Fact sheet

# Non-disclosure

This guide has been prepared to assist financial firms in preparing a quality external complaint resolution (EDR) response for complaints about non-disclosure. 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 non-disclosure 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 |
| Insured |  |
| Policy number |  |
| Policy type |  |
| Insured property |  |
| Excess  |  |

## 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 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 how you have considered all of the issues raised in the complaint and set out the financial firm’s reasons for its position, noting what information you have considered to reach this view. It is important you consider your obligations and whether you have met them.

In relation to non-disclosure complaints, the financial firm should establish and provide details of how the financial firm has complied with its obligations under the Insurance Contracts Act 1984 and why it is entitled to decline the claim:

**[The financial firm provided the complainant with the duty of disclosure statement**

Outline how the complainant was provided with the duty of disclosure statement.

**The complainant has failed to disclose something (licence, criminal or claims history)**

Explain why the financial firm believes the complainant has failed to disclose something throughout the inception process.

**The complainant was an unacceptable risk (underwriting guidelines)**

Provide details of any underwriting guidelines or underwriting opinions that refer to the complainant being an unacceptable risk.

**The action the financial firm would have done had the correct disclosure been made**

Provide details of any underwriting guidelines or underwriting opinions that refer to what the financial firm would have done at the time of inception.]

## 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

To support your position and reasoning for declining the claim due to non-disclosure, the following information is usually required:

* denial letter
* IDR response
* the certificate of insurance
* the product disclosure statement
* relevant pages of the underwriting guidelines (including underwriting discretion)
* provide examples of similar declines that are reasonably contemporaneous
* a statement or a statutory declaration from the underwriter or relevantly qualified staff member explaining the financial firm’s underwriting process and why the complainant was an unacceptable risk
* evidence establishing the complainant failed the duty of disclosure (for example a copy of the complainant’s licence, criminal or claims history)
* a recording of the policy inception call, where available. If no call recording is available, a statutory declaration from the staff member who incepted the policy with any recollections of the relevant inception and details of the standard procedure followed.
* if incepted online, copies of the relevant screen shots of the inception with an explanation of the process
* any claim form and supporting documentation
* a chronology of events, from when the financial firm became aware of the claim, to now
* any correspondence and system notes detailing all communication the financial firm has had with the Complainant in relation to the claim
* any quotes, scope of works, details of cash settlements and/or assessor’s reports, if applicable
* details of whether the full premiums or an excess have been reimbursed.

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.