

9 February 2021

Senior Manager, Behavioural Research and Policy Unit
Australian Securities and Investments Commission
Level 5, 100 Market Street
Sydney NSW 2001

By email: IDRdata@asic.gov.au

Dear Sir/Madam

Addendum to Consultation Paper 311 *Internal dispute resolution: Update to RG 165*

FM Super Resolutions welcomes the opportunity to make a submission in relation to the practical application of the proposed data reporting framework for internal dispute resolution, and the draft dictionary.

This submission provides comments in response to Question B6Q1 (a) about the draft data dictionary in the context of superannuation complaints.

B6Q1 Do you agree with our proposed requirements for IDR data reporting? In particular:

(a) Are the proposed data variables set out in the draft IDR data dictionary appropriate?

Some types of superannuation complaints differ from complaints against other financial firms. They do not seek financial redress from the superannuation trustee, but instead seek to change the financial firm's decision.

Distribution of death benefits

The first instance is complaints about the distribution of superannuation death benefits, which comprise approximately 13 percent of all complaints about superannuation.ⁱ These are disputes between potential beneficiaries (sometimes including legal personal representatives of deceased members' estates) as to who should receive the death benefit payable from the superannuation fund.

There are two issues with the proposed recording and reporting of these complaints – the monetary outcome and the complaint result, having regard to the multiple parties to the complaint.

Monetary outcome

With death benefit complaints, there is no financial impact on the superannuation trustee of the outcome of the complaint (i.e. the trustee is 'disinterested') because the trustee has to pay the benefit to someone.

Example: a member of a superannuation fund dies and a death benefit of \$1,000,000 becomes payable. The Trustee decides to pay the benefit to Dependant A. Dependant B complains to the Trustee and claims that the benefit should be paid to them instead.

In this case, the dispute is not about the amount of the benefit but rather the identity of the beneficiary/ies to whom it should be paid. This means there is not a \$1 million complaint against a superannuation trustee. There is no 'monetary compensation' in the sense of the Trustee paying any

further funds to a complainant i.e., the death benefit of \$1,000,000 will be paid in accordance with the outcome of the dispute when it is resolved.

Accordingly, the recording of \$1,000,000 as a monetary outcome of the complaint does not provide meaningful data about a trustee's complaints experience and may skew data in relation to complaints against superannuation trustees, merely because a deceased superannuation member had a large death benefit, perhaps funded by insurance.

We therefore assume that number 22 in the data dictionary will not be applicable for death benefit distributions, but it would be helpful for ASIC to confirm that this is the case.

Complaint result

A determination or resolution in respect of a dispute relating to the distribution of a superannuation death benefit will not be 'in favour of' the superannuation trustee, nor necessarily in favour of the complainant at the expense of the superannuation trustee.

This is because death benefit distribution complaints involve numerous dependants.

Example: a death benefit of \$600,000 is payable in respect of a deceased member. The Trustee determines to divide the benefit equally between three dependants. One dependant complains about the decision and the trustee changes its decision, but not in respect of the dependant who complained - the trustee decides to affirm its decision to pay one-third to the complainant but pays 50% of the benefit to the second dependant and the remaining 17% to the third dependant.

Currently number 21 in the data dictionary anticipates a binary result. However, to take account of the multiple parties to a death benefit dispute, we submit that number 21 in the data dictionary needs another code – 'in favour of another party'. In addition, number 23 in the data dictionary also needs two other codes for death benefit distribution decisions – 'decision changed' and 'decision maintained'.

Disability insurance claims

The second instance is complaints about total and permanent (TPD) and total and temporary (TTD) insurance claims. In the case of complaints about the decline of a claim for TPD or TTD benefits, it is the superannuation trustee's insurer that is declining to pay the TPD or TTD benefit, not the superannuation trustee (although the superannuation trustee may agree with the insurer's decision).

The fund trust deed will typically prohibit the trustee from paying an insured benefit if insurance proceeds are not received. We are therefore aware of situations where a superannuation trustee agrees with the complainant that the disputed claim should be paid, but is unable to persuade the insurer to pay it.

As is the case with death benefit distribution complaints, the resolution of a complaint involving payment of an insured sum in favour of a complainant does not represent 'monetary compensation' paid by the superannuation trustee. The trustee will simply pay whatever proceeds are received from the insurer (assuming a 'condition of release' is met).

The draft data dictionary does not currently appear to accommodate this distinction and in its current form may skew data outcomes in relation to superannuation trustees. We therefore assume that number 22 would not apply to insurance in superannuation complaints, but again it would be helpful for ASIC to confirm that this is the case. The addition of two codes 'decision maintained' and 'decision changed' to number 23 would also be appropriate for these complaints.

FM Super Resolutions is also aware that when insurance in superannuation complaints proceed to AFCA, there are two joined cases opened – one against the trustee and the other against the insurer. In cases where the trustee has agreed with the complainant and AFCA does too, the trustee's decision will be affirmed and the insurer's decision will be changed. We assume that, in such a case, the data dictionary will allow a superannuation trustee to record that it was the decision of the fund's insurer that was changed, rather than the superannuation trustee's decision.

Thank you for the opportunity to provide comments. If you have any queries in relation to the content of our submission, please contact Jocelyn on [REDACTED] or Pamela on [REDACTED] or by email at fmsuperresolutions@gmail.com.

Yours sincerely

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Principal

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About FM Super Resolutions

FM Super Resolutions assists superannuation funds achieve excellence in superannuation dispute resolution. Its principals, Jocelyn Furlan and Pamela McAlister, have extensive experience in superannuation complaints. Jocelyn is the former Chairperson of the Superannuation Complaints Tribunal and was a part-time member until its closure at the end of 2020. Pamela was the inaugural Superannuation Ombudsman for AFCA and is currently an AFCA panel member.

ⁱ Source – AFCA Datacube 1/7/19 – 30/6/20