



22 January 2021

Senior Manager, Behavioural Research and Policy Unit
Australian Securities and Investments Commission
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Sydney NSW 2000
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Dear Senior Manager

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

Thank you for the opportunity to comment on the IDR data reporting requirements as outlined in Consultation Paper 311 Internal dispute resolution: Update to RG 165. The Financial Rights Legal Centre (**Financial Rights**) will provide feedback on the proposals and will also comment on Questions 3, 4 and 5.

We support the expansion of the complaint issue categories into sub-categories of complaints and the publishing of IDR data at both aggregate and firm level.

We however recommend:

- further consideration regarding the recording of multidimensional data;
- ensuring appropriate processes are in place with respect to the flagging of consumer vulnerabilities;
- the recording of systemic issues as a mandatory field; and
- the recording of reasons for withdrawal of complaints.

3. The data dictionary captures multidimensional data by allowing each complaint to have one product or service, up to three issues and up to three outcomes. Where there are multiple issues and outcomes, this is captured using in-cell lists, rather than multiple rows or columns. Is this approach appropriate?

We support the proposal that that each complaint will only be able to include one product or service. We note however that ASIC proposes that:

If the complaint involves more than one issue, input up to three codes separated by commas (e.g. '6,48,60'). This data element aligns with AFCA's approach to reporting complaints lodged with them.

It is not clear that complaints involving more than one issue are counted as separate complaints with respect to reporting. We presume that this is the case but seek clarification. If it is not the case, then each complaint should be listed separately.

Furthermore despite aligning with AFCA's approach, confining a complaint to only three issues may raise problems. We regularly speak with consumers with multiple complaints – sometimes with well over three issues. It is not clear what occurs if there are more than three issues raised in relation to a product or service. We recommend allowing more than three issues per complaint, or requiring an additional complaint to be recorded.

4. Do you support quarterly reporting of IDR data? If not, what are the additional costs of reporting data on a quarterly rather than half yearly basis?

We support the quarterly reporting and recommend that this be aligned with a similar publishing schedule. Public reporting of complaints data at firm and aggregate level is important for transparency and accountability. It empowers consumers to make informed choices about the firms they wish to engage with and drives better consumer outcomes through increased accountability at a product and firm level.

5. Do you support the two proposed additional data elements that would capture consumer vulnerability flags and the channel via which the complaint was received? If not, why not?

We agree with the addition of consumer vulnerability flags and the channel via which the complaint was received.

With respect to flagging vulnerability we are aware that there may be some concern in industry and other quarters regarding the flagging of individuals for vulnerability. Data collection and use is a fraught area, and we acknowledge the need to balance consumer privacy protections and the danger of breaches with the benefits of identifying vulnerabilities and systemic issues to develop better outcomes for consumers experiencing vulnerability.

We support the collection of data relating to a customer's vulnerabilities and/or needs by industry and ASIC on the basis that:

- such information should not be used to discriminate against that customer or used in any way that causes them detriment;
- any data gathered about customers' vulnerabilities and/or needs is not used for direct marketing purposes or for a firm's own financial gain;
- that firms meet the requirements of the *Privacy Act* and take a privacy by design approach to development data collection processes.

Additional comments

We wish to note two outstanding issues, in addition to those outlined in the consultation paper.

- **Recording systemic breaches**

We note that underneath Table 2: Data to be recorded for every complaint¹ includes a note at the end which states:

Note: We will be consulting on whether the data element 'Possible systemic issue or regulatory breach' should be a mandatory field.

We are not aware of any additional consultation on this matter. Nor do we see any reference to this consultation or the issue of recording systemic issues in the latest round of consultation documents.

We remain of the view that 'possible systemic issue or regulatory breach' should be a mandatory field. If ASIC is to be empowered to monitor trends and identify issues this is a key category that will assist. Furthermore a possible regulatory breach should be reported to ASIC anyway. Making this field mandatory will assist in making sure that this occurs.

- **Recording reasons for withdrawal**

We also note that ASIC have included in the data dictionary a category to capture the reason for withdrawn complaints.

Complaint withdrawals arise in a number of circumstances many of which are not as benign as the complainant changing their mind or the firm losing contact with a disengaged consumer. Withdrawals arise from complaint fatigue, frustration, delay, inaccessible processes, and poor service. We hear from consumers who are frustrated by the process. We also hear of constructive withdrawals – where the firm recommends or intervenes somehow to convince the consumer to withdraw their complaint. ASIC's own 2018 research into this area² found that 81% of complainant experienced at least one obstacle and:

almost one-in-five complainants (18%) withdrew from the process before reaching a conclusion. The leading reasons for withdrawing were not receiving a conclusion after chasing up the firm (45%), after not hearing from the company for an extended period of time (40%), or after receiving a poor response and realising that continuing with the complaint was too difficult (30%).

At a minimum, data should be collected with respect to the reasons consumers withdraw their claim. Data relating to withdrawal of complaints and the reasons for those withdrawals are critical barometers for the healthy functioning of IDR processes in a firm and across the industry, particularly in the insurance sector. It is incumbent upon ASIC to collect this information to identify systemic issues and emerging trends, provide regulatory oversight and intervene where necessary.

¹ Consultation Paper 311 Draft Regulatory Guide 165: Internal dispute resolution <https://download.asic.gov.au/media/5113680/attachment-1-to-cp311-published-15-may-2019-draft-updated-rg-165.PDF>

² ASIC Report 603 *The consumer journey through the Internal Dispute Resolution process of financial service providers*, December 2018 <https://asic.gov.au/regulatory-resources/find-a-document/reports/rep-603-the-consumer-journey-through-the-internal-dispute-resolution-process-of-financial-service-providers/>

Concluding Remarks

Thank you again for the opportunity to comment. If you have any questions or concerns regarding this submission please do not hesitate to contact Drew MacRae, Policy and Advocacy Officer, Financial Rights at [REDACTED]

Kind Regards,

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