advice) and comply with the best interests duty and related obligations in the *Corporations Act 2001* (Corporations Act).

"Financial product advice" is a broad concept under the Corporations Act. It is "a recommendation or a statement of opinion, or a report of either of those things, that:

- (a) is intended to influence a person or persons in making a decision in relation to a particular financial product or class of financial products, or an interest in a particular financial product or class of financial products; or
- (b) could reasonably be regarded as being intended to have such an influence."

Financial product advice can be either personal advice or general advice.

Personal advice is financial product advice that is provided to a person in circumstances where the provider of the advice has considered the person's individual circumstances or a reasonable person might expect that the provider has considered the person's individual circumstances.

Retail clients rely on personal advice and may suffer significant loss if the advice is not of good quality. For this reason, there are specific legal obligations that apply to personal advice provided to retail clients. These specific obligations include the best interests duty and related obligations, that is, the obligation:

- (a) to act in the best interests of the client when providing them with personal advice (s961B);
- (b) to provide the client with appropriate advice (s961G);
- (c) to warn the client if the advice is based on incomplete or inaccurate information (s961H); and
- (d) to prioritise the interests of the client (s961J).

Not all personal advice is comprehensive advice or advice that covers the full range of advice topics. Advice providers can give personal advice which is 'scaled advice'. That is, advice providers can give personal advice that is limited in scope. For example, it might just deal with a client's life insurance needs or superannuation needs. Such scaled advice can meet all the relevant legal requirements for personal advice. This is because what an advice provider must do to meet the legal requirements, including the best interests duty and related obligations, can be 'scaled up' or 'scaled down' depending on the nature or scope of the advice.

Intra-fund advice is not a legal concept or a separate type of advice. Intra-fund advice is a term widely used in the industry to refer to the scaled or limited scope personal advice that a superannuation trustee can provide to members on the basis that the cost of the advice is borne by all members of the fund. Section 99F of the *Superannuation Industry (Supervision) Act 1993* (SIS Act) permits the superannuation trustee to directly or indirectly pass the cost of providing general advice or certain types of scaled or limited scope personal advice to the members of the fund. Under the SIS Act the cost of scaled or limited scope personal advice can only be borne by all members of the fund if it covers certain limited topics, related to the member's interest in the fund, and is not ongoing advice. The SIS Act deals only with the funding mechanism for this advice; it does not deal with the obligations of the financial advice provider in providing the advice. Any personal advice provided under an intra-fund arrangement must, like all scaled advice or limited scope personal advice, comply with the best interests duty and related obligations and the disclosure obligations in the Corporations Act that are applicable to personal advice.

When considering how the best interests duty and related obligations apply in the context of giving scaled advice (including intra-fund advice), advice providers need to remember that:

- (a) all advice is scaled to some extent - advice is either less or more comprehensive in scope along a continuous spectrum (i.e. there are not two categories of advice: 'scaled' and 'comprehensive' advice); and

- (b) the same rules apply to all personal advice on the same topic, regardless of the scope of the advice. Scaled advice does not equate to lesser quality advice for clients or lower training standards for advice providers. All advice providers who give personal advice, whether scaled or more comprehensive, must meet the training requirements for financial product advisers.

Consumers who seek financial advice, including scaled advice under an intra-fund arrangement, expect that the advice provided will leave them in a better position.

When assessing whether an advice provider has complied with the best interests duty, we will consider whether a reasonable advice provider would believe that the client is likely to be in a better position if the client follows the advice provided.

[ASIC Regulatory Guide 244 Giving information, general advice and scaled advice \(RG 244\)](#) includes guidance to assist advice providers to meet the requirements of the best interests duty and related obligations when giving scaled advice (such as intra-fund advice).