

AFCA Transition Complaints Approach

Background

AFCA must exclude a complaint that has already been dealt with by a predecessor scheme if it involves the same events and facts (AFCA rules C.1.2(d)). However, some complaints may have been excluded by a predecessor scheme without an assessment of the merits; for example, when the predecessor scheme considered a complaint to be outside its jurisdiction.

Where a complaint was assessed as outside a predecessor scheme's jurisdiction and now comes within AFCA's jurisdiction, we do not consider the complaint to have been 'dealt with' under C.1.2.(d), if the complaint has not been resolved through a decision or an agreed outcome.

This document provides information about how AFCA will approach:

- complaints that were previously assessed as outside a predecessor scheme's jurisdiction
- complaints received by the Financial Ombudsman Service (FOS) or the Credit and Investments Ombudsman (CIO) on or before 31 October 2018, that are outside jurisdiction but not assessed for jurisdiction until after 1 November 2018
- disputes discontinued with FOS
- complaints received that were dealt with by FOS, CIO or the Superannuation Complaints Tribunal (SCT)
- complaints that were withdrawn by the SCT but were not "dealt with"
- complaints received immediately before 1 November 2018 about a death benefit that are lodged with both SCT and AFCA
- superannuation complaints received by AFCA before 1 November 2018.

We will work closely with the Superannuation Complaints Tribunal to ensure consumers are well informed about where they can lodge a complaint and which scheme has carriage of an open complaint.

AFCA approaches

Closed as outside a predecessor scheme's jurisdiction

Complaints that were outside the jurisdiction of a predecessor scheme that now come within AFCA's jurisdiction will be dealt with by AFCA, subject to any other AFCA jurisdictional provisions. Most commonly this will affect complaints that were previously outside a predecessor scheme's monetary limits, but that are now within AFCA's monetary limits.

However, if a complaint is now within AFCA's monetary limit but outside jurisdiction because of other AFCA time limits, we will consider if any special circumstances should be applied to assess the relevant time limit. This will not apply to superannuation death benefit complaints, where the time limit is prescribed by law, or to superannuation disability complaints, where the AFCA rules do not permit the time limits to be extended.

This approach ensures parties are not disadvantaged by the period between AFCA's establishment and when it commences operations on 1 November 2018.

Outside FOS or CIO jurisdiction but not assessed until after 1 November 2018

A dispute received by FOS (or CIO) on or before 31 October 2018 may be subsequently assessed as outside the scheme's jurisdiction, however, it may come within AFCA's jurisdiction. In those circumstances, the FOS or CIO jurisdictional assessment will be completed and provided in writing (as required under the FOS Terms of Reference (TOR) & CIO Rules). The complainant will also be informed that while the dispute is outside the FOS TOR or CIO Rules, because it comes within the AFCA's Rules, it will be dealt with as an AFCA complaint under the AFCA Rules.

Before this is communicated to the parties, the matter will have been reviewed by an AFCA senior staff member to ensure it comes within AFCA Rules.

Disputes discontinued by FOS or CIO

A dispute may be discontinued if a complainant asks for it to be closed before it is dealt with, or if they do not respond to a request for information before it is dealt with. Where a dispute has been discontinued with FOS or CIO and the complainant subsequently seeks to reopen the dispute, we will consider if it is appropriate to reopen under the FOS Terms of Reference or CIO Rules and will apply the relevant criteria for reopening a dispute. If it is appropriate to reopen the dispute, then the matter will proceed as a dispute under the FOS TOR or CIO Rules and process as appropriate.

Disputes previously dealt with by FOS, CIO or SCT

If AFCA receives a complaint about the same subject matter that was previously the subject of a complaint with a predecessor scheme, we will consider the complaint previously 'dealt with' if the parties:

- entered into a binding agreement (eg. a conciliated outcome or negotiated outcome),
- received a recommendation, case assessment or preliminary view from FOS or CIO, or
- received a determination or final decision of FOS, CIO or SCT.

Complaints withdrawn by the SCT but not dealt with

AFCA will exercise its discretion to exclude a complaint if it was withdrawn (and not death with) by the SCT, on the basis that the SCT was the appropriate forum to consider the complaint previously and therefore it would not be appropriate for AFCA to consider the complaint again. This is because the appropriate process for the complainant to challenge the SCT's decision to treat a complaint as withdrawn was to lodge an appeal with the Federal Court within the required timeframe. It is not appropriate for AFCA to circumvent this process, which is intended to provide certainty to the parties.

Where a complaint was withdrawn by the SCT because a complainant did not respond to the SCT's attempts to contact them, we may in exceptional circumstances treat the complaint as a new complaint, provided it is otherwise within its jurisdiction and has not been 'dealt with' previously.

Complaints lodged with AFCA and SCT about the same death benefit

After a Trustee has made a final decision in relation to the distribution of a death benefit, from 21 September 2018 it must tell the potential beneficiaries that they have 28 days after receiving the final decision to lodge a complaint with SCT (until 31 October 2018) or AFCA (on and after 1 November 2018).

Where AFCA receives a complaint about the distribution of a death benefit, and the SCT has also received a complaint about the same distribution but from another potential beneficiary (prior to 1 November 2018), we will write to the individual who lodged the complaint with it ('AFCA complainant') and tell them that in the circumstances, the SCT is the more appropriate forum to consider the matter. We will suggest that the complainant contact the SCT and request to be joined to the SCT complaint. We may also forward the complaint to the SCT at the same time, but the SCT will not treat the forwarded complaint as an application to join the SCT complaint until the complainant approaches them directly.

We take this approach because the individual who initially lodged the complaint ('SCT complainant') cannot withdraw the complaint from SCT and then re-lodge it with

AFCA. However, we have the flexibility to reopen a complaint AFCA previously received if the SCT for any reason does not deal with the complaint lodged by the SCT complainant, and the complainant wishes to pursue their previous AFCA complaint. This may occur where the SCT complainant decides to withdraw their complaint and, in those circumstances, the SCT would not consider the matter further, even if there are parties joined to the complaint. But if the SCT complainant withdraws their complaint at the SCT, the SCT complainant cannot then come to AFCA as a complainant (though they might be joined to the AFCA complaint if we consider that joinder is necessary to resolve the AFCA complaint effectively).

From a practical perspective, a Trustee that has been notified of a complaint lodged with both the SCT and AFCA should check the status of the complaint with both bodies before paying out the death benefit. If we become aware that the complaint with SCT has been withdrawn, we will write to the complainant and give them 30 days to confirm whether they wish to pursue the complaint.

Superannuation complaints received by AFCA before 1 November 2018

AFCA cannot consider complaints received before 1 November 2018. The existing FOS approach of referring the complaint to the SCT will remain. However, if AFCA receives a complaint between 27 October 2018 and 31 October 2018 that we do not yet have jurisdiction to consider, we will hold the complaint and progress it through the AFCA complaint process from 1 November 2018. This takes into account the fact that the SCT will not be able to receive complaints from 1 November 2018, and it is possible that such complaints would not be able to be lodged with or transferred to the SCT by 1 November 2018.

Death benefit complaints – special approach

AFCA will refer to the SCT any complaints lodged before 27 October 2018 about the distribution of a death benefit.

If AFCA receives complaints between 27 October 2018 and 31 October 2018 about a death benefit distribution and there has not been a final decision by the Trustee, we will contact the complainant to advise them they need to first complain to the Trustee. This is because AFCA only has jurisdiction to consider a complaint once a final decision is made. It is important that the complainant understands there are mandated time frames to lodge an objection to the proposed decision, and that this must be done with the Trustee directly. We will also forward the complaint to the Trustee and ask it to treat the complaint as an objection. This replicates the approach of the SCT and also reflects what AFCA will do after 1 November 2018.

We will take this approach because we recognise there may be confusion for consumers about who to complain to, and that they may lose their right to complain if they are not aware of the required timeframes to object to a proposed decision and lodge a complaint.

