

Credit Ombudsman Service

Position Statement Issue 6

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This Position Statement sets out the timeframes for internal dispute resolution (IDR) and the procedures we expect COSL Members and complainants to observe. In preparing this Position Statement, we have considered relevant law, applicable industry codes of practice, good industry practice and fairness. In particular, we have taken into account ASIC's Regulatory Guides 165 and 139.

Internal Dispute Resolution



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1. Summary

- 1.1 All financial service providers who hold an Australian Credit Licence ('ACL') or an Australian Financial Services Licence ('AFSL') must have a documented internal dispute resolution ('IDR') process that meets the standards prescribed by Regulatory Guide 165 ('RG 165') issued by the Australian Securities and Investments Commission ('ASIC').¹
- 1.2 The Credit Ombudsman Service Limited ('COSL') provides an external dispute resolution ('EDR') service to consumers ('complainants') and members of COSL ('COSL Members'). We try to resolve complaints that have not been successfully resolved through IDR.
- 1.3 Before a complaint is referred to us, we expect that, except in exceptional circumstances, the COSL Member is given an opportunity to first resolve a complaint. Among other things, a COSL Member is in a unique position in most cases to gather internal documentation, investigate the complaint and respond directly to the complainant. In fact, our experience suggests that delays are often encountered when a complaint is referred to us without having first been addressed by the COSL Member.
- 1.4 This Position Statement sets out the timeframes within which a COSL Member is required to respond to complaints. It also outlines the IDR procedures we expect COSL Members and complainants to engage in before we deal with a complaint. IDR timeframes are prescribed by ASIC.² As the majority of complaints we receive relate to credit, this Position Statement deals predominantly with complaints of this nature. Other types of complaints, such as superannuation-related complaints, involve additional legislative requirements.³
- 1.5 For IDR purposes, a complaint is an expression of dissatisfaction made by a complainant about a financial service provider's conduct, products, services or complaints-handling process that explicitly or implicitly requires the financial service provider to offer the complainant a response or resolution.⁴
- 1.6 For EDR purposes, a complaint is an expression of dissatisfaction that a complainant conveys to us about a COSL Member's conduct, products or services, whether or not the COSL Member has first tried, or had the opportunity to first try, to resolve the complaint with the complainant through their IDR process.⁵
- 1.7 The IDR period for handling complaints is 45 days for most credit contracts.⁶

¹ RG 165.2(a); see also section 47 of the *National Consumer Credit Protection Act 2009* (Cth) ('NCCP Act').

² RG 165.

³ Maximum 90 day time limit applicable to complaints about superannuation where either section 101 of the *Superannuation Industry (Supervision) Act 1993* (Cth) or section 47 of the *Retirement Savings Accounts Act 1997* (Cth) apply.

Superannuation complaints may also be dealt with by the Superannuation Complaints Tribunal.

⁴ AS ISO 10002-2006 and Rule 45.1 of the COSL Rules, Eighth Edition.

⁵ AS ISO 10002-2006 and Rule 45.1 of the COSL Rules, Eighth Edition.

⁶ RG 165.100(b).

- 1.8 However, the IDR period for the following is only 21 days:
- (a) the complaint is about a request for a payment variation on the grounds of financial hardship;⁷
 - (b) the complaint is about the COSL Member taking enforcement proceedings against the complainant;⁸ and
 - (c) if the complaint against a COSL Member relates to a default notice issued by the COSL Member to the complainant, the IDR period for handling such matters is 21 days.⁹
- 1.9 The IDR timeframe commences from the time a complaint is made to a COSL Member about its service, product or complaints-handling procedure. Either party may ask us to consider extending the IDR timeframes. We can do this except where the complaint involves the issue of a default notice.
- 1.10 Conversely, we may waive IDR where:¹⁰
- (a) we consider that the complaint should be dealt with urgently; or
 - (b) the complaint is not being addressed adequately or in a timely manner by the COSL Member; or
 - (c) we reasonably consider that it is appropriate in the particular circumstances not to require the complainant to first try to resolve the complaint with the COSL Member.
- 1.11 The IDR timeframe is not restarted or interrupted when a complainant provides new information¹¹ and the timeframe applies whether or not the COSL Member operates a single or multi-tiered IDR process (a multi-tiered IDR process involves an internal appeals or escalation mechanism within the financial service provider's business).¹²

2. IDR procedures for credit licensees and securitisation bodies

- 2.1 Under the modified regulatory regime of the NCCP Act,¹³ a financial service provider may:
- (a) apply for a credit licence to be regulated as a credit licensee; or
 - (b) be exempt from having to be licensed as long as it:

⁷ RG 165.117 and 165.128; see also section 72 of the National Credit Code ('NCC').

⁸ RG 165.117 and 165.128; see also NCC section 94.

⁹ RG 165.117.

¹⁰ Rule 13.2 of the COSL Rules, Eighth Edition.

¹¹ RG 165.105(a).

¹² RG 165.131-133.

¹³ NCCP Act section 10(1)(a) and RG 203.39-203.40.



- (i) enters into a servicing agreement with a credit licensee under which that credit licensee acts on behalf of the financial services provider seeking a licensing exemption; and
 - (ii) is a member of an ASIC-approved EDR scheme.¹⁴
- 2.2 If a COSL Member is a credit licensee acting on behalf of a securitisation body, it must take reasonable steps to ensure that its IDR procedures cover both its own and the securitisation body's activities.¹⁵ In that case, the IDR procedures should cover:
 - (a) complaints about the credit activities the COSL Member engages in when it acts on behalf of the securitisation body; and
 - (b) complaints about the conduct of the securitisation body, including complaints about changes to the credit contract, for example, on financial hardship grounds or because the contract was unjust or 'unsuitable'.¹⁶ (These should be documented in the servicing agreement between the COSL Member and the securitisation body.)
- 2.3 If a COSL Member is a credit licensee acting on behalf of a securitised body and is unable to resolve a complaint of the nature described in 2.2(b), it must:
 - (a) inform the complainant of their right to complain to us and provide the complainant with our relevant contact details; or
 - (b) directly refer the dispute to the EDR scheme of the securitisation body, whether or not the securitisation body is a COSL Member.¹⁷
- 2.4 To enable a complainant to access the IDR procedures of the credit licensee, a securitisation body must disclose to the complainant the name and contact details of its credit licensee when asked by the complainant.¹⁸
- 2.5 ASIC recommends that a credit licensee and a securitisation body should refrain from commencing or continuing any legal action or other enforcement action such as debt collection activity while a dispute is being handled by the IDR procedures of the credit licensee and for a reasonable time thereafter.¹⁹ This allows the complainant an opportunity to utilise EDR if the IDR process fails.

¹⁴ RG 165.27.

¹⁵ RG 165.29.

¹⁶ RG 165.30.

¹⁷ RG 165.32. See also RG 139.206-RG139.210 which sets out how disputes at EDR should be handled between a credit licensee's EDR scheme and a securitisation body's EDR scheme, if both parties belong to different EDR schemes.

¹⁸ RG 165.33.

¹⁹ RG 165.34.

3. General IDR procedures and timeframes

- 3.1 If a complaint is made against a COSL Member, the Member must give the complainant a final written IDR response within 45 days of the date the complaint is first made.²⁰
- 3.2 If the complaint relates to an application for financial hardship, postponement of proceedings or a default notice issued by the COSL Member to the complainant, then the COSL Member must give the complainant a final written IDR response within 21 days of receiving the complaint.²¹
- 3.3 The timeframes prescribed by RG 165 for giving an IDR response starts from the date the complaint is made either by telephone or in writing, and it does not matter that the complaint was not made to the financial service provider's designated complaints staff or department. Therefore, non-complaints staff should be trained to refer complaints to the designated complaints staff or department.
- 3.4 A COSL Member may request an extension of the 45 day IDR period if it requires more time to prepare its response to the complaint. If this is the case, it must first obtain the complainant's consent before we will consider agreeing to an extension.
- 3.5 Similarly, the complainant may seek an extension to the IDR period, but will need to first obtain the COSL Member's consent.
- 3.6 We will consider an application for the extension of the 45 day IDR period as soon as we:
- (a) receive a written application from the party requesting the extension;
 - (b) receive evidence that all parties to the complaint have agreed to the extension;
 - (c) receive the application within a reasonable period before the expiry of the 45 day IDR period;
 - (d) are given a clear indication of the extension period sought;
 - (e) are given a detailed explanation of the special circumstances that justify the request for an extension; and
 - (f) are given documentation to support the application.
- 3.7 If the complaint involves financial hardship or enforcement proceedings, and either party informs us that the complaint has failed to be resolved after the prescribed 21 days for dealing with such complaints, we may, if we consider it appropriate, extend the IDR period for another 14 days from the expiry of the initial 21 days by referring the complaint back to the COSL Member.²²

²⁰ RG 165.100(b).

²¹ RG 165.117 for default notices and RG 165.128 for hardship variations and postponement of enforcement proceedings.

²² Rule 13.5 of the COSL Rules, Eighth Edition.

- 3.8 If, within the 21 day IDR period, the COSL Member agrees to the complainant's request for a payment variation on grounds of financial hardship or the postponement of enforcement proceedings, but does not notify the complainant in writing of the terms and conditions of the agreement, the COSL Member can have another 30 days from the date of the agreement to confirm the agreement with the complainant in writing.²³ In either event, the complainant must be informed of the right to complain to us and be given our name and contact details.²⁴
- 3.9 If the complaint involves the issuing of a default notice against the complainant, no extensions are permitted beyond the 21 day IDR period.²⁵
- 3.10 For other complaints that fall within the prescribed 45 day IDR period, we will, if requested by either party, consider extending the IDR period if the extension sought is reasonable and:
- (a) the parties are both agreeable to the extension; or
 - (b) settlement negotiations are underway between the COSL Member and the complainant; or
 - (c) the COSL Member is waiting on information, either from the complainant or a third party, which will assist the COSL Member in its IDR response.
- 3.11 If we agree to extend the IDR period, we will promptly notify both parties of our decision.

4. Waiving IDR or shortening the IDR period

- 4.1 When we receive a complaint, we check to see if the COSL Member has had the opportunity to address it. If not, we will ask the complainant to direct the complaint to the COSL Member to see if it can be resolved within its IDR process. We also ask the complainant to let us know if the complaint is not resolved by the COSL Member within the IDR period.
- 4.2 We will register a complaint at the time we receive it, even if the COSL Member has not had an opportunity to address it.²⁶
- 4.3 As noted in paragraph 1.10, we will waive IDR or shorten the IDR period in certain circumstances.²⁷
- 4.4 Circumstances that may justify us waiving IDR or shortening the IDR period include:
- (a) a material worsening of the complainant's circumstances if the complaint is not dealt with expeditiously; or

²³ NCC section 73 and RG 165.128(b) for variation of credit contract on the grounds of hardship; NCC section 95 for matters relating to postponement of enforcement proceedings.

²⁴ RG 165.129.

²⁵ RG 165.117.

²⁶ Rules 14.6 and 14.7(a) of the COSL Rules, Eighth Edition.

²⁷ Rule 13.2 of the COSL Rules, Eighth Edition.

- (b) the complainant's age, state of health or particular circumstances; or
 - (c) the COSL Member going into or about to go into liquidation or administration; or
 - (d) the prospect of either party being severely disadvantaged if IDR is not waived or the IDR period shortened; or
 - (e) neither the complainant nor COSL can contact the COSL Member, or the COSL Member is otherwise non-responsive to attempts to contact it; or
 - (f) the relationship between the parties has broken down or has become acrimonious such that it is impractical, difficult or unrealistic for the complaint to be adequately addressed by the COSL Member at IDR.
- 4.5 We will notify the parties promptly if we waive IDR or deal with the complaint before the expiry of the IDR period.

5. IDR response requirements

- 5.1 Unless otherwise agreed to by the complainant, the COSL Member must provide the complainant with a written final IDR response within 45 days of receiving a complaint. The final response must:
- (a) state the final outcome of the complaint at IDR; and
 - (b) inform the complainant of their right to refer the complaint to us if the complainant believes the complaint was not adequately handled by the COSL Member; and
 - (c) give the complainant our contact details.²⁸
- 5.2 If the COSL Member resolves the complaint to the complainant's complete satisfaction within five business days of receiving the complaint, and the complaint does not involve a request for a payment variation on grounds of financial hardship or the postponement of enforcement proceedings, the COSL Member need not give the complainant a written final IDR response if the complainant does not ask for one.²⁹
- 5.3 If the complainant has requested a payment variation or postponement of enforcement proceedings, and the COSL Member agrees to the request, it must give the complainant a written final IDR response within 21 days of receiving the complaint. The final IDR response must:
- (a) state the final outcome of the complaint at IDR;
 - (b) inform the complainant of their right to refer the complaint to us; and

²⁸ RG 165.102.

²⁹ RG 165.103.

- (c) give the complainant our contact details.³⁰
- 5.4 If the COSL Member agrees to the complainant's request for a payment variation on grounds of financial hardship or the postponement of enforcement proceedings within 21 days of receiving the complaint, but does not notify the complainant in writing of the terms and conditions of the agreement, the COSL Member has up to 30 days from the date of the agreement to confirm the agreement with the complainant in writing. The confirmation must:
- (a) state the outcome of the complaint;
 - (b) if applicable, inform the complainant of the terms of payment variation in the case of financial hardship;
 - (c) if applicable, inform the complainant of the terms and conditions of the postponement of enforcement proceedings;
 - (d) inform the complainant of their right to refer the complaint to us; and
 - (e) give the complainant our contact details.

6. IDR procedures for default notice complaints

- 6.1 Before commencing enforcement proceedings, the COSL Member must issue a borrower with a default notice. The default notice must be set out substantially in a prescribed manner³¹ and must inform the borrower that they have 30 days from the date of the default notice in which to remedy the default.³²
- 6.2 A complaint involving a default notice may include:
- (a) an allegation that the default notice was not received;
 - (b) a complaint over the amount specified in the default notice or its remedy; or
 - (c) a complaint about the COSL Member's communication to the complainant leading up to the default notice.³³
- 6.3 The COSL Member must provide a final written IDR response to the complainant within 21 days of the complaint being made. The final response must:
- (a) state the final outcome of the complaint;
 - (b) inform the complainant of their right to refer the complaint to us; and
 - (c) give the complainant our contact details.³⁴

³⁰ RG 165.118.

³¹ NCC section 208; reg 6 and Form 12, National Credit Regulations.

³² NCC section 88.

³³ RG 165.115

- 6.4 If the COSL Member resolves a complaint about a default notice to the complainant's satisfaction by the end of the fifth business day after receiving the complaint, the COSL Member need not give the complainant a written IDR response unless asked to do so.³⁵
- 6.5 If the COSL Member encounters a delay and is unable to give a final response within 21 days, it must by the end of the 21 day period:
- (a) inform the complainant of the reason for the delay;
 - (b) inform the complainant of their right to complain to us; and
 - (c) give the complainant our contact details.³⁶
- 6.6 During the 21 day IDR period, the COSL Member must refrain from commencing or continuing legal proceedings or any other enforcement action unless the limitation period for such action is about to expire. This is intended to allow the parties to genuinely consider and address the complaint during the IDR stage and also gives the complainant a reasonable opportunity to refer their complaint to us if it is not resolved at IDR.³⁷ As a guide, a reasonable period for referral to us from the time of the final IDR response being issued is 14 days, but may be reviewed in accordance with the circumstances of the parties.

7. Circumstances where COSL deals with complaints

- 7.1 We can only deal with a complaint about a person if:
- (a) at the time of the complaint, the person was a COSL Member (and therefore bound by our Rules and Guidelines); and
 - (b) subject to certain exceptions, the complainant has given the COSL Member an opportunity to resolve the complaint through IDR within the prescribed period.
- 7.2 If a complainant lodges a complaint with us without first referring it to the COSL Member, we will:
- (a) register the complaint; and
 - (b) subject to certain exceptions, refer the complaint to the COSL Member to give it an opportunity to resolve the complaint internally.
- 7.3 We will accept a complaint and start dealing with it:
- (a) if the complaint has not been resolved by the COSL Member within the IDR period; or

³⁴ RG 165.118

³⁵ RG 165.119

³⁶ RG 165.120

³⁷ RG 165.121- 122

- (b) if the COSL Member has declined a request from the complainant for a payment variation on grounds of financial hardship application or a postponement of enforcement proceedings.