



FINANCIAL PLANNING  
ASSOCIATION of AUSTRALIA

20 June 2019

Mr David Locke  
CEO and Chief Ombudsman  
Australian Financial Complaints Authority Limited  
GPO Box 3  
Melbourne VIC 3001

Email: [submissions@afca.org.au](mailto:submissions@afca.org.au)

Dear Mr Locke

### Proposed AFCA change to Rule A.14.5 to identify financial firms in published determinations

The Financial Planning Association of Australia<sup>1</sup> (FPA) welcomes the opportunity to provide feedback in response to the Australian Financial Complaints Authority's (AFCA) consultation on its proposal to identify financial firms in published determinations.

The availability of information about complaints involving financial services providers can assist consumers to make an informed decision about a potential (or existing) product or provider, and plays an important role in ensuring industry training programs address any issues that impact consumer outcomes.

Such information can also be extremely harmful to practitioners and entities if complaints are published incorrectly or contain inaccurate facts.

Therefore it is important that the Rules governing the publication of complaints determinations is clear and appropriate.

The FPA recommends greater clarity is included in the proposed change to Rule A.14.5 to ensure the information included in determinations, and the identity of the firm are accurate.

#### Financial firm

RG165.138 requires AFS licensees to be a member of one or more ASIC-approved EDR schemes that covers, or together cover, complaints made by retail clients in relation to the financial services provided. The AFCA Rules and Operational Guidelines refer to financial firms. In the financial advice profession the term financial firm could refer to the licensee, the Corporation Authorised Representative (CAR), or the financial planning practice. While it is assumed that it will be the licensee, as the AFCA member, who will be identified in the published determination, the FPA seeks clarification as to which 'financial firm' will be identified.

In some instances, the complaint process/investigation may involve other financial firms. The complaint is not against the other financial firm, rather the firm is involved in the gathering of evidence by AFCA, for example. The FPA suggest it should be clear that if

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<sup>1</sup> The Financial Planning Association (FPA) has more than 14,000 members and affiliates of whom 11,000 are practising financial planners and 5,720 CFP professionals. The FPA has taken a leadership role in the financial planning profession in Australia and globally:

- Our first "policy pillar" is to act in the public interest at all times.
- In 2009 we announced a remuneration policy banning all commissions and conflicted remuneration on investments and superannuation for our members – years ahead of FOFA.
- We have an independent Conduct Review Commission, chaired by Dale Boucher, dealing with investigations and complaints against our members for breaches of our professional rules.
- The first financial planning professional body in the world to have a full suite of professional regulations incorporating a set of ethical principles, practice standards and professional conduct rules that explain and underpin professional financial planning practices. This is being exported to 26 member countries and the more than 175,570 CFP practitioners that make up the FPSB globally.
- We built a curriculum with 18 Australian Universities for degrees in financial planning. Since 1st July 2013 all new members of the FPA have been required to hold, or be working towards, as a minimum, an approved undergraduate degree.
- We are recognised as a professional body by the Tax Practitioners Board.



any other financial firms are involved in the complaint and the complaint is not against them, they will not be identified.

The FPA suggests the following amendments (in red) to clarify these matters:

A.14.5 AFCA will publish its Determinations in a form which identifies the **AFCA member** financial firm or firms **that the complaint is against** but does not identify the other parties to the complaint. A Determination will not be published if to do so would risk identifying any party other than the **AFCA member** financial firm or firms **that the complaint is against**, or if there are other compelling reasons not to publish it.

It is also suggested that the following proposed changes to the Operational Guidelines be amended:

It is open for the parties to request that:

- certain details be changed in the Determination, if those details can be used to identify a party other than the **AFCA member** financial firm or firms **that the complaint is against** (as long as the substance of the Determination remains unaffected), or
- the Determination not be published (provided there are compelling reasons). Similarly, a party can request a Determination that has already been published to be further de-identified or removed.

#### Advice complaints

In relation to complaints involving the provision of financial advice, feedback from FPA members indicate past incidents where the complainant incorrectly names a firm or includes additional firms who may not have been involved in the provision of the services to the client that are the subject of the complaint.

The FPA recommends the inclusion of a specific provision in relation to financial advice complaints to clarify that AFCA will publish its Determinations in a form which identifies only the AFCA member financial firm that provided the financial advice to the client and whom the complaint was against.

We would welcome the opportunity to discuss with AFCA the issues raised in our submission. If you have any questions, please contact me on [REDACTED]

Yours sincerely

**Ben Marshan CFP® LRS®**  
*Head of Policy and Professional Standards*  
Financial Planning Association of Australia