

Questions on notice

taken at Public Hearing into Future of Financial Advice Bills 2011

24 January 2012

Parliamentary Joint Committee on Corporations and Financial Services

QON 1 – Is there a correlation between cost and quality of advice?

CHAIRMAN: Did you identify in this survey whether there is a correlation between cost and the quality of advice, so in the three per cent category that was good it was generally more expensive and at the poor end it was generally less expensive?

Mr Kell : We have not dug down into that.

CHAIRMAN: That is okay. They are obviously points of interest.

Mr Kell : We would be very happy to take that on board and come back to you with that further information.

ANSWER:

ASIC will release a report in March that sets out further details of the results of the Financial Advice Shadow Shop. This report will include any relevant information about the relationship between payment structures, cost and quality.

QON 2 – Fee disclosure: is it retrospective?

CHAIRMAN: I have a few more questions and then I will hand over to Senator Cormann. On some of the more obvious ones, there is a lot of discussion around the issue of retrospective, as to what that actually means in terms of fee disclosure. Some express it as the legislation being retrospective and others say not. My understanding is that from the commencement date of FOFA and there is an anniversary date into the future and then at that anniversary date fee disclosure would be provided for that year that has just been and the current year and also then for the prospective year. Is that the case? It is not about looking back 30 years, for example, and providing a statement, an annual fee disclosure, for every year of the 30 years past of the legacy product as an example.

Mr Price : That is my understanding, Mr Chairman, but I am happy to take that on notice to make doubly sure that that is correct.

ANSWER:

We confirm Mr Price's answer for new clients who enter into an ongoing fee arrangement on or after 1 July 2012. However, under the provisions in the Bill, we consider fee recipients of existing clients will need to disclose fee and service information for the prior 12 months, even where such information relates to a period before the FOFA reforms came into effect. We do not consider the provision requires disclosure for more than the previous 12 months.

QON 3: How many ASIC RIS statements were not considered adequate by OBPR?

Senator BOYCE: How many impact statements has ASIC had assessed by the Office of Best Practice Regulation as not being adequate?

Mr Price : In the past year ASIC was fully compliant with those requirements. I cannot tell you the number off the top of my head. I could answer the question on notice.

Senator BOYCE: It is fairly common, though, isn't it for your statements not to be considered adequate?

Mr Kell : We can check it and get back to you.

Senator BOYCE: I am very surprised by the answer to that question. I would have thought it was an extraordinarily uncommon event.

Mr Kell : Are you referring to those assessed as inadequate?

Senator BOYCE: Assessed as not adequate.

Mr Kell : That is right; it is very uncommon.

Mr Price : During the last 12 months all of our regulation impact statements were adequate, but I cannot tell you the exact number. It may have been around 15.

Mr Kell : I might have misunderstood that question. It is a very uncommon event and we will—

ANSWER:

The Office of Best Practice Regulation reports that over the 2 years between 2009-11, none of ASIC's thirteen Regulation Impact Statements were considered inadequate.

QON 4: When does the adviser have to provide the client with a fee disclosure statement?

Mr FLETCHER: Section 962S deals with the requirement to give a fee disclosure statement where there is an ongoing relationship. It is one that has retrospective effect. I want to understand ASIC's view about when the obligation will fall upon the fee recipient once the legislation comes into effect. Will it be the case that as from 1 July 2012 these statements will be required to start to be issued?

Mr Price : I would like to take that question on notice. I do not have the draft legislation in front of me.

Mr FLETCHER: Just to inform the line of questioning, the question is based upon the fact that it says:

The current fee recipient ... must, within a period of 30 days beginning on the disclosure day ... for the arrangement, give the client a fee disclosure statement ...

Disclosure day, in turn, is defined by reference to being the anniversary of when the relationship between the adviser and the client was established. I want to understand whether it is ASIC's view

that if an arrangement had commenced on 1 July—and it might have been 1985 but there is correspondence on record that shows that—that then triggers an obligation to issue the fee disclosure statement as at 1 July 2012.

Mr Price : Yes, okay.

ANSWER:

In the case of existing clients where there is an ongoing advice relationship, we consider clients will need to disclose fee and service information for the prior 12 months, even where such information relates to a period before the FOFA reforms came into effect. We do not consider the provision requires disclosure for more than the previous 12 months.
