

Senate Economics Legislation Committee

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Additional Estimates

2014 - 2015

Department/Agency: ASIC

Question: AET 295-296

Topic: Outstanding determinations

Reference: written - 06 March 2015

Senator: Whish-Wilson, Peter

Question:

295. What measures have ASIC put in place to ensure that determinations made in favour of consumers by the Financial Ombudsman Service (FOS) are being acted upon?
296. Can ASIC provide an update on action taken since the last report by FOS on outstanding determinations made in favour of consumers?

Answer:

295. Under the Australian financial services (AFS) licensing regime, providing financial services to retail clients requires licensees to have in place Internal Dispute Resolution arrangements and be a member an External Dispute Resolution (EDR) scheme that meets certain requirements (s912A of the *Corporations Act 2001*).

AFS licensees contract with an EDR scheme when they become members of the scheme. Each member agrees with the scheme to be bound by the applicable Terms of Reference (ToR) or Rules.

Determinations are binding on licensees. For example, paragraph 8.7(b) of the Financial Ombudsman Service's ToR provides that

"A Determination is a final decision and is binding upon the Financial Services Provider if the Applicant accepts the Determination within 30 days of receiving the Determination."

EDR schemes are operationally independent. They have their own boards and are responsible for their own internal processes, the management of disputes and the enforcement of determinations. ASIC does not have the power to intervene in scheme decision making or to direct that determinations be paid, or cause them to be paid.

In most cases, determinations are unpaid because a licensee has ceased to operate or becomes insolvent. In these cases, there is no real prospect of consumers being compensated because the company may have no other assets to meet claims; the company may have ceased to exist as a legal entity and therefore there is no one to pursue a claim against a professional indemnity insurance (PII) policy, for example, or the policy does not respond to a claim.

Circumstances where a licensee held a PII policy, but the policy did not respond to compensate consumers typically arise because of policy exclusions or because of multiple clients suffering monetary loss at the same time, thereby exhausting the limit or maximum aggregate limit of the licensee's PI insurance policy and any capital reserves it may have had.

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ASIC has made submissions to various Government and Parliamentary inquiries, e.g. the Financial System Inquiry, that one option to address the issue of uncompensated consumer losses is the introduction of a last resort compensation scheme where all other options have been exhausted.

296. See question 295.

Uncompensated consumer losses arising from unpaid EDR determinations are of significant concern to ASIC as they threaten to erode consumer trust and confidence in the financial services sector and the effectiveness of the dispute resolution system.

We have active engagement with the EDR schemes on this issue and we are exploring all of our regulatory tools and options in an effort to tackle this problem.