

Class actions affecting AFCA complaints

This factsheet outlines how AFCA deals with complaints relating to class actions, including when we might exclude a complaint that relates to a class action.

It also covers class actions more broadly and outlines the type of information we will ask for.

What is a class action?

In Australia, class actions are court proceedings where a representative (the applicant), on behalf of a group of people (class members), make claims against another person or organisation.

Financial class actions

In recent years, there has been a growing number of class actions filed against financial firms. We are likely to see this trend continue given the issues raised in the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry.

Class action 'opt out' model

Class actions in both the Federal Court of Australia and state/territory supreme courts use an 'opt out' model. This means:

- Anyone who falls within the definition of the class becomes a class member, regardless of whether they know about it or not.
- All class members are bound by any court judgment or court-approved settlement, unless they opt out of the class action before a certain date as set by the court (the set date).

In class actions, the court will ask the applicant to send an opt out notice to all known class members who have the same interest in the class action. If any class member does not want to be included in the class action, they must return the opt out notice to the court by the set date.

If a class member does not return the opt out notice by the set date, they continue to be a member of the class action. This is the case even if they had not received a copy of the opt out notice and do not know that there is a class action taking place.

A sample Federal Court opt out notice can be found here: [fedcourt.gov.au/law-and-practice/practice-documents/practice-notes/gpn-ca/sample-opt-out-notice](https://www.fedcourt.gov.au/law-and-practice/practice-documents/practice-notes/gpn-ca/sample-opt-out-notice)



How AFCA deals with complaints relating to class actions

Our role

External dispute resolution is an alternative to tribunals and courts to resolve complaints individuals and small businesses have with their financial firms.

Where an AFCA complainant is already a part of a class action, it is not appropriate for both the court and AFCA to deal with the same complaint.

We may exclude a complaint

We have discretion under our Rules to exclude some complaints. We do not exercise our discretion lightly and will only do so where there are compelling reasons.

In some cases, we may not be aware of the class action. We rely on financial firms to tell us about any relevant opt out class actions.

Where there is a class action, we will first consider whether the AFCA complaint and the class action:

- are both against the same financial firm; and
- both relate to the same facts and circumstances.

It is more appropriate for the court to hear the class action if the parties and issues are similar – in these circumstances AFCA will exclude the complaint.

AFCA may also exclude a complaint about a financial firm's conduct which is not initially included in the class action claim but is ultimately included in the class action settlement.

See sections C.2.1 and C.2.2 of the AFCA Rules on our website for more information: afca.org.au/rules



Relevant information

We will consider the circumstances of each case before deciding whether to exclude a complaint. AFCA will base its decision about whether to exclude a complaint (where a class action has begun in court) on the following information:

- the claims made against the financial firm in the class action
- the outcome that is being sought by the applicant in the class action
- the definition of the class – that is, criteria for being a class member
- whether the complainant agrees that they are a class member
- whether the complainant has opted out of the class action by returning the opt out notice to the court by the set date
- the content of the opt out notice and when it was sent
- whether there are other reasons for not excluding all or part of the complaint, for example, the complaint deals with additional issues that are not being considered by the court.

We will ask financial firms and complainants to provide relevant documents and details as set out below.

From financial firms

This section applies if the financial firm becomes aware that:

- a class action has commenced against them
- an AFCA complaint against them relates to the same facts and circumstances as those of the class action.

When this situation arises, the financial firm should:

- immediately inform us of the class action
- provide us with relevant court documents
- provide us with a list of all AFCA complaints against the financial firm that are relevant to the class action
- keep us informed about the class action, including any court order for the applicant to send opt out notices to potential class members.

From complainants

A person is a class member if they satisfy the definition of the class. This means that we would be likely to exercise our discretion to exclude their complaint.

However, we would not exclude a complaint in some circumstances. We will ask a complainant:

- if they think they do not fall within the definition of the class
- whether they have opted out of the class action (we will need proof of this)
- why they think they do not fall within the definition of the class; or
- whether there are additional issues against the financial firm that are not part of the class action.

If you have opted out

As noted above, if a complainant has opted out of the class action, we will ask them to send us a copy of the opt out notice.

If they do not have a copy of the opt out notice, we will ask for the date and name of the person or organisation they sent the opt out notice to.

If you are not sure

Before determining whether we will exclude the complaint, AFCA will ask the complainant to provide details about any issues they believe are different to those being dealt with by the class action.

If you think you fall outside the definition of the class

Sometimes the definition of a class can be complex. Complainants may wish to obtain independent legal advice on whether they fall within the definition of the class, and if so, whether they should opt out of it and continue their complaint with AFCA.

Please note that we do not provide legal or financial advice. Details of free and confidential legal services are provided on our website: afca.org.au/what-to-expect/other-places-to-get-help

