



Credit and Investments Ombudsman

PO Box A252
Sydney South NSW 1235

ABN 59 104 961 882

T 02 9273 8400
F 02 9273 8481
raj.venga@cio.org.au

4 April 2018

Ms Clare McCarthy
Behavioural Research and Policy Unit
Australian Securities and Investments Commission
GPO Box 9827
Melbourne VIC 3001

BY EMAIL: policy.submissions@asic.gov.au

Consultation: Oversight of the Australian Financial Complaints Authority: Update to RG 139

The Credit and Investments Ombudsman (**CIO**) welcomes the opportunity to make a submission to ASIC in response to the update of RG 139.

About CIO

CIO is one of only two ASIC-approved external dispute resolution (**EDR**) schemes for financial services in Australia. The key objective of CIO is to provide consumers with a no-cost alternative to legal proceedings for resolving disputes with financial services providers (**FSPs**) who are members of CIO. In resolving disputes, CIO has regard to relevant legal principles, industry codes of practice, good industry practice and fairness in all circumstances.

CIO is a not-for-profit public company that receives no government subsidy, and its operations are funded entirely by membership and complaint fees levied on its FSP members.

CIO has more than 23,000 members and operates predominantly in the credit sector. Its membership comprises non-bank lenders, mortgage brokers, debt purchasers, credit reporting bureaus, timeshare operators and small amount lenders, among others. The majority of Authorised Deposit Institutions (**ADIs**) are members of the Financial Ombudsman Service (**FOS**).

In addition to resolving individual complaints, CIO is required to identify, investigate and resolve systemic issues.

General comments

CIO considers that the introduction of AFCA is an important opportunity to update RG 139 to ensure that it continues to provide guidance for best practice for AFCA. We have responded to the proposals in the Consultation Paper below. However, we have also suggested a number of changes to RG139 that should be considered by ASIC.

Proposals

Referring matters to the appropriate authorities

CIO supports an expanded reporting regime to ASIC from AFCA. We consider that it is vital that ASIC receive detailed information from AFCA about serious contraventions of the law, contraventions of governing rules, breaches of terms and conditions of annuity/life policies or refusal or failed to give effect to a determination made by AFCA.

The meaning of "serious"

ASIC should consider giving further detail on how the expanded reporting regime is defined. In particular, the meaning of "serious" needs further detail. Relying on an "objectively reasonable belief" is not sufficiently detailed.

In our view, ASIC needs to provide more detailed guidance on this point including examples.

RG 139.43 refers to an ongoing "grey" area and encourages communication on this point. CIO agrees there will be a "grey" area but this section is not a useful way of resolving this problem. ASIC is a very busy regulator. This may lead to less reporting rather than more. This would be a poor outcome which could be avoided by providing further detail in RG 139.

Referring settled complaints

CIO supports the requirements under RG139.51 to RG139.54. We consider that it is crucial that AFCA monitors settlements to ensure that the requirements under RG139.52 are met.

Proposal B1Q1

CIO supports this proposal. We contend that serious contraventions should be reported and 30 days is sufficient time to do this.

Proposal B2Q1

CIO supports this proposal.

Proposal B3Q1

CIO supports the ASIC guidance on the primary role of the independent assessor.

Proposal B4Q1

CIO supports the guidance issued on what will not be the role of the independent assessor.

Proposal B5Q1

CIO agrees with the proposed requirements for the independent assessor set out in the Consultation Paper.

Proposal B6Q1 and B6Q2

CIO does not propose to comment on this point except to note how important it is that consumers receive up to date information about AFCA as soon as possible after the commencement of AFCA.

Suggested changes to RG 139

Clear communications and easy to use processes (page 24)

CIO considers that further detail is required here to drive innovation. AFCA should be considering the following:

- Being able to make a complaint verbally
- Requiring disability access
- Multi-lingual access

Debt recovery proceedings (page 25)

CIO was the first EDR scheme in Australia to accept complaints after legal proceedings had commenced by the FSP. We consider that it is a key consumer right to be able to lodge a dispute even after legal proceedings have commenced. The consumer then still gets access to EDR to resolve their dispute. This access right also ensures that FSPs are committed to trying to resolve disputes.

RG 139 as it is currently drafted is not clear about this key consumer right. The wording is "Such complaints should be accepted by AFCA...". This is not clearly setting out this right as a requirement of RG 139.

This section also does not deal with the issue of court judgments. CIO has been dealing with disputes after a court judgment for mortgage matters. CIO has assisted many consumers to arrange a stay, time to sell or a post judgment repayment arrangement.

We suggest that the creation of AFCA and the revision of RG 139 is an excellent time to discuss a post-judgment jurisdiction to assist consumers with making repayment arrangements. This is becoming particularly important given there are some creditors and collectors who appear increasingly willing to consider bankruptcy as a legitimate debt collection tool where the consumer owns a home, even where the debt may be relatively small.

Complaints that have not been through (or completed) IDR (page 37)

It is worth noting that there may be complaints where the consumer does not have time to complete IDR because legal proceedings have been commenced. We suggest that it is explicitly stated that IDR may not be completed when legal proceedings have been commenced.

Systemic issues

It is broadly agreed that systemic issues are a key function of EDR. CIO is committed to identifying systemic issues and if a systemic issue is identified ensuring that consumers are remediated.

The CIO Rules (41.7) specifically states:

The Ombudsman can make an order requiring the financial services provider to do or refrain from doing some act in relation to a systemic issue identified by the scheme, and which the scheme considers necessary to achieve any one or more of the following objectives:

(a) facilitating the scheme's investigation of the systemic issue,

(b) improving industry practice and communication,

(c) remedying loss or disadvantage suffered by consumers (not all of whom may have complained about the systemic issue),

(d) preventing foreseeable loss or disadvantage to consumers,

(e) minimising the risk of the systemic issue recurring, or

(f) efficiently dealing with multiple complaints or disputes related to the systemic issue.

RG 139 should specifically require AFCA to have the powers (in the Terms of Reference) set out above in CIO Rule 41.7. If these powers are not in the AFCA Terms of Reference then the systemic issues function will be significantly less efficient and effective.

We note that there is a risk that if ASIC decides not to act on a referral (because of resourcing or other issues) the FSP may assume that it has tacit approval from ASIC to continue engaging in the conduct identified. In these circumstances, it may be appropriate for ASIC to establish a process for informing the FSP that it is aware of the conduct and that, while at this stage it has chosen not to pursue the issue further, it may do so if it receives further referrals of this type.

We also consider that further guidance should be provided in relation to appropriate remediation for systemic issues (either in RG 139 or as another Regulatory Guide). We note that Regulatory Guide 256 (RG 256) provides valuable guidance for Australian Financial Services Licensees. Further guidance specific to Australian Credit Licensees, particularly in relation to remediation for responsible lending breaches, would assist AFCA in addressing issues identified and may result in better consumer outcomes.

Sincerely,

A handwritten signature in blue ink that reads "Raj Venga". The signature is written in a cursive style with a large initial 'R' and a long, sweeping underline.

Raj Venga
Chief Executive Off