



Submission to
ASIC Consultation Paper 311
Internal Dispute Resolution: Update to RG 165
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Attention:

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Dear Ms Rush

We thank you for granting us the extension of time to participate in this consultation process.

Care Inc. Financial Counselling Service (Care) and the Consumer Law Centre (CLC) appreciate the opportunity to make comment in this important consultation.

For many of our clients, internal dispute resolution (IDR) processes are the first step in the complaints process. IDR processes should be effective, efficient and fair. With these objectives in mind, IDR processes should be consistent with the approach of external dispute resolution (EDR) processes of the Australian Financial Complaints Authority (AFCA).

We generally support the proposed changes outlined by ASIC in Consultation Paper 311 on amendments to Regulatory Guide 165 (RG 165).

IDR enables our clients to escalate their concerns, without needing to access AFCA's EDR framework at first instance. However, IDR processes can be inconsistent, time consuming, and obscure the resolution process. It is crucial that changes are implemented so that IDR remains an effective component of the complaints process.

The increase in disputes directed to AFCA since its inception would suggest that many IDR processes are currently failing to achieve their intended purpose. We think that the adoption of ASIC's proposals will improve the efficacy of IDR processes so that fewer complaints are directed to AFCA.

We welcome the review and the anticipated release of new IDR standards. We are supportive of ASIC taking the leadership role in reforming the banking and finance sector following the outcomes of, and the Government's response, to the Australian Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (the Banking Royal Commission).

Below is a brief profile of Care and the CLC, and our comment in response to specific sections of the Consultation Paper which are most relevant to our service delivery.

About Care Inc. Financial Counselling Service and the Consumer Law Centre

Care and the CLC have been the primary provider of financial counselling, legal and related services for low to moderate income and vulnerable consumers in the ACT operating continuously since 1983. Care's core services include the provision of information, support and advocacy through our financial counselling service; legal advice, casework and advocacy for

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through the Consumer Law Centre; and policy comment on issues of importance to our client group, especially those most disadvantaged and vulnerable in the ACT. Care also provides the following programs: Community Development and Education Program; gambling financial counselling as part of the ACT Gambling Counselling and Support Service (AGCSS) in partnership with Relationships Australia; and the ACT's first No Interest Loans Scheme established in 1997.

Our agency responds to over 2,000 new requests for assistance each year. Given the core focus of our work, Care and the CLC have extensive expertise in advising clients in relation to responsible lending conduct matters and progressing complaints for clients with financial institutions and internal and external dispute resolution services including the Australian Financial Complaints Authority (AFCA).

Due to the constant strong demand for our services, Care prioritises service delivery to those most in need: persons in extreme financial hardship, at risk of homelessness or domestic violence, those with disabilities and consumers otherwise unable to self-help. This has meant that a proportion of the ACT's consumers who experience problems with credit and debt, have been unable to access support or exercise their legal rights simply due to resource constraints.

Care and CLC's Responses to Questions

B1 Q1: Do you consider that complaints made through social media channels should be dealt with under IDR processes? If no, please provide reasons.

Within the last decade social media has become one of the primary modes of communication, especially for teenagers and young adults. It therefore follows that, where it is appropriate and possible to do so and without breaching privacy of its customers, the finance industry should have a responsibility to timely respond to complaints made on social media, applying the same level of transparency and diligence as to other complaints received. Responses from the financial service provider should not address the specifics of the complaint. Ensuring the privacy of a consumer's personal circumstances is maintained is paramount.

Information about the relevant IDR processes, timeframes for responses and potential outcomes should be available to the consumers and acknowledgement responses should include timeframes for such a response, email addresses and other contact details where previously not provided, and other relevant information to allow consumers to participate in this process in a fully informed manner.

General websites with 'feedback' or 'compliments and complaints' or 'contact us' web forms should not be used for consumer complaints. These forms fail to appropriately identify the consumer's contact as a complaint, and often do not trigger IDR responses. The finance industry should be obliged to provide complaint-specific contact details for consumers to use.

While the use of online ‘complaint’ forms is common practice, this is not best practice for complaint resolution. When escalating complaints, consumers are often asked to provide evidence of their complaint and records of the contact they have made with the credit provider.

Online web forms often do not provide consumers with a copy of their complaint or a record of their contact history. This information is essential for effective dispute resolution. These processes retain the control of accepting and receiving a complaint, and all evidence attached to this complaint, with the finance provider and deprive the aggrieved or dissatisfied consumer of control over the process – often further exacerbating their distress.

Instead, the email address of a complaint-specific mailbox should be provided, enabling the consumer to send a complaint from their email address and keep a record of that contact. The manager of the complaint section should also be specified, with the relevant contact details provided to allow the consumer to escalate their complaint should they receive no response, or no satisfactory response.

The industry receives a large volume of complaints regarding their services, and increasingly more complaints are also voiced on social media platforms. Complaints of a general, vague or vexatious manner may not be capable of being addressed through the IDR processes. However, the starting position should be that, where a complaint is sufficiently outlined by a customer, financial services provider ought to be mandated to receive and respond to such a complaint in accordance with its IDR processes.

B2 Q1 & Q2: Do you consider that the guidance in draft updated RG 165 on the definition of ‘complaint’ will assist financial firms to accurately identify complaints? Is any additional guidance required about the definition of ‘complaint’? If yes, provide details.

There must be a consistent approach to resolving complaints across financial firms. The definition of ‘complaint’ should be broad as customers may express dissatisfaction without using the phrase ‘complaint’.

Inconsistencies in definition often means that whether a problem is viewed as an IDR-triggering complaint will vary from firm to firm. This may mean that complaints are not dealt with effectively through IDR processes and are escalated, unnecessarily using up EDR resources and causing distress and further dissatisfaction to the consumer.

Although ASIC proposes to preclude simple requests for information from the definition of ‘complaint’, we would like to emphasise that often a request for information is the first step in a complaint process. After receiving the request, financial services providers may close the matter after information has been provided to the consumer, delaying and complicating the complaints process. We are concerned that consumers may be left without redress if their matter is closed after requesting information.

While we do not suggest that all requests for information should be assumed to be 'complaints', we would support a more stringent system whereby firms are mandated to keep matters open for a reasonable period after a request is received, to enable a consumer to make a complaint following the receipt of information.

It is also pertinent to add that it is our experience that a simple request for information and documents on behalf of our clients in anticipation of lodging a complaint (for example a responsible lending complaint) frequently turns into a complaint about the finance provider failing to respond to the request for information before the substantive complaint is lodged.

We support a suggestion for RG 165 to contain guidance on the status of a complaint through an online web form. Expressions of dissatisfaction made through a form titled 'contact us', 'feedback', 'compliments and complaints' and the like should be considered complaints, regardless of the form's title. Often consumers have no option but to lodge their dissatisfaction through such a webform – doing so should not prevent invoking of the IDR processes.

B3 Q1: Do you support the proposed modification to the small business definition in the Corporations Act, which applies for IDR purposes only?

Care and the Consumer Law Centre do not frequently lodge complaints with or against small businesses and are not best placed to comment on the efficacy of a definition change. We do, however, support consistency in IDR processes and on this basis, if amending the definition of 'small business' will align IDR processes with the definition of small businesses for AFCA's purposes, would support such change. This is particularly important given AFCA's approach is to send the matter back to IDR in the first instance, as differing definitions could lead to an inconsistent dispute resolution process and outcome.

B4 Q1: Do you agree that firm should record all complaints they receive? If not, please provide reasons.

Yes, we strongly advocate that it is essential that firms record all complaints made to them. If a matter is escalated to EDR, records of the IDR processes must be provided. If a firm does not record the complaint, evidential issues may arise, and further delays in the resolution process can occur.

Maintaining a record of complaints also provides assurance to consumers and financial firms. Both parties will have a record of conversations, resolution strategies discussed and any disagreement. Having this record enhances the efficacy of complaints processes.

Further, records will assist with the identification of systemic issues consumers experience. Greater identification of these issues will enable regulators to implement strategies to improve the sector and deliver better outcomes for consumers.

B5 Q1 & Q2: Do you agree that firms should assign a unique identifier, which cannot be reused, to each complaint received? If no, please provide reasons. Do you consider that the data set proposed in the data dictionary is appropriate?

Firms should assign a unique identifier to each complaint. In our experience, customer service representatives and staff working on complaints teams can have a high turnover rate. As a result, where a complaint or dispute is managed, but then arises some time later, there is often information lost or difficulties locating files.

By assigning each complaint a unique identifier, consumers and firms will have a reference to associate all documents and communications with. This will lead to greater efficiency in IDR processes, and enhance the resolution process for consumers and firms.

The data elements provided for will assist with accuracy of reporting. Coding complaints will create a set of searchable data, making that data more accessible for concerned parties.

We emphasise that it is crucial that consumer privacy in data sets is always protected. For reporting reasons, all data sets should be de-identified and effort should be made to ensure that data cannot be used to identify a specific consumer complaint.

B6 Q1: Do you agree with our proposed requirements for IDR data reporting?

We strongly support and encourage ASIC's proposed requirements for IDR reporting. We note that recent changes to AFCA rules will allow the name of financial firms in disputes to be identified. Reporting this information as part of IDR reporting will create greater consistency between the two schemes.

Greater amounts of data will enable consumers, advocates and regulators to have better oversight over the types of complaints that are lodged. We support all efforts to enhance oversight, leading to better outcomes for consumers.

B7 Q1: What principles should guide ASIC's approach to the publication of IDR data at both aggregate and firm level?

Ensuring that firms are identifiable is vital to improving the efficacy of the consumer complaints system. We think identifying firms improves transparency and enables consumers to make informed choices about their financial affairs. For example, if a consumer is aware that a specific firm receives numerous complaints relating to unsuitable products, that consumer may then make an informed choice not to work with that firm. That choice may lead to fewer consumer complaints.

B8 Q1: Do you agree with our minimum content requirements for IDR responses?

We support ASIC's proposed minimum content requirements.

Requiring all firms to identify and address all issues raised in the complaint will encourage greater transparency and commitment by the firms to resolving in substance complaints received, rather than 'ticking boxes'. It is also likely to result in less matters being escalated to EDR, thus increase efficiency of complaints handling mechanisms, IDR and EDR, and save cost.

Setting out the firms' findings on questions of fact and identifying the information those findings are based will provide clarity on matters escalated to EDR processes, as well as ensure with compliance with procedural fairness and natural justice. This requirement will also compel firms to provide reasons for their conclusions, potentially improving the veracity of decision-making in IDR processes. Secondly, it will assist EDR intake officers and decision makers in their task of assessing matters when escalated.

We support the provision of detail in IDR responses, and emphasise that firms should also be required to advise of the next steps available to the consumer. Consumers should be told of how their complaint will be treated by the firm after the receipt of their IDR response, and identify escalation processes available to them. This is particularly important for consumers navigating the complaints process without assistance or representation.

B11 Q1: Do you agree with our proposals to reduce the maximum IDR timeframes? Is there any evidence for not setting a 30-day maximum IDR timeframe for all complaints?

We support the proposal to reduce the maximum IDR timeframe to 30days for financial services complaints and 45 days for superannuation complaints. In general, making a complaint indicates the matter is serious and causing distress to the consumer. Waiting 45 days for a response exacerbates this stress unnecessarily.

Duration of complaints processes may often lead to complaint fatigue. Pursuing a complaint for an extended period can create frustration for consumers, increase drop out rate and decrease efficiency and transparency of service delivery. At present many consumers withdraw complaints but it is not clear whether this is due to extended timeframes for a response, inconsistent IDR processes or because the matter has been resolved in a different manner.

Further, while complaint processes are afoot consumers may be subject to accruing interest and may receive demand notices for payments. Establishing a shorter timeframe is likely to result in satisfactory outcomes within a shorter period, therefore protecting consumers from greater financial hardship. Similarly, a mandatory maximum period may enable firms to place a hold on accruing interest or demand notices on the basis that the complaint is likely to be resolved within that specified period.

Greater consistency across all firms for all types of complaints enhances transparency in IDR processes. Advocates like the Consumer Law Centre may be able to advise with greater certainty on the duration of an IDR process, enabling consumers to navigate IDR processes with greater ease.

B11 Q1: 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.

We acknowledge that customer advocates play an important role and offer another avenue for customers in resolving disputes. The creation of these positions within financial services has been a positive step.

However, we do not agree that there is a strong basis to exempt customer advocates from the requirements of RG 165. It is important that regulatory guides do not inadvertently create a loop hole where complex matters may be forwarded to customer advocates with little transparency or compliance with the mandatory standards. Including matters that are escalated to a customer advocate also assists in the identification of potential systemic issues.

Case Studies

We have provided two case studies that highlight issues around consistency and effectiveness of IDR processes. The case studies focus on communication internally and externally and the inevitable time delays created when this is not effective or consistent.

Case study 1 – communication with advocates

The client presented with diagnosed mental health issues and requested that a financial counsellor assist her with a complaint with a financial service provider that had been going on for some time. The financial counsellor emailed IDR team using the contact details on the AFCA website. There was no auto reply or acknowledgement that the email had been received.

After 30 days the financial counsellor followed up with another email requesting an update on progress on the complaint. Again, there was no response to this email despite a specific request to acknowledge its receipt. After a further 7 days a phone call was made to the financial service provider. The call was not able to be taken and the financial counsellor left a message. After a couple of days of phone tag the financial counsellor was put through to a representative at which point they were asked to provide ID details (i.e. Mother's maiden name of the account holder). As this information was not available no update could be provided, and the process was delayed further. The client by this stage was feeling quite disheartened.

Eventually more than 6 weeks after the initial complaint was made, the financial counsellor person was able to communicate with a representative from the hardship team and a solution was proposed. A more efficient and timely response to consumer advocates would have reduced the stress experienced by the client.

Case Study 2- internal communication

The client was a single woman in her fifties who had left a domestic violence situation and was trying to re-establish her life after many years of trauma. Due to her financial situation, the client had leased three household and by the time she contacted our service she had paid more than double the market value of each item, however still did not own the items. The client was in significant financial hardship.

We requested that she be released from any further rental charges and that be allowed to keep the items given she had paid so much already. The request was originally denied and was escalated to the IDR department. After several delays we were able to get a positive outcome for the client wanted. It was agreed that she would make a final payment to purchase the goods outright.

However, once the agreement was finalised through the IDR process and the payment made, the arrangement was not communicated to the relevant collections team. The client continued to receive invoices stating she owed monthly rental payments. Money was taken out of her account without her knowledge and she had to go to the bank to put a stop to this. The matter was taken back to IDR with a request that they communicate with the collections team to ensure any further communication with the client ceased. Contact with the IDR team continued for two months without any successful resolution, much to the distress of the client.

Eventually a complaint was lodged with AFCA at which point the issue was then dealt with and finalised within several days. More effective internal processes would have prevented the matter escalating and causing ongoing distress to the client.

We thank you for the opportunity to make a submission into this important inquiry.