



ASIC
Australian Securities &
Investments Commission

Committee	Parliamentary Joint Committee on Corporations and Financial Services
Inquiry	Oversight of ASIC, the Takeovers Panel and the Corporations Legislation No.1 of the 46th Parliament
Question No.	014
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Topic	Remediation timeframes
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Committee member	Senator O'Neill

Question

Senator O'NEILL: Is there a deadline for the remediation to be completed?

Ms Chester: The ones that we have line of vision on, we are aware of the time frames they are working to and we're happy to share that information with you, and I am happy to take that question on notice. But at the end of the day, the deadline is set by the boards of these entities. They are on notice from ASIC and from the parliament about the consequences of them not dealing with these remediations in an efficient, honest and fair way. We're hoping this guidance, which is incredibly comprehensive and strengthened, will remove any of the last stumbling blocks in the confidence and speed with which the boards can get this money back to consumers. We have made concerted efforts to do this in the last two to three years. We think the guidance will give them the confidence to get on with it without worrying about any other obligations they may have.

Answer

Licensees operating in the Australian financial system are required to conduct remediations in an efficient, honest and fair way. ASIC is currently consulting on an updated draft guide on consumer remediation which includes guidance about how licensees can increase the efficiency of a remediation, in line with their obligations, without sacrificing quality consumer outcomes: see 21-307 MR at <https://asic.gov.au/about-asic/news-centre/find-a-media-release/2021-releases/21-307mr-asic-consults-on-consumer-remediation-draft-guidance/>, and Draft RG 000 *Consumer remediation* at RG 000.52–000.56, and RG 000.118–20.

While ASIC does have some regulatory tools available to address misconduct and poor remediation outcomes, ASIC does not have powers to direct licensees to conduct remediations within a particular timeframe.

For completeness, in relation to reportable situations arising on or after 1 October 2021 certain licensees are subject to additional notification, investigation and remediation obligations under Part 7.6, Division 3, Subdivision C of the *Corporations Act 2001* and Part 2-2, Division 5, Subdivision C of the *National Consumer Credit Protection Act 2009*.

These obligations require licensees who provide personal advice or mortgage broking services to notify, investigate and remediate affected clients who have suffered loss in particular circumstances within certain timeframes. That said, there is no overall prescribed timeframe for the completion of a remediation given the investigation must be completed 'as soon as reasonably practicable'.

If the obligations are triggered, the licensee must:

- take reasonable steps to notify clients of the reportable situation within 30 days;
- start an investigation into the nature and full extent of the reportable situation within 30 days. This investigation must be completed 'as soon as reasonably practicable' after it starts;

- take reasonable steps to notify affected clients in writing of the outcome of the investigation within 10 days of the investigation concluding; and
- take reasonable steps to pay affected clients remediation of an amount equal to the loss or damage suffered (if there is an enforceable right to recover) within 30 days of the investigation concluding.

This legislation only relates to a particular sub-set of licensees, and does not cover all misconduct or other failures that may cause loss to consumers within the Australian financial system. For more information, please see ASIC Information Sheet 259 *Complying with the notify, investigate and remediate obligations* at <https://asic.gov.au/regulatory-resources/financial-services/breach-reporting-by-afs-licensees/complying-with-the-notify-investigate-and-remediate-obligations/>.

ASIC data on remediation timeframes

ASIC is currently monitoring 64 remediations across the financial system that should see the return of approximately \$5.4 billion to over 5.6 million consumers upon finalisation. To date, \$2.78 billion has been returned or offered to consumers and another \$2.62 billion is still expected to be repaid.

See **Table 1** below for an outline of the latest estimated timeframes for current remediation activities. Note this information has been provided by the relevant licensees, and the accuracy will generally depend on what stage the remediation is up to. For example, at the early investigation and scoping stages it is often very difficult to project the likely remediation completion date as the licensee would not yet understand the full scope and extent of the misconduct (hence why some licensees may report an ‘unknown’ finalisation date). Further challenges and delays may be experienced towards the end of the remediation when licensees are trying to find and contact affected consumers to provide payment.

Whether the timeframe is delayed beyond initial projections will usually depend on the complexity and age of the misconduct, the extent and number of affected products, brands, systems or sales channels, the accessibility of records or data systems and the quality of customer contact and payment information.

Table 1 – Estimated remediation timeframes and compensation to be paid as at November 2021

Estimated completion date	Number of remediations	Total compensation to be paid upon completion of the remediations (millions) ¹
December 2021	30	\$1,848 million
January to June 2022	13	\$2,144 million
July to December 2022	5	\$991 million
2023	1	\$380 million
Unknown ²	15	TBC

Notes to Table 1

¹These total figures are based on estimates provided by licensees, and are subject to change.

²ASIC does not know the indicative timeframes for these remediations. This is still subject to further investigation by the licensees.

With respect to the 64 remediations in Table 1, \$2.78 billion has so far been returned or offered to consumers based on information available to ASIC as of November 2021. While many remediation programs have commenced making payments to consumers (including some estimated to be completed in late 2022 or 2023), the \$2.78 billion in compensation paid or offered mostly comes from remediations estimated to be completed by December 2021, and between January and June 2022.

For fees for no service misconduct remediations in particular, it is ASIC’s current intention to publish more detailed information in February 2022 relating to the institutions’ expected completion dates.