

Article Information

Authors: Andrea Beatty, Chelsea Payne, Chloe Kim

Service: Banking & Finance, Banking & Finance Litigation, Regulatory Compliance & Investigations

Sector: Financial Services

ASIC targets Banking Royal Commission Case Study: Has judgement day begun?

ASIC has commenced legal action against the perpetrators of “bad advice” presented at the Banking Royal Commission.

ASIC commenced legal action against RI Advice Group Pty Ltd (**RI Advice**) and former financial adviser, John Doyle in the Federal Court on 31 October 2019. RI Advice was previously an ANZ financial advice business before being acquired by investment management company, IOOF. During the Banking Royal Commission, the conduct of RI Advice and Mr Doyle was examined as an example of ‘Bad Advice’.^[1] The Interim Report Case Studies identified that in 2013 ASIC had already expressed their concerns to RI Advice Group that Mr Doyle had failed his competency test.^[2] Despite the group receiving a complaint about Mr Doyle, they did not increase monitoring or supervision of Mr Doyle despite his commencement as an authorised representative.^[3]

In the originating process, ASIC alleges that RI Advice had failed to take the reasonable steps necessary to ensure that Mr Doyle provided appropriate advice, acted in the clients’ best interests and put the clients’ interests ahead of its own, as required by the *Corporations Act*.^[4]

ASIC claims that RI Advice ought to have known that there was a substantial risk Mr Doyle was not complying with his legal obligations and instead was recommending structured products to his clients which bypassed compliance processes.

ASIC is alleging that RI Advice did not take the reasonable steps to respond to Mr Doyle’s contraventions. ASIC also alleges that RI Advice had contravened its general conduct obligations as an Australian Financial Services Licence holder and is seeking compliance orders from the Federal Court to prevent similar contraventions occurring in the future.

ASIC is also taking action against Mr Doyle for providing “cookie cutter” advice to retail clients to invest in complex financial products, Macquarie Flexi 100 Trust and Instreet Masti 36 and 38, without considering his clients’ financial goals or risk tolerance.^[5] ASIC alleges that Mr Doyle received upfront and ongoing commissions from his clients’ investments in the structured products despite some of them preparing for retirement.

The maximum civil penalty for the contraventions alleged against RI Advice is \$1 million per contravention being each instance of providing advice. For the individual Mr Doyle, the maximum civil penalty is \$200,000 per contravention.^[6]

Since the Final Report of the Banking Royal Commission, ASIC has been slow out the gates to bring proceedings against misconduct found during the hearings and case studies. As ASIC and APRA begin to initiate proceedings against individuals and companies, we will see how judicial interpretation of conduct will impact the industry. With APRA’s recent loss against IOOF in the Federal Court, it is clear that not every case of misconduct is open and shut.

^[1] 31 October 2019, 19-297MR ASIC takes civil penalty action against RI Advice and former Melbourne financial adviser, John Doyle: Royal Commission case study, <https://asic.gov.au/about-asic/news-centre/find-a-media-release/2019-releases/19-297mr-asic-takes-civil-penalty-action-against-ri-advice-and-former-melbourne-financial-adviser-john-doyle-royal-commission-case-study/>.

^[2] 28 September 2018, Interim Report - Volume 2 - Case studies, <https://financialservices.royalcommission.gov.au/Documents/interim-report/interim-report-volume-2.pdf>, p 189.

[3] Ibid.

[4] 31 October 2019, Originating process, *Australian Securities & Investments Commission v RI Advice Group Pty Ltd & Anor*.

[5] 31 October 2019, Concise statement, *Australian Securities & Investments Commission v RI Advice Group Pty Ltd & Anor* 3.

[6] 19-297MR n 1.