

Superannuation advice

Advice about superannuation

- An Australian Financial Services Licence (AFSL) is required for advice about superannuation because superannuation is a financial product.
- Superannuation advice may be general advice when it does not take into account the particular needs and circumstances of the individual (for example, advice given on a fund website or through a call centre) or it may be personal advice when it does take into account the particular needs and circumstances of the individual (for example, intra fund advice or a financial plan that includes superannuation).
- For general advice, a warning must be given that the individual's needs and circumstances are not being taken into account. For personal advice, the adviser has additional obligations to act in the best interests of the individual, provide appropriate advice and prioritise the individual's interests and must give a written Statement of Advice to the individual.
- Under the Corporations Act, the primary responsibility for the provision of advice lies with the AFS licensee, who is also required to supervise the provision of advice by its representatives.
- AFS licensees who provide advice to retail clients must have internal dispute resolution (IDR) procedures to handle complaints and must also be AFCA members. AFCA can therefore consider complaints about superannuation advice given by an AFS licensee or its representatives.

Superannuation Complaints

- Some complaints about superannuation advice will be superannuation complaints.
- A superannuation complaint is defined under section 1053(1) of the Corporations Act to include a complaint about a decision (or related conduct) of a trustee of a regulated superannuation fund, including someone acting on the trustee's behalf.
- When a superannuation complaint is about advice given by a superannuation trustee or by an employee of the trustee, the complaint to AFCA will often be made after the trustee has made an IDR decision not to provide any compensation or other remediation in relation to the advice. The AFCA complaint will therefore relate to a decision of the trustee.
- In other cases, superannuation advice may have been given by another AFS licensee, under an arrangement with the superannuation trustee. In these cases, the IDR decision will have been made by the other AFS licensee, although the trustee may also be informed about such complaints where they relate to its fund members.
- Even if the superannuation trustee has considered a complaint about advice provided by arrangement with another AFS licensee under its own IDR procedures (which may be the case for call centre advice and 'intra fund advice'), the other AFS licensee must also consider the complaint under its IDR procedures and AFCA will therefore initially progress the AFCA complaint against the other AFS Licensee. This means that, if the superannuation trustee wants to be informed about the progress of the AFCA complaint, it will need to have an arrangement with the AFS Licensee to keep the trustee informed about AFCA complaints.

- Where advice is given about a self-managed superannuation fund, the advice is not a superannuation complaint because complaints relating to a decision of a trustee of a self-managed superannuation funds are excluded under section 1053(4) of the Corporations Act.

What is AFCA's approach to superannuation advice?

- AFCA will consider a complaint about superannuation advice as a superannuation complaint if the superannuation advice was provided by the trustee of a regulated superannuation fund other than a self-managed superannuation fund (or its employees or 'representatives' within the meaning of the Corporations Act) under the trustee's AFSL.
- If the superannuation advice was provided under the AFSL of another AFS licensee, AFCA will consider the complaint under its general jurisdiction. This will be the case even if the advice was provided under an arrangement with a superannuation trustee, for example a member administration and call centre services arrangement, because it is the AFS licensee who is responsible for the advice.

What is the practical difference?

- Under the Corporations Act and the AFCA Rules, AFCA has different powers and limitations in considering superannuation complaints.
- There are two main differences between AFCA's jurisdiction to consider superannuation complaints and AFCA's jurisdiction to consider all other complaints.
- A superannuation complaint is not subject to monetary limits. AFCA can, however, only provide a remedy (usually by varying or replacing the trustee's decision not to compensate the complainant) to the extent necessary to redress any unfairness or unreasonableness in the trustee's decision.
- A non-superannuation complaint is subject to monetary limits. In deciding whether any compensation is payable, AFCA will have regard to what is fair in all the circumstances.

How will AFCA allocate complaints about superannuation advice to the right jurisdiction?

- AFCA will 'stream' complaints about superannuation advice according to the AFSL under which the advice was given.
- For personal advice about superannuation, the Statement of Advice will contain the AFSL number of the AFS licensee.
- For general advice about superannuation, AFCA may obtain a copy of the provider's Financial Services Guide. In some cases where superannuation advice is given to a fund member, AFCA may need to ask the superannuation trustee to confirm the identity of the AFS licensee responsible for the advice.

Where can I learn more?

To help you understand AFCA's approach to superannuation advice, you can refer to the definition of 'Superannuation Complaint' in the AFCA Rules, the Operational Guidelines and the Transitional Superannuation Guide, all of which are available on our website at www.afca.org.au/approach