



FINANCIAL PLANNING  
ASSOCIATION of AUSTRALIA

Jacqueline Rush,  
Senior Policy Adviser  
Australian Securities and Investments Commission  
GPO Box 9827  
Melbourne VIC 3001  
Email: IDRSubmissions@asic.gov.au

Date: 9/08/19

**RE: CP311 Internal dispute resolution – Update to RG 165**

Dear: Jacqueline Rush

The Financial Planning Association of Australia<sup>1</sup> (FPA) welcomes the opportunity to provide feedback in response to the Australian Securities and Investments Commission (ASIC) consultation on proposed updates to internal dispute resolution.

These new rules will benefit consumers who wish to complain to a financial services firm by ensuring that complaints are handled more quickly, easily and transparently. The FPA agree with the changes but raise some issues and seek clarifications largely in the following areas:

1. B1: Social media complaints
2. B4: Recording all complaints
3. B11: Shorten maximum time frames to close and give responses

We would welcome the opportunity to discuss with ASIC on the issues raised in our submission. If you have any questions, please contact me at [REDACTED] or 02 9220 4500.

Yours sincerely,

**Ben Marshan CFP® LRS®**  
*Head of Policy and Professional Standards*  
Financial Planning Association of Australia

---

<sup>1</sup>

- The Financial Planning Association (FPA) has more than 14,000 members and affiliates of whom 11,000 are practising financial planners and 5,720 CFP professionals. The FPA has taken a leadership role in the financial planning profession in Australia and globally:
- Our first “policy pillar” is to act in the public interest at all times.
- In 2009 we announced a remuneration policy banning all commissions and conflicted remuneration on investments and superannuation for our members – years ahead of FOFA.
- We have an independent Conduct Review Commission, chaired by Dale Boucher, dealing with investigations and complaints against our members for breaches of our professional rules.
- The first financial planning professional body in the world to have a full suite of professional regulations incorporating a set of ethical principles, practice standards and professional conduct rules that explain and underpin professional financial planning practices. This is being exported to 26 member countries and more than 175,570 CFP practitioners that make up the FPSB globally.
- We have built a curriculum with 18 Australian Universities for degrees in financial planning. Since 1st July 2013 all new members of the FPA have been required to hold, or be working towards, as a minimum, an approved undergraduate degree.
- CFP certification is the pre-eminent certification in financial planning globally.
- We are recognised as a professional body by the Tax Practitioners Board.



FINANCIAL PLANNING  
ASSOCIATION *of* AUSTRALIA

# FPA consultation on ASIC

## CP 311

# Internal dispute resolution: Update to RG 165

9<sup>th</sup> August 2019



---

# FPA RESPONSE TO CONSULTATION PAPER

---

## B1Q1 Social media complaints

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.
- 

### FPA RESPONSE

Social media has been defined as “a group of Internet-based applications that build on the ideological and technological foundations of Web 2.0, and that allow the creation and exchange of User Generated Content<sup>2</sup>” (Kaplan & Haenlein, 2010, p.61). Social media functions to share content rather than a business communication platform or complaints regulation. However, it is conceivable that if a firm decides to create a designated social media page for the purpose of sharing the company's values, products and brand, then complaints brought to the attention of the firm on that social media platform should be dealt with under an IDR process.

The FPA agrees in-principle that the protection a complainant receives by having the complaint lodged under an appropriate IDR system is important to an effective profession and monitoring service. We agree, at a minimum, a firm should deal with:

1. complaints on the firm's own social media platform(s), and
2. when the complainant is both identifiable and contactable

This minimum requirement is an appropriate reactive approach to complaints handling.

However, expectations to proactively handle social media complaints raises some issues and concerns, such as:

### Defining appropriate channels to lodge complaints

A firm should be allowed to clarify how their social media channel can be used to lodge a complaint through one of their communication channels for example private messaging, or a post on their landing page. Further, the use of social media has also propagated new mediums of communication such as various images and videos. Therefore it should be clarified that a complaint *must* be reduced to writing to reduce miscommunication.

Concerns expressed through social media should not, of themselves, be considered complaints in the first instance. However, there should be no impediment to valid concerns initially raised on social media from evolving into a complaint to be handled by IDR processes. The most frequent applied response strategy for social media complaints is to try to divert complainants away from the social network site into private channels in order to progress resolution. By having appropriately defined channels for consumers to lodge a complaint, it instills responsibility for the individual to verify the complaint, in writing, through the appropriate channels that will clearly determine that the contents is a complaint rather than a vexatious comment.

---

<sup>2</sup> Kaplan, A. M., & Haenlein, M. (2010). Users of the world, unite! The challenges and opportunities of Social Media. *Business Horizons*, 53(1), 59-68.



## Complainants identification

Customer verification is a must. True forms of social media (Facebook, Twitter, LinkedIn, etc.) are completely open to abuse by scammers, hackers, social engineers and others. There needs to be a valid connection between the customer and the business, and this cannot be established through social media channels, at least as they operate at present. According to a report by TNS NIPO (2011), 30% of consumers post their complaints in branded environments. The remaining 70% of the online complaints are lodged on consumer-generated platforms (Guda van Noort, & Lotte M. Willemsen, 2011)<sup>3</sup>. The anonymity of the internet relaxes social constraints of complaining, consumers unhesitatingly promote these negative sentiments among a broad audience of Internet Users (Gelb and Sunraram 2002)<sup>4</sup>. Furthermore, negative-word-of-mouth, as a form of consumer-generated content, is found to be more credible and more useful than marketer-generated information (Bickart and Schindler 2001)<sup>5</sup>, and hence, a very persuasive source of consumer information. The risk of providing information to these false actors through a complaint response, or even enriching the wrong party, is heightened unless there is scrutiny and security.

Hence, the requirement should remain with complaints lodged on a firm's social media channel.

## Consistency across IDR and EDR

If an IDR process has to monitor social media then there would be expectations from consumers that an EDR process would accept complaints through these channels too. It would reduce consumer confusion and create consistency. Further, from REP603 the channels to express dissatisfaction includes complaining to the company in person, and this channel has not been extended to EDR's. If IDR channels should include 'On social media' and 'directly messaged through social media' than it should be mirrored for EDR as well.

## Privacy and ownership

Ownership of content will confuse, and possibly, prevent firms from appropriately dealing with online complaints. As a result, firms should not rely on digital media channels to maintain records, as they will not have control over this: social media in particular may refresh content from time to time, with the consequent deletion of older material. For example, when a complaint is made on another social media platform, there's generally a transfer of ownership of the content to the platform owner from the content creator. If that content was to be a complaint, a firm cannot manage the post on that platform and thus must have both the complaint and complainant be directed to appropriate IDR channels of the firm. The process should require verification and identification of the complainant which may be difficult on social media platforms that are not owned or familiar with the firm, further noting some platforms are based on anonymity.

As audiences are allowed to view the complaint, it potentially reverts the consequences back to the complainant, in turn, illustrating that complaining through social media channels are not appropriate or not safe. Complaints should be made without fear of consequence.

---

<sup>3</sup> Guda van Noort, & Lotte M. Willemsen Online Damage Control: The Effects of Proactive Versus Reactive Webcare Interventions in Consumer-generated and Brand-generated Platforms

<sup>4</sup> Ge b, Betsy D. and Suresh Sundaram (2002), "Adapting to 'Word of Mouse'," Business Horizons, 45, 4, 21–5.

<sup>5</sup> Bickart, Barbara and Robert M. Schindler (2001), "Internet Forums as Influential Sources of Consumer Information," Journal of Interactive Marketing, 15, 3, 31–40.



## B2Q1: Definition of complaint

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 that should be included in draft updated RG 165.

### FPA RESPONSE

The definition of complaint should not be loosened to elevate any expression of dissatisfaction into a matter requiring a fulsome response.

Every expression of concern should be dealt with on its merits, but should a concern be completely frivolous, a financial services company should be able to defer handling the matter unless it is escalated appropriately.

According to CP311, “70% of complainants” want a written response from the firm in question (para 74), yet it is difficult to see how this is justified for those complainants who merely call up and raise a concern. The additional issue with verbal complaints is that the finer points of the complaint are harder to clarify, and subject to misinterpretation.

It is also noted that complaint handling organisations (whether in the financial services field or outside) require a complaint to be made in writing, or reduced to writing, so there is no sound reason for removing the right to a firm to deal with a verbal concern with some level of scepticism. The IDR and EDR processes should mirror each other in this regard, as a written complaint will preempt the EDR scheme requirements.

Complaint and dispute handling organisations also operate ‘inquiry lines’, through which persons can obtain verbal first line information about dispute processes, and high level advice on problems. Financial services firms should be able to mirror this process.

There is nothing to prevent firms from recording social media concerns, or concerns raised verbally, however, and a register of such concerns is a prudent step. Nonetheless, there should be some level of formality around a complaint, and a certain amount of discretion afforded to the firm to classify the concern on its merits, and with reference to whether the complainant can be identified.



## B3Q1: Small business definition

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.

### FPA RESPONSE

The FPA welcome a harmonisation of small business definitions for IDR purposes.

In addition to the AFCA rules definition of 'small business', the Australian Small Business and Family Enterprise Ombudsman (ASBFEO) also equivocate 100 employees as a 'small business'. Similarly, the ABA code also reinforce the definition of small business but specifically articulate 100 full time employees.

*ABA Code definition of 'small business':*

1. *it had an annual turnover of less than \$10 million in the previous financial year; and*
2. *it has fewer than 100 full-time equivalent employees; and*
3. *it has less than \$3 million total debt to all credit providers including:*
  - a. *any undrawn amounts under existing loans;*
  - b. *any loan being applied for; and*
  - c. *the debt of all its related entities that are businesses.*

However, there are inconsistent use of no. of employees to define a 'small business' which may cause consumer confusion as to whether what protections their complaint have.

- The *Fair Work Act 2009* defines a small business employer as one who has 15 employees or fewer;
- The ATO defines a small business as one with annual ex-GST revenue of less than \$2m;
- The *Australian Consumer Law* defines a small business contract as one in which a party is a business which employs fewer than 20 people, excluding non-permanent casual staff (at section 23(4))
- The Australian Bureau of Statistics defines a small business as one that employs fewer than 20 people

The problem is further exacerbated when different agencies generate reports that encapsulate data based on these discrepant definitions.



## B4Q1: Record all complaints

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

### FPA RESPONSE

The FPA agrees that it is necessary to record all complaints that a firm has received. The current state of technology, storage and data retrieval methods for firms should enable firms to adequately record details of all complaints received. Further we agree that reporting all complaints will significantly improve the quality and comparability of the data reported to ASIC. By recording all complaints, it removes the potentially perverse incentive for firms to deal with complaints within five business days when more consideration of the issue is necessary.

Some concerns of recording all complaints include:

#### Cost of implementation

However, there are concerns with the cost and feasibility of implementing this requirement such as adjusting IT and recording systems, as well as training staff. For example, to record all complaints, frontline staff would need to be trained to recognise what constitutes a complaint for reporting purposes. The problem is further exacerbated when privacy settings in systems prevent frontline staff from accessing files within a complaints specialist team. Thus, recording all complaints could create duplicate process, potentially leading to miscommunication and misrecording of information when a complaint is transferred to a complaints specialist team if its not resolved in five days.

#### Social media complaints

The requirement to record all complaints needs to carefully synergise with the proposed new requirements to record complaints from social media as highlighted in B1. It is nearly impossible for human moderators to go through all online posts manually to determine if there is a complaint. The requirement to record complaints should only cover dissatisfaction on their own social media channels and where the complainant is identifiable and contactable.

#### Publication of IDR data

IDR data reported to ASIC should appropriately contextualise complaints handled within five business days as to not skew the complaints handling data of a firm and overstate the number of complaints against a firm during the reporting requirements. That is, the number of complaints reported will increase substantially and may carry reputational risk. The first publication from the new reporting period should explain the increase in complaints are by:

1. Inclusion of social media complaints (if implemented)
2. Requirement to record all complaints (including those resolved at first contact and within five days of completion)
3. Expanded definition of complaint to include 'expression of dissatisfaction against staff members'

Thus to ensure the publication of IDR data remains appropriate for consumers, it needs to contextualise data from previous reporting periods.



## B5Q1: Prescribed data set

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

## 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?

### FPA RESPONSE

In regards to unique identifiers, the FPA suggest introducing a format for the industry to use. Whether it involves text or numeric only and whether the financial firm can be identified with the unique identifier. A unique identifier specified to a firm may not remain unique when the data is reported to ASIC, i.e. duplicate or identical 'identifiers'. It should also be clarified in guidance, that leading zeros are lost in CSV format and may affect data sent to external regulators. The adequacy of the data tables may not become apparent until the data capture commences, however as a minimum the information is sufficient.

It should also be noted whether the payment is made *ex gratia* (i.e. payments essentially made due to goodwill, and without the firm accepting the complainant's concerns as justified) or in accordance with an investigation outcome. Not all *ex gratia* payments are made to make the complaint/complainant simply 'go away', as there can be a business case for the payment, even where no breach has occurred.





## B6Q1: IDR data reporting

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?
- B. Is the proposed maximum size of 25 MB for the CSV files adequate?
- 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

### FPA RESPONSE

The FPA agrees with the proposed data variables. The draft dictionary appears comprehensive and functional, and covers the majority of data that is relevant to the complaint data capturing process. In practice, missing functional elements in the data dictionary may appear overtime, and there should be mechanisms in place to adjust to these on an 'as needs' basis. The data captured by the firm should not be limited by the data dictionary. However, additional data elements should be consulted on first before implementing further adjustments to a proposed data dictionary, to ensure the element provides value to all stakeholders.

## B7Q1: Publication of IDR data

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

### FPA RESPONSE

The FPA suggests the following principles should guide ASIC's approach to the publication of IDR data. The data should be:

1. Meaningful in providing information to help consumers make an informed decision about their provider
2. Raw data vs filtered data that accurately and appropriately represents the firm's compliance with IDR.
3. Discloses what it can and cannot predict as well as what database was used, sample size, and any identifiable metadata issues.
4. Relevant to the financial products and services offered to consumers by financial firms
5. Effective in improving the transparency of the complaints handling system and procedures in financial services for consumers and other stakeholders
6. Compatible with/line up with other data reporting such as AFCA's EDR reporting, and the reporting of breaches of the Financial Adviser Code of Ethics on the Financial Adviser Register (FAR)
7. Clear in identifying and presenting information about a firm's or industry's IDR complaints, including the progress of complaints, particularly whether the IDR complaints progressed to EDR, were resolved, or a settlement was reached between the parties
8. Transparent in the disclosure of information about complaints handling procedures
9. Consistent and fair - ASIC's framework for publishing IDR data must not disadvantage one financial firm, or type of firm, over others due to the business model, size, or products or services provided.
10. Efficient for all parties



## B8Q1: IDR responses - minimum content requirements

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

### FPA RESPONSE

The FPA agrees that an IDR response explaining the decision will provide more consumer satisfaction, and that an explanation allows consumers to assess the merits of escalating a complaint thereby, supporting a two tier system of complaint handling.

While the minimum content requirements are sufficient, it needs to compliment the changes to maximum IDR timeframes. The reduction in timeframes will not absolve the overuse of template letters resulting in poor quality responses to complainants.

## B11Q1: Maximum IDR timeframes

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.

## 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?

### FPA RESPONSE

The FPA agrees in-principle that setting a single maximum timeframe for all complaints is appropriate and will manage consumer expectations when filing a complaint. However, we note that the 45 day timeframe applies to traditional trustee complaints and superannuation trustee complaints, and the FPA support applying it to financial advice complaints.

The nature of financial planning is multi faceted and complex. It is based around the personal dynamics of the client / planner relationship and is not transactional as is the case with banking and insurance. The delivery and implementation of financial planning advice can involve multiple service providers and the valid and confidential exchange of information about the client. Financial planning disputes can be very subjective and complex because of the nature of the planning process and the complex personal relationships that result from the sharing of private personal and financial information. Financial planning relationships and the financial planning process employed are inherently subjective, and therefore there is always more than one "right" answer.

The financial planning process often involves the provision of advice over a period of time, and can include multiple recommendations, reviews and updated advice as required. Such disputes can involve multiple issues in relation to potential breaches of the Corporations Act, ranging from minor to more significant issues. Hence one dispute may involve multiple issues all related to the one piece of advice.

In contrast, banking and insurance matters are usually based around set contracts and policies.



Such differences in complaints are already recognised in the various types of disputes that fall under the AFCA Rules, as evidenced by the specific provisions for general insurance disputes for example. IDR should be no exception.

Furthermore, the FPA we highlighted other concerns with reduced timeframes for complaints:

1. Any reduction in time frame needs to be consistent with the new 'IDR response' requirement. That is, given an appropriate amount of time to obtain all information and supporting documents to give an IDR response that is compliant with the ASIC reporting requirements. Often, multiple departments and systems will be involved in extracting information, which can stretch out depending on staff movements, for example. While the IDR process should not be slowed down by seeking permission from an authority figure within the business for a particular resolution, for example, physically it may be impossible to turn a matter around in a 30-day timeframe.
2. As indicated from REP603 figure 24, there is a positive correlation between time taken with complaints and perceived level of stress and negative sentiment from complainants. However, a study by Sabine A. Einwiller, Sarah Steilen (2015)<sup>6</sup> indicated that the act of requesting further information and transferring complainants, reduces consumer satisfaction with the complaints handling process. While it is conceivable to correlate a consumer's satisfaction with these actions, both are necessary processes to reach an amicable resolution. Thus, the requesting of further information may be a confounding variable between complainant stress and complaint duration.
3. Similarly, complainants who are required to deal with multiple employees with their complaint also express less satisfaction (REP 603). However, this is also fundamental for the complaints process as initial response would be given by a frontline staff who would try to resolve the issue to the consumer's satisfaction first. It may then be escalated to a complaints specialist team if the complainant is not satisfied with the response. A third person may become involved to cover a previous complaint officer due to sickness, annual leave or other personal affairs.
4. Further, complaint handling in an IDR/EDR setting is stressful on those working in the field. Anecdotally, a multinational insurer company experienced a turnover of 6 Dispute Resolution staff left within 10 months in a team of 4, and a further half dozen staff in the compliance team moved on over the same period. Complaints are by their very nature confrontational, and this takes a personal toll on complaint handlers. It may take time to replace staff who move on, and the IDR process can also be interrupted by this turnover. Putting in place contingency handling arrangements does occur, but it is piecemeal at best. Resourcing a team for IDR requires training of staff, and resilience in dealing with dissatisfied consumers on a daily basis. There is a limited pool of such staff. A reduction of 33% in timeframe, will eliminate any buffer against turnover.
5. Although the research is only indicative, REP603 showed 80% of financial advice is completed within ASIC's 45-day timeframe. If there was a higher indication that complaints can be handled within 45-day timeframe, then a reduced timeframe would be feasible. However, with the plethora of industry and regulatory changes for financial advice, the possibility of dealing with financial advice complaints internally may not be practical in the current regulatory landscape.
6. Rising professional indemnity insurance premiums remain a concern for financial advisers. Reducing the timeframe inhibits a firm's capability to handle complaints through their IDR, may increase a firm's referral to an EDR and may carry additional PI risk for the financial

---

<sup>6</sup> Handling complaints on social network sites - An analysis of complaints and complaint responses on Facebook and Twitter pages of large US companies



FINANCIAL PLANNING  
ASSOCIATION *of* AUSTRALIA

adviser. Consequently, the increase in PI premium would be passed on to the consumer, further exacerbating the cost of financial advice.

Accordingly, a 45-day maximum IDR response time is sufficient and aligns with timeframes for traditional trustee and superannuation trustee complaints, which even then is barely sufficient to explore all relevant issues. The alternative to the IDR timeframe is to allow the firm to seek (whether from ASIC or AFCA) an extension of the IDR timeframe where it is possible so that the issues with the complainant can be resolved without EDR involvement, and where that takes longer than the maximum limit. An exemption should be allowed in these circumstances to prevent prejudice for a firm trying to comprehensively deal with a matter. A good response that helps the complainant to overcome the problem is more effective than a hasty reaction that still leaves the complainant frustrated.



## B12Q1 Role of customer advocates

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.

### FPA RESPONSE

It is agreed that a separate 'customer advocate' procedure can be confusing to consumers, as these are employees of the firm; unless the position is contracted out to an independent firm, it may not be appropriate to refer to them as customer advocates. Further, it is agreed that a customer advocacy process should not delay the overall timeframe of the complaint.

If a firm deems it necessary to have a customer advocacy process in place, it should sit outside the business, and step in at the first instance to ensure an independent view before the internally-driven IDR process commences. If firms are looking for cost savings by attempting to pre-empt an AFCA review of the complaint, this would be a better model for the firm. There should be no objection to ASIC's model or proposed treatment of customer advocates under RG165.

## B13Q1: Systemic issues

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.

### FPA RESPONSE

The identification for systemic issues at an IDR level may not be reflective of the wider industry or financial product. Rather, a systemic issue analysis of the aggregate data to ASIC would provide more accurate and reflective data to determine system issues.



## B15Q1 Transitional arrangements

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 details in your response, including your proposals for alternative implementation periods.

**Table 4: Transitional timeframes**

Requirement	RG 165 reference	Application date
To provide an IDR response to a complainant within reduced maximum IDR timeframes	RG 165.78– RG 165.117	31 March 2020
To record all complaints received by the financial firm, including those that have been resolved immediately and/or by the firm's frontline staff	RG 165.57	30 June 2020
To assign a unique identifier to each complaint received by the firm	RG 165.58	30 June 2020
To record prescribed complaint data for each complaint received by the firm	RG 165.59– RG 165.62	30 June 2020
To report IDR data to ASIC in accordance with ASIC's data reporting requirements	RG 165.64– RG 165.66	30 June 2021

## B15Q2

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

### FPA Response

The prescription of complaint data would greatly assist with the reduced maximum IDR timeframes. Therefore, its application date should be the same at 30 June 2020. The unison of application dates should also reduce future adoption issues. However, as discussed above the maximum IDR timeframes for financial advice complaints should not be reduced.