

27 July 2020

Manager
CDR Rules Team
Australian Competition & Consumer Commission
23 Marcus Clarke Street
Canberra ACT 2600

By email: ACCC-CDR@accc.gov.au

Dear CDR Rules Team Manager

Consumer Data Right – Intermediaries Consultation opened on 22 June 2020

AFCA welcomes the opportunity to comment on the proposal to allow intermediaries to act on behalf of accredited persons in the CDR regime as explained in the consultation material released by the ACCC on 22 June 2020.

The proposal only permits accredited persons to act as intermediaries. We understand this limitation is to maintain existing levels of consumer protection. In regard to complaints, an intermediary will be required to have internal dispute resolution (IDR) processes meeting specified standards and be a member of a recognised external dispute resolution (EDR) scheme.¹ We consider these consumer protection measures to be essential.

Special guidance

The proposed ‘combined accredited person arrangements’ (CAP arrangements) add complexity to the CDR regime and we believe consumers dealing with parties in these arrangements will need additional guidance. As more than one accredited person will be involved in a CAP arrangement, consumers with complaints will have an extra decision to make: against which party should the complaint be made?

¹ In the banking sector, ASIC’s Regulatory Guide 165 sets the IDR standards and AFCA is the recognised EDR scheme.

In the consultation material, we have not found any proposed requirement to ensure an accredited person clearly explains complaint avenues to consumers where CAP arrangements operate.² In our view this should be addressed in all of the information about complaint resolution provided to consumers dealing with parties in CAP arrangements, including disclosure through documents such as an accredited person's CDR policy and website information about IDR and EDR.

We see consumer confusion and potential delays in IDR as the primary issues. A further issue is that, if consumers complain to the wrong parties, and complaints reach EDR, there could be complications and delays at EDR.

It would be helpful for the ACCC to provide guidance to explain complaint avenues in cases involving CAP arrangements, either in the CDR Rules or other explanatory material. This would clarify the position for CDR participants including consumers and could also be used by EDR schemes. Scenarios where the guidance could assist EDR schemes are:

- CAP arrangements in a single sector

All parties to a CAP arrangement would be members of one EDR scheme. The suggested guidance could help that scheme to handle CDR complaints efficiently.

- CAP arrangements across sectors

The parties to a CAP arrangement would be members of different EDR schemes. If a complaint goes through the IDR processes of the wrong party and proceeds to EDR, the suggested guidance could help the EDR schemes to rectify the problem.

Issue for discussion

The consultation material indicates that certain obligations under the CDR regime may apply to each accredited person in a CAP arrangement. It might follow that a complaint could be against more than one party. We would like to discuss whether this is possible. If so, EDR schemes may need to put in place procedures to deal with these complaints, which could be:

- against multiple members of the same EDR scheme

² We acknowledge CDR Rule 7.2(6). This could include an extension tailored for CAP arrangements.

- against members of different EDR schemes (possibly requiring coordinated action between the schemes).

Further contact

If we can assist by discussing issues or providing information, please do not hesitate to contact us. Our contact for this matter is [REDACTED]

[REDACTED].

Yours faithfully

[REDACTED]

Michael Ridgway
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Australian Financial Complaints Authority