



**ASIC**  
Australian Securities &  
Investments Commission

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# Compliance with the fee disclosure statement and renewal notice obligations

**Report 636 | November 2019**

## **About this report**

This report summarises ASIC's review of compliance with the fee disclosure statement and renewal notice obligations by a sample of AFS licensees and their representatives.

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# Overview

## Background

- › In 2018, ASIC commenced a project to examine whether a randomly selected sample of Australian financial services (AFS) licensees and their representatives were complying with fee disclosure statement (FDS) and renewal notice (RN) obligations.
- › We commenced this work after receiving a number of breach reports from licensees that indicated that they had failed to comply with the FDS and RN obligations.

## What we did

- › In 2018 and 2019 we collected and analysed information from 30 randomly selected AFS licensees and their representatives.
- › This included copies of 1,496 FDSs and 373 RNs, and information about licensees' policies and procedures. Obtaining the FDSs and RNs allowed us to determine whether they were provided to clients within the legal timeframes.
- › We also commissioned a compliance consultant to review 176 FDSs in detail to determine whether the contents of the FDSs complied with the legal requirements.

## What we found

- › We identified frequent non-compliance by fee recipients in relation to FDS and RN obligations. (The obligations apply to fee recipients, who may be AFS licensees or their representatives, depending on who entered the ongoing fee arrangement with the client.)
- › We also identified examples of inadequate policies and procedures for turning off fees when ongoing fee arrangements (OFAs) terminated.
- › Compliance needs to improve – consumers are at risk of receiving inaccurate FDSs and RNs, or none at all, and of being charged ongoing advice fees after their OFA has terminated.

## What we are doing about it

- › We have advised the 30 AFS licensees of findings in relation to compliance and our expectation that they will remediate affected clients. We will consider our regulatory options in relation to the licensees in this review.
- › Separately, ASIC is currently investigating a number of other financial advice licensees for potential breaches of the FDS and RN obligations. At the conclusion of these investigations, ASIC will determine whether court action is appropriate.
- › We have developed a number of practical tips that licensees and their representatives can use to improve their compliance with the FDS and RN obligations.

*FDSs and RNs provide transparency to consumers in ongoing fee arrangements, but compliance with FDS and RN obligations needs to improve.*

## Our review at a glance

*From a sample of 30 AFS licensees:*

**We identified 1,609 instances where an FDS was required**

**7%** of the time, fee recipients did not give clients the required FDS

**Of the 1,496 FDSs we assessed**

**9%** were not given within the required timeframe

**176 FDSs were reviewed in detail**

**80%** did not include accurate information about the services clients were entitled to receive

**73%** did not include all the required information about the services clients received

**44%** did not include the amount of each fee clients paid under the OFA

**We identified 573 instances where an RN was required**

**35%** of the time, fee recipients did not give clients the required RN

**Policies and procedures were examined**

**More than half** of licensees did not have effective processes to remind them when RNs are due

**More than half** of licensees did not have effective processes to turn off ongoing fees

# Background

## Why we reviewed compliance with FDS and RN obligations

In recent years we have received a number of breach reports from AFS licensees regarding FDS and RN obligations. The volume and breadth of issues identified in the breach reports suggested a significant risk of non-compliance.

To determine the nature and extent of the problem in the industry, ASIC commenced a project in 2018 to examine whether a randomly selected sample of fee recipients were complying with FDS and RN obligations.

## What are FDSs and RNs, and why are they important?

An **FDS** is a statement in writing that includes information about the previous 12-month period of an OFA.<sup>1</sup>

The purpose of FDSs is to help clients understand the services they have paid for, the services they have received and how much those services cost. FDSs are intended to enable clients to make an informed decision about whether their OFA should continue. The information that must be included in an FDS is listed in Table 1.

*FDSs are intended to enable clients to make an informed decision about whether their OFA should continue*

*RNs are intended to significantly reduce the likelihood of passive or disengaged clients being charged ongoing fees*

**RNs** give clients<sup>2</sup> an opportunity, every two years, to opt in to continue paying ongoing fees and to receive ongoing services. If the client does not opt in, the OFA terminates, as should the payment of fees.

RNs are intended to significantly reduce the likelihood of passive or disengaged clients being charged ongoing fees. The information that must be included in an RN is listed in Table 1.

The FDS and RN obligations are important consumer protection obligations that were introduced as part of the Future of Financial Advice (FOFA) reforms in 2013. The reforms were designed to address the problems of passive or disengaged clients being unaware of the magnitude of the fees they are paying for ongoing advice, or receiving little or no ongoing advice in return for their fees. For clients who are engaged, the renewal requirement is intended to provide them with an opportunity to consider whether the service they are receiving is value for money.<sup>3</sup>

ASIC starkly highlighted some of the problems created by the advice industry's OFAs in [Report 499 Financial advice: Fees for no service](#) (REP 499). To date, licensees have paid or offered over \$500 million in compensation to their clients. Based on licensees' estimates, compensation for fees for no service will significantly increase.

<sup>1</sup> See Key Terms at the end of this report, and [Regulatory Guide 245 Fee disclosure statements](#) (RG 245) for an explanation of key terms used in this report.

<sup>2</sup> Clients who commenced an OFA after the Future of Financial Advice (FOFA) reforms were introduced. See Key Terms.

<sup>3</sup> See paragraphs 1.4 and 1.5 of the Revised Explanatory Memorandum to the Corporations Amendment (Future of Financial Advice) Bill 2012.

Table 1: What information must be included in an FDS and RN?<sup>4</sup>

FDS	<p><b>An FDS must include:</b></p> <ul style="list-style-type: none"> <li>› the amount (in Australian dollars) of each ongoing fee paid by the client under the OFA in the previous year (see s962H(2)(a))</li> <li>› information about the services that the client was entitled to receive under the OFA in the previous year (including from any previous AFS licensee or representative under the client's OFA) (see s962H(2)(c))</li> <li>› information about the services that the client received under the OFA in the previous year (including from any previous AFS licensee or representative under the client's OFA (see s962H(2)(d)).</li> </ul>
RN	<p><b>An RN must include a statement that:</b></p> <ul style="list-style-type: none"> <li>› the client may renew the arrangement by giving the current fee recipient notice in writing of the election (see s962K(2)(a))</li> <li>› the arrangement will terminate, and no further advice will be provided or fee charged under it, if the client does not elect to renew the arrangement (see s962K(2)(b))</li> <li>› the client will be taken to have elected not to renew the arrangement if the client does not give the current fee recipient notice in writing of an election to renew before the end of the renewal period (see s962K(2)(c))</li> <li>› the renewal period is a period of 30 days beginning on the day on which the renewal notice and fee disclosure statement is given to the client (see s962K(2)(d)).</li> </ul>

## When do the FDS and RN obligations apply?

Under s962G, clients who have entered into an OFA with an AFS licensee, or a representative of an AFS licensee, must be provided with an FDS. Under s962H, the FDS must relate to a period of 12 months that ends on a day no more than 60 days before the day the FDS is given.

Under s962K, the RN obligations only apply to clients who entered an OFA on or after the date that the FDS obligations applied to their AFS licensee or representative, and who were not provided with personal advice as a retail client before that date by the licensee or representative. They are known as post-FOFA clients. These clients must be provided with an RN every two years (with their FDS) so that they may renew the OFA. Section 962K specifies that if the client either opts out, or does not actively opt in, the OFA is terminated.

Section 962F further provides that for post-FOFA clients, a failure to comply with the FDS or RN obligations terminates the entitlement of the AFS licensee or its representative to charge the client an ongoing fee.

It is a contravention of a civil penalty provision for a fee recipient to charge an ongoing fee after an OFA has terminated: see s962P and 1317E.

<sup>4</sup> All references to legislation in Table 1 and in this report are references to provisions in the *Corporations Act 2001*.

## What we did

To test compliance with the FDS and RN obligations, we randomly selected 30 AFS licensees and examined whether the licensees (and, where applicable, their representatives):

- › issued FDSs and RNs to clients
- › issued FDSs and RNs within the timeframes set out in the law
- › issued FDSs and RNs that contained all the information required by the law
- › issued accurate FDSs – that is, FDSs that accurately disclosed the services clients were entitled to, the services clients actually received, and the fees they paid
- › had appropriate procedures in place to ensure that fees for ongoing services were discontinued when the arrangements were terminated as a result of licensees (or, where applicable, their representatives) failing to comply with the FDS or RN obligations, or clients not opting in to continue.

As part of our work, we:

- › identified the number of instances where fee recipients were required to give FDSs and RNs to clients (1,609 instances for FDSs; 573 instances for RNs)
- › assessed copies of 1,496 FDSs and 373 RNs given to clients
- › commissioned a compliance consultant to conduct a detailed review of 176 FDSs to see if they complied with the content requirements
- › assessed statements and documents from licensees, which included information about their policies and procedures as well as file notes and client correspondence.

We excluded AFS licensees that were part of the AMP, ANZ, CBA, Macquarie, NAB and Westpac financial services groups. This was because we were already looking at the conduct of these institutions in relation to a range of issues, as part of ASIC's Wealth Management Project that commenced in 2014, and we were keen to test compliance by the broader industry beyond the major banks.

More details about how we selected our sample, and about the information we gathered and analysed, can be found in Appendix A.

# What we found

We found widespread non-compliance across the sample of fee recipients. This suggests compliance with the FDS and RN obligations may be a wider industry problem, beyond our sample.

This section outlines six key areas of non-compliance that we identified, and provides tips to assist fee recipients to comply.

It is important to note that the 'failed to comply' category was broad. It included a range of non-compliance, ranging from less material and technical breaches to more significant breaches.

It is also important to note that the relevant legal obligations may apply to representatives of the AFS licensees identified in Appendix B, and not to the AFS licensees themselves. This is because the FDS and RN obligations apply to the 'fee recipient' who enters into an OFA with the client – s962C explains that the fee recipient may be an AFS licensee, or a representative of an AFS licensee, or another person to whom the AFS licensee or its representative have assigned their rights under the OFA.

Further, s910A defines 'representative' of an AFS licensee as:

- › an authorised representative of the licensee
- › an employee or director of the licensee
- › an employee or director of a related body corporate of the licensee, or
- › any other person acting on behalf of the licensee.

Irrespective of whether the fee recipient is a representative of an AFS licensee, under s912A licensees are required to take reasonable steps to ensure their representatives comply with the financial services laws (which include the FDS and RN obligations).

## 1. Some failures to issue FDSs on time, or at all

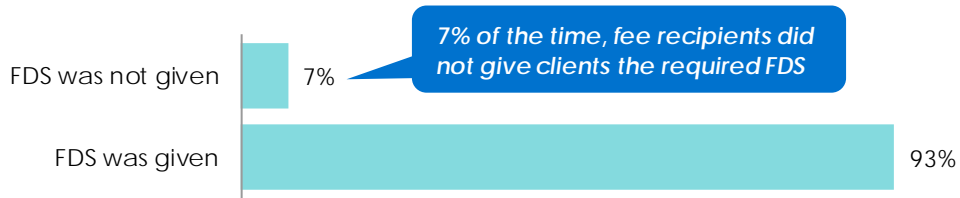
The most basic obligation is to provide an FDS to relevant OFA clients. From the 1,609 instances when the law required the AFS licensee or its representative to provide an FDS to a client in our sample, we found that:

- › in the majority of instances (93%) an FDS was provided, totalling 1,496 FDSs
- › in 7% of instances an FDSs was not provided.

These results are somewhat encouraging, because they suggest that most fee recipients are trying to comply with the requirement to give an FDS to OFA clients. However, the failure to provide some FDSs at all suggests that some fee recipients are unwilling, or unable, to consistently comply with this obligation.



Figure 1: Did the fee recipient give an FDS to the client?



**Note:** See Table 3 in Appendix C for the information shown in this figure (accessible version).

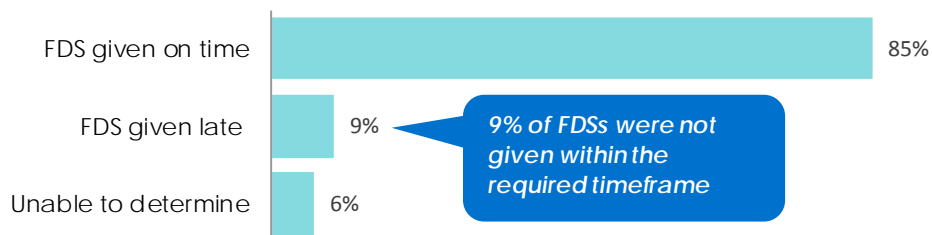
**Source:** ASIC analysis of data and documents obtained from sample of 30 AFS licensees. The sample size for this figure is 1,609 instances when the law required the fee recipient to give an FDS.

Of the 1,496 FDSs that were provided to clients:

- › in 85% of cases the FDSs were given within the required timeframe
- › in 9% of cases, however, FDSs were given late, so the fee recipient failed to comply
- › in 6% of cases we were unable to determine whether FDSs were given on time, because the documents the licensee produced to ASIC under notice did not allow a determination of the disclosure date that applied to the client.

The nature of non-compliance varied. At one extreme, the representatives of one licensee in our sample failed to give an FDS to *any* clients in the scope of our review. At the other end of the spectrum, some fee recipients gave FDSs to all clients captured by our review, but some of these FDSs were given outside the legal timeframe.

Figure 2: Of FDSs provided, how many were given to the client on time?



**Note:** See Table 4 in Appendix C for the information shown in this figure (accessible version).

**Source:** ASIC analysis of data and documents obtained from sample of 30 AFS licensees. The sample size for this figure is 1,496 FDSs that were given to clients.

## Compliance tip: Check when FDSs are due and whether they were provided

If you are a fee recipient under an OFA, you should develop systems and processes to:

- › accurately determine your complete list of clients in OFAs
- › determine the legal timeframe to provide each of these clients with an FDS each year
- › audit or check whether complying FDSs were provided to all of your OFA clients.

Section 962 sets out your FDS obligations. For further guidance, see [Regulatory Guide 245 Fee disclosure statements](#) (RG 245).

**Figure 3: Timeframe for providing an FDS (if no FDS has been issued since the OFA was entered into)**



**Note:** See Appendix C for the information shown in this figure (accessible version).

## 2. Inaccurate information about services clients were entitled to

The compliance consultant assessed whether a sample of 176 FDSs contained accurate information about the services that OFA clients were **entitled** to.

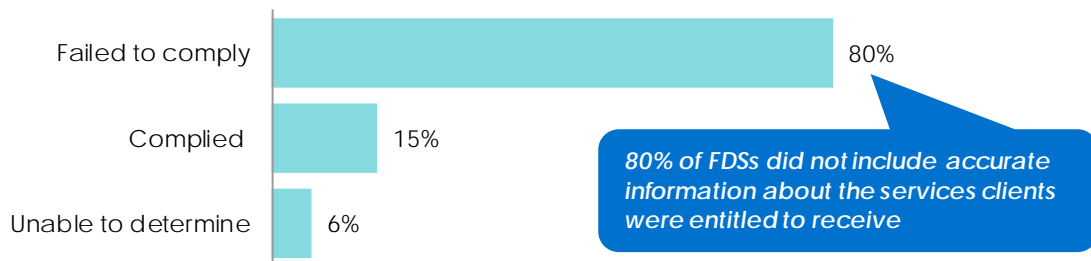
The consultant found many inconsistencies between the services promised in clients' OFAs and the services their FDSs stated they were entitled to. Figure 4 summarises the results, including that 80% of FDSs did not accurately state the services the clients were entitled to.

The 'failed to comply' category was broad and included a range of non-compliance, including:

- › instances where FDSs correctly included *some* of the services clients were entitled to, but not *all* of the services
- › more significant failures – for example, instances where the client's OFA stated they were entitled to 'comprehensive review meetings with [their] adviser every six months', but the FDS did not mention the client was entitled to this service (or whether it was provided)
- › FDSs that exaggerated the services the client was entitled to under their OFA – in such cases there is a risk that FDSs will mislead clients about whether the fees they are being charged represent value for money.

In some cases, the records provided to ASIC in response to ASIC notices contained insufficient information to allow the compliance consultant to determine whether the FDSs contained accurate information about the services clients were entitled to.

**Figure 4: Did the FDS accurately state information about the services that the client was entitled to receive during the previous year?**



**Note 1:** See Table 5 in Appendix C for the information shown in this figure (accessible version).

**Note 2:** Figures do not add up to 100% due to rounding differences.

**Source:** Detailed review of FDSs by compliance consultant. The sample size for this figure is 176 FDSs.

### Compliance tip: Ensure only services that clients are entitled to are listed in FDSs

In order to comply with the FDS obligations:

- › check the ongoing services your clients are entitled to receive under their OFA
- › accurately replicate those service entitlements in your FDSs.

Our review identified frequent inconsistencies between the services clients were entitled to under their OFA, and what their FDSs stated they were entitled to, resulting in non-compliance.

In addition, although the law does not prohibit the inclusion of additional information in an FDS, such information should generally be kept separate from the prescribed information so that the client can easily determine whether they are receiving the services they are entitled to: see [RG 245](#).

### 3. Incorrect information about the services clients received

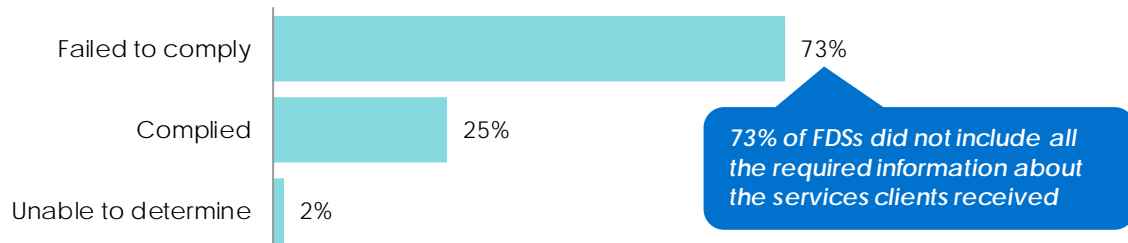
The compliance consultant assessed whether a sample of 176 FDSs contained accurate information about the services that OFA clients actually received. The compliance consultant did so by examining client files that licensees had produced to ASIC under compulsory notices.

The compliance consultant found that 73% of FDSs failed to comply. In these cases, the files produced by the licensees did not contain evidence to support all of the services that the FDS stated were provided.

Similar to Finding 2, the 'failed to comply' category was broad and included a range of non-compliance, including:

- › instances where the compliance consultant concluded that the FDS failed to comply with the relevant obligation because the client file did not contain evidence that one of the ancillary ongoing services (e.g. a report about the economy or a financial advice newsletter) had been provided to the client, as the FDS claimed
- › more significant failures – for example, where the FDS stated that the client had received an annual advice review, but the documents the licensee provided to ASIC under notice did not contain evidence of this advice review having taken place.

Figure 5: Did the FDS accurately describe the services the client received during the previous year?



**Note:** See Table 6 in Appendix C for the information shown in this figure (accessible version).

**Source:** Detailed review of FDSs and client files by compliance consultant. The sample size for this figure is 176 FDSs.

### Compliance tip: Keep good records of the ongoing services you provide

For each service in your OFA with clients, you should keep good records of whether or not you have provided those services during each annual period.

This will help you to:

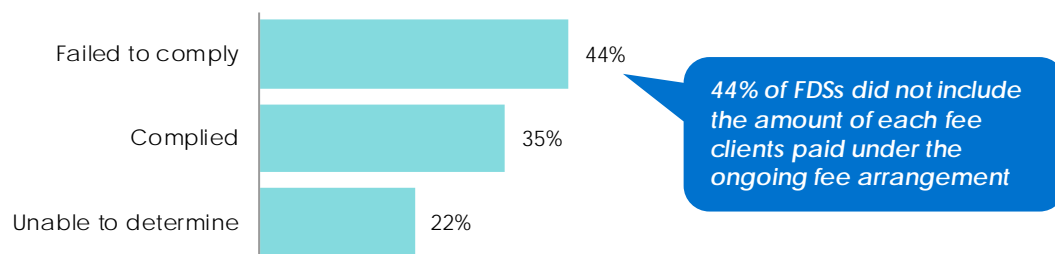
- › include accurate information in your FDSs, and avoid breaches of s962H
- › substantiate, with evidence, the services you have provided
- › identify fees-for-no-service failures, so that you can take steps to stop further breaches and to remediate affected clients.

## 4. Incorrect fees in FDSs

We asked the compliance consultant to assess whether the fees stated in the sample of 176 FDSs were the same as the fees clients paid in the relevant period of each FDS. The compliance consultant assessed this by comparing what was stated in an FDS with the evidence the licensees had given to ASIC under compulsory notices (e.g. account statements and fee invoices).

Figure 6 outlines the compliance consultant's findings – including that 44% of FDSs did not comply. In a further 22% of FDSs, the compliance consultant could not determine whether the FDSs complied because the licensees did not provide ASIC with sufficient evidence.

Figure 6: Did the FDS accurately reflect the fees paid by the client during the relevant period?



**Note 1:** See Table 7 in Appendix C for the information shown in this figure (accessible version).

**Note 2:** Figures do not add up to 100% due to rounding.

**Source:** Detailed review of FDSs by compliance consultant. The sample size for this figure is 176 FDSs.

In this project, as well as in separate breach notifications and ASIC investigations of other AFS licensees, we have identified that licensees often base the fee data they include in FDSs on the payments they receive from financial product providers and platforms (which, in turn, commonly deduct the fees from clients' accounts). However, there is usually a timing difference between when clients pay fees and when the fees are transferred by product providers and platforms to licensees. In some cases, there are also differences between the amounts deducted from clients' accounts and the amounts paid to licensees or their representatives.

When fee recipients do not have accurate data about when clients paid fees, and how much they paid (as opposed to the fees that the AFS licensee received and when they received these fees), they are at high risk of generating incorrect FDSs.

#### **Compliance tip: Ensure your FDSs relate to the fees clients paid**

An FDS should include the amount of each ongoing fee *paid by the client* under the OFA in the previous year, and accurately reflect *when* those fees were paid by clients.

It is a matter for you, the fee recipient, to determine *how* to ensure your FDSs include accurate information about the fees clients paid.

If your clients pay ongoing fees through product providers, some methods may include:

- › logging into the product issuer or product platform website or portal to check when fees were deducted from each client's account
- › producing FDSs only when you are confident that you have complete and accurate data from the product issuer or platform about the ongoing fees the client paid during the previous year (while still meeting the FDS timing requirements).

Some fee recipients charge fixed ongoing fees (not fees calculated as a percentage of clients' investments) and can be more confident in the amount of ongoing fees clients pay, because the fees do not fluctuate with the value of clients' investments.

Some AFS licensees invoice clients directly (rather than receiving advice fees through a client's financial products), making it much simpler to produce accurate FDSs.

## 5. Renewal notice breaches

From the 573 instances where the law required the fee recipient to provide an RN to a client in our sample, we found that:

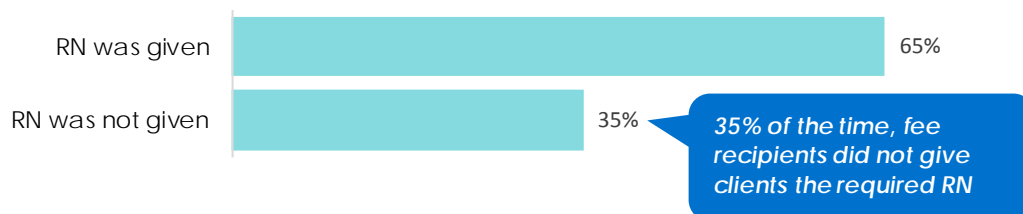
- › RNs were given in only 65% of instances
- › RNs were not given in 35% of instances – this includes some cases where the documents provided to clients were so non-compliant with the content requirements that we did not consider them to be RNs
- › of the RNs that were given, about 8% were given outside the required timeframe.<sup>5</sup>

To better understand the reasons for these failures, we assessed licensees' policies and procedures for RNs and found that:

- › more than half of the licensees did not have an effective process to identify when RNs were due
- › some licensees appeared to misunderstand the timing requirements (e.g. their RNs stated that the client could renew their OFA within 60 days instead of 30 days).

We also identified a range of failures to comply with the RN content obligations, including where licensees had developed RN templates that were inconsistent with the law, causing breaches.

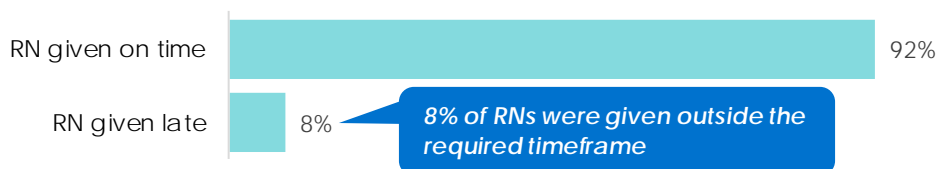
**Figure 7: Was a renewal notice given to the client?**



**Note:** See Table 8 in Appendix C for the information shown in this figure (accessible version).

**Source:** ASIC analysis of data and documents obtained from sample of 30 AFS licensees. The sample size for this figure is 573 instances when the law required the fee recipient to give an RN.

**Figure 8: Was the renewal notice given on time?**



**Note:** See Table 9 in Appendix C for the information shown in this figure (accessible version).

**Source:** ASIC analysis of data and documents obtained from sample of 30 AFS licensees. The sample size for this figure is 373 RNs that were given to clients.

<sup>5</sup> Where the fee recipient provided a managed discretionary account (MDA) service, we applied the policy in [Regulatory Guide 179 Managed discretionary account services](#) (RG 179), which states that we consider that most fee arrangements for MDAs would include 'ongoing fee arrangements' for the purposes of the fee disclosure statement (FDS) obligations in Div 3 of Pt 7.7A of the Corporations Act. We note that MDA providers are also required to give further disclosure and reporting to clients, though we did not assess compliance with those separate obligations for this report – we assessed compliance with the FDS and RN disclosure obligations.

## Compliance tip: Get the renewal period right

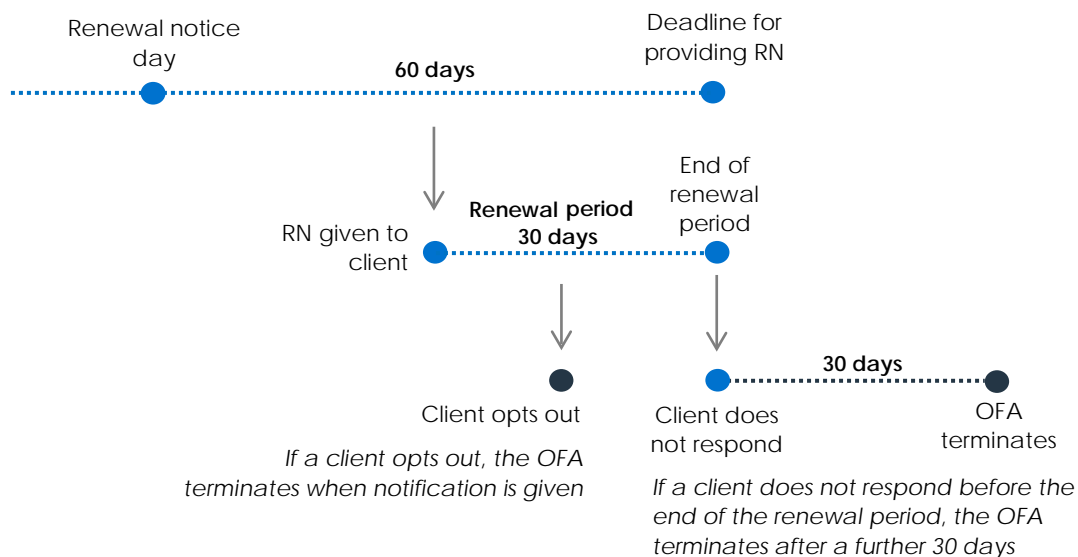
You must, before the end of a period of 60 days beginning on the renewal notice day for the OFA, give your clients an RN and an FDS (i.e. start counting from the renewal notice day plus 59 days).

The RN must include a statement that the renewal period is a period of **30 days** beginning on the day the RN and FDS are given to the client. If a client notifies the fee recipient that they do not wish to renew the OFA (i.e. the client opts out), the OFA terminates on the day the notification is given. If the client does not notify the fee recipient that they wish to renew the OFA (e.g. they do not respond), the OFA terminates after a further period of 30 days.

Fee recipients are prohibited from continuing to charge ongoing fees when an OFA has terminated – if you do so, a civil penalty may arise.

**Figure 9: Renewal notice timeframes**

*The RN (with an FDS) must be provided before the end of 60 days beginning on the renewal notice day*



**Note:** The information in Figure 9 is contained within the text.

## 6. Ineffective processes for turning off ongoing fees

We assessed licensees' systems and processes for turning off ongoing fees. We concluded that more than half of the licensees in the sample did not have effective processes to ensure that:

- › fees were turned off when clients opted out of OFAs
- › fees were turned off when clients did not respond to renewal notices
- › failures to turn off fees were detected and addressed.

### Compliance tip: Make sure ongoing fees stop when agreements terminate

When your OFA with a client terminates (e.g. because they opted out or didn't return a signed renewal notice), you need to stop charging them fees under the OFA.

If you charge clients through fee deductions by their product issuer or platform provider, you could reduce the risk of non-compliance by developing and implementing processes to:

- › provide instructions to third-party product providers and platforms to turn off fees
- › make sure third parties implement your instructions
- › run regular reconciliation or exception reports comparing your incoming fee revenue with the fees you should be receiving from OFA clients – this may help you detect instances where clients' fees have not been turned off and require further investigation.

Taking steps like these may help you identify where you need to arrange more effective processes with product providers or platforms to ensure you don't charge ongoing fees after an agreement terminates, and so avoid the potential civil penalties that may arise.



# What we are doing about it: Next steps

## Engagement with licensees in the review

We identified failures to comply with the law by each of the 30 AFS licensees or their representatives in the sample. We have written to each licensee included in this review and have explained:

- › our findings in relation to their compliance with the FDS and RN obligations, and their systems and processes
- › that we expect they will remediate clients affected by FDS and RN breaches.

## Compliance tips

We will provide this report, and an emailable version of the compliance tips it includes, to financial advice industry associations so that they can provide it to their members.

Fee recipients should review the tips and consider the changes that they may need to make to their systems and processes to ensure that they comply with the law and their clients are accurately informed about their OFAs and can decide whether they want to continue paying for them.

Fee recipients should also consult [RG 245](#) for detailed guidance on complying with FDS obligations.

## Enforcement

In 2018 ASIC adopted a 'Why not litigate?' operational discipline. Its aim is to deter future misconduct and address community expectations that wrongdoing be punished and denounced through the courts.

Under this discipline, once we are satisfied that breaches of the law are more likely than not to have occurred, and the facts of the matter show that pursuing it would be in the public interest, we will consider the question 'Why not litigate?'

ASIC is currently investigating a number of other financial advice licensees – that is, licensees not included in this review – for potential breaches of the FDS and RN obligations. At the conclusion of these investigations, ASIC will determine whether court action is appropriate.

We will also consider our regulatory options in relation to licensees included in this review.

## Legislative changes

The [Final Report](#) of the *Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry* (Royal Commission), published in February 2019, recommended that the law be amended to provide that OFAs must be renewed by clients annually (instead of every two years). In its response, the Government has agreed to amend the law to require this change, as well as other changes to OFAs recommended by the Royal Commission. We will assess whether further industry guidance is required after the legislative changes are settled.

# Appendix A: Methodology

## Licensee sample

From ASIC's database of over 2,000 AFS licensees that were authorised to provide personal advice to retail clients, we selected a sample of 30 licensees for inclusion in this project. Our sample was randomly selected except for the following:

- › We excluded AFS licensees that were part of the AMP, ANZ, CBA, Macquarie, NAB and Westpac financial services groups. This was because we were already looking at the conduct of these institutions in relation to a range of issues, as part of ASIC's Wealth Management Project that commenced in 2014, and we were keen to test compliance by the broader industry beyond the major banks.
- › We excluded new licensees that would not yet have been required to issue FDSs and RNs.
- › We included a mix of small, medium and large AFS licensees.
- › Where we found that a licensee in our original sample was not appropriate for inclusion (e.g. because it had no OFAs with clients), we removed that licensee from the sample and replaced it with another randomly drawn licensee.

## Information gathering

We used ASIC's compulsory information gathering powers to collect the following information from each of the 30 randomly selected licensees:

- › statements from the licensees explaining their policies and procedures in relation to generating and providing FDSs and RNs, and for turning off ongoing fees
- › for a sample of up to 30 clients, statements from the licensees detailing the dates that FDSs (for pre- and post-FOFA clients) and RNs (for post-FOFA clients only) were provided to the clients, copies of those FDSs and RNs, communications with clients and product issuers, file notes and other information
- › for a random sample of up to three clients (from the earlier sample of 30 clients), further documents to substantiate the amount of fees clients paid, the services they were entitled to and the services they received.

This process resulted in ASIC obtaining 1,496 FDSs and 373 RNs for analysis.

## Analysis of policies, procedures and compliance

After we obtained statements and documents from the licensees under notice, ASIC staff with the appropriate skills and experience assessed:

- › the policies and procedures used by the AFS licensees or their representatives to prepare FDSs – for example, we assessed the procedures and information sources they used to populate FDSs with information about the services clients were entitled to, services clients received, and fees clients paid

- › the licensees' policies and procedures to determine the timeframe in which FDSs and RNs were due, and to provide FDSs and RNs to clients within the required timeframes
- › whether licensees used a centralised model to produce FDSs and RNs (where the licensee prepares FDSs and RNs, and issues them to clients), or a decentralised model (where the licensee relies on its representatives to prepare and issue FDSs and RNs)
- › whether the FDS templates included the information required under s962H(2), and whether RN templates used by licensees and their representatives included the statements required by the law
- › the policies and procedures that licensees or their representatives used to identify whether a client had renewed their OFA within the timeframes required by the law, and if they had not, the processes licensees used to turn off ongoing fees
- › whether FDSs and RNs were given to clients, and whether they were given within the timeframes required by the law.

In addition, in 2019 we commissioned a compliance consultant to conduct a detailed review of a randomly selected sample of 176 of the FDSs that we had obtained. The purpose of the review was to see whether the FDSs complied with the FDS content requirements set out in s962H.

## Appendix B: Sample of AFS licensees

Table 2 lists the sample of 30 AFS licensees that we randomly selected for review.

In some cases the relevant legal obligations apply to representatives of the AFS licensees in the table, and not to the AFS licensees themselves. This is because:

- › the FDS and RN obligations apply to the 'fee recipient' who enters into an OFA with the client – s962C explains that the fee recipient may be an AFS licensee, or a representative of an AFS licensee, or another person to whom the AFS licensee or its representative have assigned their rights under the OFA
- › s910A defines 'representative' of an AFS licensee as (i) an authorised representative of the licensee; or (ii) an employee or director of the licensee; or (iii) an employee or director of a related body corporate of the licensee; or (iv) any other person acting on behalf of the licensee.

Table 2: Sample of AFS licensees

AFS licensee
1. Accordius Pty Ltd
2. Affinia Financial Advisers Limited
3. Affinity Wealth Services Pty Ltd (see Note 1)
4. Anastasiou Financial Services Pty Limited
5. Arabon Financial Pty Ltd (see Note 2)
6. Australian Central Credit Union Ltd
7. Australian Financial Solutions Group Pty Ltd
8. Blicensed Pty Ltd
9. Executive Wealth Management Financial Services Pty Limited
10. Fiducian Financial Services Pty Ltd
11. Financial Pathfinders Pty Ltd
12. First Mutual Australia Pty Ltd
13. Fitzpatricks Private Wealth Pty Ltd
14. FYG Planners Pty Ltd
15. Hood Sweeney Securities Pty Ltd
16. Illingworth David Financial Planning Pty Ltd
17. Interprac Financial Planning Pty Ltd
18. J.C. Consulting Pty Ltd
19. Koda Capital Pty Ltd

## AFS licensee

20. Les Mumme Pty Ltd
21. Lifespan Financial Planning Pty Ltd
22. Madison Financial Group Pty Ltd
23. Novus Capital Limited
24. Pitcher Partners Sydney Wealth Management Pty Ltd
25. Poynter Hargraves Financial Consultants Pty Ltd
26. Royal Wealth Co Pty Ltd
27. RSM Financial Services Australia Pty Ltd
28. Shartru Wealth Management Pty Ltd
29. Wealth Today Pty Ltd
30. Yellow Brick Road Wealth Management Pty Limited

**Note 1:** On 13 August 2019 Affinity Wealth Services Pty Ltd changed its company name to Alteris Financial Group Pty Ltd.

**Note 2:** The AFS licence of Arabon Financial Pty Ltd ceased on 20 June 2019 after the company wrote to ASIC to request the cancellation of its licence.

## Appendix C: Accessible versions of figures

This appendix is for people with visual or other impairments. It provides the underlying data and information for each of the figures included in this report.

**Table 3: Did the fee recipient give an FDS to the client?**

FDS given	Percentage
FDS was not given	7%
FDS was given	93%
Key point:	7% of the time, fee recipients did not give clients the required FDS.

**Note:** This is the data shown in Figure 1.

**Table 4: Of FDSs provided, how many were given to clients on time?**

Category	Percentage
FDS given late	9%
FDS given on time	85%
Unable to determine	6%
Key point:	9% of FDSs were not given within the required timeframe.

**Note:** This is the data shown in Figure 2.

### Text version of Figure 3 from 'Compliance Tip: Check when FDSs are due and whether they were provided'

The fee recipient must, before the end of a period of 60 days beginning on the disclosure day for the OFA, give the client an FDS. If no FDS has been given to the client in relation to the arrangement since the arrangement was entered into, the disclosure day for an OFA is 12 months since the arrangement was entered into.

**Table 5: Did the FDS accurately state information about the services that the client was entitled to receive during the previous year?**

Category	Percentage
Failed to comply	80%
Complied	15%
Unable to determine	6%
Key point:	80% of FDSs did not include accurate information about the services clients were entitled to receive.

**Note:** This is the data shown in Figure 4.

**Table 6: Did the FDS accurately describe the services the client received during the previous year?**

Category	Percentage
Failed to comply	73%
Complied	25%
Unable to determine	2%

Category	Percentage
Key point:	73% of FDSs did not include all the required information about the services clients received.

**Note:** This is the data shown in Figure 5.

**Table 7: Did the FDS accurately reflect the fees paid by the client during the relevant period?**

Category	Percentage
Failed to comply	44%
Complied	35%
Unable to determine	22%
Key point:	44% of FDSs did not include the amount of each fee clients paid under the OFA.

**Note:** This is the data shown in Figure 6.

**Table 8: Was a renewal notice given to the client?**

Category	Percentage
Renewal notice given	65%
Renewal notice not given	35%
Key point:	35% of the time, fee recipients did not give clients the required RN.

**Note:** This is the data shown in Figure 7.

**Table 9: Was the renewal notice given on time?**

Category	Percentage
Renewal notice given on time	92%
Renewal notice given late	8%
Key point:	8% of RNs were given outside the required timeframe.

**Note:** This is the data shown in Figure 8.

## Key terms

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<b>disclosure day</b>	<p>For the first FDS, the disclosure day is the anniversary of the date that the OFA was entered into. For all subsequent FDSs, the disclosure day is the anniversary of the day immediately after the end of the 12-month period covered by the previous FDS</p> <p>Note: See s962J for the exact definition.</p>
<b>fee disclosure statement (FDS)</b>	<p>A document required under s962G to be given in accordance with Div 3 of Pt 7.7A. Specifically, it is a statement in writing provided by a fee recipient to its clients on an annual basis about the previous period of 12 months of their OFA, including information about the amount of fees paid by the client, the services received by the client, and the services that the client was entitled to receive</p>
<b>fee recipient</b>	<p>A fee recipient is:</p> <ul style="list-style-type: none"><li>› an AFS licensee or its representative who enters into an OFA with a client, or</li><li>› if the rights of the person who entered into the OFA have been assigned – the person who currently holds those rights</li></ul> <p>Note: See s962C for the exact definition.</p>
<b>ongoing fee arrangement (OFA)</b>	<p>An OFA exists when an AFS licensee or its representative gives personal advice to a person as a retail client and the client enters into an arrangement with the licensee or representative, the terms of which provide for the payment of a fee (however described or structured) during a period of more than 12 months. This does not include certain arrangements that are exempt under Div 3 of Pt 7.7A</p>
<b>pre-FOFA client</b>	<p>A person who enters into an ongoing fee arrangement with an AFS licensee or its representative:</p> <ul style="list-style-type: none"><li>› either before or after the date that the FDS obligations applied to that licensee or representative, and</li><li>› who was provided with personal advice as a retail client by that licensee or representative before the FDS obligations applied to that licensee or representative</li></ul>
<b>post-FOFA client</b>	<p>A person who enters into an ongoing fee arrangement with an AFS licensee or its representative:</p> <ul style="list-style-type: none"><li>› on or after the date that the FDS obligations applied to that licensee or representative, and</li><li>› who was not provided with personal advice as a retail client before that date by the licensee or representative</li></ul>

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**renewal  
notice (RN)**

An RN, in relation to an OFA, is a written notice that includes statements that:

- › the client may renew the arrangement by giving the current fee recipient notice in writing
- › the arrangement will terminate, and no further advice will be provided or fee charged under it, if the client does not elect to renew the arrangement
- › the client will be taken to have elected not to renew the arrangement if the client does not give a written notice to renew within the renewal period
- › the renewal period is 30 days beginning on the day the renewal notice and fee disclosure statement is given to the client.

Note: See s962K for an exact definition.

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Note: This is not an exhaustive list of key terms. For further information, see [RG 245](#) and s962.