



## Attachment to INFO 257

# Example template reference request: Reference for a financial adviser

July 2021

To help Australian financial services (AFS) licensees that provide financial product advice, we have prepared an example of a completed template reference request for a financial adviser.

The template reference request can be found in the ASIC *Reference checking and information sharing protocol* (ASIC protocol): see Schedule 2 to the [ASIC Corporations and Credit \(Reference Checking and Information Sharing Protocol\) Instrument 2021/429](#).

Our example is on the next page and has been annotated to help you understand the requirements in Schedule 2 to the ASIC protocol.

Note: All references to sections and questions in the annotations are references to sections and questions in the ASIC protocol.

The example completed template reference request is **an example only**. You should consider your circumstances when providing written references under the ASIC protocol.

## Reference request

**David Jones** (the *representative*)

**XYZ Financial Planning Business Pty Ltd (AFSL XXXXXX)** requests a reference for the representative under the *ASIC Corporations and Credit (Reference Checking and Information Sharing Protocol) Instrument 2021/429* (the **Protocol**) for the purposes of:

- considering the representative's employment or authorisation as a financial adviser or mortgage broker; and
- complying with the general conduct obligations of a licensee under section 912A of the *Corporations Act 2001* and section 47 of the *National Consumer Credit Protection Act 2009* (where the representative becomes employed or authorised by the recruiting licensee).

### Questions

#### 1. Background information

- (a) Provide the name of the organisation, person(s) who completed the reference and date completed.

**ABC Advisers Pty Ltd (AFSL XXXXX)**  
**Sarah Smith, Compliance and Risk**  
**15 October 2021**

- (b) Confirm the representative's role(s) and period of employment or authorisation.

**Financial adviser – 10 September 2018 to January 2021**

- (c) Provide a brief description of the representative's main responsibilities.

**The representative was authorised to provide personal financial product advice and deal in:**

- deposit and payment products – basic products, non-basic products, non-cash payment facilities
- Government debentures, stocks or bonds
- life products – investment life insurance products and life risk insurance products
- managed investment schemes, including investor directed portfolio services
- retirement savings account products
- securities and derivatives
- superannuation – all.

**The representative was authorised to provide this advice to, and deal in these products for, retail and wholesale clients.**

- (d) Advise the ASIC reference number (if applicable) in relation to the representative.

**XXXXX Adviser Number**

You must state the full name of the person the recruiting licensee is requesting a reference for: Schedule 2.

You must state the name and AFS licence number of the recruiting licensee that requests a reference from you: Schedule 2.

You must state the name of the referee licensee, the person(s) who completed the reference, and the date the reference was completed: Schedule 2, question 1(a).

You must state the representative's job title(s) and period in the role(s): Schedule 2, question 1(b).

You must provide a description of the representative's activities authorised by you: Schedule 2, question 1(c).

You must state the ASIC reference number of the representative – that is, as provided on the financial advisers register (if applicable): Schedule 2, question 1(d).

## 2. Compliance audits

**Note:** Question 2 only applies to a representative that is currently, or was previously, a financial adviser or mortgage broker.

Complete the table in this question by providing information about compliance audits undertaken in the 5-year period preceding the date the reference is given. In completing the table, indicate whether the compliance audit results/outcome were about non-compliance with financial services laws or credit legislation, and/or non-compliance with licensee processes. Also include a description of any remedial action (see definitions below).

Date of compliance audit	Brief description of results/outcomes	Brief description of remedial action
28 February 2021	<p>Five client files assessed.</p> <p><b>Non-compliance with financial services laws and licensee processes:</b></p> <p>Three files demonstrated non-compliance with the best interests duty and related obligations in Div 2 of Pt 7.7A of the Corporations Act. The issues identified were:</p> <ul style="list-style-type: none"> <li>deficiencies in process, disclosure and record keeping (s961B), and</li> <li>advice not fit for purpose, poor justification and improper investigation undertaken (s961G).</li> </ul>	<p>Review of representative's advice files currently being undertaken.</p>
30 September 2020	Five client files assessed. No issues identified.	Nil
30 March 2020	Five client files assessed. No issues identified.	Nil
30 September 2019	<p>Five client files assessed.</p> <p><b>Non-compliance with licensee processes:</b></p> <p>Two files identified a breach of ABC Advisers Pty Ltd's licensee processes in relation to the use of Approved Product Lists.</p>	<p>Review of representative's advice files were undertaken and no systemic issues identified. Further training provided to the representative.</p>
30 March 2019	Three client files assessed. No issues identified.	Nil

You must provide a brief description of the results and outcomes of compliance audits at the time. You must include a brief description of any non-compliance with laws and/or licensee processes, and action you have taken to address concerns identified in the audit: Schedule 2, question 2.

### 3. Conduct of the representative

**Note:** Question 3 is to be answered in relation to the 5-year period preceding the date the reference is given.

(a) Did you report a breach to ASIC (whether under former section 912D or section 912DAA of the *Corporations Act 2001* or section 50B of the *National Consumer Credit Protection Act 2009*) in respect of the representative? **Yes**

(b) If you answered Yes to Question 3(a), provide details on the relevant date, type and nature of the breach. Also include details of remedial action.

**Failing to comply with the best interests duty in section 961B of the Corporations Act and the appropriate advice requirement in section 961G of the Corporations Act. Reported to ASIC on 15 March 2021.**

(c) Did (or does) the representative's conduct or performance (including acts or omissions) in relation to the provision of financial services or engaging in credit activities while employed with, or authorised under, your licence, or the circumstances surrounding the representative's departure from your licence, concern the representative's involvement in any of the following:

- (i) dishonesty – **No**
- (ii) unprofessional conduct – **No**
- (iii) conduct justifying instant dismissal or immediate termination of representative status – **No**
- (iv) refusal or deliberate non-compliance in relation to the financial services laws or the credit legislation – **No**
- (v) gross incompetence or gross negligence – **No**
- (vi) a breach of the Financial Planners and Advisers Code of Ethics 2019 – **No**

**Note:** The conduct need not involve a contravention of the law.

(d) If you answered Yes to any of the matters in Question 3(c), provide a brief summary of the details, including relevant information in relation to internal assessments, external notifications or complaints against the representative in connection with the provision of financial services or engaging in credit activities, and any remedial action.

**Not applicable.**

You must provide a brief description of what the breach (or likely breach) relates to, the name of the Act and relevant section(s) breached (or likely breached), and the date you reported it to ASIC. You must also include a brief description of remedial action: Schedule 2, question 3(b).

You must provide a brief description of the relevant conduct, how it was identified and any remedial action: Schedule 2, question 3(d).

#### 4. Unresolved matters

- (a) Is there an inquiry or investigation in progress by your organisation in relation to this representative in connection with the provision of financial services or engaging in credit activities, in relation to the 5-year period preceding the date the reference is given?

Yes

- (b) If you answered Yes to Question 4(a), provide:

- (i) a brief description of the nature of the circumstances that triggered the inquiry/investigation (for example a breach, complaint, compliance audit, external notification, internal assessment/review or other circumstance); and
- (ii) details of the progress and status of the inquiry/investigation.

As a result of the compliance audit we undertook in February 2021 (referred to in our answer to Question 2), we have commenced a full review of the adviser's files. We expect to complete it by XXXX.

- (c) If you answered Yes to Question 4(a), was the representative made aware of the inquiry/investigation?

Yes

You must provide a brief description of the cause or trigger of the inquiry or investigation, its current status and when you expect it to be completed: Schedule 2, question 4(b).

#### Interpretation

In this request, a word or an expression that is defined in section 4 of the Protocol has the same meaning in this request.

#### Additional definitions

In this request:

**client remedial action** includes:

- (a) the representative being instructed to provide corrective disclosure to a client; and
- (b) compensation being given to a client either as a financial payment or other non-financial remedy.

**complaint** means a "complaint" as defined in Australian / New Zealand Standard AS/NZS 10002:2014 *Guidelines for complaint management in organizations* published jointly by, or on behalf of, Standards Australia and Standards New Zealand, as in force or existing on 29 October 2014.

**compliance audit**, in relation to a representative, means an audit or review by or on behalf of a financial services licensee or credit licensee of the representative's compliance with financial services laws, credit legislation and licensee policies and procedures as part of the licensee's monitoring and supervision obligations under paragraphs 912A(1)(ca) and (f) of the *Corporations Act 2001* or paragraphs 47(1)(e) and (g) of the *National Consumer Credit Protection Act 2009*.

**remedial action** includes representative remedial action or client remedial action.

**representative remedial action** includes:

- (a) additional training of the representative;
- (b) increased monitoring and supervision of the representative;
- (c) consequence management for the representative (including performance management, financial consequence, formal warnings); and
- (d) suspension of the authorisation of the representative.

**unprofessional conduct** of a representative includes the following kinds of conduct of the representative:

- (a) conduct which amounts to impropriety affecting professional character and which is indicative of a failure either to understand or to practise the precepts of honesty or fair dealing in relation to retail clients or the public;
- (b) unsatisfactory professional conduct, where the conduct involves a substantial or consistent failure to reach reasonable standards of competence and diligence; and
- (c) conduct which is, or could reasonably be considered as likely to be, prejudicial to the interests of a financial services licensee or a credit licensee or retail clients,

and need not involve a contravention of any law.