

From the Desk of Director Marija Pajeska



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Response to ASIC Consultation Paper 247 – Client review and remediation programs and update to record-keeping requirements

The Association of Securities and Derivatives Advisers of Australia (ASDAA) appreciates the opportunity to provide these comments to ASIC in respect of ASIC Consultation Paper 247 – Client review and remediation programs and update to record keeping requirements.

ASDAA is a newly formed association which represents its members from the Securities and Derivatives advisory profession. Its members are comprised of individuals who are either directors or employees of firms which hold Australian Financial Services Licences (AFSLs).

Taking into consideration recent issues that have arisen in relation to the provision of personal advice to retail clients by some financial planners, we agree that the industry would benefit from ASIC guidance in regards to more effective ways to identify and resolve issues. One option that is available is the use of a review and remediation program.

We wish to highlight the following matters that we believe require further consideration and/ or clarification:

- ASIC should ensure that it remains focused in its guidance on review and remediation programs that are designed by an advice licensee for the purpose of remediating retail clients who have suffered a loss as a result of the provision of personal advice by the advice licensee's representative (including any authorised representative of the advice licensee). AFS Licensee's that commence other review and remediation programs should have the option to use the guidance and not the obligation.
- ASIC should provide guidance on any self-reporting obligations the AFS Licensee may have to the advice provider's professional association and whether clients should have access to the professional association for professional advice.
- ASIC should provide further clarification in relation to the involvement of an EDR scheme in review and remediation program and the potential costs of

such involvement. In some parts of the guidance ASIC appears to be implying that EDR schemes must be involved as an AFS Licensee has an obligation to self-report systemic issues to its EDR scheme (which is not the case) whilst at other times it is implied that it is at the AFS Licensee's discretion as to whether or not the EDR scheme is involved. There needs to be consistency in the approach adopted by ASIC.

- Where a client has lodged a complaint and that client falls within the scope of a review and remediation program, the policy should be such that the client receives an acknowledgement that a complaint has been received however it has been established that the issues identified fall within the scope of the review and remediation program and the clients complaint will be assessed as part of this process. If the client is not satisfied after completion of the review they will have the option to escalate the matter to the EDR scheme. A client should not be given priority just because they have lodged a complaint and by allowing this, it will result in the re-allocation of resources from the review and remediation program which has been initiated to assist all clients. Further, as a result of adopting the IDR procedure some clients may be offered remediation which is not consistent with the remediation offered to the bulk of the clients.
- ASIC needs to assess the process undertaken by Professional Indemnity (PI) insurers once a claim is made as the insurer usually takes over the review and negotiation process of a complaint. This may affect an AFS Licensee's ability to complete a review and remediation program at all or in a timely manner.
- ASIC needs to update Regulatory Guide RG126 to ensure that all PI insurance policies acquired by AFS Licensees define the deductible/ excess on a per claim basis. Currently the deductible/ excess in a policy can be defined as follows:
 - on a 'per claim' basis – meaning the deductible/ excess will apply to the 'event' that gives rise to the claim. Therefore, in the situation where a single event gives rise to a multiple claims by individuals the deductible/ excess is applied once across all the clients.
 - On a 'per claimant' basis – meaning the deductible/ excess will apply to each of the claimants. Therefore, in this situation where a single event gives rise to multiple claims by individuals the deductible/ excess is applied to each of the claimants.
- In developing the proposed guidance ASIC needs to bear in mind any limitations imposed under law to take a proceeding to court or make a claim under an EDR scheme. Requiring AFS Licensees to review records as far back as the AFS Licensee has retained without stipulating a limit as prescribed currently under the Corporations Act 2001 in reference to record keeping requirements is not consistent with the law.
- ASIC needs to include guidance for small advice licensees in relation to cost effective options for the oversight and operation of a review and remediation program. This could be offered via an EDR scheme, ASIC or other means. However, for it to be a feasible option it needs to be cost effective and practical so that small AFS Licensees that have access to limited resources will actually use it.
- The proposed guidance should include details relating to the interaction between the identification of potential or actual misconduct and a licensees breach reporting obligations as prescribed in ASIC Regulatory Guide RG78.
- The proposed guidance should include information relating to the obligation of an AFS Licensee to report potential or actual misconduct to the advisor's professional association.

- We refer to paragraph 175 which deals with an AFS Licensee having processes in place to review the advice of clients who respond after a review and remediation program has been concluded (e.g. by reviewing advice through the licensee's IDR processes). We agree with this provided that the AFS Licensee has the right to apply the limitations afforded to it under law for the lodgement of complaints and for lodging claims in a court of law. AFS Licensees should not be disadvantaged by being forced to waive any rights limiting the lodgement of a claim by a client after the time limits have lapsed as stipulated under law.
- Guidance should include measures that prevent the AFS Licensee or any of its representatives, affiliates, representatives of affiliates from marketing to clients or targeting clients in an effort to allocate the clients to a new adviser on the premise that their current adviser has potentially engaged in misconduct and is currently subject to a review and remediation program. Without having such limitations in the guidance ASIC may inadvertently create an opportunity for large advice licensees to strip clients from an advice provider by commencing a review and remediation program for alleged misconduct of an adviser which is not substantiated.

Our specific comments to each of ASIC's proposals in the Consultation Paper are detailed in Annexure A of this letter.

ASDAA appreciates the opportunity to provide this Submission to ASIC on these significant proposals. We would be happy to discuss any issues arising from our submissions on this issue, or to provide any further material that may assist. Should you require any further information, please contact Brad Smoling, Director of Communications, on (07) 5532 3930 or email brad@asdaa.com.au.

Yours Sincerely



Marija Pajeska
Compliance Director

What is a review and remediation program?

B1 proposal: ASIC proposes the guidance set out in paragraphs 31–35 on how we will define a ‘review and remediation program’. In summary, a review and remediation program is a project set up within an advice licensee to review personal advice, where a systemic issue in relation to the advice has been identified, and then to remediate those clients who have suffered loss as a result.

ASIC Question		Response
B1Q1	Have we appropriately defined a ‘review and remediation program’ for the purposes of this guidance? If not, please give details. Please also provide alternatives	Yes

What is a systemic issue?

B2 proposal: ASIC proposes the guidance set out in paragraphs 36–41 on how we will define a ‘systemic issue’. In summary, ASIC proposes to define a ‘systemic issue’ as an issue that may have implications beyond the immediate rights of the parties to a complaint or dispute, or that may have implications for more than one client.

ASIC Question		Response
B2Q1	Have we appropriately defined a ‘systemic issue’ for the purposes of this guidance? If not, please give details. Please also provide alternatives.	Yes

When will this guidance apply?

B3 proposal: ASIC proposes the guidance set out in paragraphs 42–45 on when our proposed guidance will apply.

ASIC Question		Response
B3Q1	Do you agree with how we have described the application of the proposed guidance? If not, why not?	No, as based on ASIC’s summary of the key points the intent of the proposed guidance is to provide guidance on review and remediation programs conducted by AFS Licensees who provide personal advice to retail clients. The proposed guidance should state that persons conducting these other review and remediation programs may apply the principles in the proposed guidance rather than should as other processes may be appropriate in other circumstances.
B3Q2	Do you agree that the principles in this guidance should apply to programs not relating to personal advice? If not, why not?	
B3Q3	Are there circumstances when the principles should not apply? If so, please give details. Please also specify whether, and how, these principles could apply with alterations.	

When to establish a review and remediation program

C1 proposal: ASIC proposes the guidance set out in paragraphs 48–51 on when it is appropriate to establish a review and remediation program.

In summary, a review and remediation program of the type covered in ASIC's proposed guidance will be appropriate when:

- (a) a systemic issue has been identified that is a result of the decisions and behaviour of the advice licensee, or an individual adviser or advisers (as representatives of the licensee), in relation to the provision of personal advice; and
- (b) the affected clients are likely to have suffered a loss (whether monetary or non-monetary)

ASIC has also highlighted circumstances where a review and remediation program may not be appropriate, one of which is when a systemic issue investigation is initiated by an EDR Scheme.

ASIC Question		Response
C1Q1	Have we appropriately defined the threshold when a review and remediation program may be appropriate? If not, please give details. Please also provide alternatives.	Yes, such threshold should not be open to interpretation or subject to change on a case by case basis. If an AFS Licensee chooses to adopt the guidance principles in other review and remediation programs undertaken then that should be its choice and at its discretion.
C1Q2	Are there circumstances, other than those set out at paragraphs 50–51, when a review and remediation program would not be appropriate? Please specify examples.	When a review is undertaken by ASIC and an enforceable undertaking is signed, a review and remediation program should only be undertaken if it is agreed to as part of the enforceable undertaking.
C1Q3	Are there other factors that advice licensees should consider when deciding whether to establish a review and remediation program?	As part of the review and remediation program the AFS Licensee should investigate whether it, its associates or affiliates, any one client or group of clients, have benefitted as a result of the misconduct. If this has been identified then appropriate action should be taken to report this to ASIC.
C1Q4	Please provide feedback on any costs or savings to your business as a result of the threshold at which a review and remediation program would be appropriate.	Costs related to the involvement of EDR schemes are undefined at the moment and could potentially outweigh any benefits.

Interaction with IDR and EDR obligations

C2 proposal: ASIC proposes the guidance set out in paragraphs 52–57 on how a review and remediation program interacts with the advice licensee’s IDR and EDR obligations.

The intent appears to be such that a review and remediation program is to operate alongside the advice licensee’s dispute resolution obligations, rather than under the IDR or EDR framework.

ASIC Question		Response
C2Q1	Do you agree with the way we have described the relationship between a review and remediation program and the advice licensee’s IDR and EDR obligations? If not, why not?	No. Once a review and remediation program has been commenced any complaints that have been received or are received before or after commencement of the review and remediation program which cover the same issues as the review and remediation program should be captured by the review and remediation program only. All clients should be dealt with equally unless they are subject to unique circumstances.
C2Q2	Will advice licensees have difficulty in meeting their IDR obligations if complaints are included as part of a review and remediation program? If so, what could be done to assist licensees?	Yes, as resolution of complaints are time critical (ie. within 45 days) and if an advice licensee has allocated resources to a review and remediation program which needs to be completed in a timely manner, it won’t be able to meet those requirements if it is constantly re-prioritising its resources based on complaints received from clients addressing the same issues.
C2Q3	Are there any barriers to advice licensees directing clients to an EDR scheme if they have a complaint about the program or a decision of the licensee? If so, what could be done to assist licensees?	The terms of reference for an EDR scheme may not currently capture resolution of complaints relating to the conduct of a review and remediation program as the program itself is not the provision of a financial service. The implications for the AFS Licensee under its PI Insurance need to be considered because usually if an AFS Licensee makes a claim under its PI Insurance the Insurance company’s legal team tends to take over or become involved in the investigation and negotiation of resolutions.

Interaction with AFS licensing obligations

C3 proposal: ASIC proposes the guidance set out in paragraphs 58–73 (including Example 1) on how a review and remediation program interacts with an advice licensee’s general AFS licensing obligations. In summary, an advice licensee must consider the following AFS licensing obligations:

- (a) operating efficiently, honestly and fairly;
- (b) adequate resources;
- (c) monitoring and supervision;
- (d) breach reporting; and
- (e) compensation arrangements.

ASIC Question		Response
C3Q1	Do you agree with how we have described a program’s interaction with the AFS licensee obligations? If not, why not?	Yes, however ASIC needs to consider how a PI Insurer involves itself in the resolution of complaints which are subject to a claim under a PI Insurance Policy and the application of a review and remediation program.
C3Q2	Will the establishment of a review and remediation program, and a subsequent decision to remediate clients, affect an advice licensee’s ability to make claims under its professional indemnity (PI) insurance? If so, please explain how.	PI Insurance policies acquired by AFS Licensees define the deductible/ excess on either a per claim basis or per claimant basis. If the remediation offered to clients is less than the deductible/ excess on a policy where the deductible/ excess is defined on a per claimant basis then the AFS Licensee will have no right to claim against the PI Insurance Policy.
C3Q3	If your answer to C3Q2 is yes, what alternatives or alterations to a review and remediation program, as described in this consultation paper, could be adopted by advice licensees that hold PI insurance to enable claims to continue to be made?	ASIC should amend RG126 to ensure that the deductible/ excess quoted in a PI Insurance policy is on a per claim basis to ensure that all AFS Licensees will have the right to claim under its PI Insurance policy.

ASIC's role

C4 proposal: ASIC proposes the guidance set out in paragraphs 74–76 on ASIC's role in review and remediation programs. In summary, ASIC may or may not be involved depending on the circumstances and its available resources.

ASIC Question		Response
C4Q1	Do you require further guidance on ASIC's role in relation to review and remediation programs? If so, please specify what guidance you would like.	ASIC has a duty of care to ensure that it has adequate resources to perform its duties. Paragraph 76(e) of the proposed guidance should be removed as it is inappropriate to state that one of the reasons considered by ASIC as to its involvement is availability of resources. We remind ASIC of its role to promote investor and financial consumer trust and confidence. When systemic issues arise within an AFS Licensee ASIC's responsibility under this role becomes more critical (ie. to comply with the ASIC Act, ASIC must ensure it has the resources available).

Identifying the scope of a program

D1 proposal: ASIC proposes the guidance set out in paragraphs 79–89 on how to identify the scope of a review and remediation program. In summary, the proposed factors that should be considered:

- (a) Type of misconduct and relevant advisers;
- (b) Type of clients;
- (c) Timeframe; and
- (d) Testing the scope.

ASIC Question		Response
D1Q1	What are some examples of how an advice licensee can determine the scope of a program?	In defining the scope of a program the advice licensee first needs to understand the objectives of the review and the desired outcome. Generally, the objective will be to identify the issues that have given rise to the alleged misconduct and the clients that have been affected. Whilst the desired outcome would be to offer remediation to those clients.
D1Q2	Do you agree with our proposed factors for consideration? Are there others? If so, please specify.	Yes
D1Q3	Do you agree that advice licensees should review advice as far back as the licensee has retained records? If not, what is a reasonable timeframe?	No. The record keeping requirements are defined in the Corporations Act as either 5 years or 7 years depending on the type of records that should be retained. The guidance should make reference to the minimum terms defined in the Corporations Act.
D1Q4	How can advice licensees test the appropriateness of the criteria used to determine the scope of a program?	ASIC has effectively proposed segregation of duties between person overseeing the program and the person/ team operating the program. The person overseeing the program can test the program.
D1Q5	Are there any types of retail clients that should be excluded from a review and remediation program? If so, please specify.	Staff and personal accounts should be included in a review and remediation program to assess whether those accounts have benefited from the action taken however it may be appropriate to exclude them from any offer of remediation as the licensee and the adviser would have benefited through the receipt of commissions, brokerage and fees. This should be assessed on a case by case basis.
D1Q6	Are there any circumstances where wholesale clients should be included in a review and remediation program? If so, please specify.	The proposed guidance should not prescribe circumstances where clients that do not fall within the defined class of clients (ie. retail clients that have been provided personal advice) should be included in a review and remediation program. Rather it should leave it to the advice licensee's discretion as to whether it chooses to include other clients. Advice licensees may choose to do so as it may be a cost effective way of resolving a matter.

ASIC Question		Response
D1Q7	Please provide feedback on any costs or savings to your business as a result of the proposed guidance on determining the scope of a review and remediation program.	Most large advice licensees will have the resources to conduct such reviews as they generally have access to experienced staff within an internal audit department or compliance department. The costs for small organisations will be high as they will have no choice but to engage external consultants as they most likely do not have the resources or know-how to conduct such reviews. In order to ensure that such reviews are conducted cost effectively and with client remediation as the sole purpose ASIC needs to consider which organisation is able to offer a cost effective facilitative approach in an effort to reduce costs for small advice licensees and ensure the best possible outcome for clients.

Inviting clients to participate in a program

D2 proposal: ASIC proposes the guidance set out in paragraphs 90–92 (including Example 2) on when it is appropriate to invite other clients to participate in a review and remediation program. In general, advice licensees are expected to take reasonable steps to determine the group of clients that may have suffered a loss as a result of misconduct however an advice licensee may need to when appropriate invite other clients outside the scope to participate in a review and remediation program

ASIC Question		Response
D2Q1	Do you agree that advice licensees should identify a group of clients that are within the scope of a program and, only in limited circumstances, seek interest from other clients in participating in the program? Please provide reasons for your answer.	Yes, however where a systemic issue has been identified which impacts wholesale clients or clients that have received general advice only it should be at the AFS Licensee's discretion as to whether or not to include those clients in a review and remediation program or to conduct a review and remediation program.
D2Q2	Are there any other instances when it would be appropriate to invite additional clients to participate in the program? If so, please specify.	There may be however in the guidance it should be left to the advice licensee to determine on a case by case basis.

Revising the scope

D3 proposal: ASIC proposes the guidance set out in paragraphs 93–96 (including Example 3) on when it is appropriate to revise the scope of a review and remediation program. In general, an advice licensee must ensure the process is fair for all potentially affected clients, the scope of the program should be flexible enough to allow for revisions if more information becomes available about other misconduct of an adviser or about other advisers that may have engaged in misconduct.

ASIC Question		Response
D3Q1	Do you agree that the scope of a program may need to be revised when new information becomes available? If not, why not?	Yes

Designing a review and remediation program

E1 proposal: ASIC proposes the guidance set out in paragraphs 99–104 on how to design a review and remediation program. In general, all review and remediation programs should:

- (a) adopt a consumer-focused approach;
- (b) be free of charge to clients;
- (c) be objective, unbiased and equitable in its dealings with clients;
- (d) have commitment from senior management; and
- (e) be operated efficiently, honestly and fairly.

ASIC is also proposing to encourage engagement with EDR schemes at this stage.

ASIC Question		Response
E1Q1	Are there any other key factors an advice licensee should consider when designing a program? If so, please specify.	No, however we acknowledge that where clients have made a complaint then there is benefit with engaging its EDR scheme, but whilst the matter is being investigated internally and/ or under its IDR procedures there should be no requirement to engage with its EDR scheme.

Developing the process for a program

E2 proposal: ASIC proposes the guidance set out in paragraph 105–111 (including our proposed key principles) on developing the processes for a review and remediation program. In general, the following key principles should be considered:

- The process of a review and remediation program needs to be fair, comprehensive, timely and transparent.
- Adequate resources should be allocated to the program to ensure it is conducted in an efficient and timely way, and has involvement at a senior management level.
- There need to be clearly defined principles to guide the process. Factors considered in reviewing advice and any calculation of loss should be consistent with the principles of the ASIC-approved EDR scheme of which the advice licensee is a member.
- Reviewers should adopt a consumer-focused approach, be open to feedback and show commitment to understanding any concerns about the advice a client has received.
- Reviewers and managers should be competent in reviewing advice.
- Conflicts of interest should be avoided.
- There should be independent oversight of the program (e.g. to review the design and implementation of the program).
- There should be appropriate governance processes in place.
- Adequate records should be maintained throughout the program.
- It may be appropriate, in some circumstances, to report publicly on the program and its progress.

ASIC Question		Response
E2Q1	Are there any other key principles an advice licensee should consider when developing the processes for a program? If so, please specify.	Yes, to assess whether it is appropriate to notify ASIC of potential or likely breaches and seek ASIC to be involved with the development of the program. Also the identification of limitations to the review.
E2Q2	Please provide feedback on any costs or savings to your business as a result of the proposed guidance on the processes for a review and remediation program.	Costs related to the involvement of EDR schemes are undefined at the moment and could potentially outweigh any benefits.
E2Q3	Are there other areas we should give guidance on? If so, please specify.	Yes, the following: <ul style="list-style-type: none"> • the identification of limitations to the review; • breach reporting obligations to ASIC; and • obligation to report potential or actual misconduct to professional associations.

Reviewing advice

E3 proposal: ASIC proposes the guidance set out in paragraphs 112–131 (including Example 4) on how advice should be reviewed for a review and remediation program. In general, advice should be reviewed in a timely way and as quickly as possible without compromising the quality of the review. Advice should be reviewed according to the principles of the EDR scheme of which the licensee is a member.

ASIC Question		Response
E3Q1	Is it reasonable for advice licensees to make a decision on whether to remediate a client within 90 days of the client being notified that they are within the scope of the program? If not, what other timeframe would be appropriate? If a timeframe is not appropriate, are there other ways to ensure advice is reviewed in a timely way (e.g. regular reporting to the public or clients)?	No, as no other timeframes are specified for the review and depending on the number of clients and the complexity of the advice the proposed 90 day period may not be sufficient. Instead what would be appropriate is for the advice licensee to nominate an appropriate time frame as part of its first communication to the client.
E3Q2	What types of remediation (monetary or non-monetary) should advice licensees provide to clients? Are there any types of remediation licenses should not provide?	This should be dealt with on a case by case basis taking into consideration the underlying issues. Examples would be monetary compensation, reduction in fees charged for future services, free education seminars, replacement goods and/or services in circumstances where clients have purchased software as part of provision of personal advice, etc.
E3Q3	Should advice licensees apply the interest rate (to calculate monetary loss) used by their relevant EDR scheme? If not, please provide alternatives.	As long as this information is readily and freely available then yes, otherwise the interest rate to be applied should be the most appropriate rate at the time.
E3Q4	Are there any circumstances, other than those listed at paragraph 129, when it would or would not be appropriate to have advice peer reviewed? If so, please specify.	In determining whether an advice peer review is appropriate, the advice licensee needs to assess any potential, apparent or actual conflicts of interest (ie. most importantly those that exist relating to ownership of clients and scope for other advisers acquiring new clients by intentionally tarnishing the reputation of another adviser). So to ensure that peer reviews are conducted fairly and honestly, advice licensees may need to consider the relationship between the person being reviewed and the person conducting the review.

ASIC Question	Response
General comment re: Example 4: Non-monetary remediation of clients	<p>We understand the point that ASIC is trying to make in this example however technically this client would not fall within the scope of the review as the client had not made a loss. To ensure that the example applies to the proposed guidance ASIC should consider including an explanation as to how the client was captured by the review.</p> <p>Further, the offer of remediation should be aligned with the provision of revised advice to ensure that the products the client has invested in are appropriate for their circumstances rather than as compensation for wrong advice which led the client to be better off.</p>

Independent oversight

E4 proposal: ASIC proposes the guidance set out in paragraphs 132–138 on the level of independent oversight required for a review and remediation program. In summary, independent oversight could be provided by:

- (a) a person or firm external to the advice licensee, and any related entities (i.e. an ‘independent expert’); or
- (b) a person internal to the licensee who is sufficiently independent from the operation of the review and remediation program and holds a senior position within the business (e.g. a licensee’s internal audit team).

An advice licensee’s EDR scheme may also provide a level of independent oversight to a review and remediation program.

ASIC Question		Response
E4Q1	Should all review and remediation programs involve a level of independent oversight? If not, in what circumstances would independent oversight be unnecessary?	Only if a cost effective option is available. Small advice licensees may not have the resources to engage an independent expert or have a department or person which is independent from the operation of the review and remediation program.
E4Q2	Do you agree that persons who are internal or external to the advice licensee are appropriate to provide independent oversight, depending on the circumstances? If not, why not?	Yes
E4Q3	Do you think an independent person will have a conflict of interest in assisting in the design of a program as well as having a general oversight role of the program? If so, how could this conflict be managed?	No
E4Q4	When should a review and remediation program involve independent oversight that is external to the licensee (i.e. an ‘independent expert’)?	There are many factors to consider, including but not limited to whether: <ul style="list-style-type: none"> • is there anyone independent within an advice provider that can oversee the review; • the cost of independent oversight outweighs any potential remediation that could be offered to clients.
General comment re: paragraph 134		At the moment there is no self-reporting obligation under law by an AFS Licensee of systemic issues to an EDR scheme. The only self-reporting obligation that exists of this nature is to ASIC.

Governance arrangements

E5 proposal: ASIC proposes the guidance set out in paragraphs 139–142 on the governance arrangements of a review and remediation program.

ASIC Question		Response
E5Q1	Is there more detailed guidance we can provide on who should be the decision maker in a review and remediation program and who should be overseeing a program? If so, please specify.	There needs to be some guidance regarding situations where the person overseeing the program is the same person as the decision maker as this may be the situation in small operations.

Record keeping

E6 proposal: ASIC proposes the guidance set out in paragraphs 143–146 on record keeping in relation to review and remediation programs.

ASIC Question		Response
E6Q1	Are there any other types of records that an advice licensee should keep in relation to a review and remediation program?	The proposed guidance appears to be sufficient.

Reporting publicly

E7 proposal: ASIC proposes the guidance set out in paragraphs 147–149 on public reporting in relation to review and remediation programs. In summary, Advice licensees should consider whether it would be in the public interest to report publicly on the program and its progress. In general, ASIC believes advice licensees should be transparent about review and remediation programs. Public reporting will be especially important for larger review and remediation programs or programs that follow public reports of client losses or alleged misconduct.

ASIC Question		Response
E7Q1	Do you agree that advice licensees should consider reporting publicly on review and remediation programs? If not, why not?	We agree with ASIC's guidance as public reporting would be beneficial where it is determined to be in the public's best interest.

Communicating generally with clients about a program

F1 proposal: ASIC proposes the guidance set out in paragraphs 152–154 (including our proposed key principles) on the factors advice licensees should consider when communicating with clients as part of a review and remediation program.

When communicating with clients about a review and remediation program, advice licensees should consider the following principles:

- First impressions are important—if correspondence looks dense or complex, clients may not read it.
- Think about the appropriate method and tone for communicating in light of the client's circumstances (e.g. their financial literacy, language skills and age) and the client's agreed forms of communication or access to different communication channels.
- Be clear and direct by using simple language, avoiding legal jargon and omitting unnecessary information.
- Break down multiple or complex tasks into simple steps.
- Use short and simple sentences and paragraphs.
- Avoid lengthy letters—consider moving additional information into supplementary material to accompany the letter (e.g. a brochure).
- Prominently highlight, at the top of any communications, the actions the client is required to take and the key messages.
- Where possible, remove uncertainty about the process and give people an idea of what to expect (e.g. how long a step may take).
- Consider when it is the best time to contact clients throughout the process.

ASIC Question		Response
F1Q1	Do you agree with our general proposed guidance on what advice licensees should consider when communicating with clients as part of a review and remediation program? If not, why not? Please provide alternatives.	Yes
F1Q2	Please provide feedback on any costs or savings to your business as a result of this proposed guidance.	Costs and savings for an advice licensee would be established on a case by case basis
F1Q3	Are there other areas on which you would like guidance about communication? If so, please specify.	No

When and how to communicate with clients

F2 proposal: ASIC proposes the guidance set out in paragraphs 155–176 on what advice licensees should consider when determining when and how to communicate with clients as part of a review and remediation program.

In summary, advice licensees should consider when it is best to communicate with clients, taking into account the nature of their client base, the progress of the program, what is expected of clients at each stage of the program and the type of misconduct.

ASIC has provided further guidance regarding the following communications:

- Initial communication with clients
- Ongoing communication
- Final communication with clients
- Requesting a response from clients

ASIC Question		Response
F2Q1	Do you agree that the initial and final communication with a client should always be in writing (see paragraph 161)? If not, why not? Please provide alternative suggestions.	Yes
F2Q2	Is 10 working days an appropriate timeframe for advice licensees to follow up in writing any verbal communication of key information to clients (see paragraph 161)? If not, please specify what an appropriate timeframe is.	Yes
F2Q3	Is there any information other than in paragraphs 165 and 170 that should be included in communication with clients? If so, please specify.	Yes, in reference to paragraph 165 the advice licensee should also communicate any limitations to the review and remediation program and how long the review is likely to take.
F2Q4	When an advice licensee is seeking interest from a broader group of clients, what additional guidance, if any, could we give at paragraph 167 on what clients should be required to do in order to participate in the program?	The guidance provided is sufficient.
F2Q5	Is 30 days an appropriate timeframe when requesting that clients respond to communication (see paragraph 173)? If not, please specify what you consider is an appropriate timeframe.	Yes
F2Q6	Are there other reasonable efforts, in addition to the examples in paragraph 174, that an advice licensee could make to contact a client who has not responded?	The examples provided appear to be sufficient.

Ensuring clients have access to external review of decisions

G1 proposal: ASIC proposes the guidance set out in paragraphs 179–184 on the external review of decisions following a review and remediation program.

ASIC Question		Response
G1Q1	When would it be appropriate for advice licensees to waive an EDR scheme's monetary, time or other limits?	Whether or not it is appropriate should be considered on a case-by-case basis. The advice licensee will need to discuss the matter on a case by case basis with its PI Insurer to ensure that it still retains its right to claim under the PI Insurance Policy if it waives an EDR scheme's monetary, time or other limits.
G1Q2	Should the limits on some forms of compensation not be waived? If so, please specify what limits should not be waived and in what circumstances.	The compensation limits are defined in the terms of reference of an EDR scheme and whether or not they should be waived should be assessed on a case by case basis.
G1Q3	Is assistance to clients wishing to seek professional advice required in all circumstances? If not, when would it be required?	No as it depends on the circumstances surrounding the underlying issues which are the subject of the review and remediation program.
G1Q4	Are there other types of assistance that advice licensees could offer clients? Please specify.	Yes, however the advice licensee should have the ability to determine what it offers on a case by case basis.
G1Q5	Please provide feedback on any costs or savings to your business as a result of the proposed guidance on the external review of decisions of review and remediation programs.	Costs related to the involvement of EDR schemes are undefined at the moment and could potentially outweigh any benefits.
G1Q6	Are there other areas on which you would like guidance in relation to the external review of licensee decisions? If so, what should that guidance include?	The interaction between a review and remediation program and the use of resources available to clients from the advisor's professional association.

Settlement deeds

G2 proposal: ASIC proposes the guidance set out in paragraphs 185–186 on settlement deeds.

ASIC Question		Response
G2Q1	Should further guidance be provided on settlement deeds? If so, what should that guidance include?	To assist small advice licensees ASIC should make a sample Settlement Deed available.

General record-keeping obligations for advice licensees

H1 proposal: ASIC proposes to amend [CO 14/923] to clarify that, when an advice licensee or one of its representatives provides personal advice, the licensee must ensure not only that client records are kept, but also that the licensee continues to have access to these records during the period in which they are required to be retained.

ASIC Question		Response
H1Q1	Do you agree with our proposed amendment to [CO 14/923]? If not, why not?	Yes, however further guidance is required regarding expectations relating to record keeping requirements relating to advisers that have left the AFS Licensee prior to the introduction of processes by the advice licensee to comply with this guide.
H1Q2	Will our proposed amendment change existing recordkeeping practices? If so, please describe the changes involved.	It depends on the current processes and procedures of the AFS Licensee. Some potential changes could be: <ul style="list-style-type: none">• changes in existing record keeping practices;• changes to contractual arrangements.
H1Q3	Please provide feedback on any costs or savings to your business as a result of the proposed amendment.	Costs and Savings would be determined on a case by case basis depending on the processes currently in place in comparison to those that are to be implemented.