

**Senate Economics Legislation Committee**

**ANSWERS TO QUESTIONS ON NOTICE**

**Treasury Portfolio**

Additional Estimates

2015 - 2016

**Department/Agency: Australian Securities and Investment Commission**

**Question: AET 82**

**Topic: Financial Ombudsman Services report of systemic issues and serious misconduct to ASIC**

**Reference: Hansard page no. 25 - 11 February 2016**

**Senator: Wang, Dio**

**Question:**

**Senator WANG:** In 2014-15 the Financial Ombudsman Service reported 62 definite systemic issues and 14 cases of serious misconduct to ASIC, and the Credit and Investments Ombudsman reported 31 definite systemic issues and 11 definite cases of serious misconduct. Could you explain whether the 14 cases of serious misconduct reported by FOS have been found to be definite? And if not, why?

**Mr Kell:** We would have to take that on notice and come back to you.

**Proceedings suspended from 11:00 to 11:15**

**CHAIR:** I welcome you back to our session, and we will continue with the ASIC.

**Senator WANG:** I refer to the 93 cases of definitive systemic issues. Could you categorise the nature of behaviours in those cases?

**Mr Day:** We would have to take that on notice. Peter Kell said earlier in relation to those that we do not have any details to hand at the moment, so we can take that on notice and give you a complete answer.

**Answer:**

Under ASIC's *Regulatory Guide 139: approval and oversight of external dispute resolution schemes* (RG 139) a scheme must report to us any systemic issues and matters involving serious misconduct by a scheme member. They must also collect and report information about complaints and disputes received on a quarterly basis.

We receive detailed statistical reports from the schemes each quarter. Senior ASIC staff also meet with senior EDR scheme personnel each quarter to discuss key trends and issues arising from complaints data and trends including systemic issues.

Under our approval framework it is the responsibility of the independent schemes to identify possible systemic issues and raise those issues with the licensee. Where a scheme investigates and confirms a matter as a definite systemic issue, the licensee must work with the scheme to remedy the problem. This may involve compensating consumers or making changes to processes within that business. Schemes must report information about systemic issues and serious misconduct to ASIC.

In some cases, the systemic issues work of a scheme may raise regulatory issues. For example, ASIC may have concerns that a licensee's conduct breaches financial services or credit laws or ASIC may have a current investigation at the same time that a scheme identifies a potential or definite systemic issue arising from their investigation.

ASIC does not look behind scheme decision making including a decision as to whether a matter is a definite systemic issue. However, ASIC may use its compulsory information gathering powers to obtain further information from a scheme to assist with an investigation, for example.

In 2014–15, FOS reported 62 definite systemic issues and 14 cases of serious misconduct to ASIC. The CIO reported 31 definite systemic issues and 11 cases of serious misconduct.

These reports covered the following types of issues:

- allegations of misleading and deceptive conduct;
- compliance with responsible lending requirements by credit providers;
- concerns about hardship procedures of credit providers;
- whether personal financial advice was appropriate;
- concerns about debt recovery procedures of credit providers;
- pay-day lending concerns
- fees and charges;
- legitimate mistakes by financial services providers or for information purposes, requiring no further action by ASIC;
- compliance with directions from the EDR Scheme
- compliance with internal dispute resolution procedures; and
- matters about disclosure requirements, credit reporting (default listing), unlicensed conduct (credit licence), and AFS licence and authorised representative requirements.

Of the cases of serious misconduct reported to ASIC by FOS and CIO:

- 10% of matters were accepted by ASIC specialist teams for investigation or surveillance;
- 38% of matters were accepted to assist with existing ASIC investigations or surveillance; and
- 52% of matters were analysed, assessed, and recorded by ASIC, but did not progress to investigation or surveillance, because ASIC's inquiries found no evidence or insufficient evidence of misconduct, or further ASIC action was precluded due to action by other agencies or the concerns being addressed.

Schemes report in some detail the numbers of systemic issues investigations they do and the outcomes they achieve through their systemic issues work in their annual reports. This includes compensation paid, fees refunded, insurance claim denials overturned or improvements to processes, disclosure or training.

FOS reported that of the 52 systemic issues resolved in 2014-15 included:

- Refunds of more than \$4.3M following direct FOS involvement (or in some cases the issues identified from FOS disputes may have already been remediated by the financial service provider or been subject of ASIC involvement);
- More than 2,700 credit listings amended or removed.