

**Senate Economics Legislation Committee**

**ANSWERS TO QUESTIONS ON NOTICE**

**Treasury Portfolio**

Budget Estimates 30 May – 1 June 2006

**Question:**     **bet 29 (ASIC)**

**Topic:**             Oliver Pollie

**Hansard Page:**     **Written**

**Senator SHERRY asked:**

Summary of case of Mr Oliver Pollie - Brandon, Queensland

- Mr Pollie invested just over 600,000.00 in a CBA's Growth Fund under the advice of a CBA financial planner in early 2001.
- He was not given a Statement of Advice (SOA) financial Plan.
- He found the investment unsatisfactory, due to apparent hidden fees and lack of growth.
- He made a withdrawal request in July 2001 and sent to CBA Sydney as instructed by CBA Financial Advisor. The withdrawal request was ignored, repeated registered mail requests were sent and continued to be ignored by the bank.
- A complaint was made to ASIC early 2003 with confirmation from Graham Ellis (Perth ASIC office) that it appeared CBA Investment services had not dealt satisfactorily with the individuals complaint, and that ASIC had the powers to order CBA to return moneys and reimburse any losses sustained.
- The case was referred to ASIC FSR Directorate from which correspondence was received informing them that no investigation would take place and that they should pursue their complaint the bank or FISC.

Questions relating to Mr Oliver Pollie

- (1) Does ASIC have the powers to investigate such a case?
- (2) Does ASIC investigate complaints on behalf of individuals?
- (3) If so why didn't ASIC investigate this case?
- (4) The individual was informed that ASIC had the powers to order CBA to return moneys and reimburse any losses sustained is this correct?
- (5) Can a detailed explanation for a decision by ASIC not to investigate be given?
- (6) Do you think referring the individual back to the bank, whom ASIC already concluded had dealt unsatisfactory with the complaint was appropriate?
- (7) Do you think it was misleading for ASIC to refer the individual to FISC knowing that the sums involved exceeded the amount it can deal with?
- (8) To fulfil its legislated objectives ASIC should be:
  - ensuring that consumers receive adequate and appropriate information to make informed decisions about financial products and services;

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- maintaining a vigilant oversight of the marketplace to proactively identify, stop and deter misleading and fraudulent conduct;
- ensuring that consumers have access to appropriate redress systems when things do go wrong.
- Is ASIC's management of this case consistent with these objectives?

#### Answers:

- (1) ASIC can and does investigate disputes with financial advisors. Generally ASIC will look at individual disputes only if the conduct complained of has broader ramifications. In doing so, ASIC would look at the individual dispute in parallel with ASIC's regulatory objectives.

Licensees are required to have an internal dispute resolution process and be members of an ASIC approved external dispute resolution (EDR) scheme. In this instance, the licensee is a member of FICS.

Under the law, licensees are responsible for the conduct of their advisers. This means that investors can complain to FICS free-of-charge about an adviser who is authorised by the licensee. The Rules of FICS state that the scheme cannot deal with a complaint until the investor has first given the licensee the chance to resolve the complaint.

FICS not only hears individual complaints but also reports to ASIC any systemic conduct for ASIC to consider and where appropriate, investigate further.

- (2) Yes, ASIC conducts an assessment of every complaint it receives. In determining which matters are selected for further action, consideration is given to a range of factors, including the likely regulatory effect of any available action. In assessing the individual complaint, ASIC seeks to recommend the most appropriate course of action.

After reviewing Mr Poli's complaint, ASIC advised Mr Poli to lodge a complaint with FICS as early as 17 February 2003. At the time, Mr Poli confirmed he had received documents from FICS to lodge his complaint.

In February 2003, ASIC's Financial Services Compliance directorate (formerly the FSR Directorate) also commenced inquiries into the conduct of the licensee, Commonwealth Investment Services (CIS). Whilst it concluded there was no breach of law by CIS, gaps were found in CIS's complaint handling processes. CIS undertook to make changes in accordance with the issues raised by ASIC and its recommendations.

- (3) A complaint was received by ASIC on 26 January 2003 with an acknowledgement letter sent to Mr Poli on 28 January 2003. ASIC wrote to Mr Poli on 18 February

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2003 referring him to FICS and the general dispute resolution process. In the same letter, ASIC advised Mr Poli that it had referred the conduct of his advisor to the Financial Services Compliance directorate (FSC directorate) for further consideration.

The FSC directorate concluded its inquiries in October 2003 and wrote to Mr Poli on 6 October 2003, again referring him to FICS.

- (4) ASIC is unable to directly order compensation. ASIC has the power to apply to a court for an order to return money or reimburse losses. Only a court or approved tribunal (such as FICS) can make such an order.

Whether an investor has a valid claim against their adviser will be assessed on a case-by-case basis. If the EDR scheme agrees that the complaint is valid, it can order the firm to do certain things or pay money to put things right. If the investor pursues this avenue, but does not agree with the decision of the EDR scheme, then the investor reserves their right to pursue further legal remedies and take the matter to court.

ASIC's letter to Mr Poli of 18 February 2003 made no reference to ASIC powers, nor to the return of moneys or reimbursement of losses.

- (5) ASIC made inquiries into the matter and referred Mr Poli to the appropriate EDR scheme.
- (6) ASIC's letter of 18 February 2003 referred Mr Poli to FICS and the general dispute resolution process, noting Mr Poli's dissatisfaction with CIS' handling of the matter.

The Rules of FICS state that the scheme cannot deal with a complaint until the investor has first given the licensee the chance to resolve the complaint. An investor who wants to complain about their adviser should lodge a complaint with the adviser or the licensee as soon as possible to start the internal procedures of the firm.

If resolution is not achieved to the satisfaction of the complainant, then the investor can lodge a complaint with FICS free-of-charge.

- (7) There are monetary limits that apply to FICS. The relevant limit for claims relating to losses from financial advice is \$100,000. However, the monetary amount relates to actual losses incurred. While the complaint sought recovery for the erosion of the principal of \$600,000, the combined claim for principal and opportunity loss (including any fees) was within FICS limits.

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- (8) ASIC has a number of regulatory remedies at its disposal and carefully selects the most appropriate remedy for the circumstances. In this situation, ASIC commenced inquiries to determine whether regulatory intervention was required. ASIC directly challenged CIS to thoroughly review the complaint raised by Mr Poli and address his concerns. The approach resulted in an offer of compensation by CIS in excess of \$45,000. While Mr Poli did not accept this offer, it did not obviate the further remedies available to him. At all times, ASIC referred Mr Poli to the appropriate ASIC approved dispute resolution mechanism, being FICS, which had the power to deal with the claim for compensation. The handling of this case is consistent with ASIC's obligations and objectives.