

Consultation paper: AFCA's Engagement Charter

Australian Financial Complaints Authority

March 2021

Contents

- 1 The consultation..... 1**
- 1.1 Background 1
- 1.2 AFCA’s role as an external dispute resolution scheme 1
- 2 The draft Engagement Charter 2**
- 2.1 Purpose 2
- 2.2 How the draft Engagement Charter was developed 2
- 2.3 Consultation questions 4
- 2.4 Submissions in response to this consultation paper 4
- 2.5 Next steps 4
- 3 Appendices 5**
- Appendix 1 5



1 The consultation

1.1 Background

AFCA is the independent external dispute resolution (EDR) scheme for the financial services sector. Our purpose is to provide fair, independent and effective resolution of financial complaints and to investigate and report possible systemic conduct to regulators. AFCA has 40,558¹ members who deliver financial services to Australian consumers in banking, credit, insurance, investments and advice, and superannuation.

We operate within the consumer protection framework to provide consumers and financial firms a dispute resolution service that is free to consumers, informal and easy to access.

AFCA considers complaints that previously would have been handled by the Financial Ombudsman Service, the Credit and Investments Ombudsman and the Superannuation Complaints Tribunal. Since commencement on 1 November 2018, AFCA has already resolved over 157,630 complaints².

1.2 AFCA's role as an external dispute resolution scheme

AFCA's jurisdiction

AFCA is not a court of law and it does not determine the legal rights of parties. Our fairness jurisdiction is not unique however and is common to many EDR and ombudsman schemes both in Australia and overseas. In delivering our service, we aim to ensure:

- an accessible and easy to use service
- transparency and consistency in complaint handling
- fairness in our process and decision-making
- that parties appropriately participate in external dispute resolution in accordance with AFCA's expectations and agreed standards of conduct.

¹ True as at 2 March 2021

² True as at 2 March 2021

2 The draft Engagement Charter

2.1 Purpose

The purpose of this consultation

The purpose of this consultation paper is to seek comment about AFCA's draft Engagement Charter from key stakeholders. The draft Charter is attached at Appendix 1.

The draft Charter outlines the service standards parties can expect of the dispute resolution services that AFCA provides. AFCA also has expectations of how participants will conduct themselves in our complaint handling and systemic issues processes.

It is important that AFCA clearly explain the standards of conduct it expects from everyone who uses our service and the service standards others can expect of us.

Parties who use the complaint resolution scheme operated by AFCA are entitled to expect fair and respectful dealings and fair treatment when they participate in our service. AFCA also expects that parties will engage respectfully, fairly and co-operatively with AFCA and with each other.

AFCA's values are the foundation of the Engagement Charter

The draft Charter has been based on AFCA's values and reflect our purpose. All parties should engage with each other and with AFCA in a way that is:

- consistent with the spirit and intent of AFCA's fairness jurisdiction
- transparent and honest
- respectful and fair
- in good faith and with 'clean hands'
- efficient
- co-operative and reasonable, with a common goal to resolve the complaint.

In our view, these principles set the tone and framework for effective and successful complaint resolution practice.

2.2 How the draft Engagement Charter was developed

Why we developed a Charter

AFCA considers it should set the benchmark standard for complaint handling in the Australian financial services sector. It must strive to meet the standards it sets for itself and others. The engagement charter outlines what participants in our process can expect of us.

In practice, many consumers and financial firms who participate in our process have never had experience with an external dispute resolution scheme before. How they engage and what is expected of them in terms of our process and their conduct is not always known to them. The draft Charter also seeks to address this.

Fair treatment of others and respectful dealings are values held by AFCA. Unfortunately, AFCA has experienced circumstances from time to time where the behaviour and conduct of parties to a complaint or their representatives, towards AFCA staff or other parties, has been aggressive, improper, abusive, bullying, harassing or intimidating. AFCA has a duty of care to its staff which it takes seriously. We have zero tolerance for behaviour or conduct that causes harm to another. The draft Charter explains the consequences for parties who do not engage in appropriate conduct.

Through external discussions with stakeholders in early 2020, prior to the global pandemic outbreak, some stakeholders encouraged AFCA to develop an engagement charter so that all parties to a complaint had a clear understanding of the behaviour and conduct that was expected of them during our process, in addition to holding AFCA to account. The draft Charter also responds to that feedback.

How the draft Charter was developed

AFCA began working on the draft Charter in June 2020, partly in response to this feedback. We conducted a desktop analysis of comparable customer service charters across similar bodies, both domestic and international. Through this work we identified a set of best practice principles to include in the draft Charter that reflect best practice, articulate the commitment of AFCA's staff to our values and reaffirm AFCA's commitment to be a world class ombudsman.

AFCA is now undertaking a limited consultation phase with key stakeholders prior to publication.

We aim to publish the Charter following this consultation phase by July 2021. The Charter would commence operation from that date.

The current scope of the Engagement Charter

We consider that the Charter should apply to everyone who participates in the provision of AFCA's services. This includes complainants and financial firms, their agents, advocates and representatives (including paid representatives).

How AFCA might respond to conduct which is inconsistent with the Charter

AFCA is a values-based organisation. We are fair and independent to ensure all parties are properly heard. We are honest, respectful and treat everyone with dignity. We are transparent and accountable for what we do. We are proactive and customer-focused to be accessible to diverse audiences. AFCA operates the complaint resolution scheme in line with our published and practiced values.

We consider that there should be clear guidance about what will happen if the conduct of people who use our service falls below our expectations. We have addressed this in the draft Charter. For financial firms, this may include using our reporting obligations to relevant regulators. For consumers this may include the circumstances in which we may warn or exercise discretion to exclude a complaint.

2.3 Consultation questions

Thank you for taking the time to consult with us on this project. Please consider and respond to the following questions about the attached draft Charter:

- 1 Are there any changes that may improve the Charter's scope, content or framework or additional matters that should be addressed?
- 2 What if any additional guidance or documentation should AFCA publish in support of the Charter?
- 3 Will the Charter have any impact on the way in which your organisation engages with AFCA or impose any unintended burden?
- 4 How should AFCA engage with a party that does not meet the conduct standards under the Charter?
- 5 What reporting, if any, do you consider AFCA should undertake in relation to the operation of the Charter?

Please add any other feedback or comment you would like to provide.

2.4 Submissions in response to this consultation paper

If you would like to comment on the draft Charter, please email your submission to submissions@afca.org.au by **20 April 2021**.

We may publish submissions on our website. If you do not want your submission published, please mark both the submission and the covering email as 'confidential'.

If you have any questions about the consultation, please contact Shannyn Carty at scarty@afca.org.au or 03 8623 2078.

2.5 Next steps

Following the consultation process, AFCA will consider all submissions and make any further appropriate changes. The draft Charter will then be submitted to the AFCA Board for approval prior to publication.

3 Appendices

Appendix 1

Proposed AFCA Engagement Charter