

QoN 010-14 – Comparison of reports 413 and 639

In referencing the different approach by ASIC to the release of ASIC Report 413 on life insurance advice and Report 639 on superannuation advice, Commissioner Press made the point that the two reports were not comparable, that the Super report was a fact finding exercise, that they were a very different scale and a different process was employed. ASIC Report 413 was based upon 202 files. ASIC Report 639 was based upon 233 files, a broadly similar scale. Admittedly Report 413 was a targeted report focusing on advisers who were generating more life insurance business and had higher lapse rates. Report 639 generated a materially worse result, with a 49% pass rate, as compared to a 63% pass rate for Report 413. Otherwise they seem roughly comparable. Can you please clarify why you think these two reports are not comparable, what the key differences are, and what has changed so significantly between 2014 and 2019?

Answer:

That advice review component of REP 639 was different to the advice review component of REP 413 and not comparable due to a number key differences as follows:

- Prevailing legal requirements - the advice reviewed for REP 413 was a combination of advice provided before the Future of Financial Advice (FOFA) reforms became mandatory and after. For advice that was provided pre-FOFA, the law required advisers to have a reasonable basis for the advice they provided and for it to comply with s945A of the Corporations Act 2001 (the Act). The fail rate for pre-FOFA advice was 41%. For advice provided post-FOFA, the law requires compliance with a range of obligations called the Best Interests Duty and related obligations contained in s961B, s961G, s961H and s961J of the Act. The fail rate for post-FOFA advice was 33%.
- Approach to review of post-FOFA advice for REP 413 – given that the law was new, in our review of post-FOFA advice for REP413 where there was any doubt as to the final rating, we gave advisers the benefit of the doubt.
- Approach to review of advice for REP 639 – when we reviewed advice for REP 639, given the law was well established, we assessed advice based on records contained on the file. While we found that 36% of files did not demonstrate full compliance with the best interests duty and related obligations, this was as a result of procedural, disclosure or record keeping deficiencies and did not indicate the member was at risk of suffering financial or non-financial detriment. A smaller subset of 15% of files indicated that the member was at risk of suffering financial or non-financial detriment.
- Identifying harmful advice - ASIC has refined its processes for reporting advice review compliance since October 2014 when REP 413 was published. In REP 639 and other more recent reports, we identify all non-compliant advice but distinguish in our reporting about non-compliant advice between advice that indicates a risk of consumer harm (referred to as financial or non-financial detriment in REP 639) and advice that does not. It is the former category of advice that causes us concern.