QoN 010-19 – Impact of ASIC look back reviews on licensees

In the discussion at the PJC hearing on 18 November 2020 about the Unmet Advice Needs project, Commissioner Press discussed the issue of licensees making things more complex than they need to be. I also separately raised the issue of a mid-tier licensee having spent $3m in responding to an ASIC initiated “fee for no service” look back project, where they seemingly came out fine. The reality is that licensees are responsible for everything that their advisers do, which is a very challenging business dynamic. If ASIC can initiate one of these lookback projects, at huge expense to the licensee, with no evidence of wrongdoing, then isn’t it unsurprising that licensee would be more conservative and risk adverse?

Answer:

Between 2013 and 2015 ASIC received breach reports from the banks on “fee for no service” misconduct. As a result, the reporting licensees were required to remediate the affected customers.

In addition to, and in light of, the breach reports from the banks on “fee for no service” misconduct, in 2015 and 2016 ASIC asked the banks and AMP to each conduct a review to assess whether there was any further “fee for no service” misconduct. This review is still ongoing with approximately $882 million in compensation paid or offered as at 30 June 2020.

ASIC has not required other licensees to conduct review and remediation work in relation to fee for no service breaches except in circumstances where we have been made aware that a licensee has breached the law. ASIC considers a licensee remediating customers who have been impacted by the licensee’s misconduct to be a part of its obligations to provide financial services in an efficient, honest and fair manner.

Due to resource constraints, ASIC generally does not supervise the “fee for no service” misconduct remediation programs by these licensees who breach reported to ASIC. However ASIC has issued regulatory guidance and an information sheet to assist licensees in conducting review and remediation programs including for “fee for no service” misconduct.