AFCA News

Edition 3 - July 2019

Welcome to the third edition of *AFCA News* for the Australian Financial Complaints Authority (AFCA).

First six months of operations

AFCA released its six month report earlier this month.

We have received over 35,000 complaints, far exceeding initial forecasts. Over 60 per cent of complaints have already been resolved, with 74 per cent resolving in favour of the complainant or by agreement.

This unexpected large number of complaints highlights the important role AFCA plays in rebuilding customer trust and increasing transparency in the Australian financial services sector.

Key stats:

- **35,263** complaints received
- **60%** of complaints resolved
- **74%** of complaints were resolved by agreement or in favour of the complainant
- **88%** of financial firms did not have a single complaint lodged against them
- **$83m** obtained in settlements*

* *Includes matters previously received by AFCA's predecessor, Financial Ombudsman Service, and resolved by AFCA since 1 November 2018.*

Non-response by members

It is disappointing to report that some members are still yet to respond to AFCA during the initial internal dispute resolution (IDR) period. I will be writing directly to financial firm CEOs about this issue and AFCA will continue to publish information relating to firms' non-response rates.

New member classification – Mutual Banks

As part of our commitment to providing contemporary data that accurately reflects the financial services industry, we are now classifying 'Mutual Banks' as a category separate from 'Banks', 'Credit providers' and 'Superannuation'. For more information about these categories, please call 1300 565 562 or email membership@afca.org.au.

Legacy complaints

We welcomed ASIC's approval of the change to our Rules to allow us to investigate certain complaints dating back to 1 January 2008 – which we are calling Legacy complaints.

Please read the Legacy complaints article in this edition for further information and follow the link to watch the webinar we hosted for members.

I hope you find this edition useful and informative, and if you have any comments or article suggestions for our forthcoming editions, please contact us at publications@afca.org.au.

David Locke
Chief Ombudsman and CEO

In this edition:

Legacy complaints

On 1 July 2019 we started accepting complaints from Australian consumers and small business that would normally fall outside our time limits.

Until 30 June 2020, we will accept complaints about the conduct of financial firms dating back to 1 January 2008. These complaints are known as Legacy complaints.

The normal case management process will be followed in handling Legacy complaints. This process begins when we refer complaints back to financial firms to resolve. It is our expectation that firms will engage proactively with their customers to resolve these legacy matters themselves where possible, as part of their commitment to provide just remediation where appropriate and meet the community's expectations of fairness.

Where firms are unable to satisfactorily resolve the complaints, AFCA will start investigating these matters from 1 October 2019.

We recently held a webinar for our members on our approach to handling legacy complaints – it's available for you to watch on our website.

Financial elder abuse

As the Australian population ages, the problem of financial elder abuse is expected to become more widespread. Many older people continue to access financial services in a branch, which provides more scope to interact with the customer and often places the financial firm in the best position to identify financial abuse. As such, it is important that employees of financial firms can recognise potential instances of exploitation and take steps to prevent loss.

When AFCA considers complaints and issues of financial elder abuse are raised, we will ask:

- Were there red flags or warning signs which may have been indicators of financial abuse of a vulnerable elderly person?
- Did the financial firm exercise its duty to take reasonable care and skill, and question the customer's authorisation of a transaction?
- If so, should the financial firm have delayed the transaction or taken other preventive action?

AFCA will consider all circumstances surrounding the financial transaction and whether the financial firm took appropriate action to determine if financial elder abuse was occurring.

We have published the AFCA Approach to financial elder abuse to assist financial firms, consumers and consumer advocates to recognise the warning signs of financial elder abuse and to understand how we apply legal principles, industry codes and good industry practice when considering these types of complaints. You can find all our AFCA Approach guides on our website.

2019 National Elder Abuse Conference

On 22-23 July delegates will convene at the 2019 National Elder Abuse Conference in Brisbane. Among them will be AFCA Executive General Manager Diana Ennis. Diana will contribute to a panel discussion about safeguarding, including looking at how the views and wishes of older persons can be included in financial services design.

Focus on fair – not black letter law

AFCA is not on the side of the consumer or the financial firm, nor are we in the middle simply splitting the difference on disputes. We are to the side, working with both parties to achieve a fair result.

We decide each case as we see it and make determinations without favour. The test we apply is 'what is fair in all circumstances of the case?'

With that in mind, black letter law arguments that are legally sound and well-articulated will not succeed if they deliver fundamentally unfair outcomes for consumers. We will not accept financial firms relying upon a provision in a 52-page standard term contract if that term is unfair and unreasonable.

We have regard to the law and to good industry practice, including any Codes of Conduct. When deciding a complaint, we will consider equitable principles such as representations made, the power imbalance between a financial firm and consumer, and how a reasonable person would understand the situation.

Case study

Insurer's obligations when removing joint policy holder

Issue: Two siblings inherited a property and took out a joint home and contents insurance policy for the house. As the complainant was illiterate, his sister organised the policy in both their names. The policy was in place from April 2015 to September 2017, when the sister removed the complainant from the policy without his knowledge or consent. The home was subsequently destroyed by fire. The sister lodged a claim and was paid out the insured amount, whilst the complainant received nothing as he was no longer on the policy. He lodged a complaint with AFCA and we investigated.

Outcome: The insurer argued that the complainant's sister had the responsibility to inform him that his name was no longer on the policy, and because she didn't, it was not required to pay the complainant, based on the general principles relating to joint policies.

We found that while the policy may allow for one party to make changes, we do not accept that this extends to removing policy cover from one of the parties without their knowledge and consent. The insurer's action in this case was against basic contract principles.

We raised these issues with the insurer who accepted that they had not acted in accordance with community expectations. The insurer promised to rectify the situation and ensure that the complainant receive his half of the insurance payout. The case was resolved before it needed to reach an ombudsman's determination.

Applications: This is a prime example of AFCA carrying out our role of doing what is fair in all the circumstances, applying relevant legal principles, good industry practice and codes of practice. If a strict black letter law application leads to an unfair outcome, we will step in. The insurer's initial position did not produce a fair outcome, nor did it consider the vulnerability of the complainant.

Banking Code update

The Banking Code Compliance Committee (BCCC, the Committee) launched on 1 July to independently monitor compliance with the new 2019 Banking Code of Practice to improve Australian banking industry standards.

The new Code provides enhanced or expanded protections for:

- customers experiencing vulnerability
- Indigenous customers
- small business customers, and
- prospective guarantors.

Formerly known as the Code Compliance Monitoring Committee (CCMC), the purpose of the BCCC is to monitor and drive best practice Code compliance. Under the new Code and the new BCCC Charter, the BCCC will have greater powers, including:

- greater access to banks' Code breach data, and
- greater sanctioning powers, including publicly naming offenders, reporting Code breaches to ASIC and requiring banks to correct Code breaches.

Tough action over direct debits

The Committee has actively monitored direct debit obligations since 2008, finding banks' compliance 'unacceptable' and 'indicative of systemic non-compliance'.

In October 2017, the Committee issued a report outlining direct debit requirements and recommendations aimed at improving business practices. Finding that banks had not taken adequate steps to improve compliance, the Committee recently wrote to the CEOs of several banks outlining its concerns and required they provide a plan for remediation or risk being named for non-compliance.

The BCCC will continue the CCMC's work and will undertake ongoing monitoring banks compliance with this important protection.

For more information about the Banking Code of Practice and to stay up to date with news and developments, visit the BCCC's website.

Superannuation fund updates

Superannuation trustees with more than one fund

Some of our superannuation trustee members provide trustee services for more than one fund. It is important that you keep us up to date with this information as and when it changes.

Because complainants often only know the name of their fund, rather than the related trustee, we provide them with the option of selecting their fund when they lodge a complaint. If the list of funds related to a superannuation trustee on our database is out of date, complaints can be lodged against the incorrect trustee.

We are currently looking at improving how we gather this information from our superannuation trustee members. In the meantime, we ask you notify us as soon as possible if there are changes to the list of funds you manage.

We have included an 'Add/Remove' superannuation fund form in the member resources section in Secure Services. When you need to add or remove a fund, please complete this form and email it to membership@afca.org.au.

Complaint submissions – best practice

Financial firms need to ensure that their submissions are made through the AFCA Secure Services portal. We are finding that many financial firms are sending hard copy documents to us by mail – this greatly increases the risk of important documents becoming lost or incorrectly filed.

AFCA has a guide to complaint submissions to assist financial firms and complainants when making submissions. This includes best practice tips and common issues to avoid and is available on our website.

Follow us on LinkedIn

The LinkedIn page for one of our predecessor schemes, Financial Ombudsman Service shut down on 1 July.

Follow us on our Australian Financial Complaints Authority LinkedIn page to continue to receive AFCA updates.

Current matters

AFCA is committed to sharing information about our work with the public and improving awareness about our service.

You can get updates about current matters on our website.

Upcoming AFCA member events

22 August 2019

AFCA Investments and Advice Forum – Perth

Register now

23 August 2019

AFCA Investments and Advice Forum – Adelaide

Register now

Events we're attending

Visit our website to view all upcoming events on our events calendar

Feedback and questions

If you have any financial questions, article suggestions or want to know more about AFCA processes, email publications@afca.org.au and we'll do our best to provide an answer in a future edition.

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