The AFCA Approach to identifying a claim

We have created a series of AFCA Approach documents, such as this one, to help consumers and financial firms better understand how we reach decisions about key issues.

These documents explain the way we approach some common issues and complaint types that we see at AFCA. However, it is important to understand that each complaint that comes to us is unique, so this information is a guide only. No determination (decision) can be seen as a precedent for future cases, and no AFCA Approach document can cover everything you might want to know about key issues.

1 At a glance

1.1 Scope

Every AFCA complaint will have at least one issue that needs investigation. We will examine each issue to see if the financial firm did anything wrong, and if so, whether that wrongdoing led to the consumer suffering a loss. At AFCA we refer to these issues as ‘claims’ or ‘causes of action’.

This document sets out how we identify claims and why this step is important.

1.2 Summary

1.2.1 Who should read this document?

- Financial firms, consumers and consumer representatives who have a complaint at AFCA
- Anyone who wants to understand how AFCA determines what a claim is and how to apply compensation.

1.2.2 Summary of our approach

AFCA will ask the complainant to explain, in their opinion, what the financial firm has done wrong in providing the relevant financial product or service. We do not expect complainants to identify breaches in Codes of Practice or law – we will investigate this.

We will identify the various claims within the information provided by the complainant, asking questions if we need to, to understand the issues better.

We will then explain our understanding of each claim within the complaint (to both parties) and invite them to comment on each claim. It is important that we clearly understand the complainant’s position, and that the financial firm understands both the allegation against it, and the remedy being sought for each claim.

Some claims can be accepted, some rejected, and others will continue through the AFCA process. Clearly identifying and describing the different claims within a complaint can help complainants and financial firms in narrowing down the specific issues that they really disagree with and need help resolving.

2 In detail

2.1 Why is it important to know what a claim is?

Identifying each claim within a complaint allows the complainant and the financial firm to understand:

- the obligation that the complainant says should have been fulfilled

- how the financial firm's conduct impacted the consumer; and
- the amount of loss the complainant is stating was caused by the financial firm's conduct.

Importantly for this approach, the term 'claim' should not be confused with an 'insurance claim' which is an application for benefits under an insurance policy.

> A 'claim' is a set of events and facts that together may lead to losses and gives the complainant a right to ask for a remedy if shown to be true.

As noted above, an AFCA complaint may contain more than one claim.

Additionally, AFCA compensation limits apply 'per claim'[1], so it is important to understand the value of each individual claim and avoid any overlaps. While there is no compensation limit for superannuation complainants, it is still important to identify all relevant claims so that the complainant and the financial firm can understand each other's position.

2.1.1 What is the difference between the monetary limit on jurisdiction and the compensation cap?

AFCA Rule C.1.2(e) generally prevents AFCA from handling a complaint where the value of the claim is more than $1 million (subject to some exceptions). This is the monetary limit on jurisdiction.

AFCA Rule D.4. sets out the maximum compensation that we can award for complaints other than superannuation complaints. This is the compensation cap.

These two rules act together, which means AFCA can handle a complaint which has claims of compensation for more than the compensation cap but can only award compensation up to the value of the compensation cap per claim.

2.2 The AFCA Approach

There are two main guiding principles for identifying a claim:

- Do the claims arise out of distinct and independent transactions?
- Can each claim be maintained without negating the others?

AFCA Rule A.3.2 says that AFCA can help complainants to submit a complaint. In the Operational Guidelines we explain that this includes helping to ensure:

- The complainant's position is properly explained; and
- The AFCA process operates efficiently and in a timely way.

[1] It is a requirement ASIC Regulatory Guide 267 *Oversight of the Australian Financial Complaints Authority* (at RG267.147) that compensation caps apply on a 'per claim' basis and should not be aggregated.

We do not:

- Advocate for complainants or financial firms, and so will not inappropriately introduce claims that are not readily evident from the complaint.
- 'Split' a complaint that is properly a single claim into multiple claims (with the monetary cap applying to each claim).
- Aggregate multiple claims into one just because the claims all arise from an ongoing relationship between a financial firm and a complainant.

For each identified claim, AFCA will:

- Examine the relevant events and facts to see if any wrongdoing has occurred
- Examine whether the wrongdoing has caused a loss; and
- Calculate the appropriate amount of that loss.

If we identify wrongdoing that has caused a loss, we will:

- Apply the approach specified in section 1045C of the *Corporations Act 2001* (Cth) (for superannuation complaints); and
- Consider what is fair in all the circumstances (for all other complaints).

It is important to note that AFCA does not determine legal rights for each claim. AFCA's role is to resolve the complaint in accordance with our Rules. In doing so, we may express a view on the financial firm's liability for each claim, but our focus is on what is a fair outcome for the entire complaint.

3 Context

3.1 Common examples

Some common examples of claims for each broad category of complaint:

Financial industry sector	Examples of common claims (not exhaustive)
Any	• Breach of contract • Misleading and deceptive conduct • Poor service • Incorrect application of fees, charges, rebates • Breach of privacy
Banking transactions	• Unauthorised transactions • Poor service
Credit and lending	• Breach of responsible lending requirements
Insurance	• Denial of cover • Refusal of insurance claim • Breach of contract

Financial industry sector	Examples of common claims (not exhaustive)
Insurance Broking	• Inappropriate advice
Financial planning and advice	• Inappropriate advice (each Statement of Advice is a separate claim)
Stockbroking	• Unauthorised transactions • Inappropriate trading strategy[2]
Superannuation	• Trustee decision not fair and reasonable

The following examples explain our approach to determining whether the complainant has one or multiple claims.

Multiple claims

Where the complainant claims a credit provider failed to meet its obligations in relation to several loans over a period of time, we are likely to treat the credit decision for each loan as a separate claim and will not aggregate the claims.

If a bundled insurance contract charges multiple excesses, then each insurance claim under the bundled policy (e.g. home and contents) will be treated as a separate claim.

If a financial planner gives advice recommending an investment and then separate advice recommending another investment, and the complainant disputes the suitability of both pieces of advice, we are likely to treat this complaint as involving two claims, with a cap applying to each claim.

Single claim

If the complainant claims a bank allowed a third party to access funds from their account without the proper authority, we are likely to treat this as one claim and will aggregate all the unauthorised withdrawals. This is because the withdrawals all arose from the same set of circumstances. That is, the bank allowing the third party unauthorised access to funds in the account.

If a financial planner provides a Statement of Advice recommending a number of investments, and the complainant disputes the suitability of this advice, we are likely to treat the complaint as one claim. This is because the claim arises from a single Statement of Advice.

[2] Where the overall strategy is inappropriate, individual transactions made in pursuit of that strategy will be aggregated.

3.2 References

Definitions

Term	Definition
ASIC	Australian Securities and Investments Commission
Compensation cap	the maximum compensation that AFCA can award for complaints other than superannuation complaints
Complainant	a person who has lodged a complaint with AFCA
Consumer	an individual or small business owner (including a primary producer) who uses the services of a financial firm
Financial firm	a financial firm such as a bank or financial adviser, who is a member of AFCA
Statement of Advice	a document that sets out the advice given to a consumer by their licensed financial planner or adviser

Useful links

Document type	Title / Link
Rules	afca.org.au/about-afca/rules-and-guidelines
Operational Guidelines	afca.org.au/about-afca/rules-and-guidelines
Corporations Act	This Commonwealth statute can be found here: legislation.gov.au/Details/C2017C00328
ASIC Regulatory Guide 267	*Oversight of the Australian Financial Complaints Authority* asic.gov.au/regulatory-resources/find-a-document/regulatory-guides/rg-267-oversight-of-the-australian-financial-complaints-authority/