EDR Response Guide

Inappropriate advice

This guide has been prepared to assist financial firms in preparing a quality external dispute resolution (EDR) response for disputes about inappropriate advice. This is a **guide only**.

It is important to note the following:

* All issues raised in a complaint should be addressed. If there are multiple issues, please refer to the additional EDR response templates available or consider addressing them in a separate section as it is important that all issues are addressed.
* This is your EDR response. As such it is to be sent to both AFCA and the complainant(s). It is to the benefit of all parties for the complainant(s) to understand the reason for your position.
* AFCA will generally seek more information if a complaint does not resolve at Registration & Referral. AFCA still expects a response to any subsequent requests for information.

This guide may change over the time to reflect any feedback.

To ensure a comprehensive response for inappropriate advice complaints, an EDR response should include the sections outlined below.

## Complaint summary

|  |
| --- |
| Complaint details |
| Financial firm name |  |
| Financial firm reference |  |
| Complainant name |  |
| AFCA reference |  |

## Complainant’s position

[Outline the financial firm’s understanding of the complainant’s position.

Include necessary background information including (but not limited to):

* claim amount
* any payments made to the insured.]

## Financial firm’s position

[Briefly outline the financial firm’s position in relation to each of the complainant’s issues.

Explain the scope of the advice or service agreed between the client and the adviser [include reference to any terms of engagement document].

If the financial firm has taken steps to attempt to resolve include details: (eg. the financial firm provided a response to the complainant, offering to [ ]. The complainant rejected the offer and said [ ].)

## Financial firm’s reasons for position

Outline how you have considered all of the raised in the complaint and set out the financial firm’s reasons for its position, noting what information you have considered to reach this view and refer to supporting documents if relevant.

It is important you consider the financial firm’s obligations and whether they have been met.

For inappropriate advice complaints, a financial firm needs to provide information to show:

* (for advice prior to 1 July 2013) how the financial firm met section 945A requirements and had a reasonable basis for any personal advice provided OR
* whether the financial firm enquired and investigated changes to the complainant’s relevant personal circumstances since the initial advice or at review
* (for advice provided post 1 July 2013) how does the financial firm say the advice was in the best interests of the complainant(s)
* how the advice provided to the complainant(s) was appropriate for their goals, circumstances and objectives
* whether the adviser obtained or made reasonable attempts to obtain complete and accurate information
* whether the adviser had the expertise to provide the advice
* whether there is a mismatch between the complainant(s)’ goals and objectives (ie timeframes) and their risk profile – if yes, how was this dealt with and explained to the complainant(s)
* if recommending a product, whether the adviser conducted a reasonable investigation
* if holistic advice, how the financial firm says the asset allocation was appropriately diversified (if relevant)
* how the recommended investments were consistent with the agreed scope and risk profile and met the needs and objectives of the client
* whether the complainant(s) could afford the recommended strategy/product
* whether the complainant(s) gained or lost any benefits as a result of the advice
* any other step the adviser took at the time the advice was provided that would be reasonably regarded as being in the best interests of the client.

## Jurisdictional issues?

Include the details of any jurisdictional issues the financial firm wishes to raise. Ensure you refer to the AFCA Operational Guidelines and any relevant approach documents.

Full details of the section of the AFCA Rules must be included to ensure that AFCA and the complainant understand the jurisdictional issue(s) being raised.

## Proposals to resolve the complaint

Set out any action the financial firm is willing to take/accept to resolve the complaint.

[If you require further information before the financial firm can offer a resolution, please provide details of what information is required].

## Supporting information

Provide a list of all the supporting information provided. In relation to a complaint about inappropriate advice, the following information is usually required (where relevant to the issues in complaint).

This list forms a guide only:

* copy of the financial services guide and adviser profile (information to show the competency, experience and qualifications of the adviser to provide the service)
* copy of a service agreement/letter of engagement (signed) and any other relevant agreements/terms and conditions
* ‘know your client’ material such as fact find/client data forms/risk profiling records/file notes \*
* ‘know your product’ material including any applicable research documents\*
* adviser’s file notes, contact records (records of all contact made with the complainant)
* advice documents (eg. statement of advice, record of advice)\*
* disclosure documents, such as FSG and PDS
* signed authority to proceed (if used)
* copy of any relevant signed application forms
* where the complainant(s) is/are a wholesale client/sophisticated investor, a copy of the accountant’s certificate or sophisticated investor documentation
* a statement from the adviser setting out details of dealings and discussions with the complainant(s) (ie when, how, when and why) – if a statement is not available, the financial firm should explain why not and any attempts made to obtain one
* details of advice fees
* details of any ongoing reviews (if relevant)
* for advice about derivatives – details of adviser or financial firm representative’s accreditation
* other relevant documents the financial firm provided to the complainant(s) (eg. product disclosure statement, information brochures, derivatives explanatory booklets, prospectus, quotes)
* other relevant correspondence (eg. letters, emails and faxes) between the adviser and the complainant(s).

## Please note: Record Keeping

\* ASIC requires financial firms to retain SOAs and supporting client and product information for a period of seven years as a standard licensing condition (ASIC Pro Forma 209, condition 57 and RG 175). If financial firm is unable to provide these records, it should explain why they are not available.

## Other Resources

If other issues are raised, we offer a range of resources in the member resources section of the Secure Services portal. These include other EDR response guides, specific complaint topic guides and the Complaint Information Documentation guide.