

3 April 2019

Mr David Locke
Chief Ombudsman and Chief Executive Officer
Australian Financial Complaints Authority
GPO Box 3
MELBOURNE VIC 3001

submissions@afca.org.au

Dear David

Amendments to AFCA's Rules and Guidelines for Legacy Complaints

Thank you for seeking our input to your proposed amended Rules and Guidelines in relation to Legacy Complaints. In summary, AFCA is now required to deal with certain complaints about conduct by Financial Firms dating back to 1 January 2008.

We have read your proposed guidelines and rules and have the following general observation to make. Under the revised legislation AFCA will be called upon to deal with complaints up to eleven years old. In our experience there is a strong correlation between the difficulty to resolve a complaint and provide for natural justice / procedural fairness for both the complainant and the person who is subject to the complaint and the age of the events giving rise to the complaint. This is because;

- Documents will be destroyed in accordance with a business's normal document retention policies or as a condition of some professional indemnity insurance policies. Without documents it is difficult for either party to accurately substantiate their claims.
- Evidence that is based on a person's memories or recollections can be increasingly unreliable with the passage of time.
- Industry practice and standards change over time. AFCA will need to determine which standard the financial firm should be held to account for, the 2008 standard or the 2019 standard. I believe it should be the standard that prevailed at the time the work was completed. Should AFCA concur you will need to ensure your Decision Makers have relevant experience to make this assessment. AFCA should make it very clear to all parties which standard they will be applying.

- People and businesses move and change over time. People who are party to the complaint may have moved employers and no longer have access to records to defend themselves, similarly entities may no longer exist in the form they did at the time of the action giving rise to the complaint.

Yours sincerely

Simon Grant FCA
Group Executive Advocacy and Professional Standing