Association of Financial Advisers Ltd
ACN: 008 619 921
ABN: 29 008 619 921
PO Box Q279
Queen Victoria Building NSW 1230
T 02 9267 4003 F 02 9267 5003
Member Freecall: 1800 656 009
www.afa.asn.au

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Senior Manager, Behavioural Research and Policy Unit
Australian Securities and Investments Commission (ASIC)
Level 5, 100 Market Street
Sydney NSW 2000

By email: IDRdata@asic.gov.au

Dear ASIC,

AFA Submission –Addendum to Consultation Paper 311 - Internal Dispute Resolution: Update to RG 165

The Association of Financial Advisers Limited (**AFA**) has served the financial advice industry for over 70 years. Our objective is to achieve *Great Advice for More Australians* and we do this through:

- advocating for appropriate policy settings for financial advice
- enforcing a code of ethical conduct
- investing in consumer-based research
- developing professional development pathways for financial advisers
- connecting key stakeholders within the financial advice community
- educating consumers around the importance of financial advice

The Board of the AFA is elected by the Membership and all Directors are currently practicing financial advisers. This ensures that the policy positions taken by the AFA are framed with practical, workable outcomes in mind, but are also aligned to achieving our vision of having the quality of relationships shared between advisers and their clients understood and valued throughout society. This will play a vital role in helping Australians reach their potential through building, managing and protecting their wealth.

Introduction

We would like to better understand the objective of IDR reporting to ASIC, as it is unclear to us how this data will be used by ASIC. An assessment of the type of information that should be provided is dependent upon the intended use of this data. Is it likely that ASIC will routinely be asking questions of licensees about specific complaints that have been reported in these IDR reports? Alternatively, is it intended as a means to compare complaint rates between different AFSLs, as a basis to identify surveillance targets?

We are very conscious of the additional workload IDR reporting will involve and particularly for small businesses. There are many businesses who have never had a complaint. There are nearly 2,200 AFSLs represented on the Financial Adviser Register, and nearly 80% have 5 financial advisers or less. Quarterly reporting for these small businesses, simply seems excessive. In our view annual reporting should be sufficient. In addition, we continue to call for the outcome where a nil response is not required where no complaints have been received or are ongoing for a licensee. We would like to ensure that all steps are taken to sensibly minimise the cost of this new IDR reporting regime.

In our submission to CP 311 in August 2019, we explained the significant differences in complexity in the treatment of complaints between product providers and advice licensees. We explained the difference between a product provider model and an Authorised Representative model, where the licensee does not have complete visibility of everything that happens. We also spoke about the difference between face-to-face interactions with a client and the types of interactions that are more typical between product providers and their clients. In a face-to-face scenario, something that the client does not understand could be discussed in a manner where it could be classified as a complaint until the client better understand the matter. How should this be treated?

If we use a common current scenario, many of the life insurers are substantially increasing premiums, particularly for Income Protection business. There are numerous cases of where level premium business has been increased by very substantial percentages (in some cases over 100%). When the client receives the notice of premium increase, and they contact their adviser to discuss the issue and to ask for advice and a solution to a situation that appears unaffordable, it is quite possible that they will complain about how the level premium arrangement has not turned out as the adviser had indicated that it would, and demand an explanation. Should this be treated as an advice complaint? If the adviser explains the nature of the product and more broadly the factors driving this outcome and the client accepts that this is not a matter that the adviser can control, is it then appropriate to treat this as a complaint? We would argue that it is not the fault of the adviser that the client's life insurance premiums have increased so much, and it does not make sense to record this as a complaint, or for it to be reported to ASIC in the IDR reporting. We would further suggest that these conversations are happening all over the country and it would be impossible for licensees to know about all of these discussions.

We do not believe that ASIC has given appropriate consideration to the additional complexity that the changes to the IDR regime will cause for the financial advice profession. In our view the requirement to record all complaints, even those that are subject to quick clarification or resolution will confuse and cloud the IDR data, not make it more transparent. And of course, it will increase the cost of running financial advice businesses.

We are concerned about the implications of the expectation that a complaint about multiple products or services will be treated as multiple complaints. We would like to better understand how this might work in a financial advice context.

We note the requirement to include the financial adviser number, when the matter relates to financial advice. Whilst we understand that there may be reasons for this, we note that other than authorised representatives (most of whom would be financial advisers) and credit representatives (both in Questions 8 and 9), there are no other cases where it is necessary to name or identify individuals. This does seem to be inconsistent. It is surprising that three questions relate to whether the complaint relates to an adviser (or at least an authorised representative/credit representative) – Questions 8, 9 and 20. This seems excessive and duplicative.

AFA Response to Questions

1. Will the draft data dictionary be practical for industry to implement? If not, why not?

In our view the data dictionary is relatively practical to implement. There is a lot of detail on dates and the status of a complaint with AFCA and the outcome of the complaint that should be readily available.

In terms of the Product or Service in Table 8, we question the inclusion of annuities in "Non-income stream risk", given that an annuity is an income stream product.

In terms of the Product or Service in Table 12 on financial advice, we note that often there might be a dispute as to whether the advice was personal advice or general advice. If there was a dispute in terms of the type of advice, then what category should the licensee classify the matter?

In terms of the Complaint Issues in Table 13, there are four types of financial advice complaint issues. We question why there is no type for fee dispute. Three of the four options relate directly to the Best Interests Duty and related obligations. There are other matters that contribute to complaints.

2. If your financial firm has multiple business units or brands under the one licence, would you prefer to report the complaints data separately or as one single file?

We are not a financial firm, and are therefore not in a position to respond to this question, however clearly this question will only be applicable to large firms. It is reasonable to give them the choice.

3. The data dictionary captures multidimensional data by allowing each complaint to have one product or service, up to three issues and up to three outcomes. Where there are multiple issues and outcomes, this is captured using in-cell lists, rather than multiple rows or columns. Is this approach appropriate?

We are not aware of any reason or issue that would prevent this approach from working. If the different outcomes are linked to different issues, then how will this be reflected?

4. Do you support quarterly reporting of IDR data? If not, what are the additional costs of reporting data on a quarterly rather than half yearly basis?

We do not support quarterly IDR reporting. We can not see what benefit there will be in reporting on a quarterly basis and the point about currency of the data has no context unless the intended usage is understood. In our view, it makes sense to report on an annual basis, and for any publishing to be done on the same basis. Doing this on a quarterly basis is simply going to create additional work for licensees that will increase costs and drive up the cost of financial services for consumers.

Complaints that are going through the process at AFCA, can take some time to be finalised. This might mean that a firm who has one complaint that goes through the AFCA process, could need to do multiple reports over an extended period, if the IDR reporting needs to be done on a quarterly basis, with no additional information provided until the matter is resolved by AFCA.

From a small business perspective, where complaints are infrequent at most, the idea of quarterly reporting is perplexing.

We recommend annual reporting, with nil responses not required.

5. Do you support the two proposed additional data elements that would capture consumer vulnerability flags and the channel via which the complaint was received? If not, why not?

The question about a client experiencing vulnerability is in large part only going to impact a smaller number of situations. For many businesses, this question is either not going to be known or not likely to be relevant.

Information on the channel via which the complaint was received might be useful data to understand the operations of the IDR regime across the full industry.

Whilst ASIC is consulting on these two additional data elements, we note that they are not included in the data dictionary and it is therefore not possible to comment on the specific design of these questions. We would have thought that this would be more useful.

6. When we publish the IDR data, how can we best contextualise the data of individual firms? Are there any existing metrics of size and sector that would be appropriate for this purpose?

This is an important point, as we do not want the public or the media forming a view based upon the raw number of complaints by a licensee without taking into account the size of the licensee. There are seemingly two options, in the financial advice context, for this:

- Assessing the data in terms of a ratio of complaints per adviser, or complaints per 100 advisers.
- Grouping licensees based upon ranges that represent the number of financial advisers.

7. Which IDR data elements do you think will be most useful for firms to benchmark their IDR performance against competitors?

From a financial advice perspective, we suggest that the following is most relevant.

- The number of complaints, adjusted for the size of the licensee.
- The proportion of complaints that are resolved in favour of the complainant.
- The amount of compensation paid, adjusted for the size of the licensee.
- The type of product or service and complaint issue.

Concluding Comments

Our primary input is with respect to the proposed frequency of reporting. When ASIC is consulting on promoting access and affordability of financial advice, it is inconsistent to make changes in other parts of the regulatory regime such as reducing the maximum timeframe to finalise complaints and to introduce quarterly IDR complaints reporting. Ultimately, all this activity drives up costs, which inevitably needs to be passed on to consumers. There needs to be a level of balance in these matters, where the benefit needs to exceed the cost. The benefits of more frequent reporting have not been articulated.

The AFA welcomes further consultation with ASIC should clarification of anything in this submission be required. Please contact us on (02) 9267 4003.

Yours sincerely,

Phil Anderson
General Manager Policy and Professionalism
Association of Financial Advisers Ltd