

Australian Securities and Investments Commission

Answers to Questions On Notice

Public hearing: Parliamentary Joint Committee on Corporations and Financial Services

19 March 2021

Division/Agency: Australian Securities and Investment Commission
Question No: 016
Committee Member: Senator Louise Pratt

Question:

Senator PRATT: Is there an assessment from the liquidators of where the money went? People were told that their money was in trust and that, if they took that, the money wasn't therefore going to be funnelled out elsewhere. Nevertheless it was. What's the legal assessment of those arrangements?

Ms Armour: I'm happy to come back and give you an analysis from the reports from the administrators and liquidators on that assessment.

Senator PRATT: In terms of people whose complaints before AFCA have been deemed inadmissible because of that previous legal case, if the compensation scheme of last resort comes forward, will they still be able to access that? What is the standing of their complaints before AFCA? Can it be fixed with legislative reform if a compensation scheme of last resort does eventually come forward, or what other remedies might they have?

Ms Armour: We can give you some more detail on what the appropriate responses are to deal with the D H Flinders situation. We will provide you with some information on whether a legislative fix would, in our view, address that.

Answer:

An investment in a registered managed investment scheme such as the Sterling Income Trust is by nature a different legal arrangement to providing moneys to another person to be held on trust. Investors in a registered managed investment scheme are entitled to expect that their moneys will be invested in the manner disclosed in the Product Disclosure Statement pursuant to which they invested.

In response to an assessment of where the money went, in the Ferrier Hodgson (now known as KPMG) Sterling Group Voluntary Administrators report dated 30 May 2019 it was stated that:

"The income associated with the rental management agreements has for the most part been assigned to either the Income Trust or more recently the Silverlink Income Right Trust. The capital invested via the SIT and Silverlink was used to invest in property related assets (with the return on the investment intended to cover the SNL rent commitments), however the value of these underlying assets deteriorated impacting the return on investment. As a result, there were significant cash flow pressures on the Group due to the requirement for the entities within the Group to top up rental payments and mortgage interest payments."

In response to the issue of the DH Flinders case affecting the AFCA Sterling-related complaints position, the class of investors who may be eligible to benefit from any Compensation Scheme of Last Resort that is ultimately able to be established by Government at some future date, will depend on how eligibility is defined by the Government in the legislation establishing such a scheme. ASIC's understanding is that such legislation could overcome limitations on eligibility arising from case law.