

How AFCA will assess the information you give us

This factsheet is about how AFCA considers relevant information when assessing a complaint.

This is to help parties understand how to best support their complaint with strong and relevant information.

Does AFCA treat information like a court?

No. Section A.14.3 of AFCA's Rules states that we are not bound by the rules of evidence that apply in court proceedings. We do not require parties to give information 'under oath'. We also do not give parties the opportunity to 'cross-examine' each other.

AFCA must conduct enquires and resolve complaints in a way that draws out the facts and is fair to all the parties involved.

How does AFCA approach information in complaints?

AFCA takes an evidence-based approach to complaints and will thoroughly investigate a complaint before making a decision about the outcome. This means AFCA makes decisions about complaints based on what the information tells us. We review what the parties are telling us and balance this against the information to decide what most likely happened.

Examples of possible types of information

- Documents (e.g. a claim form, a policy document, a contract, bank statements).
- Contemporaneous notes – notes or records that were made at the time of an event occurring (e.g. notes made by a doctor during a consultation with a patient, notes made by a bank call centre agent during a call with a customer). These carry more weight than recollections from some time after the event because notes made at the time of, or soon after an event are more likely to accurately detail what happened at the time than notes made some time after.
- Expert opinions – opinions from an authority (usually independent) in a particular field that are relevant to a complaint (e.g. a doctor's report on a medical condition and the likelihood of a complainant being able to return to work, a plumber's report on the cause of a leak).
- Recollections about incidents – these are accounts of what a party remembers about an incident (e.g. an email from a complainant to AFCA detailing what they remember a bank employee telling them about the terms of their personal loan).

- Information as a pattern of conduct or behaviour – information to show how someone acted over a period of time (e.g. bank statements to show someone was regularly sending money to someone else to financially support them). This could also include circumstantial information which may not prove something but does suggest what was more likely to have happened.
- Character information – information that explains or shows something based on the known character of the person (e.g. regular and consistent visits to a bank branch).

How does AFCA assess and weigh the types of information?

Generally:

- Information from an independent source is more reliable than information from a party with an interest in the outcome of the complaint. This is because someone with an interest in the complaint may be biased in their view, whether consciously or unconsciously. For example, an independent report from a plumber about the cause of a leak would generally be more reliable than a report from the home owner.
- A formal opinion from an expert with specialised knowledge or experience is more reliable than an opinion from a less-qualified expert. For example, a report from a neurologist about a brain injury would generally be more reliable than a report about the same injury from a GP. Similarly, a report from an engineer about structural issues with a house would generally be more reliable than a report from a general tradesperson.
- Information that has controls over its creation and maintenance is more reliable than information without controls. For example, records of when someone called an insurer from the insurer's case management system would be more reliable than someone's

memory of when they called. This is because case management systems usually have controls around creating and changing notes.

- Notes made at the time of an event occurring are more reliable than a recollection of what occurred made some time after the event. For example, notes recorded into a case management system by a bank's call centre agent during a call with a customer about what was discussed would be more reliable than the customer's verbal recollection of what was discussed sometime after the call had occurred.
- Information from one source that is consistent or matches up with the information provided in another source is more reliable. For example, information (such as a statutory declaration) stating that someone was financially dependent on someone else would be more reliable if it was provided with a bank statement to show the financial dependence.

How does AFCA consider conflicting information?

Where there is conflicting information, AFCA will decide which information to give more weight to. We consider information to be reliable if it is most likely to be accurate and can be confidently used to form a view or on a complaint.

The reliability or strength of information depends on the nature and source of the information and how it was obtained. Some information will carry more 'weight' and be more reliable and stronger than other information.

Is a belief the same as evidence?

No. Beliefs may be based on facts or information, but without supporting information, a belief is an unproven assertion. Even if the belief is true, to be given weight, it will need to be backed up with supporting information.



What does AFCA do with information on a complaint?

AFCA will request relevant information from the parties involved in the complaint and give them the chance to make submissions. AFCA will only request the information we consider is necessary to decide the issues in dispute and will not seek information merely because one of the parties requests it.

A person bringing a complaint to AFCA should present sufficient information and outline the specific issues in dispute to clearly explain what their complaint is about. The financial firm must then respond and establish their position with supporting information. Where a party is unable to provide information to support their position, AFCA may not find in their favour. This means it is in the interests of all the complaint parties to provide full responses to AFCA's requests for information.

In some cases, if a party fails or refuses to respond to a request for information, we may draw an adverse inference about that party's position on the complaint. This means we may assume the requested information undermines the position of the party refusing to provide the information. This would lead us to draw a negative conclusion about that party's version of events or position based on the refusal to provide the requested information. This may negatively impact that party's chances of the complaint being found in their favour. For example, this could include a financial firm refusing to provide a copy of a loan contract.

Before providing a preliminary view or determination, AFCA will share the information it relied on to form that view or make that decision with the complaint parties. We will also explain the relevance of the information we share.

If a party tells AFCA they do not consent to us sharing information, we will generally not be able to rely on that information. This means we cannot use it when forming a view or deciding a complaint. This may negatively impact that party's chances of the complaint being found in their favour. The only exception is if we decide certain information should not be exchanged with the other party because special circumstances apply. For example, where sharing the information may harm or embarrass someone, or if the information contains commercially sensitive information. We consider special circumstances apply to a very small number of cases. Please see "The AFCA approach to special circumstances" on our website: afca.org.au/approach