Senate Economics Legislation Committee

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Additional Estimates

2016 - 2017

Division/Agency: Australian Securities and Investment Commission
Question No: 170
Topic: Fees for No Service Report
Reference: Written
Senator: Ketter, Chris

Question:

In relation to the fees for no service, Mr Medcraft, you said: Only one bank came to us and reported it, the rest we had to go out and discover it. The ABA's release, which was just prior to those comments, says: It is important to recognise that the banks had first identified the problem, proactively reported it to ASIC and are well on the way to resolving it. There is a bit of an inconsistency there in terms of who and how many. Did they come en masse to you to say, 'We've identified this as a problem,' or, as per your comments, did you have to go out and find—

Mr Medcraft: My understanding is we had one bank report it to us, and then—

Ms Bird: We had a significant report made to us. Then we put out a media release saying that this was an issue, and we got a number of other reports as well.

Mr Kell: In response to that release.

Ms Bird: But I would really have to check through the timing, because the fee for no service is a collection of different sorts of breaches. When the breach reports came in is a matter for debate. We are at the point now where four institutions have put in breach reports, and we are dealing with the mediation for those plus we have asked all of the institutions to have a much more proactive, broader look across their whole business to make sure they do not have other problems in those businesses as well.

Mr Medcraft: It was, perhaps, the right nudge.

1) In relation to the ASIC Fees for No service Report, on what date was the first report by a bank made to ASIC? What prompted this report to be made?

2) On what date did the issue come to ASIC's attention?

3) Please identify the media release referred to by Ms Bird.

4) On what dates did breach reports first come in to ASIC from each of the other institutions captured by the Fees for No Service Report? What prompted these reports to come in?

5) The Fees for No Service report states that "fee-for-service failures show that AFS licensees and advisers prioritised revenue and fee generation over the delivery of advice and services paid for by their customers. For example, we are concerned that: (a) licensees did not have systems in place to ensure that services were being provided in return for the fees being charged. By contrast, the licensees had much more effective systems for recording incoming revenue." (page 39-40). Can ASIC elaborate further on these comments, and provide further explanation as to the differences between the systems and the reasons for that?

6) ASIC considers "that the advisers were allowed to have many more ongoing advice customers on their books than they would have been able to monitor or advise on an annual basis. For example, some advisers had many hundreds of customers—often having 'inherited' these customers, and the stream of fee revenue, from other advisers who had departed from the licensee." (page 39-40) What does ASIC consider to be the reasons for this situation?

7) Please provide an update on compensation outcomes in relation to Fees for No Service

report. What are the latest total estimates for future compensation? How much compensation has been paid to date? When does ASIC expect all compensation to be finalised? Is this proceeding as to schedule?

Answer:

1. On 15 August 2013 ANZ Financial Planning, a business operating under the Australian Financial Services licence of Australia and New Zealand Banking Corporation, lodged a significant breach notification in relation to the failure to deliver services to customers under the Prime Access Service package. The breach notification was prompted by ANZ finding that for some customers, there was no evidence in ANZ's 'Coin' software system that an annual review had been undertaken and / or a written report provided to the customers. At that time ANZ believed that the failure affected a small percentage of customers.
2. 15 August 2013.
3. 16 April 2015, 15-081MR, *ASIC update on Wealth Management Project - Investigation into charging of advice fees without providing advice.*
4. ASIC considers that it is generally required to keep the content of breach reports confidential but notes that it received fees for no service breach reports from licensees that are captured by ASIC Report 499 *Financial advice: fees for no service* (REP 499) on the following dates:
    - 13 August 2014;
    - 9 September 2014;
    - 5 December 2014;
    - 23 December 2014;
    - 13 February 2015;
    - 27 March 2015;
    - 27 May 2015;
    - 5 June 2015;
    - 17 July 2015;
    - 31 July 2015;
    - 31 August 2015; and
    - 24 December 2015.
5. ASIC found that in general the banks and licensees that reported significant breaches were able to identify, from their revenue systems, the population of potentially affected customers who were charged ongoing advice fees. However, the banks and licensees did not generally have systems in place to efficiently identify whether or not those customers received the services they were charged for – this process took much longer and in some cases is still ongoing. In some cases, licensees had difficulties identifying the reason the revenue was received, and whether it created an obligation to actually provide a service or not.

    REP 499 describes how the project covers two types of failures:

    - a customer who has a financial adviser pays fees to receive ongoing advice from that adviser, but the adviser does not provide the advice; or

- a customer who does not have a financial adviser (because, for example, the adviser departed the advice licensee or retired) is charged a fee for ongoing advice, which the customer does not receive.

In general customers affected by the second scenario have been compensated sooner than customers in the first scenario. This is because in the second scenario banks and licensees have been able to identify, from their systems, that customers were charged fees but were not allocated to a financial adviser. However, in the first scenario, banks and licensees were able to identify from their systems that customers were charged ongoing advice fees and were allocated to a financial adviser (based on data including the flow of fees and commissions to the adviser), but not whether service was provided to the customer.

6. It is common in the financial advice industry for financial advice to have large books of customers. This scenario can arise because of a number of reasons including:

   - When an employed financial adviser departs a licensee (for example, due to resignation or retirement), the adviser's customer book may be assigned to another employed financial adviser.
   - An authorised representative of a licensee may purchase a book of customer from another licensee or authorised representative.

   In September 2014 ASIC Report 407 Review of the financial advice industry's implementation of the FOFA reforms (REP 407) reported that, based on a sample of 55 AFS licensees: financial advisers with large AFS licensees tended to have more retail customers (469 on average) than advisers with medium (281), small (253) and very small (161) AFS licensees. REP 407 also found that large licensees were more likely to have a higher proportion of customers who had not received advice in the previous twelve months.

7. As at 31 March 2017, based on data reported to ASIC by the banks and licensees:

   - Compensation of $41.7 million had been paid, or agreed to be paid, to over 38,000 customers for fees for no service failures.
   - Based on estimates provided by the banks and licensees, further compensation of approximately $162 million is expected to be paid to 292,000 customers. This includes a failure to provide general advice services to approximately 220,000 customers of MLC Nominees Pty Ltd (whose assets are now under the trusteeship of a different entity, NULIS Nominees Pty Ltd).
   - ASIC expects the majority of expected compensation will be paid by the banks and licensees in 2017.

   ASIC is committed to public reporting in relation to progress, and intends to issue a public update on review and compensation outcomes in April 2017, and thereafter every six months until the completion of the breach remediation activities.