

Parliamentary Joint Committee on Corporations and Financial Services
Australian Securities and Investments Commission
Answers to Written Questions on Notice

Question No: 013-01
Committee Member: Mr Falinski
Topic: Superannuation funds compliance with advice requirements

Question:

At a public hearing of the House Economics Committee on 30 June 2020, it was asked of Industry Fund Services (IFS) under what law they were offering “limited personal advice”. In answer to this question, IFS stated:

ASIC’s Report 639 Financial advice by superannuation funds examined a sample of intra-fund and scaled advice provided by superannuation funds. The majority of that advice was compliant with s961B, 961G and 961J of the Corporations Act. ASIC provided additional tips to trustees and advice providers to ensure compliant scaled advice and Intra-fund advice.

As you can see from the extracts below, ASIC did not report on compliance rates for industry funds, but when they looked at intra-fund and scaled advice, the overall pass rates were just 56 per cent. Whilst the reference to a majority may well be technically correct (i.e. greater than 50 per cent), it is hardly an outstanding performance. And in fact, IFS would fit into the category of advice provided by a related party, which has an overall pass rate of 47 per cent

Compliance rates across funds types

Our advice reviews showed that the compliance rate for retail, industry, corporate and public sector fund types varied within a moderate range. Due to the different sample sizes, it is not possible to fairly compare the overall quality of advice based on fund type. As a result, it would not be appropriate to draw definitive conclusions that the advice provided to members of one fund type was more compliant than the advice provided to members of another fund type.

Table 9: Percentage of compliant files by delivery channel

Delivery channel	Number of files	Compliant with s961B	Compliant with s961G	Compliant with s961J	Overall compliance rate
Internally employed advice providers	37	57%	65%	84%	57%
Advice providers employed by a related party	112	48%	60%	70%	47%
Third-party advice providers	84	46%	75%	73%	46%

Note: The overall rate of compliant advice represents files that were assessed as complying with the best interests duty and related obligations.

Table 10: Percentage of compliant files by advice type

Advice type	Number of files	Compliant with s961B	Compliant with s961G	Compliant with s961J	Overall compliance rate
Intra-fund	32	56%	59%	81%	56%
Scaled	68	57%	65%	79%	56%
Comprehensive	133	43%	68%	68%	43%

Note: The overall compliance rate represents files that were assessed as complying with the best interests duty and related obligations.

In contrast, when ASIC’s targeted Report 413 on life insurance advice revealed a 37 per cent failure rate, there was outrage and the whole Life Insurance Framework process commenced in response.

Therefore:

- a) Given the above, what action has ASIC taken to shut down this very dangerous form of advice doing such great consumer harm?
- b) Given that ASIC has taken pre-emptive action against real estate agents on the basis of a letter from a shadow minister, why has ASIC not taken action in this instance?
- c) Can the Chair of ASIC give the Parliament a commitment that ASIC will undertake its regulatory duties now that this matter has been brought formally to its attention?
- d) Can ASIC give the Parliament a commitment that ASIC will exercise its regulatory duties without favour and in an impartial way?

Answer:

- a) ASIC is very supportive of the provision of good quality limited advice. We do not consider limited advice to be a dangerous form of advice.
- b) ASIC has taken appropriate regulatory action in this matter. This matter is not analogous to the possible inadvertent provision of unlicensed financial advice by some real estate agents.
- c) ASIC always undertakes its regulatory duties in a diligent and appropriate manner.
- d) Yes.