EDR Response Guide

Misleading representation/conduct

This guide has been prepared to assist financial firms in preparing a quality external dispute resolution (EDR) response for complaints about misleading or deceptive representations/conduct. 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 misleading or deceptive representations/conduct 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 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

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

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

For example, for misleading or deceptive representations/conduct complaints, what does the financial firm say about:

* whether the adviser or financial firm’s representative made a statement(s) or engaged in conduct that was false or misleading (representation)
* whether the complainant(s) relied on the representation(s) to their detriment or was/were led into error by the misleading or deceptive representation

[if the financial firm is an insurer, whether the financial firm has complied with its duty of utmost good faith, and whether s14 of the Insurance Contracts Act applies, and if so, how.]

### 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 misleading or deceptive representations/conduct, 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
* a statement from the adviser or financial firm’s representative 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
* if the representations/conduct was about a future matter or partly about a future matter – documents from the financial firm that it had a reasonable basis for making the representations or to engage in the conduct
* any adviser’s file notes, contact records (records of all contact made with the complainant)
* advice documents (eg. statement of advice, record of advice)\*
* 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
* for advice about derivatives – details of the adviser or financial firm representative’s accreditation
* other relevant documents the financial firm provided to the complainant(s) (eg. product disclosure statement, derivatives explanatory booklets, prospectus)
* other relevant correspondence (eg. letters, emails and faxes) between the adviser or financial firm’s representative 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.