

Chapter 21

Communication and complaints management

21.1 The committee has referred to the many cases where submitters felt that ASIC simply did not listen to or did not care about their report of alleged misconduct and expressed extreme disappointment with ASIC's response to their concerns. Their complaints about ASIC centred on three broad areas: delays in response or failing to respond; inadequacy of response; and the tone of the response. In this chapter, the committee considers the way in which ASIC manages complaints lodged with it and communicates with retail investors and consumers seeking the regulator's assistance.

21.2 Paragraph (d) of the inquiry's terms of reference directed the committee to examine ASIC's performance in relation to its complaints management policies and practices. The term 'complaint' has been interpreted to include both misconduct reports, that is when a complaint potentially involves a contravention of the legislation ASIC administers, and complaints made about ASIC.

Timeliness

21.3 Delays in responding to requests and poor feedback, including a failure to keep a complainant informed of progress, were among the numerous concerns that submitters raised with the committee. Extracts from selected submissions are provided below to illustrate some of the objections the committee received about the timeliness of ASIC's handling of misconduct reports:

Unfortunately it is difficult to monitor what progress is being made, if any, with complaints forwarded to ASIC. Generally, it has been difficult to get ASIC officers to even acknowledge the receipt of complaints and to get responses to other matters presented.¹

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On October 2007 I submitted 3 complaints against the Nab to ASIC. These complaints were forwarded to ASIC with all the printouts put on discs. ASIC later informed me that they have recorded the information in its confidential internal database and will be of assistance to them should they receive further similar complaints. On the 29th February 2008 I received an Email from ASIC that (Nab) has advised that the changing of my family's account type will be looked into and finalised by September 2008. Who is ASIC kidding, a further 7 months.²

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1 Name withheld, *Submission 213*, attachment 1, p. 6.

2 Ms Muriel McClymont, *Submission 425*, p. [2].

There was no discernible response in my situation from ASIC until letters were written by Members of Parliament.³

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(*the following is an extract of a letter to ASIC's chairman*) Furthermore it is obvious your staff do not respond to telephone calls that are made regarding this subject of systemic problems. I have been told by your staff members that the call I made was logged on and it would be replied to in 2 days. Two weeks have passed and still no answer!⁴

21.4 The Consumer Credit Legal Centre (NSW) was of the view that:

ASIC needs to respond to consumer complaints in a timely fashion and, where timeliness is not practical, keep consumers (and their advocates) informed in some appropriate way.⁵

21.5 Mr Gerard Brody, the chief executive officer of the Consumer Action Law Centre, informed the committee that his organisation makes around 40 or so detailed complaints a year to ASIC where it is acting for a client as well as less detailed complaints of an allegation of misconduct where the consumer is happy to talk to the regulator directly. The Centre was of the view that improved communication about complaints would 'encourage ASIC to be more timely in enforcement actions'. More broadly, this might also be improved with an enhanced consumer advisory role within ASIC.⁶

21.6 Mr Brody stated that the Centre encouraged regulators to consider 'providing better and timely feedback to those who make complaints about potential misconduct'. While he recognised that ASIC had limitations on what it can say about ongoing investigations, he noted that there was a danger in regulators not saying anything. In his view:

It can mean consumers and consumer organisations have reduced motivation to complain and that evidence that regulators need to take enforcement action is not forthcoming. We are pleased that ASIC has taken up this recommendation and is now reporting to consumer organisations about complaints and progress made.⁷

Clarity in response

21.7 Timeliness was not the only problem. The Commonwealth Ombudsman also informed the committee that complainants often say that even after ASIC informs

3 Mrs Jan Braund, *Submission 244*, p. 4.

4 Mrs M Woolnough, *Submission 346*, p. [3].

5 Consumer Credit Legal Centre (NSW) Inc, *Submission 194*, p. 2.

6 Mr Gerard Brody, Chief Executive Officer, Consumer Action Law Centre, *Proof Committee Hansard*, 20 February 2014, p. 39.

7 *Proof Committee Hansard*, 20 February 2014, p. 39.

them of its decision, they do not understand why ASIC arrived at its conclusion. According to the Ombudsman, this was particularly the case when the decision related to the exercise of ASIC's discretion, such as the discretion not to investigate a report of misconduct or waive late fees. In this regard, the Ombudsman noted that it accepted that ASIC was 'best placed to determine its priorities and what may be in the broader public interest'. Even so, the Ombudsman observed that complaints received by his office regarding ASIC's decisions not to investigate reports of misconduct were 'usually resolved only after a more detailed and better explanation of the decision has been provided'. The Ombudsman explained:

...where we do investigate a complaint, the remedy provided in the majority of cases is a further explanation of the decision by ASIC. In these cases, our investigations typically lead us to conclude that ASIC's decision was not unreasonable or administratively flawed, but that ASIC's decision simply required further and better explanation.⁸

21.8 He concluded:

Although ASIC is a specialist independent regulator with market knowledge and expertise which informs its decision making, the fact that complaints are usually resolved through ASIC's internal review process or where ASIC (or this office) provides a better explanation to the complainant suggests that ASIC could improve the explanations of its decisions in the first instance.⁹

21.9 The Ombudsman observed that the results of the 2013 ASIC stakeholder survey suggested that one of ASIC's perceived limitations was that it does not clearly communicate what it is doing. In the Ombudsman's view, early management of expectations about what ASIC can or will do and the provision of better explanations of decisions to complainants should lead to a decrease in the number of complainants seeking an internal review of decisions by ASIC and of complaints to the Ombudsman about ASIC. Such improvements would benefit ASIC by reducing its complaint handling workload, as well as reassuring staff and complainants that problems have been dealt with in the appropriate manner and have not been allowed to fester.¹⁰

Tone of communication

21.10 Many submitters expressed frustration with ASIC's poor communication or apparent inaction following a report about possible breaches or complaints. One of the lasting impressions that retail investors were left with from ASIC's response to their complaint was that ASIC does not care. Ms Anne Lampe, a former financial journalist and former employee of ASIC's media unit, referred to what she held to be ASIC's 'consistent failure to adequately protect, seemingly care, or bother to take action when

8 Commonwealth Ombudsman, *Submission 188*, p. 15.

9 Commonwealth Ombudsman, *Submission 188*, p. 16.

10 Commonwealth Ombudsman, *Submission 188*, pp. 15–16.

small investors and self-funded retirees are stripped of their life savings'.¹¹ Making a similar observation, Mr Bill Doherty stated:

The ASIC complaints handling procedure is a total failure. People do not wish to be told that their Complaint will be added to a data base when they contact ASIC at their wits end. They do not wish to be advised to get a lawyer when they are impecunious because of ASIC failings. I personally referred a complaint about Ariff about 6 mths after ASIC commenced Civil Action against him and I got the Robotic response yet again.¹²

21.11 Many investors and consumers who wrote to the committee believed that they had strong evidence of maladministration in lending or misconduct by advisers or directors but when they contacted ASIC for assistance, it failed to act on their complaint in any effective way.¹³ A number referred to their disappointment in receiving a 'flick letter' or generic response, 'scripted or form letter', 'a boilerplate or robotic reply'.¹⁴ Indeed a number of submissions referred to ASIC's insensitive or indifferent response to their circumstances. Submitters were particularly galled, in the face of financial ruin, by ASIC's advice to seek a lawyer.¹⁵ In this regard, one submitter described ASIC's response to his concerns about Storm as:

One of the best bits of advice, that ASIC have to offer, is for Bank Clients to get themselves a Lawyer, when they know, only too well, that affected victims have been reduced to being almost penniless by the deliberately orchestrated plan by Banks to gain control of the life savings of victims.¹⁶

Other concerns

21.12 Submitters also expressed frustration about the effort involved in preparing their complaint, compiling supporting documentation and answering queries from ASIC, all to no avail. In its ultimate response to a complaint from Mr Trevor Eriksson, ASIC wrote that it had limited powers in relation to commercial lending contracts and that ASIC did not generally intervene in private commercial disputes. Mr Eriksson advised, however, that when he initially discussed his complaint with ASIC officers, they were enthusiastic about investigating the matter and suggested that there could be contraventions. Ultimately, in the face of ASIC's apparent loss of interest, Mr Eriksson argued that 'ASIC should not have misled the writers of complaint; they should have known that they did not have the power to investigate and said so upfront'.¹⁷ ASIC's approach to investigating complaints from individuals, and how this

11 *Submission 106*, p. 1.

12 Mr Bill Doherty, *Submission 138*, p. [3].

13 See for example, *Submission 71*.

14 *Submissions 1, 21, 26, 106, 110, 213, 279, 365 and 400*.

15 *Submissions 82, 106, 131 and 138*.

16 Name withheld, *Submission 82*, p. 1.

17 Mr Trevor Eriksson, *Submission 212*, p. [4].

is reflected in ASIC's 'no further action' letters, was also objected to in other submissions:

(the following is an extract of a 2010 letter to ASIC's then chairman)
...ASIC is neglecting its responsibilities under s.12 of its Act for business to business unconscionability in financial services. Worse, it is persistently turning away supplicants whose complaints should be taken seriously. Frankly, it is difficult to take seriously the claims in some letters in response from ASIC staff that the complainant's case has been properly examined.¹⁸

* * *

On April 15th 2013, a response to my complaint was written and signed by Warren Day, Senior Executive Leader Stakeholder Services. I appreciate that some investigation was made regarding some my allegations. However, there was no effort to contact me in order to clarify matters. As a result, there is considerable presumption in their response. For instance, they presumed that the matter regarding the bank providing a loan based on 'house and land' value yet selling our property 'for land value only' on the grounds that the house was 'illegal', had been dealt with in court. If they had bothered to contact me, I could have explained that this was impossible as the hearings were all held before the bank sold our property. Of course, if they had thought about it, common sense would have brought them to that conclusion all by themselves.

ASIC pointed out that a few of my complaints can only be dealt with through other avenues, and I accept that. However, they are completely wrong in some of their other responses. The overall result is that though the letter appears to address my complaints, by the end of it, ASIC have successfully deflected every bit of responsibility toward any of the issues.¹⁹

* * *

I am not directly involved in a tangle with ASIC. The extent of my experience concerns the extreme time and energy I have put in trying to stop a friend from committing suicide...He turned to ASIC for help and was summarily dismissed. For whatever reason, ASIC was not interested in his case, giving him the impression that the sum involved was too low for ASIC to investigate. He was devastated by their response.²⁰

21.13 Submitters objected to receiving unsigned replies from ASIC.²¹ One submitter advised that after receiving such a letter they were unable to contact anyone to discuss the matter further:

18 Dr Evan Jones, *Submission 295*, attachment 1, p. 1.

19 Ms Susan Field, *Submission 75*, p. 2.

20 Mr Dan McLean, *Submission 105*, p. 1.

21 For example, see Name withheld, *Submission 20.2*, p. 1 and Mrs Caroline Baker, *Submission 49*, p. 1.

I later got a letter from ASIC with no name at the bottom and signed "Misconduct and Breach Reporting". When I called the phone number provided I was then repeatedly told no one knows anything about this matter.²²

21.14 One aggrieved individual concluded that the aim of ASIC's complaints processes 'seems to be to let the dissatisfied victim—who has had little help in actually seeing justice done—let off some steam and then be left to pick up the pieces of their shattered life while ASIC neatly files the complaint'.²³

Standards for handling misconduct reports and complaints

21.15 It is clear that ASIC receives a substantial volume of queries, complaints and misconduct reports. In 2012–13, ASIC's client contact centre received over 700,000 telephone calls. ASIC's annual report for that year notes that over 80 per cent of calls were answered on the spot with the remainder referred to specialist staff.²⁴ Also in 2012–13, ASIC received and assessed 11,682 reports of alleged misconduct, 11,320 statutory reports and 1,214 breach reports.²⁵

21.16 ASIC governs its complaints handling processes by a service charter. The charter sets targets for ASIC to provide various services or undertake certain functions. Table 21.1 summarises the service charter targets and ASIC's results in 2012–13 against these targets

22 Mr Owen Salmon, *Submission 368*, p. 3.

23 Dr Peter Brandson, *Submission 232*, p. 7.

24 ASIC, *Annual Report 2012–13*, p. 51.

25 ASIC, *Submission 45.2*, p. 4.

Table 21.1: ASIC's service charter results, 2012–13

<i>Service</i>	<i>Service target</i>	<i>2012–13 performance</i>
General telephone queries	ASIC aims to answer telephone queries on the spot	Of telephone queries handled directly by the contact centre (716,382), 80.5% (576,513) were answered on the spot and 19.5% (139,869) were referred to specialist staff
General email queries	ASIC aims to reply to email queries within two business days	77% (111,399 of 144,204)
General correspondence about the public database and registers (including fee waivers)	ASIC aims to acknowledge receipt within 14 days of receiving it, with full response within 28 days	85% (17,387 of 20,478)
Registering a company	ASIC aims to complete company registrations within one business day	98% (200,326 of 204,035)
Updating company information and status	ASIC aims to enter critical changes to company information in the corporate register within two business days	98% (995,676 of 1,013,048)
Registering as an auditor	ASIC aims to decide whether to register an auditor within 28 days of receiving a complete application	92% (123 individual applications and 16 authorised audit companies)
Registering as a liquidator	ASIC aims to decide whether to register a liquidator or official liquidator within 28 days	100% of liquidator applications (37 of 37 applications) and 98% for official liquidators (44 of 45 applications)
Applying for or varying an AFS licence	ASIC aims to decide whether to grant or vary an AFS licence within 28 days	79% of licences granted within 28 days (374 of 472 applications) 83% of licence variations decided in 28 days (649 of 784 applications)
Registering a managed investment scheme	By law ASIC must register a managed investment scheme within 14 days of receiving a complete application	100% (205 of 205)
Applying for or varying a credit licence	ASIC aims to decide whether to grant or vary a credit licence within 28 days	83% of licence applications (313 of 375) and 91% of licence variations
Applying for relief	For applications for relief from the Corporations Act that do not raise new policy issues, ASIC aims to give an in-principle decision within 21 days of receiving all necessary information	71% of in-principle decisions (1,935 of 2,744 applications)
Complaints about misconduct by a company or individual	For reports alleging misconduct by a company or an individual, ASIC aims to respond within 28 days of receiving all relevant information (target: 70%)	76% (8,828 of 11,682)

Source: ASIC, *Submission 45.2*, pp. 71–72.

21.17 Although ASIC has set a target for responding to general correspondence about its public database and registers and misconduct reports, ASIC does not have a target set for responding to other general correspondence. ASIC's service charter provides the following explanation:

For other general correspondence, the exact timing and content of our response will depend on each case and the request.

In some cases, it may not be appropriate for us to fully respond to correspondence, or be reasonable to expect us to do so. For example, correspondence about surveillance, investigations and enforcement may involve sensitive and highly confidential matters that will restrict what we can say, or prevent us from replying at all.²⁶

21.18 The committee compared ASIC's approach to those adopted by other regulators and law enforcement agencies. The ACCC's service charter states that it aims to respond within 15 business days of receipt to letters or webforms that request a response.²⁷ APRA aims to reply to email queries from members of the public within two business days and all other correspondence within 15 business days.²⁸ The UK Financial Conduct Authority (FCA) aims to provide a substantive response to correspondence received from consumers and firms within 12 business days of receipt, for which it has set a target of 90 per cent. During the period 1 October 2012 to 31 March 2013, the FCA responded to 96.1 per cent of consumer correspondence and 94.1 per cent of correspondence from firms within the 12 business day timeframe.²⁹ The service charter of the AFP does not include timeframe targets, noting that the 'nature of investigating criminal activity makes it difficult to provide specific timeframes for completion of the investigations that we undertake'. However, the AFP does commit to advising relevant parties of the progress of investigations at 'reasonable intervals', except where the investigation may be jeopardised by doing so.³⁰

21.19 The Commonwealth Ombudsman informed the committee that complainants often report long delays when waiting for a response from ASIC about their complaint, which can 'be a source of frustration, especially when delay results in lost revenue'. The Ombudsman's *Better Practice Guide to Complaint Handling* states that

26 ASIC, *ASIC Service Charter*, September 2012, p. 4.

27 The ACCC's service charter adds: 'We receive a lot of contact from people simply providing us with information. In those circumstances, we will record your information but we may not provide a response'. ACCC, *Service Charter*, www.accc.gov.au/about-us/australian-competition-consumer-commission/service-charter (accessed 10 October 2013).

28 APRA, 'APRA Service Charter', www.apra.gov.au/AboutAPRA/Publications/Pages/APRA-Service-Charter.aspx (accessed 10 October 2013).

29 UK FCA, 'Our Performance: Communications', www.fca.org.uk/about/governance/our-performance/standards/communications (accessed 10 October 2013).

30 AFP, 'AFP service charter for the Australian community' www.afp.gov.au/about-the-afp/service-charters/afp-service-charter.aspx (accessed 10 October 2013).

once a complaint has been made to an agency, the complaint should be resolved as quickly as possible in order to prevent irritation or fatigue which 'can thwart successful complaint handling'.³¹

21.20 Service charters and quantifiable performance benchmarks are useful, but care should be taken in analysing the results. Further, some individuals who have interacted with ASIC expressed suspicion about how the performance targets could be met:

The email inquiry response service is useless for anything that is not 'routine'. My experience is to receive an automated response notification. Then, if I am very lucky, a proforma response weeks later. Invariably, that second response does not address the issue, or may promise that another area or officer will follow-up. In reality, that proforma response is sufficient for ASIC to mark the enquiry as concluded. Needless to say any promised follow-up does not materialise.³²

Assessment of ASIC's processes

21.21 In assessing ASIC's performance at managing misconduct reports and complaints, the committee has paid particular regard to the evidence from ASIC and the Commonwealth Ombudsman.

ASIC's response

21.22 ASIC advised that although it has 'a good record' of meeting its service charter targets, it has been 'making continual efforts to improve the way we handle reports of misconduct and our communication with persons who have made a report'.³³ ASIC has recently been publishing additional information about how it assesses complaints—in October 2012 and July 2013 ASIC released a number of information sheets on how it approaches commonly reported matters.³⁴ In its main submission, ASIC reported that over the past two years it has developed a 'customer engagement framework'. Key aspects of the framework include a protocol for handling reports of misconduct, clear communication objectives as the report of misconduct is handled and efforts to provide clear information about reporting misconduct on ASIC's website.³⁵ Under the customer engagement framework:

- personal telephone contact (or two attempts) is now made with the person who lodged the report of misconduct to ASIC within three business days of receipt for all reports (except for market matters, which are responded to

31 Commonwealth Ombudsman, *Better Practice Guide to Complaint Handling*, April 2009, p. 14.

32 Name withheld, *Submission 263*, p. 5.

33 ASIC, *Submission 45.2*, p. 88.

34 ASIC, 'ASIC releases new information sheets on dispute resolution and misconduct', *Media Release*, no. 13-181, 18 July 2013.

35 ASIC, *Submission 45.2*, p. 95.

immediately due to the sensitivities of the matters raised in these reports of misconduct);

- two new report-handling streams have been developed, as follows:
 - 'rapid handling'—for matters outside of ASIC's jurisdiction or are appropriate for rapid resolution by way of a telephone call and targeted information; and
 - 'expedited communication'—for matters within ASIC's jurisdiction and which ASIC will collect information on, but where ASIC cannot directly resolve the person's particular concerns;
- the 'how to complain' section on ASIC's website has been redesigned; and
- customer service principles have been adopted for the handling of reports of misconduct.³⁶

21.23 Mr Medcraft informed the committee that ASIC had taken significant steps to improve transparency and communication. He acknowledged, however, that despite all its efforts, ASIC officers have heard the clear message from the submissions—'we need to communicate more and we need to communicate more effectively about our work and our decisions'. He stated that this was 'an ongoing goal of the commission'.³⁷

21.24 It is also necessary to acknowledge another aspect of complaints handling. Government agencies such as ASIC are often contacted by distressed individuals who have few options for having the wrong, or perceived wrong, that they have suffered remedied. Guidance published by the Commonwealth Ombudsman observes that these complainants can exhibit unreasonable behaviour and be unwilling to accept decisions taken about their complaint. They can present employees with various difficulties:

These complainants often tend to be angry, aggressive and abusive to staff members. They threaten harm, they are dishonest or intentionally misleading in presenting the facts, or they deliberately withhold relevant information. They flood agency offices with unnecessary telephone calls, emails and large amounts of irrelevant printed material. These complainants tend to insist on outcomes that are clearly not possible or appropriate, or demand things they are not entitled to. At the end of the process they are often unwilling to accept decisions and continue to demand further action on their complaint.³⁸

21.25 The committee is aware of cases where ASIC is required to deal with individuals that have unrealistic expectations either about what ASIC can do or the degree of access that they should have to ASIC employees. Further, there is clearly

36 ASIC, *Submission 45.2*, p. 96.

37 Mr Greg Medcraft, Chairman, ASIC, *Proof Committee Hansard*, 20 February 2014, p. 2.

38 Commonwealth Ombudsman, *Better Practice Guide to Managing Unreasonable Complainant Conduct*, June 2009, p. 1.

scope for aggrieved individuals to take up a disproportionate amount of ASIC's resources.³⁹

Evidence from the Commonwealth Ombudsman

21.26 The Commonwealth Ombudsman advised that in 2012–13 it received 338 complaints about ASIC (representing 1.9 per cent of the total complaints received by the Ombudsman). By contrast, the Ombudsman received 55 complaints about the Australian Financial Security Authority, 35 complaints about the Australian Communications and Media Authority and 17 complaints about the ACCC.⁴⁰

21.27 The largest category of complaints received about ASIC in 2012–13 related to problems associated with the implementation of the new business names register. The Ombudsman advised that the remaining main areas of complaint about ASIC related to ASIC's discretionary decision to investigate a report of misconduct; ASIC's decision to not waive late fees; and accessibility, including difficulties making contact with ASIC, delays in receiving a response, and the usability of ASIC's online services.⁴¹ Another issue commonly raised in complaints is that there is uncertainty about how to complain to ASIC about ASIC:

While ASIC's website contains a clear heading, "how to complain", the subsequent list of links does not offer a clear and explicit opportunity to make a complaint about ASIC.⁴²

21.28 The Commonwealth Ombudsman, Mr Colin Neave AM, told the committee that ASIC has taken steps to improve its website and is working to increase the capacity of its call centre. However, he considers that there are further ways that ASIC could improve, including by simplifying the complaints process and making it more accessible, particularly by delineating the process for complaining about ASIC from misconduct reporting. Mr Neave noted that his office had been engaging with ASIC about these issues and that 'overall ASIC has been responsive and cooperative'.⁴³

39 For example, ASIC advised that just five individuals have sent it approximately 400 separate pieces of correspondence since 2009 regarding a particular complaint. Further, over 100 requests under the *Freedom of Information Act 1982* have been lodged or reviews of decisions made under that Act taken place. Involved at various times in assessing the correspondence, requests and reviews were members of ASIC's Misconduct and Breach Reporting team, its Investment Managers and Superannuation stakeholder team, Chief Legal Office, and the Senior Executive Leader responsible for Stakeholder Services. ASIC's actions in this matter have also been reviewed by the Commonwealth Ombudsman. ASIC, answer to question on notice, no. 12 (received 21 May 2014), pp. 38–39.

40 Commonwealth Ombudsman, *Submission 188*, p. 5.

41 Commonwealth Ombudsman, *Submission 188*, p. 3.

42 Commonwealth Ombudsman, *Submission 188*, p. 3.

43 Mr Colin Neave AM, Commonwealth Ombudsman, *Proof Committee Hansard*, 20 February 2014, p. 12.

21.29 The Ombudsman's *Better Practice Guide to Complaint Handling* suggests that when a decision has been made regarding a complaint, an explanation of the decision should be presented in a style the complainant can understand and should deal with each concern raised by the complaint.⁴⁴ Further, Mr Neave suggested that handling complaints only in writing 'is not always the best way' and that consideration should be given to explaining the organisation's decision orally as well as in writing:

...when someone is terribly upset about something having gone wrong, if the letter does not deal with reasonable precision with the elements of the complaint, that only makes it a lot worse for the institution, whether it is a private sector institution or ASIC itself. There are all sorts of reasons why this cannot happen. There might be some duty of confidentiality, there might be some privacy problems or there might be some other issue, but my recommendation to any organisation which is dealing with complaints is: if you get a chance to sit down with the person who is making the complaint and talk it through with them, the whole communication dynamic changes quite significantly.⁴⁵

21.30 Mr Neave was asked whether consideration should be given to conducting an external audit of ASIC's complaints-handling processes. In his view, recent initiatives following the problems associated with the business names register have improved ASIC's capacities and processes. Mr Neave provided the following testimony:

I think the progress which has been made recently, which we have been heavily involved with ourselves, has led to a point where it seems to be working quite well, but it is certainly something that we will be keeping a watchful eye on. When the business name issue arose, that is when the office became very interested in ASIC. We have been having meetings every couple of months with them ever since then in order to work on improving the complaint-handling processes. As I said before, we are also doing—and this goes across Commonwealth agencies and departments—doing surveys and investigation. There will be some recommendations coming out of that which I think will assist not just ASIC but all Commonwealth departments and agencies. There is quite a deal of work going on.⁴⁶

Committee view

21.31 The committee has received a significant number of submissions from individuals aggrieved by how ASIC managed their report of misconduct. There are examples where such reports were handled poorly, or could have been handled better. The committee does, however, recognise that it is only likely to be contacted by individuals who consider that their complaint did not receive sufficient attention or was otherwise not handled appropriately, not those satisfied with ASIC's performance

44 Commonwealth Ombudsman, *Better Practice Guide to Complaint Handling*, April 2009, p. 25.

45 Mr Colin Neave AM, *Proof Committee Hansard*, 20 February 2014, p. 14.

46 Mr Colin Neave AM, *Proof Committee Hansard*, 20 February 2014, p. 15.

in this area. Further, the committee acknowledges that, at times, ASIC also has to deal with unreasonable complainants.

21.32 Nevertheless, the committee does consider that ASIC needs to improve how it manages misconduct reports and complaints. In particular, ASIC must strive to be more responsive and sensitive to the concerns of consumers and retail investors, while adequately managing expectations about what it can do. The committee considers that ASIC should review how it manages and responds to misconduct reports from members of the public, particularly those from vulnerable and disadvantaged consumers.

Recommendation 38

21.33 The committee recommends that ASIC undertake an internal review of the way in which it manages complaints from retail investors and consumers with the aim of developing training and professional development courses designed to:

- **have ASIC officers more attuned to the needs of vulnerable and disadvantaged consumers and to enhance ASIC's consumer advisory role;**
- **devise strategies and protocols for responding to retail investors and consumers registering a complaint, many of whom are at their wits end and in desperate need of help;**
- **ensure that ASIC officers, when advising a consumer to transfer their complaint to the relevant external dispute resolution scheme, make that transfer as seamless and worry-free as possible while conveying the sense that ASIC is not discarding their complaint; and**
- **acknowledge the advantages of making a return call to the complainant and provide guidance for ASIC officers on the times when making a return call would be appropriate.**

