

ASIC Regulatory Guide (RG) 271 - Internal dispute resolution (IDR)

Current as at 24 September 2020

OVERVIEW

ASIC has issued:

- [Regulatory Guide 271 Internal dispute resolution \(RG 271\)](#) which updates ASIC requirements regarding IDR. This follows on from industry feedback provided to ASIC on its [Consultation Paper 311 Internal dispute resolution: Update to RG 165 \(CP 311\)](#); and
- [ASIC Corporations, Credit and Superannuation \(Internal Dispute Resolution\) Instrument 2020/98](#) to effect the changes.

Given the impact of COVID-19, ASIC has given the industry a transition period. The standards, requirements and guidance only apply to complaints received on or after **5 October 2021**. For complaints received by firms before 5 October 2021, [Regulatory Guide 165 Licensing: Internal and external dispute resolution \(RG 165\)](#) applies (which will be withdrawn on 5 October 2022).

Relevant to insurance, Australian Financial Services Licensees (and some non-licensed persons) must have a dispute resolution system that consists of:

- an IDR procedure that complies with the standards and requirements made or approved by ASIC that cover complaints made by retail clients in relation to the financial services provided; and
- membership of the Australian Financial Complaints Authority (AFCA).

Certain of the RG 271 content is “enforceable” and some is merely “guidance” to help firms comply with their legal obligations.

In short, the RG and associated Instrument have the effect of:

- changing the definition of ‘complaint’ to the broader version in AS/NZS 10002:2014 instead of AS ISO 10002-2006;
- changing the definition of ‘small business’ to align with the AFCA definition which in effect broadens the scope of retail clients caught by the IDR requirements;
- imposing a new obligation to comply with the IDR requirements rather than just having the procedures in place;
- setting minimum content requirements for IDR responses which were previously not specified;
- reducing the maximum IDR timeframe for providing an IDR response from 45 to 30 days and making some changes to the exceptions;

- imposing requirements on how financial firms' IDR processes and procedures will interact with AFCA;
- imposing requirements for identifying and escalating systemic issues; and
- imposing requirements regarding outsourcing IDR processes to third party service providers; and
- setting out ASIC's IDR standards some of which are enforceable and others by way of guidance.

RG 271 does not provide any guidance regarding IDR data reporting obligations as proposed in CP 311. ASIC will commence its second phase of targeted consultation on IDR data collection and reporting. This consultation will build on the feedback that the industry and consumer stakeholders provided in response to CP 311. ASIC may release another regulatory guide in that regard once it consolidates all the feedback from the consultation. Current release date is expected to be Oct 2020 (or possibly even Nov 2020).

This paper does not cover Traditional trustee, Superannuation related or credit complaints.

It is also important to note that other obligations regarding IDR can also be relevant e.g. the General Insurance Code of Practice, Insurance Brokers Code of Practice and Privacy Act also impose obligations relating to complaints handling not covered in this paper.

APPLICATION OF THE IDR REQUIREMENTS

ASIC notes that the IDR requirements set out in the RG apply to any expression of dissatisfaction made by a consumer that meets the definition of 'complaint' set out in AS/NZS 10002:2014.

Whilst not as clearly stated as it could be, ASIC has confirmed that the requirements only apply to complaints by a *retail client* as defined in the Corporations Act.

ASIC has however amended, the definition of small business in the retail client test but only for the purposes of the IDR requirements and not more broadly. Nothing stops an entity from applying the IDR requirements to complaints affecting persons other than retail clients if they wish.

We discuss this further below.

CHANGE TO DEFINITION OF 'COMPLAINT'

Enforceable

A new definition of 'complaint' has been updated to that in AS/NZS 10002:2014 as follows: [underlining identifies main differences from the current]

[An expression] of dissatisfaction made to or about an organization, related to its products, services, staff or the handling of a complaint, where a response or resolution is explicitly or implicitly expected or legally required.

ASIC interprets the words 'or about an organization' in the definition to cover expressions of dissatisfaction made on social media as noted below (and not more broadly).

The following are considered expressions of dissatisfaction by ASIC:

- posts (that meet the definition of 'complaint') on a social media channel or account owned or controlled by the financial firm that is the subject of the post, where the author is both identifiable and contactable.

ASIC notes that:

- it does not expect financial firms to seek to identify complaints made on third party social media accounts or channels.
- when responding to a complaint made on social media, a firm must ensure consumer privacy is protected.
- representatives of firms must refer complaints made on social media in accordance with their licensee, as they are required to do for complaints they receive through other channels.

This is an important qualification on what had previously been proposed by ASIC in CP 311.

- complaints about a matter that is the subject of an existing remediation program or about the remediation program itself (e.g. delays, lack of communication); and
- complaints about the handling of an insurance claim (e.g. excessive delays or unreasonable information requests).

Non enforceable

For avoidance of doubt, ASIC notes that it does not consider the following to be 'complaints':

- employment-related complaints raised by firm staff; and
- comments made about a firm where a response is not expected, such as:
 - feedback provided in surveys; or
 - reports intended solely to bring a matter to a financial firm's attention—for example, that an automatic teller machine (ATM) is damaged.

ASIC notes that it expects firms to take a proactive approach to identifying complaints and notes that:

- a response or resolution is:
 - 'explicitly expected' if a consumer clearly requests it;
 - 'implicitly expected' if the consumer raises the expression of dissatisfaction in a way that implies the consumer reasonably expects the firm to respond and/or take specific action.

- a consumer or small business is not required to expressly state the word ‘complaint’ or ‘dispute’, or put their complaint in writing, to trigger a financial firm’s obligation to deal with a matter according to ASIC’s IDR requirements.
- firms can structure and resource their complaint management function(s) differently. Smaller firms may have one person responsible for complaints, along with other duties. Medium-sized and large firms may empower their frontline staff to resolve complaints at the first point of contact, and also provide further opportunities for matters to be considered by a specialist complaints team if complainants are not satisfied with the initial action taken. Some firms, especially in the banking sector, may also offer customer advocates as an additional escalation point.
- regardless of a firm’s structure, it is the complainant’s expression of dissatisfaction (that meets the definition of ‘complaint’) that triggers a firm’s obligation to deal with the matter according to ASIC’s IDR requirements, not the referral of a complaint to a specialist complaints or IDR team.
- firms should not categorise an expression of dissatisfaction that meets the definition of ‘complaint’ as ‘feedback’, an ‘inquiry’, a ‘comment’ or similar (and therefore not to be dealt with in the firm’s IDR process) merely because:
 - the complainant expresses their dissatisfaction verbally;
 - the firm considers that the matter does not have merit; or
 - a goodwill payment is made to the complainant to resolve the matter without any admission of error.

DEFINITION OF ‘COMPLAINANT’ AND SMALL BUSINESS DEFINITION CHANGE

Enforceable

ASIC states that any IDR process for financial service providers must be able to deal, at a minimum, with complaints made by ‘retail clients’, as defined by s761G of the Corporations Act and its related regulations.

Importantly, ASIC has modified (for IDR purposes only) the definition of ‘small business’ in s761G(12) of the Corporations Act to align it with the broader definition in the AFCA Rules:

“small business means:

(a) in relation to an obligation in this Chapter to have an internal dispute resolution procedure—a business (including a primary production business within the meaning of section 995.1(1) of the Income Tax Assessment Act 1997) that has less than 100 employees at the time of the act or omission that gives rise to the complaint, but not including a body corporate that, at that time, is a member of a group of related bodies corporate and that group has 100 employees or more;

(b) otherwise—a business employing less than:

(i) if the business is or includes the manufacture of goods—100 people:

(ii) *otherwise—20 people.*”.

This means for example, that in the general insurance context the retail client definition is different and to be caught for IDR purposes:

- the complainant must be an individual or small business as defined for IDR purposes i.e. ANY business:
 - that has less than 100 employees *at the time of the act or omission that gives rise to the complaint* [this could be post issue of a policy meaning a business that was not retail at the time of issue could become retail mid-term]; **or**
 - otherwise—a business employing less than:
 - if the business is or includes the manufacture of goods—100 people
 - otherwise—20 people; **and**
- the service or product must be one of the listed general insurance types in section 761G(5); **and**
- the complainant must otherwise not be exempt from being a retail client as defined in the Act.

The industry will need to build in new procedures and amend documentation to take this broader small business definition into account.

MAXIMUM IDR TIMEFRAMES AND IDR RESPONSES

Acknowledgement of receipt of complaint

Not enforceable

A firm should acknowledge receipt of each complaint promptly either verbally or in writing (email, post or social media channels) taking into account the method used by the complainant to lodge their complaint and any preferences they may have expressed about communication methods.

ASIC expects that firms will acknowledge within 24 hours (or one business day) of receiving it, or as soon as practicable.

Maximum timeframe for an IDR response (subject to 5 day and complaint management delay exceptions below) and its content

Enforceable

IDR response timing no later than **30 calendar days** [pre change it was 45 days] after receiving the complaint, subject to the exceptions noted below.

An ‘**IDR response**’ must be a written communication from a firm to the complainant, informing them of:

- the final outcome of their complaint at IDR (either confirmation of actions taken by the firm to fully resolve the complaint or reasons for rejection or partial rejection of the complaint);
- their right to take the complaint to AFCA if they are not satisfied with the IDR response; and
- the contact details for AFCA.

If a firm rejects or partially rejects the complaint, the IDR response must clearly set out the reasons for the decision by:

- identifying and addressing the issues raised in the complaint;
- setting out the financial firm's findings on material questions of fact and referring to the information that supports those findings; and
- providing enough detail for the complainant to understand the basis of the decision and to be fully informed when deciding whether to escalate the matter to AFCA or another forum.

Whilst not described as “enforceable”, ASIC notes that the level of detail should reflect the complexity of the complaint and the nature and extent of any investigation conducted by the firm. ASIC does not expect financial firms to provide information in an IDR response that would breach the firm's privacy or other legislative obligations (e.g. the ‘tipping off’ provisions of the Anti-Money Laundering and Counter Terrorism Financing Act 2006).

ASIC also notes that the maximum IDR timeframes for providing an IDR response apply to all IDR processes, including those that include internal appeals or escalation mechanisms (multi-tier IDR processes). Complainants should not be disadvantaged by the use of multi-tier IDR processes by financial firms.

Regardless of the structure of a firm's IDR process, the firm's obligation to deal with a matter according to ASIC's IDR requirements is triggered when the complainant's expression of dissatisfaction meets the definition of ‘complaint’ and not by the referral of a complaint to a specialist complaints or IDR team.

Customer advocate

Enforceable

ASIC provides that a firm *may* offer a complainant the option of escalating their complaint to the customer advocate, as an alternative to AFCA, after an IDR response is issued. However, when making such an offer:

- the firm must not prevent complainants from exercising their right to access AFCA—for example, by presenting the customer advocate as a mandatory step in the IDR process;
- if a complainant chooses to escalate their complaint to the customer advocate, the total time spent dealing with the complaint must not exceed the relevant maximum IDR timeframe which includes both the IDR process and the customer advocate review; and

- time stops running on the date that the IDR response is sent to the complainant. Time starts to run again from the date that the complainant notifies the financial firm that they wish to escalate the complaint to the customer advocate.

ASIC has set out further non enforceable information on the customer advocate's role in improving financial firms' IDR processes at RG 271.191–RG 271.192.

Complaint management delay exception and IDR delay notification content

Enforceable

This exception from having to provide an IDR Response is only available if there is no reasonable opportunity for the financial firm to provide the IDR response within the relevant maximum IDR timeframe because:

- resolution of the individual complaint is particularly complex e.g., an individual complaint is about a transaction or event that occurred more than six years ago and requires reconstruction of account information; or a complaint about a superannuation death benefit distribution involves multiple submissions from potential beneficiaries with competing information about the status of relationships or levels of financial dependence; and/or
- circumstances beyond the financial firm's control are causing complaint management delays e.g., the complainant is waiting on a medical appointment that the firm reasonably requires the complainant to attend; the complainant is unable to respond to the firm due to illness or absence; information must be obtained from third parties to a complaint (excluding an authorised representative who is a party to the complaint); or a death benefit decision-maker is waiting on information requested from potential beneficiaries to a death benefit to substantiate their claim.

Before the relevant above maximum IDR timeframe expires, the firm must give the complainant an '**IDR delay notification**' that informs the complainant about:

- the reasons for the delay;
- their right to complain to AFCA if they are dissatisfied; and
- the contact details for AFCA.

The above does not:

- prevent a complainant from exercising their right to escalate a complaint to AFCA and does not affect AFCA's ability to register a complaint;
- apply to the refer back timeframes applied by AFCA when a complaint is escalated to AFCA.

Complaints closed within five business days of receipt exception

A firm does not need to provide an IDR response to a complainant if the firm *closes the complaint* by the end of the fifth business day after receipt because the firm has:

- resolved the complaint to the complainant's satisfaction; or

- given the complainant an explanation **and/or apology** when the firm can take no further action to reasonably address the complaint [this is an addition],

unless:

- the complainant requests a written response; or
- the complaint is about:
 - hardship;
 - a declined insurance claim; or
 - the value of an insurance claim.

Whilst not described as enforceable, ASIC notes:

- when determining whether a complaint has been resolved to a complainant's satisfaction, it expects firms to consider whether:
 - the complainant has confirmed (verbally or in writing) that they are satisfied with the action(s) taken by the financial firm in response to the complaint and do not wish to take the matter further; or
 - other circumstances exist that make it reasonable for the firm to form the view that the complaint has been resolved to the complainant's satisfaction.
 - in some circumstances, it may be reasonable for a firm to form the view that an explanation and/or apology is the only action they can take to address the complaint. For example, if the complaint relates only to:
 - a financial firm's commercial decision, such as a refusal to grant credit or provide insurance cover on certain terms; or
 - reasonable initial contact by a financial firm about debt collection.

IDR AND AFCA LINKS

Enforceable

The IDR process must require a firm (in IDR responses and IDR delay notifications) to:

- inform the complainant that they have a right to pursue their complaint with AFCA; and
- provide details about how to access AFCA.

Firms must also provide details about how a complainant can access AFCA in a range of disclosure documents, including:

- Financial Services Guides;
- Product Disclosure Statements (PDSs).

Whilst not described as enforceable, ASIC notes:

- firms' broader communications to consumers about their arrangements for managing complaints—including the publicly available complaint management policy, brochures explaining how to complain, relevant website frequently asked questions (FAQs) and call centre scripting should also effectively inform complainants of:
 - their right to take their complaint to AFCA if they are dissatisfied; and
 - the contact details of AFCA.
- a firm may wish to directly refer a complaint to AFCA for resolution. This may occur where a firm has given an IDR response to the complainant, but the complaint remains unresolved and the complainant has not escalated it to AFCA. Firms wishing to make such a referral need to obtain the consent of the complainant(s) to do so: see RG 267.99.
- when complaints involve hardship notices or requests for postponement of enforcement proceedings, interest and other default charges may continue to accrue. This may increase the need for financial firms to directly refer complaints to AFCA. The complainant's consent to the referral also needs to be obtained in these circumstances: see RG 267.100.

SYSTEMIC ISSUES

Enforceable

ASIC requires that:

- boards must set clear accountabilities for complaints handling functions, including the management of systemic issues identified through consumer complaints.
- if a firm provides reports to the board and/or executive committees, the reports must include metrics and analysis of consumer complaints including about systemic issues identified through those complaints.
- firms must:
 - encourage and enable staff to escalate possible systemic issues they identify from individual complaints;
 - regularly analyse complaint data sets to identify systemic issues;
 - promptly escalate possible systemic issues to appropriate areas within the firm for investigation and action; and
 - report internally on the outcome of investigations, including actions taken, in a timely manner.

Some smaller firms may not have escalation processes to investigate systemic issues. They must still act in a timely manner to investigate possible systemic issues identified from complaints.

Whilst not described as enforceable, ASIC notes:

- if an investigation confirms that a systemic issue exists, ASIC expects the firm to take prompt action to identify affected consumers and provide fair remediation. Note: AFCA must make a report to a regulator (ASIC, the Australian Prudential Regulation Authority or the Australian Taxation Office) as soon as practicable—but no later than 15 calendar days—after AFCA considers that there is a systemic issue.
- that a systemic issue is a matter that affects, or has the potential to affect, more than one consumer and provides the following examples:
 - a disclosure document that is inadequate or misleading;
 - a systems issue that produces errors—for example, benefit calculation errors or interest calculation errors;
 - a unit pricing error that incorrectly allocates investment earnings to members;
 - a documented procedure that does not comply with legal requirements—for example, it permits privacy requirements to be breached;
 - a procedural weakness that is liable to recur;
 - an erroneous interpretation of a superannuation trust deed provision; and
 - a group insurance administration error that does not record cover for eligible members.

OUTSOURCING

Enforceable

Firms that outsource part, or all, of their IDR process must:

- have measures in place to ensure that due skill and care is taken in choosing suitable service providers;
- monitor the ongoing performance of service providers; and
- appropriately deal with any actions by service providers that breach service level agreements or fall short of their obligations under the RG.

ASIC notes that a firm that outsources part, or all, of its IDR process remains responsible for ensuring that the service provider's IDR processes comply with all the requirements in RG 271 and that outsourcing should also be done in a way that ensures accessibility for consumers and maintains a consumer-centric approach.

IDR STANDARDS

ASIC's IDR standards reflect the requirements for effective complaint management in AS/NZS 10002:2014 and other matters ASIC consider relevant, given its own regulatory experience.

ASIC expects that its IDR standards can be adapted by financial firms to suit the nature, scale and complexity of their business. The IDR standards cover:

- top-level commitment to effective, fair and timely complaint management;
- enabling complaints;
- resourcing;
- responsiveness;
- objectivity and fairness;
- complaint management policies and procedures;
- data collection, analysis and internal reporting; and
- continuous improvement of the IDR process.

Refer to the RG for more detail and guidance, but we set out below those stated to be enforceable.

Accessibility

The IDR process must be easy to understand and use, including by people with disability or language difficulties.

No charges or detriment

The IDR process must be free to complainants and:

- material explaining the IDR process must be provided free of charge to complainants; and
- complainants must be able to make or pursue their complaint via the IDR process free of charge.

Resourcing

The IDR process must be resourced so that it operates fairly, effectively and efficiently and a firm must regularly review whether the IDR process is adequately resourced.

Staff numbers

Staffing numbers must be sufficient to deal with complaints in a fair and effective manner within maximum IDR timeframes. This includes resourcing the IDR function to deal with intermittent spikes in complaint volumes.

Empowering staff and financial delegations

Firms must:

- provide relevant staff with appropriate authority to be able to resolve complaints.

- ensure that the authorities for determining and/or approving complaint outcomes (including product contract variations) and the financial delegations in place for paying amounts to complainants facilitate the fair and efficient resolution of complaints.

Maximum IDR timeframes

Firms must adhere to ASIC requirements for issuing IDR responses within maximum IDR timeframes as noted earlier.

Closing complaints

Firms must ensure that complaint resolution outcomes (e.g. refunds, fee waivers, correction of records, compensation payments) are implemented in a timely manner when a complaint is closed.

Policy and procedures

Firms must have a publicly available, readily accessible complaints policy and an internal complaint management procedure. Firms must provide material that explains their IDR process free of charge to complainants.

Data collection, analysis and internal reporting

Firms must have an effective system for recording information about complaints. The system must enable firms to keep track of the progress of each complaint.

CP311 Proposal B5 To facilitate the effective operation of the IDR data reporting regime, we propose to require all financial firms to record an identifier or case reference number for each complaint received was been adopted.

Report complaints data internally and publicly

Firms must provide reports about complaints data regularly to senior management and the firm's board (or equivalent).

There is a significant amount of other information and guidance provided in the RG that needs to be considered carefully.

IMPORTANT NOTICE

This document is designed to provide helpful general guidance on some key issues relevant to this topic. It should not be relied on as legal advice. It does not cover everything that may be relevant to you and does not take into account your particular circumstances. It is only current as at the date of release. You must ensure that you seek appropriate professional advice in relation to this topic as well as to the currency, accuracy and relevance of this material for you. Liability limited by a scheme approved under Professional Standards Legislation.