

The Trio Victims Right of Reply 22.07.2021
Concerning The Australian Securities and Investments Commission's response
to the Parliamentary Joint Committee on Corporations and Financial Service
Questions on Notice

ASIC's 12-page response document, published on PJC's webpage 9 July 2021, s See item 186.

https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Corporations_and_Financial_Services/No1of46thParliament/Additional_Documents

Right of Reply 1.

ASIC's document states,

'I note that Mr Telford has referred in his letter to concerns raised by Guernsey residents in 2017 about Mr Carl Meerveld - who was connected to the Trio fraud - and various events in Guernsey involving Mr Meerveled, (sic) ... Most of the information in Mr Telford's letter is material relating to Trio that is in the public domain and has already been considered by ASIC. Mr Telford's letter and this material do not raise any new allegations of misconduct or provide any new evidence in relation to Mr Meerveld or Trio that ASIC considers should be addressed.'

ASIC's statement suggests the concerns presented by Mr Telford and VOFF have already been considered which contain no new material or new allegations of misconduct.

This statement is completely at odds with the facts. Did ASIC check whether the custodian's bank submitted a Suspicious Money Transaction Report to the Australian Transaction Reports and Analysis Centre (AUSTRAC) concerning the more than \$50 million in a single amount, transferred from Australia to a questionable overseas location?

Did ASIC check whether the custodian bank breached its obligations and responsibilities under Anti-Money Laundering and Counter-Terrorism Financing Act by not reporting the single transfer of \$57m?

There is no evidence to verify what ASIC did or didn't do in its checking for misconduct. VOFF allege, before the crime occurred, ASIC failed to check the Gatekeepers to ensure they were fulfilling their duties and responsibilities according to legislation. Once the crime occurred, ASIC then also failed to follow the money trail or investigate the Trio fraud thoroughly.

Mr Meerveld is mentioned in publicly available court and liquidation documents as well as Enforceable Undertakings (EUs) published before the liquidator identified the missing money in 2015. But not found in the public domain is information that in 2010, Mr Meerveld offered to assist ASIC with the Trio investigation, but ASIC declined. The missing \$57m is also not in the public domain or any explanation as to why the money trail was never followed.

Right of Reply 2.

ASIC's document states, *'It is on the public record that the Australian Federal Police did examine whether to commence a separate investigation into Trio and decided not to do so.'*

ASIC's statement says one thing, background evidence suggests differently.

ASIC's correspondence in 2012 to the Australian Federal Police (AFP), obtained under Freedom of Information, shows that ASIC ignored the Trio crime to highlight financial planners' fees and commissions. [Ironically no one was ever charged over 'fees and commissions']. ASIC write,

'Trio was a funds management group based in Albury, NSW and provided a complex suite of managed investment funds which were heavily marketed through several financial advisors in Australia. These financial planners earned fees and commissions based on investments into Trio funds...It is alleged that financial advisers provided recommendations to clients due to high commissions which were paid by Trio. It is further alleged that the complex structure of the Trio scheme was designed to conceal fraudulent activity.'

Source: VOFF FOI No 373 to AFP 28.07.2015. 17 + 2 pages.

In the same FOI document, in referring to ASIC's 2012 correspondence the AFP state,

'the material provided by ASIC does not provide sufficient information to support an investigation into any Criminal Code Act 1995 offences...'

AFP reason it decided not to conduct a separate investigation into Trio hinged on ASIC.

Right of Reply 3.

ASIC's document states, *'Since 2014 ASIC staff have met with members of the VOFF organisation on numerous occasions and ASIC has responded to numerous letters and representations that Mr Telford, VOFF members and other investors have sent to ASIC either directly or through Members of Parliament. This includes ASIC's responses to Mr Telford sent on 31 July 2014, 12 December 2017 and 7 March 2018, copies of which are enclosed. Given the large number of communications ASIC has not provided a response to all of Mr Telford's correspondence.'*

VOFF alleged in one letter that Mr Shorten, Minister for Superannuation exercised a union bias where one group benefitted at another groups' expense, similar to what he did in 'Cleavevent'. He made a distinction without a difference, suggesting one group lost money through 'no fault of their own' while the other group 'invested their savings into troubled funds'. With no accurate account of the fraud, Mr Shorten's union bias fulfils what the former Prime Minister Mr Paul Keating urged the trade union movement to do, (as early as 1989) to use the billions of dollars generated by superannuation over the next 20 years to increase its own industrial clout. Keating added, *'the development of union-run superannuation funds would give the union movement "institutional muscle" to supplement its already substantial industrial strength.'*

Source: Michael Millett Sydney Morning Herald *Keating sees super as union shield* Sept 28,1989 page 4. ASIC did not answer the above concern.

Right of Reply 4.

ASIC's document states, *' ... ASIC has not provided a response to all of Mr Telford's correspondence.'*

Did ASIC not respond because of the high level link between The Australian Workers Union (AWU) and the Trio Capital Limited (Trio) scheme? The Minister for Financial Services and Superannuation, Mr Shorten was a former AWU National Secretary and the AWU had an Officer's Election Fund (slush fund) that invested in Trio products. Due to the Trio fraud the Officer's Election Fund's money was "stolen". It was the union's war chest, it was campaigning money.

Mr Shorten's Office gave ASIC a directive, to 'bring down' the financial advisor who recommended the Trio products to the AWU's Officer's Election Fund. Mr Shorten's directive had the hallmarks of outright retribution against an individual. The serious crime against 6,090 Australians who had their savings stolen was ignored.

Did ASIC compromise its independent handling of the Trio matter to pursue the Minister's interests?

Right of Reply 5.

ASIC's document states, '*... ASIC has not provided a response to all of Mr Telford's correspondence.*'

ASIC did not answer if they had breached *the Australian Securities and Investments Commission Act 2001 (ASIC Act), and the Corporations Act 2001 (Corporations Act)* that states ASIC's role as an, '*... an independent Commonwealth Government body*', by succumbing to Mr Shorten's directive and fulfilling Mr Shorten's perceived 'conflict of interest' issue.

Right of Reply 6.

ASIC's document states, '*... ASIC has not provided a response to all of Mr Telford's correspondence.*'

VOFF were concerned that when Mr Shorten was the AWU National Secretary he chose to keep quiet about the scandal surrounding the Australian Workers' Union slush Fund in the 1990s.

Source: Michael Smith & Bob Kernohan, 2GB radio 14/01/2014. Transcript here

<https://michaelsmithnews.typepad.com/files/bob-kernohan-interview-2gb-7-january-2014.pdf>

Did Mr Shorten, as a Minister of the Crown, (while he headed the Trio investigation) disclose his close ties with the AWU and perceived conflicts of interest?

Mr Shorten should not have been in charge of the Trio fraud investigation, again a conflict of interest perhaps!

ASIC did not answer the above question/concern.

Right of Reply 7.

ASIC's document states, '*... ASIC has not provided a response to all of Mr Telford's correspondence.*'

Mr Shorten as a Minister of the Crown had an obligation to serve the community equally, without discrimination, not to discredit the non-union funds by suggesting they were "swimming outside the flags".

Mr Shorten distorted ASIC's publication '*Investing between the Flags*' by suggesting SMSF victims invested 'outside the flags'. Why did ASIC allow this misleading categorisation?

ASIC offered no answers.

Right of Reply 8.

VOFF alleged that Mr Shorten and ASIC covered up information about the Trio fraud, failed to acknowledge systemic issues and politicized a crime. ASIC and the NSW Supreme Court relied on Shawn Richard's statement of facts, although Mr Richard was jailed for dishonesty. VOFF say there is no evidence to show that a proper forensic investigation was carried out. VOFF asked ASIC if Mr Richard's account of events were tested thoroughly before being accepted as evidence?

ASIC said, '*our investigation was extensive, and we gathered information and evidence from a variety of sources to determine what regulatory actions ASIC would be able to pursue successfully in the circumstances. We did not merely rely on information from Mr Shawn Richard as you have suggested.*'

VOFF ask the Committee Chairman, if an investigation did occur, why hasn't an evidence-based account of that investigation been made public?

Right of Reply 9.

ASIC's write, *'our investigation was extensive, and we gathered information and evidence from a variety of sources to determine what regulatory actions ASIC would be able to pursue successfully in the circumstances. We did not merely rely on information from Mr Shawn Richard as you have suggested.'*

VOFF found confusion between regulators and liquidator as to what exactly happened.

1. ASIC allege 'fees and commissions' had a major role.
2. ASIC also claim the money disappeared during the purchase of Pink Sheets.
3. Chris Savundra, Chief Legal Officer at ASIC claimed at a meeting with VOFF that Trio wasn't a fraud.
4. ACT Super carried out an investigation and found 'fraud' in the Astarra Strategic Fund but no creditors of ASF were entitled to view the report.
5. The Australian Prudential Regulatory Authority (APRA) acknowledged that Trio was a 'fraud', [necessary condition for the Part 23 of the Superannuation Industry (Supervision) Act 1993 to take effect].
6. In June 2015, Brett Manwaring of PPB Advisory informed a VOFF delegation that Trio was a Ponzi and no pool of money exists.

Evidence to support 'fraud' can be found in NSW Supreme Court documents, but there is no evidence to show that ASIC took all reasonable steps to pursue the stolen funds.

Right of Reply 10.

ASIC's document states, *'Since 2014 ASIC staff have met with members of the VOFF organisation on numerous occasions'*

5 July 2012 the first meeting was held in Market St., Sydney. A VOFF delegation met ASIC's Chairman Greg Medcraft, APRA's Chairman Ross Jones and Superannuation Minister Bill Shorten. Mr Shorten likened the terrible Trio crime to a "Sting". He retracted his comments about "swimming outside flags" and "rogue investors". However he never publicly apologized. VOFF presented a 29-page document that contained some questions. Mr Shorten said the questions are very important and requested Treasury to answer.

VOFF never received a reply. Two years later, VOFF submitted a FOI for the document. An \$83 fee was required then no such document could be found. Under FOI law, the fee is not returned. But in this instance, because of circumstances VOFF got its money back.

Right of Reply 11.

ASIC's document states, *'Since 2014 ASIC staff have met with members of the VOFF organisation on numerous occasions'*

At the 13 July 2016 meeting with ASIC's Commissioner John Price; Fiona Lourey Senior Lawyer; Chris Savundra Enforcement team Senior Executive Leader Markets; Robert Rush Manager - Government Relations; and Eve Brown, minister from Kelly O'Dwyer's office.

Eve Brown attended as a kind of mediator at VOFF's request to Treasury as VOFF. During the meeting VOFF asked ASIC for its assistance to launch a restitution action against a Trio company. ASIC said Australia doesn't have restitution law. In this particular instance, it was Eve Brown that had to correct ASIC and inform that there is restitution in Australia. ASIC were defensively unhelpful.

Right of Reply 12.

ASIC said, *'our investigation was extensive, and we gathered information and evidence from a variety of sources to determine what regulatory actions ASIC would be able to pursue successfully in the circumstances.'*

VOFF had pointed out to ASIC that in 2002, ASIC travelled to Hong Kong to secure 100,000 documents from the Hong Kong based company, Zetland, owned by Scottish Accountant James Sutherland and American Lawyer Jack Flader. The documents played a vital role in the sentencing of a Queensland man who faced charges for fraud against the Australian Commonwealth. At that time the names of Mr Flader and Mr Sutherland were already on ASIC's company registration database, as they were the owners of the 2001 ASIC registered holding company that eventually purchased the fund which became Trio Capital Limited. About one a year later after ASIC's visit to Hong Kong, ASIC allowed the same two men to own and operate a fund in Australian and for that fund to handle superannuation.

ASIC made no comment about VOFF's concern.

[Police keep better parking infringement records than ASIC's data on multi million dollar frauds. ASIC failed to know who the people were behind a company, due diligence, none, and consequently Australia became exposed to predatory fraudsters.]

Right of Reply 13.

In regards to ASIC's *REGULATORY GUIDE 234 Advertising financial products and services (including credit): Good practice guidance November 2012*

VOFF provided ASIC with about 6 examples that gave the impression the Guide was breached.

RG 234.79 *An advertisement should not present a comparison in a way that would create a misleading impression of the product.*

Did Mr Shorten benefit by comparing BAD choice losers on the one hand and GOOD choice winners that were fully compensated on the other hand. Did the extensive media coverage of the tragic stories of gutted self-managed investors against the Industry funds that benefited from the Trio disaster breach ASIC's REGULATORY GUIDE 234?

RG 234.164 (b) *It is not necessary to show that consumers have actually been misled— the law prohibits conduct that is likely to mislead.*

After the Trio fraud SMSFs were made out to be dangerous. Systemic issues in the financial system such as the weaknesses in regulatory legislation and the loopholes in law, which the Trio fraudsters exploited, were not fully revealed to the public. Trio Capital did expose consumers to a danger. The entire system let consumers down. There are other ways to face this danger rather than scare people away from SMSFs. For example, SMSF trustees could be offered an opt-in scheme or some other safety net.

ASIC answered the above concerns by saying,

'In addition, we note that ASIC Regulatory Guide 234 Advertising financial products and services (including credit): Good practice guide (RG 234) was intended to assist promoters and advertisers of financial products or credit to understand their statutory obligations. We do not consider that RG 234 applies to the examples of general media commentary and reporting that you have provided. This is because they are not advertisements from financial services or credit providers.'

Right of Reply 14.

In regards to ASIC's *REGULATORY GUIDE 234 Advertising financial products and services (including credit): Good practice guidance November 2012:*

The Guide did not apply to the examples VOFF provided from the press. ASIC said, *'We do not consider that RG 234 applies to the examples of general media commentary and reporting that you have provided. This is because they are not advertisements from financial services or credit providers.'*

ASIC's statement above raises another question that VOFF would like to ask. Could financial services or credit providers be exempt from the law by using the media as an advertising platform?

For example, former ASIC Chairperson Jeremy Cooper is in financial services. His disingenuous remark, *'you can't have your cake and eat it too'* was aimed at SMSFs. His comment wasn't an accidental event because on the 27 March 2013, an article, *'No safety net' on SMSF losses* by journalist Gareth Hutchens that heavily quoted Mr Cooper was distributed en masse throughout Australia. Google search page repeated exactly the same header over and over apart for an independent link to various newspapers. About 23 headers per Google search page and this particular article continued 10 pages deep into the Google search. This same magnitude didn't occur over Princess Diana's car crash or 9/11.

Did ASIC pay distribution costs?

Would ASIC be concerned if Mr Cooper's disingenuous comment were made in his own self-interest?

And Mr Cooper's interest is seemingly in the managing a multi billion-dollar fund – which means he would directly benefit from giving SMSF's bad press.

Right of Reply 15.

ASIC, write, *'Most of the information in Mr Telford's letter is material relating to Trio that is in the public domain and has already been considered by ASIC.' ... 'Since 2014 ASIC staff have met with members of the VOFF organisation on numerous occasions and ASIC has responded to numerous letters and representations that Mr Telford, VOFF members and other investors have sent to ASIC either directly or through Members of Parliament. This includes ASIC's responses to Mr Telford sent on 31 July 2014, 12 December 2017 and 7 March 2018, copies of which are enclosed. Given the large number of communications ASIC has not provided a response to all of Mr Telford's correspondence.'*

Mr Telford appears to be a public nuisance. Was *'the large number of communications'* necessary because ASIC repeatedly ignored the Trio victims' concerns? ASIC ignored the victims' concerns over being called *'rogue investors'*, *'swimming outside the flags'*, *'relied on a mindless financial planner'*, and *'not everyone put money into Trio'*.

Mr Medraft said at a meeting with VOFF that "The Trio fraud found the financial system wanting." Had ASIC publicly explained that the "fraud" insidiously undermined the financial system, the public would have had a better understanding.

- Had Mr Medraft publicly explained that ASIC was aware of the legislation weaknesses and the loopholes in law that the fraudsters exploited.
- Had he informed the public of the failure of the Gatekeepers, and that the investors followed ASIC's and APRA's requirements.
- Had he informed the investors invested in an APRA regulated fund, ANZ and NAB were Trio's custodians, as well as the SMSF trustees along with their financial adviser carried out due diligence into 4-years of research by Research Houses and Star Rating firms.

Had all of the above been carried out and ASIC provided an honest acknowledgement of the Trio matter a different picture of the crime scene would have been painted to the one that points blame at the victims.

ASIC knows that the whole industry is dependant upon the credibility of the Audit system; APRA is totally dependant upon the audit reports and in 2019, Mr Medcraft warned about a decline in auditing and called for rules shake-up to avoid 'Enron style' collapses. Had ASIC been honest and accurate from the very beginning; had it explained that existing legislation didn't require the regulator to know the personal histories of Directors acquiring a business; and publicly explained about legislation weaknesses across international jurisdictions that prevented the regulator from recovering the stolen funds. Had the regulator applied accuracy and transparency to the Trio fraud matter, the narrative would not be the debacle it became.

Right of Reply 16.

One of ASIC's Enforcement Outcomes:

- *Permanent banning of Jeffrey Revell-Reade from providing financial services in Australia.*

Ref 15-119MR ASIC permanently bans Australian mastermind of UK fraud

Is this an ASIC achievement or major reason for concern?

Mr Revell-Reade had already spent 2-years of his eight and a half years sentence to prison for operating a scam based in Spain when ASIC handed him this ban. The 1,000 investors in Britain that fell for Revell-Reade's "boiler-room" scam of selling junk stock over the phone, lost \$126.4 million. Yet the UK authorities and the court treated the victims respectfully and managed to claw back proceeds of crime and sell Revell-Reade's assets to repay the victims. On the other hand, the Trio victims despite being in an ASIC licensed and APRA regulated fund were treated disrespectfully. ASIC made no attempt to claw back the proceeds of crime and not a single cent was returned to the Trio victims.

The authorities had Mr Revell-Reade on the radar and an investigation into Revell-Reade's activities started 4 years leading up to the court trial. During this period the United Kingdom Serious Fraud Office (SFO) issued worldwide warnings and asked the press and media to refrain from writing or printing any articles about Revell-Reade that might jeopardise any possible court trial that may arise in the future. The warning reached Hong Kong and New Zealand. Seems like ASIC didn't have a clue about the warning because ASIC issued Revell-Reade with a financial service licence at this same time!

The only tenuous link VOFF found is the Multi-Tech International Corp shares acquired by Revell-Reade and purchased by Astarra Strategic fund in 2009. Whether ASF purchased from Revell-Reade is not known. VOFF submitted a Freedom of Information to ASIC for information about the Multi-Tech International Corp shares but ASIC never acknowledged the FOI.

John Telford
Secretary
Victims of Financial Fraud (VOFF Inc)