



ASIC
Australian Securities &
Investments Commission

Internal Dispute Resolution in Super - New Enforceable Requirements (RG 271)

Main Presentation: November 2020

Appendix: December 2020

Updated
October
2021



Overview

Background

Key changes

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ASIC expectations

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Key takeaways

NOTE: Slides 9, 14, 31 and 36 were updated in October 2021 to reflect an updated version of RG 271 issued September 2021 (see also [Summary of changes to RG 271 - Sept 2021](#)) and unincorporated amendments made to ASIC Instrument 2020/98 on 28 September 2021 (see ASIC [Instrument 2021/753](#))



Internal Dispute Resolution

Background

Sarah Edmondson

Head of Behavioural Research and Policy

ASIC



Background leading to RG271

- Role of IDR in the broader financial services dispute resolution framework
- Lead up to issue of RG271: Ramsay Report, Productivity Commission reports, Financial Services Royal Commission
- What informed the changes:
 - Australian Standard **[AS/NZS 10002:2014]** *Guidelines for complaint management in organisations*
 - ASIC consumer research
 - ASIC's Close and Continuous Monitoring IDR onsite program
 - Feedback from consultation on IDR changes in 2019

Recent insights



81% of complainants experienced at least one obstacle

Consumer research - [ASIC REP 603](#)

Structural, transparency and customer service obstacles encountered by complainants

Approx. half of all complainants did not receive an explanation of the IDR outcome.



IDR onsite visits to financial firms

- structural or cultural approach hampering processes
- adequacy of oversight for complaints handling at the frontline
- concerns about the quality of final response letters
- limited focus on systemic issues
- limited controls to ensure compliance
- issues with complaints-recording systems
- significant under-reporting of complaints



Internal Dispute Resolution

Key changes

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Key changes from 5 October 2021

- RG 271 commences for complaints received on and after 5 October 2021
- Makes clear a set of enforceable obligations
- **Updated definition of complaint**
- Clarification on certain types of complaints, for example:
 - Social media posts on channels or accounts you control
 - Objections to a proposed death benefit distribution

An expression of dissatisfaction made to or about an organization, related to its products, services, staff or the handling of a complaint, where a response or resolution is explicitly or implicitly expected or legally required.

Source: AS/NZS 10002:2014 and RG271.27

Key changes from 5 October 2021

Reduced maximum IDR timeframes

- **Superannuation complaints** (except for objections to death benefit distributions):
45 calendar days after receiving the complaint.
- **Objections to death benefit distributions:**
90 calendar days after 28 calendar day objection period

Use of IDR Delay Notifications

Only where no reasonable opportunity to respond due to:

- complaint being particularly complex; and/or
- circumstances beyond the financial firm's control



Key changes from 5 October 2021

Minimum content requirements for IDR responses

Level of detail should reflect complexity of complaint

Super-specific: complaints closed within 5 business days

A written IDR response must be provided, even where the complaint is closed by the end of the fifth business day, for any decision of a superannuation trustee relating to a complaint.

For further details: see RG271.71 – RG271.75.





Key changes from 5 October 2021

- Firms must have a system that enables them to **record and keep track of the progress of each complaint**
- Strengthened focus on **systemic issues**
- Ensuring complaint staff are empowered with **appropriate decision authorities and financial delegations** to facilitate fair and efficient resolution
- IDR process must be **resourced** so that it operates fairly, effectively and efficiently.



To come ... IDR data reporting

- Government gave ASIC powers to mandate IDR data reporting and to publish data
- We started consultation on data reporting during CP 311. Then put it on hold to finalise standards and requirements.
- We are about to release an updated data dictionary for feedback
- Data reporting will **not** commence 5 October 2021. We will run pilots and have staggered implementation.
- Things to do now: record all complaints, apply unique identifiers, consider data fields. A key principle will be alignment with AFCA data reporting.



Internal Dispute Resolution

Issues for the super industry

Jane Eccleston

Senior Executive Leader, Superannuation

ASIC

Superannuation complaints: areas of concern highlighted by ASIC

- Timeliness of responses
- Adequacy of written reasons
- Limited identification of complaint drivers
- Insufficient focus on improving complaint management
- Handling of claim related complaints
- Quality of data

Related ASIC publications

Report 646

Insurance in superannuation 2019–20: Industry implementation of the Voluntary Code of Practice

Report 591

Insurance in Superannuation

Report 529

Member experience of superannuation

Lifting the bar

Superfunds article June 2019

Enforceability Framework

ASIC [Regulatory Guide 271](#) *Internal dispute resolution*

ASIC Corporations, Credit and Superannuation (Internal Dispute Resolution) [Instrument 2020/98](#) (as amended by [Instrument 2021/753](#))

- references parts of RG271 making them enforceable
- takes effect for complaints received on or after 5 October 2021
- modifies the Corporations Act (ss912A(1)(g) and 1017G(1)) to impose an additional obligation for **firms to comply with their internal dispute resolution procedures**

Breaches:

- civil penalty consequences: (s912A(1)(g) Corps Act)
- an offence (s101 SIS Act)

Enforceable requirements cover:

definition of complaint

death benefit distributions

authorities and delegations

outsourcing

contents of IDR response

maximum timeframes

systemic issues management

data collection

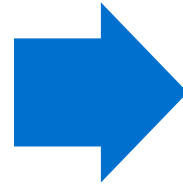
resourcing

reporting

ASIC Expectations

Timely preparation

- Early attention
- Review systems, processes and resources
- Trustee Board briefed and engaged
- Liaison with service providers



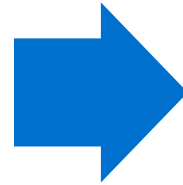
Trustee challenges

- Reducing friction points in existing processes
- Overseeing outsourcing arrangements
- Integrating with insurer's processes
- Lead time for new/enhanced IT systems

ASIC Expectations

Positive member-centric approach

- Members can understand process
- IDR process is easy to access
- Learn from member experiences to improve

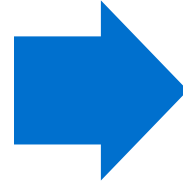


Trustee challenges

- Assisting vulnerable persons
- Accommodating broad definition of complaints
- Monitoring time taken and effective use of IDR Delay Notifications
- Independence in decision making

ASIC Expectations

Sufficient investment in IDR staffing and systems



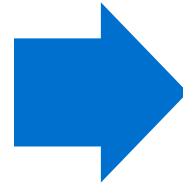
Trustee challenges

- Granting authority appropriately to resolve complaints
- Future-proofing resources to cope with fluctuations
- Setting up regular reviews of resources
- System capability to record data across all relevant teams

ASIC Expectations

Trustee Board level accountability

- Trustee remains responsible, top-down commitment
- Set clear lines of reporting and accountability
- Regular Board reports on complaints



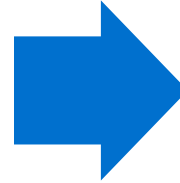
Trustee challenges

- Integrating RG271 into your culture
- Honestly assessing your IDR practices
- Changing delegations to accommodate shorter timeframes

ASIC Expectations

Focus on identifying and responding to systemic issues

- Timely identification of potential systemic issues
- Prompt action to rectify actual systemic issues
- Regular Board reports on systemic issues



Trustee challenges

- Encouraging staff to escalate issues that could affect multiple members
- Capturing data to allow analysis of systemic issues
- Implementing dedicated process for managing and reporting systemic issues



Areas of future interest to ASIC



How trustees proceed with preparedness leading up to 5 October 2021

Compliance from 5 October 2021

- Accurate data capture on all complaints
- Time to resolve complaints
- Quality of complaint responses, especially around reasons
- Systemic Issues focus
- Reporting and complaint measurement metrics
- Quality and fairness of complaint outcomes



Internal Dispute Resolution

Insights from AFCA

Tim Goss

Head of Service Delivery

AFCA



AFCA insights – the right people to support IDR

- What is likely to work?
 - Human skills
 - Subject matter expertise
 - Time management skills
 - Communication skills
- What is likely to not work?
 - Not using time wisely
 - Failing to engage early
 - Failing to set or meet timeframe milestones
 - Unnecessarily complex or jargon filled responses



AFCA insights – the right structures to support IDR

- What is likely to work?
 - A complaint awareness culture
 - A fresh set of eyes
 - Visible and accessible complaint information
 - Expertise and support for frontline staff
 - Quality principles and standards
- What is likely to not work?
 - Isolated complaint functions
 - Closed or inaccessible complaint systems
 - Unclear decision-making delegations
 - Insufficient or inflexible resourcing arrangements
 - The absence of internal service level agreements to support complaint functions



AFCA insights – the value of insights from IDR

- What is likely to work?
 - Systematic approaches to capturing insights
 - Regularly exploring complaint insights
 - Learning and improvement systems and structures
 - Time based metrics
- What is likely to not work?
 - Inaccessible or irregular access to complaint insights
 - Inconsistent recording of complaint insights
 - Misaligned milestones for timeframe reporting



Other comments from AFCA

- AFCA's Systemic issues mandate means it will consider how firms meet the new RG271 requirements from 5 October 2021
- Ensure your staff are aware of systemic issue concepts
- Let AFCA know if you have a systemic issue

- AFCA's expectations of our people:
 - Identify possible systemic issues arising from complaints
 - Refer the possible systemic issue to the financial firm for response and action
 - Report the confirmed systemic issue to the appropriate regulator

Internal Dispute Resolution

Question time





Internal Dispute Resolution

Closing comments

Jane Eccleston

Senior Executive Leader, Superannuation

ASIC



Key takeaways

- 1. The time to act on the new IDR requirements is NOW:**
 - There is a significant amount to be done to get ready in order to comply.
 - The long implementation period for RG 271 is designed to set you up for success.
 - You must get it right by 5 October 2021.
- 2. We will be conducting some preparedness checks closer to October 2021.**
- 3. The requirements will be enforceable and penalty provisions can apply.**
- 4. We expect Trustee Board level accountability and governance.**
- 5. There should be a focus on members and systemic issues at all stages in the IDR process.**



Internal Dispute Resolution

Appendix: Common Questions and Answers

December 2020



Common questions and answers

Q. Does a superannuation trustee need to collect information on complaints closed within 5 business days?

A. Yes, a trustee should have systems to record all complaints as per RG 271.179 and report on complaints regularly as per RG271.183, even those resolved immediately or within 5 business days.

Q. Why does the exception to providing a written IDR response, if a complaint is resolved within 5 business days, NOT apply to a decision of a superannuation trustee?

A. The exception does not apply (as stated at RG 271.75) because ASIC cannot modify the requirements of section 101 of the SIS Act which states that written reasons must be given for **any decision of a trustee related to a complaint.**



Common questions and answers

Q. What decisions of a trustee should be taken as related to a complaint?

A. This is a matter of interpretation of s101 of the SIS Act. In forming a view trustees may wish to consider the context and substance of the complaint.

Of relevance to a trustee's response is the fact that the IDR response requirements are scalable as per RG 271.55 - so where the complaint is simple, a simple response would likely to be sufficient.

We are interested in hearing superannuation trustees' views on, and/or existing approach to, what is a decision requiring a written reason.

October 2021 Update: An amended version of RG 271 was published on 2 September 2021 including several technical and clarifying amendments arising out of feedback from stakeholders. This includes a note added at paragraph 75 to provide some guidance on ASIC's interpretation of when complaints are likely to involve a decision of a trustee (or failure by a trustee to make a decision) relating to the complaint. This is relevant when considering whether written reasons are required (per s 101(1)(d) of the SIS Act) for complaints resolved within 5 days of receipt.



Common questions and answers

Q. Are firms expected to trawl social media posts for expressions of dissatisfaction and follow up contacting and identifying the poster?

A. There is no requirement to monitor unrelated or third party public social media channels, for example, review websites or contact a person about a post on such a site.

RG271 confines expectations to social media channels or accounts that the financial firm or its representatives own or control (refer to RG 271.32(a)).

We would expect a superannuation trustee to have a process to monitor its own online channels and social media accounts, take reasonable steps to contact and identify a person who appears to be making a complaint, and ensure all complaints are handled in accordance with its IDR procedures no matter how they are received.

The trustee remains responsible for identifying whether there is an expression of dissatisfaction that meets the definition of a complaint, keeping in mind that a person does not have to use the word 'complaint' in a post for it to be a complaint as per RG 271.30.

When communicating with a person making a post we remind trustees to ensure consumer privacy is protected (refer to RG 271.32 (a) Note 2).



Common questions and answers

Q. There can be a fine line between a query and a complaint, and some members have taken issue where we have treated a simple query as a complaint. Can ASIC give some guidance on how to determine whether something is an expression of dissatisfaction that should be treated as a complaint?

A. We are unable to give any more specific guidance than what has already been given in RG271 because whether something is a complaint or not depends on context at the time.

We encourage trustees to build their processes to take a member centric and expansive approach on what is considered a complaint as covered at RG 271.30. We see value for a trustee seeking to communicate with a member at the point of contact to understand the issue behind why they are reaching out.

Part of building member centric processes is to tailor responses to the nature of the complaint made. For instance, a simple complaint may be best responded to in a simple way rather than an extensive formal letter.



Common questions and answers

Q. For complaints about insurance matters, such as a TPD claim, is the 45-day maximum timeframe intended to cover both the insurer and the trustee?

A. A trustee must respond to a complaint related to insurance in superannuation within the 45-day maximum timeframe under RG271.

The 45 days starts to be measured from the first date either the trustee or the insurer receives a complaint, as per RG 271.79.

The maximum timeframe does not change where resolution of the complaint requires action by the insurer.

Our expectations are that trustees and insurers will work together to identify practical arrangements, within their control, that will facilitate the timely resolution of complaints.

If an individual complaint is genuinely complex or there are circumstances which are clearly outside of the parties' control then RG271 provides scope for the complaint to exceed the maximum 45-day timeframe as long as the related requirements (e.g. sending of an IDR delay notification) are met in accordance with RG 271.64 to RG 271.69.



Common questions and answers

Q. Why are objections to death benefit distributions proposals classified as a complaint?

A. Objections to a death benefit distribution proposal (“objections”) are considered complaints under RG 271.32(b) as they are expressions of dissatisfaction where a resolution is sought by the complainant.

This approach ensures:

- objections are consistently afforded a path through IDR and to AFCA across the superannuation industry; and
- relevant parties are given written reasons so that they can understand the trustee's decision on the objection.

RG271 allows a maximum timeframe of 90 days to handle objections as set out at RG 271.80 to RG 271.82 as ASIC recognises that dealing with such complaints is unique and often complex given the involvement of multiple potential beneficiaries.



Common questions and answers

Q. Is there a drafting error at RG 271.83(b)?

A. RG 271.83 concerns the options for handling a death benefit objection complaint.

Where the outcome of such a complaint is to **amend** the previous death benefit distribution proposal the wording specifically allows a trustee flexibility to choose between:

- RG 271.83(a) advising a new decision is made and restarting the death benefit distribution notice process - where new objections need to be made to the trustee before the matter can go to AFCA (aligning with the requirements of s1056 of the Corporations Act);

OR

- RG 271.83(b) continuing the existing complaint where the next step is for it to be referred to AFCA (rather than come back to the trustee).

October 2021 Update: An amended version of RG 271 was published on 2 September 2021 to reflect further feedback from stakeholders. The words 'amend or' have been removed from 83(b) to align the paragraph with the operation of s1056 of the Corporations Act.



Common questions and answers

Q. Can ASIC give more clarity around resourcing standards?

A. A trustee needs to assess and reach its own decision on the resources that are needed to handle complaints fairly and efficiently all aspects of their IDR processes (e.g. from frontline and through to any escalated and/or outsourced complaints teams).

Resources are measured not just by extra staff, but in ensuring that systems, processes and delegations all operate effectively. Staff should be sufficiently trained and skilled for the IDR related roles they perform, and processes and systems fit for purpose to consistently meet all the requirements of RG271.

Resources should be able to flex in times where complaint volumes significantly vary (refer to RG 271.143).



Common questions and answers

Q. What guidance can ASIC give on the timeframe and record keeping requirements for handling systemic issues identified from complaints?

A. Each systemic issue will be different. The timeframe for dealing with them will be a matter for a trustee to decide based on the circumstances of each issue.

ASIC will look at whether there is a reasonable basis for the time taken and trustees are acting in members' best interests.

A trustee needs to make its own call as to what record keeping is needed on the handling of systemic issues, taking into account the requirements of RG271 (in particular on reporting to the Board and senior management) and its other legal record keeping obligations.



Common questions and answers

Q. When will more information on the content and format for future IDR reporting to ASIC be released?

A. An updated data dictionary for future IDR reporting to ASIC is due to be released for feedback in December 2020.

We have endeavoured to align the data fields as closely as possible to those used by AFCA.

We plan to conduct some pilots on IDR data reporting to ASIC in late 2021, with implementation to follow. Financial firms will not be expected to report IDR data to ASIC from 5 October 2021.

Q. Will future IDR reporting to ASIC require use of a unique identifier for each complaint as proposed in CP 311?

A. Yes.



Common questions and answers

Q. Will the preparedness checks mentioned in the presentation apply to all financial firms?

A. At this stage the preparedness checks mentioned at the roundtable will only be focused on superannuation trustees. We propose to share our findings more broadly to assist the industry.



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