

Senate Economics Legislation Committee

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Supplementary Budget Estimates

2014 - 2015

Department/Agency: ASIC

Question: SBT4283

Topic: Scoping of financial advice

Reference: Hansard page no. 68-69 - 22 October 2014

Senator: Madigan, John

Question:

Senator MADIGAN: In ASIC's recent report, you identified that there is a significant problem with inappropriate scoping of financial advice. Can you explain how scoping might lead to poor outcomes for consumers?

Ms Bird: In circumstances where the adviser did not take into account the full facts and circumstances of the person in front of them; so, they have said, 'I am looking at this particular narrow issue, but I have failed to look at other issues, which would clearly impact them.' They might have ignored the super. They have said, 'I am not going to look at the life insurance that you might have in super,' or something like that. It is circumstances where the adviser has narrowed the scope of advice in a way that we would consider not to be appropriate.

Senator MADIGAN: Do the recent FoFA changes and the current FoFA bill establish a mechanism whereby an adviser can get a client to agree to leave things out of the advice, or limit the scope?

Senator Cormann: Sorry, if I can take that question. In the way you are positioning it, it is as if this is entirely driven by the adviser. If your question whether there are changes the adviser and the client can agree on the scope on the advice, yes, absolutely. That was a deliberate and intentional change. The reason being is that we do not want a client to be forced to pay way more because there is a legal requirement for advice to be provided on a whole range of things, many of which are likely to be irrelevant to the specific needs and requirements of the client at that time. It is really the equivalent.

If you wanted to go and buy a tyre of a car, but there is a legal requirement that there has to be a full explanation on every aspect of the car as a whole, then obviously that is going to become a more expensive process than if you are able to say that in this particular circumstance I have got this particular need. I am keen to get some advice on this particular issue, then the client and the adviser, in our view, should be able to reach an agreement to limit the area on which advice is sought in order to keep the costs down for the client.

The important point here, and I will go back to what I said to Senator Dastyari before, is that none of this removes the overall requirement for the adviser to act in the best interests of the clients. While they might be able to limit the scope of the advice consistent with the changes we have made in order to bring down costs, the adviser continues to be required under the law to act in the best interests of the client.

Senator MADIGAN: In ASIC's experience, to what extent did consumers understand the impact of limiting the scope of the advice? Did they appreciate the impact of matters left out of the advice? Did they appreciate that the adviser possibly benefited from the way the advice was scoped?

Mr Kell: In relation to the poor quality advice that we saw, for example we believe it did not satisfy the best interest test, often the client would not have understood that issue, that they

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have breached their best interest in other tests.

Ms Bird: If I can say, we have seen many circumstances of inappropriately scoped advice, not just in this project but also in the shadow shot we did in relation to superannuation. We would say that when the adviser scopes the advice, that scoping has to be in the best interests of the client and the advice still has to be appropriate.

Senator Cormann: That is the key point. If you are asking me, 'Are there still people out there that break the law?', I suspect that there are still people out there that are breaking the law. There are still people out there that are speeding, there are still people out there that are stealing, there are still people out there that are killing people, and there are probably still people who are not complying with all of the requirements of our Corporations Law. They should, and of course ASIC's job is to enforce compliance. The key point here, though, is that if an adviser inappropriately scopes the advice without acting in the best interests of the client, he or she would be breaching the law. That is of course—

Senator DASTYARI: Who has the claws to investigate that?

Senator Cormann: The point being here is that the law obviously changed somewhat recently, that is the initial changes to FoFA that have been in place for a reasonably short period of time, and of course ASIC is working to lift compliance with the law. Part of the reason why ASIC went through this exercise that was reported on recently in relation to risk insurance is that it is part of its job to lift compliance with the law.

Mr Price: It may be worth noting that in about 2010, I think, there was an ASIC report on access to advice. That indicated that a substantial number of people who do receive advice actually do not want a full financial plan; they want something that is more specific to their circumstances.

Senator MADIGAN: In the 37 per cent of cases that you identified in your life insurance report where the advice failed, how many of these cases involved inappropriate scoping and advice?

Ms Bird: I could not tell you that, I would have to take that on notice.

Senator MADIGAN: Thank you.

Answer:

Of the 37 per cent where we identified the advice failed, 77 per cent of the 37 percent (55 advice files) involved a failure relating to scoping of advice.

We used Regulatory Guide 175: *Licensing: Financial product advisers – Conduct and disclosure* when assessing whether scoping was an aspect of whether client advice passed or failed.

We consider 'inappropriate scoping' is *advice that been inconsistently scoped with the client's relevant circumstances and the subject matter of the advice they are seeking*. However, it is important to note that this is only one aspect of our client file and advice assessment.

An extract of the relevant paragraphs of [Regulatory Guide 175: Licensing: Financial product advisers – Conduct and disclosure](#).

The subject matter of the advice sought by the client
RG 175.257

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The next element of the safe harbour requires an advice provider to identify the subject matter of the advice sought by the client (whether explicitly or implicitly): s961B(2)(b)(i). This is relevant to determining the scope of the advice.

RG 175.258

The subject matter of the advice could be a goal the client is seeking to achieve and a strategy for reaching their goal, as well as, or instead of, a recommendation about specific financial products or classes of financial product. The request for advice could also be triggered by an event or situation (e.g. divorce, redundancy or receiving an inheritance).

RG 175.259

Either an advice provider or the client may suggest limiting or revising the subject matter of advice sought by the client. If a client seeks advice on a revised subject matter, the advice provider must comply with the best interests duty and related obligations in Div 2 of Pt 7.7A in relation to the revised subject matter.

Scope of the advice

RG 175.260

An advice provider can determine the scope of the advice only after identifying the subject matter of the advice sought by the client.

RG 175.261

An advice provider needs to use their judgement in deciding on the scope of the advice. An advice provider must determine the scope of the advice in a way that is consistent with the client's relevant circumstances and the subject matter of the advice they are seeking.

RG 175.262

It is possible to limit the scope of advice to a single issue if this is consistent with the subject matter of advice sought by the client: see Section D of RG 244.