

# Frequently Asked Questions – Superannuation

## What is the timeframe for notification of new complaint matters by AFCA?

The Secure Services portal is the most efficient and effective way to obtain current information about complaint matters, including death benefit objections.

AFCA will also send emails to an AFCA Member's nominated contact when a new complaint is lodged.

Complaint lodgement method	AFCA time to notify AFCA Member <sup>1</sup>
Online portal	2 business days
Phone	2 business days
Email	3 business days

## Is there a requirement for an AFCA member to publicly display their membership certificate?

An AFCA member may choose to display their membership certificate publicly however there is no AFCA requirement to do so.

## Can a third-party, such as a superannuation fund administrator acting on behalf of the superannuation fund trustee, request information in respect of a complaint lodged with AFCA?

AFCA is only able to provide information to an authorised representative of the AFCA Member. In this example, the superannuation trustee, as the AFCA Member, would need to provide authority for the third-party administrator to have access to their complaint information.

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<sup>1</sup> AFCA will generally provide notification within these timeframes. A business day is a Melbourne metropolitan business day.

## How does an AFCA member update authorised representative details?

AFCA members can update authorised representative details via the Secure Services member portal.

The Secure Services portal allows members to view cases and manage complaints online, run reports, update contact details, pay invoices, notify AFCA of authorised representative changes, and much more.

There are various levels of authorisation. Staff who handle complaints and require access to Secure Services would generally be set up as a 'Dispute Contact'.

**Note 1:** Listing someone as a Dispute Contact will provide them with access to **all** complaints for that AFCA Member. The system does not allow us to provide access to only some of their complaints or limit access in any way.

**Note 2:** If an email drop box address is registered as the email contact this will not provide the individuals listed with authorised representative status. If individuals require authorised representative status they must be listed individually by name.

## What information do superannuation trustees need to provide their superannuation fund members about AFCA?

ASIC has announced that it will provide all financial firms transitional relief until 1 July 2019 to allow them time to update mandatory disclosure documents and periodic statements with AFCA's contact details.

	Type of document		
	<ul style="list-style-type: none"> <li>IDR Final Response letters</li> <li>RG 165.92 'delay letters'</li> </ul>	<ul style="list-style-type: none"> <li>Website information</li> <li>General complaints brochures</li> </ul>	<ul style="list-style-type: none"> <li>Mandatory disclosure documents</li> <li>Periodic statements</li> </ul>
<p><b>From 1 November 2018 to 31 January 2019</b></p>	<p>May continue to include references to both the predecessor EDR scheme and AFCA, provided it is clear that only AFCA can receive complaints after 1 November 2018</p>	<p>As a condition of the transitional disclosure relief provided in ASIC Corporations (AFCA transition) Instrument 2018/447 and ASIC Credit (AFCA transition) Instrument 2018/448, broader</p>	<p>AFCA members should use this time to remove predecessor scheme details and instead refer complaints to AFCA</p>

	AFCA Members should use this time to remove predecessor scheme details and instead refer complaints to AFCA	communications about how to complain must be updated with AFCA's details by 1 November 2018.	
<b>From 1 February 2019</b>	Give contact details of AFCA only		
<b>From 1 July 2019</b>	Give contact details of AFCA only		

## What is the escalation protocol if there is an issue?

The escalation points within AFCA will generally depend on the resolution path for the individual complaint matter.

AFCA contact points and escalation paths are in the process of being updated and will soon be available via our Secure Services portal.

## What if the complainant provides the wrong superannuation fund reference/member/account number?

AFCA will record the number that the complainant advises. If the financial firm identifies that this is not the correct identifier for the complainant they can update the number provided by the complainant via the secure services portal. AFCA will then reference this number in future correspondence about the complaint.

## Can a superannuation fund trustee lodge a complaint with AFCA against their group insurer if the trustee disagrees with a decision of the insurer relating to a member of the superannuation fund covered under the trustee's insurance policy?

Superannuation complaints can only be made by individuals. If a superannuation fund trustee wants to refer a complaint to AFCA on behalf of one of its superannuation fund members they must first obtain the individual's written consent and provide a copy of this consent to AFCA at the time of submitting the complaint.

## Can an employer lodge a superannuation complaint?

Superannuation complaints can only be made by individuals, AFCA won't be able to accept a Superannuation complaint from an employer on behalf of their employee members.

## Can complaints that were previously lodged with a predecessor scheme and closed, be re-opened with AFCA?

Complaints that have already been dealt with by a court, dispute resolution tribunal or Predecessor Scheme, including the SCT, are excluded from AFCA's jurisdiction.

If you consider that a complaint has previously been dealt with it is important to provide AFCA with evidence supporting this view, for example a copy of the SCT determination.

Refer to page 103 of the Transitional Superannuation Guide for more information.

## In what circumstances might AFCA decide not to consider a complaint?

Rule C.2 of the AFCA Rules gives AFCA discretion to decide that it is not appropriate to consider a complaint. AFCA will only exercise this discretion where there are compelling reasons to do so. Examples of where AFCA may exclude a complaint include:

- there is a more appropriate place to deal with the complaint such as a court
- the subject matter of the complaint has already been dealt with by AFCA or a predecessor scheme such as the SCT
- the complaint is the subject of legal proceedings
- the complaint is frivolous, vexatious, misconceived or lacking in substance.

For further guidance on this topic and additional examples of when AFCA may exclude a complaint refer to page 108 of the Transitional Superannuation Guidelines.

## Will AFCA accept the complaint even if it hasn't been through the superannuation fund's IDR process?

Yes.

AFCA will accept the complaint however will usually refer it back to the superannuation fund to try and resolve through their IDR process. The refer-back period takes into account the legislatively specified IDR timeframe (or any shorter time as set out in an applicable industry code). For superannuation complaints it will usually be 45 days from the date the complainant first lodged the complaint with the superannuation fund. The refer-back process does not apply to death benefit complaints.

AFCA will monitor the progress of the complaint and the superannuation fund must tell AFCA if the complaint is resolved during the refer-back period. If the complaint is not resolved the superannuation fund must provide a copy of its response to both the complainant and AFCA.

For further information on the refer-back period and instances when this may not occur refer to page 25 of the Transitional Superannuation Guidelines.

## Why has the complaint been ‘referred’ back to us (superannuation fund)? We have already addressed via our IDR.

AFCA will usually provide the superannuation trustee with a further opportunity to resolve the complaint before commencing its complaint resolution process. AFCA finds that many complaints are resolved through this process particularly if the complaint is reviewed with fresh eyes. If a complaint is referred back we would encourage superannuation trustees to have the matter reviewed by a party other than the person who first considered the matter.

The usual refer-back period is 21 days however there are exceptions such as death benefit complaints and if AFCA determines that circumstances such as financial difficulty apply.

For further information on the refer-back period refer to page 25 of the Transitional Superannuation Guidelines.

## Why has the complaint been ‘referred’ back to us (superannuation fund)? Our view on this matter will not be changing.

If the superannuation trustee is of the view that there is nothing further they can do you do not need to wait for the refer-back period to expire and you can ask AFCA to commence its consideration of the matter.

AFCA will usually provide the superannuation trustee with a further opportunity to resolve the complaint before commencing its complaint resolution process. AFCA finds that many complaints are resolved through this process particularly if the complaint is reviewed with fresh eyes. If a complaint is referred back we would encourage superannuation trustees to have the matter reviewed by a party other than the person who first considered the matter.

Where IDR has already been completed the usual refer-back period is 21 days however there are exceptions such as death benefit complaints and if AFCA determines that circumstances such as financial difficulty apply.

For further information on the refer-back period refer to page 25 of the Transitional Superannuation Guidelines.

## When will a complaint about superannuation advice be considered as a Superannuation Complaint?

- AFCA will consider a complaint about superannuation advice as a Superannuation Complaint if the advice was provided by the trustee of an APRA-regulated superannuation fund (or its employees or representatives) under the trustee's AFSL. Under the Corporations Act, a representative includes an authorised representative under the trustee's AFSL and any other person acting on behalf of the trustee in providing advice that the trustee has an AFSL authorisation to provide.
- 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 (which may be the case for call centre advice and 'intra fund advice'), because it is the AFS licensee who is responsible for the advice.

For more information refer to the AFCA Factsheet - Superannuation Advice.

## What if a complaint about advice is not a superannuation complaint under the AFCA Rules but the superannuation trustee has considered the advice complaint under its own IDR procedures?

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. AFCA will 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.

## AFCA has asked the trustee to provide a complete (EDR) response outlining the trustee's position. Is this the same as an SCT s.17 notice?

When a complaint is lodged, generally as a first step we will refer the complaint back to the trustee. The trustee may seek to resolve the complaint directly with the complainant during this period. If the complaint is not resolved the trustee will be asked to respond to both AFCA and the complainant with full response which outlines the trustee's position, including any documents the trustee considers relevant.

If the complaint is not resolved during the refer-back period it will proceed to Case Management. At this stage AFCA will write to the trustee with an 'initial case management notification'. This written request is AFCA's equivalent of the SCT's s.17 notice. AFCA will identify the issues for our review and request any additional information that it may need and that was not already provided in the trustee's response as part of the registration and referral process.

## Libraries

### **Will AFCA have access to the SCT's trust deed library?**

No. The SCT is unable to share information it has collected with AFCA.

### **Will AFCA be keeping a trust deed library like the SCT?**

No. AFCA does not maintain a centralised document repository or library.

AFCA's complaint management system records and stores information against the individual complaint that it relates to. The financial firm will be required to provide the version of the trust deed applicable at the relevant date for each complaint. This can be provided in electronic format and can be uploaded by the secure services portal.

### **Will AFCA be keeping a library of insurance policies?**

No. AFCA does not maintain a centralised document repository or library.

AFCA's complaint management system records and stores information against the individual complaint that it relates to. The financial firm will be required to provide the insurance policy applicable at the insured event date the complaint relates to. This

can be provided in electronic format and can be uploaded by the secure services portal.

## When would AFCA consider a request for an extension of time?

AFCA may consider a request for an extension of time in certain circumstances. Rule A.21.3 of the AFCA Rules gives AFCA the right to extend a timeframe unless the Rules state otherwise.

The AFCA Rules require AFCA to handle complaints in a timely manner. An extension of time can delay the resolution process. For this reason, AFCA only provides an extension where sound reasons are provided for the extension. Typically, AFCA will not grant an extension of time that is longer than the original timeframe.

If an extension of time is granted this will be confirmed by AFCA in writing.

For more information on this refer to page 85 of the Transitional Superannuation Guide.

Examples of when AFCA may consider such a request include:

- **An extension of time to try and resolve a complaint** – AFCA may extend the period available to the parties to try and resolve the complaint if AFCA considers special circumstances exist. Also refer to page 29 of the Transitional Superannuation Guide.
- **An extension of time to respond to a request for information** – Requested information must be provided within the timeframe specified by AFCA. If this won't be possible AFCA must be advised promptly with an explanation of the reasons. AFCA will consider whether an extension of time is appropriate. Also refer to page 41 of the Transitional Superannuation Guide.
- **Application to be joined to a death benefit complaint** – An interested person has 28 days, from the date a final notice is received about a superannuation trustee's decision to pay a death benefit, to complain to AFCA about the decision. AFCA will generally not extend this time period in the absence of special circumstances. However, AFCA may consider an extension of time if an applicant can show:
  - > they could be paid all or part of the death benefit under the trust deed and relevant legislation; and
  - > there is a good reason why they did not apply to be joined within 28 days of receiving the notice, such as they were in hospital or overseas and could not access or give proper consideration to the notice.



## What is a preliminary assessment and is it binding?

After collecting relevant information and obtaining submissions from the parties to a complaint, AFCA may choose to provide parties with a preliminary assessment. The preliminary assessment will set out the reasons for any conclusions about the merits of the complaint and will provide a recommendation as to how the complaint should be resolved.

A preliminary assessment is only binding if all parties to the complaint agree to settle the complaint on that basis. If parties are not willing to settle on the basis of a preliminary assessment the complaint will generally proceed to determination.

Refer to page 57 of the Transitional Superannuation Guide for more information.

## AFCA determinations

### What is a determination and is it binding?

A determination is a written assessment by one or more AFCA decision makers that sets out AFCA's decision as to how the complaint should be resolved. A determination may be made by an ombudsman, an adjudicator, or by an AFCA Panel. AFCA will determine the appropriate decision maker.

When an AFCA decision maker makes a decision about a Superannuation Complaint they step into shoes of the superannuation trustee and have all of the same powers, obligations and discretions. A determination:

- comes into effect immediately it is made unless a later date is stated in the determination;
- can vary or substitute the original decision of the superannuation provider and where this occurs is taken to be the original decision and to have effect from the date of the original decision;
- binds third party decision makers, such as insurers, that may have been joined to a Superannuation Complaint about a disability benefit.

Refer to page 67 of the Transitional Superannuation Guideline for more information.

### Can an AFCA determination be appealed?

A determination is the final stage in AFCA's complaint resolution process. Other than by appeal to the court on a question of law, it is not possible to ask AFCA to change a determination of merits.

Each party to a superannuation complaint has a right of appeal to the Federal Court on a question of law within 28 days of a copy of the determination being given. Unless the Federal Court determines otherwise, an AFCA determination continues to have effect while the appeal is being determined.

Refer to page 73 of the Transitional Superannuation Guideline for more information.

Section A.20.1 of the Rules states that the 'outcome of complaints' may be published for each financial firm. Are you able to shed some light on what this means? What level of information may be shared?

AFCA is obliged under ASIC Regulatory Guide 267 (RG267) and the AFCA Rules to collect, record and report certain statistical information to regulators and other bodies.

For examples of this statistical information refer to A19.1 in the AFCA Rules.

For further information on AFCA's collection and publication of information refer to page 83 of the Transitional Superannuation Guide.

## Death benefits

**If AFCA receives a complaint regarding a death benefit objection within the 28-day claim staking period, would it be referred back to the trustee under the AFCA refer back process giving them 21 days to resolve or respond to AFCA?**

We will refer the complaint back to the trustee in a different process to our IDR/post-IDR timeframes. We give the trustee 28 days to advise the potential beneficiaries of the AFCA complaint and let us know the details of the potential beneficiaries.

**Once a death objection has been reviewed by the trustee the complainant/objector has 28 days to lodge the objection with AFCA, would AFCA still accept the complaint after the lapse of this 28-day period?**

If the trustee reviews the objection and determines to maintain its original decision (becoming the final decision) then the complainant has 28 days from the date they receive written notification of the final decision to lodge the complaint with AFCA.

AFCA will process the complaint and notify the trustee (by way of auto-email). AFCA will then either decide that we can consider the matter and request additional information from the trustee, or refer the matter to the AFCA Rules team if there is a question about whether the complainant may be eligible to lodge having not met the 28-day timeframe (plus a postal allowance).

**Note:** If the outcome of the trustee's review of the death objection is they determine to alter the allocation of the death benefit, this becomes a new proposed decision and the 28-day claim-staking period would apply again.

**If there are multiple complainants for the same death benefit distribution, would they be joined in the same complaint?**

Yes. Initially we may have more than one case number, if the complainants have come to us separately, but we would merge our files before progressing to Case Management if the matter relates to the same complaint. We will also determine the role each potential beneficiary has and in Case Management issue statutory notices to join parties where appropriate.

**If AFCA receives a complaint/objection about a death benefit distribution and the trustee has not reviewed the objection through their IDR process, would AFCA accept the complaint or refer it back to the trustee?**

For AFCA to consider a complaint about a death benefit distribution, a complainant must object to the trustee within the 28-day claim staking period and lodge the matter with AFCA within 28 days of receiving the final decision. Exceptions to this are when the trustee has not properly notified the interested party or potential beneficiary.

**Examples that may assist:**

The Trustee determines allocation of the death benefit and advises the potential beneficiaries/interested parties of their decision and provides the 28-day claim-staking period.

- **Complaint lodged with AFCA within the 28-day claim-staking period** - AFCA would refer the complainant back to the trustee to lodge their objection with the trustee in the first instance. We would close our complaint as at that time the complainant has no standing to lodge a complaint with AFCA about the distribution of the death benefit. AFCA's expectation is that the trustee would then consider the objection through its normal channels within the appropriate IDR timeframe.
- **The complainant has lodged their objection with the trustee within the 28-day claim-staking period but is unhappy with the time being taken by the trustee to consider the objection** – AFCA would likely refer the complaint back to the trustee to consider the objection within the 90-day IDR period. The 90 days would

commence from when the complainant lodged their objection with the trustee. AFCA would classify this complaint as an administration delay complaint.

- **The person does not object within the 28-day period and notice requirements have been met** – they can't complain to AFCA.

If the trustee did not provide potential beneficiaries/interested parties with the 28-day claim-staking period; or there is some other reason the person is considered to have not been properly notified; or the trustee did not consider the objection; the two 28-day periods would not apply.

- AFCA would progress the matter through the death benefit process, including referring for an AFCA Rules review to confirm the party is eligible and to consider any other applicable time limits.

**If AFCA referred a death benefit complaint back to the trustee, how long does the trustee have to review the distribution decision and send their decision to AFCA and the complainant?**

An overview of how the AFCA process progresses:

- **Death Benefit identified** – AFCA will send an auto email to advise the complaint has been received and include the details we have. At this stage AFCA has not yet assessed jurisdiction or eligibility to lodge. Within 7 days AFCA would usually either close or progress the complaint if we are satisfied there has been a final decision.
- **Death Benefit Referral** – AFCA will advise the trustee that we have a complaint that it appears we can consider and will ask the trustee to advise potential beneficiaries/interested parties of the complaint; and to provide details of the potential beneficiaries/interested parties to AFCA (within 28 days of being notified).
- **Death Benefit Invitation** – AFCA writes to potential beneficiaries/interested parties and invites them to join the complaint (28 days for parties to respond, no trustee action required at this point)
- **File consolidation / referral for Case Management** – AFCA will assess information and parties and progress a lead file for allocation to a case worker
- **Case Management** – The case worker reviews the file and calls and writes to the trustee to request the information that will be required for AFCA's investigation. Formally joining parties and issuing required statutory notices to join also occurs in Case Management.

## When would AFCA consider a request for an extension of time from a potential beneficiary/interested party to a death benefit distribution decision?

- **Application to be joined to a death benefit complaint** – An interested person has 28 days, from the date a final notice is received about a superannuation trustee's decision to pay a death benefit, to complain to AFCA about the decision. AFCA will generally not extend this time period in the absence of special circumstances. However, AFCA may consider an extension of time if an applicant can show:
  - > they could be paid all or part of the death benefit under the trust deed and relevant legislation; and
  - > there is a good reason why they did not apply to be joined within 28 days of receiving the notice, such as they were in hospital or overseas and could not access or give proper consideration to the notice.