

Australian Securities and Investments Commission
Answers to Questions On Notice

Committee	House of Representatives Standing Committee on Economics
Agency	Australian Securities and Investments Commission
Question No.	ASIC22QW
Topic	ASIC funding of consumer groups
Reference	Written
Committee member	Mr Jason Falinski MP

Question:

In [Question on Notice 008](#) after the 18 November Parliamentary Joint Committee on Corporations and Financial Services hearing, I asked about ASIC funding of consumer groups. In response ASIC advised that funding of consumer groups was a practice in the past as a direct outcome of enforceable undertakings entered into by banks and other financial firms.

(a) When did this practice cease?

(b) Previous answers to questions regarding enforceable undertakings have not provided details of community benefit payments. ASIC has instead invited me to look at all the enforceable undertakings on the ASIC register. Could you please provide the total sum of money that has been paid through these means?

(c) What other programs do ASIC have where monies are paid to advocate groups or external advocate groups?

Answer:

(a) When did this practice cease?

In response to Question No: 011 – 01 (d), ASIC confirmed that it does not directly fund consumer groups.

In that response, we explained that ASIC has in the past, entered into Court Enforceable Undertakings (CEU) with banks and other financial firms that include an agreement to make a community services payment (sometimes referred to as a community benefit payment) to a charity or other appropriate recipient.

The purpose of these payments has been to fund the recipients to provide particular services, education or information to consumers within the cohort who may have been / were likely to have been affected by the relevant misconduct (e.g. older people, Indigenous consumers, people with low financial capability).

ASIC has not formally ceased using CEU which remain a regulatory tool open to use by ASIC, and a community services payment may also be considered appropriate in any future CEU. A decision to provide for a community services payment in an CEU will be subject to considerations such as the nature of the misconduct; terms of proposed CEU; and ASIC's guidance in Regulatory Guide 100: *Enforceable undertakings* (RG 100) with the relevant considerations from that RG set out below.

RG 100.36 An enforceable undertaking may require a promisor to perform a community service obligation such as disgorging profits from unlawful conduct by paying money to affected consumers, funding an education program for consumers, or paying money to a charity or community organisation.

RG 100.37 We will generally apply the following principles when considering whether to accept an enforceable undertaking that includes a community service obligation:

- a) priority will be given to payments directed to compensating persons who have suffered loss as a result of the conduct the subject of the enforceable undertaking;
- b) if persons affected by the conduct the subject of the enforceable undertaking cannot be identified, or it is impracticable to compensate them, we may accept an undertaking to fund an education program, or pay money to a charity or community organisation;
- c) we will not take account of an offer to perform a community service obligation in deciding whether to refer a brief to the Commonwealth Director of Public Prosecutions (CDPP) in respect of the promisor;
- d) the community service obligation should be directed to purposes related to the conduct the subject of the enforceable undertaking; and
- e) generally, we will not accept an enforceable undertaking that provides for the payment of money to ASIC or to a third party where ASIC has direct control over how that money is spent. We may depart from this principle in order to ensure the payment relates to the alleged conduct, and/or to ensure proper accountability as to how money is spent. For example, we may accept:
 - (i) a community service payment to ASIC to produce specified education materials; or
 - (ii) a payment to a third party to produce or fund an education program where ASIC has control over the timeframe, subject matter, target population, medium of communication, or to include reporting obligations.

RG 100.38 The amount of a community service obligation should generally be proportional to the alleged conduct having regard to:

- a) the penalties that could be applied in relation to the alleged conduct; and
- b) the amount of profit made, or loss avoided, as a result of the conduct the subject of the enforceable undertaking.

(b) Previous answers to questions regarding enforceable undertakings have not provided details of community benefit payments. ASIC has instead invited me to look at all the enforceable undertakings on the ASIC register. Could you please provide the total sum of money that has been paid through these means?

Financial services firms have paid **\$94.5 M** in community services payments as part of Court Enforceable Undertakings (CEU) in the past ten years (to calendar year 2011).

The details of these payments are contained in the text of each CEU and summarised in Table 1.

(c) What other programs do ASIC have where monies are paid to advocate groups or external advocate groups?

In response to Question No: 011 - 01 & 02, ASIC set out the allocation of funds for the preparation of consumer submissions or consumer research under the auspices of ASIC's Consumer Advisory Panel (CAP) for the past ten years.

For completeness, we refer to our response to Question No: 011 – 01 (d) in which we stated that ASIC has in the past – and continues to – monitor some consumer remediation programs conducted by financial firms. Where funds are not able to be returned directly to all of the consumers affected by the firm's misconduct or error, then the residual remediation funds is

sometimes paid by the firm to an appropriate organisation with a community service purpose. This is consistent with ASIC guidance about remediation in RG 256 (currently under review) which states that firms must not profit from the misconduct or other compliance failure (see paragraph 135). That is, that they cannot hold onto funds because they have lost contact with the affected consumers.

ASIC has records of almost \$9 M in such payments being made to charitable bodies and not for profit NGOs including community legal centres, for example, where ASIC has had some involvement in the remediation process. Such payments generally relate to services, education, or information to consumers within the cohort who may have been / were likely to have been affected by the relevant misconduct. This is, however, only a portion of the total financial consumer remediations that have taken place. There are many other financial sector remediations completed or underway which are managed by financial firms without any involvement of - or reporting to - ASIC. we understand that a proportion of these will also involve payments to a relevant charitable or not for profit organisation, and both the selection of the recipient and the use to which funds are to be applied will be determined by the financial firm.

In both CEUs and non-CEU remediation processes giving rise to a payment, the firm directly pays the relevant charitable recipient. For the payments under a CEU, and for payments arising through a remediation that ASIC has been closely monitoring, ASIC requires recipients to report on their use of these funds.

ASIC is currently consulting in Consultation Paper 335: *Consumer remediation: Update to RG 256* (CP 335) about our proposals to clarify current guidance when remediation money cannot be returned to consumers.

Our proposed guidance is that if a licensee cannot, despite best endeavours, find consumers to pay them compensation (including when cheques remain uncashed):

- (a) the licensee must not profit from the failure (see the current RG 256 at RG 256.135);
- (b) the residual funds should be sent to a relevant state or federal unclaimed money regime if available; and
- (c) if the licensee is unable to lodge money with an unclaimed money regime, as a last resort, the money should be paid as a residual remediation payment to a charity or not-for-profit organisation registered with the Australian Charities and Not-for Profits Commission.

Finally, for completeness and transparency, from time to time ASIC meets the reasonable travel or related costs for consumer stakeholders in course of financial capability initiatives, such as participation on the Government's Financial Literacy Board, or the work of ASIC's Indigenous Outreach Program (IOP).

Table 1 – Payments made by firms to recipient organisations under court enforceable undertakings

The table is presented with the most recent payment appearing at the top.

Date of EU	EU number	Firm	Recipient	Amount	Date paid	Project summary
29/10/2018	30140656	Local Appliance Rentals	The Smith Family	\$103,729	18/01/2019	Learning for Life Program -supporting young people to gain Certificate in Financial services (see report on Register)
22/10/2018	30445123	Mr Eli Ekman	Ecstra	\$10,000	11/10/2018	Ecstra provides grants to NGOs for financial capability projects
9/07/2018	30133832	CBA (BBSW)	Ecstra	\$15,000,000	20/07/2018	Ecstra provides grants to NGOs for financial capability projects
5/07/2018	30219284	ANZ - My Super	Super Consumers' Centre	\$1,250,000	31/07/2018	Consumer education and resources relating to superannuation (see reports on EU Register)
3/07/2018	30219285	CBA - MySuper	Super Consumers' Centre	\$1,250,000	27/07/2018	
2/07/2018	30133804	Goldman Sachs	Ecstra	\$500,000	25/07/2018	Ecstra provides grants to NGOs for financial capability projects
20/06/2018	30133804	Vantage Global Prime	The Ethics Centre	\$95,000	22/7/2018	Range of projects (report coming shortly)
24/04/2018	30133642	Malouf	Financial Counselling Foundation (varied from FLA)	\$750,605	2 payments 30/06/20 and 23/11/20	FCF provides grants to NGOs for financial counselling services – this program focused on people affected by domestic and family violence
9/04/2018	30219203 & 30219204	CBA (FFNS)	Dementia Australia	\$175,000	18/06/2018	Dementia-Friendly Banking Initiative
			Indigenous Consumer	\$400,000	05/06/2018	Financial counselling, financial

			Assistance Network			capability and education programs
			Financial Counselling Foundation	\$1,200,000	24/05/2018	FCF provides grants to NGOs for financial counselling services – this focused on increasing capacity of the National Debt Helpline as well as research into Indigenous helpline.
			COTA	\$175,000	08/06/2018	Projects relating to older people
			National Seniors	\$175,000	05/06/2018	Financial Information Desk
			Seniors Rights Service NSW	\$175,000	21/06/2018	Support for range of services
			The Ethics Centre	\$400,000	06/06/2018	Range of projects (report coming shortly)
			Settlement Services International	\$300,000	05/06/2018	Financial capability programs for refugees and migrants in western Sydney
29/03/2018	30219182	ANZ (FFNS)	Financial Literacy Australia (now administered by Ecstra)	\$1,375,000	22/05/2018	Ecstra provides grants to NGOs for financial capability projects
			The Ethics Centre	\$250,000	15/06/2018	Range of projects (report coming shortly)
			Financial Counselling Australia	\$1,375,000	22/05/2018	Support for the National Debt Helpline
16/02/2018	30219140	David Lawrence Orth	Financial Literacy Australia (now administered by Ecstra)	\$400,000	27/02/2018	Ecstra provides grants to NGOs for financial capability projects
13/02/2018	30133494	Frank John Tearle	The Ethics Centre	\$100,000	15/03/2018	Range of projects (report coming

						shortly)
13/02/2018	30133506	Justin Kurt Epstein	The Ethics Centre	\$100,000	12/03/2018	Range of projects (report coming shortly)
23/01/2018	30133417	Thorn Australia (Radio Rentals)	Financial Counselling Foundation	\$2,425,140	08/01/2020 & 26/02/2020	FCF provides grants to NGOs for financial counselling services – this program focused on people affected by domestic and family violence
24/11/2017	28424908	Foster Stockbroking	The Ethics Centre	\$80,000	13/12/2017	Range of projects (report coming shortly)
20/11/2017	2842906	ANZ (BBSW)	Ecstra	\$20,000,000	22/05/2018	Ecstra provides grants to NGOs for financial capability projects
20/11/2017	28424907	NAB (BBSW)	Ecstra	\$20,000,000	25/05/2018	Ecstra provides grants to NGOs for financial capability projects
23/05/2017	29490310	Motor Finance Wizard, i.e: Affordable Car Loan	Brotherhood of St Laurence	\$153,761	30/04/2018	Affordable Cars for Employment (ACE) pilot program
19/05/2017	29337448	Macquarie Bank Limited	The Smith Family	\$2,000,000	02/06/2017	Financial Literacy Project including roll-out of Cert 1 in Financial Literacy
22/03/2017	29506346	Barclays entities	The Ethics Centre	\$500,000	12/04/2017	Range of projects (report coming shortly)
15/03/2017	29804839	Westpac (FX)	Financial Literacy Australia (now administered by Ecstra)	\$3,000,000	15/03/2017	Ecstra provides grants to NGOs for financial capability projects
15/03/2017	29804840	ANZ (FX)	Financial Literacy Australia (now administered by Ecstra)	\$3,000,000	15/03/2017	Ecstra provides grants to NGOs for financial capability projects

21/12/2016	2974437	CBA (FX)	Financial Literacy Australia (now administered by Ecstra)	\$2,500,000	04/01/2017	Ecstra provides grants to NGOs for financial capability projects - this program focused on projects relating to older people
21/12/2016	29744349	NAB (FX)	Financial Literacy Australia (now administered by Ecstra)	\$2,500,000	23/01/2017	Ecstra provides grants to NGOs for financial capability projects – focus on older people
8/12/2016	29804349	Hochtief AG	Australian Shareholders Association	\$103,400	8/12/2016	Advancement of shareholder education in Australia, and company monitoring
			The First Nations Foundation	\$103,400	8/12/2016	Initiatives with the Financial Services Council on My Moola - the Foundation's adult financial literacy program.
2/12/2016	29804328	BMW Australia Finance Limited	Consumer Action Law Centre	\$750,000	28/06/2017	Casework for vulnerable and disadvantaged consumers, and enhanced website to provide consumer education
			Financial Counselling Foundation	\$2,500,000	14/02/2017	FCF provides grants to NGOs for financial counselling services – focus on Indigenous people and Townsville residents after the flood.
			Moneymob	\$120,000	28/06/2017	Talkabout Loans and Phones Project
			Financial Rights Legal Centre	\$630,000	28/06/2017	Support for the centre's work in credit and debt advice and casework services
			Financial Counselling Australia	\$1,000,000	28/06/2017	Funding for the National Debt Helpline

4/11/2016	29744238	Cash Converters	The Salvation Army - WA	\$312,610	28/11/2017	Support for WA Doorways Program - support to people break cycle of debt/poverty
18/03/2016	29533337	Nimble Australia	Financial Counselling Australia	\$216,776	20/07/2016	Range of tools to help build the capabilities of financial counsellors
24/02/2016	29533136	ACE Insurance Ltd	The Smith Family	\$500,000	24/03/2017	Funding to support the development and delivery of the Certificate 1 Financial Literacy Program
			Financial Counselling Australia	\$500,000	24/03/2017	Range of tools to help build the capabilities of financial counsellors
22/12/2015	29305824	Angus Aitken & Bell Potter Securities	Financial Literacy Australia	\$80,000	15/01/2016	FLA provided grants to NGOs for financial literacy projects
22/12/2015	29305829	Philip King and Regal Funds Management	Financial Literacy Australia	\$80,000	12/01/2016	FLA provided grants to NGOs for financial literacy projects
26/05/2015	29269078	Amazing Rentals	North Australian Aboriginal Justice Agency	\$5,000	26/05/2015	Civil legal advice and services to Aboriginal people in the NT
			Top End Women's Legal Service	\$5,000	26/05/2015	
5/12/2014	28965993	Interactive Brokers LLC	Financial Rights Legal Centre	\$100,000	5/12/2014	Consumer education including video warning consumers about debt management firms
21/07/2014	28492040 and 28492039	Royal Bank of Scotland (BBSW)	Financial Literacy Australia	\$1,600,000	01/08/2014	FLA provided grants to NGOs for financial literacy projects
3/02/2014	28399424	Home Essentials Australia &	Indigenous Consumer Assistance	\$125,000	3/02/2014	Financial capability and other services for Indigenous

		others	Network			people
			Pilbara Community Legal Service	\$125,000	3/02/2014	Community legal services particularly for Indigenous people
28/01/2014	28399392	BNP Paribas (BBSW)	Financial Literacy Australia	\$1,000,000	31/03/2014	FLA provided grants to NGOs for financial literacy projects
23/12/2013	28553827	NAB	Financial Literacy Australia	\$2,000,000	31/03/2014	FLA provided grants to NGOs for financial literacy projects
23/12/2013	28553828	UBS AG	Financial Literacy Australia	\$1,000,000	02/04/2014	FLA provided grants to NGOs for financial literacy projects