

Regulatory regimes guide: Complaints management

March 2021

Snapshot

At a glance...



What?

An expanded internal complaints handling regime including enhanced 'record and track' requirements, abridged maximum response timeframes and wide-ranging enforceable provisions that could attract significant civil penalties if breached.



Who is impacted?

AFSL and ACL holders, superannuation trustees (excluding SMSFs), RSA trustees, debt collectors and other purchasers of relevant contractual rights and some unlicensed fintechs.



When?

5 October 2021.

Considerations

Internal process enhancements

RG 271 elevates ASIC's expectations on what IDR responses must contain, the management of systemic issues and the resourcing for complaints handling.

You should consider how to enhance internal processes to be ready for the commencement date. This should include how you can utilise triage expertise within your firms (to create economies of scale in your complaints handling process), enhance staff training and ensure that sufficient time is built into the complaints handling process for a legal review of complex IDR responses. We expect more legal interpretation and input will be required in the IDR process to determine an appropriate approach to breach reporting and minimise litigation risk.



Interconnected regulatory reform

October 2021 presents a perfect storm of regulatory reform. For example, investigating a complaint may potentially enliven the need for breach reporting, as well as customer remediation, and ultimately have repercussions under the BEAR/FAR accountability regime. Complaints data will also need to be connected into the product governance process.

As the interconnectedness has not necessarily been previously contemplated in an IDR context, education and training will be critical. Everyone involved in investigations, complaints and breach reporting must have a comprehensive understanding of general conduct obligations and how they are triggered.



Identifying and managing systemic issues

Given the management of systemic issues will be a core, enforceable obligation under RG 271, it will be critically important to train and upskill legal, risk, compliance and complaints teams to ensure the requirements under RG 271 are comprehensively understood and consistently interpreted.



Harmonisation of IDR responses

Any changes firms make to IDR responses to comply with RG 271 must also be balanced with the remediation and breach reporting notifications to customers that will be required under the new regimes.

Complaints Management – What's new?

Overview

ASIC has released updated internal complaints handling guidance in the form of Regulatory Guide 271 – Internal Dispute Resolution (IDR). Its purpose is to 'drive fair and timely complaint outcomes for consumers and sharpen the industry's focus on systemic issues'

The guidance contains wide reaching reforms. These include heightened obligations to record and track complaints through the adoption of a broader definition of 'complaint', a reduced timeframe of 30 days to respond to standard complaints, more comprehensive and prescriptive content in customer communications and clear expectations with regard to the identification and management of systemic issues.

In a sign of times to come, ASIC has also designated various wide-ranging core obligations in RG 271 as being enforceable through the general conduct obligations under s912A of the Corporations Act 2001 (Corporations Act) and s47 of the National Consumer Credit Protection Act 2009 (Credit Act).

Details



Complaints

The regime covers any complaint made by an individual or small business concerning an organisation's financial services, products, staff or the handling of a complaint. This expressly includes complaints made on social media which is a change from Regulatory Guide 165 and expands the definition of small business to align with the definition used by AFCA.

Financial products and services provided to wholesale customers are generally out of scope, although an organisation may opt to include these complaints within its IDR scheme.



Timeframes

The maximum timeframe to respond to a standard complaint has been reduced from 45 to 30 days (enforceable obligation). Response timeframes for most complaints concerning traditional trustees and superannuation have also been halved, from 90 to 45 days (enforceable obligation).

Timeframes for complaints relating to credit and superannuation death benefit distributions remain unchanged.



Customer advocate

RG 271 confirms that complainants may be directed to a customer advocate as an alternate to AFCA, but the IDR timeframes must still be met – the guide makes clear that the maximum timeframes for providing a response apply to all IDR processes including internal appeals, escalation pathways and any customer advocate review.



Enforceable obligations

ASIC has designated various core obligations outlined in RG 271 enforceable. Any breaches of these core obligations may not only attract significant civil penalties under the Corporations Act and/or Credit Act but will also trigger obligations under the new breach reporting regime which comes into effect concurrently in October 2021 (which is also covered in our update).

The core enforceable obligations cover a wide range of topics including the requirement to capture, track and address all complaints that satisfy the broader definition; meet the abridged maximum IDR response timeframes; include certain information in complaint responses; set clear accountabilities for complaints handling including the management of systemic issues; and have adequate staff numbers to deal with complaints fairly and effectively within the prescribed timeframes.



IDR responses

Going forward, IDR responses must either confirm the actions taken to fully resolve the complaint or outline the reasons for the rejection or partial rejection of the complaint. It must contain a sufficient level of detail to reflect the complexity of the complaint and the extent of the investigation. If the complaint is rejected in part or full, the response must also identify and address the issues raised by the complainant, the findings on material questions of fact (including details of supporting material) and provide enough detail for the complainant to understand the basis of the decision.

Certain obligations relating to what an IDR response must contain will now be enforceable under RG 271.



Systemic issues

RG 271 requires boards to set clear accountabilities for complaints management, which expressly includes the management of systemic issues identified through complaints data.

Reports to the board and executive committee must include metrics and analysis of complaints, including systemic issues. Organisations should also encourage the escalation of potential systemic issues, regularly analyse data to identify these issues and report the outcome of resulting investigations internally in a timely manner. Certain obligations around the management of systemic issues will now be enforceable under RG 271.



Accessibility and resourcing

The IDR scheme must be easy to understand and use by all complainants, including those with vulnerabilities, and there should be multiple lodgement methods.

Adequate resourcing is also critical, to ensure the complaints are dealt with efficiently, fairly and effectively. Staff numbers must be sufficient to deal with complaints in line with RG 271 requirements (including to deal with intermittent spikes in volume). Frontline and specialist complaints staff must also be properly trained, and have the right attributes and delegations.

Provisions around accessibility and resourcing will now be enforceable under RG 271.

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