

Questions on notice

Complaints about the Australian Securities and Investment Commission's (ASIC's) handling of matters

Over the last 10 years:

1. How many complaints has the Commonwealth Ombudsman received about ASIC's handling of matters each year.

The Office of the Commonwealth Ombudsman (the Office) received 1,997 complaints about ASIC's handling of matters over the last 10 financial years (2013-14 to 2022-23) summarised in Table 1, below.

Table 1: Complaints received last 10 years, by financial year	
Financial Year	Number of complaints
2013-2014	164
2014-2015	184
2015-2016	179
2016-2017	198
2017-2018	170
2018-2019	236
2019-2020	245
2020-2021	258
2021-2022	197
2022-2023	166
Total	1,997

2. Of those complaints received, for each year, how many:
 - a. did the Commonwealth Ombudsman decline to investigate?

Please note: The outcome of a complaint is only known at the time it is finalised. For this reason, the subsequent tables in this response reflect data for finalised complaints.

The Office assesses thoroughly all complaints it receives to identify whether a matter can be resolved without the need for investigation. These resolutions can include explaining to the complainant why we consider the agency's actions or decisions were not unreasonable in the circumstances (*decline to investigate*) or referring them back to the agency to make a complaint or to a more appropriate body (e.g., a court or tribunal) (*advised to pursue elsewhere*) to consider their matter.

Under the Ombudsman Act, a complaint is formally 'investigated' when inquiries are made of the relevant agency under s 8 of the Act.

Table 2 shows the Office did not formally investigate 1860 of the 1951 complaints about ASIC that it finalised between 2013-14 and 2022-23.

Table 2: Outcome of non-investigated complaints finalised between 01/07/2013 and 30/06/2023			
Year	Advised to pursue elsewhere	Investigation declined	Total
2013-2014	80	72	152
2014-2015	83	91	174
2015-2016	87	77	164
2016-2017	69	112	181
2017-2018	60	99	159
2018-2019	87	142	229
2019-2020	90	145	235
2020-2021	101	142	243
2021-2022	85	74	159
2022-2023	103	61	164
Total	845	1015	1860

b. did the Commonwealth Ombudsman investigate?

Between 2013-14 and 2022-23, the Office investigated 91 of the 1,951 complaints finalised during the period, as summarised in Table 3.

Table 3: Investigated complaints finalised between 01/07/2013 and 30/06/2023	
Financial Year	Total
2013-2014	16
2014-2015	15
2015-2016	16
2016-2017	11
2017-2018	8
2018-2019	9
2019-2020	2
2020-2021	5
2021-2022	3
2022-2023	6
Total	91

c. of those investigations, how many had findings that ASIC had acted inappropriately.

and

d. for the group of cases where the Commonwealth Ombudsman did make findings that ASIC has acted inappropriately, could you summarise in aggregate and general terms, what the inappropriate action or inactions by ASIC were.

Investigations of complaints

Please note: A complaint may include more than one issue. During the relevant period, the Office investigated 91 complaints comprising 137 issues. Table 4, below, summarises each of these issues.

In most complaints, the Office's focus is on assessing whether the agency's actions or decisions were fair and reasonable in the circumstances. We do not generally assess whether an agency (or its staff) "acted inappropriately".

Table 4: Issues in investigated complaints finalised between 01/07/2013 and 30/06/2023.¹											
	2013-2014	2014-2015	2015-2016	2016-2017	2017-2018	2018-2019	2019-2020	2020-2021	2021-2022	2022-2023	Total
Business Names	3	4	2		1	3					13
<i>Applications</i>			1								1
<i>Australian Business Names Register</i>	2	2	1			1					6
<i>Cancellation and transfer</i>	1	2				1					4
<i>Other</i>					1						1
<i>Payments and fees</i>						1					1
CDDA		3	3	2							8
Company – Other	2	1	2			3			1		9
Financial Advice and Services		1	2	2		2					7
<i>Australian Financial Services License</i>			2	2		1					5
<i>Other</i>						1					1
<i>Regulatory</i>		1									1
Financial Reports and Auditing				1			1		4		6
<i>Advisor or Practitioner</i>							1		4		5
<i>Company</i>				1							1
FOI Personal Access – 3rd party consult			1								1
Insolvency – Liquidator or Admin.										3	3
Market – Regulatory			1								1
Other	3								1	1	5
Registry	3	11	9	6	10	3	1	10			53
<i>Australian Company Register</i>	1	1			3			1			6
<i>Fees - other</i>			1	2			1	2			6
<i>Fees - waiver</i>	2	6	7	3	7	3		7			35
<i>Forms</i>		4	1	1							6
Regulatory	7	2	1	4	1					1	16
<i>Director</i>	3			1	1					1	6
<i>Other</i>	2	2	1	1							6
<i>Shareholder</i>	2			2							4
Service Delivery	1	2	3		1			1		6	14
<i>Other</i>		1								2	3
<i>Telephone</i>	1										1
<i>Written correspondence</i>		1	3		1			1		4	10
Unclaimed Money		1									1
Total	19	25	24	15	13	11	2	11	6	11	137

¹ This data was extracted on 20 July 2023 and covers contacts received and finalised about ASIC in the period from 1 July 2013 to 30 June 2023. The data contains complaints considered under the jurisdiction of the Ombudsman Act 1976 only. Complaints reflect the issue/s the complainant identified when providing their complaint. As a contact about an agency moves through the investigation process, the number of complaints, issues investigated and outcomes captured can change over time. The data in this response is accurate as at the extraction date and may produce different figures to those previously published. Complaint investigations can have more than one outcome.

Table 5, below, summarises the outcomes of the Office’s consideration of each of the issues raised in investigated complaints about ASIC which were finalised in the period from 2013-14 to 2022-23.

Table 5: Outcomes of investigated complaints finalised between 01/07/2013 and 30/06/2023.²											
Outcomes	2013-2014	2014-2015	2015-2016	2016-2017	2017-2018	2018-2019	2019-2020	2020-2021	2021-2022	2022-2023	Total
Act of Grace payment							1				1
Action expedited	2									1	3
ASIC apology	1	1	2						1		5
ASIC officer counselled or disciplined									1		1
ASIC undertook to reconsider matter	1	3	4	2	2	1		1		2	16
Better explanation - by ASIC	3	4	3	1	2	1		2		1	17
Better explanation - by Ombudsman	9	7	4	3	4	8		1		2	38
Compensation for Detriment caused by Defective Administration Scheme (CDDA) payment		1	1								2
Change to policy or practice			1		1	1				1	4
Debt waived or reduced		1		1				1		1	4
Decision changed		2	1		1				1	1	6
Fee refunded/waived/reduced		3	3	1			1	2	1	1	12
Other financial remedy					1						1
Other non-financial remedy								1	1		2
Penalty waived or reduced	1			1	1			1			4
Remedy provided by agency without Ombudsman intervention			1	1					1		3
No remedy	2	3	4	5	1			2		1	18
Total	19	25	24	15	13	11	2	11	6	11	137

² This data was extracted on 20 July 2023 and covers contacts about ASIC received and finalised in the period from 1 July 2013 to 30 June 2023. The data contains complaints considered under the jurisdiction of the Ombudsman Act 1976 only. As a contact about an agency moves through the investigation process, the number of complaints, issues investigated and outcomes captured can change over time. The data in this response is accurate as at the extraction date and may produce different figures to those previously published. Complaint investigations can have more than one outcome.

Own motion investigations and Recommendations

Under section 5(1)(b) of the Ombudsman Act, the Ombudsman may by his or her own motion investigate any action that relates to a matter of administration taken by a Department or a prescribed authority.

In November 2015, the Office published an own motion investigation report entitled *Australian Securities and Investments Commission: Own motion investigation into the management of a conflict of interest matter in 2005*.³ The investigation resulted in the Ombudsman making 3 recommendations to ASIC, being to:

1. Review its policy regarding conflicts of interest, particularly its policy relating to documenting all disclosures (and enquiries about possible disclosures) and the management of allegations of conflicts of interest made by persons other than the conflicted person.
2. Review its policy regarding secondments with a view to improving information about the disclosure, assessment and recording of conflicts of interest involving secondees.
3. Consider reviewing the clauses regarding conflicts of interest in its template secondment agreement.

ASIC advised the Office that it accepted and would implement all 3 recommendations.

³ *Own Motion Investigation into the Management of a Conflict of Interest Matter in 2005*, Report by the Commonwealth Ombudsman, No. 07/2015. Available online:
https://www.ombudsman.gov.au/data/assets/pdf_file/0033/36879/ASIC_Report.pdf