

Check SoAs as well as consent forms, regulators tell trustees

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ASIC and APRA have urged trustees to not solely rely on the signed fee consent forms advisers need to provide from July 1, but to keep an eye on statements of advice and related documents as part of their “trustee oversight practices” to make sure fee deductions are appropriate.

Just hours before legislation came into effect requiring trustees to receive a copy of clients’ informed consent to deduct advice fees from super accounts, regulators sent a joint letter telling trustees that “over-reliance on member consent” should be avoided.

“Instead reliance on the consent should be combined with further trustee oversight practices, in particular, proactive reviews of a sample of Statements of Advice (SOAs) and/or related documents to evidence the provision of services, either where misconduct is suspected or as part of a regular review,” the letter stated.

“While member written consent shows that fees have been properly consented to, reviews of SOAs and other documents for a sample of members provide a further assurance that the expected services have been provided in respect of those fees.”

The joint letter is signed by APRA deputy chair Helen Rowell and ASIC commissioner Danielle Press. In a move that will do little to engender trust, the regulators’ exhortation came with a warning not to take advisers at their word.

“Reliance on attestations by financial advisers or advice licensees that services have been provided has limitations due to the potential for conflicts of interest, so cannot in all circumstances be relied upon.”

The regulators justified the directive by saying it observed a wide spread of practices used by trustees in determining whether members had provided consent for fees to be deducted, as part of a 2019 review into trustee oversight processes.

“Our review identified a wide range of practices in relation to the extent of reliance on consents and attestations, from some trustees relying solely on financial adviser attestations that advice has been provided, through to others who will not pay financial advisers without clear evidence of member consent,” the letter stated.

Privacy concerns

According to trustee experts, industry super funds like Aussie Super, Sunsuper and Hostplus have increasingly asked advisers for copies of advice documents since the Hayne royal commission.

The practice has the potential to spark concerns about privacy and disclosure.

If funds haven’t included a consent for advisers to provide the clients’ SoA in the original fund application form it would need to be sourced. Even with permission, the question remains for advisers: how much information is prudent to provide?

“It depends on what has been agreed between the client and the adviser,” says Jonathan Steffanoni, partner at consultancy firm QMV.

The concern is more around the release of confidential information than personal information, Steffanoni explains.

“What’s governed by the Privacy Act is personal information like the client’s name, date of birth, things like that, which is distinct from confidential information,” he says. “It’s important for the adviser to understand any confidentiality arrangements that are in place with their clients and ensure they adhere to those.”

According to the The Fold Legal partner Simon Carrodus, the practice of requesting SoAs goes back to the sole purpose test. After the royal commission, super funds wanted to make sure that the fees coming out of super were related to advice on super.

Yet trustees should generally have no real need to review the whole SOA, he says.

“What trustees need to check is the adviser’s name, the client’s name and the scope of the advice,” Carrodus continues. “That information will usually be contained in the first two or three pages. The rest of the SOA can be removed or redacted. Trustees don’t need to see the whole SOA.”