



Member forum

Investments and Advice

Natalie Cameron – Lead Ombudsman

Shail Singh – Ombudsman

Today's session includes



Statistics



CSLR



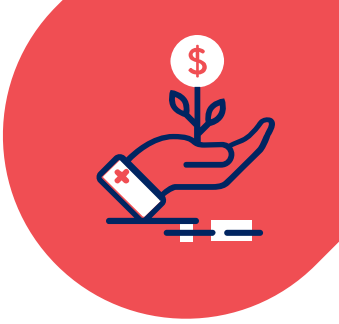
Fairness Jurisdiction
Project



Case Study - Jurisdiction

Year at a glance AFCA

Between 1 July 2020 to 30 June 2021



Complaints received

70,510

complaints received



12.2%

decrease in complaints compared to 2019-20



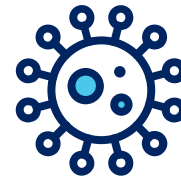
76%

of complaints lodged online



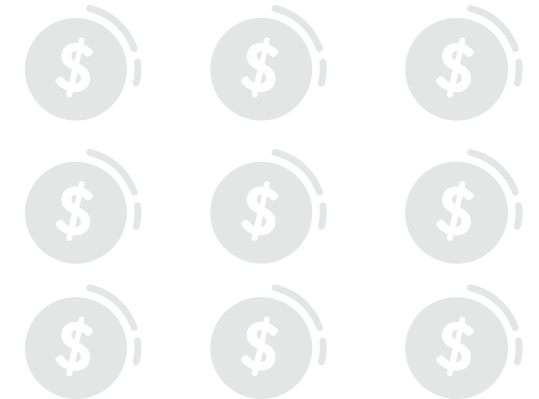
3,562

complaints from small businesses



8,303

complaints related to COVID-19



7.35%

complaints involved financial difficulty

Products complained about



42,261

Banking and finance



16,912

General insurance



5,249

Superannuation



3,888

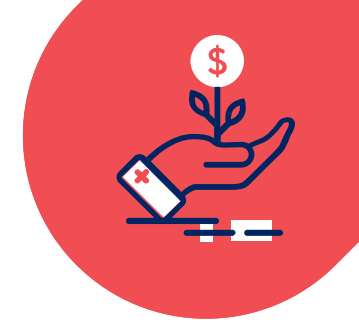
Investments and advice



1,623

Life insurance

Investments and advice complaints



Complaints received

3,888 complaints received

33% resolved at Registration and Referral stage

Top five investments and advice complaints received by product¹

Product	Total
Shares	950
Foreign Exchange	431
Contracts for Difference	417
Superannuation Fund	302
Self-managed Superannuation Fund	272

Top five investments and advice complaints received by issue¹

Issue	Total
Service quality	674
Inappropriate advice	534
Failure to act in client's best interests	525
Incorrect fees/costs	331
Failure to follow instructions/agreement	229

Complaints closed

3,465 complaints closed²

More than **\$36.8** million³ in compensation was awarded or obtained through AFCA

54% of complaints resolved by agreement, or in favour of complainants

Average time to close a complaint
114 days

Stage at which investments and advice complaints closed

Stage	Total
At Registration	1,148
At Case Management	938
Preliminary Assessment	333
Decision	462

Average time taken to close investments and advice complaints

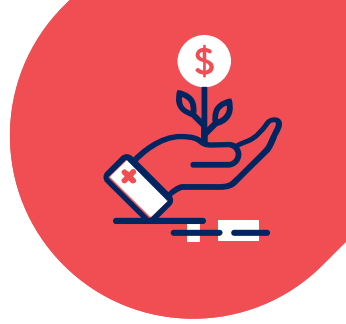
Time	Total
Closed 0–30 days	19%
Closed 31–60 days	22%
Closed 61–90 days	15%
Closed greater than 90 days	43%

¹ One complaint can have multiple products/issues.

² This includes 1,178 received before 1 July 2020, and 2,287 received from 1 July 2020 to 30 June 2021.

³ This includes matters previously received by AFCA's predecessor, Financial Ombudsman Service, and resolved by AFCA between 1 July 2020 to 30 June 2021.

Advice complaints



Complaints received

1,238 complaints received

1.8% of all AFCA complaints were advice complaints

Outcome amount for closed complaints:
more than **\$23.6** million

Complaints closed

964 complaints closed

Stage at which complaint resolved

Stage	Total
CM Level 2 (conciliation)	180
Registration and Referral	178
Decision	173
Rules review	167
Preliminary View	135
CM Level 1	111
Before referral	17
Fast Track - Case Management Level 1	3

178 complaints closed at Registration and Referral

162 days: Average age of closed complaints

43% of complaints resolved by agreement



Compensation Scheme of Last Resort (CSLR)

CSLR



- > Establishment of a Compensation Scheme of Last Resort (CSLR) will support ongoing confidence in the financial system's dispute resolution framework by facilitating payment of compensation to eligible consumers who have received a determination for compensation from AFCA that remains unpaid.
- > AFCA supports the creation of a CSLR. AFCA believes Australia needs a compensation scheme for people who have the right to a remedy for financial misconduct but who are left without redress when a financial firm becomes insolvent. The terms of the CSLR is a matter for Government. AFCA's role will be to help implement the legislation once passed.
- > AFCA is conscious that any new requirements will need to be implemented in a way that is true to the new requirements, whatever their final form, and is transparent and fair.

CSLR Status



- > On 28 October, the Federal Government introduced legislation to establish the CSLR.
- > The legislation has been delayed in the House until the November sitting, with referrals to House Committees and the likelihood of objections in the Senate. The scope of the scheme still cannot be considered settled, in such circumstances.
- > In April 2020, AFCA paused complaints against insolvent financial firms while awaiting detail of the scope and timing of a CSLR.
- > Complaints against insolvent financial firms and other complaints that were on pause while awaiting the introduction of CSLR will continue to be paused and will be assessed once the legislation comes into effect.
- > AFCA will only be able to fully assess the impact of the CSLR to a complaint when the scheme is legislated. We will review all relevant complaints as soon as that occurs.
- > AFCA will contact all parties to discuss the status of paused complaints after that assessment is completed.
- > More information about the CSLR is available on the [Treasury website](#).



Systemic Issues

Systemic Issues – Year at a glance



AFCA Annual Review financial year 2020–21

Identified **1086** potential systemic issues

Reported **36** possible serious contraventions to regulators

Referred **147** systemic issue investigations to financial firms

Identified and investigated systemic issues resulting in the remediation of **357,959** consumers

Reported **55** definite systemic issues to regulators

Resolved **59** definite systemic issues to regulators

Ensured more than **\$31 million** in refunds were made to consumers

Systemic Issues in Investments and Advice



AFCA Annual Review financial year 2020–21

Identified 144 potential systemic issues

Reported 27 possible serious contraventions to regulators

Referred 6 systemic issue investigations to financial firms

Reported 1 definite systemic issue to regulators

Resolved 2 definite systemic issues to regulators

Misleading information on Mixed asset funds and SMSFs were the top complaint themes linked to Definite Serious Contravention reports to regulators

Firms failing to give effect to AFCA determinations formed the basis of the most referrals for investigation

Case Study – Investments and Advice

Systemic Issue - Inappropriate Advice

- > AFCA received complaints which raised concerns about whether remediation had been calculated correctly as part of an inappropriate advice remediation program.
- > AFCA instigated an investigation into this and escalated the matter with the financial firm.
- > After AFCA raised the issue, the firm confirmed that it had incorrectly applied its compensation methodology as part of its initial remediation. The initial remediation was approximately \$450,000. After it corrected its error and applied the correct compensation methodology, total compensation was over \$1.2m.
- > This resulted in over \$750k in additional funds being paid to over 75 customers as a result of the investigation.
- > The financial firm has issued notices to all affected customers.





Fairness Jurisdiction Project

Fairness Jurisdiction Project



We have finalised our project

- > Our aim was to create a framework for how we would operate within our fairness jurisdiction, making decisions and providing our dispute resolution in a fair, independent and consistent way.
- > We have:
 - described and benchmarked our fairness jurisdiction both domestically and internationally
 - built a framework to assist AFCA staff to consistently apply the fairness jurisdiction in our complaint handling
 - articulated how the parties should engage with each other and AFCA to ensure a fair process
 - explained our approach to delivering fair outcomes; and
 - designed systems to calculate and capture fair outcomes once achieved.
- > We thank all of our stakeholders who we engaged with during 2019 to 2021 for their thoughtful feedback which helped shape our work and considerations.

Fairness Jurisdiction Project



AFCA Engagement Charter

- > Most recently, we have launched the AFCA Engagement Charter.
- > The Engagement Charter shares AFCA's values and outlines the behaviour we expect from financial firms, complainants and AFCA employees when resolving disputes.
- > It is a living document that makes the roles, responsibilities and expectations of each party more explicit so that our stakeholders have a shared understanding of good conduct.

See more

www.afca.org.au/engagement-charter

Engagement Charter

Purpose

AFCA's Engagement Charter outlines AFCA's expectations about how people using our service will engage with us and each other during our complaint resolution process. It also describes the service standards others can expect from AFCA.

It is a living document, based on core principles and designed to respond to an ever-changing financial landscape. We may amend and expand on the principles set out in this document from time to time.

AFCA's role

AFCA's purpose is to provide fair, independent and effective solutions for individuals and small businesses who have a complaint about a financial product or service.

AFCA has a specific and important role assisting individuals and small businesses to resolve complaints about financial services and products. We are:

- impartial and independent – we do not advocate for either party or their position.
- fair and focussed on dispute resolution outcomes – if everyone cannot come to an agreement, it is our role to decide an appropriate outcome.

AFCA's vision is to be a world class ombudsman service, by:

- raising standards and minimising complaints
- meeting diverse community needs; and
- being trusted by all.

AFCA's jurisdiction

Our **Rules** set out the complaints we can consider, the procedures we use to resolve complaints and the remedies we provide. Our **Operational Guidelines** and **Transitional Superannuation Guidelines** set out how we interpret and apply our Rules.

We can consider a broad range of financial complaints, including:

- errors in banking transactions and credit listings
- difficulty repaying loans, credit cards and short-term finance
- denial of an insurance claim (such as car, home and contents, pets, travel, income protection and trauma)
- investment and financial advice
- a trustee's decision in relation to the administration of a superannuation account including distribution of a death benefit.

Purpose Engagement charter 1

Fairness Jurisdiction Project



Approach to Terms of Settlement

- > Most recently the final element of the fairness framework has been completed.
- > Ensuring that the parties capture and document fair outcomes when complaints are resolved is an important aspect of our fairness jurisdiction.
- > ASIC also requires us to report when terms of settlement are unfair or inappropriate.
- > AFCA's revised Approach to Terms of Settlement has been published and includes information about how to prepare terms of settlement and how terms of settlement can affect a further or current complaint with AFCA.
- > We are taking feedback until 8 December 2021.

See more

www.afca.org.au/about-afca/publications/approach-terms-of-settlement



Case Study – AFCA's Jurisdiction

Case Study – Jurisdictional Decision

- > AFCA must be satisfied it has jurisdiction before it considers a matter. There are a number of jurisdictional thresholds that must be met.
- > This is done proactively but can also be considered in response to a financial firm's submission.
- > It can occur at any point in the process, from Registration and Referral, right through to Decision.
- > However, once we have addressed the jurisdictional concerns, we do not expect financial firms to repeat them.
- > For example, the claim must be under \$1 million.
- > Complainant must have been aware (or should reasonable have been aware of loss) less than 6 years ago.



Case Study – Jurisdictional Decision

- > The process is that when a concern is raised, an initial OTR assessment is completed. If within jurisdiction the matter proceeds.
- > If it is found to be outside jurisdiction, the complainant may contest it.
- > A team manager considers the response and if there is any substance, it is referred to an Ombudsman for a Jurisdictional Decision (JD).
- > This is the final binding decision.



Case Study – Jurisdictional Decision

- > The clients and adviser had an ongoing advice relationship.
- > The adviser informs the clients that he has a great investment opportunity for them, and asks them to loan him money.
- > He promises a high rate of return, based on the investments prospects of success.
- > Clients lend him the money on this basis.
- > The adviser subsequently reveals it is a lie and he has gambled the money away.
- > Clients bring dispute against the AFSL for the adviser's conduct.
- > Financial firm denies responsibility as adviser acting outside authority.



Case Study – Jurisdictional Decision

- > AFCA can only consider those complaints that arise from or relate to a financial service provided by the financial firm to the complainant (Rule B.2.1 (a)).
- > AFCA also has a general discretion to excluded matters that are misconceived or are otherwise without merit (Rule C.2.1).



Case Study – Jurisdictional Decision

- > Initial OTR assessment found that although there was an advice relationship, the adviser had advised the complainants that he was not acting in his capacity as an adviser in requesting the loan.
- > The complainant's lawyers objected to the assessment.
- > While they acknowledge the transaction (the loan) was out of scope, they said that because the adviser arranged the withdrawal, he did this as their adviser.
- > The arranging of the loan carried with it an obligation to advise on the risks of the transaction.



Case Study – Jurisdictional Decision

- > While Mr F has clearly breached a number of obligations owed to the complainants, the question was whether the financial firm was responsible for his conduct.
- > The Ombudsman found that as the loan arose out of the fin planning relationship it may “arise from” or “relate to” a financial service, however it was not necessary to make a finding on the issue.



Case Study – Jurisdictional Decision

- > This was because financial firm cannot be responsible for Mr F's conduct, either under principles of actual or ostensible authority. This is because Mr F indicated in a clear and timely manner that the investment had nothing to do with the financial firm, or his role as an adviser.
- > This was because the claim was misconceived against the financial firm.
- > The matter should be excluded pursuant to Rule C.2.1 on this basis.



Wrap up and Questions



AFCA contact details

- > Website: www.afca.org.au
- > Email: info@afca.org.au
- > Telephone: 1800 931 678
- > Address: GPO Box 3, Melbourne VIC 3001

AFCA membership contacts

- > Telephone: 1300 56 55 62
- > Email: membership@afca.org.au
- > Secure services: www.afca.org.au/members

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Thank you

