

Independent Assessor Terms of Reference

1. The Independent Assessor is appointed by the Board of AFCA.
2. The role of the Independent Assessor is to consider and respond to service complaints about AFCA. The Independent Assessor function is part of AFCA's overall complaints and feedback process, which is in place to deal with complaints about AFCA's service.
3. The Independent Assessor will also identify, address and report on issues affecting AFCA's complaint handling operations and performance that arise from service complaints. The Independent Assessor may make recommendations to AFCA in response to issues arising from service complaints.

Escalating a complaint to the Independent Assessor

4. Any person or business directly affected by how AFCA deals with a complaint against a financial firm can complain to the Independent Assessor. This includes any party to a complaint (including a complainant, financial firm, representative or a joined party).
5. Before a complaint can be made to the Independent Assessor, AFCA must have had a reasonable opportunity to consider and respond to the complaint through its internal complaints and feedback process.
6. A complaint to the Independent Assessor must be made within three months of AFCA considering and responding to the complaint through its complaints and feedback process, unless special circumstances apply.

Complaints that the Independent Assessor can consider

7. The Independent Assessor can consider complaints about the standard of service provided by AFCA in handling a complaint against a financial firm.
8. The Independent Assessor does not consider the merits or the substantive outcome of a complaint against a financial firm, such as a determination or other finding issued by AFCA about the merits of a complaint, or AFCA's jurisdiction. The role is not an appeal or review mechanism for AFCA's decision and judgments on the facts or merits of a complaint.
9. The Independent Assessor cannot comment on the facts or outcome of a complaint against a financial firm. This includes AFCA's finding about:

- 9.1. whether a complaint is within AFCA' jurisdiction;
 - 9.2. whether to dismiss, reject or uphold a complaint; or
 - 9.3. any compensation awarded or corrective action taken.
10. The Independent Assessor will not consider a complaint where:
- 10.1. the individual or business has previously made a complaint to the Independent Assessor about the same issue;
 - 10.2. the complaint is frivolous, vexatious or malicious; or
 - 10.3. the complaint relates solely to matters other than AFCA's handling of a complaint against a financial firm. This includes any complaint concerning AFCA's decision to report a systemic issue or serious contravention to a regulator.
11. In most circumstances, the Independent Assessor will only consider a complaint about AFCA's handling of a complaint against a financial firm once AFCA has completed its investigation of the complaint against the financial firm. In exceptional circumstances, however, the Independent Assessor can request AFCA to put its investigation on hold while the Independent Assessor considers the service complaint.

Assessment of a complaint

12. Where the Independent Assessor forms the view that a complaint falls within these Terms of Reference, the Independent Assessor may, depending on the nature and circumstances of the complaint, notify both the complainant and AFCA in writing of the issues his/her review and assessment will consider.
13. AFCA will provide the Independent Assessor with all its files relating to the service complaint, together with its comments (if any) on the issues raised by the complaint.
14. The Independent Assessor may ask the complainant or AFCA for any further information that the Independent Assessor considers necessary to complete his/her assessment.

Outcome of an Assessment

15. The Independent Assessor will provide his/her findings in writing to the complainant and to AFCA. There is no further appeal against the Independent Assessor's findings and recommendations.
16. If the Independent Assessor finds that AFCA has not met its service standards, he/she can make a recommendation in writing to the Chief Ombudsman, with a

copy provided to the complainant. This might be that AFCA should offer an apology, should pay compensation for any distress or inconvenience caused by the poor service (non-financial loss) or take other action.

17. Compensation will be equivalent to what AFCA might award an Applicant for non-financial loss against a financial firm in similar circumstances, under the AFCA Rules clause D.3.3. For the avoidance of doubt, the Independent Assessor cannot make a recommendation to the Chief Ombudsman that AFCA give consideration to re-opening, changing or correcting a determination or other finding issued by AFCA about the merits of a complaint against a financial firm, or AFCA's jurisdiction.
18. If the Chief Ombudsman accepts a recommendation from the Independent Assessor, the Chief Ombudsman will communicate this to the Independent Assessor, who will notify the complainant of the outcome.
19. In cases where the Chief Ombudsman does not agree with the recommendation from the Independent Assessor, the matter will be referred to the Chair of the AFCA Board. The Chair of the AFCA Board may make a final decision or alternatively refer the matter to the Board for final decision.
20. The Chair of the AFCA Board will communicate acceptance or rejection of a recommendation to the complainant, the Independent Assessor and to the Chief Ombudsman.

Reporting

21. The Independent Assessor will report quarterly in writing to the AFCA Board on the number and nature of the complaints the Independent Assessor has received, the findings made, and the outcomes of any recommendations made to the Chief Ombudsman, including the outcome of any escalation to the Chair of the AFCA Board. The Board will also be provided with a quarterly report on all service complaints received by AFCA, including complaints that were finalised without escalation to the Independent Assessor.
22. The Independent Assessor will report quarterly in writing to ASIC.
23. The Independent Assessor will report publicly every six months on all service complaints received and finalised by AFCA. As part of its six monthly public reporting, the Independent Assessor will publish a report within the AFCA Annual Review.