

VOFF's Right of Reply to ASIC's 12-page 2021 response to the PJC's 'Questions on Notice'.

Victims of Financial Fraud (VOFF) - a group of honest hard-working Australians that had superannuation and direct investments stolen by Trio – have a responsibility to speak up and not let the same insidious malfeasance happen to other consumers. Consumers are more easily lured into a false sense of security by incorrect information. ASIC's 12-page response document is an example of as it contains inaccuracies. The highly respected financial journalist Mike Taylor, in referring to ASIC's response document, repeated two ASIC inaccuracies,

(a). *"At the height of the fall-out from the Trio/Astarra collapse the Australian Securities and Investments Commission (ASIC) told affected investors that among the reasons the regulator encouraged people to take financial advice is because they might later take action against the adviser."*¹

ASIC's above statement is misleading for two reasons:

(a-1) The Trio victims did take financial advice from financial advisers [licensed by ASIC] but did not take action against them because the entire financial system failed the consumers. The custodian banks, research houses, star-rating firms, and auditor all failed to detect the fraud. Even the Australian Prudential Regulations Authority (APRA) failed to communicate its concerns about Trio with ASIC. ASIC did not carry out background checks of the people it allowed to purchase an Australian Trust Fund. APRA failed to act quickly when in late 2008 to mid 2009 it was unable to obtain a true valuation of Trio's assets. The law firm that assisted in the writing of Trio's Product Disclosure Statement failed to sound any alarms and it was later found that the PDS was deceptive. The entire financial system failed to identify the Trio fraud. Consumers and financial advisers are not responsible for systemic issues or regulatory failure.

(a-2) ASIC understood the significance of 'swimming between the flags' because it had categorized it as financial advice and as wise investment behavior. ASIC's Deputy Chairman Jeremy Cooper, at National Conference in Adelaide in March 2009, explained '*Swimming Between the Flags*'. He said,

- *swimming between the flags – investing in bank deposits, diversified blue chip shares, vanilla managed funds and other investments with known risks or with professional advice; and*
- *swimming outside the flags – investing in riskier and more complex investments and beyond, all the way to unregulated investments and scams.*²

ASIC's broacher '*Investing between the flags - A practical guide to investing*', (November 2009) states, "*You've sought personal financial advice where you don't understand something or feel you need it.*"³

Yet Mr Shorten was allowed to distort ASIC's "swimming between the flags" message by wrongly suggesting self-managed investors were 'swimming outside the flags'. ASIC stood by and allowed Mr Shorten to mislead the public with this false and misleading characterization.

The second inaccuracy Mr Taylor repeated was:

(b). *"Investing through an APRA regulated fund is likely to be more appropriate for an investor who does not want to be actively involved in managing their fund or who do not have the skills or experience to do so."*

¹ Mike Taylor *Why ASIC told burned SMSF investors to use a financial adviser* July 13, 2021:

<https://www.linkedin.com/pulse/why-asic-told-burned-smsf-investors-use-financial-adviser-mike-taylor/>

² ASIC's Deputy Chairman Jeremy Cooper outlines what is meant by Swimming Between the Flags at National Conference Adelaide March 2009. Page 3

³ Australian Securities and Investments Commission, November 2009 ISBN 978-0-9805780-2-7 Page 5

This alarmed the Trio victims as they did invest in an APRA regulated fund. The Astarra Strategic Fund was an APRA regulated fund.

That Mr Taylor was misled is a warning and compelled VOFF to point out the many other alarming inaccuracies throughout ASIC's 12-page response document. VOFF regards the following information as a 'right of reply' document. VOFF wrote to ask ASIC to correct or remove its document. ASIC refused to act.

The following extracts from ASIC's 12-page response document are in blue. VOFF respond to the inaccuracies.

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 says it already considered concerns by Telford and VOFF. They contain no new material or new allegations of misconduct.

In hindsight it is now understood that ASIC failed to check the Gatekeepers to ensure they were fulfilling their duties and responsibilities according to legislation. Then once the crime occurred, ASIC failed to follow the money trail or thoroughly investigate the Trio fraud. There is also no evidence to verify that ASIC checked for misconduct in the funds managed by Mr Meerveld who was based in Hong Kong. He is named in court, liquidator and Enforceable Undertaking (EU) documents as an overseas Trio fund manager. Nowhere is it mentioned that in 2010, Mr Meerveld offered to assist ASIC with the Trio investigation. ASIC declined. Then in 2015, at the end of the so-called Trio investigation, the Trio liquidator found that \$57m disappeared from the overseas Trio fund where Mr Meerveld was a manager.

There is no information in the public domain to inform whether ASIC checked why \$57m disappeared. No evidence to show whether Trio's custodian bank submitted a Suspicious Money Transaction Report to the Australian Transaction Reports and Analysis Centre (AUSTRAC) when Trio transferred (to a questionable overseas location) a single transfer of over \$50 million. Did the bank breach its obligations and responsibilities under Anti-Money Laundering and Counter-Terrorism Financing Act?

2. ASIC write,

'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, but background evidence suggests differently. According to ASIC's 2012 correspondence to the Australian Federal Police (AFP), (obtained by VOFF under Freedom of Information), ASIC ignored the Trio crime to highlight financial planners' fees and commissions [incidentally, 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.'*⁴

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

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

The above correspondence between ASIC and the AFP suggests the AFP did not conduct a separate investigation into Trio because ASIC didn't / couldn't / wouldn't provide sufficient evidence.

3. ASIC write,

'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.'

ASIC is selective in its response and ignores very important issues. For example, VOFF informed ASIC that Mr Shorten, Minister for Superannuation exercised the same union bias he used in 'Cleavevent' - a situation where one group benefitted at another groups' expense. In regards to the Trio victims, Mr Shorten claimed one group lost money through 'no fault of their own' while another group 'invested their savings into troubled funds. Mr Shorten's interest in superannuation followed former Prime Minister Mr Paul Keating suggestion in early 1989 when he urged the trade union movement to use the billions of dollars generated by superannuation over the next 20 years to increase its own industrial clout. Mr Keating added, *'the development of union-run superannuation funds would give the union movement "institutional muscle" to supplement its already substantial industrial strength.'*⁵

The victims that lost money for no fault of their own were from union-run superannuation funds. The self-managed super fund trustees and direct investors were accused by Mr Shorten to have lost their savings by their own fault. Mr Shorten made a distinction without a difference. He politicised the Trio crime and ensured one group benefitted at another groups' expense.

In regards to ASIC communication with VOFF, three such letters are in ASIC's response document and because there is a need to list inaccuracies here in this letter suggests something about the quality of ASIC's correspondence.

In regards to meetings - ASIC and a VOFF delegation did meet on the 5 July 2012 where VOFF handed a list of questions to Mr Shorten and ASIC. VOFF still haven't received a reply.

On the 13 July 2016 meeting, VOFF asked ASIC to launch a restitution action against Global Consultants and Services Ltd (GCSL). ASIC said it had closed its books on Trio and sees no purpose to take any further action. ASIC refused to use its power and claw back the stolen money.

⁴ VOFF FOI No 373 to AFP 28.07.2015. 17 + 2 pages.

⁵ Michael Millett Sydney Morning Herald *Keating sees super as union shield* Sept 28,1989 page 4.

4. ASIC state it, *'has not provided a response to all of Mr Telford's correspondence'*. In other words it doesn't answer unless it's in ASIC's best interest. Here is an example of 4 non-response issues:

(a) VOFF informed ASIC that The Minister for Financial Services and Superannuation, Mr Shorten, was the former Australian Workers Union National Secretary, and in charge of the Trio investigation. Given that the AWU's slush fund, called 'Officer's Election Fund' had invested in Trio products and lost it's war chest to the Trio fraud, raises 'conflict of interest' questions. The stolen money would have helped Mr Shorten run for the Prime Minister position.

(b) *The Australian Securities and Investments Commission Act 2001 (ASIC Act), and/or the Corporations Act 2001 (Corporations Act) that states ASIC's role as an, '... an independent Commonwealth Government body'.*

VOFF asked ASIC whether it breached or compromised its role as an independent agent when it succumbed to Mr Shorten's directive to 'bring down' the financial advisor who had recommended the Trio product to the Officer's Election Fund? Mr Shorten's directive had the hallmarks of outright retribution against an individual. Mr Shorten ignored the serious financial crime against 6,090 Australians. ASIC didn't answer.

(c) VOFF was concerned to learn Mr Shorten, as the AWU National Secretary, kept 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>

As a Minister of the Crown, (while he headed the Trio investigation) he never disclosed his close ties with the AWU and his conduct in the 1990's fraud meant he should not have been in charge of the Trio fraud investigation. ASIC did not respond to this concern.

(d) 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 answer.

5. ASIC and the NSW Supreme Court relied on and accepted Shawn Richard's statement of facts, seemingly without evidence. Considering Mr Richard was jailed for dishonesty, VOFF asked ASIC if Mr Richard's account of events were tested thoroughly before being accepted as evidence?

ASIC 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.'

6. VOFF do not accept ASIC's statement above because the regulators and the liquidator remain confused as to what exactly happened. For example:

1. ASIC allege 'fees and commissions' had a major role.
2. ASIC claim money disappeared in 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 the ASF creditors are not entitled to view the report.
 5. APRA acknowledged that Trio was a 'fraud', [necessary condition for the Part 23 of the Superannuation Industry (Supervision) Act 1993 to take effect].
 6. The NSW Supreme Court conformed 'fraud'.
 7. In June 2015, Brett Manwaring of PPB Advisory informed a VOFF delegation that Trio was a Ponzi and no pool of money exists.
 8. In 2017-18 the Australian Tax Office claimed from one of the owners of Trio Capital \$30,791,572.78 in unpaid tax (Trio victim's money).
7. ASIC 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.'

VOFF reminded ASIC that it travelled to Hong Kong in 2002 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. One a year later after ASIC's Hong Kong visit, ASIC allowed the same two men to purchase, register and operate a fund that handle Australian superannuation. ASIC ignored this concern.

8. ASIC write,

'Since 2014 ASIC staff have met with members of the VOFF organisation on numerous occasions'

"Numerous" is an overstatement. The first meeting (5 July 2012) at 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 a list of questions. Mr Shorten said the questions are very important and passed them on to Treasury to provide answers but it never replied.

9. At another meeting (13 July 2016) a VOFF delegation met 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, from Kelly O'Dwyer's office. Eve Brown acted as a mediator. She had to correct ASIC as it claimed Australia doesn't have Restitution Law.

10. Concerning,

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

VOFF provided examples to suggest ASIC's Regulatory Guide 234 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 from extensive media coverage that compared the tragic stories of gutted self-managed investors against the fully compensated Industry fund members? Did benefiting 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.*

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. After the Trio fraud, SMSFs were made out to be dangerous.

Was RG 234.164 (b) breached by using tactics to scare people away from SMSFs?

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.'

11. 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.'

The '*... large number of communications...*' was necessary because ASIC persistently ignored the victims' concerns. At a meeting with VOFF, Mr Medcraft said, "*The Trio fraud found the financial system wanting.*" Once it's understood that the Trio fraud undermined the financial system, calling the victims 'rogue investors' or 'swimming outside the flags' is meaningless. Trio consumers carried out due diligence and they invested in the APRA regulated fund. They cannot be faulted.

In 2019 Mr Medcraft warned about a decline in auditing and a potential 'Enron style' collapse. The Trio audit reports deceived everybody including APRA and the custodian banks. The public would have had a better understanding of Australia's largest superannuation theft had ASIC provided accurate and evidence-based reports. Accuracy and transparency would have ruled out any need for victims to correspond with ASIC.

12 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.*"

The word "most" is an unsatisfactory statement concerning a serious financial crime. That ASIC considers something is no indication that ASIC understands or acted.

VOFF could make a list of what's *NOT* in the public domain, but the list would be very long.

13. ASIC write,

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

ASIC present this as an achievement.

However, Mr Revell-Reade was 2-years of his eight and a half years sentence in 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 [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 the 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.

For 4 years leading up to the Revell-Reade court trial, the United Kingdom Serious Fraud Office (SFO) had issued a worldwide warning to media to refrain from publishing articles that might jeopardise any possible court trial that may arise in the future. The warning reached Hong Kong and New Zealand. Did ASIC misplace the warning because during this same period ASIC issued Revell-Reade with a financial service licence?

Due to the lack of transparency surrounding the Trio fraud, there's not much of a connection between Revell-Reade and Trio. He crossed paths with some of the Trio crooks around the time Trio started.

There are many more issues about the Trio fraud that are not in the public domain. But this document remained focused on ASIC's 12-page response letter.

ASIC wrongly claim there are no unresolved issues surrounding Trio.

John Telford
Secretary
Victims of Financial Fraud (VOFF Inc)