

Parliamentary Joint Committee on Corporations and Financial Services
Friday, 13 September 2019
Response to Question on Notice

Hansard Page Ref: 38
Topic: Royal Commission witnesses

Mr GEORGANAS: At the royal commission, I can't remember how many witnesses appeared. **Have any of those witnesses or people representing organisations that appeared at the royal commission sought the advice of ASIC prior to the royal commission being conducted or prior to any decision being made by a royal commission? If so, were there cases basically not investigated where there has been action taken by the royal commission to refer things?**

Mr Shipton: I don't have the precise details of all of the witnesses. I will reiterate a statement I made before that a number of the issues that were before the royal commission were in process or in train already by ASIC and it is very likely that perhaps some of those witnesses who did appear before the royal commission and who did a valuable service to the commission and to the system more broadly may have been interviewed by us or been part of an inquiry by us but I can't say. **We would have to take it on notice and liaise with you as to the level of specificity that you like.** But I think what you're getting to is before and after the royal commission how we are treating matters. Before the royal commission, we would like to think that we were prioritising things appropriately but certainly after the royal commission we are sharpening up that prioritisation through the processes that have been mentioned before and some of the improvements that Mr Crennan has mentioned.

I mentioned in my opening remarks that we are actually prioritising, in an investigative sense, the case studies and referrals that came to us from the royal commission, because they are clearly of priority to the broader community. They are clearly identified as priority items because they were the subject matter of case studies and referrals from the royal commission.

Hence they are priority items for us. Those investigations are being worked through as a matter of priority. Some are at a very advanced stage. Some have actually now gone to the courts. But we're working hard and hoping by the end of this calendar year to have advanced most of them to more publicly known levels of information.

ASIC followed up with Mr Georganas' office who provided the following specifics for this question on notice:

The number of witnesses that appeared before the royal commission that raised complaints against financial institutions, that had already previous to the royal commission raised the same issues and complaints to ASIC but no action had been taken by ASIC, but after raising the same complaints before the royal commission the RC saw appropriate to take action against the financial institution.

Answer

ASIC understands there were 26 witnesses who were customers of financial institutions (**witnesses**) who appeared and gave evidence before the Financial Services Royal Commission (**FSRC**).

Of these, only three had previously raised their concerns as reports of misconduct with ASIC prior to the FSRC hearings. Two of these reports were referred to specialist teams within ASIC; one to assist an existing investigation and the other, for further consideration. In the third case, after an initial assessment, ASIC did not to take further action because the matter was better dealt with by the external dispute resolution process, to get individual rectification.

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Ultimately, after further work, ASIC determined not to action these two cases specifically. ASIC generally does not act on behalf of individuals. In the first case, the concerns raised were referred to an existing surveillance ASIC was undertaking into the financial institution. The outcome of the surveillance was there were enough concerns to warrant commencing an investigation. In the second case, the specialist team found there was limited benefit in pursuing the concerns to achieve the outcome sought by the individual – to seek compensation. This individual was encouraged to contact the Financial Ombudsman Service as that was the appropriate avenue to obtain compensation.

In these three cases, the FSRC did not make recommendations to take action against the financial institutions.

Further details follow:

1. Witness in Round 3 (Small Medium Enterprises), Bradley Wallis
 - ASIC action: Concerns raised by one witness where ASIC determined not to take any further action because the matter was better dealt with by the FOS to get individual rectification. ASIC understands from media reports that Mr Wallis complained to FOS, which found the bank's conduct "unfair" but it was entitled to do so under the law.
 - FSRC recommendation(s): Consider amendments to the law to introduce a legislative mechanism that can make identified provisions of industry codes (such as the banking code) enforceable under law. Recommendation that responsible lending not be extended to small business lending.

2. Witness in Round 4 (Farming finance and issues affecting indigenous consumers), Kathy Marika (via Legal Aid NSW)
 - ASIC action: Concerns raised by one witness was referred to a specialist team to assist an ongoing surveillance by ASIC into the financial institution. The surveillance led to an investigation by ASIC. ASIC has commenced civil proceedings against the financial institution.
 - FSRC recommendation(s): Hawking of superannuation and insurance products should be prohibited. Amendments to the law about exclusions to the definition of 'financial product'.

3. Witness in Round 6 (Insurance), Grant Stewart
 - ASIC action: Concerns raised by one witness was referred to a specialist team for further consideration. The specialist team declined the matter on the basis the concerns were better dealt with by the FOS to get individual rectification and compensation. ASIC is currently investigating this financial institution.
 - FSRC recommendation(s): Prohibition of hawking, remuneration and governance.
 - ASIC also notes recent action against CommInsure for hawking offences. For further information, please refer to the [media release](#).

ASIC's work to date on FSRC recommendations

ASIC continues to work on the FSRC recommendations and the areas of concern identified by the FSRC. We published an [update](#) on our work on 11 September 2019. A number of FSRC referrals and case studies are before the courts, and we have more under investigation.

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Where an FSRC recommendation is directed at ASIC we are acting as a matter of priority. For example, the FSRC made a number of recommended changes to the Banking Code. ASIC has worked with industry on those changes and approved the first tranche of changes to the Banking Code for a 1 July 2019 commencement. We have stated that we will decide whether to approve the second tranche of Banking Code changes later in 2019.

We are also working with Treasury on the Government's commitments to implement law reforms recommended by the FSRC. Where law reforms completed by Parliament have given ASIC new regulatory powers, we are identifying cases where we can use the new regulatory powers including early intervention to address matters of potential significant harm to consumers.

In some cases, we have initiated steps to provide consumers with interim protection ahead of legislative reforms, such as our proposed ban on unsolicited direct sales of life insurance and consumer credit insurance using our modification powers, ahead of proposed legislative reforms to prohibit hawking of insurance and superannuation.