

Expect a 'busier' ASIC this period: Analysis

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The next ASIC enforcement update will likely show it has been busier than the second half of 2021 according to analysis from The Fold Legal, with financial advice already seeing an increase in enforcement.

Analysing ASIC's enforcement activity, the law firm noted Report 722 (July to December 2021 update) showed a small decline in enforcement activity across the financial services industry more broadly, but financial advice saw a "moderate to significant" increase in enforcement, as did investment management and "other financial services". Credit and superannuation saw significant declines.

"These trends accord with what we are seeing in the market at the moment," the review written by partner Simon Carrodus and senior associate Glenjon Aligiannis stated. "Financial advice continues to be a strong area of interest to ASIC with an uptick in the number of administrative proceedings brought by the regulator."

It is expected that ASIC will conduct around 50 investigations per half-year, which is similar to its current pace.

"We anticipate that the next enforcement update from ASIC will show that it has been an equally busy, if not busier, period than the second half of 2021."

This is due to the increased number of civil penalty proceedings commenced and before the courts currently, as well as the "consistently high" number of investigations commenced during the later of 2021.

Major bank back in the spotlight

Westpac will likely be the centerpiece in ASIC's action during this six-month period after the bank was fined \$40 million on 22 April for charging advice fees to over 11,800 deceased customers.

In a press release ASIC said over a 10-year period Westpac charged more than \$10.9 million in fees to over 11,800 deceased customers. This was inclusive of a \$113 million penalty which also covered sanctions related to banking, superannuation, wealth management and insurance brands.

There are six matters filed separately in total which will all be considered by the court.

ASIC deputy chair Sarah Court said it is unprecedented for ASIC to file multiple proceedings against the same respondent at the same time.

"These were exceptional circumstances. ASIC had numerous Westpac-related matters under investigation through the course of 2021, and we decided to expedite those matters for consideration by the court at the earliest opportunity."

Court said the corporate regulator is "disappointed" to have to commence legal proceedings again against a major bank.

"The conduct and breaches alleged in these proceedings caused widespread consumer harm and ranged across Westpac's everyday banking, financial advice, superannuation and insurance businesses."

A common aspect across these matters has been poor systems, processes and governance. Court said this is suggestive of an overall "poor compliance culture" within Westpac.

"Customers are entitled to have trust and confidence in Westpac being able to deliver what it promises, without suffering financial harm. Westpac must urgently improve its systems and culture to ensure these systemic failures do not continue".

Additionally, the corporate regulator handed out a \$20 million penalty to Aware Super in February for fees for no service. It charged 25,300 customers a combined \$50 million for advice services it didn't provide.

Also in February, RI Advice was fined \$6 million for failing to ensure authorised representative John Doyle provided appropriate financial advice.