EDR Response Guide

Credit listings

This guide has been prepared to assist financial firms in preparing a quality external dispute resolution (EDR) response for disputes about credit listings. 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. It is to the benefit of all parties for the complainant 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 credit listing complaints, an EDR response should include the sections outlined below.

## Dispute details

Name of the complainant(s): [consumer or business name]

Name of the financial firm:

Financial firm reference:

AFCA reference:

## Summary of complaint

Details of the credit facility:

|  |  |  |  |
| --- | --- | --- | --- |
| Approved date | Regulated/Unregulated | Date of credit listing | Current status of debt |
|  |  |  |  |

Summarise all issues raised by the complainant: [include necessary background information]

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 position

Outline how you have considered all of the issues raised in the complaint and set out the reasons for your position, noting what information you have considered to reach this view. It is important you consider your obligations and whether you have met them.

The options below are examples, which will not always apply and require your amendment.

In relation to credit listing complaints, the complainant might have no understanding of the financial firm’s obligations and/or why a listing has been made. In such a case, it might be more appropriate to provide a narrative response, outlining what has happened, and if you have acted in accordance with the relevant legislation.

Alternatively, the complainant (or their representative) might have an understanding of the financial firm’s obligations and have raised a specific issue with an aspect of the legislation. In such a case, it might be more appropriate to set out your reasons for position in a table or with bullet points.

The response should cover the following issues:

If the listing in complaint was made prior to 12 March 2014, the obligations that apply are set out in section 18E and Part III of the Privacy Act 1988. Those obligations include:

* Was the complainant 60 days or more overdue in making a payment?
* Is the amount listed not barred by the statute of limitations?
* If the full amount of the debt is listed, was a default notice under section 88 of the National Credit Code sent, and did it state that the balance would be payable if the default was not remedied within 30 days?
* Was the listing made 90 days plus a period of time (to allow for postage) after the section 88 notice was sent?
* Were there any discussions with the complainant regarding financial difficulty and/or whether a listing would be made prior to the listing being made?

If the listing in complaint was made after 12 March 2014, the obligations that apply are set out in the Privacy Amendment (Enhancing Privacy Protection) Act 2012. Those obligations include:

* Was the complainant 60 days or more overdue in making a payment?
* Is the amount listed $150 or more and not barred by the statute of limitations?
* If the full amount of the debt is listed, was a default notice under section 88 of the National Credit Code sent, and did it state that the balance would be payable if the default was not remedied within 30 days?
* If only the overdue amount was listed, was a written notice demanding payment under s6Q of the Privacy Act 2012 sent?
* Has a notice under s21D of the Privacy Act 2012 been sent, stating the amount that is to be listed and warning the complainant that a listing may be made in
* 14 days or more?
* Was the s21D notice sent more than 30 days after the s88 or s6Q notice?
* Was the listing made over 14 days after the s21 notice was sent?
* Was the listing made less than 3 months after the s21D notice was sent?
* Were there any discussions with the complainant regarding financial difficulty and/or whether a listing would be made prior to the listing being made?

## 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.

## Complainant’s position (optional)

[If necessary, outline the complainant’s position on the financial firm’s decision].

## 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 you 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 a credit listing, the following information is usually required:

* privacy consent signed by the complainant
* credit facility account statements from three months prior to the complainant falling into arrears to when the default listing was made
* default and demand notices sent to the complainant
* details of the complainant’s address history, including last known address
* collection/system notes showing all contact with the complainant from three months prior to the listing being made
* correspondence to the complainant regarding the debt around the time of the default, including providing proximate warning of the financial firm’s intention to list outstanding debt
* credit facility contract and general terms
* details of whether the complainant had requested hardship assistance. If so, provide dates of when the request was made and what action financial firm took in relation to the hardship request including copies of all correspondence sent.

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.