

DO YOUR DISPUTE RESOLUTION PROCESSES NEED UPDATING?

ASIC's updated requirements for how financial firms deal with consumer and small business complaints under their Internal Dispute Resolution (IDR) procedures are consistent with many other ASIC policies and processes released in the post-Hayne Royal Commission world.



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Special counsel Selina Nutley says ASIC's new Regulatory Guide 271 *Internal dispute resolution* (RG 271) focuses on proactivity on the part of licensees so that, as much as possible, issues are identified and resolved before a complaint is made.

In this article, Selina explains the central features of RG 271 and encourages licensees to take steps to ensure their systems can comply with the new requirements.

Background

Currently, all financial firms providing advice to retail clients must have IDR processes in accordance with Regulatory Guide 165 *Licensing: Internal and external dispute resolution* (RG 165).

In 2019, ASIC released its report detailing proposed changes to RG 165. Some of the proposals, particularly those about classifying complaints made via social media, raised significant concern in the financial services

sector. On 30 July 2020, ASIC released new RG 271 which will eventually replace RG 165.

Central features of RG 271

Here is a summary of the central features of RG 271 and how it differs from RG 165:

- There is a greater focus on 'the vibe' and creation of an organisation-wide culture intended to identify and raise issues proactively and resolve complaints quickly.
- The definition of 'complaint' is largely the same. However, ASIC has made it clear that posts on social media channels or accounts owned or controlled by the licensee can constitute a complaint. This is the change many licensees feared. However, it is equally clear in RG 271 that there is no obligation to identify complaints made on third party controlled social media accounts or channels.
- The licensee is now obliged to provide reasons for the decision set out in the IDR response, including by:
 - identifying and addressing the issues raised in the complaint
 - setting out findings on material questions of fact and referring to information that supports those findings
 - providing 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 AFCA or another forum.
- For standard complaints, an IDR response must be provided no later than 30 calendar days after receipt. This is a significant reduction from the 45 days currently contained in RG 165. There are limited instances where licensees are relieved of this obligation, but all require the licensee to serve a delay notification on the complainant before the time expires.



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- Systemic issues are dealt with more extensively than in RG 165. Systemic issues are matters that affect, or have the potential to affect, more than one consumer, such as inadequate disclosure documents or consistent system errors. Licensees are required to have clear processes for how to identify and deal with systemic issues, and where identified, to take prompt action to identify consumers and provide fair remediation.
- There is also a further focus on data collection, analysis, and internal reporting about the number and nature of complaints, and how they are dealt with. Senior management and boards are expected to be regularly provided with these reports, and it should be disclosed in annual reports. Licensees must undertake regular compliance audits.
- Importantly, RG 271 does not oblige licensees to report complaints data to ASIC every six months as previously mooted in the consultation paper. ASIC's revised timetable of ongoing work presently provides for consultation on this topic in the third quarter of 2020 when we expect to see more specific obligations imposed.

What's next?

When RG 271 comes into effect on 5 October 2021, RG 165 will be revoked. However, licensees need to undertake work in the interim to ensure their systems are capable of compliance with RG 271.

If you need help with reviewing your systems and ensuring they meet the relevant standards, our Funds Management team can help.