

ASIC COMMENCES PROCEEDINGS FOR BREACH OF BEST INTERESTS DUTY

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Legal Briefings - By **Michael Vrisakis** and **Alison Wheatley**

On 3 June 2016, ASIC commenced proceedings against NSG Financial Services Pty Ltd (**NSG**) for breach of the 'best interests duty', specifically section 961L of the *Corporations Act*. This is the first action ASIC has brought for breach of the duty since its introduction under the FOFA reforms.

NSG is an independent Melbourne based financial advisory group which holds an AFSL for the provision of personal advice to retail clients on risk insurance and superannuation products. It also employed advisers to provide advice on its behalf as representatives and authorised representatives.

ASIC is seeking declaratory relief and pecuniary penalties against NSG, alleging that it 'failed to take reasonable steps to ensure that its advisers complied with the best interests obligation when providing advice to clients'.

ASIC alleges that:

- NSG did not provide appropriate training to its advisers to ensure compliance. For instance, ASIC is claiming that NSG 'trained its advisers that it is almost always in a client's best interest to take out some form of life risk insurance, regardless of a client's financial situation',
- NSG's legal compliance and risk management policies have been inadequate and were not followed or enforced,

- clients were sold policies or rolled over into superannuation accounts that were unsuitable and unnecessary, and
- performance reviews and disciplinary action have not been taken against advisers who did not act in compliance with their Corporations Act obligations.

As a result, it is alleged that NSG advisers did not act in the best interests of their clients.

Interestingly, this case may offer judicial guidance on the scope and operation of the duty and assist in the provision of compliance advice in this space. This case is also a timely reminder of the importance of not only having appropriate compliance and risk management policies that reflect the current state of the law but also of ensuring that advisers are trained in how to appropriately discharge their duties under the law. These proceedings indicate that it is not enough to have a policy without appropriate training. It is also a reminder that appropriate disciplinary action should be taken where advisers have breached their obligations.

The first hearing of the matter is scheduled for 8 July 2016 before the Federal Court of Australia. We will continue to monitor this case and provide you with relevant updates.

The full ASIC release can be found [here](#).

KEY CONTACTS

If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.



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