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Get ready for the IDR changes

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With the implementation date of the internal dispute resolution changes imminent, many advisers and licensees will have commenced updating internal complaints procedures to comply with the Australian Securities and Investments Commission's (ASIC's) new standards and requirements for internal dispute resolution (IDR) systems. Financial firms will need to ensure they are adequately prepared for the 5 October 2021 deadline.

What you need to know

- The new standards and requirements must be applied to complaints received on or after 5 October 2021. There is a transitional arrangement in place for complaints received before this date.
- The definition of a complaint is now broader and will include any expression of dissatisfaction made to or about an organisation, related to products, services, staff, or handling of a complaint, where a response or resolution is explicitly or implicitly expected or legally required. Among other things, advisers and licensees will need to monitor posts on social media channels or accounts controlled by their organisations, as these may constitute a complaint.

Firms must ensure that they:

- comply with the maximum timeframes to provide an IDR response—which are now shorter in some instances. Additionally, financial firms are required to acknowledge a complaint within 24 hours, or one business day, of receiving it, or as soon as is practicable.
- have a publicly available, readily accessible complaints policy and an internal complaint management procedure that sets out the

detail regarding their IDR systems. ASIC has provided guidance on what the client-facing complaints policy and the internal complaint management procedure should address.

- understand and comply with the IDR standards in relation to the design, implementation and ongoing improvement of IDR systems.

The potential identification of systemic issues originating from a complaint highlights the need for IDR processes to align with the new breach reporting regime, which commences on 1 October 2021. It is important to remember that if there are reasonable grounds to believe a 'reportable situation' has arisen, a report must be made to ASIC within 30 calendar days in the approved manner and form.

Context

The financial sector legislation imposes requirements to have an IDR procedure that complies with the standards and requirements made or approved by ASIC on the following kinds of regulated entities.

- Financial services licensees, unlicensed secondary sellers and unlicensed product issuers, as set out in sections 912A(2)(a)(i) and 1017G(2)(a)(i) of the *Corporations Act 2001* (Corporations Act),
- Credit licensees and unlicensed carried over instrument lenders, as per sections 47(1)(e) and (h) of the *National Consumer Credit Protection Act 2009*, and
- Trustees of regulated superannuation funds and approved deposit funds, and retirement savings account (RSA) providers, as stated in section 101(1)(b) of the *Superannuation Industry (Supervision) Act 1993* and section 47(1)(b) of the *Retirement Savings Account Act 1997*.

The ASIC *Corporations, Credit and Superannuation (Internal Dispute Resolution) Instrument 2020/98* was registered on 30 June 2020.

The purpose of the instrument is to set out the standards and requirements made and approved by ASIC with respect to IDR systems.

The contents of the standards and requirements are set out in specific paragraphs of ASIC Regulatory Guide 271 *Internal Dispute Resolution* (RG 271), which was published by ASIC on the same date. These are referred to as enforceable paragraphs and are highlighted in RG 271 by text borders and headers around the relevant paragraphs. That is, the contents of those enforceable paragraphs of RG 271 are incorporated by reference into the instrument.

This means that ASIC can pursue civil action to ensure that financial firms comply with the relevant contents of RG 271. Contraventions of the IDR obligations may give rise to civil penalty consequences or may constitute an offence.

Key dates and transitional arrangements

For complaints received on or after 5 October 2021, the new standards and requirements under RG 271 will apply.

For complaints received by financial firms before 5 October 2021, the requirements of the existing regime under RG 165 *Licensing: Internal and external dispute resolution* will continue to apply until it is withdrawn on 5 October 2022.

What is a complaint?

ASIC has adopted a broader definition of a complaint which is:

[An expression] of dissatisfaction made to or about an organisation, related to its products, services, staff or the handling of a complaint, where a response or resolution is explicitly or implicitly expected or legally required.

Financial firms should not categorise an expression of dissatisfaction that meets the definition of a 'complaint' as 'feedback', an 'inquiry', 'comment' or similar, merely because the complainant expresses their dissatisfaction verbally, or the financial firm determines the matter does not have merit, or a goodwill payment is made to the complainant to resolve the matter without any admission of error.

In fact, ASIC has expressly called out posts on social media channels or accounts owned or controlled by the financial firm that is the subject of the post, where the author is both identifiable and contactable. Financial firms will need to have systems in place to monitor their social media feeds to address any complaints received via social media platforms. Thankfully, ASIC does not expect financial firms to seek to identify complaints made on third-party social media accounts or channels.

Requirements for IDR responses

An IDR response must be a written communication that contains the following information.

- The final outcome of the complaint, including confirmation of the actions taken by the financial firm to

fully resolve the complaint, or reasons for rejection or partial rejection of the complaint.

Where complaints are rejected the IDR response must:

- identify and address the issues raised in the complaint, set out the financial firm's findings on material questions of fact, and refer to the information that supports those findings.
- provide enough detail for the complainant to understand the basis of the decision and to be fully informed when deciding whether to escalate the matter to the Australian Financial Complaints Authority (AFCA) or another forum.

The response must also include:

- the complainant's right to take the complaint to AFCA if they are not satisfied with the IDR response.
- the contact details for AFCA.

ASIC expects that the level of detail in an IDR response will reflect the complexity of the complaint and the nature and extent of any investigation conducted by the firm. This means that financial firms will need to ensure that staff keep detailed notes of steps taken to address issues identified in a complaint and the findings on material questions of fact.

A financial firm may offer a complainant the option of escalating their complaint to a customer advocate as an alternative to AFCA after an IDR response is issued. However, the financial firm must not prevent complainants from exercising their right to access AFCA—for instance, by presenting the customer advocate as a mandatory step in the IDR process.

If a complainant chooses to escalate their complaint to a customer advocate, the total time spent dealing with the complaint must not exceed the relevant maximum time applicable to the IDR process and the customer advocate review.

Maximum timeframes

Financial firms are required to acknowledge complaints within 24 hours (or one business day) of receipt, or as soon as practicable. ASIC expects financial firms to consider the method used by the complainant to lodge their complaint and any preferences they may have expressed about communication methods when determining the approach method of communicating with a complainant.

The maximum IDR timeframes for financial firms to provide an IDR response are summarised in Table 1.

Table 1. IDR timeframes

Complaint type	Maximum timeframe
Standard complaints	No later than 30 calendar days after receiving the complaint
Traditional trustee complaints	No later than 45 calendar days after receiving the complaint
Superannuation trustee complaints, except for complaints about death benefit distributions	No later than 45 calendar days after receiving the complaint
Complaints about superannuation death benefit distributions	No later than 90 calendar days after the expiry of the 28-calendar-day period for objecting to a proposed death benefit distribution referred to in section 1056(2)(a) of the Corporations Act.



The quote

The definition of a complaint is now broader and will include any expression of dissatisfaction made to or about an organisation

Credit-related complaints involving default notices	No later than 21 calendar days after receiving the complaint
Credit-related complaints involving hardship notices or requests to postpone enforcement proceedings	No later than 21 calendar days after receiving the complaint, exceptions apply if the credit provider or lessor does not have sufficient information to make a decision, or if they reach an agreement with the complainant

The maximum IDR timeframes apply to all IDR processes, including multi-tier IDR processes. The financial firm's obligation to deal with a matter according to its IDR requirements is triggered when the complainant's expression of dissatisfaction meets the definition of a complaint—it is not triggered by the referral of a complaint to a specialist complaints or IDR team.

Complaint management delays

A financial firm is not required to provide a complainant with an IDR response within the maximum IDR timeframe in the following circumstances.

- Where there is no reasonable opportunity for the financial firm to provide the IDR response within the relevant maximum IDR timeframe, because resolution of the individual complaint is particularly complex and/or there are circumstances beyond the financial firm's control that are causing delays. Examples of complexity and circumstances which may be beyond a financial firm's control are provided in sections 67 and 68 of RG 271.
- Where the financial firm has given the complainant an IDR delay notification before the relevant maximum IDR timeframe expires. This notification informs the complainant of the reasons for the delay, their right to complain to AFCA if they are dissatisfied, and the contact details of AFCA. For superannuation trustees and RSA providers, the requirement to provide written reasons for failure to make a decision on a complaint is satisfied upon making an IDR delay notification.

Complaints closed within five business days of receipt

An IDR response is not required if the financial firm closes the complaint within five business days of receipt because it has been resolved to the complainant's satisfaction, or the complainant has been given an explanation and/or apology if the financial firm cannot take any further action to reasonably address the complaint.

However, a financial firm must provide a written IDR response, even where the complaint is closed within five business days if the complainant requests a written response or the complaint is about hardship, a declined insurance claim, the value of an insurance claim, or a decision of a superannuation trustee.

Superannuation complaints

Insurance in superannuation complaints

Trustees, insurers and administrators must have arrangements in place to ensure the maximum IDR timeframe is complied with, regardless of which of these parties the initial complaint is lodged with. The time starts to run from the date the complaint is first lodged with any one of these parties.

Objections to superannuation death benefit distributions

With respect to death benefit distributions, the Corporations Act pro-

vides that a decision-maker may go through the claims staking process and then propose a decision on how and to whom the death benefit will be paid. Notice of the proposal is sent to all potential beneficiaries, explaining that they may object to the proposal within 28 calendar days. Any objection to a proposed death benefit distribution is a complaint and will trigger the start of the IDR process. Trustees should be mindful that the 90-calendar-day maximum IDR timeframe commences from the end of the 28-calendar-day objection period.

After reviewing any objections, the death benefit decision-maker may take the following actions.

- Amend the previously proposed decision and give all potential beneficiaries additional notice that the decision-maker proposes to make a new decision. Any further objections must be notified to the death benefit decision-maker within 28 calendar days. If a new decision is proposed, each complainant must be provided with a response that meets the minimum IDR response requirements, except for the AFCA related requirements. This is because any objection must be made to the death benefit decision-maker, rather than to AFCA. All non-complaining beneficiaries must also be provided with the same information as the complainant.
- Amend or maintain the previously proposed decision and give all potential beneficiaries notice that the decision has been made. Eligible complainants can make a complaint to AFCA within 28 calendar days. In this circumstance, each complainant must be provided with a response that meets the minimum IDR response requirements, including the complainant's right to refer the matter to AFCA within 28 calendar days of being given notice if they are not satisfied. Again, all non-complaining beneficiaries must be provided with the same information as the complainant.

Systemic issues

Boards are required to set clear accountabilities for complaints handling functions, including managing systemic issues identified through consumer complaints. ASIC considers that consumer complaints are a key risk indicator for systemic issues within a financial firm. Some examples of systemic issues are:

- disclosure documents that are inadequate or misleading
- systems issues that produce errors—for instance, benefit calculation errors or interest calculation errors
- unit pricing errors
- erroneous interpretations of a superannuation trust deed provision
- group insurance administration errors that do not record cover for all eligible members.

Financial firms are required to:

- encourage and enable staff to escalate possible systemic issues they identify from individual complaints
- regularly analyse complaints data sets to identify systemic issues
- promptly escalate possible systemic issues to appropriate areas within the firm for investigation and action
- report internally on the outcome of investigations, including actions taken, in a timely manner.

It is important to note that where reports are provided to the board and/or executive committees on IDR processes, those reports must include metrics and analysis of the financial firms' compliance with its IDR processes and include any systemic issues identified.

Financial firms are warned that AFCA must make a report to ASIC, the Australian Prudential Regulatory Authority or the Aus-

tralian Taxation Office as soon as practicable, but no later than 15 calendar days after AFCA considers that there is a systemic issue.

The potential identification of systemic issues originating from a complaint further highlights the need for IDR processes to align with the new breach reporting regime commencing on 1 October 2021. The key issue is whether—and when—an investigation is deemed to have commenced for the new breach reporting regime where steps have been taken to address a complaint.

IDR standards

ASIC has set out its IDR standards for the design, implementation and ongoing improvement of IDR systems, and expects that the standards can be adapted by financial firms to suit the nature, scale and complexity of their business.

The IDR standards and related guidance require consideration of the following issues.

- There should be top-level commitment from boards, chief executives and senior management to developing effective complaint management processes and a robust complaint management culture. Financial firms should encourage staff to treat complaints with respect, be helpful and adopt a user-friendly approach.
- Financial firms should develop an IDR system that is readily accessible and easy to use. The IDR process must be easy to understand, including by people with disabilities or language difficulties.
- Financial firms should communicate how and where complaints may be made by publishing their complaints policy online and making it available in hard copy upon request. Additionally, information on IDR processes should be contained in product welcome packs and regulated documents such as financial services guides, product disclosure statements, credit guides and periodic statements.
- The IDR process should be flexible as to how complaints are lodged and offer multiple lodgement methods, including telephone, email, letter, social media, in person, and online.
- Financial firms should allow representatives to lodge complaints on behalf of complainants which may include financial counselors, legal representatives, family, friends and members of parliament.
- The IDR process, along with materials explaining the process, must be free to complainants. Complainants must be able to make or pursue their complaint via the IDR process free of charge.
- The IDR process must be resourced so that it operates fairly, effectively and efficiently. Staff numbers must be sufficient to deal with complaints in a fair and effective manner within maximum IDR timeframes.
- Financial firms must provide relevant staff with appropriate authority to resolve complaints, including financial delegations for paying amounts to complainants to facilitate fair and efficient resolution.
- Staff who are expected to play a role in the IDR process include the chief executive and senior management, the manager responsible for the IDR process, staff managing complaints, business unit managers and frontline staff.
- ASIC expects staff who deal with complaints to have the knowledge skills and attributes to effectively perform their roles. Financial firms should provide staff with adequate materials and equipment to handle complaints, including scripts, FAQs, checklists,

sample letters and templates, specialist support materials, complaint management IT systems and finances.

- When a complaint is received, complaints management staff should assess and prioritise complaints according to the urgency and severity of the issues raised. Financial firms should actively encourage staff to resolve complaints, wherever possible, at the first point of contact.

Furthermore, financial firms:

- should deal with complaints with as little formality as possible and avoid requirements—for instance, that a complaint must be lodged in writing—that restrict complainants' access to the IDR process
- should consider a broad range of possible remedies when attempting to resolve complaints
- must adhere to the requirements for issuing IDR responses within maximum IDR timeframes
- must ensure that complaint resolution outcomes, for example, refunds, fee waivers, correction of records or compensation payments, are implemented in a timely manner when a complaint is closed
- must have a publicly available, readily accessible complaints policy and an internal complaint management procedure. They must provide material that explains their IDR process free of charge to complainants. ASIC has provided guidance on what the client-facing complaints policy and the internal complaint management procedure should address, in section 172 to 178 of RG 271
- must have an effective system for recording information about complaints, the system must enable firms to keep track of the progress of each complaint
- must regularly provide reports about complaints data to senior management and the firm's board or equivalent
- should monitor and review the performance of their IDR process, including monitoring of complaint metrics, ongoing quality assurance and regular reviews

ASIC expects financial firms to develop processes that ensure each complaint is managed fairly, objectively and without actual or perceived bias.

Where to from here?

Licensees who are not yet ready for 5 October may require assistance with advice on the design and implementation of their IDR process, including review of the client-facing complaints policy and the internal complaint management procedure. **FS**