

Rome burns, ASIC shows bankrupt determination

[ADELE FERGUSON](#) December 20, 2011



FOR the many victims of disgraced liquidator Stuart Ariff (pictured), the decision by the NSW District Court judge James Bennett to serve up a prison sentence of six years - out in March 2015 - for 19 counts of criminal fraud will be a bitter-sweet victory. While the punishment over Ariff's actions in HR Cook Investments is welcomed, it symbolises the need for a royal commission into white-collar crime and the role of the regulator ASIC.

Ariff's prison sentence will create a good headline but there are a number of issues that need to be addressed. Until they are, this victory will be tinged with bitterness, frustration and anger. Issues include a decision by ASIC to pursue Ariff over his conduct in only one company rather than the 15 others that he pleaded guilty to in the Supreme Court of NSW in August 2009.

Another issue is why the regulator and the insolvency lobby group, the Insolvency Practitioners Association, who had received numerous complaints about Ariff in 2003, hadn't acted on those complaints earlier. If they had they might have got back some of the millions of dollars Ariff illegally took from them.

This goes to the heart of the matter. Until ASIC starts to use its powers and act on complaints, little will change and criminal behaviour will not be deterred by Ariff's sentence. Senator John Williams said yesterday that each week at least one complaint was made to his office about a dodgy liquidator. "Most of the complaints include details and proof of wrongdoings, but where's ASIC? What's it doing to clean up this industry?" he said.

For the many victims of Ariff, some who were financially and emotionally destroyed by his actions, they will never see a cent in compensation despite the court ordering in 2009 that he repay \$4.9 million after he admitted to 83 counts of gross misconduct, including the fictitious creation of accounts in 16 companies, to pay for limousines, beauty treatments, luxury family holidays totalling \$200,000, and asset stripping.

Rather than paying his victims back, he became bankrupt, went on the dole and used taxpayers' money to pay his legal bills. From then on it became a struggle to properly investigate his estate and possible trail of money due to lack of funds available to the bankruptcy trustees.

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Skip to [top](#) | [bottom](#)

This is despite there being matters relating to Ariff's estate that required further investigation.

For these reasons and many more, they have every right to feel let down by a system that continues to take the easy way out and turn a blind eye to the continued operation of a circle of Ariff's mates who helped him build his insolvency business.

Sue Shedden, whose parents owned HR Cook, said she was disgusted and devastated at the "very short" length of his sentence. "The pain and hardship he has caused so many people and the fraud committed is staggering."

Another victim, Bill Doherty, left the court questioning when ASIC would act on prosecuting Ariff's accomplices and when his victims would be compensated for what he believed was ASIC's ineptitude.

The story of Ariff dates back well before HR Cook. I first brought Ariff to public attention in a series of articles in October 2007, when a Malaysian company, Berjaya, contacted me after giving up on ASIC and the IPA over their apparent lack of interest in what was going on in the liquidation of a company called CarLovers Carwash, where it was the main creditor. Berjaya contacted ASIC in 2005 with receipts, invoices, and later a forensic accounting report to support their allegations that Ariff had kept CarLovers in administration for three times longer than necessary. ASIC fobbed them off with a standard letter.

It was then brought to my attention that Ariff was the son-in-law of Tony Clark, one of former prime minister John Howard's best mates and business confidants, and a former director of Telstra. There were reports that Ariff and his sister, while working for Starr Dean-Willcocks, were involved in the administration of the controversial National Textiles, which was chaired by John Howard's brother, Stan.

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Skip to [top](#) | [bottom](#)

Even more incredibly, I was informed that Ariff was hired by Melbourne business figure Tom Karas, who has links to underworld figure Mick Gatto, for several insolvencies, including Bulla Tip, MDC Entertainment and Armidale YCW Rugby League Football Club.

If ASIC had investigated Berjaya's complaints against Ariff in 2005, the HR Cook liquidation and many others might have had a better ending. ASIC finally took action against Ariff in late November 2007.

On December 7, Michael Dwyer, who was a commissioner with ASIC until December 11 after being recruited from the insolvency industry to create a team to regulate the industry, wrote an opinion piece in the media trying to defend some of the criticism waged at ASIC during a senate inquiry into the industry.

"Like most of the corporate world, when the global financial crisis struck in 2007, ASIC was focused on what were considered more important issues of the day. The Senate inquiry into insolvency - initiated by John Williams - quite correctly made this point. At that time, ASIC had directed its resources to the squeakiest wheel. For that period, it was not insolvency."

His comments are staggering, not because the GFC emerged in Australia in 2008, but because people had lodged complaints with ASIC years before the GFC. Let's

hope they use this victory yesterday to start utilising their power and sending a message to the insolvency industry, some of the shonky lawyers, auctioneers and property valuers that huddle together and use hapless victims as their stamping ground.

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