



**ASIC**

Australian Securities & Investments Commission

# Westpoint compensation proceedings: Additional FAQs for investors with FICS claims

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The Australian Securities and Investments Commission (ASIC) has decided to take legal action on behalf of investors in the Westpoint Group seeking compensation for their failed investments.

These proceedings will impact on investors who have lodged complaints with the Financial Industry Complaints Service (FICS).

These FAQs are designed to explain how ASIC's compensation proceedings affect investors who have gone to FICS. Investors seeking more general information about ASIC's compensation proceedings should refer to [Westpoint compensation proceedings: FAQs for investors](#).

- 1. Will complainants who have had a Determination made by FICS against their financial adviser in relation to their Westpoint complaint, and have accepted that Determination, be able to join ASIC's proceedings at any point?**
  - An investor who has accepted a determination made by FICS would generally not be able to participate in ASIC's proceedings. However, there may be some exceptional circumstances in which an investor who has accepted a FICS determination could participate in ASIC's proceedings eg where the financial adviser has not paid the determination. ASIC is seeking further advice in relation to these matters.
  - An investor who has accepted a determination made by FICS in relation to an investment in mezzanine notes issued by Market Street Mezzanine Ltd pursuant to a prospectus may participate in ASIC's proceedings against State Trustees Limited if they have not accepted a determination made by FICS involving State Trustees. However, any amount the investor has received in respect of the FICS determination may reduce the amount, if any, the investor may recover if ASIC's proceedings against State Trustees Limited are successful.

- 2. Will complainants who have had a Determination made by FICS in relation to their Westpoint complaint, and have rejected that Determination, be able to join ASIC's proceedings at any point?**
  - An investor who rejects a determination made by FICS is free to pursue other remedies against the Licensee (FICS Rule 37.1). Accordingly, they would be free to participate in ASIC's proceedings.
  
- 3. Will investors who have agreed to a FICS-facilitated settlement of their Westpoint complaint against their financial adviser be able to join ASIC's proceedings? Does the answer to this depend on whether they have signed a release, or will ASIC be seeking to rescind any Westpoint settlements previously made?**
  - ASIC's general view is that an investor who has reached a settlement, through the FICS process or otherwise with their financial adviser, will not be able to participate in ASIC's proceedings against financial services licensees. However, there may be some exceptional circumstances in which a settlement previously made could be rescinded and ASIC is seeking further advice in relation to these matters.
  - An investor who has reached a settlement through the FICS process or otherwise with their financial adviser, may participate in ASIC's proceedings against State Trustees Limited. However, any amount the investor has received in respect of the FICS determination may reduce the amount, if any, the investor may recover if ASIC's proceedings against State Trustees Limited are successful.
  
- 4. Will complainants who have a current complaint with FICS that has not yet been determined be able to join ASIC's proceedings?**
  - Yes. However, we note the provisions of FICS Rule 14.1(n) which prevents FICS from dealing with a complaint if the complainant has commenced legal proceedings against the licensee who is the subject of the complaint, unless the complainant undertakes in writing not to take any steps in the legal proceedings.
  - Until such time as a investor receives formal notification from ASIC that they are required to make a decision whether or not to be part of ASIC's proceedings, FICS advises that it will continue to deal with their complaint, unless an investor decides not to pursue their complaint through FICS.
  - If a complainant indicates to FICS that their decision is to proceed with their complaint and that they will opt out of the ASIC proceedings, FICS advises that it will continue to deal with their complaint.
  - An investor who has a current complaint with FICS against their financial adviser can continue with that complaint and join ASIC's proceedings against State Trustee Limited.
  
- 5. If an investor obtains a determination from FICS, will they be excluded from joining ASIC's proceedings? Does the answer to this question depend on whether or not they formally accept the FICS decision and/or sign a release?**
  - An investor who accepts a FICS Determination against the investor's financial adviser would generally not be able to participate in ASIC's proceedings against financial services licensees. However, there may be some exceptional circumstances in which an investor who has accepted a FICS determination could participate in ASIC's proceedings eg where a

Licensee has not paid the determination. ASIC is seeking further advice in relation to these matters.

- An investor who accepts a FICS Determination against the investor's financial adviser may participate in ASIC's proceedings against State Trustees Limited. However, any amount the investor has received in respect of the FICS determination may reduce the amount, if any, the investor may recover if ASIC's proceedings against State Trustees Limited are successful.

**6. Will investors who have, or have had a complaint with FICS, be excluded by default from any opt out proceedings that ASIC brings?**

Unless they have accepted a settlement or determination, investors will not be excluded from ASIC's proceedings because of the FICS complaint.

This material is published by the Australian Securities and Investments Commission (ASIC), Level 18, 1 Martin Place, Sydney NSW 2000, AUSTRALIA.  
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