

09 August 2019

Jacqueline Rush
Senior Policy Adviser
Australian Securities and Investments Commission
GPO Box 9827
Melbourne VIC 3001

By email to: IDRSubmissions@asic.gov.au

Dear Ms Rush

**Submission on CP311 - Internal dispute resolution:
Update to RG 165**

The Mortgage & Finance Association of Australia (MFAA) is pleased to have the opportunity to comment on CP311 – Internal dispute resolution: Update to RG 165.

1. About the MFAA

With more than 13,500 members, the MFAA is Australia's leading professional association for the mortgage broking industry with membership covering mortgage and finance brokers, aggregators, lenders, mortgage managers, mortgage insurers and other suppliers to the mortgage broking industry. The stated purpose of the MFAA is to advance the interests of our members through leadership in advocacy, education and promotion. To achieve this aim, the MFAA promotes and advances the broker proposition to a range of external stakeholders including governments, regulators and consumers, and continues to demonstrate the commitment of MFAA professionals to the maintenance of the highest standards of education and development.

2. Introduction

Since 2003, the MFAA's Code of Practice has required its members to provide an IDR process in order to resolve disputes promptly and efficiently and to save customers from the need to engage in any extended resolution process. Most brokers are keen to resolve any complaint or dispute quickly as any delay can impact their businesses, which are heavily reliant on client referrals. One unhappy customer can have a ripple effect on a business model that relies primarily on word of mouth referrals.

From the point of view of a broker, it is to the firm's advantage to resolve a complaint via the firm's IDR process as often as possible. A well-performing firm will only fail to manage a complaint to the customer's (reasonable) satisfaction if the customer rejects a reasonable response. The firm is likely to want to avoid the customer escalating the matter to an external dispute resolution (EDR) process due to unpredictable costs and the uncertainty about the

outcome. A thorough and well-constructed IDR process is therefore vital to the businesses of our members.

We note that in recently released AFCA data, mortgage brokers represented only 107 of the 35,263 complaints received by AFCA for the period 1 November 2018 – 31 April 2019. This indicates that brokers take their responsibility to deal with customer complaints in a serious and satisfactory manner and that they have robust processes currently in place.

While the MFAA and its members recognise the importance of IDR, there are some aspects to what is proposed by ASIC that causes the MFAA and its members some concern.

It is vital that the costs associated with additional administration in managing complaints be considered when RG 165 is updated. The vast majority of brokers are small businesses and any additional compliance costs imposed on them, including those driven by enhanced IDR obligations, can have a significant impact, which may contribute to negative outcomes for both customers and brokers.

3. Social media complaints

3.1 Executive summary

- a. Complaints must identify one or more specific events that are capable of being addressed at IDR (an 'actionable' complaint). Actionable complaints should exclude general statements about poor service or delayed responses as well as anonymous complaints.
- b. Monitoring of social media should be limited to the licensee's own page and 'actionable' complaints on other pages that are drawn to the licensee's attention, where a complaint relates to the activities of a person who acts under that licensee.
- c. If more than five persons complain about a related issue, the licensee should be able to provide a single reply to all those complainants inviting them to lodge a more detailed complaint via IDR.
- d. The guidance should clearly state that loan aggregators and lenders have no obligation to monitor the social media pages of their members, credit representatives, and other introducers and service providers unless the complaint is made on the aggregator's or lender's own social media pages, the entity complained of is clearly identified, and the complaint is an 'actionable' complaint.

3.2 Complaint validity

The continuing and increasing use of social media as a form of communication by customers is an issue many businesses are grappling with due to the ease of communication and the public nature of this type of communication.

Accordingly, the MFAA suggests that there needs to be some caution in how complaints made via social media are dealt with, particularly taking into consideration that many brokers are small businesses with limited resources. Most are also a member of an aggregator which contracts with a large number of broker businesses. The MFAA agrees that ASIC should provide guidance on what types of social media content that may form a complaint should be officially responded to in order to ensure that customer issues are dealt with appropriately.

The expectation that firms will monitor and respond to social media complaints must be practically manageable. A complaint that triggers a need for response by a firm's IDR should

be specific (that is, explicit about what the complaint is rather than merely disgruntled rumbling with no specific issue of complaint) and clearly identified, and it should be clear that a response is required.

For example, if a customer expresses a complaint via Twitter, and a group of people respond by tweeting “this happened to me also” or similar imprecise words of this nature, the tweet and responses should not form an ‘actionable’ complaint unless each individual is clearly identifiable and the matter is specific (for example, having been charged a fee incorrectly). Similarly, there must be a ‘reasonable’ test for complaints. For example, recording ‘all’ complaints received seems inappropriate if the complaint is very minor, or is the result of a misunderstanding.

3.3 Complaint management issues

The firm should be able to respond to all people involved in a social media complaint by way of a shared response, for example, through one reply to all the identifiable people who have responded to a tweet, being careful not to disclose any personal details of one complainant to another.

Although ASIC states that there is an expectation that firms will monitor their own social media, there should be no expectation that industry participants should monitor any other social media pages beyond that particular firm’s own page, unless these other complaints are reasonably and obviously brought to the firm’s attention. Where a person acts under a credit licence and their EDR membership is held under the particular business that the individual is employed by or contracted to, the complaint should be referred to the relevant business.

4. Aggregator responsibility

Aggregators typically manage a large volume of brokers. These brokers may be contractors or franchisees and may or may not be a credit representative of the aggregator. Typically, brokers will normally operate their own small business.

The MFAA contends that aggregators should only be responsible for their own social media complaints and should not have to monitor or respond to complaints made about a broker contracted to the aggregator, through the broker’s own page regardless of whether that broker is a credit representative of the aggregator or not.

5. Timeframe reduction

ASIC has proposed a reduction of the maximum IDR timeframe for all complaints (other than superannuation complaints and complaints about trustees providing traditional services) from 45 to 30 days.

We do not believe this proposal is reasonable if a customer fails to provide sufficient information to a business to enable an appropriate response, or delays their response (for example, delays providing relevant information or documentation) which is necessary to allow resolution. The timeframe should apply from the point at which the firm has all necessary information to deliver a reasonable response.

Many broker complaints also involve the activities of a lender, and the broker is therefore reliant on the lender to provide information. In this case, a reduction in timeframes may not always be possible because the transfer of relevant information may be delayed, for example, where the information must be sought from an offsite archive.

Also relevant to being able to provide a timely response is the age of a particular complaint. Now that AFCA can deal with complaints dating back to 2008, firms may see a spike in older complaints for which records may be held in storage or relate to staff members who are no longer employed by the firm. We contend that firms should be allowed additional time to deal with older complaints in order for the firm to have sufficient time to obtain the relevant information.

Further, it is impractical to reduce the IDR timeframes while simultaneously increasing the time needed to deal with a complaint by requiring significantly more data to be recorded and then reported. In our view, the administrative burden on firms, particularly small businesses, will be significant.

The proposed recording and reporting requirements are likely to have a significant impact on the daily activities of brokers and it is very likely that the 30-day timeframe will not be able to be met in many cases, particularly when brokers need to conduct a thorough investigation and must rely on the timeliness of external parties to provide them with information.

We consider that the proposed IDR time frames should not be reduced at this time.

6. MFAA response to ASIC questions

B1Q1. Do you consider that complaints made through social media channels should be dealt with under IDR processes? If no, please provide reasons. Financial firms should explain:

(a) how you currently deal with complaints made through social media channels; and

(b) whether the treatment of social media complaints differs depending on whether the complainant uses your firm's own social media platform or an external platform.

In our view, clarity is required about the criteria necessary to determine whether a complaint is of a minor nature, for example, a failure to respond immediately to a telephone or email message. See also the MFAA's statements in sections 3 and 5 above.

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?

See the MFAA's response in section 3.

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 that should be included in draft updated RG 165

See the MFAA's response to these two questions in section 3.2 above.

B3Q1. 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.

The MFAA has no comment on this proposal.

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

We consider that this requirement is particularly onerous and unnecessary and will increase administrative costs for businesses, particularly for sole traders and small businesses that have limited personnel resources. Some complaints can be dealt with quickly and may result from a misunderstanding rather than a complaint that triggers an IDR process.

Further, most brokers operate as small businesses and do not have the resources necessary to manage all the proposed IDR requirements, in particular, recording all the information proposed to be reported. If brokers choose to outsource this activity, this will impose additional financial constraints on an industry sector that is already facing rising costs and declining revenues.

We suggest this concern can be addressed by providing guidance through a definition of an 'actionable' complaint which excludes minor, frivolous, and promptly resolved complaints as well as general statements about poor service.

B5Q1. Do you agree that financial firms should assign a unique identifier, which cannot be reused, to each complaint received? If no, please provide reasons.

The MFAA supports this proposal.

B5Q2. 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?

The MFAA has no comment on these questions.

B6Q1 Do you agree with our proposed requirements for IDR data reporting? In particular:

(a) Are the proposed data variables set out in the draft IDR data dictionary appropriate?

Taking into account that most brokers are small businesses, complying with this requirement will be onerous for brokers, and will increase administration costs. We consider that this requirement is inappropriate, especially given that brokers are generally adept at dealing with complaints quickly and without the need for EDR action. We believe that adding this administrative burden to small businesses that are already dealing with complaints appropriately is not necessary.

Further, the MFAA is concerned as to whether providing this information for all complaints is necessary and whether it could be considered intrusive for some customers. For example, some brokers may need to, at the time a complaint is made, ask the customer for personal information which the customer may not consider relevant to their complaint, and which may cause stress and further upset the customer for no real gain. If all complaint fields must be included, it must be clear that any fields voluntarily left blank by the customer need not require the firm to ask additional questions to ascertain the information at the time the complaint is made unless that information is essential to identify the issue(s). Firms should only be required to provide information that they already hold about a customer, or information that can be asked of the customer without aggravating the customer's complaint.

Finally, it would assist industry if aggregated data could be provided rather than unit record data.

(b) Is the proposed maximum size of 25 MB for the CSV files adequate?

The MFAA considers this file size is appropriate.

(c) When the status of an open complaint has not changed over multiple reporting periods, should the complaint be reported to ASIC for the periods when there has been no change in status?

The MFAA has no comment on this proposal.

B7 We propose to publish IDR data at both aggregate and firm level, in accordance with ASIC's powers under s1 of Sch 2 to the AFCA Act.

B7Q1 What principles should guide ASIC's approach to the publication of IDR data at both aggregate and firm level?

The MFAA supports the principles of openness and transparency in the broking industry, however we strongly disagree with the publication of IDR data that will name a firm. ASIC has processes in place to publicly identify individuals and firms that breach the law through its disqualified lists and its ban and licence cancellation notices and this publication process should be sufficient to keep the community informed.

Additionally, a business may suffer many complaints that are a result of economic and geographic circumstances unrelated to the services previously offered by relevant firms, for example, a downturn in mining production resulting in job losses in a mining town that results in borrower incapacity to continue to service home loans. Publication of these data appears to us unfair in these types of circumstances.

Publishing IDR data, in the absence of useful contextual information about the complaint(s) may also provide an unfair representation of a firm's culture, systems and standard of service. If this proceeds, a comparison of the number of complaints related to the number of transactions of a particular type must be provided. The existence of a complaint should not be considered as evidence of wrongdoing having occurred, it is merely an indication that one individual customer was unhappy with the service they received, or there was a misunderstanding. It could be crippling for a small business if customers make an assessment of a firm's quality of service or ethical standards based on complaint data that is published without context, particularly as it is proposed that even minor complaints are to be reported.

In a post-Royal Commission context, the industry's focus is to restore consumer trust in the banking and financial services sector and to deliver improved customer outcomes. We consider that this proposal serves no useful purpose and may further erode customer trust at a time when the industry is making changes which are positive for customers.

B8Q1 Do you agree with our minimum content requirements for IDR responses? If not, why not?

The MFAA supports this approach.

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.

The MFAA has no comment on this question.

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.

The MFAA has no comment on this question.

B11Q1. Do you agree with our proposals to reduce the maximum IDR timeframes? If not, please provide:

(a) reasons and any proposals for alternative maximum IDR timeframes; and

(b) if you are a financial firm, data about your firm's current complaint resolution timeframes by product line.

See the MFAA's response in section 5 above. The MFAA considers that the time frame should remain at 45 days.

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?

See the MFAA's response in section 6 above. Any change in timeframe must take into account whether the firm is relying on others, including the complainant, for information as well as the resources available to small businesses.

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.

The MFAA has no comment on this question.

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.

The MFAA has no comment on this question.

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.

The MFAA is supportive of this proposal.

B14Q1. Do you agree with our approach to the application of AS/NZS 10002:2014 in draft updated RG 165? If not, why not? Please provide reasons.

The MFAA supports this approach so long as the issues outlined in section 3 of this submission are taken into account.

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.

The MFAA has no comment on this question.

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

Subject to our response to question B11Q1 above and assuming that ASIC releases its final guidance shortly, the timeframes appear reasonable.

Conclusion

The MFAA appreciates the opportunity to provide a response to ASIC's consultation paper on the proposed update to RG 165.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Mike Felton', with a stylized flourish at the end.

Mike Felton
Chief Executive Officer
Mortgage & Finance Association of Australia