The AFCA Approach to delayed insurance claims in superannuation

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afca
Australian Financial Complaints Authority

Contents

We have created a series of AFCA Approach documents, such as this one, to help consumers and financial firms better understand how we reach decisions about key issues.

These documents explain the way we approach some common issues and complaint types that we see at AFCA. However, it is important to understand that each complaint that comes to us is unique, so this information is a guide only. No determination (decision) can be seen as a precedent for future cases, and no AFCA Approach document can cover everything you might want to know about key issues.

1 Purpose of this approach

1.1 Scope

This document sets out how AFCA approaches ~~superannuation~~ complaints about delays in handling insurance claims held through superannuation. It forms part of a broader suite of guidance on how AFCA resolves superannuation complaints.

This document does not relate to complaints about:

- delays in insurance claims when the insurance policy is held outside of superannuation~~; or~~ (although our approach may be similar)
- delays ~~in the administration of death benefit claims.~~ in decisions relating to the payment of a death benefit, as these involve different legal considerations.

There are some important differences between AFCA's superannuation jurisdiction and its ~~broader~~ non-superannuation ~~-~~jurisdiction. The Appendix to this document sets out the approach AFCA takes in determining superannuation complaints.

1.2 Who should read this document?

This document should be read by trustees~~,~~ and insurers.~~,~~ It also should be read by superannuation fund members who wish to make a complaint about delay in the handling of their insurance claim, and their respective advisers.

1.3 Summary

It is common for people to hold insurance cover for death and total permanent disablement (TPD) through their superannuation fund. Although less common, people mayalso hold income protection (IP) insurance cover through their superannuation fund.

Unnecessary and unexplained delays in claims handling can add to a complainant's stress and uncertainty.~~,~~ T~~t~~herefore it is important that claims are determined in a timely manner.

If a complainant has expressed dissatisfaction about a delay in the handling of a superannuation-related insurance claim, ~~then~~ AFCA will consider whether there hasbeen a delay and whether ~~it~~ the delay is unreasonable or unfair in the circumstances.

In complaints about delay, AFCA will generally raise a superannuation complaint against the trustee and join the insurer. This is because the insurer decides whether to admit or deny an insurance claim, and the trustee ~~holds~~ is the owner of the insurance policy.~~, consequently making adecision on whether an insurance benefit is paid.~~ The trustee has certain obligations in respect of the claim including

to do everything reasonable to pursue an insurance claim for the benefit of a beneficiary, is the claim has a reasonable prospect of success.

Reviewing the trustee's decision

In reviewing the trustee's decision and conduct, AFCA will consider whether the trustee has reasonably done everything necessary to ensure there were no unreasonable delays, including by the insurer.

Reviewing the insurer's decision

In reviewing the insurer's decision and conduct, AFCA will consider whether the insurer unreasonably delayed the handling of the claim.

What is considered an unreasonable delay

AFCA will consider the relevant circumstances including the:

- Terms of the policy and trust deed
- Complexity and circumstances of the claim; and
- Industry standards such as those set out in the *Life Insurance Code of Practice, the Financial Services Council Claims Handling for Superannuation Fund Standard* (Claims Standard), *and the Insurance in Superannuation Claims Handling Guidance Note* (Guidance Note)~~, and the former *Insurance in Superannuation Voluntary Code of Practice*~~.

We have set out links to these industry standards and other key documents in section 5.4 of this approach document.

2 Jurisdiction

2.1 AFCA's purpose

AFCA is the independent external dispute resolution (EDR) scheme for the financial services sector. AFCA's purpose is to provide fair, independent and effective solutions for financial disputes. We do this by providing fair dispute resolution services. We also work with financial firms to improve their processes and standards of service to minimise future complaints. In addition to resolving financial complaints, AFCA identifies, resolves and reports on systemic issues and serious contraventions of the law.

2.2 AFCA's jurisdiction

A person may make a superannuation complaint to AFCA under s1053 of the *Corporations Act 2001* (Cth). This includes a complaint that a superannuation trustee

has made a decision that is or was unfair or unreasonable. AFCA may join insurers to a superannuation complaint under s1054 of the Corporations Act.

Under s1053(5)(a) of the Corporations Act ~~*2001* (Cth), an insurer or trustee's~~ a failure tomake a decision is taken to be a decision, which can be considered by AFCA.

Under s1053(5)(b) of the Corporations Act, the conduct, or the failure to engage in conduct (in relation to making a decision), is also taken to be a decision, which can also be considered by AFCA.

These provisions are relevant to complaints about delay as AFCA can review both a failure to make a decision and the conduct, or failure to engage in conduct, in the making of a decision.

2.2.1 Fair and reasonable

Our superannuation complaint determinations address whether the financial firm's decision was fair and reasonable in its operation in relation to the complainant ~~and any joined parties~~ in all the circumstances of the complaint.

~~The primary focus of our review is to assess whether the financial firm made a fair and reasonable decision in its operation in relation to the complainant (and any joined parties).~~ AFCA must not make a determination of a superannuation complaint that would be contrary to the fund's trust deed, any relevant insurance policy or the law.

3 In detail

3.1 Assessing complaints about delay

When assessing complaints about delayed insurance claims handling (in superannuation), AFCA will consider whether the delay is unreasonable or unfair inthe circumstances.

AFCA considers there are generally three different sources of delay in an insurance claim (insuperannuation). These are delays caused by:

- a financial firm, such as the insurer or the trustee
- the complainant; or
- a third party (such as a medical practitioner).

AFCA approaches each of these sources of delay differently.

3.1.1 Delays caused by a financial firm

Delays in this category may be caused by the insurer, the trustee, or their agents.

AFCA considers the timeframes ~~set out~~ in the ~~Financial Services Council~~ Life Insurance Code of Practice (Code) set a minimum standard of accepted industry practice and expects ~~the~~ insurers to meet them.

Key timeframes in this Code include:

- making a decision on IP claims within 2 months ~~unless exceptional circumstances apply~~unless an exception applies
- making a decision on TPD claims within 6 months unless ~~exceptional circumstances apply~~an exception applies
- ~~making a decision on IP or TPD claims within 12 months if exceptional circumstances apply~~
- ~~making~~communicating the claims decision in writing ~~a decision~~ within 15~~10~~ business days of receiving all information necessary toassess the claim
- providing updates on the claim process every 20 business days~~; and~~
- replying to update requests within 10 business days.

If insurers don't comply with these timeframes AFCA will expect them to provide compelling reasons. AFCA expects insurers to act as quickly as possible in assessing claims and that there may be some instances where fairness and reasonableness requires insurers to progress claims more swiftly than the minimum timeframes set out in the Code. This may be because of a particular vulnerability or urgency faced by the complainant. AFCA notes this is consistent with the Code, which recognises claims may need to be prioritised if urgency is identified.

AFCA also expects trustees to hold insurers to these timeframes, noting the trustee's obligation under s52(7)(d) of the *Superannuation Industry (Supervision) Act 1993* (Cth) to 'do everything that is reasonable to pursue an insurance claim for the benefit of a beneficiary, if the claim has a reasonable prospect of success'. The Guidance Note also ~~indicates that~~states trustees are responsible for overseeing the conduct of the insurer in the claims process, including proactive engagement to minimise delays.

~~For example~~Further, AFCA expects trustees to bring claims to the attention of their insurer quickly so that assessment can begin, even where a complete set of documents andevidence has yet to be provided.

AFCA also expects a trustee to identify if ~~prevent~~ the insurer ~~from~~ is delaying the denial of a claim that does not have a reasonable prospect of success (in the trustee's opinion) – for example, see case study 2.

AFCA expects trustees to comply with the timeframes set out in the Claims Standard and Guidance Note (as applicable). ~~from 1 July 2021 and the *Insurance in Superannuation Voluntary Code of Practice* (ISVCP) for the period in which it operated.~~

Key timeframes in the Claims Standard and Guidance N~~n~~ote include:

- the trustee releasing benefits to a member within 5 business days after:
  - receiving money from an approved claim, and
  - confirming the requirements have been met for the release of money from the member's superannuation account
- the trustee reviewing the insurer's decision to decline a claim within 15 business days
- the trustee communicating with the insurer within 5 business days of the review if it ~~disagrees with~~queries the insurer's decision
- the trustee communicating with the complainant within 5 business days of the review if it confirms the insurer's decision to decline the claim
- ensuring a progress update is provided to the complainant every 20 business days.

~~AFCA also notes that f~~From 1 January 2021, insurers and trustees ~~will be~~are required to ensure that claims handling is done in line with the obligations ~~attaching to~~under their Australian Financial Services Licence, ~~which requires~~including for claims to be handled efficiently, honestly and fairly. ASIC has provided further information about its expectations of licensees in ASIC Information Sheet INFO 253.

3.1.2 Delays caused by the complainant

Delays in this category may be caused by the complainant or someone acting on their behalf. Examples of this type of delay include delays caused by a complainant refusing to provide an authority to an insurer to obtain their medical records, or by refusing to attend a medico-legal examination.

However, just because a complainant may *appear* to be the source of the delay does not mean they are.

In determining the actual source of the delay AFCA will consider if any requests made by an insurer were reasonable. For example, AFCA may consider it reasonable for a complainant to refuse to attend a medico-legal examination if there is already sufficient evidence on the file for the insurer to make a decision.

In this instance AFCA would consider the insurer, not the complainant, is the source of the delay and apply the approach set out in 3~~2~~.1~~2~~.1 above. Other examples include where an insurer insists the complainant attend an appointment, but it is ~~it is~~ not possible for the complainant to ~~attend appointments~~do so due to a circumstance such as injury, illness, ~~or~~ distance, ~~/~~ or limited mobility.

Where AFCA determines the source of the delay relates to the actions of the complainant (or their agent), then we may consider whether it is appropriate to exclude the complaint under ~~the~~ Rule A.8.3 of the AFCA Rules. More information about this can be found in the AFCA Approach to Excluding Complaints.

It is worth noting AFCA may be able to review a subsequent decision of an insurer and trustee relating to the ~~same set of facts~~claim decision, even if it has excluded the ~~decision~~ complaint about the delay. For example, if an insurer subsequently decides to decline the claim, and the trustee agrees with the decision of the insurer, AFCA ~~will~~ may be able to review the decisions even though it excluded the complaint about the delay.~~n to decline.~~

3.1.3 Delays caused by a third party

Delays in this category may be caused by a third party, such as a medical practitioner or the complainant's former employer failing to provide information in a timely manner.

AFCA acknowledges third-~~-~~party delays occur. ~~,~~ ~~h~~However, AFCA may considers~~s~~ the insurer or trustee to be responsible for those third-party delays. An example of this is if an insurer insists on a medical practitioner providing a report that not necessary for it to make a claim decision. ~~this does not necessarily mean the insurer and trustee have acted reasonably by not being thesource of the delay.~~

~~In the case of~~For third-~~-~~party delays, AFCA expects the insurer and trustee to ~~be able to~~explain:

- why this third-party evidence is necessary to decide the claim
- why this third-party evidence cannot be obtained from another source, such as an alternative medical practitioner
- what communications and attempts the trustee and insurer have made to follow up the third party; and
- what other parts of the investigation the insurer and trustee are progressing in the meantime (while waiting on the third-party information).

When choosing a medical practitioner to conduct a medico-legal examination, AFCA expects insurers will take into account their previous experiences with that medical practitioner, the practitioner's availability, timeliness and responsiveness.

3.2 What information does AFCA need?

AFCA has set out the information it requires of insurers and trustees in its EDR response guide to superannuation insurance claim delays, which is available on AFCA's website at www.afca.org.au/about-afca/publications.

~~In a complaint about insurance claims handling delays (in superannuation), AFCA expects the insurer to provide:~~

~~- a detailed timeline of the claim, setting out:~~

  ~~- all contact and correspondence with the complainant and third parties~~
  ~~- all information requested and an explanation about why information was needed to progress the claim~~

- all follow up requests when timeframes have not been met
- any timeframes that do not comply with the relevant codes and an explanation for the non-compliance

- any correspondence to the complainant explaining why a timeframe would not be met and why delay had occurred
- a copy of the claim file in chronological order including any records of decision and supporting material (such as chief medical officer reports)
- a detailed submission as to why the insurer is not currently able to make a decision on the claim; and
- the strategy the insurer is pursuing to decide the claim and to address third-party delays (if any).

AFCA expects the trustee to provide:

- a submission setting out whether the trustee agrees with the dates set out in the insurer's timeline
- an outline of the steps the trustee has taken to ensure it has met the timeframesset out in the Guidance Note or ISVCP if applicable; and
- a detailed submission, including an outline of the steps the trustee has taken to avoid unreasonable delays by the insurer in their investigation and decision.

3.3 Consequences for unreasonable delay

AFCA cannot award non-financial loss to complainants in the superannuation jurisdiction. This means AFCA cannot award compensation for a complainant's stress or inconvenience caused by unreasonable delay.

However, AFCA has other tools it can use if it finds there has been an unreasonable delay.Subsection 1055(6) of the *Corporations Act 2001* (Cth) sets out the actions that AFCA may take if it is satisfied that a decision in its operation to the complainant is unfair or unreasonable, or both.

If AFCA considers there is enough information to accept a claim, AFCA can determine an insurer has delayed unreasonably, directing the insurer to accept the claim together with interest paidpayable, in line with section 57 of the *Insurance Contracts Act1984* (Cth).

If AFCA considers an insurer has delayed unreasonably, but there is not enough evidence to admit the claim, AFCA can remit the matter to the insurer to consider with specific directions.

In the eventIf AFCA considers an insurer has delayed unreasonably, and there is enough evidence to decline the claim, AFCA may remit the matter to the insurer and direct it to decline the claim.

3.4 Systemic issues and Code referrals

If AFCA identifies a trend in complaint records about delays in insurance claims handling (in superannuation) by a trustee or insurer, then AFCA's Systemic Issues Team may ~~choose to~~ investigate whether the trend represents a systemic issue.

More information about AFCA's role in systemic issues can be found here: afca.org.au/about-afca/systemic-issues

In addition, if AFCA identifies a potential breach by an insurer of the Code ~~*Life Insurance Code of Practice*~~, then AFCA may refer the matter to the Life Insurance Code Compliance Committee for review. This may result in sanctions being imposed against an insurer – see clauses 8.18 to 8.21 ~~13.14~~ of the ~~Life Insurance~~ Code.

More information about AFCA's Code function can be found here:afca.org.au/about-afca/codes-of-practice

4 Context

4.1 Case studies

Case study 1 – Unreasonable delay in approving the claim

The complainant lodged a complaint with AFCA about delays in the handling of her TPD claim.

The complainant had lodged a TPD insurance claim with the trustee of her superannuation fund because of post-traumatic stress disorder (PTSD) relating to procedures she had for leukemia. The leukemia was now in remission.

The complainant was 62 years old at the time of the claim and had worked as a nurse at a hospital prior to stopping work due to her leukemia treatments. The complainant's PTSD was particularly triggered by being around medical professionals.

The complainant's treating doctor had been seeing her regularly and prescribed medication for her symptoms. The complainant had been regularly taking that medication.

The insurer asked the complainant to attend a medico-legal examination with a psychiatrist. The psychiatrist said he believed the complainant would benefit from seeing a psychologist regularly. He also thought that with regular therapy some of her symptoms would improve and she may regain work capacity within six months, but her symptoms were likely to flare up around medical professionals.

The insurer sought to delay the TPD assessment to see if the complainant responded to therapy and asked the complainant to attend another medico-legal examination

with a different psychiatrist. The complainant lodged a complaint to AFCA about the delay and said the insurer had sufficient information to approve her TPD claim.

AFCA reviewed the complaint and determined the insurer did in fact have enough material to approve the claim. AFCA noted the relevant test under the TPD policy was whether the complainant was unlikely to ever work again in an occupation for which she was suited, based on her education, training or experience.

AFCA determined that ~~even~~ the medico-legal psychiatrist's report supported the complainant's claim. The complainant was unlikely to ever work again in an occupation for which she was suited (based on her education, training or experience), noting she had previously worked as a nurse and her PTSD symptoms would flare up in a hospital environment.

AFCA also noted the complainant was 62 years old and was unlikely to work in other roles, even if she received a short refresher course in administration skills.

~~AFCA deemed the insurer's failure to make a decision to be a decision under s1053(5)(a) of the Corporations Act.~~ AFCA determined the insurer's decision (or failure to make a decision) was unreasonable and set it aside, remitting the claim to the insurer with a direction to approve the TPD claim and pay interest (calculated with reference to s57 of the Insurance Contracts Act). AFCA also determined the trustee's decision to agree withthe insurer was unreasonable, setting aside that decision as well.

Case study 2 – Unreasonable delay in declining the claim

~~In December 2019 t~~The complainant lodged a complaint with AFCA about delays in thehandling of his TPD claim. His claim was based on a mental health condition.

~~The complainant lodged his TPD claim in December 2018, based on a date of disablement in February 2017. The complainant's condition was an adjustment disorder with anxiety and depressed mood.~~

At the time of the AFCA complaint, the insurer and trustee had yet to make ~~a~~ decisions, after asking the complainant to attend numerous medical appointments (withdifferent medico-legal mental health specialists). The insurer said it was not yet able to make a decision as it had conflicting medical evidence about the complainant's prognosis.

~~AFCA noted the complainant did not meet the terms of the policy in February 2017 – even though he had ceased work in one job at the time, he shortly afterwards found a job he was able to perform with reasonable adjustments. As a result, AFCA determined the complainant did not satisfy the relevant waiting period in the policy until February 2018 (60 days after he ceased work with the second employer).~~

~~AFCA also noted the complainant had rolled over his superannuation to a different fund when he started the second job, losing his insurance cover at that time.~~

It became apparent to AFCA that the complainant was not covered under the trustee's group policy with the insurer at the date of assessment defined in the policy. This meant the complainant's TPD claim would have been unsuccessful regardless of the medical evidence.

~~AFCA realised the insurer was not going to be liable for the complainant's insurance claim, and the insurer should have denied the claim as soon as it became aware of the timeline.~~

AFCA determined the delay was unreasonable as the insurer should have denied the claim, without subjecting the complainant to numerous medico-legal examinations.

AFCA also found the trustee's decision was unreasonable as it should have independently satisfied itself and alerted the insurer to the fact the complainant did not have TPD ~~claim had nomerit.~~cover at the relevant time.

AFCA could not award non-financial loss. H~~h~~owever, the AFCA decision-maker referred the insurer and the trustee to the Life Insurance Code Compliance Committee ~~and theSystemic Issues Team~~ to investigate whether this represented a breach of the Code.~~,~~ The decision maker also referred the matter to the Systemic Issues team to consider whether this represented any broader gaps in ~~also considering~~ the insurer's and trustee's claims handling practices.

Case study 3 – Unreasonable delay caused by the complainant

The complainant lodged a complaint with AFCA about delays caused by the insurer and the trustee in handling his IP claim.

After contacting the insurer and the trustee about the delay (and reviewing information provided by both), AFCA found the delay was caused by the complainant refusing to authorise the insurer to obtain his medical file from his treating general practitioner.

The group IP policy required the complainant to show he had been under the regular care of, and taking the advice of, a medical practitioner. The complainant said he met this requirement but refused to provide evidence or an authority form that allowed the insurer to obtain this evidence. ~~indicated inhis IP claim that he had met this requirement because he had been under the regularcare of, and had taken the advice of, his treating general practitioner.~~

AFCA exercised its discretion under Rule A.8.3 of the AFCA Rules to exclude~~d~~ the complaint about the delay on the basis the complaint was without merit. ~~and the financial firm had made no error.~~ This was because AFCA was ~~unable to determine whether this policy requirements had been met by the complainant without the~~

~~medical file from the complainant's treating general practitioner.~~satisfied any delays in the claim assessment were caused by the complainant.

Case study 4 – Unreasonable delay by a third party

In September 2018 the complainant lodged an insurance claim with the trustee for an IP benefit relating to a musculoskeletal disorder in her lower back.

The complainant provided evidence from her general practitioner indicating she had ~~problems with her~~suffered the condition. The insurer was satisfied the complainant was unable to work due to her condition but was unsure if the complainant had ceased work due to sickness or injury; a requirement under the IP policy. The insurer was concerned because the complainant had given four months' notice before ceasing work with the employer, which seemed inconsistent with ceasing work due to sickness or injury.

The insurer and the trustee had both written to the complainant's employer on several occasions for the complainant's records, however the employer ~~had not written back.~~did not respond. ~~The complainant's former employer assured the trustee it would attend to the matter shortly.~~

This initial request for information from the former employer was made three months earlier and since that time the claim had stalled, pending the outcome of the employer's information.

In September 2019 the complainant lodged a complaint with AFCA about ~~the~~ delays in the assessment of her IP claim.The insurer indicated to AFCA the delay was ~~a result of~~caused by the complainant's former employer. The insurer said it was necessary to talk to the employer to determine whythere was a four-month period of notice before terminating employment.

The complainant provided documents showing ~~that~~ she had given the insurer and trustee information during the claim, which addressed their concerns. She said that even though ~~even though~~ she had given four months' notice, she had ~~been~~ used up her ~~on long service leave and annual leave~~remaining leave entitlements for that period ~~of time~~. The complainant provided her letter of resignation which indicated she was having difficulties performing the role due to her back issues.

AFCA determined there had been an unreasonable delay ~~on behalf of~~by the insurer. The insurer should have considered whether there was any other way to resolve its concerns after it became ~~clear~~ the former employer ~~was not going to~~ repeatedly ignored the insurer's requests. ~~provide the required information in a timely manner.~~ AFCA found the information being sought was unnecessary, as the complainant had provided sufficient evidence to address the insurer's concerns.

AFCA set aside the decision of the insurer and remitted the claim to it with a direction that it finds the complainant had ceased work due to sickness or injury. AFCA also set aside the decision of the trustee to agree with the insurer.

References

4.2 Definitions

Term	Definition
Complainant	A person who has lodged a complaint with AFCA
IP claim	A claim for income protection insurance benefits
TPD claim	A claim for total and permanent disability insurance benefits

4.3 Useful links

Document type	Title / Link
AFCA Rules	afca.org.au/rules
Act	Superannuation Industry (Supervision) Act 1993 (Cth) legislation.gov.au/Details/C2019C00307
Act	Insurance Contracts Act 1984 (Cth) www.legislation.gov.au/Details/C2019C00115
Code	Life Insurance Code of Practice https://cali.org.au/life-code/~~www.fsc.org.au/policy/life-insurance/code-of-practice~~
~~**Guidance Code**~~**Guidance Note~~s~~**	Insurance in Superannuation Claims Handling Guidance Note ~~shorturl.at/cqIRY~~https://www.superannuation.asn.au/policy/insurance-in-superannuation-guidance-notes/
~~**Code**~~	~~Insurance in Superannuation Voluntary Code of Practice~~ ~~https://www.superannuation.asn.au/ArticleDocuments/498/Insurance_in_Superannuation_Voluntary_Code.pdf~~ ~~www.superannuation.asn.au/policy/insurance-in-superannuation-voluntary- code-of-practice~~
ASIC Information Sheet	ASIC Information Sheet INFO 253~~shorturl.at/pxy58~~ https://download.asic.gov.au/media/13aboqnx/info253-published-6-may-2021.pdf
AFCA Approach to Excluding Complaints	https://www.afca.org.au/media/419/download

Document type	Title / Link
AFCA EDR response guide to superannuation insurance claim delays	https://www.afca.org.au/media/1290/download

Appendix – AFCA's superannuation jurisdiction

What are AFCA's remedial powers for superannuation complaints?

Division 3 of the Corporations Act sets out additional provisions which relate to AFCA's superannuation jurisdiction. These provisions impact the way in which AFCA determines superannuation complaints and the remedial powers it exercises.

When an AFCA decision-maker determines a superannuation complaint, they have all the same powers, obligations and discretions of the trustee (or other decision maker) whose decision or conduct is being reviewed.

An AFCA decision-maker can only make a determination to place the complainant (as nearly as practicable) in a position where the unfairness and / or unreasonableness no longer exists.

In addition, an AFCA decision-maker must not do anything contrary to law or the governing rules of the fund.

When an AFCA decision-maker determines a superannuation complaint, they step into the shoes of the superannuation provider, with the benefit of all the information provided.

Reviewing decisions (and related conduct)

If the AFCA decision maker is satisfied that the superannuation provider's decision (or related conduct) operated fairly and reasonably in relation to the complainant in the circumstances, the AFCA decision maker must affirm it.

However, if the AFCA decision-maker is not satisfied and considers there is some unfairness or unreasonableness in the operation of the superannuation provider's decision, then the AFCA decision-maker can take one of the following remedial actions:

- vary the decision
- set aside the decision and substitute their own decision; or
- set aside the decision and send the matter back (remit) to the superannuation providerand insurer to make a new decision in accordance with AFCA's directions.