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# The impact of complaints

## New requirements, new challenges

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As at 30 June 2020, the Australian Financial Complaints Authority (AFCA) had received 80,546 complaints, of which 78% were closed, and \$258.6 million paid in compensation. Complaint areas and associated numbers were:

- banks: 28, 411
- general insurers: 15,748
- credit providers: 9,857
- superannuation fund trustees or advisers: 4,732
- debt collectors or buyers: 2,607.

Drilling down to those providing investment advice, complaint areas and associated numbers related to:

- misleading product and/or service information: 757
- inappropriate advice: 585
- failure to follow instructions/agreements: 575
- failure to act in clients' best interests: 469
- service quality: 380.

### I'm not complaining, but ...

In July 2020, the Australian Securities and Investments Commission (ASIC) released updated requirements in its Regulatory Guide 271 *Internal Dispute Resolution* (RG 271) in relation to how financial firms deal with consumer and small business complaints under their internal dispute resolution (IDR) procedures. RG 271 will replace Regulatory Guide 165 *Licensing: Internal and external dispute resolution*.

With the new and improved regulatory guide on IDR due to commence on 5 October 2021, how will these statistics, clearance rates and customer satisfaction levels be affected? Will the new definitions, compressed timelines, increased policies, processes and allocation of resources see a different result in June 2022?

Despite catching many unawares, the IDR policy consultation has been long and protracted. It commenced in December 2018 with ASIC Report 603 *The consumer journey through the Internal Dispute Resolution process of financial service providers*.

The investigation undertaken by ASIC at the time found that:

- four in five complainants experienced difficulty, decreased satisfaction and formed a negative impression of the financial firm in question
- one in two people whose complaint was not resolved in their favour did not receive an explanation.
- one in seven people found it difficult to find the relevant financial firm's contact details
- four in five people whose complaints took more than 45 days to conclude were not told about external dispute resolution schemes
- one in three people spoke to too many contacts over the course of the complaint
- one in seven people withdrew from the complaint process due to an inadequate response from the financial firm.

The majority of these suggest process failures, which a competent licensee should have identified.

However, the updated guidance contains more significant response obligations, including:

1. an introduction of reduced timeframes for responding to complaints, including superannuation complaints
2. enhanced disclosure in terms of the information financial firms must include in written IDR responses to allow customers to decide whether to escalate their complaint
3. new timeframe requirements for consumer advocate reviews of appeals against IDR decisions
4. guidance about how firms can deal with representatives who are not acting in consumers' best interests.

*Financial firms have until 5 October 2021 to comply with the new IDR standards and requirements.* This paper provides some practical suggestions regarding possible changes to processes, policies and systems to accommodate the new requirements.

## The first few steps

### Policy

#### New definition

Consumers can now use a financial firm's IDR processes to complain about its IDR processes, the outcomes of the IDR process and its remediation program.

With the broadened scope, and obligations to uncover and facilitate complaints, a financial firm may need to consider the adequacy of its current resources.

#### Public complaints policy

A financial firm will need to have a public complaints policy that explains:

- how consumers may lodge a complaint (e.g. online, email, phone, in person)
- options available to assist complainants who might need additional help to lodge their complaint
- key steps for dealing with complaints
- response timeframes
- details about accessing AFCA in instances where a complaint is not resolved.

Financial firms will also need to develop (or refine) their public privacy policies.

#### Process and record keeping

##### Outsourcing IDR processes:

Financial firms outsourcing, all or part of, the IDR process, must:

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

Further, financial firms will need to review their outsourcing policies, selection and performance criteria, and contractual clauses.

##### Complaint acknowledgement:

In terms of complaint acknowledgement, financial firms:

- now have to acknowledge a complaint within 24 hours or one business day of receiving it, or as soon as is practicable

- must take into account the method used by the complainant to lodge their complaint and any preferences they may have expressed about communication methods (e.g. email, post or social media channels)
- need to look at the systems in place to effectively monitor their social media footprint.

#### Written response for partial or full rejection of complaints

For those complaints rejected by a financial firm, its response must clearly set out the reasons for the decision by:

- identifying and addressing the issues raised in the complaint
- setting out the findings on material questions of fact and referring to the information that supports those findings
- *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.*

Financial firms will also need to review their complaints correspondence and templates to ensure they can meet the new requirements.

#### Compressed timeframe to provide IDR response

As a general rule, RG 271 will require a financial firm to provide an IDR response no later than 30 calendar days after receiving the complaint.

In some cases, a different timeframe applies:

- Traditional trustee complaints—no later than 45 days
- Superannuation trustee complaints—no later than 45 days
- Superannuation death benefit complaints—no later than 90 days
- Credit-related complaints involving default notices—no later than 21 days.

Financial firms will need to consider resourcing requirements and ensure they have adequate capacity to deal with these new timeframes.

#### Complaints closed within five business days of receipt

Financial firms will not need to provide an IDR response to a complainant if they:

- resolved the complaint to the complainant's satisfaction
- gave the complainant an explanation and/or apology when the firm could take no further action to reasonably address the complaint.

However, financial firms will need to look at their record-keeping processes to ensure adequate notes are maintained to support any closed nil-IDR responses.

#### People

Employees of a financial firm will have an obligation to proactively identify those who may need additional assistance.



#### The quote

*Despite catching many unawares, the IDR policy consultation has been long and protracted.*

In addition, financial firms will need to ensure that their IDR staff:

- are capable
- are adequately resourced
- are appropriately authorised (with appropriate delegations) to resolve complaints
- have an awareness of cultural differences that should be reflected in their position descriptions.

#### **Tools for staff**

Financial firms will need to ensure their IDR staff have:

- knowledge of the regulatory guides, consumer protection laws relating to financial products and services, AFCA approaches and relevant industry codes of practice
- an understanding of the products and services offered by the firm
- empathy, respect and courtesy
- an awareness of cultural difference and the ability to identify and assist complainants who need additional assistance.

Further, financial firms should develop health and safety policies to support staff involved in complaints management.

It is recommended that financial firms review or develop these policies and train and develop IDR staff to be able to satisfy ASIC's requirements.

#### **Data and analysis**

##### ***Metrics and monitoring***

Firms will need to monitor key metrics for complaints management on an ongoing basis.

Extensive information regarding complaints will need to be documented, tracked and monitored, including:

- number of complaints received and closed
- nature of complaints
- time taken to acknowledge complaints
- time taken to resolve complaints
- complaint outcomes
- possible systemic issues
- number of complaints escalated to AFCA.

##### ***Quality assurance***

ASIC will expect financial firms to carry out regular and ongoing quality assurance.

##### ***Complaint audits***

Firms should conduct regular compliance audits to identify and address issues of non-compliance.

##### ***Reporting data internally and publicly***

IDR staff should regularly provide detailed reports about complaints data to senior management and the licensee's board. In addition, complaints should be included in annual reports.

It is recommended that financial firms review their data and recording capability.

#### **The (increasing) cost of doing business**

Better complaints management does not come cheap. RG 271 has been estimated to cost the industry approximately *\$5.087 million per year*, according to the ASIC regulatory impact statement. In reality, the cost of non-compliance may be significantly higher. **FS**