



Member forum Superannuation

17 March 2023

Presenters:

- **Anne Maree Howley** – Senior Ombudsman, Superannuation
- **Benjamin Norman** – Ombudsman, Superannuation
- **Fiona Power** – Senior Manager, Superannuation

Today's session includes



Statistics and update



**Current themes in
Super complaints**



Operational update



Case studies

Stats for 2022 calendar year



Complaints received

5,542 complaints received
Up 11% from last year

35% resolved at Registration and Referral stage
Up 3% from last year

Complaints closed

5,619 complaints closed
Up 11% from last year

Average time to close a complaint:
119 days
Down 2% from last year

Top five superannuation complaints received by product ¹

Product	Total
Superannuation account	3,307
Total and permanent disability	933
Income protection	820
Death benefit	475
Pension	74

Top five superannuation complaints received by issue ¹

Issue	Total
Delay in claim handling	990
Service quality	889
Account administration error	573
Incorrect fees/ costs	351
Denial of claim	321

Stage at which superannuation complaints closed

Stage	Total
At registration	1,949
At case management	2,310
Rules review	229
Preliminary assessment	574
Decision	557

Average time taken to close superannuation complaints

Time	Total
Closed 0-30 days	704
Closed 31-60 days	1,622
Closed 61-180 days	2,140
Closed 181-365 days	767
Closed more than 365 days	386

Superannuation complaints (1 January to 30 June 2022)



Complaints received

2,598 complaints received
Up 13% from last year

31% resolved at Registration and Referral stage
Up 2% from last year

Complaints closed

2,691 complaints closed
Up 5% from last year

Average time to close a complaint:
129 days
Up 4% from last year

Top five superannuation complaints received by product ¹

Product	Total
Superannuation account	1,495
Total and permanent disability	469
Income protection	414
Death benefit	232
Pension	35

Top five superannuation complaints received by issue ¹

Issue	Total
Service quality	467
Delay in claim handling	398
Account administration error	256
Denial of claim	182
Claim amount	157

Stage at which superannuation complaints closed

Stage	Total
At registration	843
At case management	1,158
Rules review	93
Preliminary assessment	286
Decision	311

Average time taken to close superannuation complaints

Time	Total
Closed 0-30 days	338
Closed 31-60 days	723
Closed 61-180 days	1,016
Closed 181-365 days	378
Closed more than 365 days	236

Superannuation complaints (1 July to 31 December 2022)



Complaints received

2,944 complaints received
Up 9% from last year

38% resolved at Registration and Referral stage
Up 3% from last year

Complaints closed

2,928 complaints closed
Up 18% from last year

Average time to close a complaint:
110 days
Down 6% from last year

Top five superannuation complaints received by product ¹

Product	Total
Superannuation account	1,812
Total and permanent disability	464
Income protection	406
Death benefit	243
Pension	39

Top five superannuation complaints received by issue ¹

Issue	Total
Delay in claim handling	592
Service quality	422
Account administration error	317
Incorrect fees/ costs	202
Failure to follow instructions/ agreement	185

Stage at which superannuation complaints closed

Stage	Total
At registration	1,106
At case management	1,152
Rules review	136
Preliminary assessment	288
Decision	246

Average time taken to close superannuation complaints

Time	Total
Closed 0-30 days	366
Closed 31-60 days	899
Closed 61-180 days	1,124
Closed 181-365 days	389
Closed more than 365 days	150

Decision outcomes for super complaints

(1 July 2022 to 28 February 2023)



Closure pre decision	Total
Assessment (Discretionary Exclusion)	92
Conciliation	48
Discontinued	518
Negotiation	546
Rules	413
Preliminary Assessment in Favour of complainant	37
Preliminary Assessment in Favour of FF	139
Resolved by FF	1,410

Outcome at decision stage	Total
Determination Trustee decision affirmed	196
Determination Trustee decision remitted	3
Determination Trustee decision substituted	49
Determination Trustee decision varied	2

General update

> Approach to fees and charges – revised

- Set out on AFCA website from 27 February 2023
 - <https://www.afca.org.au/news/latest-news/afca-updates-approach-to-superannuation-fees-and-charges>
 - <https://www.afca.org.au/about-afca/publications>
- Communication provided to industry, including all affected financial firms
- Treatment of paused cases

> AFCA Publications – new AFCA Fact Sheets

> ASIC Reports 751 and 752

- Failure to include AFCA details or setting them out in a separate document
- Report 752 – Communication recommendations

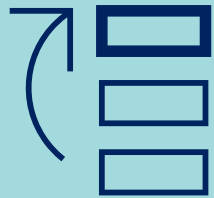


Current themes in super complaints

Income protection (IP) complaints

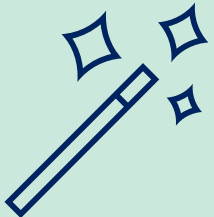


Generally, not as well understood as Total and permanent disability (TPD) or death



Current themes

- > Agreed value/ indemnity
- > Sole traders (how business income/ expenses will be treated)
- > Interaction with other benefits, such as workers' compensation, JobKeeper and JobSeeker etc
- > Ongoing requirements, such as medical certification requirements



Tips

- > Room for better disclosure
- > Worked examples are useful
- > Room for better communication at commencement of claim
- > Follow up telephone calls with written communications
- > Better engagement by trustee

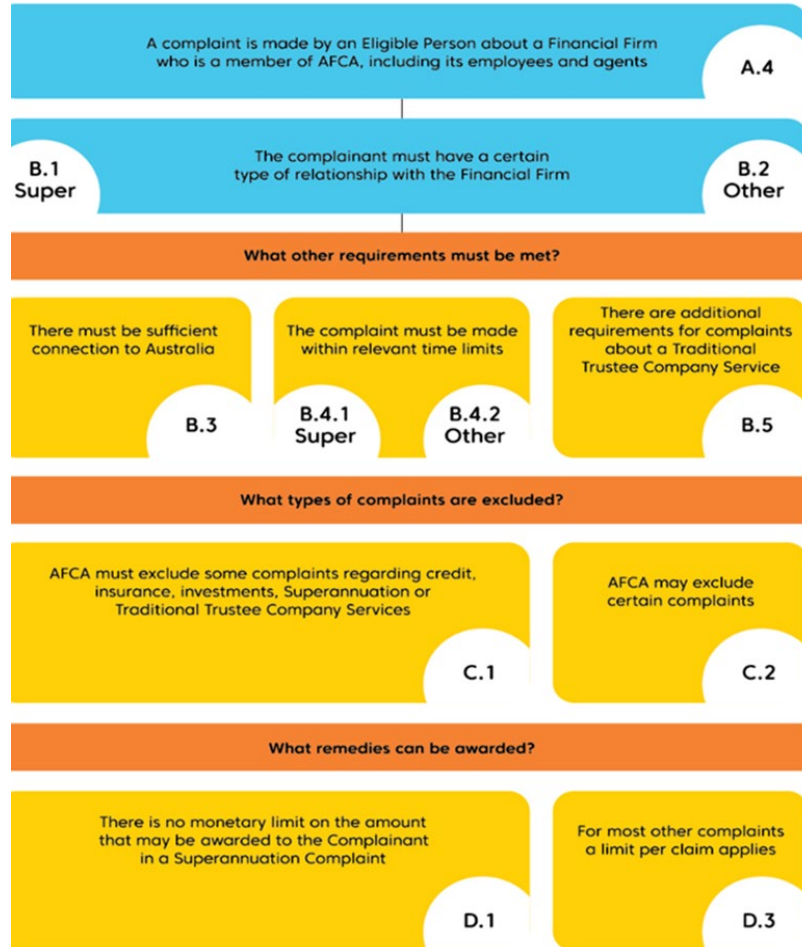
Operational update

AFCA Rules



- > AFCA Rules set out the jurisdiction and powers of the AFCA scheme
- > We actively determine our jurisdiction to consider a complaint
- > We expect financial firms to raise jurisdictional issues as early as possible
- > We encourage financial firms to be aware of AFCA's Rules and refer to any (if applicable) in its EDR response
- > Provide detailed and substantive submissions (including primary documents) to assist with jurisdictional issues.

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

FAQ on AFCA Rules process



What is the process for requesting a jurisdictional exclusion under the AFCA Rules?

Process

If a financial firm considers AFCA does not have jurisdiction to consider a complaint under its mandatory exclusions, we encourage financial firms to raise this with us as early as possible by:

- > requesting a Rules review during the 'refer back' process. A request can be made using the Secure Services Portal where a financial firm can make a note in the comment section or select the appropriate option in the drop-down box which will flag that they want a jurisdictional review.
- > refer to the specific AFCA Rule(s) and the basis on which you consider the Rule(s) apply
- > provide supporting documentation
- > the case will then be progressed to the Rules team.

Fees

No fee is charged if a complaint is excluded under AFCA's mandatory exclusions – however this is on the assumption that the financial firm has brought this to AFCA's attention early. If the complaint is progressed to case management and information comes to light as part of our investigation, a fee will apply.

FAQ on AFCA Rules process



What is the process for requesting a Rules Review under Rule A.8.3?

Potential Rule A.8.3 discretionary exclusion

If a Financial Firm considers Rule A.8.3 applies because:

- a) the complaint is without merit;
- b) the Complainant has suffered no loss (or has been appropriately compensated for such loss and AFCA would not award any further amount); or
- c) the Financial Firm has committed no error.

Process – submissions

We encourage financial firms to raise this with us as early as possible by:

- > setting out the basis on which you consider the Rule applies
- > providing supporting documentation including primary documents relied upon
- > demonstrate in the submissions why there is no error or loss and if relevant, calculations to show the complainant has been adequately compensated

FAQ on AFCA Rules process



What is the process for requesting a Rules Review under Rule A.8.3 (continued) ?

> Process – request

- Requests for an A.8.3 review can be made using the Secure Services Portal
- A financial firm can make a note in the comment section or select the appropriate option in the drop-down box which will flag that they want a merits (Rule A.8.3)review.

> Progress

- The case will progress to case management
- There is call to action for case managers when they are allocated a complaint to turn their mind to what is the appropriate complaint pathway.

Cases progressing to Decision

Cases are being allocated to a decision maker with reference to number of days at AFCA, and as a result many older cases are being allocated to a decision maker quite soon after the Recommendation has been rejected.

We expect financial firms to provide post recommendation submissions within the timeframes specified in our correspondence to ensure cases can be dealt with by our decision makers in a timely manner.



Early identification of potential multiple complaints



We encourage a financial firm to:

- > engage with us early to let us know about the issue/ event that has triggered multiple complaints
- > provide us with updates to help us understand the complaint volumes you are receiving at the IDR stage

This will help us provide a better customer experience for your members who are contacting us to lodge complaints with us

Case studies and recent court decisions

Nottingham v Australian Financial Complaints Authority [2023] FCA 58



Facts of complaint

- > The complaint was about the failure of the trustee to pay an insured death benefit of \$80,000 to N, the executor of the deceased's estate
- > The trustee said the deceased's cover had ceased on 30 June 2019 as he had an 'inactive account' and it had not received an election to retain death cover. It said it was required to cease cover by law (s68 AAA of SIS [PYS legislative amendment])
- > N said the deceased received the election form sent on 23 April 2019, signed it in May 2019 and posted it
- > After the death of the deceased, N submitted the deceased had taken all necessary steps to retain cover and sought the trustee compromise the claim and pay the estate \$80,000
- > The trustee's decision was not to compromise the claim.

Determination

AFCA found...

- > The deceased's account was an 'inactive account' as defined by law as the last contribution was in 2012
- > The deceased completed his election and dated it on 25 May 2019 (copy found in his papers)
- > The trustee accepted the trustee had not received the form, as supported by its process, and had to cease cover
- > The trustee's decision not to compromise the complaint was fair and reasonable.

Continued... Nottingham v Australian Financial Complaints Authority [2023] FCA 58



Federal Court decision

Applicant's submissions

- > AFCA had committed an error of law in finding the trustee had not received the election
- > AFCA failed to have regard to a relevant consideration being consideration of the reliability of its mail receipt system in complying with s68AAA requirements, in particular:
 - the risk insurance would be cancelled,
 - requirement to have a better system, and
 - the failure to take out insurance to cover the risk of an election loss

Court's findings

- > The court confirmed AFCA's task is to determine if the decision is fair and reasonable in all the circumstances
- > It is not obliged to comply with the rules of evidence
- > In reaching its findings AFCA is entitled to weigh the evidence between the parties
- > AFCA may exercise 'decisional freedom' with a 'range of lawful outcomes' in the exercise of its powers, which it accepted it had
- > In reaching a fair and reasonable decision it was not required to conduct a review of the trustee's systems

Death benefit – the distribution question



- > Preference given to dependants who might have expected to receive financial support from the deceased – see AFCA approach to superannuation death benefit complaints
- > Important to consider the nature and extent of that financial support.

813949

- > Dispute about distribution of death benefit greater than \$500k
- > Dependants = 3 adult children & 1 minor child (10 years old at date of death)
- > Trustee decided to distribute entire benefit to minor child
- > Adult children were dissatisfied with the trustee's decision
- > Ombudsman set aside the trustee's decision on basis of limited financial expectation
- > Reviewing the Death Benefit Approach generally
- > See also 856722 for another example

Thank you