

The "real" IOOF "scandal" 18 months on

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Just under 18 months ago in July 2015, I wrote an article titled "[Whistleblowers, witch-hunts and wisdom](#)." It dealt with issues raised about IOOF following a series of articles written by high profile Fairfax journalist Adele Ferguson (and Sarah Danckert) from 20 June 2015 that made serious allegations of wrongdoing and criminal behaviour, sourced primarily from an ex-employee (the "whistleblower"). The allegations mainly related to the research team and its then head, Peter Hilton. I highlighted in my article that I had worked with Hilton at Bridges (now part of IOOF) from 1993 to 2001.

My article challenged the picture that Fairfax painted. It caused some controversy at the time, including being discussed in disparaging terms by the Sam Dastyari-chaired Parliamentary Senate Inquiry (Scrutiny of Financial Advice), that interviewed IOOF Managing Director, Chris Kelaher, on 7 July 2015.

In mid this year, ASIC concluded its inquiry into IOOF that it commenced following the media coverage.

The most serious Fairfax allegation was that Peter Hilton was "insider trading" and "front running" by trading in securities prior to the release of IOOF research reports on those same securities. The regulator's statement on 8 July 2016 said "ASIC's market surveillance team completed a thorough review of the trades and circumstances involved. This review determined that the release of the research reports had no material effect on the price of the relevant securities and there was no other evidence to warrant the commencement of a formal investigation".

ASIC did identify a number of broader concerns at IOOF relating to compliance arrangements, breach reporting, management of conflicts of interest, staff trading policy, disclosure, whistleblower management and protection, and cyber security. It said the corporate culture at the time contributed to these issues.

Not a glowing report – but let's be clear. No contraventions of the law were identified. ASIC took no actions on any allegations against IOOF employees or ex-employees and imposed no fines, sanctions, banning orders, enforceable undertakings or licence conditions on IOOF. In addition, of the areas of concern ASIC noted, it seems none were prime or direct responsibilities of Hilton or the research team.

This ASIC outcome confirms the suggestions of my earlier article that Fairfax's 2015 coverage was a witch-hunt and media beat-up of some poor internal compliance processes, strained resources and culture issues, pursued by a high profile journalist with a narrow

agenda (including a call for a financial services royal commission) keen to paint another large firm and its staff as "crooked" on the back what now can be seen as exaggerated and/or erroneous claims from disgruntled former employees.

No client money was lost. There was no fraud. No criminal intent or activity occurred. This was no Astarra/Trio (which I helped expose), Storm Financial or CBA Financial Planning scandal. Yet, IOOF financial planners and previous research staff continue to be tainted with their close association with such other scandals via the Fairfax reporting.

Remember, the front page headline of the *Sydney Morning Herald* back on Saturday 20 June 2015 was "IOOF's boiler room throws customers to the wolves". People do, and should, go to jail for running boiler rooms which involves stealing money from clients by selling them worthless or manipulated, overpriced securities. Clearly, the IOOF research department did nothing of the sort.

While ASIC took no actions against any individual, reputations and careers have been tainted or destroyed as a result of the Fairfax allegations. Peter Hilton departed IOOF in September 2015. All original members are understood to have since left the IOOF research team. The Fairfax allegations received global coverage and the damning articles still feature prominently in any Google search. Yet many in the financial services industry remain unaware of the July ASIC announcement, as it received minimal coverage in comparison to last year's Fairfax barrage.

Like many large financial services firms, IOOF had issues. Years of aggressive growth and acquisitions had, in the words of Kelaher at the first Senate Hearing in July 2015 "thrown up many challenges in respect of: merging IT systems; internal policies and protocols; and, most importantly, creating a single culture". It had also stretched the relatively small research and compliance resources to breaking point.

IOOF had in early 2015 independently appointed PricewaterhouseCoopers (PWC) to do a report (which found no evidence of front running) and later to conduct an independent review of the policy and procedures within its research team. IOOF also agreed with ASIC in July 2016 to engage an external compliance consultant to conduct a review of compliance arrangements within all IOOF business units.

Peter Hilton could be blunt but he had worked in the research team for 26 years and was responsible for overseeing tens of billions of dollars of Australians' money. He was on the investment committee of a number of IOOF dealer groups and their multi-manager business and was in demand to speak at conferences and client seminars. Several planners I have spoken to believe Peter made invaluable contributions to the investment recommendations they provided to clients over many years.

Meanwhile Fairfax's key disgruntled ex-employee "whistleblower" worked just past the standard six months' probation period before going on sick leave in December 2014 and

making allegations against Hilton (primarily) which originally centred on "bullying and harassment".

("Whistleblower" and "disgruntled ex-employee" will be used interchangeably even though the employee left IOOF before contacting ASIC so was not a "whistleblower" under their definition. In addition, in an email to IOOF staff on Monday 22 June 2015 after the weekend SMH coverage, Kelaher wrote "the individual concerned at no time initiated the IOOF whistleblower policy").

After the Fairfax articles first appeared in mid-2015, I was shown an email from the "whistleblower" to Hilton from November 2014, just weeks before the bullying and harassment allegations. It said "Thanks for the probation meeting today. The team is fantastic and great to work with – happy that I'm here to stay."

The bullying and harassment allegations in late 2014 became part of a Fair Work Commission matter in early 2015 however, by then, had expanded to include front running, plagiarising research and cheating on exams. Kelaher stated to the Senate hearing that this was to "substantiate some of the bullying allegations".

In the June 2015 email to staff, Kelaher had said of the whistleblower "he obtained internal files unlawfully and has retained them for his own purposes for a significant period. His employment was terminated during the Fair Work hearing for, amongst other things, possessing and repeatedly ignoring requests to return these files."

It seems most of these additional issues raised were historic in nature and dealt with internally at the time as appropriate.

For example, there was a major focus on the issue of Hilton having a member of the team complete his compliance training in 2014. This was clearly wrong and needed to be dealt with – but Hilton had already faced a substantial financial penalty over this internal matter and his Responsible Manager status had been removed.

This clearly wasn't sufficient punishment for National's Senator John Williams, a close friend of Adele Ferguson and one of the politicians involved in the Senate hearings, who named and shamed Hilton in a speech to Parliament on 24 June 2015 talking of "very concerning allegations of insider trading, front running and even cheating on exams". Dastyari called this a "fantastic speech".

As I noted in my earlier article, the value of annual compliance training can easily be overstated by non-participants in the industry. After more than 30 years in the industry, I believe this type of testing, involving multiple choice questions around short articles, has limited effectiveness in either testing or enhancing an individual's ability to do most jobs in financial services. Experience, leadership, integrity and good culture are much more important factors.

Are there ever likely to be apologies, or retractions, from the exaggerated reporting and allegations of journalists Ferguson and Danckert in relation to these matters or from the grandstanding politicians?

The Fairfax reporting after the July 2016 ASIC release was disappointing in this respect. Danckert's fanciful take was that "ASIC found its review of "insider trading" by the senior executive at the company found that while it did occur, it failed to move the share price enough to warrant action." Her suggestion that Hilton was insider trading but that ASIC "let him off" is a gross distortion and a feeble response to having failed to highlight any prosecutable actions against IOOF or its staff.

Meanwhile, the disgruntled ex-employee, "whistle-blower" still refuses to come out publicly, for reasons that do little to inspire confidence that underlying motivations were genuine.

ASIC's conclusions and lack of action against IOOF or staff and their willingness to meet with the "whistle-blower" for only 35 minutes (according to Fairfax) suggest that they also viewed the allegations as exaggerations or distortions of reality.

With no case of insider trading/front running, it is difficult to see genuine reasons why this disgruntled ex-employee was so desperate to expose, in such a public fashion, a series of historic compliance/HR issues which had already been dealt with internally. Bullying and harassment allegations often just came down to one person's word against another's.

Prior to terminating the whistleblower, IOOF felt the need to (in Kelaher's words to the July Senate Hearing) "notify police and employed a security guard in the Sydney office" after "he continued harassing staff" and "HR formed the view that there was a potential threat to personal safety".

Senator Edwards said of the transcript of the December 2014 meeting between the whistleblower and IOOF's internal Head of Investigations Rob Urwin "I understand that if a meeting is recorded without the knowledge or consent of the other party it is an illegal recording" arguably because the target can easily be manipulated in such situations. Nevertheless, this recording was obviously relied on by the politicians and the journalists.

So it seems the "whistleblower" in this case did at least the following:

1. Stole and refused to return confidential company documents (or did so with the help of others);
2. Illegally recorded and passed on a conversation with another employee;
3. Coerced or threatened other employees to the point where company management felt the need to hire additional security.

Is this the behaviour we expect from honest people supposedly highlighting wrongdoing within a company?

So what was this all about? Extracting money from IOOF? Revenge on the company or its staff? Had the "whistleblower" made similar allegations with any previous employers? Did previous employers see the "whistleblower" as reliable and trustworthy?

Did the Fairfax journalists ask any of these questions or assess these issues objectively? Or were they ignored given the obsession with bringing disrepute to IOOF and staff and the desire to push the case for a royal commission.

On 30 June 2015, around a week after the Fairfax coverage started, a senior employee of a major company that previously employed the "whistleblower" sent an email to a member of the IOOF research team which said: "I hope you are well despite all this unfortunate rubbish that is being aired in the press. I appreciate it must be a challenging time so I wanted to at least just say that I have the upmost respect for your entire team, having worked with many of the guys over the years. I look forward to the genuine truth being made known and the good people getting the respect they deserve."

It seems the Fairfax journalists were somewhat naïve, did not fully understand the documents they were provided, and were possibly manipulated by their main source.

There has been a real "scandal" around the IOOF events – but it's not the one you read about in the Fairfax press and it's not the one about some processes and culture needing improvement. (That "scandal" could apply to many financial services firms).

No, the real scandal here is about reckless and biased elements of the media (and politicians) that are prepared to utilise suspect sources and misrepresent reality for their own narrow agenda.

Increasingly, we need to be sceptical of what is in the media, particularly as the quality of general and investigative journalism from the mainstream press has deteriorated in recent years as technological change has led to job losses and reduced editorial and legal oversight.

The media can be important in uncovering dangerous or criminal behaviour in the financial services industry but the power it has to destroy reputations and careers needs to be exercised extremely carefully. Like an investment manager riding high after a recent run of successes, journalists too are prone to ego, hubris and blinkered thinking that can lead to poor judgements. It can also mean the appropriate level of oversight of such individuals is absent.

Senator Sam Dastyari said at the Senate hearing he was "not in the business of demonising whistle-blowers". True, of course – but they, and the media, should be in the business of adequately scrutinising them and avoiding becoming cheerleaders for those "whistleblowers" who support their own narrow agenda without properly understanding their background and motivations.

This narrow agenda was highlighted by a speech Ferguson gave in May this year which was published as "Adele Ferguson on the cost of whistleblowing and need for a bank royal commission" on the SMH website.

At the second Senate hearing IOOF Chairman Dr Roger Sexton said he was "extremely concerned about misreporting that has occurred in the press" saying he "had three separate calls from journalists; I have given them an answer and they have printed the exact opposite in the press. That is outrageous." As recently as IOOF's 2016 AGM (24 November 2016) the current Chairman referred to the "irresponsible media reporting" around these events.

It's a scandal about the waste of time, money and resources of regulators, politicians, PR groups, media, lawyers, IOOF management and staff that could have been much better used in actions and measures that would actually improve protection for real world investors. For example, IOOF's accounts for 2015/2016 show non-recurring professional fees of over \$5 million incurred to deal with reviews, senate inquiries and defending the allegations.

Should the regulator's role be to attend, in force, every fire a disgruntled employee and manipulated media arsonist ignites? ASIC cannot possibly devote major resources to investigate every situation at financial services firms where the internal processes could be improved, resources are insufficient or culture is poor.

It's a scandal about the way the media and financial services industry can poorly treat, and ruin, the reputations and careers of good people trying to do their job in a high pressure environment. Many knew or suspected that the situation at IOOF was quite different to that portrayed by Fairfax. Some had had close business or personal relationships with Peter Hilton, including some who were major beneficiaries of funds raised via the IOOF group over many years.

However, few of these have made any attempt to contact Peter Hilton in the last 18 months, let alone comment publicly. Most likely they are concerned at the effect this might have on funds their companies' hold with IOOF or on their own reputation.

Part of the problem is the practice of parties signing confidentiality arrangements/deeds of release when an employee/employer relationship goes sour. These agreements prevent the parties talking about the circumstances around an acrimonious departure and can have the adverse impact of allowing untrustworthy or incompetent employees to simply move on to the next job without new employers (or prospective clients) knowing. In addition, good employees forced to move on from a difficult situation (and often treated as scapegoats) are constrained from explaining what really went on.

Most people see the world in simple terms – black and white, good and bad. In this simplistic world "whistleblowers" are seen as good and someone with a few blemishes over a 26 year career as bad. But we know the world really doesn't work that way, particularly as this lazy thinking of the majority can be maliciously exploited by the devious.

The scandal surrounding HSU "whistleblower" Kathy Jackson should be a lesson in this regard. Originally seen as a hero in the eyes of the media and politicians (Tony Abbott called her "brave" and "decent"), she was recently charged with 70 theft and deception offences and Fairfax now reports that "she turned out to be an opportunistic hyena much to the embarrassment of her politically motivated cheerleaders".

The circumstances of the IOOF "scandal" are in many respects complex, but much simpler if you can identify the motivations and incentives of the various participants. As Charlie Munger says "never, ever think about anything else when you should be thinking about the power of incentives".

In late October 2016, Maurice Blackburn was precluded by the Supreme Court from pursuing the mooted IOOF class action following action by IOOF. In some ways, this is a pity because while it would almost certainly fail (and waste more money), it may have useful in exposing the facts.

For the true facts – in this situation at least – are something you can expect little of from the mainstream media, politicians or even the company itself.



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