NAB Keeps ASIC In The Dark About Planner Crimes

Summary:
NAB financial planners as bad or worse than CBA's. Fraud and forgery uncovered by whistleblower leaks. Bank pays out victims to silence them and then pays out planners without reporting them to ASIC - allowing them to move to other companies to keep the same scams running.

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Lack Of Regulation Allowing Latitude To Rogue Financial Planners

It took a while for the axe to fall on Alfie Chong. For weeks, the National Australia Bank had held a report stating Chong was involved in "systemic breaches" flogging complex products to his financial planning clients.

Chong was already under investigation by the corporate regulator.

Not only that, the highly sensitive report warned, the bank was seeking an explanation for "what appeared to be 'copy and pasted' client signatures on the Authority to Act documentation".

"The responsible manager is proposing to terminate the adviser."

That finally happened, in June last year, when Chong's firm Meritum, a NAB subsidiary, made a call on the high-profile and long-serving financial planner.

But that was not the end of his career. Far from it. By August, he was working under the licence of NEO Financial Solutions, a Perth firm not aligned to one of the four big banks.

When NEO was contacted this week by Fairfax Media, the circumstances of Chong's departure from Meritum came as an apparent surprise. A spokesman said background checks were undertaken before Chong was taken on.

This included contacting Meritum for a reference.

"In no circumstances were there any qualifications [from Meritum] in terms of the reference checks that would have caused NEO to be concerned ... there were no concerns or hints that there were problems. Comprehensive questions were asked."

Chong did not respond to emailed questions from Fairfax Media. NEO confirmed it had been in contact with Chong.

NAB Wealth chief executive Andrew Hagger declined to comment on specific cases, but said NAB Wealth's compliance head was authorised to give formal references and went through "strict processes in doing so".

Meanwhile, it emerged during the week that 39 of the 700 former clients of departed NAB planner Graeme Cowper – whose activities were brought to light by Fairfax Media last week – had been quietly compensated by the bank. NAB did report Cowper to ASIC in 2010. Yet he moved on unimpeded to work at Aon, then AMP's IPAC, where he is now on paid leave.

The cases highlight will give weight to those calling for a much stronger register for financial planners than the one proposed by the government to allow consumers to interrogate the work history of their advisers before entrusting them with their life savings.

Finance Minister Mathias Cormann has used the register to try to neuter calls for a Royal Commission, aided by Labor, which has also so far resisted backing a judicial inquiry.

There are major questions about how useful the register will be – given it will have no information about why advisers left their former firms.

> The ease with which Chong and Cowper were able to move around exposes this gaping flaw in the system in Australia. Financial planners who resign under a cloud can quickly turn up elsewhere in the industry offering advice to unsuspecting clients.

Still pressure for a Royal Commission is building in the wake of Fairfax Media's revelations last week of sackings, risk warnings, forgery and misconduct within NAB's Wealth division – information exposed in a leaked cache of documents from an internal whistleblower.

Advocates for a broader inquiry drew direct parallels to last year's scandals in the Commonwealth' Bank's financial planning division and Macquarie Private Wealth.

During a dramatic week, ASIC revisited its sweep of 10 institutions, including NAB's Meritum which offered complex financial advice to customers.

That sweep had found that a staggering 50 per cent of files it reviewed had "insufficient evidence of compliance", including inadequate consideration of the client's needs, unsuitable gearing recommendations, misrepresentation of the products and risk and lack of transparency on fees charged. It also found instances of "boilerplate" statements of advice.

In Meritum's case, it found systemic breaches by two unnamed advisers, and the company subsequently "terminated" them.

Fairfax Media has already revealed last week that Meritum had sacked six advisers in the past two years over "compliance issues."

A sensitive leaked document, a "risk review" authored by Hagger in August, also said NAB had quietly "terminated", "suspended" or "ensured resignations" of another 31 NAB financial planners due to "conflicts of interest, inappropriate advice, inappropriate practices or serious or repeat compliance issues". Other "major incidents" had involved forgery of client signatures and file reconstructions.

But NAB reported only five of the 37 departed planners to ASIC by lodging a breach report – meaning 32 of those ushered out had no black marks against their names, and may have already moved on to other jobs. NAB says most of the cases did not involve actions that required a breach.

NAB chief executive Andrew Thorburn has announced a range of "fresh processes" in response to Fairfax's stories. The bank's whistleblower policies would be strengthened; a "deeper review" of client files would be conducted, and from now on, the reason for planners' departures would be passed on to ASIC. The bank maintains that it does not have "systemic" issues within its Wealth division.

The sackings and compensation payments – to 700 customers totalling between $10 million and $15 million – were previously unknown to the regulator. ASIC commissioner Peter Kell told the Senate this week that "much of the information that was raised on Saturday in Fairfax Media was news to us, and that's why we are seeking further information about many of these planners."

Following Fairfax Media's stories, ASIC has used its formal legal powers to serve notices on NAB requiring it to hand over information. "All regulatory options are on the table," Kell said.

> Labor Senator Sam Dastyari likened NAB's actions to those of the Commonwealth Bank. "It is like déjà vu," he said.

That affair resulted in a landmark senate inquiry, calls for a royal commission and the bank's chief executive Ian Narev apologising and agreeing to review the files of any of its 400,000 customers who believe they had been given inappropriate advice.

"How on earth as a major financial institution did National Australia Bank think covering this up was going to be acceptable?" Senator Dastyari asked.

ASIC also confirmed that it had not received breach reports on several former advisers named in a key NAB "advice review" document from August 2014.

The exception was Cowper, who had almost 700 customers and managed $35 million of their money.

According to the August 2014 internal document, Cowper was "terminated" for file reconstruction and compliance breaches.

It is not known how much NAB paid out to Cowper's clients. But a number of former clients contacted Fairfax Media this week saying they had either received a minimal payout, in return for signing confidentiality agreements, or no compensation at all.

One customer, who asked not to be named, said she was signed up with Cowper in 2006 after trying to apply for a home loan. She was single, in her 40s, self employed and wanted to own her own home.

Like another victim, Veronica Coulston, who had received an inheritance and wanted to pay down her mortgage, the bank manager had other ideas.

She suggested talking to Cowper, who advised she take out a margin loan with NAB and invest in NAB-owned managed funds.

When the investments started blowing up during the GFC, Cowper suggested borrowing more money. By the time Lehman Brothers collapsed, she had nothing left, bar a few thousand dollars.

"I felt like someone had died. I'd worked incredibly hard," she said.

In 2010 Cowper's client was diagnosed with Stage IV cancer.

"One of the things that agitated me when I was in hospital was seeing all the very old people around me," she says. "It occurred to me that if I were to live through the illness, I might live to an old age – and how would I pay for it?"

She says NAB never contacted her or offered compensation.

Another customer also first met Cowper through a bank manager referral, having gone to borrow money to buy a house.

He says Cowper advised him to invest his $260,000 savings plus a $600,000 margin loan in NAB managed funds, and he was advised to take out multiple insurance policies through NAB's MLC arm.

He says when he met Cowper, he filled in a "fact find" – a form detailing a person's financial situation. But Cowper told him that what he had written would prevent him from becoming a client because he would be classified as "too conservative", and offered to fill in a new form.

When the GFC struck and the client's investments started to deplete, he decided to shut down the margin loan. It cost almost $50,000 to close the account, based on the economic cost to NAB of him paying out the loan early. He had not been told he had signed up for a fixed interest rate. He says he complained and tried to get compensation but he was unsuccessful and gave up.

Hagger said on Friday that NAB stood for "paying proper compensation to customers", and said the bank welcomed all customers "who believe they've had inappropriate advice to contact us ... we will deal with each and every request".

According to ASIC's senate evidence this week, NAB filed a breach report on Cowper with ASIC in 2010, six months after he left the bank.

But, incredibly, it emerged in Senate estimates that the regulator did not take further action against him due, in part, to "resourcing limitations."

Fairfax Media can reveal Cowper left NAB in July 2009, joined Aon a month later and is now working as a planner at AMP-owned IPAC. Aon and AMP are now reviewing Cowper's client files. Cowper is on paid leave.

AMP declined to comment. Cowper was not available for comment but said in a statement last week that he had not been sacked by NAB and "strongly" refutes any allegations of inappropriate advice.

One former IPAC employee told Fairfax Media that he knew of a number of complaints made about Cowper to compliance and the NSW state manager between 2013 and July 2014.

These included complaints that some of his files did not contain client signatures on certain documents, excessive churning of insurance policies and rolling existing products into more expensive products.

ASIC, having failed to pursue Cowper in 2010, is now revisiting the case. "As part of the investigations we are now initiating as a result of this more recent information, we will certainly be looking at whether that compensation was adequate and whether any further information needs to be taken," Kell told the Senate on Wednesday.

But not everyone named in NAB's internal documents had breach reports filed against them. They include George Cassimatis, who went on to launch ill-fated Storm Financial, Craig Stubbs, who NAB said was "moved on" due to poor compliance and became CEO of Fincorp, and Nick Sinclair, who NAB said was "moved on" in 2012 due to conflicts of interest involving property. Stubbs and Sinclair both strongly deny any wrongdoing.

Whistleblower Jeff Morris helped expose the CBA scandal. He also helped his friend Coulston seek compensation from NAB for Cowper's advice.

He has now turned his attention to the Abbott government's soon-to-be launched adviser register, which he regards as "dangerous."

"The government seems to be determined to emasculate the adviser register to the point where it is likely to be more dangerous than useful for consumers," he says.

The register will only include five years of an adviser's employment history, he points out, which would mean advisers who worked at Storm Financial or Lehman Brothers would already be able to hide key parts of their work history.

"Better no register than one that engenders false confidence and provides more cover for rogues to hide behind," he says. "Better to dispense with the register and openly revert to 'buyer beware' so that people don't lower their guard."

Former Financial Planning Association (FPA) chairman Matthew Rowe, who runs Hood Sweeney and has pushed for change for years, also doubts the register's effectiveness.

"The register would only be as good as the commitment of our major institutions to transparency and acting in the public interest."

The CBA scandal, exposed by Fairfax Media over two years, threw up multiple cases of planners slipping through the cracks and reappearing elsewhere to cause more clients more financial strife.

Rick Gillespie "resigned" from CBA in June 2009. A compliance manager had gone through his files and reported him for suspected forgery and fraud; CBA filed a breach report six months after he left. ASIC took three years to ban him for life; in the meantime he worked at two firms offering advice to customers.

Both firms said they were "unaware" that Gillespie had left CBA under suspicious circumstances or that he was subject to an investigation by ASIC.

Stuart Jamieson worked at CBA's financial planning division in Western Australia for almost 10 years until he resigned in 2012, amid a bank investigation. Jamieson joined three other operations until he was let go by Westpac last year when the bank found out about his past after the FPA suspended him.

ASIC's Kell says the industry has to take its responsibility to file breach reports far more seriously. And he says there also needs to be more vigilance in licensees checking out the employment history of planners.

But the United States seems to have found the answer. In the US, advisers are required to fill in a lengthy 24-page form when they leave a business, including why they left a company. This includes whether they were discharged, permitted to resign, terminated, voluntary or "other". It includes customer complaints and any regulatory action.

The Stockbrokers Association of Australia has been pushing for the US-style system since 2004. It has proposed it major reviews including it in every major submission, including David Murray's Financial System Inquiry, FOFA and the parliamentary joint committee inquiry into education, ethics and professional membership of advisers.

For the ASA it was disappointing that the industry working group that charged with building the new register rejected its suggestion to include such misconduct.

Meanwhile, the stories of financial anguish caused by NAB financial planners keep emerging. And now the Australian Prudential Regulation Authority has signalled that it is watching the NAB situation – along with the wider industry.

APRA chairman Wayne Byers told Senate estimates that it would consider what such issues "tell us potentially about governance, culture and risk management in the group more broadly.

"Yes we have paid attention to those issues, yes we have tried to understand what drove those issues to develop, but our interest is the extent to which they may be indicators of problems elsewhere in the group."

The leaked documents at NAB shine a light on multiple problems within NAB wealth. The bank whistleblower describes a toxic culture of profit before all else. One former employee – one of many who contacted Fairfax Media this week – said: "I worked at NAB financial planning and witnessed pretty much word for word the same events that happened at CBA, except there were no whistleblowers – until now."

He told of one senior financial planner who pumped all his clients into geared managed funds – "regardless of risk profile" and pillaged them with fees.

"The bullying, threats, affairs, staff churn, [are] another story," he says.

"When it all went pear shaped he was caught forging signatures to use branch accounts to cover margin calls ... I watched management do everything they could to cover the tracks of their star.

"In the end he quietly left for another organisation, all smoothed over. Despicable."

NAB says it reports cases of forgery to the police – but only where it involves "misappropriation of client funds".

In the face of concerns that NAB has tried to cover up issues, Hagger says NAB has been "very open".

"We have been open with the customers we have compensated, we have been open with our regulators," he said.

ASIC was asked this week whether it was satisfied the bank had acted appropriately. Kell gave a qualified answer.

"That's the subject of the work we are undertaking at this point in time," he told the Senate.

"We have commenced to gather information so we can asses in relation to the advisers we have mentioned whether there was misconduct, whether there should have been breach reports, they may or may not have been terminated.

"We are also talking to NAB about the review of the remediation that was provided to clients, as to whether that was appropriate. As to whether making a judgement as to whether on all of these matters NAB has acted appropriately, we are not in a position to say yea or nay just at this time."

Websites For More Information: Lack Of Regulation Allowing Latitude To Rogue Financial Planners
http://www.smh.com.au/business/banking-and-finance/lack-of-regulation-allowing-latitude-to-rogue-financial-planners-20150227-13qd3n.html

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