EDR Response Guide

Life avoidance of policy

This guide has been prepared to assist financial firms in preparing a quality external co dispute resolution (EDR) response for complaints where the policy is being avoided on the basis of either non-disclosure or misrepresentation. 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 avoidance of policy complaints, an EDR response should include the sections outlined below.

## Complaint summary

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

## Policy Summary

|  |  |
| --- | --- |
| Policy Details | |
| Life Insured |  |
| Policy number |  |
| Policy type |  |
| Cover type |  |
| Sum Insured |  |
| Policy commencement date |  |
| Policy end date |  |

## 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 regards relation to each of the complainant’s issues].

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

It is important you consider your obligations and whether you have met them.

In relation to non-disclosure and misrepresentation complaints, AFCA will consider whether the financial firm has established:

* the financial firm provided the complainant with the duty of disclosure statement
* the complainant has failed to disclose something they were asked by the financial firm or made a misrepresentation
* the financial firm would not have insured the complainant at all or on the same terms had the duty of disclosure been complied with or the misrepresentation not 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.

## 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 where the policy is being avoided, the following information is usually required:

* show cause letter, avoidance/decline letter
* IDR response
* the original application form(s) and and any pre-contract call recordings
* transcript of the relevant parts of the sales call
* the welcome letter with the original policy schedule
* copy of the completed application forms sent to the complainant (if applicable)
* the policy document including any PDS as at the policy start date
* initial claim forms including attending doctor’s statement(s)
* all medical information obtained for the avoidance of the policy (including letters of instruction from the financial firm to the consultant Specialist)
* a complete record of the original underwriting process, including file notes and correspondence
* a copy of the applicable underwriting guidelines that were in operation at the time the insurance contract was entered into.
* a statutory declaration from the underwriter who considered the original application identifying:
* the underwriting guidelines that were in operation at the time of the application, and
* how the underwriter would have applied the underwriting guidelines to the application had the duty of disclosure been satisfied or the misrepresentation not made
* if the underwriter who considered the original application is not employed by the financial firm any more, then statutory declaration should be made by another underwriter who can comment on the financial firm’s underwriting practices at the relevant time
* where underwriting guidelines do not exist, the retrospective underwriting opinion must detail clear reasons for the underwriter’s decision, along with samples of similar declines.

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.