



Attachment to Report 737: What has changed since RG 256?

This table provides an overview of the differences between:

- [Regulatory Guide 256](#) *Client review and remediation conducted by advice licensees* (RG 256) (issued September 2016);
- [Attachment to Consultation Paper 350: Draft regulatory guide](#) (draft RG 000) (published November 2021); and
- [Regulatory Guide 277](#) *Consumer remediation* (final RG 277) (issued September 2022).

Note 1: This table should be read in conjunction with RG 256 and RG 277. It is a summary of the guidance only, and not a replacement.

Note 2: RG 256 applies to remediations initiated before 27 September 2022. Remediations initiated on or after 27 September 2022 must be conducted in a manner consistent with RG 277.

Table: What has changed since RG 256

Subject matter	Guidance in RG 256	Guidance in draft RG 000	Changes made in final RG 277
Application of the guidance	The guidance applied predominantly to Australian financial services (AFS) licensees providing personal advice to retail clients.	The guidance applied to all AFS licensees and credit licensees.	We have clarified that the guidance applies to all AFS licensees and credit licensees, including superannuation trustees, retirement savings account providers (in certain circumstances), debt management firms and claims handling service providers.

Subject matter	Guidance in RG 256	Guidance in draft RG 000	Changes made in final RG 277
Initiating remediations	A remediation is triggered when a licensee becomes aware of a systemic issue, which is defined as an issue causing actual or potential loss or detriment to a number of clients as a result of 'misconduct or other compliance failure' by the licensee or its current or former representatives.	<p>A remediation is triggered when 'misconduct or other failure' has caused consumer loss to one or more consumers.</p> <p>'Misconduct or other failure' includes a breach of financial services law or credit legislation, and contractual failings and errors.</p> <p>'Misconduct or other failure' extends to the decisions, omissions or behaviours of current or former authorised representatives, third-party service or product providers, consultants and other significant related entities, as well as those of licensees.</p>	Minimal changes made, other than to include an additional example relating to debt management services (Example 2).
Key principles	The guidance described a number of principles that licensees should consider when initiating, designing and implementing the review and remediation process (mostly aligned to the principles outlined in Regulatory Guide 165 <i>Licensing: Internal and external dispute resolution</i> (RG 165) (superseded by Regulatory Guide 271 <i>Internal dispute resolution</i> (RG 271)).	There are nine principles for conducting a remediation that will help licensees comply with their general licensing obligations and to conduct remediations efficiently, honestly and fairly.	Minimal changes made. The nine key principles are now described in Table 1.

Subject matter	Guidance in RG 256	Guidance in draft RG 000	Changes made in final RG 277
Review period	Licensees are not generally expected to review advice given to clients more than seven years before becoming aware of the misconduct or other compliance failure.	<p>The review period starts from when a licensee reasonably suspects the misconduct or other failure first occurred and caused loss to a consumer. Where possible and reasonable, licensees should apply assumptions to fill gaps in their records, particularly when record-keeping obligations have been breached.</p> <p>However, there are circumstances where it may be appropriate to limit the review period beyond record retention requirements, if there are no records.</p>	Minimal changes made, other than to include an additional example illustrating how to determine the remediation review period (Example 6).
Assumptions that are beneficial to consumers	Not applicable	<p>In order to save time and program costs, remediate more efficiently or make up for absent records, licensees may use assumptions that are beneficial for consumers (instead of, or in addition to, using a file review approach as per RG 256).</p> <p>Licensees should give consumers the benefit of <i>any</i> doubt, and minimise the risk of consumers falling out of scope or being under-compensated.</p> <p>The assumptions should aim to return affected consumers as closely as possible to the position they would have otherwise been in, be evidence based and monitored.</p>	Minimal changes made, except to reduce content on the monitoring of assumptions, and we have clarified that when using assumptions, licensees should give consumers the benefit of <i>the</i> doubt (as opposed to <i>any</i> doubt).
Remedies	Compensation should generally be calculated in line with the principles of the relevant external dispute resolution (EDR) scheme.	<p>The guidance described a non-exhaustive list of possible remedies to consider when determining appropriate outcomes for affected consumers, depending on the different types of products, services and misconduct.</p> <p>There is no direct reference to EDR principles.</p>	<p>We have included more guidance on possible remedies, including in relation to mortgage broker or other credit intermediary misconduct, and debt management services misconduct.</p> <p>We have added an additional example relating to non-financial or indirect financial loss.</p>

Subject matter	Guidance in RG 256	Guidance in draft RG 000	Changes made in final RG 277
Foregone returns or interest	Licensees should calculate the actual foregone returns or interest. However, if it's not possible or reasonably practicable, licensees should apply a rate that is 'fair and reasonable'. It may be appropriate to use the cash rate set by the RBA plus 6%.	<p>Licensees may choose to calculate the actual foregone returns or interest, use assumptions or apply a fair and reasonable rate.</p> <p>The calculations should account for the returns or interest within the licensee's product or service, or outside the product or service (or both).</p> <p>The RBA cash rate plus 6% is an example of a fair and reasonable rate in the context of superannuation or investments. The 10-year Government bond rate plus 3% as per the <i>Insurance Contracts Act 1984</i> and <i>Insurance Contracts Regulations 2017</i> is another example of a fair and reasonable rate in the context of insurance and non-investment related remediations (i.e. credit and banking).</p>	<p>Licensees may choose to calculate the actual foregone returns or interest, or apply assumptions that are beneficial to consumers.</p> <p>We have simplified the guidance, and removed the concept of the 'fair and reasonable rate'.</p> <p>We have retained the RBA cash rate plus 6% as an example of an appropriate assumption for wealth-type remediations. The Australian 10-year Government bond rate plus 3% prescribed under legislation is also included as an example of an appropriate assumption if it is relevant to the circumstances.</p>
Communicating with consumers	The guide described key principles when communicating with clients, and included guidance on the timing and form of communications, guidance for the initial, ongoing and final communications, and what to do when requesting a response from clients.	<p>The guidance described a consumer-centred approach to communications and referred licensees to the remediation field guide <i>Making it right: How to run a consumer-centred remediation</i> (published December 2020) for more information on how to plan and write communications.</p> <p>A key principle of a consumer-centred remediation is that it should minimise complexity, and asking a consumer to take any action should be rare.</p>	<p>We have updated the guidance to reflect an outcomes-based approach to communicating with consumers during a remediation, to address concerns about scalability.</p> <p>Licensees should now refer to the updated version of Making it right: How to run a consumer-centred remediation (published in September 2022) for more information about testing, monitoring and adapting the communications plan when required.</p>

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Reasonable endeavours	Not applicable	Licensees should apply reasonable endeavours to find affected consumers and make remediation payments, while prioritising automatic transfers over issuing cheques.	<p>We have clarified when licensees should return remediation money in the context of superannuation accounts, third-party payments to superannuation accounts, client money accounts and deregistered companies—see Table 3.</p> <p>We have clarified that cheques should not be the default (unless specifically requested by the consumer) and are not necessary to satisfy a reasonable endeavours standard for low-value amounts.</p>
Low-value compensation threshold	If a client is owed \$20 or less and cannot be compensated without significant effort (for example, if the client no longer holds an account), the licensee may instead make a community service payment.	If a licensee owes \$5 or less to a former customer and does not have their payment details, the licensee may instead make a residual remediation payment to a charitable organisation.	<p>No changes made to the value of the threshold.</p> <p>We have clarified that amounts over \$5 may still be allocated towards a residual remediation payment as long as reasonable endeavours have been made. The approach (including the number of contact attempts) can be scalable based on the value and will depend on the context (e.g. the quality of customer contact information and steps already taken to improve the customer data).</p>
Interaction with internal dispute resolution (IDR)	If a client makes a complaint about the final decision—following a review of their advice as part of the review and remediation process—the client should be directed to the EDR scheme and not to IDR. IDR requirements apply to complaints that fall within scope of a remediation.	<p>IDR requirements (which give a licensee another opportunity to review their decision) apply if a consumer makes a complaint about:</p> <ul style="list-style-type: none"> the misconduct or other failure that is the subject of the remediation; the remediation itself; or the final remediation outcome. 	<p>No changes to the underlying principle that consumers should be directed to IDR before the Australian Financial Complaints Authority (AFCA).</p> <p>We have included additional guidance about the links between IDR, AFCA and remediation, including that should AFCA receive a complaint that has been through an IDR and remediation process, it will not refer the complaint back prior to proceeding through its case management process.</p>

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Dealing with money that cannot be returned to consumers	Not applicable	To ensure no profit is retained, if despite reasonable endeavours consumers cannot be contacted or paid, licensees should lodge the money in an unclaimed money regime if available or make a residual remediation payment.	Minimal changes made. We have also added additional principles to consider when making residual remediation payments.
Public reporting	Public reporting provides transparency of review and remediation and may be needed for a large-scale exercise affecting many clients, or a review and remediation following public reports of client losses, alleged misconduct or other compliance failure.	The guidance described a similar position to RG 256 on the principle of transparency, but added additional guidance that licensees should publicly report details of the remediation if a low-value compensation threshold is applied and a residual remediation payment is made.	<p>We have removed the additional guidance that licensees should publicly report details of the remediation if a low-value compensation threshold is applied and a residual remediation payment is made.</p> <p>Our guidance on transparency is similar to our guidance in RG 256. However, we have included more transparency principles and tips in the update to Making it right: How to run a consumer-centred remediation.</p>
Other remediation outcomes	<p>To ensure clients have access to EDR, licensees should consider waiving monetary or time limits, and/or offering assistance to clients to seek own professional advice.</p> <p>Settlement deeds should not restrict a client's ability to speak to ASIC, an EDR scheme or an advisor's professional association or legal representation.</p>	Licensees should consider whether other non-monetary remedies or actions may be necessary to ensure fair and timely outcomes are achieved, including providing information on tax implications, postponing or ceasing action during a remediation, waiving limitation periods or monetary limits and avoiding the use of settlement deeds.	We have updated the section on postponing or ceasing action during a remediation, including the definition of 'enforcement action'. The definition now includes 'enforcement proceedings' (as defined in the <i>National Consumer Credit Protection Act</i>) and the giving of default notices.

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Other external stakeholders	Licensees should consult their professional indemnity (PI) insurers and consider engaging with the relevant EDR scheme when initiating a review and remediation process.	The guidance described the role of AFCA, the Australian Prudential Regulation Authority, the Australian Tax Office and PI insurers in remediations.	Minimal changes made, other than to reflect the role of consumer representatives, and to acknowledge that AFCA's systemic issues function is being reviewed following Treasury's recommendations in the 2021 independent review of AFCA.
Interaction with other legal obligations	The guide described interaction with AFS licensing obligations.	The guidance described the interaction with AFS and credit licensing obligations, the new IDR requirements under RG 271 , the design and distribution obligations, obligations of superannuation trustees and fund managers of managed investment schemes, and the new notify, investigate and remediate obligations.	No changes.
ASIC's role	The guide described ASIC's role as supervisory in nature.	Getting a remediation right is the responsibility of a licensee. ASIC will generally not be actively involved in remediations, but we may consider using a number of regulatory actions/tools (including enforcement action) if we identify a licensee has not remediated or not conducted a remediation in accordance with the guide.	Minimal changes made.
Examples	The guide included nine examples on financial advice.	The guidance included 25 product-neutral and product-specific examples.	We have added six new examples (Examples 2, 6, 13, 14, 17 and 19) and removed three examples (Examples 20, 24 and 25 in draft RG 000). There are now 28 examples in total.