

Parliamentary Joint Committee on Corporations and Financial Services

Australian Securities and Investments Commission

Answers to Questions on Notice

Public hearing: 28 February 2020

Question No: 015
Reference: 23

Question:

Senator O'NEILL: Can I ask you to provide, on notice, details of that so we understand something about what 'novel' means as well.

Ms Bird: We have put out media releases, for example, in the fees-for-no-service remediation, where we are overseeing the remediation of the large institutions. We've been putting out regular media releases which update the figures. We did one in February which had the total remediation offered and paid—that's into consumer's hands—

Senator O'NEILL: Could you put those numbers on the record please?

Ms Bird: \$607.8 million, and we'll update that periodically.

Senator O'NEILL: That was what we heard the last time.

Ms Bird: Well, it has slightly increased.

Senator O'NEILL: So to be clear: it is \$607.8 million of the \$10 billion that has been purported in the public.

Ms Bird: Obviously that \$10 billion doesn't all relate to fee-for-no-service remediation.

Senator O'NEILL: From your conversations with them, seeing as you are doing this oversight—and you're giving me the impression that you're telling them they're not doing a good job—you must have some idea of the scale of money that's being invested in the remediation program into the bank, its own purposes and its staff by comparison to what the number it believes will be going out to customers.

Ms Bird: We asked them to estimate the final amount that they think will be going out to customers. We haven't asked them to estimate the amount that they think they've done. I think it would be quite challenging because, as has been explained, a lot of it would be very hard to attribute just to the remediation program because it's all about improving and fixing their systems from the past.

Answer:

ASIC often becomes aware of a licensee's systemic issues through breach reports, proactive surveillance or industry reviews, reports of misconduct from the public, and reports of systemic issues from EDR schemes.

ASIC does not and cannot oversee all remediation programs. We are simply not resourced to do this.

However, in some remediations (typically those that are large scale and/or complex), ASIC may become involved in:

- reviewing and commenting on the design and implementation of the review and remediation process;
- monitoring the review and remediation process;
- requesting regular reporting on the progress of the review and remediation, and providing feedback on those reports; and/or a combination of the above.

(In performing these roles, ASIC is exercising its incidental powers in s11(4) *Australian Securities and Investments Commission Act*.)

Whether ASIC oversees the remediation program and the extent of ASIC's involvement will depend on a range of factors including:

- the size of the review and remediation;
- the licensee's past conduct and conduct in response to the systemic issue;
- the nature of the misconduct or other compliance failure and the impact on clients;
- the licensee's experience in past review and remediation processes, or similar activities; and
- ASIC's available resources.

Where a licensee fails to undertake a remediation program that ASIC considers should be undertaken, ASIC will consider taking enforcement action. For example, in cases of complete failure to remediate a breach ASIC could consider civil penalty action under s912A(1)(a) *Corporations Act*. However, currently our legal powers and enforcement options are limited. When the proposed directions power is in effect, ASIC will be able to direct a licensee to undertake a remediation or do so in a specific manner.

To assist industry and provide guidance, ASIC has

- released Regulatory Guide 256 *Client review and remediation conducted by advice licensees* (RG 256) in September 2016. ASIC is in the process of updating RG 256 to provide more guidance to industry.
- issued Information Sheet 232 *Fees for no service: Remediation* (INFO 232), with practical guidance in relation to fee for no service (FFNS) remediation, in August 2018;
- engaged extensively with individual licensees in relation to their remediation programs. (For example, we estimate we have spent 3FTE per year for over 5 years assisting the institutions with their FFNS remediation.)
- provided consistent messages. ASIC has repeatedly encouraged institutions to speed up their remediation processes and to be consumer focussed. For example, when the Commissioners meet with the board of the institutions they give the following message: ASIC does not expect remediation to be perfect, and the institutions should to err on the side of generosity.

ASIC is currently overseeing a number of large remediation programs in the wealth management/financial services space. We have outlined the key programs for advice and insurance below:

(a) Fee for no service by AMP, ANZ, CBA, Macquarie, NAB and Westpac

The total amount of fee for no service compensation **paid or offered** by the institutions **as at 31 December 2019** (as reported in ASIC media release on 11 February 2020) is \$607.8 million. The breakdown for each institution is as follows:

- AMP – \$140.4 million
- ANZ – \$59.4 million
- CBA – \$164.8 million
- Macquarie - \$2.6 million
- NAB – \$163.9 million¹

¹ *This figure includes compensation paid by NAB's superannuation trustee, NULIS Nominees (Australia) Limited (NULIS), for two breaches involving failures to provide general advice services to superannuation members who paid general advice fees. As announced by ASIC on 2 February 2017, ASIC imposed additional licence conditions on NULIS following these and another breach: ASIC MR 17-022. The failure was by MLC Nominees Pty Ltd (and MLC*

- Westpac – \$76.7 million

Total: \$607.8 million

(b) CFPL/ FWL licence conditions and related compensation

ASIC published the final KordaMentha Forensic report under the CFPL/FWL licence conditions on 10 April 2019. ASIC's media release stated that CBA had offered approximately \$7.3 million under the licence conditions, plus \$1.9 million for advice reviewed as a result of the licence conditions, but technically not under of the licence conditions. **Total: \$9.2 million was offered to customers as at 28 February 2019**

(c) Other advice compensation amounts

- Macquarie – \$24.7 million paid under the EU (as at June 2017). This is unrelated to the FFNS remediation outlined above.
 - My Adviser (MR 16-267) – \$2 million paid to date (as at February 2017).
 - TFS – \$2.5 million (\$2,549,291) paid as at 13 April 2018.
 - HSBC Bank Australia Ltd – As at 14 June 2019, HSBC had offered approximately \$695,000 in compensation under an enforceable undertaking.
 - Advice Compliance Project – As at 31 December 2019 a total of approximately \$141.8 million has been paid to over 7,051 customers who suffered loss or detriment as a result of non-compliant conduct by approximately 633 currently identified high-risk advisers whose conduct occurred during the period between 1 January 2009 to 30 June 2015.
 - Conflicted Advice in Big 5 (CAB 5) – As at 30 June 2019, a total of approximately \$651,914 has been paid to customers.
 - State Super Financial Services (trading as StatePlus): approximately \$104.8 million in respect of fees for no service conduct as at November 2019. [The quantum of this remediation is not public.]
 - Bendigo Financial Planning: approximately \$6.7 million in respect of fees for no service conduct as at November 2019. [The quantum of his remediation is not public.]
- ClearView Financial Advice Pty Ltd: as at September 2019 had paid \$730,138 to 215 clients who suffered loss or detriment as a result of non-compliant life insurance advice.

Total: \$284.6 million

(d) Consumer credit insurance (CCI) remediation

This remediation covers CBA, NAB, Westpac, ANZ, Latitude, Suncorp, Bendigo, Allianz, Bank of Queensland, Citigroup, Credit Union Australia and People's Choice Credit Union .

Limited for the first of the two breaches). Whilst on 1 July 2016, the superannuation assets governed by MLC Nominees were transferred by successor fund transfer to NULIS, and on 3 October 2016, NAB divested 80% of its shareholding in the MLC Limited Life Insurance business, accountability for this remediation activity (including compensation) remained within the NAB Group.

The total amount of remediation (including interest) **paid** by the institutions **as at 28 February 2020** is **\$100 million** with a further \$20 million expected by 30 June 2020 (as yet not reported publicly – release planned for April 2020).

A range of other insurance remediations are underway by insurers and are being overseen by ASIC, however these insurers are not related to the banks.

Total: \$100m as at 28 February