

Member forum

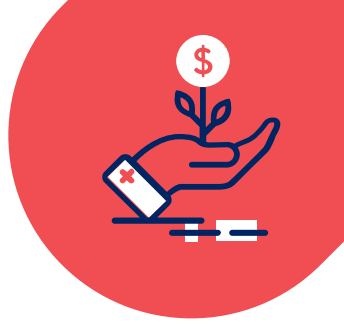
Investments and advice

16 March 2023

Presenters

- **Shail Singh** – Acting Lead Ombudsman
- **Eunice Sim** – Senior Manager

Today's session includes



Complaint statistics



Case studies

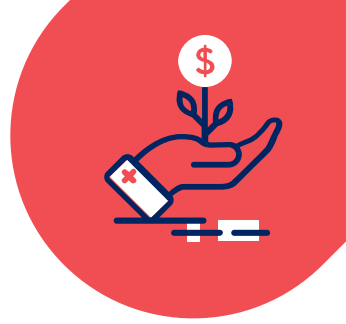


Updates

- Compensation Scheme of Last Resort
- Dixon Advisory
- Independent Review – Recommendation 6
- Quality of Advice review

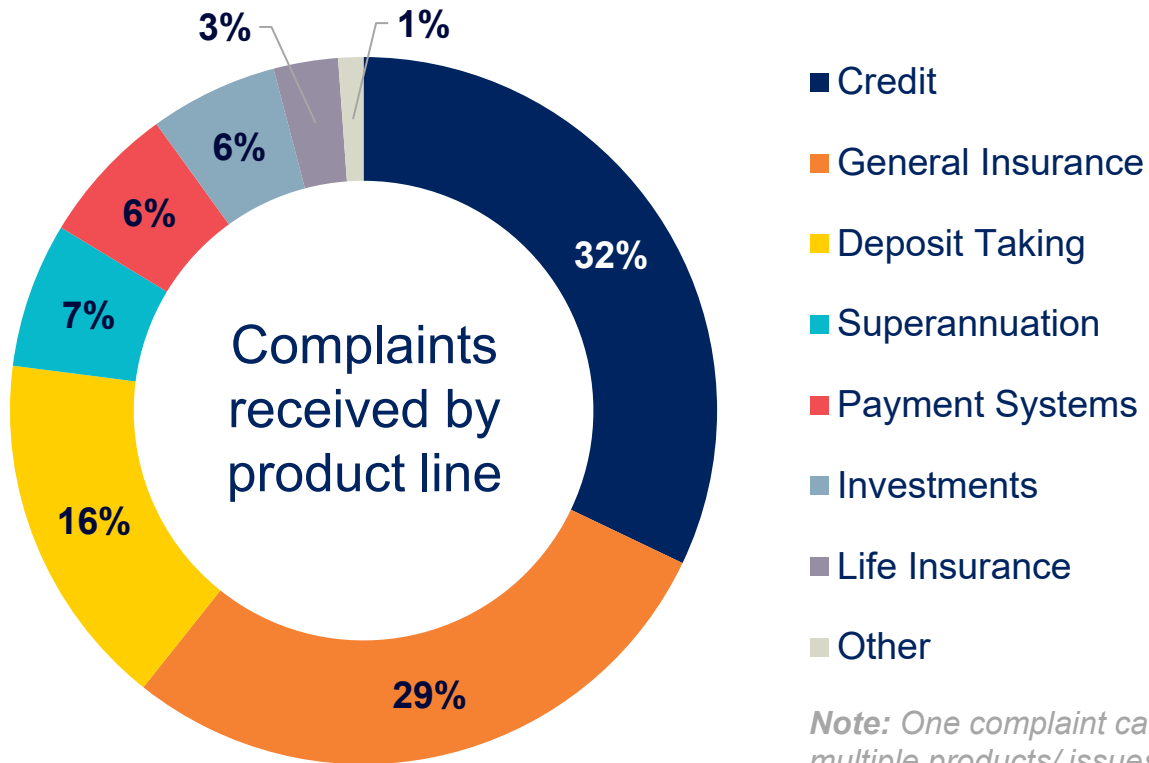
Complaints received – AFCA overall

1 January to 31 December 2022



83,494 complaints received

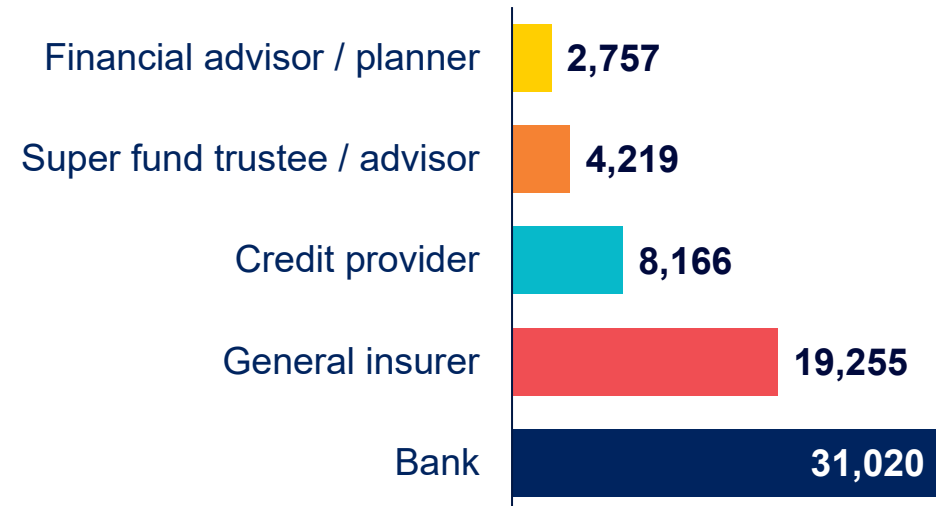
75,198 complaints closed



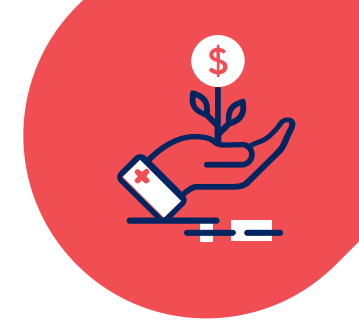
- Credit
- General Insurance
- Deposit Taking
- Superannuation
- Payment Systems
- Investments
- Life Insurance
- Other

Note: One complaint can have multiple products/ issues

Complaints received by top 5 financial firm types



Investments & advice complaints (1 Jan to 31 Dec 2022)



Complaints received

4,909 complaints received
Up 25% from last year

36% resolved at Registration and Referral stage
Up 3% from last year

Complaints closed

2,574 complaints closed
Down 18% from last year

Average time to close a complaint:
105 days
Down 5% from last year

Top five investments and advice complaints received by product ¹

Product	Total
Self-managed superannuation fund	1,696
Foreign exchange	760
Shares	748
Superannuation fund	360
Cryptocurrency	238

Top five investments and advice complaints received by issue ¹

Issue	Total
Inappropriate advice	1,651
Failure to follow instructions/ agreement	925
Service quality	540
Failure to act in client's best interests	505
Incorrect fees/ costs	207

Stage at which investments and advice complaints closed

Stage	Total
At registration	915
At case management	708
Rules review	550
Preliminary assessment	169
Decision	232

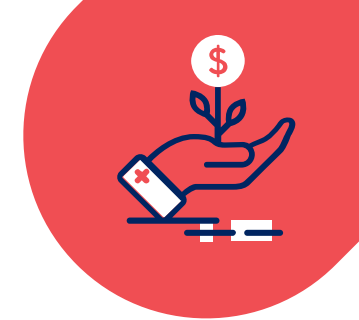
Average time taken to close investments and advice complaints

Time	Total
Closed 0-30 days	569
Closed 31-60 days	656
Closed 61-180 days	910
Closed 181-365 days	211
Closed more than 365 days	228

68% of complaints in favour of financial firm
32% of complaints in favour of complainant

¹One complaint can have multiple products/ issues

Advice complaints (1 Jan to 31 Dec 2022)



Complaints received

2,211 complaints received
Up 131% from last year

20% resolved at Registration and Referral stage
Up 4% from last year

Complaints closed

524 complaints closed
Down 34% from last year

Average time to close a complaint:
236 days
Up 20% from last year

Top five advice complaints received by product ¹

Product	Total
Self-managed superannuation fund	1,566
Shares	189
Superannuation Fund	164
Mixed Asset Fund/s	61
Property Funds	34

Top four advice complaints received by issue ¹

Issue	Total
Inappropriate advice	1,651
Failure to act in client's best interests	505
Failure to prioritise clients interests	121
Failure to provide advice	70

Stage at which advice complaints closed

Stage	Total
At registration	107
At case management	152
Rules review	70
Preliminary assessment	82
Decision	113

Average time taken to close advice complaints

Time	Total
Closed 0-30 days	53
Closed 31-60 days	78
Closed 61-180 days	174
Closed 181-365 days	90
Closed more than 365 days	129

42% of complaints in favour of financial firm
58% of complaints in favour of complainant

¹One complaint can have multiple products/ issues

Advice complaints (1 Jan to 31 Dec 2022)

Excludes Dixon Advisory complaints



Complaints received

483 complaints received
Down 47% from last year

20% resolved at Registration and Referral stage
Up 4% from last year

Complaints closed

524 complaints closed
Down 34% from last year

Average time to close a complaint:
236 days
Up 22% from last year

Top five advice complaints received by product ¹

Product	Total
Superannuation fund	107
Self-managed superannuation fund	89
Shares	76
Mixed asset fund/s	43
Cash management accounts	25

Top four advice complaints received by issue ¹

Issue	Total
Failure to act in client's best interests	223
Inappropriate advice	177
Failure to provide advice	65
Failure to prioritise client's interests	34

Stage at which advice complaints closed

Stage	Total
At registration	107
At case management	152
Rules review	70
Preliminary assessment	82
Decision	113

Average time taken to close advice complaints

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Closed 0-30 days	53
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Compensation Scheme of Last Resort (CSLR)



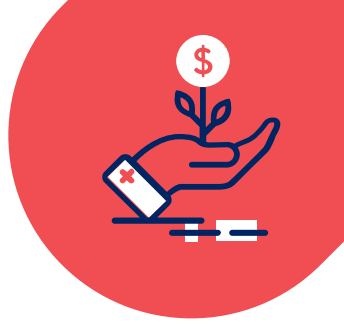
- > On 8 March 2023 the Federal Government re-introduced legislation to establish the CSLR
- > AFCA now awaits a vote on the bill
- > Establishment of a CSLR will be an important step forward in consumer protection in Australia
- > AFCA confirms its support for the creation of a CSLR in principle
- > CSLR will be a separate and independent entity with its own board and funding arrangement
- > Final decision about eligibility will rest with CSLR
- > AFCA looks forward to working with the Government and stakeholders to help implement this important reform.

Dixon Advisory



- > As at 1 February 2023, AFCA has received more than 1,800 complaints since the August 3 announcement by ASIC advising former clients of Dixon Advisory and Superannuation Services to consider contacting AFCA if they believe they have suffered loss due to misconduct related to financial advice
- > In January 2022, AFCA was advised that Dixon Advisory had been placed into Voluntary Administration
- > As a result, AFCA paused progress of all complaints against Dixon Advisory
- > This is in line with our policy for the handling of complaints involving insolvent firms, including those in Voluntary Administration. While awaiting the introduction of CSLR, these complaints will continue to be paused and will be assessed once any CSLR is established
- > AFCA will only be able to fully assess the impact of the CSLR and its relevance to paused complaints once the scheme is legislated. We will review all relevant complaints as soon as that occurs
- > Whether or not a former client of Dixon Advisory is eligible for compensation will depend on the individual circumstances of the advice that they were given, as well as the scope and operation of a CSLR.

Independent Review – Recommendation 6



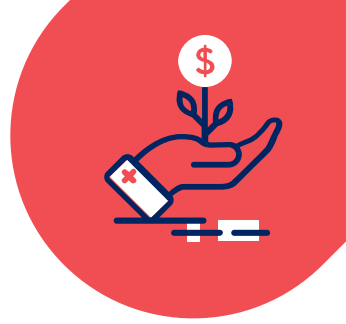
Recommendation 6

- > *“AFCA should exclude complaints from sophisticated or professional investors, unless there is evidence that they have been incorrectly or inappropriately classified.”*
- > *“The Review does not consider it appropriate that AFCA be required to exclude all wholesale investors. Where possible, AFCA should look to more actively exercise its existing discretion to exclude wholesale complaints in appropriate circumstances. As they stand, the Operational Guidelines are more restrictive of AFCA’s discretion than they should be.”*

In response an internal working group is focused on addressing how AFCA responds to complaints from sophisticated and professional investors. The next steps is to update the AFCA Operational Guidelines and develop a new AFCA Approach with input from key stakeholders.

Quality of Advice Review

- > Key aspects of the proposals include changing the definition or personal advice, the good advice test, relevant providers
- > AFCA's concern is to ensure people get access to EDR and when in EDR what happens?
- > Disclosure documents.



When will we exclude
a complaint?

AFCA Rules

AFCA Rules set out the jurisdiction and powers of the AFCA scheme.

We expect financial firms to raise jurisdictional issues as early as possible.

Jurisdiction =

whether AFCA can consider the matter

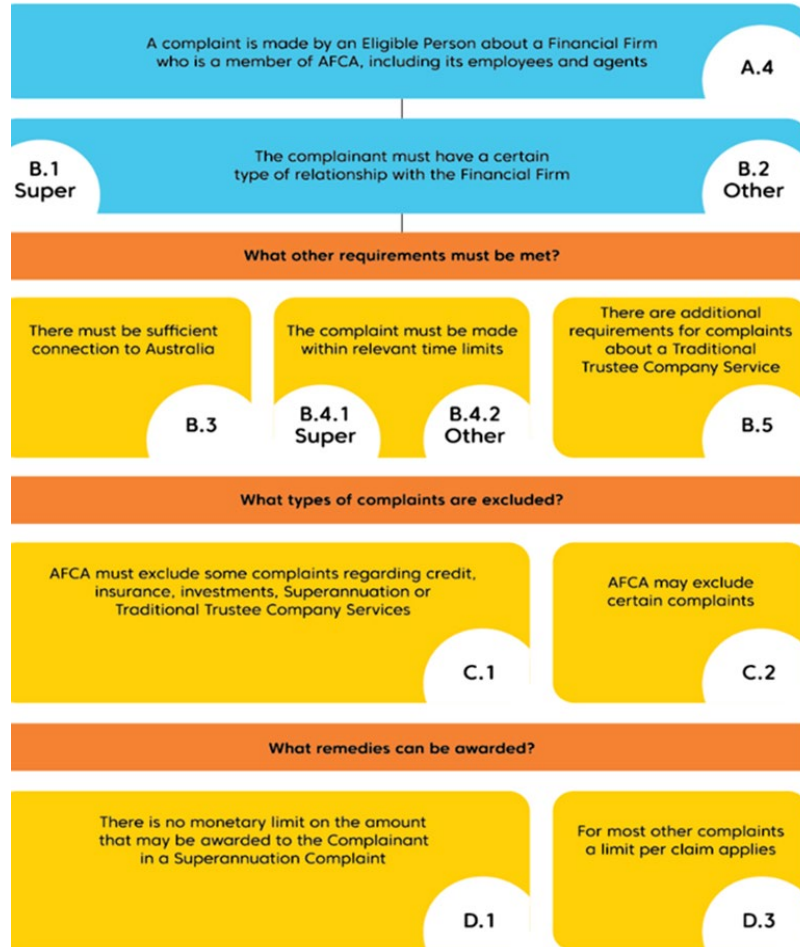


Merits =

considering whether the financial firm should be liable for the conduct and loss complained of



Reasons to not consider a complaint



Eligibility (Sections A and B)

- A complaint / complainant must meet the requirements in the Rules

Mandatory Exclusions (C.1)

- AFCA must exclude certain complaints

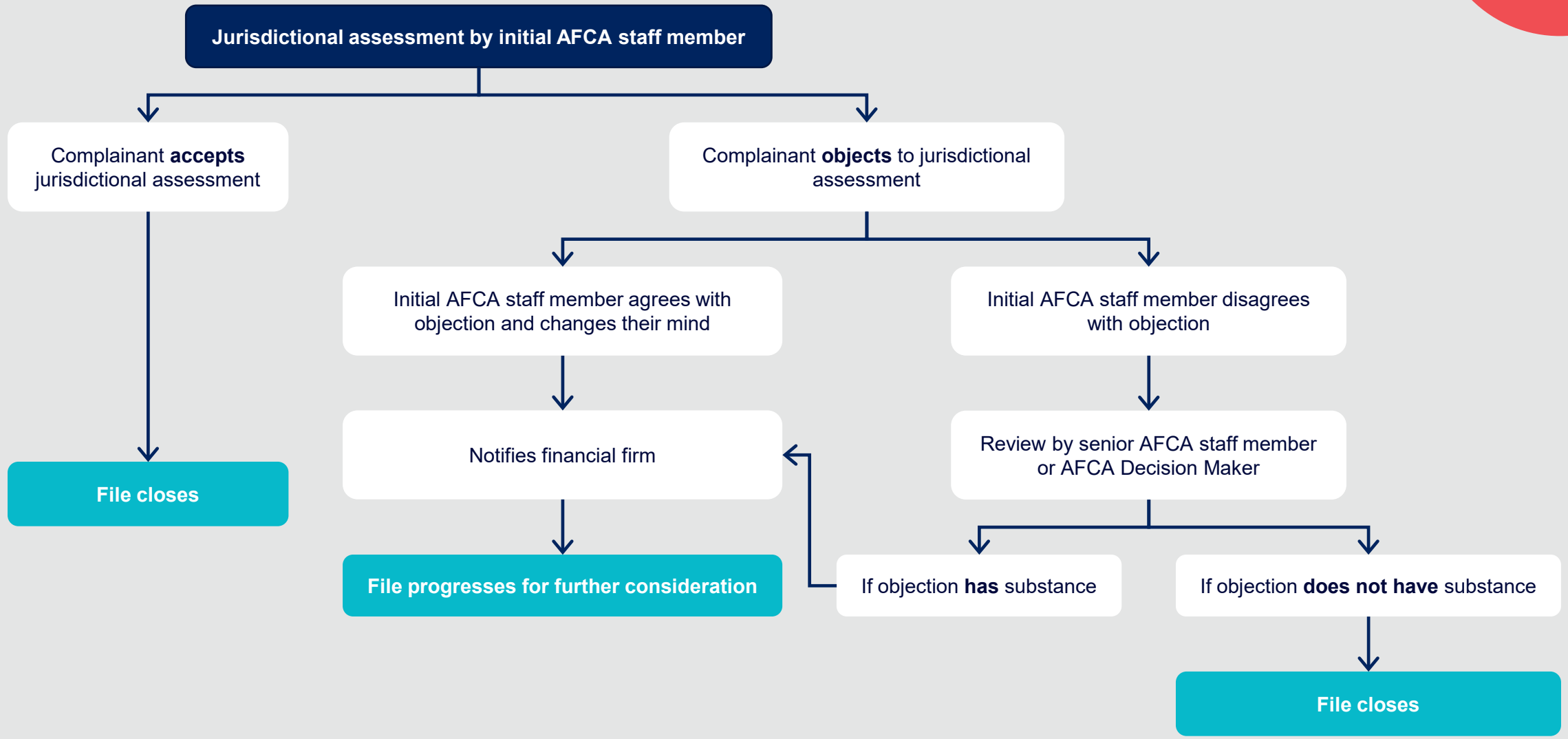
Discretionary Exclusions (C.2)

- AFCA has discretion to exclude complaints

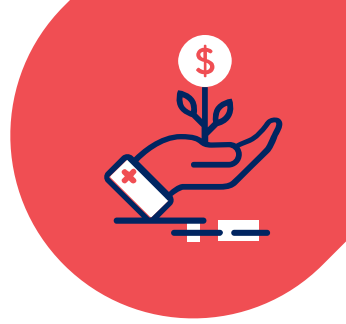
Decline to consider further (A.8.3)

- AFCA may decline to consider a complaint further

Process to exclude allows procedural fairness



Standing to bring complaint – SMSF related



> **Complaint must be brought by an Eligible Person. A.4.1**

- Eligible person is defined in E.1.1 of our Rules

> **Who received the financial service?**

- Individual v trustee for SMSF?
- Complaints about financial services received by SMSF, the eligible person to bring a complaint is Current Individual or corporate trustee

> **Impact of winding up SMSF**

- Seek independent legal and financial advice, before making any decisions

A.8.3 decline to consider further



- > AFCA's discretion to not to proceed
- > Used for compelling reasons
- > Any complaint that requires detailed investigation or explanation of reasons for our assessment not suitable for A.8.3
- > 30% of A.8.3 assessments are objected to

Complaints closed

Between 1 January 2022 to 31 December 2022

64 complaints closed
UP 278 % from last year

2.5% of closed Complaints
UP 350% from last year

Product	Total
Shares	21
Superannuation fund	7
Cryptocurrency	6
Foreign currency	4
Mixed assets	4

Issues	Total
Service Quality	10
Inappropriate Advice	8
Failure to follow instructions/ agreement	6
Failure to act in client's best interests	6
T&C and technical problems	5 each

¹One complaint can have multiple products/ issues

More information

- > **The AFCA Approach to excluding complaints**

afca.org.au/about-afca/publications

- > **AFCA Rules and Operational Guidelines**

afca.org.au/rules

- > **AFCA Fact Sheet on SMSF**

afca.org.au/about-afca/publications/factsheet-SMSF-complaints

- > **EDR Response Guides**

afca.org.au/about-afca/publications



Case study 1

Insurance advice

Case study 747581 – Facts



- > The client, Mr A worked as a driller on a fly-in fly-out basis
- > Mr A sought advice to protect him from the unforeseen consequences of illness, injury or death
- > SOA recommended \$750,000 for term life and TPD covers, \$250,000 for trauma cover, and income protection with a two year benefit
- > Insurance premiums (except trauma) were funded using the client's membership balance in superannuation
- > No issues with the life, TPD and trauma cover. The complaint focused on the failure to recommend an income protection contract with an age 65 benefit.

Case study 747581 – Findings



- > The determination was in favour of the adviser. Therefore no compensation was payable
- > The recommended advice was tested against Mr A's goals
- > The advice may have limitations when balanced against Mr A's goals
- > Mr A made an informed choice to enter an income protect contract with a two year benefit period, rather than seeking a longer benefit period
- > It is not necessary to assume that the advice needs to recommend automatically the most comprehensive benefit for Mr A.

Case study 2

SMSF property advice

Case study 624981 – Facts



- > The complainants say they were given inappropriate advice by the financial firm to commence the SMSF and purchase property
- > The financial firm, which is a member of a group of companies, including a realty arm, markets itself as providing comprehensive financial planning services and a range of financial products
- > The financial firm says that AFCA cannot consider the complaint because the property has not been sold and no loss has been crystallised. However, if AFCA does consider the matter, the financial firm says it has not engaged in any wrongdoing.

Case study 624981 – Facts

- > The financial firm says the complainants came to them with the express purpose of purchasing property and it was only engaged to set-up the SMSF and did so on a transactional basis. If any advice was found to have been provided about the SMSF, it was general in nature only, as it did not take into account the complainants' individual circumstances.

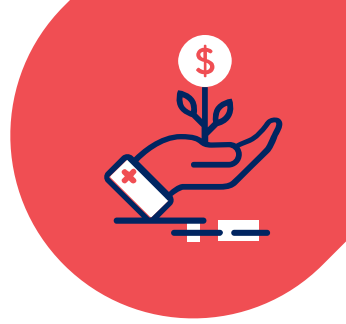


Case study 624981 – Findings



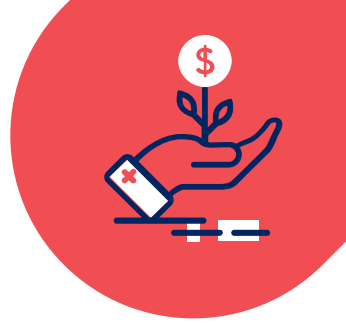
- > The determination was in favour of the complainants. The financial firm must pay the complainants \$111,095.32 plus interest to the date of the payment. As the loss is based on an estimate of the value of the property at 18 September 2015, the complainants must market and sell the property in an arm's length transaction within 6 months of the payment.
- > Personal advice was provided by the financial firm.
 - *Mr M made a recommendation to commence the SMSF and purchase property in consideration of the complainants' circumstances.*
 - *The financial firm is responsible for Mr M's conduct as he purported to act on its behalf and also because it is responsible for conduct of the realty arm of the business, as it is a wholly owned subsidiary of the financial firm.*

Case study 624981 – Findings



- > The financial firm did not provide appropriate advice to the complainants
 - *The advice was not appropriate for the complainants' circumstances*
 - *The complainants were not suitable candidates to run an SMSF, nor is there any clear evidence they wanted to take on trustee responsibilities*
 - *The recommended strategy resulted in the complainants having an excessive proportion of their superannuation invested in property and exposed them to single sector asset class risk.*

Case study 624981 – Findings



- > The financial firm's conduct caused the complainant loss
 - *Although the property must be sold to determine exactly how much that loss is, to ensure the complainants do not carry the risk of sale, the financial firm must pay the complaints upfront-compensation before they are required to sell the property.*

Thank you