

SEQUOIA GROUP PD DAYS

Compliance Briefing

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Nationally – 16 April to 1 May 2024

Agenda

- License update
- ASIC – Compensation Scheme of Last Resort (CSLR)
- Financial Services & Credit Panel (FSCP)
- Legislation announcements
 - QAR
 - Experienced Pathway
- Sole Purpose
- EO v ROA
- Super Switching

License update

- A number of breaches lodged over the last 3 months
 - Insurance not cancelled
 - Overcharging of fees
 - Incorrect implementation
 - No foundation advice document
 - No FDS

Submit or update reportable situation by licensee (includes updating a breach report)

- Documentation Update

- Exit Strategy text added to Text Library
- SMSF discussion points added to 'Discovery' File Note
- Insurance Appendix text

SMSF Suitability Assessment File Note

Discussion for SMSF Advice

In completing this file note you will need to discuss the following with your clients. Where appropriate, record your responses, reaction and/or understanding using their own words.

- Review the eligibility of each member to be a trustee.
- Discuss the benefits of having an SMSF.
- Discuss the risks of having an SMSF.

ASIC Compensation Scheme of Last Resort

- The Compensation Scheme of Last Resort legislation was passed in June 2023.
- Open ended impost on advisers who have done nothing wrong to cover for the failures to properly regulate the industry.
- AFCA will be able to award up to \$150k compensation per claim from the CSLR for unpaid determinations.
- This is retrospective legislation with AFCA having paused some 4,875 complaints between April 2020 and 1 June 2023.
- Complaints lodged between 1/11/2018 & 7/09/2022 will be funded by the initial levy against 10 of the largest insurers and institutions. Complaints lodged after 7/09/2022 will be funded by the levy against advisers.

CSLR.....just plain wrong

- No other industry has an arrangement like this.
- Retrospective legislation is just plain bad legislation.
- AFCA have nobody looking at their determinations – if we struggle to get the right outcome when we can contest the complaint, what hope will we have when AFCA are Judge Jury and Executioner with a bottomless bucket?
- Where is the accountability of ASIC in product failures?
- The Industry Bodies are now just raising issues which should have been raised before the scheme started. AIOFP has led a sole fight about responsibility for product failures not being with advisers.

CSLR.....the cost

- Initial estimates have been released but are subject to recalculation. Potentially \$1,186 per adviser.
- 1st Levy Period 2/4/24 to 30/6/2024 – Government is required to fund and is estimated at \$2.4m for Financial Advice (Other subsectors total \$2.4).
- 2nd Levy Period 1/7/2024 to 30/6/2025 – Funded by advisers and is estimated at \$18.5m for Financial Advice (Other subsectors total \$5.6).
- The Dixon Advisory & Superannuation Service (DASS) is estimated to account for \$9.43m in the second levy period and other claims \$2.11m (the other \$7m will be AFCA Fees \$2m CSLR operating costs \$4.72m and ASIC costs \$361K).
- The recalculation of costs will depend on how efficient AFCA are at progressing the DASS claims.

Financial Services & Credit Panel

- Established under RG 263 the FSCP has broad ranging powers to act in instances where ASIC seek it more appropriate to act.
- The Panel has Industry panel members sitting with an ASIC Chair.
- The Panel sits without the involvement of the adviser or the AFSL.
- The adviser will receive a notice of Proposed Action after the Panel has sat and the adviser can respond but is forbidden from notifying the AFSL.
- RG263 provides the prescribed circumstances for convening the panel and the range of outcomes which range from No Action to Banning orders and imposition of financial penalties (where there is a restricted civil penalty provision).

FSCP – Potential Circumstances

- The Prescribed Circumstances include:
 - A Financial Adviser becomes insolvent.
 - Fraud The financial adviser is convicted of fraud.
 - Not a Fit and Proper Person (ASIC comes to that belief and refers to the FSCP)
 - Contravention of Education Standards (excluding failure of CPD)
 - Failure of a Supervisor to approve an SOA issued by a Provisional relevant provider.
 - Serious contravention or involvement in the contravention of Financial Services Law
 - Refusal to give effect to an AFCA determination.
 - Anything else ASIC considers appropriate.

FSCP – Outcomes

- The FSCP panel has met 16 times in the past 12 months.
- The FSCP panel has handed down the following findings:
 - Banning Order / Cancellation of Registration 2
 - Supervision orders (external supervision) 7
 - Reprimand / letter of Warning 4
 - No Action 3
- Circumstances for convening a Panel
 - Conduct 3
 - Switching advice 5
 - Inappropriate advice or scoping the advice 4
 - Treating Personal advice as General Advice 3

FSCP – Case Study

- September 2022 ASIC collect SOA's issued in 2021/2 from a number of advisers in a surveillance that is not directed at the advisers concerned.
- Nothing further heard until November 2023 when ASIC issued a Proposed Action Notice in relation to 2 of the client SOA's.
- Without being able to involve the AFSL the adviser must respond within 30 days.
- In January 2024 the Panel hands down a decision that despite no longer having what they identified as a potential Conflict of Interest the adviser must engage an external compliance person (approved by ASIC) and having not previously done any work for the adviser or the AFSL and have them review the next 10 pieces of advice.
- The ASIC approved reviewers charge \$900 to \$2500 per advice document to review.

QAR – The suspense continues!!!!

- The Government has released the first tranche of the “delivering better financial outcomes and other measures”.
- Not the key expected changes in regard to advice documents.
- They go into a long queue of legislation that needs to be debated and approved so will be pushed back to later this year.
- Sensible measures around definitions of Conflicted remuneration.
 - Informed payments received from clients are not conflicted.
 - Specific exemption for Superannuation Fund to make member directed payments for advice.

QAR – The suspense continues

- Streamlining ongoing fee renewal and consent requirements.
 - Will remove the need for an FDS
 - Requires a standard Fee consent form to be accepted.
- Introduces new standardised consent requirements for Life Risk Insurance, General Insurance.
 - We trust that this will be met through the advice document and not require an additional document.
- Sets the legal basis for Superannuation Trustees to pay a member's fees.
 - Also imposes on trustees' requirements that may impact the ability to charge.

Experienced Pathway – Relevant Providers

- From 1/7/2024 those advisers who believe they will meet the requirements to take advantage of the experienced provider pathway will be able to make the declaration to their AFSL and have that declaration lodged on the FAR register.
- It will be up to the AFSL to confirm and accept the declaration of experience.
- ASIC has still not provided information regarding the lodgement or the need to have completed the Ethics course.
 - The experienced pathway provides a degree standard equivalent so I still expect that the Ethics module will be required.
- A strict requirement is that if you were registered to provide advice on the exam cut off dates 1/1/2022 or 1/10/2022 you must have passed the exam at that stage.

Sole Purpose

- The license has been receiving numerous document requests from platforms to ensure adherence to requirements.
- Non-Super advice cannot be charged to Super
- Non-Super & Super fees to be charged proportionately to the advice provided as well as to the client.
- This applies when providing advice to both husband and wife. You cannot just take the fee from one account; it must be apportioned to both parties.

EO v ROA

- Execution Only (EO) – Can only be used when a client has expressly directed, in full detail, what they want the adviser to execute.
- You must ensure that you have not educated, influenced, or persuaded your client to execute the transaction, whether directly or indirectly.
- Cannot be used where the client has asked you for assistance in determining the type of product, the effect of the transaction on their personal circumstances, or any other situation where you would be required to provide either general or personal advice.

EO v ROA

- EO? YES.
- Withdrawal of funds from cash/single investment.
- Purchase/Sell specific share including amount.
- Cancel existing insurance/reduce cover – risks involved in doing this
- Increase existing insurance cover.
- Request to switch off CPI on existing insurance.

EO v ROA

- EO? NO.
- Any transaction involving an SMSF including establishment or wind up.
- Commencement of a pension.
- Client wants to know if their current level of cover is too high. A needs analysis is completed, and client then wants to reduce cover down to that level.
- Client wants to withdraw funds from investment however holds multiple funds.
- Applying for a new insurance product.

EO v ROA

- ROA:
 - The client has previously received an SOA. ROA must refer to an SOA.
 - Clients' circumstances are not significantly different to that in the SOA.
 - ❖ The legislation does not define what is meant by significant. You must be able to support your determination in using an ROA based on no significant changes on your file.
 - The subject matter and scope of the further advice is in line advice provided.
 - The basis of the advice is not significantly different to the basis within the SOA.

Super Switching

- Where you are recommending the replacement of an existing product with another, you should carefully consider the risks, costs and benefits gained/lost by the client.
- Prior to recommending replacement of a product to a client, you must investigate the following:
 1. The client's existing products
 2. The products they could potentially acquire (alternatives)
 3. The recommended products.

Super Switching

- The analysis of switching should be completed on a 'like for like' basis and cover features, benefits and fees.
- You must clearly articulate to the clients the advantages and disadvantages, including all costs and risks for both the existing and proposed products.
- The advice must leave the client in a better position, and this will need to be considered as part of the analysis.
- Where there is a loss of benefit to the client, the overall cost saving may override this. However, it will depend on the importance of the benefit to the client and how it forms part of the client's overall preferences and goals.

Super Switching

Switching advice will generally not be in the client's best interest if:

- The overall benefits likely to result from the replacement of product would be **less** than under the existing product (unless there is an overall cost savings, and this element was of higher priority to the client); or
- The cost of the replacement product is **higher** than the existing product (unless the replacement product features better satisfy the client's needs, and these elements are of higher priority to the client).



Where the costs are higher, the SoA does not appear to demonstrate that the client is aware of and/or values the new product benefits or features over the increased costs. Consider providing evidence that the client desires the increased investment options over the reduced fees (p20).

Appropriate advice: RG175.375(b), RG175.352, RG175.256(e), s961G FASEA 2, FASEA 4, FASEA 5, FASEA 7, FASEA 9

Where the costs are higher ensure the client's objectives are at the forefront of any recommendations. Can the existing fund meet the client's requirements?

Questions

