

Question No: 014
Topic: Licensee attestation
Committee Member: Bert van Manen MP
Reference: Hansard page 21

Question

Mr VAN MANEN: Mr Shipton or Commissioner Press, I was made aware yesterday, in some discussions, that the responsible manager of an AFS licence has received a request from a funds manager who wants the total of the licensee attestation as part of their licensee remuneration agreement. In short—without reading it in its complete form—it is asking the responsible manager to sign off the attestation to say that the licensee has ensured that all fees charged by all their advisers under that particular licence are reasonable and appropriate and have had regard to the activities, services or obligations to which the adviser service fee relates and that it relates to the financial product advice and other services. **Are you aware of those documents circulating and funds managers asking licensee responsible managers to sign off on that for the whole of their adviser base for their particular licence?**

Ms Press: I haven't seen a direct attestation like that, although I believe that it would be around ensuring that, when fees charged to clients—or members of super funds, in particular—they are actually receiving service, so that we don't have the issue of fees for no service in those companies. But, without seeing the actual document, it's a little difficult to comment.

Mr VAN MANEN: I'll see if I can get you a copy of the document, but I'm concerned. I fully accept that all people should be getting the advice they're paying for, but, if you have 100 advisers in your licence, with even 100 clients each, there is always a chance that something is going to slip through the cracks. I'm not aware of any legislative basis for this other than the fund managers trying to cover their bases.

Ms Press: **If I could take it on notice and have a look at the document, I should be able to give you a better response once we've had a look.**

Mr VAN MANEN: Thank you.

Answer

ASIC is aware of documents that seek attestation from Australian financial services (AFS) licensees to certain circumstances as part of the licensee remuneration agreement. Following the Parliamentary Joint Committee Hearing on 15 July 2020, ASIC received a copy of the licensee attestation referred to in the question.

Superannuation trustees are not prevented from asking the responsible manager of an AFS licensee to sign an agreement attesting to the provision of advice in return for the advice fees payable to the AFS licensee.

AFS licensees should ensure that advice is provided in return for the advice fees they and their representatives are paid. They must behave fairly, honestly and efficiently (see s912A(1)(a) of the *Corporations Act 2001*) and take reasonable steps to ensure that their representatives comply with the financial services law (see s912A(1)(ca) of the *Corporations Act 2001*). In Regulatory Guide 104 *AFS Licensing: Meeting the general obligations* (RG 104), ASIC sets out its expectations that AFS licensees monitor and supervise their representatives pursuant to their general obligations. This includes monitoring a representative's compliance when the representative provides their services (paragraphs RG 104.62 to RG 104.72).

Further, there are good reasons why a superannuation trustee might seek to ensure the provision of advice services in return for fees deducted from a superannuation account through an attestation from a responsible manager and/or other mechanisms. It is important that superannuation trustees have appropriate oversight of fees and other charges being deducted from members' superannuation accounts for payment to third parties such as financial advisers.

ASIC and APRA sent a [joint letter](#) to superannuation trustees dated 10 April 2019 pointing out that APRA and ASIC expect that trustee oversight and assurance in relation to financial advice fee deductions would include actions that are:

- preventative: such as ensuring appropriate authorisation processes for deductions are in place and promoting understanding by financial advisers and members;
- interrogative: such as having processes that regularly check that advice or other services are being provided; and
- remedial: such as ensuring that members are appropriately compensated where fees are charged inappropriately.

ASIC and APRA were not prescriptive about how a superannuation fund manager should go about this task. Although we did point out that trustees need to take care to ensure that controls on advice fee deductions do not place undue reliance on assurances or attestations from financial advisers or other third parties, given the potential personal conflict of interest that these parties might have in the continuation of fee payments.

Relevant law reform

ASIC notes that the Government has consulted on Exposure Draft Bills implementing aspects of law reform arising from Recommendations 2.1 and 3.3 of the *Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry*. Recommendation 2.1 requires a financial adviser to seek the consent of a client in an ongoing fee arrangement before deducting, or arranging to deduct, fees from a client's account, including superannuation. Recommendation 3.3 requires that a superannuation trustee obtain the consent of a member before they deduct advice fees (both ongoing fees and non-ongoing fees) from the member's choice superannuation account. The Exposure Draft Explanatory Memorandum to Recommendation 3.3 notes that trustees are expected to implement appropriate processes for determining whether the requirements for an ongoing fee arrangement are met. Trustees should also obtain adequate information to be satisfied that an ongoing fee arrangement exists and the relevant fee is covered by that arrangement (paragraph 1.34).