

# ASIC raises the stakes on complaints handling

By Ross Paull\*

**When I first read ASIC’s new Regulatory Guidance (RG 271) on how Australian Financial Services (AFS) firms must prepare to run their Internal Dispute Resolution (IDR) processes, a 1980’s cult horror classic sprung to mind and my first thought was that this could be “A Nightmare On Compliance Street”. The metaphor is do not fall asleep or things could get messy.**

In this case, the “blades” will be the enforceable paragraphs that freely pepper this RG, along with a raft of more stringent standards. Best practice has been dialled up quite a few notches.

Issued on 31 July 2020, RG comes into effect on 5 October this year. The decent transition period hints at what lies ahead.

*“Firms will need to undertake internal capacity building...” (.25)*

Small firms will have to comply without the resources of the big guys. As I write this, it’s almost April, so the day when the force of law and possible civil penalties comes into effect, looms large.

In drawing it up, ASIC has done the poker equivalent of raising the stakes. The pressure is now on the other players - AFS Firms<sup>1</sup> - to respond.

Let’s begin with what’s happened to the definition of complaint. It’s now an “expression of dissatisfaction”. Pretty broad, right?

It then goes on to say that a response could be implicitly expected.<sup>2</sup> In other words, the complaint doesn’t have to be in writing to trigger a firm’s obligation to deal with a matter according to the new requirements. Firms must take a proactive approach to identifying complaints.



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## Key Highlights

- **Enforceable Regulatory Guidance (RG).** ASIC has given a new RG the force of law.
- **Tighter compliance obligations.** The new guidance significantly tightens standards for how AFS firms and Fintech companies must run their IDR processes.
- **A customer-centric approach.** It requires a more proactive and enabling approach to dealing with complaints.
- **Civil penalty consequences.** Failure to comply with the enforceable standards could result in civil penalties.

“Leading complaints management practices can help improve customer service, strengthen underlying compliance controls and avoid the growing potential for regulatory fines or damage to an institution’s reputation”

– DELOITTE CRS



This enabling piece bears out in the new standard, quote:

*“Firms should encourage complaints and make it easy for people to voice their concerns by developing an IDR system that is readily accessible and easy to use” (.131)*

Then there’s the requirement for the process to be unbiased:

*“Financial firms should manage complaints objectively and without actual or perceived bias” (.167)*

Oh, and the process must be free of charge to the complainant even though it’s open season.<sup>3</sup>

Hmmm, I was unhappy with the slow response from the teller who served me the other day and I left the branch frowning.

This will almost guarantee an increase in the number of complaints and the concomitant resources to manage. ASIC guessed this might be the case and they’ve addressed this with more enforceable paragraphs:

*“The IDR process must be resourced so that it operates fairly, effectively and efficiently” (.142)*

*“...includes resourcing the IDR function to deal with intermittent spikes in complaint volumes” (.143)*

### ASIC’s ‘3 Rs’: Resourcing, Recording and Reporting

ASIC anticipates more complaints, but AFS Firms must carry the can. Not only that, but the onus is also on them to track the melee with an enforceable requirement to record:

*“Firms must have an effective system for recording information about complaints. The system must enable firms to keep track of the progress of each complaint” (.179)*

It seems to be about trying to strike a balance between ASIC’s desire for a more consumer-centric approach and a firm’s capacity to deal with what may seem to be minor grievances – at the source.

ASIC has also elevated responsibility for a firm’s adherence and oversight to the highest levels, the CEO (or equivalent) and Board (.128 and .143).

As well as recording, there’s the reporting:

*“Firms must provide reports*

*about complaints data regularly to senior management and the firm’s board (or equivalent)” (.183)*

How do you enable complaints and, with an abundance of caution, proactively read a customer’s mind that a response may be implicitly required in a very timely way?

*“Timeliness is central to effective complaint management and is a key performance measure of a firm’s IDR process” (.49)*

*“...must provide an IDR response to a complainant no later than 30 calendar days after receiving the complaint” (.56)*

### Harnessing Technology

What if a firm could simply refer their customers to a portal, an automated “clearinghouse”, so they could conveniently engage under their own steam, and firms could efficiently handle any volume via a single location?

Note that complaints and disputes are used interchangeably throughout RG 271, yet complaints are different because of the inequality between parties. A complaints officer handling many cases is not as emotionally invested in resolution as the

customer. This requires careful design considerations.

Now comes the good news. Outsourcing to external providers is permitted, especially if it ensures accessibility (.47), and leveraging the power of technology and data analytics is a best practice standard (.17(g)).

To this end, Guided Resolution has purpose-built a tech platform, 'Guided Compliance' [www.guided-compliance.com.au/AFSL](http://www.guided-compliance.com.au/AFSL) to help prevent unforced errors in complaints handling so there is no need to be afraid of RG 271.

We can take the pain out of compliance by providing the immediate internal capacity to handle complaints using ADR<sup>4</sup> best practices.

As well as avoiding regulatory fines, there are many sound reasons to comply.

## Being Compliant

The compliance function is not just about topics like anti-money laundering and internal policing. It's much more than that. Compliance is a firm's ticket to play and stay in the game.

In the absence of compliance, firms invite reputational damage.

“Changing the way an institution manages customer complaints requires real action. A considerable first step is realizing that satisfying customers and satisfying regulators are not two mutually exclusive propositions.”

– DELOITTE<sup>5</sup>

Customers are unlikely to work with you if you lack trust in the marketplace. But if you are trusted, customers will give you the benefit of the doubt.

Tighter regulation is also an opportunity to test new ways of thinking and create adequate set-ups.

Studying win-win negotiation principles was for me transformational because it brought to light all the rookie errors that I'd made in the past. I suspect that RG 271 will bring on similar “ah-ha” moments as AFS firms prepare for it:

- **Mindset.** We are shifting the perspective away from viewing complaints as being negative. We instead consider it as 'feedback' (a good thing, right?) as well as an opportunity to garner data to identify trends and potentially drive positive change.
- **Early.** The earlier the intake and the quality of the intake capabilities, the better. To get in before things become entrenched and to detect and mitigate the legal (i.e., regulatory action) and reputation risks.
- **Response.** Moving from the typical ad-hoc response patterns to a more proactive complaints management approach will help fuel a core part of the Customer Experience (CX).
- **Value.** Recognise the 'goldmine' that complaints data can represent by appreciating its value, assigning a business value to it, and developing a robust body of complaint data.

Compliance is so much more than obeying the rules. It's a currency of exchange between a firm and its customers. Trust reserves are built over time and can grow if there's a positive feedback loop:

- Repeated interactions;
- Honest and fair communications; and
- Follow-through on commitments.

The last two steps require the adoption of reliable rules around the communication exchange. ASIC has simply up-scaled its expectations on what this looks like concerning complaints.

It requires high-quality intake capabilities and accessible CX that meets the needs of today's digital culture:

- Self-guided
- Self-paced
- Available 24/7
- Easy to use
- Unassuming

Guided Compliance embeds all the bells and whistles with no lock-in contracts. Firms can comply with RG 271 at a fraction of the cost of ramping up with physical infrastructure. And other businesses can use the platform to follow industry best practices.

We'd love to be your technology partner to help navigate the new compliance obligations and we're happy to give you a few months to test out the platform and see how it fits your needs, 'on the house'. ◇

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## FOOTNOTES:

- 1 These include all AFSL holders with retail customers, unlicensed issuers of financial product (retail), all credit providers, lessors and their service providers (brokers) and all FinTech companies.
- 2 RG 271.27 – expression of dissatisfaction in relation to products, services, staff, or the handling of a complaint.
- 3 RG 271.141
- 4 Alternative Dispute Resolution
- 5 'The power of complaints – Unlocking the value of customer dissatisfaction' Deloitte Center for Regulatory Strategies (2015)