



ASIC

Australian Securities & Investments Commission

REGULATORY GUIDE 256

Client review and remediation conducted by advice licensees

September 2016

About this guide

This guide sets out our guidance on review and remediation conducted by Australian financial services (AFS) licensees who provide personal advice to retail clients (advice licensees).

The guidance should also be applied to review and remediation that is not related to personal advice to the extent relevant.

Note: This guide applies to remediations initiated before 27 September 2022. Remediations initiated on or after 27 September 2022 must be conducted in a manner consistent with [Regulatory Guide 277 Consumer remediation](#) (RG 277).

About ASIC regulatory documents

In administering legislation ASIC issues the following types of regulatory documents.

Consultation papers: seek feedback from stakeholders on matters ASIC is considering, such as proposed relief or proposed regulatory guidance.

Regulatory guides: give guidance to regulated entities by:

- explaining when and how ASIC will exercise specific powers under legislation (primarily the Corporations Act)
- explaining how ASIC interprets the law
- describing the principles underlying ASIC's approach
- giving practical guidance (e.g. describing the steps of a process such as applying for a licence or giving practical examples of how regulated entities may decide to meet their obligations).

Information sheets: provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

Reports: describe ASIC compliance or relief activity or the results of a research project.

Document history

This guide was issued in September 2016 and is based on legislation and regulations as at the date of issue. On 27 September 2022 we added the note on the front page.

Disclaimer

This guide does not constitute legal advice. We encourage you to seek your own professional advice to find out how the Corporations Act and other applicable laws apply to you, as it is your responsibility to determine your obligations.

Examples in this guide are purely for illustration; they are not exhaustive and are not intended to impose or imply particular rules or requirements.

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A Overview

Key points

This regulatory guide sets out our guidance on client review and remediation (review and remediation) that:

- is conducted by Australian financial services (AFS) licensees who provide personal advice to retail clients (advice licensees); and
- seeks to remediate clients who have suffered loss or detriment as a result of misconduct or other compliance failure by an advice licensee (or its representatives) in giving personal advice.

Review and remediation, which may be large or small scale, generally aims to place affected clients in the position they would have been in if the misconduct or other compliance failure had not occurred: see RG 256.5–RG 256.6 and RG 256.13–RG 256.20.

The principles in this guide should also be applied to review and remediation that is not related to personal advice, to the extent relevant, although we recognise that:

- implementation may differ between the various types of review and remediation; and
- licensees may need to consider specific legislative requirements or other guidance that applies: see RG 256.7–RG 256.11.

Key considerations for advice licensees include:

- when to initiate the process of review and remediation (see Section B);
- the scope of review and remediation (see Section C);
- designing and implementing a comprehensive and effective process for review and remediation (see Section D);
- communicating effectively with clients (see Section E); and
- ensuring access to external review (see Section F).

RG 256.1 Poor conduct by advice licensees undermines trust and confidence in the financial system and may result in significant investor and consumer losses. This can have a detrimental effect on investors and consumers, and could put retirement savings at risk.

RG 256.2 It is therefore important that advice licensees proactively address systemic issues caused by misconduct or other compliance failures, and have robust review and remediation processes in place to protect and compensate their clients for loss or detriment suffered as a result. Critically, this means allocating adequate resources to the review and remediation to ensure it is conducted in an efficient and timely way.

Who does this guide apply to?

RG 256.3 This regulatory guide applies to client review and remediation conducted by AFS licensees who provide personal advice to retail clients (advice licensees).

Note 1: We use the term ‘clients’ in this guide to mean ‘retail clients’.

Note 2: ‘Personal advice’ is defined in s766B(3) of the Corporations Act: see also ‘Key terms’.

Note 3: Our guidance applies to personal advice about both Tier 1 and Tier 2 products:

- ‘Tier 1’ products are all financial products that are not Tier 2 products; and
- ‘Tier 2’ products are general insurance products, except for personal sickness and accident (as defined in reg 7.1.14 of the Corporations Regulations 2001); consumer credit insurance (as defined in reg 7.1.15); basic deposit products; non-cash payment products and First Home Saver Account deposit accounts.

RG 256.4 Advice licensees seek, through review and remediation, to address systemic issues where these issues are a result of the decisions, omissions or behaviour of the licensee (or its representatives) in relation to the provision of personal advice to clients.

Small-scale review and remediation and small licensees

RG 256.5 Our guidance is intended to apply to all advice licensees described in RG 256.3, regardless of the licensee’s size or the size of the review and remediation.

RG 256.6 The principles in this guide can be scaled up or down, depending on the size of the review and remediation, and may be adapted to suit advice licensees of different sizes and with different internal structures.

Review and remediation not related to personal advice

RG 256.7 Not all review and remediation is conducted in relation to personal advice. Other examples include processes to remediate clients for:

- (a) misconduct or other compliance failure by a licensee (or its representatives) other than advice licensees (e.g. other AFS licensees, credit licensees or financial product providers); or
- (b) misconduct or other compliance failure by advice licensees that does not relate to personal advice (e.g. misconduct or other compliance failure relating to general advice).

RG 256.8 Review and remediation may be conducted by persons other than advice licensees, such as superannuation trustees, credit providers or financial product providers. Although our guidance is intended to

apply to advice licensees providing personal advice, many of the principles in this guide are applicable to review and remediation that is not related to personal advice.

- RG 256.9 All review and remediation generally follows the same steps—that is:
- (a) determining who are the potentially affected clients;
 - (b) designing and implementing the process;
 - (c) communicating with clients; and
 - (d) providing for external review if the client is not satisfied with the operation of the review and remediation or the result.
- RG 256.10 Persons conducting review and remediation that is not related to personal advice should apply the principles in this guide to the extent relevant.
- RG 256.11 We recognise, however, that:
- (a) implementation of the principles may differ between the various types of review and remediation; and
 - (b) licensees may need to consider any specific legislative requirements that apply, or other guidance on client review and remediation (e.g. the good practice guidance on managing errors and compensation in Regulatory Guide 94 *Unit pricing: Guide to good practice* (RG 94) which applies to product providers).

When will this guide apply?

- RG 256.12 Our guidance applies to client review and remediation initiated on or after the date of issue of this guide.

Note: In this guide, the process of review and remediation is ‘initiated’ when an advice licensee makes the decision to address a systemic issue through review and remediation. The next steps will generally be to determine the scope of the review and remediation and then to design the framework.

What is client review and remediation?

- RG 256.13 All AFS licensees have an obligation to ensure that their financial services are provided efficiently, honestly and fairly: s912A(1)(a) of the *Corporations Act 2001* (Corporations Act).
- RG 256.14 Complying with this obligation includes AFS licensees taking responsibility for the consequences of their actions if things go wrong when financial services are provided and clients suffer loss or detriment. This includes remediating clients who have suffered loss or

detriment as a result of misconduct or other compliance failure by the licensee or its current or former representatives.

Note: This is consistent with the Federal Court of Australia's (Federal Court) view on the meaning of 'efficiently, honestly and fairly' for the purposes of s912A(1)(a) in *Australian Securities and Investments Commission v Camelot Derivatives Pty Limited (In Liquidation)* [2012] FCA 414.

- RG 256.15 Generally, the review and remediation process is a set of activities set up within a business to review the services provided to clients—where a systemic issue caused by misconduct or other compliance failure in relation to those services has been identified—and to remediate clients who have suffered loss or detriment as a result (whether monetary or non-monetary).
- RG 256.16 Review and remediation can be a separately resourced large-scale exercise, where a business sets up a separate project team and recruits additional staff; or it can be a small-scale exercise operated by existing staff and using a business's existing resources.
- RG 256.17 What is an appropriate response to a systemic issue will depend on a range of factors. For advice licensees, this includes the number of clients affected, the number of advisers involved, and the nature of the misconduct or other compliance failure.
- RG 256.18 Regardless of the approach adopted, advice licensees should initiate the process of review and remediation as soon as they become aware of a systemic issue, rather than wait for a client to make a complaint or a claim against them.

Example 1: Review and remediation using existing resources

Scenario

Advice licensee ABC Advisers (ABC) discovered, after receiving a complaint from one of its clients, that one of its advisers had been giving inappropriate advice to clients to acquire a margin lending facility.

After determining that the adviser had given inappropriate advice to five clients, ABC's compliance officer reviewed the advice provided to the five affected clients, and made appropriate compensation offers.

Commentary

In this example, it was appropriate for the advice licensee to review the advice and remediate clients using its existing resources, given that only one adviser was involved and a small number of clients were affected.

- RG 256.19 The aim of review and remediation is generally to place affected clients in the position they would have been in if the misconduct or other compliance failure had not occurred: see RG 256.128.

- RG 256.20 Remediation of clients may be monetary (e.g. compensation), non-monetary (e.g. providing disclosure not previously given or moving clients into more appropriate products), or a combination of both.

What is a systemic issue?

- RG 256.21 In this guide, we define a ‘systemic issue’ 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 an advice licensee or its current or former representatives. The impact may be a monetary loss or non-monetary detriment.

- RG 256.22 Systemic issues may be identified, for example:

- (a) by an advice licensee’s external dispute resolution (EDR) scheme or ASIC;
- (b) by analysing trends in complaints made to an advice licensee or to the licensee’s EDR scheme; or
- (c) from the results of an advice licensee’s regular compliance checks or audits of a particular adviser or advisers.

- RG 256.23 A systemic issue, however identified, could include, for example:

- (a) misconduct or other compliance failure by one adviser that may affect several clients;
- (b) misconduct or other compliance failure by several advisers in relation to the process of giving advice (e.g. disclosure or record keeping);
- (c) a problem with several advisers in how they give advice about a particular class of products; or
- (d) an advice licensee not having sufficient processes in place to identify and address misconduct or other compliance failure in an efficient and timely way.

- RG 256.24 The types of systemic issues covered by this guide are those where clients may have suffered loss or detriment as a result of the decisions, omissions or behaviour of an advice licensee, or an individual adviser or advisers (as representatives of the licensee), in relation to the provision of personal advice to clients.

- RG 256.25 These systemic issues may include, for example:

- (a) failure to provide advice that is in the best interests of the client (or providing advice without a reasonable basis for the advice, if advice was given before the Future of Financial Advice reforms);
- (b) failure to provide appropriate advice;
- (c) failure to give priority to the interests of the client;

- (d) failure to adequately disclose the relevant risks to a client;
- (e) fraud (e.g. signature forgery);
- (f) failure to provide key disclosure documents (e.g. Financial Services Guide, Statement of Advice, fee disclosure statement or renewal notice), or providing disclosure documents that fail to comply with the requirements under the law;
- (g) providing false or misleading statements;
- (h) failure to act on a client's instructions; or
- (i) conducting inappropriate or unauthorised transactions on a client's account.

Example 2: Conducting unauthorised trades on a client's account

Scenario

Advice licensee Green and Brown Advisory Services (Green and Brown) provides financial services to retail clients. Its AFS licence does not authorise it to provide managed discretionary account (MDA) services to its clients.

An adviser at Green and Brown provided advice to a number of clients to invest in a diversified portfolio of managed investments and listed securities.

Some months later, the adviser identified a further listed security, Black and Blue Ltd, that they thought would be appropriate for the portfolio of these clients. Without consulting with or receiving any instructions from their clients, the adviser proceeded to buy shares in Black and Blue Ltd for each of their portfolios.

Shortly afterwards, the value of the unauthorised share purchase dropped significantly due to a corporate scandal affecting Black and Blue Ltd.

One of the affected clients noticed the trades and queried them with Green and Brown, who subsequently conducted an internal investigation into the trading.

On confirming that none of the clients had authorised the trades, Green and Brown commenced a review to help clients to dispose of the unauthorised assets. Green and Brown also provided financial remediation to the clients to compensate them for their losses.

Commentary

In this example, it was appropriate for the advice licensee to initiate a review and remediation process to remediate clients for the unauthorised trades on their accounts.

- RG 256.26 While consideration of the nature of complaints can assist advice licensees in determining whether review and remediation is appropriate, review and remediation is not solely driven by complaints but requires licensees to seek out all clients that may have suffered loss or detriment as a result of the systemic issue identified.

Our policy objectives

- RG 256.27 It is important that review and remediation is conducted in a way that is comprehensive, timely, fair and transparent. Consumers should have confidence that any review and remediation in which they are involved is conducted in this way, regardless of the size of the review and remediation or the size of the advice licensee.
- RG 256.28 More specifically, our guidance aims to:
- (a) improve outcomes for consumers;
 - (b) provide a streamlined and well-understood review and remediation framework for advice licensees; and
 - (c) set out the key principles against which we will assess whether the review and remediation process is operating efficiently, honestly and fairly, in line with the general AFS licensee obligations.

Key considerations for review and remediation

- RG 256.29 There are a range of principles that you should consider when initiating, designing and implementing the review and remediation process. The key principles are set out below.

When review and remediation is appropriate

- RG 256.30 You should consider a range of factors when deciding whether to initiate the process of review and remediation, including the nature of the misconduct or other compliance failure, who to engage with as part of the process, and how such a process will interact with other AFS licensee obligations.
- RG 256.31 Review and remediation is more likely to be appropriate where a systemic issue has occurred that may have caused loss or detriment to the affected clients. Not all systemic issues will require review and remediation: see Section B.

Scope of review and remediation

- RG 256.32 The scope of review and remediation will often depend on the type of misconduct or other compliance failure, the size and structure of your business, and the size of your client base. There is no one-size-fits-all approach to determining the appropriate scope of review and remediation.
- RG 256.33 The scope of review and remediation should be determined in a way that ensures it covers the right advisers, the right clients and the right timeframe: see Section C.

Design and implementation of review and remediation

- RG 256.34 The process of review and remediation should be comprehensive, timely, fair, and transparent. There should be clearly defined principles to guide the process and an appropriate governance structure (including oversight by a senior person). The process should also be straightforward for the client.
- RG 256.35 In some situations, it may also be appropriate to have an independent expert provide assurance about the governance and operation of the review and remediation.
- RG 256.36 Public reporting provides transparency of review and remediation and may be needed for a larger-scale exercise affecting many clients, or a review and remediation following public reports of client losses, and alleged misconduct or other compliance failure : see Section D.

Communicating with clients

- RG 256.37 Effective, timely and targeted communication is key to ensuring that clients understand the review and remediation and how it will affect them.
- RG 256.38 You should proactively contact potentially affected clients, and consider the best way to do this in light of your client base and appropriate methods of communication: see Section E.

External review of decisions

- RG 256.39 It is important that clients have access to your EDR scheme if they are not satisfied with the decision you have made in relation to whether misconduct or other compliance failure has occurred and whether remediation is appropriate, and about the nature of remediation offered.

- RG 256.40 You should consider engaging with your EDR scheme when establishing a review and remediation process so that relevant documentation, timeframes and other arrangements are agreed upfront between you and your scheme. This will facilitate the streamlined consideration, review and decision by the EDR scheme when necessary.
- RG 256.41 Where appropriate, you should offer assistance to clients who wish to seek their own professional advice to assist their response to the review and remediation conducted: see Section F.

Our role

- RG 256.42 ASIC often becomes aware of an advice licensee's systemic issues through breach reports, proactive surveillance, reports of misconduct from the public, and reports of systemic issues from EDR schemes.
- RG 256.43 There may be times when we will encourage you to initiate a review of client advice and the remediation of clients, or we may require this as part of our enforcement activities. In these instances, and where you voluntarily commence a process of review and remediation that ASIC is aware of, our involvement may include:
- (a) general monitoring of the review and remediation process;
 - (b) reviewing and commenting on the design and implementation of the review and remediation;
 - (c) requesting regular reporting on the progress of the review and remediation, and providing feedback on those reports; or
 - (d) a combination of the above.
- Note: This is not an exhaustive list.
- RG 256.44 The extent of our involvement will depend on a range of factors—for example:
- (a) the size of the review and remediation;
 - (b) your past conduct and conduct in response to the systemic issue;
 - (c) the nature of the misconduct or other compliance failure and the impact on clients;
 - (d) your experience in past review and remediation processes, or similar activities; and
 - (e) ASIC's available resources.

B When review and remediation is appropriate

Key points

Review and remediation is generally appropriate where a systemic issue has been identified that may have caused loss or detriment to clients: see RG 256.45–RG 256.48.

There are interactions between the review and remediation process and your dispute resolution obligations: see RG 256.49–RG 256.50.

Internal dispute resolution (IDR) obligations (including timeframes) will still apply to complaints from clients that fall within the scope of the review and remediation: see RG 256.51–RG 256.55.

There are a range of AFS licensing obligations that will interact with the review and remediation process: see RG 256.56–RG 256.73.

When to initiate review and remediation

- RG 256.45 Generally, review and remediation of the type covered in this guide will be appropriate if:
- (a) a systemic issue has been identified that is a result of the decisions, omissions or behaviour of an advice licensee, or an individual adviser or advisers (as representatives of the licensee), in relation to the provision of personal advice to retail clients; and
 - (b) the affected clients may have suffered a loss or detriment (whether monetary or non-monetary): see RG 256.3–RG 256.11.
- RG 256.46 Review and remediation is not appropriate in all circumstances. The aim of review and remediation is for the advice licensee to proactively seek out clients who have potentially been affected by the misconduct or other compliance failure, and to remediate those clients for any loss or detriment suffered.
- RG 256.47 There may be times when a systemic issue only affects a small number of clients and these clients have all made a complaint. In these circumstances, review and remediation would be unnecessary because all affected clients would be aware that they may have suffered loss or detriment as a result of the misconduct or other compliance failure, and would receive consideration of their complaint and be remediated through your IDR processes (and EDR if required).
- RG 256.48 Review and remediation may also not be appropriate where:

- (a) the loss or detriment suffered is a result of a product failure and is not a result of your decisions, omissions or behaviour, or that of your representatives; or
- (b) you are subject to a current systemic issue investigation by your EDR scheme seeking remediation for affected clients where this investigation covers the same or similar issues.

Note: This is not an exhaustive list.

Interaction with IDR and EDR obligations

RG 256.49 Interactions between review and remediation and your IDR processes and/or EDR scheme include the following:

- (a) Systemic issues are often identified through trends in IDR complaints or trends in disputes handled by your EDR scheme.
- (b) Review and remediation will, in many cases, use your IDR resources (e.g. human resources, procedures for reviewing advice and calculating loss, and record-keeping systems).
- (c) The external review of decisions from review and remediation will generally be carried out by your EDR scheme.

RG 256.50 While there are interactions between your dispute resolution obligations and review and remediation, each also has a distinct purpose:

- (a) *IDR*: Complaints initiated by your clients are reviewed as part of your IDR processes (see RG 256.51–RG 256.55).
- (b) *Review and remediation*: This process reviews the advice of a selection of clients that you determine may have been affected by a systemic issue within your business (i.e. they are not ‘complaints driven’).
- (c) *EDR*: Your EDR scheme reviews complaints by your clients if they are not satisfied with your decision following IDR, or following review and remediation. Your EDR scheme also identifies systemic issues and serious misconduct, and will seek action from you in response.

When do the IDR obligations apply?

RG 256.51 When a review and remediation process is being conducted, the IDR obligations will not apply to many of the clients within the scope of the review and remediation. This is because many of the clients that have their advice reviewed as part of the review and remediation will have

been selected by you and will not have made a complaint about the potential misconduct or other compliance failure.

- RG 256.52 However, where a client has made a complaint to you, and that complaint is within the scope of the review and remediation, the IDR obligations (including the timeframes) will apply to that matter. A final response must still be provided to these clients within 45 days. We understand that, in some situations, it may be difficult to meet the 45-day timeframe. In these cases, you must send a breach report to ASIC.

Note 1: [Class Order \[CO 09/339\]](#) *Internal dispute resolution procedures* requires AFS licensees, as part of their IDR procedures, to adopt specific sections of Australian Standard 10002-2006 *Customer satisfaction—Guidelines for complaints handling in organizations* (AS ISO 10002-2006). [Regulatory Guide 165](#) *Licensing: Internal and external dispute resolution* (RG 165) gives guidance on the obligations of AFS licensees in operating IDR processes.

Note 2: Breach reports should be addressed to: 'Misconduct and Breach Reporting, Australian Securities and Investments Commission'. The written report should be emailed to ASIC at fsr.breach.reporting@asic.gov.au.

- RG 256.53 If a final response is not provided within the 45-day timeframe, the client must be informed of their EDR rights. Including a complaint in your review and remediation process does not exempt you from your IDR obligations.

Note: These complaints may need to be prioritised over the review of advice of other clients: see RG 256.125.

- RG 256.54 If a client makes a complaint about your decision—following a review of their advice as part of the review and remediation process—the client should be directed to your EDR scheme and not to your IDR processes. In most cases, because you have already reviewed the advice given to the client, there would be little value in re-examining this advice. Doing so is likely to add an unnecessary layer of complexity and result in delays for the client.
- RG 256.55 Complaints outside the scope of review and remediation will continue to be dealt with through your usual IDR processes.

Interaction with AFS licensing obligations

- RG 256.56 You must consider a range of AFS licensing obligations that will interact with review and remediation.

Operating efficiently, honestly and fairly

- RG 256.57 As noted in RG 256.13, all AFS licensees have an obligation to provide their financial services efficiently, honestly and fairly: s912A(1)(a) of the Corporations Act.
- RG 256.58 Complying with this obligation includes taking responsibility for the consequences of your actions if things go wrong when providing financial services and clients suffer loss or detriment. This includes remediating clients who have suffered loss or detriment as a result of misconduct or other compliance failure by you or your current or former representatives.
- Note: See [Regulatory Guide 104](#) *Licensing: Meeting the general obligations* (RG 104) for further information.
- RG 256.59 You should give priority to any review and remediation, and not unnecessarily delay the process. You must still ensure that you comply with your ongoing obligations while developing and conducting the process of review and remediation.

Adequate resources

- RG 256.60 AFS licensees—other than bodies regulated by the Australian Prudential Regulation Authority (APRA)—are required to have adequate resources to provide financial services covered by the AFS licence: s912A(1)(d) of the Corporations Act.
- RG 256.61 If you do not have adequate resources to conduct the review and remediation process (when appropriate), and to remediate clients, you may be in breach of this obligation.
- RG 256.62 We are likely to look more closely at you if the timeframe for remediating clients is lengthy, taking into account the nature of the misconduct or other compliance failure and the number of affected clients. Unnecessary delays may indicate that you do not have adequate resources to conduct the review and remediation or are not prioritising the remediation of clients and acting efficiently, honestly and fairly.

Monitoring and supervision

- RG 256.63 Under the Corporations Act, an AFS licensee is required to:
- (a) take reasonable steps to ensure that its representatives comply with the financial services laws (s912A(1)(ca)); and
 - (b) ensure its representatives are adequately trained, and competent, to provide the financial services authorised by the licensee (s912A(1)(f)).

RG 256.64 Where a systemic issue is identified in relation to an existing representative, you have an obligation to take steps to rectify any deficiencies in the representative's behaviour.

Note: See RG 104 for further information.

Breach reporting

RG 256.65 AFS licensees must notify ASIC in writing of any 'significant' breach (or likely breach) of their obligations under s912A (including licence conditions), s912B (compensation arrangements) or financial services laws, as soon as practicable, and in any event within 10 business days of becoming aware of the breach (or likely breach).

RG 256.66 You must consider whether the breach (or likely breach) is significant and, if so, provide timely notification to ASIC. Whether a breach is significant will depend on individual circumstances.

RG 256.67 In many cases, a systemic issue that triggers the initiation of the review and remediation process will also be a significant breach for the purposes of the breach reporting obligations. You must make this assessment on a case-by-case basis.

Note: See [Regulatory Guide 78](#) *Breach reporting by AFS licensees* (RG 78) for further information.

Compensation arrangements

RG 256.68 Under s912B of the Corporations Act, AFS licensees must have arrangements for compensating retail clients for loss suffered as a result of a breach by the licensee or its representatives of their obligations in Ch 7 of the Corporations Act.

RG 256.69 These arrangements must:

- (a) satisfy the requirements in the Corporations Regulations 2001 (Corporations Regulations), which are that AFS licensees must obtain professional indemnity (PI) insurance cover that is adequate, considering the nature of the licensee's business and its potential liability for compensation claims (reg 7.6.02AAA); or
- (b) be approved by ASIC as alternative arrangements.

RG 256.70 [Regulatory Guide 126](#) *Compensation and insurance arrangements for AFS licensees* (RG 126) sets out what ASIC regards as the minimum requirements for adequate PI insurance. RG 126 also provides information about when we will approve alternative arrangements.

- RG 256.71 The Corporations Regulations also provide exemptions from the requirements for some AFS licensees that are regulated by APRA or are related to an entity regulated by APRA: reg 7.06.02AAA(3).
- RG 256.72 Whether remediating clients in a single instance of client loss or as part of a broader client remediation process, advice licensees will often consider how their compensation arrangements can assist in providing remediation to clients.
- RG 256.73 You should engage with your PI insurer as early as possible, and throughout the review and remediation process. You should also consider discussing with your PI insurer, as early as possible in the review and remediation process, whether they would prefer to review any proposed communications with clients. This is to minimise the risk that the rights of your PI insurer will be prejudiced by any action you take and that, as a consequence, you may void or reduce your cover.

C Determining the scope of review and remediation

Key points

Identifying the scope of review and remediation is an important step in ensuring that all potentially affected clients are captured by the review and remediation.

The process you undertake to determine which clients are affected will depend on the nature of the misconduct or other compliance failure, the size and structure of your business, and the size and nature of your client base. There is no one-size-fits-all approach to determining the group of affected clients.

You should determine the scope of review and remediation in a way that ensures it covers the right advisers, the right clients and the right timeframe: see RG 256.74–RG 256.88.

While you should seek out potentially affected clients, there may also be limited times when you need to invite additional clients to participate in the review and remediation (e.g. if there is doubt about whether all potentially affected clients have been included in the scope): see RG 256.89–RG 256.92.

The scope of review and remediation should be flexible enough to allow for revisions if more information becomes available: see RG 256.93–RG 256.97.

Identifying the scope of review and remediation

- RG 256.74 Identifying the scope of review and remediation is an important step in ensuring that all potentially affected clients are captured by the review and remediation. This includes determining the nature of the misconduct or other compliance failure that has occurred, and which clients may have been affected, and testing whether the scope is appropriate.

Note: A similar range of factors may be considered in determining whether there is a systemic issue that would warrant initiating a review and remediation process.

Type of misconduct or other compliance failure and relevant advisers

- RG 256.75 Generally, the first steps you will take to determine the potentially affected clients are to identify:
- (a) the nature of the misconduct or other compliance failure that may have caused loss or detriment; and

- (b) which advisers may have engaged in that misconduct or compliance failure.

RG 256.76 You should then assess which clients may have received advice from these advisers and may have suffered loss or detriment. The processes you undertake to determine the affected clients will depend on the nature of the misconduct or compliance failure, the size and structure of your business, and the size and nature of your client base. There is no one-size-fits-all approach in determining the group of clients affected, and you may need to adopt more than one approach.

RG 256.77 The scope of the misconduct or other compliance failure and the relevant advisers could be identified, for example, by:

- (a) assessing the nature of all complaints received through IDR;
- (b) reviewing an appropriate sample of advice provided;
- (c) examining any trends in the advice given to clients that may indicate advisers have given non-compliant advice (e.g. advice that generated higher-than-average commissions). One way this can be done is by analysing the data held about advisers, the advice they give and/or their client base;
- (d) considering what may have caused the misconduct or other compliance failure (e.g. inadequate or incorrect training material) and making further investigations into the advisers affected by the relevant factors;
- (e) assessing the results of regular compliance audits of advisers, and the action taken as a result of these audits; and
- (f) reviewing the results of any ASIC surveillance.

Type of clients

RG 256.78 You should consider which of your current and past clients received, or may have received, the type of advice that is of concern. Large multi-licence groups should also consider whether the scope of the review and remediation should include all advice licensees within the group.

RG 256.79 There may be times when a client who has previously had their advice reviewed through your IDR processes or by your EDR scheme should be included in the scope of review and remediation. This is likely to be the case if you become aware of information that may change the assessment of these matters in favour of the client.

RG 256.80 It is important that the scope of the review and remediation is not so narrow that it will exclude clients that may have been exposed to another type of misconduct or compliance failure by advisers. For example, if the review and remediation is targeted at reviewing

insurance advice given by an adviser, but you are aware that the adviser has in several instances provided non-compliant advice in other product areas, these other product areas should be included in the review and remediation. Both relate to misconduct or other compliance failure by the adviser in giving personal advice.

- RG 256.81 In some situations, it may be appropriate to include other types of clients (e.g. wholesale clients) within the scope of review and remediation. You should make this assessment on a case-by-case basis.
- RG 256.82 You are not required to include a client within the scope of review and remediation if:
- (a) the client advises you that they do not wish to have their advice reviewed; or
 - (b) you have invited a client who was outside the original scope of the review to participate in the review and remediation, and the client has not responded to the invitation after reasonable efforts have been made to contact the client.
- RG 256.83 You should, however, have processes in place to review the advice of clients who indicate at a later date—including after the review and remediation has been concluded—that they wish to participate.

How far back should advice be reviewed

- RG 256.84 It is important that the right timeframe is selected as part of the review and remediation. This involves you considering over what period of time the relevant misconduct or other compliance failure may have occurred and the length of time that clients have potentially been affected.
- RG 256.85 We will not generally expect you to review advice given to clients more than seven years before you became aware of the misconduct or other compliance failure. This is consistent with the requirement for AFS licensees to keep certain records in relation to the provision of financial product advice for at least seven years.
- RG 256.86 However, in certain circumstances—such as where the client has held the product about which advice was given for a long period of time—it may be appropriate to review records going back further than the minimum seven years. We expect that you will act in a way that gives priority to the interests of your clients when deciding how far back to review advice given to clients.

Note: Condition 57 of [Pro Forma 209 Australian financial services licence conditions](#) (PF 209) and [Class Order \[CO 14/923\] Record-keeping obligations for Australian financial services licensees when giving personal advice](#) requires AFS licensees to keep records relating to Financial Services Guides, Statements of Advice and compliance with the best interests and related obligations for at least seven years.

Testing the scope

- RG 256.87 When assessing the scope of the review and remediation, you should be satisfied to a reasonable level of certainty that the scope you have chosen properly captures all potentially affected clients. One way this could be achieved is by documenting and applying an appropriate methodology to test by sampling that the affected clients have been properly captured.
- RG 256.88 You should be able to clearly articulate and record how you determined which clients would be reviewed and potentially remediated.

Inviting clients to participate in review and remediation

- RG 256.89 You should identify the group of clients that fall within the scope of the review and remediation. These clients will have their advice reviewed to determine whether any misconduct or other compliance failure has caused loss or detriment and, if so, be remediated for that loss or detriment. This is regardless of whether these clients have made a complaint about the advice they received or whether they have expressed an interest in participating in the review and remediation.
- RG 256.90 In addition, there may be times when it is appropriate for you to invite other clients outside the original scope to participate in the review and remediation. This is likely to be the case, for example, when you cannot determine with a reasonable level of certainty that the scope of the review and remediation will capture all potentially affected clients.
- RG 256.91 In general, you cannot merely rely on inviting clients to express an interest in having their advice reviewed—that is, clients should generally not be expected to ‘opt in’ to review and remediation.
- RG 256.92 We expect you to take reasonable steps to determine the group of clients that may have suffered loss or detriment as a result of the potential misconduct or other compliance failure. Inviting clients to participate in the review and remediation should only be necessary in limited circumstances.

Example 3: Inviting clients outside the scope to participate**Scenario**

ABC Financial Services (ABC) is a large financial services group. It provides personal advice to retail clients under three AFS licences.

A review and remediation process was initiated to review the advice of 10 advisers across all licensees within the group.

ABC determined that a group of 800 clients should form part of the scope of the review and remediation. However, record keeping across the group was very poor, which meant it was difficult for ABC and the licensees to determine whether any of the remaining clients had received advice from the 10 advisers.

After reviewing all its available records to determine who had received advice from the 10 advisers, ABC decided to write to all of the remaining clients to provide them with an opportunity to advise ABC whether they had received advice from any of the 10 advisers, and to request having their advice reviewed as part of the review and remediation.

The 800 clients originally chosen received a different letter, notifying them that they already formed part of the review and remediation, rather than inviting them to participate.

Commentary

In this example, it was appropriate for the advice licensee to invite the remaining clients to participate in the review and remediation.

Revising the scope

- RG 256.93 Further misconduct or compliance failure may often be identified during the review and remediation that was not originally anticipated when the scope was determined. There are a range of instances in which the scope of the review and remediation may need to be revised (e.g. non-compliant advice in product areas not originally anticipated or advisers not previously identified).
- RG 256.94 To ensure the process is fair for all potentially affected clients, the scope of the review and remediation should be flexible enough to allow for revisions if more information becomes available about further misconduct or compliance failure by an adviser, or about other advisers that may have engaged in the misconduct or compliance failure.
- RG 256.95 When this occurs, you should in most cases revise the scope of the review and remediation to include any additional clients that may have suffered loss or detriment as a result of the further misconduct or other compliance failure.

- RG 256.96 You should also consider whether closed matters under the review and remediation need to be re-examined to determine whether clients in the closed matters also received advice that falls within the revised scope of the review and remediation.
- RG 256.97 You should always adopt the approach of being inclusive rather than exclusive in determining the scope of the review and remediation.

Example 4: Revising the scope of review and remediation

Scenario

XYZ Advisers (XYZ) is an AFS licensee that commenced a review of client advice and the remediation of clients after becoming aware that three of its advisers had regularly been giving inappropriate insurance advice.

After reviewing a sample of advice by the three advisers, XYZ felt certain that the deficiencies in the advice related only to insurance advice.

After commencing a review of all clients that received insurance advice by the three advisers in the past four years (the length of the advisers' employment), it became apparent that one of the advisers was also giving superannuation advice that was inappropriate. This was discovered when reviewing advice that combined both insurance and superannuation advice. This problem was not evident with the other two advisers.

XYZ reviewed a sample of the adviser's superannuation advice over the past four years and found further instances of inappropriate superannuation advice. As a result, XYZ decided to expand the scope of the review and remediation to include superannuation advice given by that adviser.

Commentary

In this example, it was appropriate for the advice licensee to revise the scope of the review and remediation.

D Design and implementation

Key points

A well-designed review and remediation process will be easier for clients to understand and have confidence in.

The process of review and remediation should be comprehensive, timely, fair and transparent. There should be clearly defined principles to guide the process and an appropriate governance structure, including some level of senior oversight (and also independent expert assurance where appropriate): see RG 256.99–RG 256.160.

There should be proper record keeping of the work that is done and the conclusions reached: see RG 256.160–RG 256.163.

Advice licensees should consider whether it may be in the public interest to report publicly on the review and remediation exercise, and provide updates on progress: see RG 256.164–RG 256.167.

- RG 256.98 The processes that each advice licensee establishes for review and remediation will be different. However, each licensee should consider similar factors when developing these processes, including:
- (a) the resources required;
 - (b) who will review the advice;
 - (c) how to review the advice;
 - (d) what governance arrangements are appropriate;
 - (e) how to keep records; and
 - (f) whether to report publicly on the review and remediation exercise.

Designing a review and remediation process

RG 256.99 A well-designed review and remediation process avoids unnecessary complexity. If clients can understand the process easily, they are more likely to have confidence that it will produce consistent, timely and fair outcomes.

RG 256.100 All review and remediation processes should:

- (a) adopt a consumer-focused approach;

Note: This includes advice licensees being helpful; communicating in plain English; showing commitment to remediating any loss or detriment suffered by clients; minimising negative impacts on clients; being objective, unbiased and equitable in their dealings with clients; and giving clients the benefit of the doubt where there is missing information.

- (b) be free of charge to clients;
- (c) have commitment from senior management; and
- (d) be operated efficiently, honestly and fairly.

Note: These principles are consistent with the principles set out in RG 165. You may also wish to consider the principles in RG 165 when designing and operating a review and remediation process.

- RG 256.101 You should consider engaging with your EDR scheme when designing a review and remediation process to determine whether certain processes should be put in place to better facilitate clients making a complaint to the EDR scheme about the review and remediation.
- RG 256.102 Engagement with ASIC about the review and remediation may be required during the design phase and throughout the review and remediation: see RG 256.42–RG 256.44.

Continual improvement

- RG 256.103 Feedback is an important part of improving practices in all businesses. Continual improvement is also a key aspect of IDR and should similarly apply to review and remediation.
- RG 256.104 You should build into the design of the review and remediation the ability to assess your own performance during the review and remediation process. This will enable you to determine whether improvements can be made to the process, or to your ongoing IDR processes and general risk assessment procedures.

Developing the processes for review and remediation

- RG 256.105 The appropriate processes that will ensure your review and remediation is being operated fairly, honestly and efficiently will depend on the scope of the review and remediation.
- RG 256.106 How you structure your review and remediation processes, and who in your business will be involved, are generally decisions for you to make as the advice licensee, taking into account the principles set out in this guide. You could establish a new team to operate the review and remediation process, or operate the process from within existing teams and using existing resources.
- RG 256.107 ASIC may at times give you feedback or directions on the appropriateness of how you have structured your review and remediation processes in light of our guidance.

Key principles when developing the processes for review and remediation

When developing the processes for review and remediation, you should consider the following principles:

- The process of review and remediation should be comprehensive, timely, fair and transparent.
- Adequate resources should be allocated to the review and remediation to ensure it is conducted in an efficient and timely way.
- There should be clearly defined principles to guide the process. Factors considered in reviewing advice and any calculation of loss or detriment should generally be consistent with the principles of the ASIC-approved EDR scheme of which you are a member.
- Reviewers should adopt a consumer-focused approach, be open to feedback and show commitment to understanding any concerns about the advice a client has received.
- Reviewers and managers should be competent in reviewing advice.
- Conflicts of interest should be avoided.
- There should be appropriate governance processes in place, including some level of oversight by a senior person (e.g. to review the design and implementation of the review and remediation). In some cases, this may involve engaging an independent expert to provide assurance about the governance and operation of the review and remediation process.
- Adequate records should be maintained throughout the review and remediation process.
- It may be appropriate, in some circumstances, to report publicly on the review and remediation and its progress.

Allocating adequate resources

RG 256.108 Adequate resources should be allocated to review and remediation to ensure the process is conducted in an efficient and timely way. If you do not have adequate resources allocated to review and remediation, you may be in breach of your AFS licensing obligations: see RG 256.60–RG 256.62.

RG 256.109 Adequate resources could include, but are not limited to:

- (a) appropriately qualified advice reviewers;
- (b) training and support for less experienced advice reviewers;
- (c) communications experts to assist with drafting communications with clients;
- (d) appropriate record-keeping systems;
- (e) technological resources; and
- (f) financial resources to operate the review and remediation process and remediate clients for any loss or detriment suffered.

- RG 256.110 Senior management should assess the need for resources and provide them promptly. The selection, support and training of personnel involved in review and remediation are particularly important.
- RG 256.111 What are adequate resources will depend on the size of the review and remediation. For example, a larger-scale exercise operated by a multi-licensee group would need to have more resources allocated to it than a small-scale exercise operated by a single advice licensee.
- RG 256.112 You may outsource all or parts of the review and remediation process—however, you are ultimately responsible for its operation.

Reviewing advice

- RG 256.113 Clear principles and guidance should be established for reviewing advice to ensure that advice is reviewed consistently and fairly. However, the process should still be flexible enough to make changes where lessons are learned throughout the process.
- RG 256.114 Consistency across advice reviewers and throughout the review and remediation process is essential. Each piece of advice should be reviewed in a consistent and fair manner.
- RG 256.115 The processes for reviewing advice should not be unnecessarily complex. This will assist reviewers in ensuring that advice is reviewed consistently and fairly. The review process should also be straightforward for clients.
- RG 256.116 Templates are a useful way to guide advice reviewers (particularly those who are less experienced) and assist in record keeping. However, the review process should not be a ‘tick-a-box’ exercise.
- RG 256.117 We expect advice reviewers, in each case, to assess all the information, obtain any missing information and use their judgement in forming a view on whether misconduct or other compliance failure has occurred, and whether clients have suffered loss or detriment as a result.
- RG 256.118 Advice should be reviewed in a timely way and as quickly as possible without compromising the quality of the review. What is a reasonable timeframe will depend on the nature of the matter.
- RG 256.119 We recognise that, for larger, more complex matters, a longer timeframe may be required to review advice and make a decision about whether to remediate an affected client. However, for smaller, less complex matters, we would expect advice licensees to make a decision about whether to remediate an affected client in a much shorter timeframe using the IDR timeframes as a guide, where appropriate: see Example 5 and Example 6.

Example 5: Remediating clients within a reasonable timeframe**Scenario**

XYZ Financial Services (XYZ) is a large financial services group. XYZ detected that ongoing advice service fees were being paid by clients over a five-year period for a service that was not provided to them. XYZ submitted a breach report to ASIC.

XYZ initiated a process of review and remediation to remediate the 9,000 clients who had been affected. XYZ examined client files going back five years.

After completing its investigations, XYZ contacted all affected clients to explain the situation. It ensured that dedicated resources were in place in each of its contact centres to accept calls from clients with any questions.

XYZ also fixed the processes that had failed, and ensured that appropriate checks and controls were in place to prevent similar issues from arising in the future.

XYZ commenced remediating affected clients six months after the issue was detected, and advised ASIC within one month of commencing remediation that they had communicated with and remediated all affected clients.

Commentary

In this example, the advice licensee remediated clients within a reasonable timeframe, given the nature of the misconduct or compliance failure and the number of clients affected.

Example 6: Remediating clients within a reasonable timeframe for a smaller, less complex matter**Scenario**

ABC Financial Services (ABC) discovered that one of its advisers had given inappropriate margin lending advice. ABC audited a sample of the adviser's files and found that the margin lending advice for two other clients did not meet the best interests duty and would require remediation.

ABC initiated a process of review and remediation to remediate all affected clients. ABC examined 25 client files going back seven years to determine whether margin lending advice had been provided, and which clients were affected.

ABC contacted all of the seven clients it determined had been affected to advise them that their advice would be reviewed and that it would let them know the result of the review at a later date. The communication also gave information on how clients could complain about the review and remediation process if they wished to do so.

ABC set out a timeframe for reporting to its board and made sufficient internal resources available during that time to review the advice.

ABC commenced remediating affected clients 45 days after the issue was detected, and advised ASIC around one month after commencing remediation that it had communicated with and remediated all affected clients.

Commentary

In this example, it was appropriate that the advice licensee remediated clients within a much shorter timeframe, given the nature of the misconduct and the number of clients affected.

- RG 256.120 At any time you communicate with clients, it will be helpful to give them an indication of the timeframe in which a decision will be made or compensation received: see RG 256.180.
- RG 256.121 You should act in the interests of your clients by ensuring that advice is reviewed in a timely manner. We are likely to look more closely at the way in which the review and remediation is being conducted if the timeframe for remediating clients is lengthy, taking into account the nature of the misconduct or other compliance failure and the number of affected clients.
- RG 256.122 Failure to make a decision about whether to remediate an affected client within a reasonable timeframe may indicate that you do not have adequate resources to conduct the review and remediation, or that you are not prioritising the remediation of clients and acting efficiently, honestly and fairly. This means you may be in breach of your AFS licensing obligations: see RG 256.60–RG 256.62.
- RG 256.123 There is also a risk that you may be subject to public scrutiny if you fail to make a decision about whether to remediate an affected client within a reasonable timeframe.
- RG 256.124 Advice should be reviewed according to the principles of the EDR scheme of which you are a member: see Table 1.

Table 1: How ASIC-approved EDR schemes review advice and determine appropriate remedies

Reviewing disputes	<p>EDR schemes are not bound by the rules of evidence that apply to court proceedings. This means that the schemes have some flexibility in how they handle a dispute, the evidence they will consider and the weight they place on that evidence.</p> <p>The Financial Ombudsman Service (FOS) and Credit and Investments Ombudsman (CIO) provide information on their websites setting out their rules or terms of reference, with relevant guidance on how each specifically deals with advice disputes.</p>
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Determining whether misconduct has occurred	<p>When determining whether misconduct has occurred, EDR schemes will take into account a range of factors (e.g. legal principles, industry codes, practice guides and good industry practice), and previous decisions they have made.</p> <p>EDR schemes consider all the evidence and assess the alleged misconduct based on the balance of probabilities.</p>
Determining an appropriate remedy	<p>EDR schemes can order a range of remedies for complainants. These include compensation for direct financial loss, or other indirect or non-financial loss, and ordering the financial services provider to undertake a specific course of action to remediate the client.</p> <p>EDR schemes may also award interest to be paid in addition to any monetary remediation ordered.</p>

- RG 256.125 You may need to prioritise the review of advice received by some clients over the advice received by others, including when you are aware that a client may be suffering hardship (e.g. an illness in the family) or has special circumstances (e.g. they are entering retirement).

Note: See [Regulatory Guide 209](#) *Credit licensing: Responsible lending conduct* (RG 209) for further information on determining whether a client is suffering hardship.

- RG 256.126 In operating the review and remediation, reviewers must be consumer focused by being flexible and helpful, and showing commitment to rectifying the potential misconduct or other compliance failure.
- RG 256.127 If your advice records are incomplete, you should seek additional information from the client. This can include any records the client has in writing or the client's recollection of events. You should only seek information from clients that is relevant, and the process should not be onerous for the client. Clients should be given the benefit of any doubt where records are incomplete or insufficient.

Determining remediation

- RG 256.128 Client remediation can be monetary or non-monetary, or a combination of both. The aim is generally to place the client in the position they would have been in if the misconduct or other compliance failure had not occurred. However, there are some rare circumstances when this may not be appropriate: see Example 7.

Example 7: Where it may not be appropriate to place clients in the position they would have been in if the misconduct or other compliance failure had not occurred

Scenario

ABC Bank (ABC) designed a large-scale remediation for clients who had paid fees for ongoing advice but did not receive the advice in return.

ABC's guiding principle was to return clients to the position they would have been in if the misconduct or other compliance failure had not occurred by:

- refunding the fees that were incorrectly deducted (refund amount); and
- adjusting the payment to reflect the interest or earnings that the refund amount would have earned if it had remained in a client's account or investment fund.

For most clients, this resulted in payment of the refund amount plus interest or investment earnings. However, for a group of clients, the value of the investment fund that the fees were deducted from had declined in value. A rigid application of ABC's compensation principles would have resulted in these clients receiving negative interest or earnings, so they would have been compensated with less than the fees they had paid.

After consulting with ASIC, ABC decided to set a minimum floor on the refunds and compensation paid, so that no client would have their compensation reduced by negative interest or earnings, and all affected clients would receive at least the value of the fees incorrectly deducted plus an interest component.

Commentary

In this example, it would not have been appropriate for the bank to follow the guiding principle of generally placing clients in the position they would have been in if the misconduct or other compliance failure had not occurred in determining the amount to be paid to affected clients.

RG 256.129 Compensation should generally be calculated in line with the principles of your relevant EDR scheme: see Table 1 above. You should consult with your EDR scheme to seek guidance on methods of calculating compensation where required.

RG 256.130 Compensation includes the payment of actual investment returns or interest that would have been earned by the client if the misconduct or other compliance failure had not occurred. However, if it is not possible or reasonably practicable to find out the actual investment returns or interest that the client would have received, you should use a fair and reasonable rate to calculate the foregone returns or interest.

- RG 256.131 The rate you use should be:
- (a) reasonably high—to ensure that clients will not be disadvantaged by an advice licensee’s inability to determine the actual investment returns or interest, and to remove any incentive for licensees to use a proxy to calculate foregone returns or interest instead of working out the actual investment returns or interest that a client would have received;
 - (b) relatively stable; and
 - (c) objectively set by an independent body.
- RG 256.132 We expect that, in most situations, you should be able to determine the actual investment returns or interest that a client would have received. The circumstances in which you would need to use a proxy to determine foregone returns or interest should therefore be limited.
- RG 256.133 We think that, in the exceptional circumstances where it is not possible or reasonably practicable to determine the actual investment returns or interest that a client would have received, it is appropriate to use the cash rate set by the Reserve Bank of Australia (RBA) plus 6%. We consider this rate (which is effectively the Federal Court’s post-judgement interest rate) is generally fair and reasonable because it is consistent with the principles set out in RG 256.131.

Example 8: Where it may be appropriate to calculate foregone returns or interest using a fair and reasonable rate such as the RBA cash rate plus 6%

Scenario

XYZ Bank (XYZ) initiated a process of client review and remediation to return fees to clients who had paid for an advice service that was not provided to them.

For most of the affected clients, XYZ repaid the fee, plus an amount for the interest or earnings the client would have received if the misconduct had not occurred.

However, for a very small group of affected clients, XYZ was unable to accurately determine the interest or earnings component. This was because the relevant data was held by external product issuers, and XYZ had failed to keep adequate client records and files to enable it to calculate the actual interest or earnings each of the affected clients would have received if the misconduct had not occurred.

To compensate this group of clients in a timely way, XYZ advised ASIC that it would apply interest at the RBA cash rate plus 6% to calculate the foregone interest or earnings to be paid to these clients.

In letters to clients, XYZ explained that it had applied this interest rate. The letters also explained that clients could contact XYZ if they thought they were owed a different compensation amount or, alternatively, clients could make a complaint through the bank’s EDR scheme.

Commentary

In this example, it was appropriate for the advice licensee to calculate the foregone interest or earnings by applying the RBA cash rate plus 6%, because XYZ was unable to accurately determine the interest or earnings that the clients would have earned.

- RG 256.134 Whichever rate you choose to use to calculate the foregone returns or interest, you should record your reasons for using this rate, taking into account the principles in RG 256.131.
- RG 256.135 Where the amount of compensation to be paid to a client is below \$20 and the client cannot be compensated without significant effort on your part—for example, because the client no longer holds an account with you—you may instead make a community service payment by paying the amount to an appropriate organisation (which will generally be not-for-profit) to fund activities that could be characterised as a community service. You may wish to consult ASIC on which organisations may be appropriate to pay this amount to. You must not profit from the misconduct or other compliance failure.

Note: See [Regulatory Guide 100](#) *Enforceable undertakings* (RG 100) for further information about community service obligations.

- RG 256.136 Non-monetary client remediation may be appropriate in some circumstances if clients have received non-compliant advice, or were subject to misconduct or other compliance failure, but did not suffer a monetary loss. Remediation may, for example, include recommending that a client transfers to a product that more appropriately reflects their risk profile, and assisting them to do so.

Example 9: Where non-monetary remediation of clients may be appropriate

Scenario

David is 42 years old, has no dependants and owns a house with a mortgage of \$550,000. He recently inherited \$100,000 following the death of a relative.

David sought advice from Harvey, an adviser at Green and Brown Advisory Services (Green and Brown), about what to do with the inheritance. David was asked to answer a series of questions which were designed to assist Harvey in determining David's personal circumstances, priorities and risk profile.

The results of the questionnaire showed that David had a conservative risk profile and his priorities included reducing debt and saving for retirement. Despite this, Harvey recommended that David invest all of his inheritance in a high-risk managed investment scheme.

When the firm reviewed the advice given to David, it was determined that David received advice that did not address his personal circumstances

and risk profile. However, given favourable market conditions, the managed investment scheme that was recommended to David had performed well over the past few years and had resulted in a gain that outweighed the benefit David would have received if he had been advised to pay the inheritance into his mortgage or superannuation fund.

David did not suffer a monetary loss. However, Green and Brown explained to David that he had not received appropriate advice and that an alternative strategy would be more appropriate for him, assuming his circumstances and risk profile had not changed.

David was offered a free review by one of Green and Brown's advisers, or a reimbursement of fees if David chose to see an adviser from another firm.

Commentary

In this example, non-monetary remediation was appropriate for the client.

Advice reviewers

- RG 256.137 Advice should be reviewed by people who meet the training and competence requirements to provide personal advice on the relevant type of advice in the relevant product area that is being reviewed (e.g. superannuation, insurance, investments).

Note: The level of training and competence required to provide personal advice is set out in [Regulatory Guide 146 Licensing: Training of financial product advisers](#) (RG 146). The Government is consulting on proposals to amend the minimum training standards for advisers.

Peer reviewing advice

- RG 256.138 After advice is reviewed initially by a person who forms a view on whether misconduct or other compliance failure has occurred that has caused loss or detriment to the client, this advice may then be 'peer reviewed' by another person who conducts the same assessment. Peer reviews can be conducted by persons who are internal to your business.
- RG 256.139 Peer reviews of advice are a useful way to ensure that advice is being reviewed consistently and fairly. There will be many instances in which peer reviewing will be appropriate. We do not expect that peer reviewing, or regular peer reviewing, will be required in all circumstances.
- RG 256.140 Whether peer reviewing is appropriate will depend on the nature of the misconduct or other compliance failure involved, the scope of the review and remediation, the experience of the reviewers and the stage the review and remediation is at.

Circumstances when peer reviewing may be required

- RG 256.141 Some examples of circumstances when peer reviewing may be required include, but are not limited to, the following:
- (a) the advice involves complex investment strategies or the client has unusual circumstances;
 - (b) there are a large number of clients within the scope of the review and remediation and there are many advice reviewers; or
 - (c) the review and remediation is at its early stages and reviewers are still developing ways to ensure that reviews are conducted consistently.
- RG 256.142 When peer reviews are conducted, we expect the peer reviewer to be appropriately qualified and experienced in reviewing advice.
- RG 256.143 You should consider involving a consumer advocate in the process of peer reviewing to ensure that a consumer-focused approach is adopted in the way that advice is being reviewed.
- RG 256.144 If peer reviews are appropriate but there are a small number of reviewers, which would make conducting peer reviews more difficult, managers or decision makers should be closely involved in reviewing the advice before endorsing the advice reviewer's recommendation.

Governance arrangements

- RG 256.145 All review and remediation processes should have appropriate governance arrangements. The governance arrangements required as part of a review and remediation process will depend on the size of your business and the scope of the review and remediation.
- RG 256.146 There can be one or more decision makers, or the decision maker may also be the file reviewer in some circumstances. Whoever the decision maker is, they should hold a senior position within your business and be experienced in making decisions for the business on a day-to-day basis.
- RG 256.147 All review and remediation processes should have some level of oversight by a senior person. This person should receive regular and direct reporting on the progress of the review and remediation. If you are an incorporated business, this may include reporting to the board or appointing a director or senior executive as the person responsible for the review and remediation. For other types of business structure, this may require the principal of the firm or another senior person involved to oversee the review and remediation.
- RG 256.148 In some cases, it may also be appropriate to provide for oversight by a senior person who is internal to your business but removed

from the operation of the review and remediation (e.g. your internal auditor, compliance officer or internal audit team).

- RG 256.149 The person or persons providing oversight should not be overseeing their own work.
- RG 256.150 The type of involvement of the person or persons overseeing the review and remediation could include:
- (a) review of the design of the review and remediation and testing its design;
 - (b) general oversight of the review and remediation process and checking operational effectiveness; and
 - (c) reviewing a selection of advice to ensure assessments are being undertaken consistently and fairly.
- RG 256.151 The roles and responsibilities of each party should be clearly understood by you and the person or persons providing the oversight, and should be documented.

When engaging an independent expert may be appropriate

- RG 256.152 In some situations, it may be appropriate for a firm or person external to your business and any related entities, who has expertise in overseeing review and remediation, to be engaged to provide assurance about the governance, design and operation of your review and remediation.
- RG 256.153 Engaging an independent expert may be appropriate where:
- (a) complex issues are involved;
 - (b) the review forms part of an enforceable undertaking or ASIC-imposed licence condition(s);
 - (c) reporting to the public would be appropriate;
 - (d) there is nobody sufficiently independent or competent within the advice licensee to provide oversight; or
 - (e) the advice licensee has little or no experience in designing or implementing a review and remediation process, or similar activities.
- RG 256.154 Ultimately, the type of independent oversight that is appropriate to each review and remediation depends on factors such as:
- (a) the size of the review and remediation;
 - (b) the competence of those involved in the review and remediation;
 - (c) the nature of the misconduct or other compliance failure; and
 - (d) whether your EDR scheme is conducting a separate systemic issue investigation in relation to the same or similar scope.

RG 256.155 An independent expert should usually be retained directly by an advice licensee and not through a third party.

Independence of an expert

RG 256.156 Where it is appropriate for an independent expert to provide assurance about the governance and operation of the review and remediation, it is important to ensure that the external expert chosen is, and remains, genuinely independent, and is able to exercise objective and impartial judgement.

RG 256.157 The following non-exhaustive factors are indications of the potential risks to an expert's ability to exercise objective and impartial judgement. These are based on the factors we consider in assessing the independence of an expert at RG 100.68:

- (a) whether fees and remuneration from your business in the two years before the proposed appointment are material to the expert's revenue in Australia;
- (b) whether the staff undertaking work on the engagement, or their immediate families, have a financial interest in your business, including financial interests held through an intermediary;
- (c) whether the staff undertaking work on the engagement, or the expert, owe an amount to your business or to a related body corporate of your business that has been advanced other than in the ordinary course of business or on terms and conditions other than those that would normally apply to such a loan;
- (d) whether there are any existing or previous business or personal relationships between the expert, the expert's staff or their immediate families and your business or your officers;
- (e) whether the expert or the expert's staff are officers in your business, or have been in the previous two years;
- (f) whether the expert has participated in strategic planning for your business;
- (g) whether there is actual or potential litigation between the expert and your business;
- (h) whether the expert has acted on behalf of your business in litigation or disputes with third parties;
- (i) whether the expert has appropriate arrangements to manage conflicts of interest that may arise during the engagement, taking into account the size, scope and nature of the expert's business; and
- (j) any other matters that render, or may reasonably be perceived to render, the expert or the expert's staff incapable of exercising objective and impartial judgement.

Conflicts of interest

- RG 256.158 You should have controls in place to ensure there are no conflicts of interest, and that advisers who are the subject of the review and remediation are not involved in the review and remediation and are unable to influence any persons who are involved in the review and remediation (e.g. advice reviewers, peer reviewers, decision makers and those providing oversight of the review and remediation).
- RG 256.159 An independent expert selected and appointed by the advice licensee should also ensure that they have appropriate measures to manage any conflicts of interest that may arise during the engagement, including from their appointment by the licensee.

Record keeping

- RG 256.160 Specific record-keeping obligations are imposed on AFS licensees under the AFS licence conditions in PF 209, and under [CO 14/923]. Record-keeping requirements are also implied by the general duties imposed under s912A of the Corporations Act. The relevant duties of a licensee that imply such a record-keeping obligation include:
- (a) the duty to ‘do all things necessary to ensure that the financial services covered by the licence are provided efficiently, honestly and fairly’ (s912A(1)(a));
 - (b) the duties to comply with the financial services laws and to take all reasonable steps to ensure its representatives comply with these laws (s912A(1)(c)–(ca));
 - (c) the duty to have an adequate dispute resolution system (s912A(1)(g)); and
 - (d) the duty to have adequate risk management systems in place (s912A(1)(h)).
- RG 256.161 Good record keeping is an important part of any review and remediation to ensure compliance with these obligations. Records may include, but are not limited to, records of:
- (a) the steps taken to develop the review and remediation (including, for example, how the scope and design were determined and the decisions made as part of these processes);
 - (b) client communication (including in writing, by telephone and in person);
 - (c) internal communications and communication with other external parties in reviewing the advice;
 - (d) the governance arrangements;
 - (e) the assessment of the advice;

- (f) peer review outcomes;
- (g) recommendations made by advice reviewers and the reasons for those recommendations;
- (h) decisions made and the reasons for those decisions, particularly where the decision is different to an advice reviewer's recommendation;
- (i) how the type of remediation is determined;
- (j) the interest rate used to calculate foregone returns or interest where it is not possible or reasonably practicable to determine the actual investment returns or interest that a client would have received, and your reasons for using this rate; and
- (k) the timeframes in reviewing the advice.

RG 256.162 Good records are useful for properly monitoring the progress of the review and remediation, understanding the nature of the misconduct or other compliance failure, and reporting to senior staff, ASIC and your EDR scheme (where required): see RG 256.164. Good records are also useful to enable the efficient reviewing of complaints by your EDR scheme if a client makes a complaint following the outcome of the review and remediation.

RG 256.163 As mentioned in RG 256.147, regular reporting on the progress of the review and remediation should be provided to a senior person overseeing the review and remediation, which may include reporting to the board, or other relevant persons or areas within your business.

Reporting publicly

RG 256.164 You should consider whether it may be in the public interest to report publicly on the review and remediation. Any public reporting should provide an update on the progress of the review and remediation.

RG 256.165 In general, we believe advice licensees should be transparent about review and remediation. Public reporting will be especially important for a larger-scale review and remediation, or a review and remediation that follows public reports of client losses, alleged misconduct or other compliance failure.

ASIC reporting publicly

RG 256.166 Where ASIC is overseeing the design and implementation of a review and remediation process, and public reporting is appropriate, we may also make public statements in relation to your review and remediation and our involvement.

RG 256.167 Where we have entered into an enforceable undertaking that requires reporting by an independent expert, our policy is that we will make publicly available a summary of the final report, or a statement that refers to the contents of that report, on our enforceable undertakings register on our website. We may also refer to the contents of the report publicly: see RG 100.78–RG 100.85.

E Communicating with clients

Key points

Effective, timely and targeted communication that is informed by behavioural insights is key to ensuring that clients understand the review and remediation process and how it will affect them.

You should proactively contact potentially affected clients, and consider the best way to do this in light of your client base and the methods of communication available to your clients: see RG 256.169 and RG 256.173–RG 256.179.

Communication should be straightforward and remove complexity where possible: see the principles set out below at RG 256.169.

Communication that is well timed in relation to a client's decisions will be the most effective: see RG 256.170–RG 256.172 and RG 256.180–RG 256.186.

Advice licensees should be reasonable and flexible when requesting a response from a client: see RG 256.187–RG 256.192.

- RG 256.168 There are a range of factors for you to consider when communicating with clients about review and remediation, including when and how it is appropriate to communicate with potentially affected clients. This is important to ensure that clients understand the review and remediation process and how it will affect them.

Communicating generally with clients about review and remediation

- RG 256.169 It is important that you proactively contact clients who have potentially been affected by the misconduct or other compliance failure. You should consider the appropriate way to do this, taking into account the nature of your client base, the methods of communication available to your clients, and any preferences previously expressed by your clients.

Key principles when communicating with clients

When communicating with clients about review and remediation, you should consider the following principles:

- First impressions are important—if correspondence looks dense or complex, clients may not read it.
- Think about the appropriate method and tone for communicating in light of the client's circumstances (e.g. their financial literacy, language skills and age) and the client's agreed forms of communication or access to different communication channels.

- Be clear and direct by using simple language, avoiding legal jargon and omitting unnecessary information.
- Break down multiple or complex tasks into simple steps.
- Use short and simple sentences and paragraphs.
- Avoid lengthy letters—consider moving additional information into supplementary material to accompany the letter (e.g. a brochure).
- Prominently highlight, at the top of any communication, the actions the client is required to take and the key messages.
- Where possible, remove uncertainty about the process and give people an idea of what to expect (e.g. how long a step may take).
- Consider when would be the best time to contact clients throughout the process.

When and how to communicate with clients

Timing of communication

RG 256.170 Communication that is well timed in relation to a client's decisions will be the most effective.

RG 256.171 In many cases, advice licensees communicate with clients at the following stages of review and remediation:

- (a) at the beginning, to inform the client that they are included in the scope of the review and remediation; and
- (b) after the client's advice has been reviewed, to inform the client of the final decision and how the client will be remediated, if applicable.

Note: We recognise that, in some circumstances, advice licensees may not communicate with a client until after a client's advice has been reviewed.

RG 256.172 You should consider when it is best to communicate with your clients, taking into account the nature of your client base, the progress of the review and remediation, what is expected of clients at each stage of the review and remediation, and the type of misconduct or other compliance failure. This may be at the initial and final stages described in RG 256.171, or at other times.

Form of communication

RG 256.173 Evidence from behavioural sciences shows that effective, timely and targeted communication is key to ensuring that clients understand review and remediation and how it affects them. Small details in how communication is framed can affect whether and how a consumer understands and responds to information.

- RG 256.174 Advice licensees engage with clients in various different forms, including by mail, telephone, email, SMS, secure online facilities and in person.
- RG 256.175 Subject to RG 256.176, contact with a client throughout the review and remediation process should be in a form that is appropriate to your client's circumstances (e.g. their financial literacy, language skills and age) and any previously agreed form of communication with the client.
- RG 256.176 When notifying a client initially about the review and remediation, or informing them of a decision made following a review of the client's advice, this information should be communicated in writing. If this information is communicated verbally (e.g. by telephone or in person), you should follow this up in writing to the client within 10 business days.
- RG 256.177 At each of these stages, clients need to consider what the review and remediation and your decisions mean for their individual circumstances. While you can initially communicate this information with clients verbally—to ensure that clients properly understand the nature of the information they are receiving—it is important that they also receive these communications in writing. This will give clients the opportunity to review the information, seek advice (either from family and friends or professional advice) and ask additional questions.
- RG 256.178 You should consider testing the effectiveness of your communication with specialists. User testing is another useful way to ensure that communication is effective. ASIC may also give feedback or directions about how we think consumer communications should be drafted.
- RG 256.179 Where clients have particular needs (e.g. poor English skills or low financial literacy), interpreters and staff who are trained cross-culturally or trained to cater for clients with particular needs should be provided.

Initial communication with clients

- RG 256.180 If you plan to communicate with clients that their advice will be reviewed as part of a review and remediation process—but before a decision is made on whether remediation is appropriate—you should clearly set out in writing:
- (a) that potential misconduct or other compliance failure has been identified, and the nature of the misconduct or failure to the extent that it has been identified at that particular point in time;
 - (b) that you are operating a review and remediation process and what steps that involves;
 - (c) if you have decided the client is within the scope of the review and remediation, what this means for the client;

- (d) an indication of the timeframe in which a decision will be made;

Note: You should ensure that the review and remediation process is operated without unnecessary delays, and that you have adequate resources allocated to the review and remediation to ensure this happens and to meet any indicative timeframe given to clients about when a decision will be made: see RG 256.60–RG 256.62.

- (e) the client's rights (e.g. the right to submit a dispute to your EDR scheme);
- (f) a central contact point if the client wishes to discuss the communication further; and
- (g) the next steps.

RG 256.181 Taking into account the principles set out at RG 256.169, this information may be presented in different forms. For example, it may be appropriate to provide a client with a brief letter containing key information, and attach a short brochure to it setting out additional information.

RG 256.182 As noted at RG 256.89, you should identify the group of clients that falls within the scope of the review and remediation without these clients needing to express an interest in participating in the review and remediation. As noted at RG 256.90, where it is appropriate for you to seek interest from a wider group of clients, and you do so, there should be a clear and straightforward process for these clients to follow to indicate their interest.

Ongoing communication

RG 256.183 The level of ongoing communication with clients will depend on your existing communication strategies, the progress of the review and remediation against the expectations initially communicated to clients, and the client's preferences.

RG 256.184 Clients should at least have an opportunity to obtain updates on the progress of their advice review. This could be done, for example, by:

- (a) providing a direct telephone number or email that the client may contact to obtain this information;
- (b) providing access to a secure electronic facility that includes information on the progress of the review of the client's advice file; or
- (c) communicating in a way that is agreed with the client.

Final communication with clients

- RG 256.185 When communicating a decision to a client, you should clearly set out in writing:
- (a) what the decision is;
 - (b) the reasons for the decision;
 - (c) the circumstances of the advice and what factors have been taken into account in forming the decision;
 - (d) if remediation is offered, its components and how it was calculated; and, if not offered, the reasons why;
 - (e) the client's rights if they are unhappy with the decision (e.g. lodging a dispute with your EDR scheme); and
 - (f) contact details if the client wishes to discuss the decision further.
- RG 256.186 You should consider the principles set out at RG 256.169 when communicating a decision.

Requesting a response from clients

- RG 256.187 You may request that clients respond within a specified timeframe—for example, when seeking additional information from a client or requesting a client's acceptance of an offer of remediation.
- RG 256.188 This timeframe should be prominently disclosed and should be reasonable and flexible, taking into account that clients will require time to consider the letter, review past advice they have received and collect any information required. As a minimum, you should give clients 30 days to respond to any requests.
- RG 256.189 Where a client does not respond to communications, you should make reasonable efforts to contact the client. This may include:
- (a) searching your records for alternative contact details; or
 - (b) searching through publicly available information (e.g. the White Pages or other digitally available information).
- RG 256.190 If you ask for a response from the client within a specified period of time, you should be flexible in allowing clients additional time to respond. Whatever timeframe is provided, clients should not be excluded from the review and remediation or be denied remediation on the basis of not responding within the specified timeframe.
- RG 256.191 You should have processes in place to review the advice of clients who respond after review and remediation has been concluded (e.g. by reviewing advice through your IDR processes).
- RG 256.192 You should also consider what assistance could be provided to clients to generate responses—for example, providing a checklist of simple tasks that a client is required to complete in order to accept an offer of remediation.

F Ensuring clients have access to external review of decisions

Key points

Clients should have access to EDR processes to review your assessment of their advice. You may need to consider waiving any monetary or time limits, but we suggest you consult your PI insurer before you agree to do this: see RG 256.193–RG 256.197.

You should consider engaging with your EDR scheme when commencing the review and remediation process, so that relevant documentation, timeframes and other arrangements are agreed upfront: see RG 256.196.

You should also consider whether it is appropriate to offer assistance to clients who wish to seek their own independent professional advice to assist their response to review and remediation: RG 256.198–RG 256.199.

- RG 256.193 It is important that clients have access to your EDR scheme if they are not satisfied with the decision you have made in relation to whether a breach or other misconduct has occurred and whether remediation is appropriate.
- RG 256.194 To ensure that clients have access to EDR processes, depending on the nature of the advice, you may need to consider waiving any monetary or time limit, or other limits that may constrain your EDR scheme's jurisdiction. You should consult your PI insurer before agreeing to waive any limits.
- RG 256.195 You should provide clients with information and documents that were used to form the decision following the review of the client's advice. We recognise, however, that there may be some limited circumstances where it is appropriate to withhold certain information and documents. These circumstances might include where the release of information would endanger a third party or where it would compromise your general security measures.
- RG 256.196 You should consider engaging with your EDR scheme when initiating a review and remediation process so that relevant documentation, timeframes and other arrangements are agreed upfront with your EDR scheme. This will facilitate the streamlined consideration, review and decision by your EDR scheme when necessary.
- RG 256.197 Clients should receive clear communication about their EDR options.

- RG 256.198 You should also consider whether it is appropriate to offer assistance to clients who wish to seek their own professional advice about your decision on whether remediation is appropriate. We think this is appropriate where, given the nature of the remediation offer (e.g. its relative size compared to the client's overall wealth or the complexity of the underlying issues), the client might reasonably want to test the offer but may not have the resources to do so.
- RG 256.199 Assistance could come in different forms—for example:
- (a) offering to reimburse the client (e.g. up to a limit of \$5,000) for professional advice sought by the client (e.g. advice from a lawyer, accountant or financial adviser); or
 - (b) offering the services of a group of professionals independent of your business to provide advice to the client, free of charge.
- RG 256.200 Guidance on the interaction of review and remediation and IDR and EDR obligations is provided at RG 256.49–RG 256.55.

Settlement deeds

- RG 256.201 Settlement deeds, or contracts, are an important part of the remediation process for advice licensees. However, deeds should only be relevant to the conduct being remediated.
- RG 256.202 Settlement deeds should not restrict a client's ability to speak to ASIC (or other Commonwealth, state or territory agencies), your EDR scheme, an adviser's professional association or legal representation about a matter—for example, if the client has concerns about the operation of the review and remediation, or the way in which their matter has been reviewed.
- RG 256.203 Settlement deeds should also not restrict a client's ability to speak to ASIC (or other Commonwealth, state or territory agencies) about the original misconduct or other compliance failure that gave rise to the remediation outcome.

Key terms

Term	Meaning in this document
advice	Personal advice provided to retail clients
advice licensee	An AFS licensee who provides personal advice to retail clients
AFS licence	An Australian financial services licence under s913B of the Corporations Act that authorises a person who carries on a financial services business to provide financial services Note: This is a definition contained in s761A.
AFS licensee	A person who holds an AFS licence under s913B of the Corporations Act Note: This is a definition contained in s761A.
APRA	Australian Prudential Regulation Authority
ASIC	Australian Securities and Investments Commission
Corporations Act	<i>Corporations Act 2001</i> , including regulations made for the purposes of that Act
Corporations Regulations	Corporations Regulations 2001
client	See 'retail client'
[CO 09/339] (for example)	An ASIC class order (in this example numbered 09/339)
credit licensee	Holder of an Australian credit licence
EDR	External dispute resolution
initiate (a review and remediation process)	The process of review and remediation is 'initiated' when an advice licensee makes the decision to address a systemic issue by conducting this process
Federal Court	Federal Court of Australia
financial product advice	A recommendation or a statement of opinion, or a report of either of these things, that: <ul style="list-style-type: none"> • is intended to influence a person or persons in making a decision about a particular financial product or class of financial product, or an interest in a particular financial product or class of financial product; or • could reasonably be regarded as being intended to have such an influence. This does not include anything in an exempt document Note: This is the definition contained in s766B of the Corporations Act.

Term	Meaning in this document
IDR	Internal dispute resolution
personal advice	<p>Financial product advice given or directed to a person (including by electronic means) in circumstances where:</p> <ul style="list-style-type: none"> the person giving the advice has considered one or more of the client's objectives, financial situation and needs; or a reasonable person might expect the person giving the advice to have considered one or more of these matters <p>Note: This is the definition contained in s766B(3) of the Corporations Act.</p>
PI insurance	Professional indemnity insurance
reg 7.6.02AAA (for example)	A regulation of the Corporations Regulations (in this example numbered 7.6.02AAA), unless otherwise specified
retail client	A client as defined in s761G of the Corporations Act and Div 2 of Pt 7.1 of the Corporations Regulations 2001
review and remediation	Client review and remediation—a set of activities set up within an advice licensee to review personal advice given to clients, where a systemic issue in relation to the advice has been identified, and then to remediate clients who have suffered loss or detriment as a result (whether monetary or non-monetary)
RG 104 (for example)	An ASIC regulatory guide (in this example numbered 104)
s912A (for example)	A section of the Corporations Act (in this example numbered 912A), unless otherwise specified
systemic issue	An issue causing actual or potential loss or detriment to a number of clients as a result of misconduct or other compliance failure by an advice licensee or its current or former representatives
Tier 1 products	All financial products that are not Tier 2 products
Tier 2 products	General insurance products, except for personal sickness and accident (as defined in reg 7.1.14 of the Corporations Regulations); consumer credit insurance (as defined in reg 7.1.15); basic deposit products; non-cash payment products and First Home Saver Account deposit accounts

Related information

Headnotes

adequate resources, advice licensees, advice reviewers, advisers, AFS licensees, client review and remediation, compensation, external dispute resolution, financial product advice, general advice, governance arrangements, independent expert, internal dispute resolution, loss or detriment, misconduct or other compliance failure, personal advice, PI insurer, record keeping, retail client, settlement deeds, systemic issue

Class orders and pro formas

[CO 09/339] *Internal dispute resolution procedures*

[CO 14/923] *Record-keeping obligations for Australian financial services licensees when giving personal advice*

PF 209 *Australian financial services licence conditions*

Regulatory guides

RG 78 *Breach reporting by AFS licensees*

RG 100 *Enforceable undertakings*

RG 104 *Licensing: Meeting the general obligations*

RG 126 *Compensation and insurance arrangements for AFS licensees*

RG 146 *Licensing: Training of financial product advisers*

RG 165 *Licensing: Internal and external dispute resolution*

RG 209 *Credit licensing: Responsible lending conduct*

Legislation

Corporations Act, s766B, 912A, 912B, 913B

Corporations Regulations, Div 2 of Pt 7.1, reg 7.6.02AAA

Cases

Australian Securities and Investments Commission v Camelot Derivatives Pty Limited (In Liquidation) [2012] FCA 414

Consultation papers

CP 247 Client review and remediation programs and update to record-keeping requirements

Media and other releases

15-101MR ASIC to give guidance on review and remediation in the financial advice industry

15-388MR ASIC releases draft guidance on review and remediation programs and proposed changes to record-keeping requirements for advice licensees