Financial Rights LEGAL CENTRE

Submission by the
Financial Rights Legal Centre

ASIC

Internal dispute resolution: Update to RG 165, May 2019

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About the Financial Rights Legal Centre

The Financial Rights Legal Centre is a community legal centre that specialises in helping consumers understand and enforce their financial rights, especially low income and otherwise marginalised or vulnerable consumers. We provide free and independent financial counselling, legal advice and representation to individuals about a broad range of financial issues. Financial Rights operates the National Debt Helpline, which helps NSW consumers experiencing financial difficulties. We also operate the Insurance Law Service which provides advice nationally to consumers about insurance claims and debts to insurance companies, and the Mob Strong Debt Help services which assist Aboriginal and Torres Strait Islander Peoples with credit, debt and insurance matters.

Financial Rights also conducts research and collects data from our extensive contact with consumers and the legal consumer protection framework to lobby for changes to law and industry practice for the benefit of consumers. We also provide extensive web-based resources, other education resources, workshops, presentations and media comment.

This submission is an example of how CLCs utilise the expertise gained from their client work and help give voice to their clients' experiences to contribute to improving laws and legal processes and prevent some problems from arising altogether.

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www.financialrights.org.au/submission/ or www.financialrights.org.au/publication/

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National Debt Helpline 1800 007 007
Insurance Law Service 1300 663 464
Mob Strong Debt Help 1800 808 488

Monday – Friday 9.30am-4.30pm

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Executive Summary

Thank you for the opportunity to comment on proposed updates to the Australian Securities and Investment Commission (**ASIC**) internal dispute resolution (**IDR**) requirements set out in RG 165.

The Financial Rights Legal Centre (**Financial Rights**) is broadly supportive of the proposed updates to RG 165. The key recommendations of our submission are that:

- Complaints made through social media channels should be dealt with under IDR processes.
- In addition to any review or post on the firm's social media page, the definition of a complaint made "through social media channels" should include complaints made with direct connection to a firm's social media verified account, or 'tagged' to a firm's social media verified account.
- Further clarification or guidance is required for RG 165.35(b) to ensure that simple request for information are captured in the data where appropriate and that IDR timeframes commence at the point of the original request for information where such a request develops into a complaint.
- Firms should be *required* rather than encouraged to record all complaints that they receive.
- Data on systemic issues should be mandatory fields to be provided to ASIC.
- Consideration should be given to including a detailed list of sub-categories of complaint to assist further categorisation and identification of trends in the Data Dictionary.
- All IDR data reporting fields should be mandatory and provided to ASIC.
- IDR data should be collected with respect to:
    - the reasons consumers withdraw their claim; and
    - how often the exceptional circumstances category is used, and what the exceptional circumstances are that are being relied on (in broad terms).
- The IDR response should:
    - include an offer to provide the consumer, at their request, with any and all relevant documentation that the firm has relied upon to make the decision; and
    - address any specific arguments raised by the consumer, or their representative, in the initial complaint.

- The maximum complaint timeframe for IDR should be reduced to 30 days for *all* licensees, with an interim period of maximum complaint timeframes set in the schema as proposed.
- In addition to the proposed IDR delay notification content, firms should:
    - provide a genuine estimate as to how long they expect any consideration of the complaint to take; and
    - commit to providing you regular updates on the progress.
- The maximum IDR timeframe for superannuation complaints should be reduced from 90 to 45 days.
- RG 165.117 regarding customer advocates should be implemented as proposed with the following additions:
    - firms using customer advocates should be required to collect and report data to ASIC on their use, outcomes, systemic issues identified and actions taken;
    - guidance provided with respect to what customers are told about their options during or after the IDR process has completed; and
    - a review of the functioning of customer advocates and their impact on IDR should be established.

Definition of 'complaint'

B1Q1: Do you consider that complaints made through social media channels should be dealt with under IDR processes?

Financial Rights supports the proposal that complaints made through social media channels be dealt with under IDR processes in line with aligning definition of complaint with the updated AS/NZS 10002:2014.

As noted by Report 603 social media is an increasingly common and effective way for consumers to raise complaints and have them addressed. On principle there should be few if any barriers placed in raising a complaint – consumers should need to know any magic words nor should be confined to particular controlled channels that may be intentionally or unintentionally less accessible.

We note however that at para 31 ASIC:

> *at a minimum , …expect that complaints made **on a financial firm's own social media platform(s)** will be dealt with through the firm's IDR process when the consumer is both identifiable and contactable **[our emphasis]***

We take "on a financial firm's own social media platform(s)" to mean that at a minimum, ASIC expects complaints made on a financial firm's own social media *page* will be dealt with. Presumably this is aimed at consumers who complain directly on a financial firm's Facebook page, for example. However, this is not quite how other social media platforms such as Twitter or Instagram work. On these channels one can complain about a firm by adding (or 'tagging') the name of the firm (or 'handle') on the consumer's own post – whereby alerting the firm to the complaint. The financial firm is alerted to this tagging with a message sent to the firm via the social media platform. There are no pages (or platforms) as such on these services.

The same can be done on a service like Facebook – where a consumer can include the name of the firm (or 'tag the firm') in the consumer's own post on their own page – in addition to going directly to a firm's page and leaving a complaint/comment on the page. They can also tag a firm on a comment on another entity's post or page. In either case the firm is alerted to the complaint because of the tag.

Further clarification is therefore required to ensure that the definition of a complaint made "through social media channels" includes, in addition to any review or post on the firm's social media page, any complaint made with direct connection to, or 'tag' of a firm's social media verified account. For instance, a complaint made via a public post or status update on the consumer's own Facebook timeline, or in a public Facebook group, but that includes a 'tag' of a verified social media account of the firm about which the consumer is complaining. Such complaints should be considered a complaint under RG 165.

Financial Rights also believes that there should be some guidance as to the definition of 'social media'. We understand that some platforms (Facebook, Twitter, Instagram and so on) are very explicitly social media platforms, however the waters are somewhat muddied when it comes to

some other platforms, such as customer forums on websites that are otherwise not primarily social websites, or campaign websites such as the effective 'Vodafail' website (http://vodafail.com/) that collected complaints. We believe that there needs to be some flexibility in the definition of 'social media' to capture sites such as these.

Clearly there are also privacy concerns associated with the use of social media as a complaint channel. ASIC Guidance should clarify that although complaints received via social media should be captured, recorded and dealt with as complaints wherever practicable, financial firms need to me mindful of privacy in any response to the complaint. Specifically, it would usually be inappropriate to respond to the substance of a complaint via social media where this would involve any disclosure of personal or confidential information. In many cases it may only be appropriate to respond via social media to acknowledge the complaint and invite further contact via a more private and secure means of communication to resolve the issue.

B2Q1: Do you consider that the guidance in draft updated RG 165 on the definition of 'complaint' will assist financial firms to accurately identify complaints?

B2Q2 Is any additional guidance required about the definition of 'complaint'? If yes, please provide:

(a) details of any issues that require clarification; and

(b) any other examples of 'what is' or 'what is not' a complaint

Financial Rights considers that the inclusion of guidance for firms regarding the definition of 'complaint' is helpful.

Financial Rights can confirm that the practices described in CP311 at paragraph 36 are experienced by consumers with whom we have spoken – namely requiring consumers to expressly state the word 'complaint' or lodge the complaint in written form or classifying complaints not as a complaint but as feedback.

Case study 1 –Richard's story - C165114

Richard is a 70 year old from far west NSW. Richard called us because his insurance premiums were high and unaffordable. He told us that he had spoken to the bank (the insurance was distributed by the bank, and it was also the insurer. We will refer to bank through-out) after he received a letter from the bank saying he was 1 month late on his premium payment. It said that if he did not pay, then they will cancel his policy.

Richard told us he called the bank himself to tell them he cannot afford that amount. He asked to pay less. They said they could lower it form $630 to $560, but cannot go any lower. They said they can waive this month only, but he'll have to keep paying. He told us they said to him "it is insurance for life, and will only end when you pass away." Richard is quite confused by this. He tells us he believes sum insured is $50,000, but he already paid $63,000 to it. Richard is on an age pension $817 per fortnight and his mortgage is $120 per fortnight. He only has around $200 p/fn to pay other bills and buy food.

Richard tells us he did not know what kind of financial product it was, but said he had to keep paying otherwise he would lose his house.

Financial Rights called the bank's IDR with Richard to raise the issue of unaffordability and to find out what financial product it was, to be able to give him advice by asking for documents. A month later we called Richard to follow up but the bank had not sent him anything. We undertook another call with him to the bank and they said they'd send documents but again they failed to. At this stage, we decided to open a file and represent Richard and a further month later after yet another written request the bank finally sent the documents.

It turned out to be a joint Life Insurance policy that Richard had signed up for in the 1990s when the mortgage was initiated – he believed it was a condition of the mortgage but it was not. The benefit amount was $50,000.00. Richard had paid more than the benefit amount in premiums. It sounded like the product may have been sold inappropriately in the first place, but there had been a lot of time elapsed since its original inception and neither Richard, nor his very ill wife who was in a nursing home, could remember clearly what had occurred all those year ago.

We advised Richard of the nature and the scope of the product and also of his rights to raise a dispute but Richard decided not to continue.

The story disturbed us, and we raised the matter with the Bank's customer advocate at a community forum. The matter was taken up and the bank offered to waive all future premiums. It turned out that the bank had actually halved Richard's premiums (probably somewhere between the first and second requests for documents) but this was neither effectively communicated to Richard, nor did it address his problems which were that he could no longer afford the premiums at all, had undoubtedly already paid more than the benefit amount under the policy, and the dubious sale of the product in the first instance.

We are of the view had the bank been more proactive in talking with Richard (rather than treating it as a pure affordability issue) and understood the broader issues involved, the matter could and should have been resolved the matter sooner and without our intervention.

We also can confirm issues raised at paragraph 40 including:

- the interaction of insurance claims handling areas and complaints processes;

Case study 2–Leila and Jerry's story - S230246

Leila and Jerry's property was damaged in the December 2018 hail storm. They made claim a claim on their home building policy which was accepted. However problems arose

with the remediation work and delays.

Leila said that she tried calling IDR and she believed she was contacting the IDR department but was told she was with "complaints resolution" which was one step before IDR.

Leila spoke to a woman who called herself a "technical lead." When Leila asked to go to IDR, the woman got aggressive and said that Leila has to go back to the same assessor and if she doesn't the insurer would consider that she has failed to cooperate and breached her duty of utmost good faith. The woman then threatened to stop paying on their temporary accommodation if she decided to go to IDR.

Leila asked for call recordings of the conversations with the technical lead and was told by the insurer that they don't take call recordings of conversations with managers and technical leads.

Case study 3–Adele's story - S232133

Adele made a claim on her home building insurance when her home was damaged by a water leak. An issue arose with respect to the materials being used in the remediation that she wished to complain about.

Adele sent an email to the large insurer's IDR but received a bounce back email. Adele then rang and someone at IDR who told her that they don't accept external emails and it would have to go through her claims manager.

Case study 4–Salem's story

Salem's car was stolen in February 2014 and he made a claim with his insurer. The claim was investigated and Salem was interviewed twice. He was informed that these interviews would take an hour but instead they took three hours and one and a half hours respectively. Salem felt as if the interview was an interrogation and complained to his case manager. Salem requested a different investigator but this was denied.

Source: *Financial Rights, Guilty Until Proven Innocent*

Case study 5 –John's story

John held comprehensive car insurance when his car was stolen. The car was recovered by the police with damage to the windows and a ripped panel under the steering wheel. John made a claim and his insurer asked to conduct an interview. John went to his insurer's branch and participated in the interview.

A few days after the interview the investigator turned up at John's property unannounced demanding entry to the property. John was not home but his partner was. The investigator had not arranged to speak to John to conduct an additional interview. The investigator knocked on the door and asked to come inside. John's partner was home alone with her children and not comfortable letting a strange and unannounced man in her home so she said 'no.' The investigator then said to John's partner that "I can do what I want, when I want. I want to come and look." He presented no ID nor did he wear an identifying uniform. John's partner continued to deny the investigator entry as she thought at first he was a salesperson and didn't know what the house call was about. The investigator told John's partner that he had a right to enter the property and would not leave, eventually sneaking around the back of the house without permission.

John's partner called the insurer to complain about the behaviour of the investigator and was told "don't be silly, [investigator's name] would never do that" and insisted that the investigator was wearing a uniform and had an ID. John also complained and was told by the investigator that "Your wife is a f***ing liar".

Source: *Financial Rights, Guilty Until Proven Innocent*

- and the interaction between life insurers and superannuation trustees

Case study 6 –Gary's story – C153741

Gary has a dispute with his insurance in his super relating to an allegation of non-disclosure. The insurer wanted to cancel his insurance.

Acting on Gary's behalf Financial Rights lodged a dispute in late 2017 with the superannuation's IDR. During the IDR period we had great difficulty with the process, rarely receiving any information regarding the status of the dispute and, at times, inconsistent communication. We finally received what we understood to be a "final Trustee IDR" response 9 months later. On instructions we lodged in external dispute resolution a couple of months later. . Only to then be advised the matter had not gone through the Trustee's IDR. We subsequently received a final decision from the Trustee a further 2 months later.

Financial Rights supports the definition of 'complaint' set out in the AS/NZ 10002:2014 is broad and its use to guide the definition of complaint under RG 165. We support the proposed wording at RG 165.32.[1]

We note that RG165.35 is proposed to define what is *not* a complaint:

> *We do not expect firms to deal with the following matters through their IDR process: (a) staff grievances or work-related problems;*
>
> ***(b) simple requests for information; and***
>
> *(c) comments made about a firm where a response is not required—for example: (i) feedback provided in surveys; or*
>
> *(ii) reports intended solely to bring a matter to a financial firm's attention—for example, that an automatic teller machine (ATM) is damaged.* ***[our emphasis]***

While this is relatively straightforward we do hold some concerns about RG165.35(b) regarding "simple requests for information". In our experience simple requests for information lead ultimately lead to complaints – be it intentionally or unintentionally. A simple request for a PDS for example can either lead to a complaint about for example, terms and conditions in the PDS, exclusions, excess or even the inaccessibility of the PDS that has misled the consumer. A simple request for information about the charging of a fee can lead to a complaint about the fee. In both cases the firm simply provides a PDS to the consumer and the matter is closed – when clearly an expression of dissatisfaction has arisen.

Richard's story above is one example of a simple information request which was symptomatic of an underlying complaint, which was only ultimately resolved by the intervention of the Customer Advocate.

In our casework practice we regularly request information and documents as the first step in raising a dispute. In some cases we raise the substance of the likely dispute in the initial letter requesting documents, but in some cases this is not practical because the nature and merit of the dispute may differ considerably depending on the content of the requested information. It is not uncommon for such request to either, not be responded to within appropriate timeframes, or for the request to be met with an offer of settlement with no admissions. This practice presents three problems:

1. Firstly we cannot advise the client in relation to settlement offer because we have no idea about the merits of otherwise of their dispute or the appropriate remedy without the information requested.

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[1] Proposed RG 165.32:

Financial firms should not categorise an expression of dissatisfaction as 'feedback', an 'inquiry', a 'comment' or similar (and therefore not a complaint to be dealt with in the firm's IDR process) because:

(a) the complainant expresses their dissatisfaction verbally;

(b) the firm considers that the matter does not have merit; or

(c) a goodwill payment is made to the complainant to resolve the matter without any admission of error.

2. It is unclear whether the financial firm is recording this matter as a complaint or disregarding it as "a request for documents" because that may be all that is contained in the correspondence. Even if they are capturing the matter as a complaint, there will be no accurate description of the nature of the complaint to inform the firm about problems with their products or services.
3. If we write back explaining that we cannot advise the client about the settlement offer without the requested documents, the entire IDR process has just been blown out by an unnecessary delay that could have been avoided by simply providing the requested information in the first place (whether accompanied by a settlement offer or otherwise).

We believe that RG 165.35(b) needs to be further refined to recognise that requests for information may often be a precursor to a complaint and to ensure that data is captured about such requests and that IDR timeframes are counted from the initial request for information when such as request develops into a complaint.

Recommendations

1. **Complaints made through social media channels should be dealt with under IDR processes.**
2. **In addition to any review or post on the firm's social media page, the definition of a complaint made "through social media channels" should include complaints made with direct connection to a firm's social media verified account, or 'tagged' to a firm's social media verified account.**
3. **Further clarification or guidance is required for RG 165.35(b) to ensure that simple request for information are captured in the data where appropriate and that IDR timeframes commence at the point of the original request for information where such a request develops into a complaint.**

Definition of 'small business'

B3 Do you support the proposed modification to the small business definition in the Corporations Act, which applies for IDR purposes only? If not, you should provide evidence to show that this modification would have a materially negative impact.

Financial Rights supports the alignment of the definition of "small business" in the Corporations Act with that of AFCA Rules as proposed. Any harmonising will assist in decreasing complexity and lowering the chance for exceptions and loopholes to be exploited.

Recommendations

4. **The definition of "small business" in the *Corporations Act* should be aligned with the AFCA Rules as proposed.**

Recording all complaints received

B4Q1 Do you agree that firms should record all complaints that they receive? If not, please provide reasons.

Financial Rights supports the proposed change to the guidance to *require* rather than encourage firms to record all complaints that they receive.

This will ensure that more resources are provided to the complaints area to ensure that this information is collected appropriately leading to long term efficiencies and improvements to consumer experiences and outcomes borne through the identification and hopefully addressing of systemic issues identified through this process. While this may for some firms involve increased costs, it will lead to savings in the long run through improved products, services and customer relationships. We are surprised firms do not already capture this data to improve product design and customer centre design of services.

Recommendations

5. **The guidance should be amended to *require* rather than encourage firms to record all complaints that they receive, as proposed.**

Recording a unique identifier and prescribed data set for all complaints received

B5 Do you agree that financial firms should assign a unique identifier, which cannot be reused, to each complaint received? If no, please provide reasons.

Do you consider that the data set proposed in the data dictionary is appropriate? In particular:

> **(a) Do the data elements for 'products and services line, category and type' cover all the products and services that your financial firm offers?**
>
> **(b) Do the proposed codes for 'complaint issue' and 'financial compensation' provide adequate detail?**

Financial Rights supports financial firms assign unique identifiers to each complaint received.

Recording a complaint

However, some clarity may be required around the ambiguity arising around recording a complaint by a consumer who expresses dissatisfaction regarding one issue and recording a complaint of a consumer who complains about multiple issues. Is the unique identifier with respect to an individual complainant or each is the unique identifier applying to each separate complaint of many by one individual complainant? We note that the Dictionary includes at field "32. Complaint Issue" the ability to input more than one issue, suggesting that the unique identifier is being applied to a complainant with a "complaint" that is in fact made up of multiple complaints rather than each individual complaint. If this is the case, this needs to be made explicit in the guidance, since we believe it is ambiguous as it stands.

We do not express a view as to which approach is more efficient or more desirable rather consideration should be given to whether a unique identifier should be applied to each individual complaint amongst many to better record the details of the complaint.

Complaint issue codes

The list of Codes for complaint issues at 32 is broad and comprehensive and is necessarily limited to ensure that it is not overly difficult to place a complaint within a category. We would suggest an additional category of common complaint categories that may not fit into the categories provided, that is, complaints about sales practices. These could potentially fall into code 9: Service and/or administration but this is not so clear.

We do however believe that consideration should also be given to providing firms with a detailed list of sub-categories to assist further categorisation and identification of trends. This would assist firms to identify trends within each of these categories. For example:

2. Charges

201 Excessive charge or fee

202 Failure to disclose charge or fee

…

or

4 Financial Difficulty

401 Seeking/disputing repayment arrangement

402 Inappropriate debt collection

…

Ideally sub-categories would be compulsory since it will assist both ASIC and individual financial firms in better identifying specific issues and trends. The ten broad categories may be so broad that they may be rendered meaningless and will not assist ASIC (or firms) in identifying emerging issues. For example, complaints about "7- Insurance claims" may be high and increasing but they may be made up of 90% complaints about delays and ten percent about cash settlements, depreciation of assets, disputes over quantum or excessive information requests. If complaints about insurance claims are decreasing but complaints about delays are increasing – this key trend will be potentially lost. Each of these well-known issues may be described in any number of ways by financial firms when filling in field "33 Description of complaint Issue", which allows free form description of up to 4000 characters. This will require both the firm and ASIC to manually read (or use potentially unreliable AI to interpret) thousands of complaints. While we are not arguing for the removal of such a free form description at field 33, we do think serious consideration needs to be given to including another field of sub categorisation.

Even if ASIC is not minded to make such a list of sub-categories compulsory, we do believe that at a minimum, a non-compulsory list of complaint sub-categories will provide useful guidance to firms in both better explaining what each category means and, assist them in developing systems to identify emerging issues.

Possible systemic issue or regulatory breach

We note that underneath Table 2: Data to be recorded for every complaint includes a note at the end which states:

> *Note: We will be consulting on whether the data element 'Possible systemic issue or regulatory breach' should be a mandatory field.*

'Possible systemic issue or regulatory breach' should be a mandatory field. If ASIC is to be empowered to monitor trends and identify issues this is a key category that will assist. Furthermore a possible regulatory breach should be reported to ASIC anyway. Making this field mandatory will assist in making sure that this occurs.

We also believe guidance should be developed in the IDR data dictionary providing a non-exhaustive list of possible systemic issues – acknowledging that future systemic issues will not be currently known and will need to be defined and refined moving into the future.

Furthermore, we do not see any rationale for not requiring the fields:

- *Details of any actions taken to manage complaint, including contact with the complainant*
- *Any recommendations for product, service or system improvements arising from the complaint (if applicable)*

The former is important to know for ASIC oversight of IDR; the latter is key information to know in terms of the both the design and distribution obligations and the product intervention powers.

Withdrawn claims

Field 19 Complaint status includes the following mandatory fields:

> *Use 1 (Open) if the complaint has been opened for the first time and its resolution is in progress*
>
> *Use 2 (Re-opened) if the complaint has been re-opened (e.g. if a complaint has been referred back from the Australian Financial Complaints Authority (AFCA) or additional information has become available). If 2 (Re-opened) is used, record the reason for re-opening the complaint in data element 24 'Reason for re-opening'.*
>
> *Use 3 (Withdrawn) if the complaint was withdrawn by the complainant or contact with the complainant has been lost.*
>
> *Use 4 (Closed) if the complaint has been resolved or firm has provided a final response to complainant*

Complaint withdrawals arise in a number of circumstances many of which are not as benign as the complainant changes their mind or the firm loses contact with a disengaged consumer.

Withdrawals arise from complaint fatigue, frustration, delay, inaccessible processes, and poor service. We hear from consumers who are frustrated by the process

We also hear of constructive withdrawals – where the firm recommends or intervenes somehow to convince the consumer to withdraw their complaint, for example by telling them that their claim is likely to be denied, raising the possibility of no-claim bonuses being affected, or suggesting the consumer may be involved in fraud.

At a minimum, data should be collected with respect to the reasons consumers withdraw their claim. Data relating to withdrawal of complaints and the reasons for those withdrawals are critical barometers for the healthy functioning of IDR processes in a firm and across the industry, particularly in the insurance sector. It is incumbent upon ASIC to collect this information to identify systemic issues and emerging trends, provide regulatory oversight and intervene where necessary.

Furthermore, data needs to be collected on the use of exceptional circumstances. As will be outlined below with respect to maximum timeframes IDR data reporting should include not

only how often the exceptional circumstances category is used, but what the exceptional circumstances are that are being relied on (in broad terms) so that ASIC can have some oversight of whether such time limit blowouts are both reasonable and in the customer's best interests.

Recommendations

6. **Consideration is required to clarify whether a unique identifier applies to recording a complaint by a consumer who expresses dissatisfaction regarding one issue and recording a complaint of a consumer who complains about multiple issues.**
7. **Field 32 of the Data Dictionary should include a category of complaint about sales practices.**
8. **Consideration should be given to including in the Data Dictionary a detailed list of sub-categories of complaint to assist further categorisation and identification of trends.**
9. **'Possible systemic issue or regulatory breach', "Details of any actions taken to manage complaint, including contact with the complainant" and "Any recommendations for product, service or system improvements arising from the complaint (if applicable)" should be a mandatory fields.**
10. **IDR data should be collected with respect to:**
    a) **the reasons consumers withdraw their claim; and**
    b) **how often the exceptional circumstances category is used, and what the exceptional circumstances are that are being relied on (in broad terms).**

IDR data reporting

B6 Do you agree with our proposed requirements for IDR data reporting?

We support the requirement that financial firms report to ASIC every six months. We have detailed our issues and concerns with respect to the proposed data variables in answer to the previous question.

Recommendations

11. **Financial firms should report to ASIC every six months.**

Guiding principles for the publication of IDR data

B7 What principles should guide ASIC's approach to the publication of IDR data at both aggregate and firm level?

The key principles that should guide ASIC's Approach to the publication of IDR data are:

- **Improving transparency:** It will assist financial services industries, regulators, consumer and their representatives with more comprehensive information when it comes to analysing trends, understanding patterns and addressing systemic issues. It is currently impossible to know if a recurring problem is present across many financial institutions or is particular to one firm. To solve the problem in either situation requires a very different approach, and the implementation of this change will allow for systemic problems to be most effectively addressed.
- **Accountability and removing information asymmetry:** Poorly behaving financial firms should be held to account for that poor behavior. That feedback to consumers is not currently available. Consumers have long been at a disadvantage in engaging with the financial sector in not knowing which firms receive high levels of complaints. Publishing firm level IDR data will make for more fully informed consumers when it comes to making choices regarding which financial firm they engage. Consumers have a right to know which financial firms are attracting disputes, the nature of those disputes and the outcomes.
- **Improving standards and competition**: Financial firms should be encouraged to embrace feedback. The goal of the reporting regime should not be to "hide" complaints in order to have the lowest numbers, but to demonstrate a willingness to be proactive about complaints, resolve them quickly and effectively, and improve the business in response.

As ASIC would be aware AFCA is currently consulting on proposed rule changes to publish Determinations in a form which identifies the financial firm or firms that are party to a complaint.[2] We have supported this move and support a similar move with respect to IDR data.

To further meet the principles outlined above, ASIC should release full data sets and summary information for firms and products on an annual basis.

[2] AFCA, Rules changes to identify financial firms in published determinations https://www.afca.org.au/news/consultation/rules-changes-to-identify-financial-firms-in-published-determinations/

Recommendations

12. The key principles that should guide ASIC's Approach to the publication of IDR data are:
    a) Improving transparency
    b) Accountability and removing information asymmetry
    c) Improving standards and competition

IDR responses – minimum content requirements

B8 Do you agree with our minimum content requirements for IDR responses? If not, why not?

Minimum content requirements for IDR responses are appropriate given the low quality of some responses.

Case study 7 –Larry and Marg's story – C130855

Larry and Marg held comprehensive car insurance over their jointly owned vehicle. They decided to sell the vehicle and purchase a van, to make modifications to accommodate Larry's wheelchair. The van was substituted under their insurance policy. The cost of these modifications meant that during the term of insurance, the car's registration lapsed whilst they saved money to make the modification. A few months later the van was set on fire by arson. The insurer refused the claim due to the failure of Larry and Marg to disclose that the registration lapsed. Financial Rights requested documents from the insurer and raised issues with the rejection. The insurer provided the documents, and upheld the refusal. Financial Rights continued the complaint, disputing the insurer's decision to refuse and made detailed submissions. Seven days later we received, what appeared to be a pro forma response that failed to analyse or respond to any of the issues raised and purported to be the insurer's final decision. On instructions we lodged in EDR. 25 days later, the clients claim was accepted

Proposed RG165.75 (c) states:

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

(c) 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.

We support this proposal. In addition to this the response should include an offer to provide the consumer, at their request, with any and all relevant documentation that the firm has relied upon to make the decision. The next iteration of the General Insurance Code of Practice is likely to include such a commitment.

The response should also address any specific arguments raised by the consumer, or their representative, in the initial complaint. Financial Rights has drafted complaints on behalf of consumers containing quite detailed submissions, only to receive a response which simply affirms the initial decision without addressing any of points raised in support of the complaint. This is totally unsatisfactory for the consumer but also leads to escalation to EDR which may have been completely unnecessary and is therefore against the interests of the financial firm: see Larry and Marg's case study above.

Case study 8 –Sarah' story - C129541

Sarah's husband died whilst they were on holiday. The travel insurer appointed an investigator to review the circumstances of her husband's death. Sarah's claim was denied, based on a reliance on an alcohol exclusion based on the investigators' findings. Sarah was beyond distressed. She had been with her husband and he was not drunk. Sarah battled her way through IDR, who repeatedly and consistently failed her, including:

a. sending her only every second page of their decision (one assumes it was double sided, and in error only one side was scanned and sent to her);
b. references to medical reports that were never provided;
c. references to witnesses, quoting sections but without providing copies of their full statements;
d. reliance on witnesses who were not present on the day of the event, as discovered by Sarah when she contacted the hotel herself;
e. delays attributed by the insurer to awaiting reports from procedures that Sarah knew could not be performed (as her husband had already been cremated)
f. repeated refusal to provide copies of the evidence relied on.

Sarah's experience was via an online information exchange through the insurer's website. The documents were often of poor quality and difficult to download and access in comprehensible order. It is difficult for a consumer to understand an insurer's position without being fully informed of the information relied upon in coming to a decision. Sarah's claim was eventually paid, but the poor claims handling compounded what was already and stressful period of time mourning her deceased partner.

Recommendations

13. The IDR response should:

    a) include an offer to provide the consumer, at their request, with any and all relevant documentation that the firm has relied upon to make the decision; and

    b) address any specific arguments raised by the consumer, or their representative, in the initial complaint.

IDR responses – superannuation trustees

B9Q1 Do you agree with our proposed approach not to issue a separate legislative instrument about the provision of written reasons for complaint decisions made by superannuation trustees? If not, please provide reasons.

Yes Financial Rights agrees with this approach

B10Q1 Do you consider there is a need for any additional minimum content requirements for IDR responses provided by superannuation trustees? If yes, please explain why you consider additional requirements are necessary.

In Financial Rights' experience Superannuation complaints IDR processes are not as proactive and well formed as the rest of the sector. Bringing superannuation standards in line with industry practice will be a significant achievement in itself.

Recommendations

14. ASIC proposals regarding superannuation trustees should be implemented.

Reduced maximum IDR timeframes

B11Q1 Do you agree with our proposals to reduce the maximum IDR timeframes? If not, please provide reasons and any proposals for alternative maximum IDR timeframes.

B11Q2 We consider that there is merit in moving towards a single IDR maximum timeframe for all complaints (other than the exceptions noted at B11(b) above). Is there any evidence for not setting a 30-day maximum IDR timeframe for all complaints now?

Standard complaints reduction to 30 calendar days

We support a movement to decreasing the maximum complaint timeframe to 30 days for *all* licensees with an interim period of maximum complaint timeframes set in the schema set out at proposed RG165 Table 3.

We remain disappointed that current Codes of Practice in the financial services sector do not push the envelope when it comes to complaints timeframes, and generally reflect the current 45 day/90 day maximums. Self-regulation has failed to improve industry practice in this regard to improve.

We note many insurers currently state they will aim or try to respond in 15 business days, for example, NRMA, [3] Suncorp[4] and Westpac.[5]

The introduction of a 30 day for standard complaints and a movement towards 30 days for all licensees is therefore important to motivate industry to:

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[3] NRMA, Motor Insurance Product Disclosure Statement and Policy Booklet, page 84

> *"Customer Relations will contact you with a decision usually within 15 business days from when they received your dispute".*

https://www.nrma.com.au/sites/nrma/files/nrma/policy_booklets/car_pds_0519_all_1.pdf

[4] Suncorp, Home & Contents Insurance — Product Disclosure Statement, page 82,

> *"Our IDR team will review your complaint, and provide you with their final decision within 15 business days of your complaint being referred to them."*

https://www.suncorp.com.au/content/dam/suncorp/insurance/suncorp-insurance/documents/home-and-contents/home/home-contents-insurance-pds.pdf;

[5] Westpac, Home and Contents Insurance Product Disclosure Statement and Supplementary Product Disclosure Statements, page 53

> *"The Team Leader or Manager will try to resolve your complaint within 15 business days"*

https://www.westpac.com.au/content/dam/public/wbc/documents/pdf/pb/FSR_HomeContentInsPDS.pdf

- improve resourcing to a critical service/core business area;
- discourage inaction and building delays into IDR processes;
- motivate financial firms to re-design products and services to better serve customer needs in the first place;
- establish a culture of continuous improvement; and
- reduce confusion for consumers;
- lower the chances that customers will become frustrated with the process, give up and withdraw.

We understand that for the most part the banking sector largely meets these timeframes and that the majority of complaints are dealt with within these timeframes – however some sectors, and some firms, are better than others.

We also understand that there are genuine exceptional circumstances on particularly complex matters that require additional time. Under RG165.118, if a firm fails to respond to a complaint within that timeframe in "exceptional circumstances" then they must send an IDR delay notification.

Three issues arise. The first regards the definition of exceptional circumstances. There is currently no definition of exceptional circumstances under RG165. Consideration should be given to defining exceptional circumstances to both prevent subjective assessments of what makes up an "exceptional circumstance" – particularly what it is not an exceptional circumstance. We remain concerned that without any parameters around exceptional circumstances it is within the power of a firm to under-resource IDR and push out complaints to maximum timeframes for profit-driven purposes. "Exceptional circumstances" loophole should not be able to be used regularly to avoid meeting specified timeframes.

For further discussion of this issue as it related to customer advocates, see below.

The second issue is the content of the IDR delay notification. Currently under proposed RG 165.119 is similar in substance to current RG165.92 namely that the firm must provide:

(a) the reasons for the delay;

(b) their right to complain to AFCA if they are dissatisfied; and

(c) the contact details for AFCA.

In addition to this the firm should:

- provide a genuine estimate as to how long they expect any consideration of the complaint to take.
- commit to providing you regular updates on the progress – the Banking Code for example provides monthly updates: clause 206;

The third issue is about reporting. As detailed above in the section on Recording a unique identifier and prescribed data set for all complaints received, IDR data should include not only how often the exceptional circumstances category is used, but what the exceptional circumstances are that are being relied on (in broad terms) so that ASIC can have some oversight of whether such time limit blowouts are both reasonable and in the customer's best interests.

Maximum timeframes for Superannuation

We support RG165 reducing the maximum IDR timeframe for superannuation complaints from 90 to 45 days in line with the commitment under the Insurance in Superannuation Voluntary Code of Practice. This is an important step to ensure that superannuation trustees meet the commitment voluntarily made.

We note too that like other firms, if a superannuation trustee fails to respond to a complaint within that timeframe in "exceptional circumstances" then they must send an IDR delay notification as per RG165.118-120. Consideration should be similarly given to constraining the use of exceptional circumstances and/or preventing its abuse.

Acknowledging complaints

There remains a significant loophole in the draft RG 165. RG 165.70 states that:

> *If it is not possible for the financial firm to acknowledge the complaint within 24 hours, the firm should acknowledge it as soon as practicable.*

This "as soon as practicable" phrasing can function to undermine the timeframe requirements. Any firm can claim that it is not practicable for them to acknowledge any complaint within the stipulated timeframe, for any reason.

Recommendations

15. **The maximum complaint timeframe for IDR should be reduced to 30 days for *all* licensees, with an interim period of maximum complaint timeframes set in the schema as proposed in RG165 Table 3.**
16. **Consideration should be given to defining exceptional circumstances to both prevent subjective assessments of what makes up an "exceptional circumstance" – particularly what it is not an exceptional circumstance.**
17. **In addition to the proposed IDR delay notification content firms should:**
    a) **provide a genuine estimate as to how long they expect any consideration of the complaint to take; and**
    b) **commit to providing you regular updates on the progress.**
18. **The maximum IDR timeframe for superannuation complaints should be reduced from 90 to 45 days.**

19. "as soon as practicable" should be removed from RG165.70.

Role of customer advocates

B12Q1 Do you agree with our approach to the treatment of customer advocates under RG 165? If not, please provide reasons and any alternative proposals, including evidence of how customer advocates improve consumer outcomes at IDR.

B12Q2 Please consider the customer advocate model set out in paragraph 100. Is this model likely to improve consumer outcomes? Please provide evidence to support your position.

Financial Rights experience of customer advocates

Financial Rights experience with customer advocates in the banking sector has been mixed with some positive experiences and some less so.

Some customer advocates are well resourced, proactive, responsive and open to contacts from our organisation when we have sought to escalate a complaint from a client, or a systemic issue. In a number of cases we have achieved outcomes that we believe were better than a client could have expected if they were to complain to AFCA, either because their complaint was already out of time, outside jurisdiction or lacked legal merit, but was clearly appropriate from a fairness or compassionate perspective. We also understand that many act proactively within organisations to identify systemic issues and advocate for change.

Taking a look at Richard's story above, Richard's complaint about the original sale of the financial product was out of time legally, and crucial evidence was not available because of the fragile state of his wife's health, and the passage of time. The Customer Advocate was able to resolve the matter to Richard's satisfaction in circumstances where a complaint to AFCA or the courts would have had little prospects of success.

In another instance Financial Rights contacted the Customer Advocate at a bank (by a short e-mail) to report an issue that had been raised by a couple of callers to the National Debt Helpline which suggested that the bank was not abreast of an important change in NSW law in relation to court-based enforcement procedures. After some investigation the Customer Advocate was able to affirm that there had been a procedural breakdown in the bank that had now been rectified.

Other customer advocates have not been so empowered, their role within an organisation less clear, they have been difficult to access, are less proactive, poorly resourced and do not have a similar status or respect within an organisation.

Our longstanding and continuing concerns with the customer advocate role include:

- ***the lack of consistency in their defined role, objectives and status across the sector:***

  Far from providing certainty, the ABA's Guiding Principles for Customer Advocates[6] lists a non-mandatory list of potential responsibilities for customer advocates from which to pick and choose from. This lack of definition and consistency is reflected in our experience working with banks and their customer advocates.

- ***the potential to bifurcate the IDR process wherein consumers are given two potential routes through the complaints process each with their own set of rules, and timelines:***

  Clients express confusion as to whether the correct approach is to head to the customer advocate or AFCA. Some websites refer to the ability to request a review from the customer advocate and the customer's continued ability to contact AFCA at any time (eg Commonwealth Bank,[7] Westpac[8]) others do not refer to this continued ability giving the impression of a stark once off choice eg ANZ[9].

- ***the lack of consistency of when customer advocates intervene or take on cases:***

  In most cases the role of customer advocates kick in after an IDR response however others proactively intervene during the IDR process or are happy to be approached by consumer representatives during the initial 45 days. ANZ for example states:

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[6] https://www.betterbanking.net.au/wp-content/uploads/2017/01/ABA-Customer-Advocate-Guiding-Principles-FINAL-1.pdf

[7] *"Contact the Bank's complaints team. This gives the Bank the chance to investigate the situation and put things right. You can contact the team on 1800 805 605 or through our feedback page.*

If you're not happy with the outcome, you can either:

Contact your Customer Advocate and request a review. Decisions of the Customer Advocate are binding on the Bank, but not on you. Most reviews are completed within a fortnight. If you remain unhappy you can then contact the Australian Financial Complaints Authority (AFCA) for an external review. AFCA provides fair and independent financial services complaint resolution that is free to consumers

Contact AFCA for an external review without first going to your Customer Advocate. (Remember that your Customer Advocate is unable to review complaints that have already been investigated by AFCA.) https://www.commbank.com.au/about-us/who-we-are/customer-commitment/customer-advocate.html

[8] *The role of the Customer Advocate is to provide an independent review of the outcome of your complaint. The Customer Advocate operates separately from our day to day business areas and its recommendations are binding on the bank. If you choose to contact the Customer Advocate first, you can still refer your complaint to an external dispute resolution scheme if you remain dissatisfied. The Customer Advocate will advise you of the kinds of complaints they can help with* https://www.westpac.com.au/contact-us/your-customer-advocate/

[9] If you're not satisfied with the resolution offered by our Complaint Resolution Centre, you can have your complaint reviewed free of charge by:

- ANZ's Customer Advocate, who will provide an impartial review of your complaint; or
- An external dispute resolution scheme, the Australian Financial Complaints Authority.

https://www.anz.com.au/support/contact-us/compliments-suggestions-complaints/. See also https://www.anz.com.au/support/contact-us/other/customer-advocate/

> *On some occasions, particularly difficult complaints may be referred directly to the Customer Advocate for resolution.*[10]

This muddies the waters with respect to any argument that customer advocates act separate to - and should therefore not be considered within - the maximum timeframe regime.

- ***the potential for customers to fall outside of established complaints timeframe protections:***

  We are aware that there are many cases of customer advocates handling cases well beyond the established timeframes – many of which may be due to the legitimate complexity of the complaints. This is despite the ABA Guiding Principles stating that:

  > *The Customer Advocate's core objective is to enhance existing complaints processes and ensure customer complaints are escalated, and responded to within specified timeframes and that responses are thorough and fair… Banks should always ensure that customers are aware of the relevant time limits for decision-making*

  Our concern remains that without any timeframes applying to the work of customer advocates there is the potential to use customer advocates to avoid the regime. Without any strictures, customer advocates could also be under-resourced and lead to long delays for consumers hoping to achieve better outcomes through the customer advocate process rather than AFCA.

- ***the bifurcation of customer complaint experiences:***

  More resources may be provided to customer advocates such that consumer complaint experiences fall to poor levels in IDR but increase with respect to customer advocates.

The Deloitte Customer Advocate Initiative: Post-Implementation Review Report commissioned by the Australian Banking Association May 2019 also details significant issues with customer advocates including poor communications to customers regarding their rights to access AFCA and a lack of awareness of their existence.

Case study 9 –Jessica's story - C168114

Jessica is currently in a Part IX Debt Agreement to make repayments on four alleged debts that were originally with her Bank. Three of the four alleged debts were assigned to one debt collector, the final one to another.

On Jessica's behalf in, we raised a dispute about Jessica's liability for each of the alleged debts given the circumstances in which these loans were obtained, each involving potential domestic violence and responsible lending issues to the IDR.

The solicitor was in communication with the allocated dispute consultant.

[10] https://www.anz.com.au/support/contact-us/other/customer-advocate/

Jessica's complaint was now a matter of urgency. Having not had any written response from the allocated consultant in the promised time frames, and no response from any other consultant, the solicitor rang the IDR department to speak to anyone about what was happening. The consultant who answered refused to take the solicitor's reference number of the complaint, or look up the matter. The consultant advised our solicitor that she had to either have the client on the phone or the solicitor had to go personally into the branch set up a profile and password of a type that allowed her to make a complaint.

At the same time, Financial Rights had a number of complaints about the same bank's IDR, refusing to do phone conferences with clients.

Financial Rights raised the specific issues we were having with IDR and acting with authority on our client's behalf with the bank's customer advocate, including the conduct in Jessica's specific matter.

However, this then resulted in more confusion and delay because now IDR refused to review the rest of Jessica's dispute arguing that it was being handled by the customer advocate. If the customer advocate had taken on that role, we were unaware of the fact.

In our view the customer advocate was only looking into the process issues (because we were only raising Jessica's process issue along with a number of similar issues), not the substantive dispute. However there was a complete lack of transparency and it now appeared no-one was looking at it.

Jessica didn't receive any substantive response to her complaint until 7 months later only after we had lodged a complaint in AFCA on her behalf.

The role of IDR and customer advocates

The fundamental principles of internal dispute resolution include:

- Fairness: recognising that there is a power imbalance between the customer and the firm. Firms should be
    - impartial and objective: IDR should not be defensive of the organisation
    - confidential: Maintaining the customers privacy
    - transparent: fully informing the customer how the complaint will be handled and the outcome
- Accessible to customers made up of
    - awareness: customers should be able to easily find out how to access IDR and what to do; and
    - accessible via many contact options.

- Responsive: with properly trained and resourced complaints handlers with a particular focus on those people with specific needs and vulnerabilities, and acting professional in the face of sometimes unreasonable behaviour
- Efficiency: with systems developed to deal promptly with simple complaints and an appropriate and proportionate process in place to deal with complex or sensitive matters
- Integration: within the firm – treating complaints as core business and building feedback loops to improve business in every part of the business from product design to service delivery and administration.[11]

Proper functioning IDR should therefore:

- reassure customers that the organisation is committed to properly addressing and resolving any problems;
- maintain or help improve relationships with the people the organisation deals with; and
- improve the organisation's transparency and accountability.[12]

The current reality of internal dispute resolution is however far from this picture. While not universal by any means, IDR is in many cases:

- under-resourced;
- staffed by poorly trained front line employees;
- inflexible and unresponsive with staff sticking to scripts that are inflexible and do not recognise and acknowledge the unique needs of each customers;
- structured to build hurdles into the complaints process, leading to frustration and constructive complaints withdrawals;
- designed to take a defensive role, acting as a wall against criticism or potential costs eg the payment of an insurance claim;
- unable to properly deal with complaints and serve complainants in an appropriately effective, timely, efficient manner;
- unable to identify systemic issues and assist the business the learn from its mistakes; and
- far from objective or fair.

In many situations we advise clients who are frustrated with IDR to simply wait out the 45 day limit and go to AFCA.

[11] Commonwealth Ombudsman, *Better Practice Guide to Complaint Handling.*

[12] Page v, Ombudsman NSW, Effective complaint handling guidelines 3rd Edition | February 2017

Case study 10 –James' story - C189583

James made a contents insurance claim in September following a sewage leak that affected his basement and his two sons' bedrooms. The insurer took 10 weeks to remove James' contents from the basement, causing both building delays and further damage to the contents that James believed would not have happened had the contents been removed sooner.

James made a complaint with the insurer regarding these delays and negligence. An insurer representative reviewed the complaint and effectively "rubber stamped" it – telling James that "everything is all fine". However, the representative eventually raised a complaint with IDR team on James' behalf.

James was subsequently contacted by the IDR team who asked him to provide further information. James asked to see a copy of complaint provided by the insurer's representative but IDR refused to provide him with a copy. The complaint was then passed through several people and took weeks to process. When ultimately James was permitted to see the representatives' complaint it was apparent that the issues in the complaint had been misstated.-For example the representative had included that James had a complaint about needing to move out and incurring costs in the process, when James and his family hadn't moved out of house. Because of inaccuracies in the complaint, there was further time wasted when the IDR team came back with the decision that James' complaint about moving costs was unsubstantiated.

Financial Rights assisted James by taking the matter to the Customer Advocate who agreed with James' assessment that the delay had caused items to be further damaged.

This experience is reflected in the findings of *Report 603 The consumer journey through the Internal Dispute Resolution process of financial service providers*, December 2018.

A key difference between the customer advocates that are currently performing well and IDR is that the Customer Advocate:

- looks at the whole relationship between the financial firm and the customer, not just the isolated product and/or transaction which triggered the complaint (this can include quite robust investigation);
- considers the person as a whole, including understanding their particular needs and vulnerabilities;
- considers not only law, but fairness and compassion in the circumstances; and
- provides feedback to the entire business from the complaints experience.

There is no reason why IDR departments could not be empowered by financial firms to adopt these principles, rather than their current approach. The reality is that customer advocates are

currently necessary in a sector where IDR is not seen as core business and is not resourced nor structured to meet what the community and regulators expect IDR to be.

The ABA Guiding Principles for Customer Advocates[13] states that the purpose of a Customer Advocate is to:

> *make it easier for customers when things go wrong by helping to facilitate fair complaint outcomes and minimise the likelihood of future problems.*

To Financial Rights this is the purpose of *internal dispute resolution*. In an ideal world the customer advocate role would be redundant. Rather than customer advocates, IDR should be structured to:

- "make it easier to navigate the complaints handling process";
- "assist customers with specific issues or problems and deal with complaints and case management"
- "improve the system for resolving complaints and streamlining disputes"[14]

However these objectives have been designated to the customer advocate as outlined in the ABA guiding principles for customer advocates. It is our view that these are the responsibilities of IDR and should be embedded in the structure of every complaints handling department.

The existence of customer advocates is an admission that IDR as it currently stands fails to serve both the needs of the customer to resolve disputes and fails to serve the needs of the firm to be accountable to the public, identify systemic issues and feed these back into the business to improve products, performance and customer service.

Regulatory response to customer advocates

In any regulatory response ASIC needs to avoid reifying the role of the customer advocate as separate to and independent of a properly functioning IDR department such that it either leads to absolving or preventing the IDR and complaints handling function from meeting the principles as outlined above.

ASIC must also avoid entrenching two IDR pathways that can lead to confusion or in the worst case scenario, regulatory arbitrage to avoid timeframes.

In principle we therefore support RG 165.117 to ensure that customer advocates do not adversely impact complaints by:

- extending the IDR process beyond the relevant maximum IDR timeframe; and
- preventing complainants from exercising their right to access AFCA by presenting the customer advocate as a mandatory step.

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[13] https://www.betterbanking.net.au/wp-content/uploads/2017/01/ABA-Customer-Advocate-Guiding-Principles-FINAL-1.pdf

[14] https://www.betterbanking.net.au/wp-content/uploads/2017/01/ABA-Customer-Advocate-Guiding-Principles-FINAL-1.pdf

These are straightforward principles that should be met. We would however wish to clarify and add to these.

First, it may be necessary to refer to the extant exceptions to these maximum timeframes given that some customer advocates do currently take on more complex matters. Clarification of exceptional circumstances may be required as outlined above.

Second, firms using customer advocates should be required to collect and report data to ASIC (and publicly) their use, their outcomes, systemic issues identified and actions taken. It is imperative that there is no incentive for financial firms to effectively "hide" complaint numbers, or poor complaint resolution timeframes, in the Customer Advocate function. There should also be adequate data to review and evaluate the Customer Advocate in a few years time to determine its ongoing usefulness and necessity.

Data should include:

- Number of customers who approached the customer advocate and subsequently taken on by the customer advocate
- Number of customers approached by the customer advocate and subsequently taken on
- Total number of complaints decisions
- Number of decision with enhanced outcomes in the customers favour
- Number of decisions overturned in the customers favour
- Number of original decisions affirmed
- Number of customer advocate cases going to AFCA and the outcome of those cases
- Records of time taken to resolve disputes, identifying what time if any was spent in IDR and with the Customer Advocate respectively
- Number of disputes which are outside the IDR timeframe because of exceptional circumstances and an outline of what those exceptional circumstances were
- Number and type of feedback to IDR
- Number and type of systemic issues identified and action taken to address those issues

Such transparency will both demonstrate trends in the health of IDR and demonstrate the value customer advocates may have in improving IDR functioning.

Third, ASIC should establish guidance with respect to what customers are told regarding their options during or after the IDR process has completed. This wording in letters, IDR delay notifications and on websites should make clear that:

- customers have a right to go to AFCA at any stage
- communications are clear as to the role of the Customer Advocate and what they do, what they do not do

  they will provide regular updates (and ASIC should defined the timeframe for these updates)As far as possible it should not be possible for consumers to ever fall out of the

complaints process at the Customer Advocate without their complaint being resolved. Ideally, where the original position of the financial firm is not overturned, the Customer Advocate should be obliged to reaffirm the client's right to escalate the complaint to EDR and offer to assist with lodging the initial complaint.

Fourth, there should be a review in 2-3 years of the functioning of customer advocates and their impact on IDR and consumer experiences. The ultimate aim in such a review should be to improve the the proper functioning of IDR and consumer complaint experiences, and embed continuous improvement and customer-centric practice in the entire financial firm

Recommendations

20. **RG 165.117 should be implemented as proposed to ensure that customer advocates do not adversely impact complaints by:**
    a) **extending the IDR process beyond the relevant maximum IDR timeframe; and**
    b) **preventing complainants from exercising their right to access AFCA by presenting the customer advocate as a mandatory step.**
21. **It may be necessary for RG165.117 to refer to the extant exceptions to maximum timeframes given that some customer advocates do currently take on more complex matters.**
22. **Firms using customer advocates should be required to collect and report data to ASIC (and publicly) their use, their outcomes, systemic issues identified and actions taken.**
23. **ASIC should establish guidance with respect to what customers are told regarding their options during or after the IDR process has completed.**
24. **There should be a review of the functioning of customer advocates and their impact on IDR and consumer experiences.**

Systemic issues

B13Q1 Do you consider that our proposals for strengthening the accountability framework and the identification, escalation and reporting of systemic issues by financial firms are appropriate? If not, why not? Please provide reasons.

Financial Rights is strongly supports the proposal. We see identifying and addressing systemic issues as a core part of the work that financial services business should be doing.

We support proposal at part (c) setting out some specifics around the requirement to record systemic issues but retain some concern relating to the note under 165.132(a). This note states that

> *Firms **should consider** building a mandatory 'flag' into their complaints management systems that requires staff to evaluate the potential systemic impact of the issues raised in each complaint. **(our emphasis)***

We recommend that this be amended to set out that firms must build a mandatory flag into their systems in line with recommended changes record keeping (above) at B4 and B% and Table 2 of the Draft RG. These should also be reported to AFCA and to ASIC in line with the recommendation above.

We also support the public release of information and data relating to systemic issues identified by AFCA and ASIC. This will assist consumers, consumer advocates and industry to help identify further issues, or for industry, apply such findings to their own improvement processes.

Recommendations

25. **The accountability framework should be strengthened as proposed and ASIC should require that financial firms identify, escalate and report systemic issues.**
26. **Firms must build a mandatory flag into complaints for systemic issues, rather than simply considering building in that flag.**

IDR standards

B14Q1 Do you agree with our approach to the application of AS/NZS 10002:2014 in

Financial Rights supports the approach being taken by ASIC with respect to the application of AS/NZS 10002:2014.

Recommendations

27. **AS/NZS 10002:2014 should be applied as proposed.**

Transitional arrangements for the new IDR requirements

B15Q1 Do the transition periods in Table 2 provide appropriate time for financial firms to prepare their internal processes, staff and systems for the IDR reforms? If not, why not? Please provide specific detail in your response, including your proposals for alternative implementation periods.

B15Q2 Should any further transitional periods be provided for other requirements in draft updated RG 165? If yes, please provide reasons.

We support the proposed transition times and do not believe that further transitional periods be provided.

Other comments

Core requirements

We note that the consultation paper states at paragraph 22 that:

> *Once the policy settings are finalised, we intend to issue a legislative instrument that will have the effect of making the core IDR requirements set out in RG 165 enforceable.*

We are unclear as to what makes up core and non-core parts of RG 165. We note that Part C states that that section:

> *sets out our core requirements for identifying complaints and recording and reporting data from firms' IDR processes*

And that ASIC

> *proposes to include the content of IDR responses as a core requirement for all financial firms, including superannuation trustees, in the legislative instrument making parts of RG 165 enforceable*

Other than that it is not entirely clear which parts are also core requirements and enforceable. At a minimum this needs to be made clearer.

We see no reason why the entire RG cannot be made enforceable. For part of the RG to be enforceable and part of the RG to be not enforceable will lead to some aspects to be prioritised and resourced while others will be lowered in priority and under-resourced. This would not be a good outcome for consumers.

Recommendations

28. **The concept of core requirements should be either clarified or reconsidered to ensure that the entirety of RG165 is enforceable.**

Concluding Remarks

Thank you again for the opportunity to comment. If you have any questions or concerns regarding this submission please do not hesitate to contact Financial Rights on (02) 9212 4216.

Kind Regards,

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