Friday 14 June

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Dear Jessica,

**Feedback on Draft Authorised Representatives and Advocates Industry Guidance Note (IGN 017)**

ACCAN welcomes the opportunity to comment on Communications Alliance’s draft Authorised Representatives and Advocates Industry Guidance Note (hereafter IGN 017).

We understand that a review of this IGN will take place in September 2019. However, we wish to raise three concerns about the substance of IGN 017 for consideration before then.

Our consultation with financial counsellors and lawyers revealed that the authorisation process is unnecessarily arduous. They reported the following challenges:

* Inconsistency in how the process is applied across and within RSPs
* Lengthy delays when RSPs knock back requests for authorisation
* Identification measures that request an unnecessary level of personal information about the person seeking authorisation by RSPs (eg. Drivers’ licence number)
* Legal representatives required to undergo the same authorisation process as other representatives.

We are concerned that IGN 017 lacks detail about a recommended process for authorising representatives or advocates (the authorisation process), and overcomplicates the issue. IGN 017 should be simplified and amended to focus on the following:

* Emphasise the need to comply with the authorisation process outlined in the ACCC/ASIC Debt Collection Guideline[[1]](#footnote-1), noting that the TCP Code requires RSPs to comply with this guideline
* Recommend use of a standardised authorisation form similar to the Authority Form already developed by Financial Counsellors Australia (FCA) in consultation with other industries and Communications Alliance
* Recommend a simplification of the authorisation process for legal representatives.

*Compliance with ACCC/ASIC Debt Collection Guideline*

Section 2.2 of IGN 017 states that one of its key objectives is to ‘clarify the methods by which a consumer can appoint an Advocate or Authorised Representative’. Section 5.2.1 acknowledges the difficulty of developing a process that simultaneously protects consumers while avoiding undue burden. It offers ‘**no clear solution’** to this challenge.[[2]](#footnote-2) While aware of the need to protect against unauthorised access, ACCAN does not consider this to be a helpful approach in a Guidance Note.

Our solution is this: **IGN 017 should recommend a simple authorisation process in accordance with the ASIC/ACCC Guideline** (the Guideline), as required under TCP Code section 6.10.1A in relation to debt collection activities.[[3]](#footnote-3) The Guideline states that RSPs should not:

“refuse to deal with an appointed or authorised representative, whether by direct refusal or by placing unnecessary obstacles in the way of the authorised representative, for example**, by insisting on a particular style or form of authorisation when the written authority provided already includes the necessary information**.”[[4]](#footnote-4)

We recognise the Guideline addresses the authorisation process for representatives dealing with debt collection. However, this limitation is impractical. It is unreasonable for all parties if the Guideline and TCP Code recommend one standard approach for authorising representatives dealing with debt collection, but none for those dealing with any other kind of communication with RSPs.

IGN 017 should emphasise that RSPs enforcing ‘a particular style or form of authorisation when the written authority provided [eg. the FCA form] already includes the necessary information’ can be interpreted as obstructing the authorisation process. Instead, the process should be straightforward for both the customer **and** the representative. IGN 017 must go further to ensure the standards outlined in the Guideline are being met.

*Standardised authorisation form*

It is unclear why IGN 017 cannot recommend use of a standardised authorisation form at this time, especially considering Communications Alliance’s positive engagement and input into the FCA Authority Form a few years ago.

The introduction of a standardised authorisation form would:

* Significantly improve the efficiency of the authorisation process for all parties
* Ensure RSPs are compliant with section 6.10.1A of the TCP Code by following the Guideline
* Support industry best practice

Consultation with our stakeholders highlighted that the authorisation process is applied inconsistently across and within RSPs. Organisations we spoke to had different experiences depending on whether they contacted RSPs face-to-face, online or over the phone.

 This poses a significant challenge, especially for those acting on behalf of rural, regional and remote (RRR) consumers. Financial counsellors and community lawyers see their RRR clients intermittently. This means that when an RSP rejects an authorisation request, the process can be delayed for weeks. This is a serious concern for ACCAN: **the longer the authorisation process takes, the longer the vulnerable consumer is at risk of harm**.

The solution to this challenge is to encourage use of a standardised authorisation form. We recommend a form similar to that at Appendix D of the Guideline, but adjusted to suit legal and other kinds of representatives.[[5]](#footnote-5) This is the same form referred to above, developed by FCA in conjunction with key industry stakeholders, **including** **Communications Alliance.** It is currently used throughout the financial services sector. The form captures the contact information recommended by the Guideline as necessary to prove identification.[[6]](#footnote-6) RSPs could use existing searchable databases of certified financial counsellors[[7]](#footnote-7) and lawyers[[8]](#footnote-8) to further verify their identity if needed.

We also suggest that in some cases it may be appropriate and more efficient to grant authorisation to organisations, rather than individuals. This would acknowledge the reality that more than one case worker in an organisation can act on a client’s behalf, for example when there are personnel changes necessitating case handovers between case workers. It would also allow for case work to continue when lead case workers are on leave, without triggering a new authorisation process.

*Recognition of professional standing*

ACCAN is unsure about the need for an internal authorisation process for those acting in professional legal standing. We understand that an authorisation process is necessary to prevent fraudulent activity and protect the privacy and security of the client. However, more efficient means to authorise a representative should be pursued where available.

**Ironically, under current arrangements it is easier for a lawyer to sue an RSP on behalf of their client due to their standing with the court, than to be recognised as an authorised representative by the provider**. All lawyers must obtain prior authority from their clients to act on their behalf. This authority should be sufficient to acknowledge the lawyer as an authorised representative when engaging with RSPs on behalf of their client. To engage in fraudulent behaviour puts lawyers at risk of losing their practicing certificate. Similarly, a financial counsellor who engages in fraud invites career-ending consequences.

IGN 017 should legitimise the professional standing of these kinds of representatives. This includes discouraging the practice of document witnessing in this context. Section 5.2.3 lists a lawyer or financial counsellor as acceptable witnesses to an authorisation form**. A further irony is that a lawyer or financial counsellor is considered appropriate authority to witness an authorisation form, but their overall authority to act on their client’s behalf at times is not acknowledged by RSPs.**

These inconsistencies need to be constructively addressed in IGN 017, as they are unhelpful and time-consuming for all involved, industry included.

*Final comments*

Consumers bear the negative consequences of arduous authorisation processes. Their representatives are required to overcome complex and inconsistently applied bureaucratic hurdles. ACCAN recognises the difficulties of standardising industry policies and processes. It is essential that the guidance tools developed by Communications Alliance are as clear, prescriptive and well-thought-out as is practicable.

We look forward to providing more in-depth feedback when IGN 017 is reviewed in September 2019. Please contact me if you would like to discuss any issues raised in this feedback.

Yours sincerely

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1. ACCC/ASIC 2015, [Debt Collection Guidelines](https://download.asic.gov.au/media/3549402/rg96-published-29-february-2016.pdf), section 9, p. 21 [↑](#footnote-ref-1)
2. Communications Alliance 2019, Industry Guidance Note (DRAFT) IGN 017: Authorised representatives and advocates, p. 6 [↑](#footnote-ref-2)
3. Communications Alliance 2018, [Telecommunications Consumer Protection Code](https://www.commsalliance.com.au/__data/assets/pdf_file/0004/60988/TCP-C628-2015-incorporating-Variation-No-1-2018.pdf), p. 54 [↑](#footnote-ref-3)
4. ACCC/ASIC 2015, [Debt Collection Guidelines](https://download.asic.gov.au/media/3549402/rg96-published-29-february-2016.pdf), section 9, p. 21 [↑](#footnote-ref-4)
5. ACCC/ASIC 2015, [Debt Collection Guidelines](https://download.asic.gov.au/media/3549402/rg96-published-29-february-2016.pdf), section 9, p. 63 [↑](#footnote-ref-5)
6. ACCC/ASIC 2015, [Debt Collection Guidelines](https://download.asic.gov.au/media/3549402/rg96-published-29-february-2016.pdf), section 9C, p. 63 [↑](#footnote-ref-6)
7. <https://www.toolkit.org.au/toolkit/terms-of-use> [↑](#footnote-ref-7)
8. Available on the websites of each State and Territory Law Society. [↑](#footnote-ref-8)