

Credit Ombudsman Service

Consumer Guide Issue 1

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We set out below some information that may assist consumers in handling complaints with their financial service provider before making a complaint to COSL. It provides helpful information about Internal Dispute Resolution – how it works, what you can expect and in what timeframe.

Dealing with
Internal
Dispute
Resolution
as a
Complainant



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Consumer Guide Issue 1

Dealing with Internal Dispute Resolution (IDR) as a Complainant

Summary

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Summary

- IDR period for handling complaints is 45 days for most credit contracts.
- IDR period for handling complaints relating to hardship variations and enforcement proceedings is 21 days.
- IDR period for handling complaints relating to default notices is 21 days.
- Extensions to IDR timeframes are possible upon application to the EDR scheme for complaints other than those involving default notices.
- IDR timeframes may be shortened for matters that require urgent attention.
- The IDR timeframe commences when you lodge a complaint to your financial service provider about their service, product and complaints handling procedure.
- The IDR timeframe is not interrupted when you or your financial service provider produce new information on the complaint.

What is a complaint?

For the purposes of internal dispute resolution (IDR), a complaint is:

- An expression of dissatisfaction that you make to your financial service provider about the provider's conduct, products, services or its complaints handling process that explicitly or implicitly requires the financial service provider to offer you a response or resolution (AS ISO 10002-2006 and adopted in Rule 45.1 of the COSL Rules, Eighth Edition).

For the purposes of external dispute resolution (EDR), a complaint is:

- An expression of dissatisfaction that you make to us about your service provider's conduct, products or services, whether or not you have first tried to resolve the complaint with the financial service provider through its IDR process (AS ISO 10002-2006 and adopted in Rule 45.1 of the COSL Rules, Eighth Edition).

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How do the IDR timeframes work?

All licensed financial service providers who hold an Australian Credit License (ACL) or an Australian Financial Services License (AFSL) must have a documented IDR process that meets with the requirements of the Australian Securities and Investments Commission (ASIC) Regulatory Guide (RG) 165.

This means:

- If you lodge a complaint to your financial service provider, the provider must within **45 days** from the time you first make your complaint, provide you with a final IDR response in writing (RG 165.100).
- If your complaint relates to an application for financial hardship, postponement of proceedings or involves a default notice issued to you by the financial service provider, then the provider needs to give you a final IDR response within **21 days** of receiving your complaint (RG 165.117, RG 165.128).

The timeframes specified by RG 165 for providing an IDR response commence at the time you make the complaint. You may telephone the financial service provider to lodge your complaint, but it is always best to make your complaint in writing so that all parties have a clear record of the dispute. Your complaint:

- Does not re-commence when new information is provided by either you or the financial service provider; and
- Applies to financial service providers who operate a simple or multi-tiered IDR procedure (a multi-tiered IDR procedure involves steps for internal appeals or escalation of complaints within the business of the financial service provider).

Are extensions to the IDR timeframes allowed?

The financial service provider can request an extension to the 45 days IDR timeframe for providing you with a response if the circumstances demand that the provider needs more time to prepare its response to your complaint. If this is the case, the financial service provider needs to seek your consent before we will consider such a request for extension. The extension sought cannot exceed 90 days from the time you first lodged your complaint.

Similarly, if you wish to seek an extension to the IDR period, you may also do so with the consent of the financial service provider.

Applications for extension to the 45 day IDR timeframe may be made directly to us. We will consider such applications upon:

- Receiving a written application from the party requesting the extension;
- Evidence that all parties to the dispute have agreed to the extension;
- A clear indication of the extension period sought;
- A detailed explanation of the special circumstances that justify the request for an extension;
- Any documentation to support the application;
- The application being made in a reasonable period before the expiry of the 45 day IDR period.

If your complaint involves financial hardship or enforcement proceedings, and you or your financial service provider tell us that you have not managed to resolve your dispute after the prescribed 21 days for dealing with such matters, we may, if we consider it appropriate, extend the IDR time frame for a maximum of another 14 days from the expiry of the initial

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21 days (Rule 13.5 of the COSL Rules, Eighth Edition), by referring the complaint back to your financial service provider.

If your financial service provider agrees to your application for financial hardship or your request to postpone enforcement proceedings within 21 days of its IDR process, but does not properly document the terms or conditions of the agreement in writing to you, under RG 165 they can have another 30 days from the date of the agreement (RG165.129) to confirm the agreement with you in writing. In any case, the maximum timeframe including extensions under such circumstances cannot exceed a maximum of 51 days.

If your complaint involves the issuing of a default notice against you, no extensions are permitted beyond the 21 days IDR timeframe (RG 165.117).

Will COSL consider my complaint earlier than the IDR timeframes?

If you refer a complaint to us, we will always ask you to first attempt to resolve your complaint with the financial service provider through their IDR process.

We will look at expediting the complaint process and shorten the IDR response timeframes if (under Rule 13.2 of the COSL Rule, Eighth Edition):

- We consider that any aspect of your complaint needs to be reviewed urgently; or
- It does not appear that the complaint is receiving timely and adequate attention from your financial service provider; or
- We consider that the circumstances of the complaints do not require the parties to first try resolving the dispute directly.

Circumstances that we would consider as giving rise to an exception to adhering to the prescribed IDR timeframes may include:

- Severe stress to your financial position if the complaint was not handled expeditiously; or
- Your state of health; or
- Your financial service provider's commercial position such as whether they are still trading, or whether they have gone into liquidation or administration; or
- Delaying the investigation may place you or your financial service provider in a disadvantaged position.

You and your financial service provider will be notified immediately if we agree to commence dealing with your complaint before the prescribed IDR period concludes.

What can I expect to see in an IDR response?

Your financial service provider must, within 45 days (unless otherwise agreed with you) of receiving your complaint provide you with a written IDR response that must:

- State the final outcome of your complaint at IDR;
- Advise you that you have the right to take your complaint to an EDR scheme in the event you feel your complaint has not been adequately handled by the financial service provider ; and
- Provide you with the name and contact details of the EDR scheme.

If your financial service provider resolves the complaint to your complete satisfaction within five business days of receiving your complaint, and the complaint does not involve an application for hardship variations or postponement of enforcement proceedings, your financial service provider does not need to provide you with a written IDR response if you do not ask for one (RG 165.103).

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If your complaint is about a financial hardship issue or you have requested a postponement of enforcement proceedings that the financial service provider has taken against you, and your provider **does not consent to your application**, the financial service provider must, within 21 days of receiving your complaint, provide you with a written IDR response that must:

- State the outcome of your complaint at IDR;
- Advise you of your rights to take your complaint immediately to an EDR scheme if the outcome you receive does not resolve your complaint; and
- Provide you with the name and contact details of the EDR scheme where you can refer your complaint to.

If your financial service provider agrees to your application or request for either financial hardship variations or postponement of enforcement proceedings within 21 days of receiving your complaint but does not document the terms or conditions of the agreement in writing, your financial service provider has up to 30 days from the date of reaching the agreement with you, to provide you with a written IDR response that:

- States the outcome of your complaint; and
- Advise you of the terms of the hardship variation in the case of an application for financial hardship relief; or
- Advise you of the conditions of the postponement of enforcement proceedings if that is what you have applied for; and
- Advise you of your rights to take your complaint further to an EDR scheme; and
- Provide you with the name and contact details of the EDR scheme.

If your complaint is about a default notice and your financial service provider resolves the dispute to your complete satisfaction by the end of the fifth business day after receiving your complaint, the financial service provider does not need to give you a written IDR response if you do not tell them to do so (RG 165.119).

How can I make the complaints process work faster for me?

Before you contact us, you should first discuss the issues with your financial service provider.

- Speak to the contact person at the financial service provider's office that you dealt with; or
- Speak to the financial service provider's customer complaints area.

They may be able to resolve your complaint quickly without our involvement.

Search COSL Members for the complaint contact details and person of your financial service provider <http://www.cosl.com.au/>

To help you set out your case more effectively, and to give you a better understanding of our involvement in the complaints process, you could refer to the "You Can Complain" guide that includes sample complaint letters available on the consumer website of ASIC at www.asic.gov.au.

The ASIC guide is set out in simple language. There are sample letters for complaints about most types of financial services or product related complaints such as credit, financial advice, savings accounts and insurance.

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When can I refer my complaint to COSL?

Before you refer a complaint to us check that your financial service provider is a member with us.

We can only consider your complaint if:

- Your financial service provider is a member of our EDR scheme and is therefore bound by our rules and guidelines; and
- You have given the financial service provider the opportunity to resolve the complaint with you directly, which means you will have to give the provider the timeframes ASIC's RG165 allows them to present you with a final response.

If you lodge your complaint with us before the required IDR timeframe is up, we will:

- Register your complaint; and
- Refer the complaint back to your financial service provider for resolution until the IDR timeframes expire.

We will accept your complaint and commence our investigations:

- After the required IDR timeframes expire; and
- You and your service provider fail to resolve your complaint; or
- If the complaint is a financial hardship application or a request for postponement of enforcement proceedings and your financial service provider has denied your application or request to such matters.

How do I lodge a complaint with COSL?

- You may write to us by downloading and completing our online complaint form available through our website www.cosl.com.au and faxing or mailing the completed form and supporting documents to us.
- If you require assistance on completing the form, you may telephone us.

What happens when I raise new grounds of complaint after COSL has accepted my original complaint?

After we have accepted your original complaint and commenced the **Investigation Phase** on your complaint, you can only raise new grounds of complaint with our approval (Rule 8.1 of the COSL Rules, Eighth Edition).

We will generally provide our approval unless:

- In our view, you have been tardy in raising the new grounds of complaint; or
- It is unreasonable at the time to expect the financial service provider to respond to the new issues you have raised.

The **Investigation Phase** is when we carry out the appropriate investigation process on your complaint.

This may include:

- Preparing a complaint summary, taking into consideration key issues in the case and working out the strengths and weaknesses of each party to the complaint;
- Requesting further information that we deem relevant to the case;

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- Conducting a conciliation conference; or
- Completing our investigation and presenting you and your financial service provider with an assessment of the merits of the complaint or make recommendations as to the resolution of the dispute.

However, if your complaint has gone past our Investigation Phase and proceeded to the **Determination Phase**, we will not consider any new grounds of complaint unless:

- We are satisfied that exceptional circumstances exist to justify a new ground of complaint; and
- Your financial service provider consents in writing; and
- We give our written consent on the terms and conditions that we regard as appropriate under the circumstances.

The Determination Phase is when the Credit Ombudsman makes a Determination about your complaint if:

- The complaint is not resolved by the end the Investigation Phase; or
- The financial service provider has contravened the COSL rules and not responded to us; or
- We declare the Investigation Phase completed pursuant to Rule 22.5 of the COSL Rules, Eighth Edition.

This publication provides information about topical industry issues. Its contents are designed to provide general guidance only. It is not legal advice and should not be relied on in place of legal advice.

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