

Our ref: 2018-400017

26 February 2018

Mr John Telford



By email only to: [johnt@1earth.net](mailto:johnt@1earth.net)

Dear Mr Telford

I refer to the correspondence you sent to Ombudsman's Office on 8 February 2018.

You have set out your attempts to access Appendix 4 to ASIC's Submission to the *PJC Inquiry into the collapse of Trio Capital Limited*. I understand Appendix 4 set out ASIC's interactions with Trio over the relevant period and was provided to the PJC on a confidential basis.

ASIC decided the document was exempt from the FOI Act (and could not be provided to you) because '*public disclosure... would...infringe the privileges of the Parliament of the Commonwealth...*'.<sup>1</sup> The Office of the Australian Information Commissioner decided this decision was correct.

You believe 'Appendix 4 might offer some understanding of why ASIC showed no interest in a proper investigation [and] show why ASIC did not acknowledge the systemic failure of the financial system relating to the Trio fraud.' You 'call for an independent investigation of Appendix 4 including an investigation into the actions of Mr Shorten (the former Assistant Treasurer and Minister for Financial Services and Superannuation) and ASIC's handling of Trio'.

The Ombudsman's office is not authorised to investigate any action taken by a Minister<sup>2</sup> and we have no authority to investigate Members of Parliament.<sup>3</sup>

I note that you have previously complained to us about ASIC's failure to act in relation to Trio's collapse, the lack of support from ASIC and the fact that the government's compensation package did not cover SMSF investors.

You may recall that on 4 July 2014, I sent you a letter that explained our role in relation to ASIC's regulatory and investigation function. We also spoke about your situation on 1 September 2014. My

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<sup>1</sup> *Freedom of Information Act 1982*; s 46 (c)

<sup>2</sup> *Ombudsman Act 1976*; s 5(2)(a)

<sup>3</sup> Under s 5(1) of the *Ombudsman Act*, we are authorised to investigate *action that relates to a matter of administration...by a Department or prescribed authority...*

notes of that conversation reflect that I acknowledged the Trio collapse had affected you and other VOFF members and you remained aggrieved with how the whole matter had been handled. I explained to you this was not something that could be the subject of an investigation by us. I needed you to provide me with details of a current, live issue (i.e. an action or decision) that indicated maladministration by ASIC.

Since that time, the Ombudsman has published a policy that explains we generally do not investigate ASIC regulatory matters. I have included a copy of the Ombudsman's policy.

In my view, your recent correspondence repeats your request that we investigate ASIC's role in the Trio collapse.

I note that on 16 May 2012, the Parliamentary Joint Committee on Corporations and Financial Services published its report into the *Inquiry into the collapse of Trio Capital*; on 26 April 2013, the Treasury, published its report into its *Review of the Trio Capital fraud and assessment of the regulatory framework* and on 8 April 2016, APRA published its report on its *Investigation into the failure of Trio Capital Limited*.

I have considered these reports in the context of your complaint. I acknowledge that you and VOFF members do not believe enough has been done and there matters that have not been addressed. However, given the investigations already undertaken; the conclusions already drawn; the recommendations that have been made and the time that has elapsed, I do not see that the Ombudsman's Office has a further role to play in this matter. I cannot see that any investigation action by us would add to the level of knowledge regarding ASIC's role in the Trio collapse.

For these reasons, I have decided that an investigation of your complaint is not warranted and I have closed this complaint file. If you have any questions about this letter, please call me on 1300 362 072.

Yours sincerely



Elisha Hill  
Senior Investigation Officer



## Our role in dealing with ASIC's regulatory decisions

If a person disagrees with the Australian Securities and Investments Commission's (ASIC) response to a complaint decision, they can complain to the Commonwealth Ombudsman.

### Complaints about ASIC's regulatory decisions

A person can complain to ASIC that a company or person has breached the laws ASIC administers (ASIC calls these complaints 'reports of misconduct'). For example, some people complain about the actions of company directors or the actions of liquidators.

If a person disagrees with ASIC's response to a complaint, they should contact ASIC first to discuss the decision. If they remain dissatisfied, they can then complain to the Commonwealth Ombudsman.

Our role is to form a view about whether ASIC's decision was open to it to make under the laws it administers, including the *Australian Securities and Investments Commission Act 2001* and the *Corporations Act 2001*. We also consider whether, in handling the report of misconduct, ASIC treated the complainant fairly.

### Our Office policy

ASIC's website contains information about how it deals with reports of misconduct: [How ASIC deals with reports of misconduct](#).

We acknowledge that ASIC is not obliged to investigate every report it receives. The law permits ASIC to be selective about the matters it decides to take action into.

Therefore, when we receive a complaint about an ASIC decision not to take action, the Commonwealth Ombudsman's Office generally declines to investigate the complaint.

We will, however, carefully consider each complaint we receive to decide if it warrants investigation. For example, we may investigate if there is some indication of maladministration or unreasonableness in ASIC's decision making process.

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More information is available at [ombudsman.gov.au](http://ombudsman.gov.au).

The Ombudsman has taken reasonable action to ensure that the information contained in this publication is accurate and adequately comprehensive for the purpose for which it was created. The Ombudsman is not responsible for any damage or loss claimed to arise from any error or omission in this information.

### Contact us

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Canberra ACT 2601

The Ombudsman has offices in:

- » Adelaide
- » Brisbane
- » Canberra
- » Melbourne
- » Perth
- » Sydney

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