

**Senate Economics Legislation Committee**

**ANSWERS TO QUESTIONS ON NOTICE**

**Treasury Portfolio**

Supplementary Budget Estimates

2016 - 2017

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

**Question No:** 225

**Topic:** Mr Pullen Pillay

**Reference:** Written

**Senator:** Ketter, Chris

**Question:**

- 1) Has ASIC come across Mr Pullen Pillay previously and in what circumstances?
- 2) With the substantial number of complaints against Mr Pullen Pillay, is ASIC concerned about the compensation process for impacted clients?
- 3) Has a referral been made to ASIC regarding Mr Pullen Pillay as a systemic issue from the Financial Ombudsman Service (FOS)?
- 4) If a referral has been made by FOS what does ASIC propose to do and are there any actions that ASIC may undertake to help clients get compensated for poor advice? If the 300-odd complainants concerning Mr Pullen Pillay are not enough for ASIC to take action, what level of complaint would be?
- 5) ASIC has banned advisers for writing 5 or 10 pieces of advice without a Statement of Advice (SOA). Mr Pullen Pillay has sold hundreds of agri-investments without an SOA being issued. Why is Mr Pillay being left alone?
- 6) Mr Pillay is still a financial planner operating from an office in The Entrance ([www.pullenpillay.com](http://www.pullenpillay.com)). Does ASIC have any concerns about this in light of the complaints made against him?
- 7) Have any of the financial services firms that licensed Mr Pillay reported Mr Pillay to ASIC?
- 8) If Mr Pillay was not reported to ASIC by these bodies that licensed him, does ASIC propose to investigate? If not, why not?
- 9) ASIC Deputy Chair Mr Peter Kell has spoken about the financial advice industry cleaning itself up. What is ASIC's view of the current state 'self-clean' of the financial advice industry?
- 10) The Fairfax media article by Adele Ferguson on 21 May 2016 titled "MISTrust: 300 clients are down about \$70 million" notes that Perth-based Arafura Pearls investments were purportedly pushed on to Mr Pillay's clients from 2009. Arafura Pearls later collapsed in 2011. Did ASIC contact Mr Pillay in 2012 about his involvement with Arafura Pearls?
- 11) Why did ASIC fail to pursue an investigation into Mr Pillay after 2012?
- 12) Did ASIC conduct checks into Mr Pillay's conflict as a financial planner and his role as an agent for Arafura Pearls?
- 13) Did the interest of current Prime Minister Malcolm Turnbull in Arafura Pearls prevent ASIC from investigating the collapse?
- 14) Mr Pillay provided advice 550 times over six years and earned millions of dollars of commissions. None of the advice was provided in his own name. 94 clients have said they did not meet with 'Angela Keys', the purported adviser listed on the Statement of Advice (SOA) documents. Another 20 or so clients of Mr Pillay have advice from 'Daniel McSweeney', the purported adviser listed on the Statement of Advice (SOA) documents, whom they did not meet. The Commonwealth Bank (CBA), as the licence holder, is arguing in both cases that McSweeney and Keys gave advice, not Mr Pillay.

- a. Daniel McSweeney and his company 'Wealth Achievers' was also implicated in 'ripping off customers' in recent media - does Mr Pillay's connection with Mr McSweeney in these SOA documents sufficient to raise alarms with in ASIC?
- b. What does ASIC believe the licence holder should do in situations such as Mr Pillay's per their new guideline RG 256 issued on 15 September 2016?
- c. What is ASIC's response if the licence holders do not take action to compensate under this guideline?

15) The CBA contends that Mr Pillay had no interest in the advice he provided, although Mr Pillay's former clients allege that millions were paid to a company where Mr Pillay's wife was the sole director. Mr Pillay's former clients allege that the CBA defends the relationship it had with Mr Pillay since Mr Pillay's former clients cannot prove that the CBA paid into Mr Pillay's companies.

- a. Is this a case where ASIC can investigate on behalf of Mr Pillay's former clients?
- b. Based on ASIC's new guideline (RG 256), should the CBA attempt to determine if Mr Pillay was the major financial beneficiary of CBA commissions? Has the CBA informed ASIC whether it is investigating the issue?
- c. Mr Pillay's former clients allege there are documents in the possession of the CBA and other licence holders. These have not been produced for ongoing compensation disputes at the Financial Ombudsman Service (FOS). Where documents are not provided to FOS, is ASIC's able to investigate the licence holders' compliance with their obligations to act "fairly, honestly and efficiently" when dealing with complaints?
- d. In situations, such as with Mr Pillay's former clients, where there are hundreds of complainants, what does ASIC see as the realistic remedy? What does ASIC consider the best avenue for compensation? What options are open to victims where licence holders of the AFSL do not cooperate with the complaints process?
- e. How does ASIC address the potential for conflict by firms appointed by customer advocates chosen by the licence holder (CBA in this case)?
- f. Is ASIC concerned that lawyers, appointed as customer advocates in programs such as the OARP, do not have any financial planning experience? Why are financial planners excluded from OARP and similar processes?

**Answer:**

- 1) ASIC is aware of concerns raised in relation to Mr Pullen Pillay. ASIC is currently undertaking significant inquiries in relation to the activities of Mr Pullen Pillay. ASIC's work has, and will continue, to include making inquiries of, amongst others, the Australian Financial Services (AFS) licensees that Mr Pullay has represented. ASIC's actions also include liaising with the Financial Ombudsman Service (FOS) about the complaints they have received concerning Mr Pillay. ASIC will consider remediation issues as part of our work on this matter.

ASIC is also aware of concerns raised in relation to the conduct of Mr McSweeney and is also undertaking significant inquiries into his activities.

Given these regulatory actions are underway, we are not able to provide answers at this point in time to all the questions subsequently raised under QoN 225, but we will inform the Committee on the progress and outcomes of our work in relation to these matters at the appropriate time.

- 2) See the answer to question 1.
- 3) As part of its ongoing engagement with ASIC, FOS has informed ASIC that it has a large number of complaints about Mr Pillay.

- 4) See the answer to question 1. We note that FOS is the appropriate venue to deal with client complaints against financial service providers.
- 5) See the answer to question 1.
- 6) See the answer to question 1.
- 7) Yes.
- 8) Not applicable.
- 9) ASIC continues to work with the Government and industry to increase the levels of professionalism within the financial advice industry.
- 10) Yes.
- 11) See the answer to question 1.
- 12) See the answer to question 1.
- 13) No, ASIC is an independent agency that makes its own decisions on regulatory matters.
- 14) ASIC is aware of the allegations included in question 14.
  - a. ASIC is aware of allegations relating to Daniel McSweeney. See the answer to question 1.
  - b. ASIC expects licensees to act in accordance with RG256 in relevant circumstances.
  - c. All AFS licensees have an obligation to ensure that their financial services are provided efficiently, honestly and fairly. This includes taking responsibility for the consequences of their representatives' actions, including remediating clients who have suffered loss due to inappropriate advice. All AFS licensees who provide financial services to retail clients are also required to have a dispute resolution system comprising internal dispute resolution and membership of an ASIC approved external dispute resolution scheme, such as FOS.
- 15) ASIC is aware of the allegations included in question 15.
  - a. As noted in the answer to question 1, ASIC is making inquiries into this matter. However, ASIC does not provide legal advice to consumers and generally does not investigate on behalf of individual consumers.
  - b. RG 256 does not mandate specific enquiries to be made by an AFS licensee.
  - c. It is not clear the exact nature of the allegations being referred to.
  - d. Under the AFS licensing regime all retail clients have access to the dispute resolution system and compensation arrangements required by the Corporations Act. See also the answer to question 1 above.
  - e. The operation or presence of a 'customer advocate' does change or detract from the AFS licensee's obligation to have a complying dispute resolution system comprising internal dispute resolution and membership of an external dispute resolution scheme. It does not preclude customers from seeking advice from the professional adviser of their own choice, or pursuing a matter through external dispute resolution.
  - f. ASIC is not involved in the OARP and does not supervise the OARP. Generally financial advisers are able to represent clients in their disputes with licensees.