

AFCA News

Edition 2 - 10 April 2019



Welcome to the April edition of AFCA News for the Australian Financial Complaints Authority (AFCA).

Consumer advisory panel

Our [new AFCA Consumer Advisory Panel](#) (ACAP) met for the first time recently. This panel

allows us to consult with leading consumer representatives on all major initiatives and provides us with unique perspectives that can help inform our work. We have selected Panel members who are advocates for the diverse community we serve, including older Australians, Indigenous and Torres Strait Islanders, vulnerable communities and those with financial difficulties. Open feedback from advocates, who work directly with thousands of consumers each year, will help us to meet community expectations and understand varying needs that may impact accessibility. The panel will meet quarterly in different locations across Australia and I look forward to working with them as we continue to improve our processes and services.

Financial firms required by law to co-operate with AFCA

We welcomed the Government's announcement that [financial firms must co-operate with AFCA](#) to resolve financial complaints. Financial firms are now required by law to provide all relevant documents and records relating to complaints. This is an important step in ensuring consumers and small businesses have their financial complaints solved fairly and efficiently. We expect financial firms to co-operate fully and respond promptly to all requests and if we see any failure of this, we will notify regulators to see appropriate action taken. We'll be providing our members with more guidance about their requirements in the coming weeks.

Changes to our public reporting

One of our main commitments as a new organisation is to be open, transparent and accountable to the public. We already publish regular updates on our [statistics](#) and all our [decisions](#). This is currently in an anonymised way, however, from 1 July this year, after we have amended our Rules, all new decisions will include the names of the financial firms involved. In addition, we will publish detailed six-monthly reports on our work, the definite systemic issues we're identifying and the firms involved, and comparative tables of the complaints accepted and resolved by financial firms. AFCA plays an important public role and we recognise that transparency in our data is essential to rebuild trust in the financial sector.

The Fairness Project

We're undertaking a "Fairness Project" to map community expectations and produce a set of criteria for fairness which can be plainly understood and will explain how we assess it in any given complaint. This approach will ensure we deliver clear, consistent and quality decision making and will set the bar for financial firms when applying fairness to their own internal dispute resolution processes. We'll provide you with updates on the project as it progresses and you can read more on our "fairness revolution" [here](#).

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Townsville Floods

Recently, AFCA staff – including our Lead Ombudsmen for Small Business and General Insurance – have made [visits to Townsville](#) to meet those affected by the recent floods, answer questions and raise awareness of AFCA as an avenue to resolve insurance complaints for small businesses and consumers. So far, we've had 18 complaints relating to the floods, but we're expecting more to come as the insurance companies complete their own internal dispute resolution processes. We expect these insurance claims to be processed fairly and efficiently, however if there are disputes, we're able to intervene and resolve them.

Finally, our [Rules consultation](#) closes on 12 April so there is still time for you to provide feedback. I would also like to remind our members to complete our member survey which closes on 12 April. The results from this survey will help us develop our member services and improve the way we communicate with you.

I hope you find this edition useful and informative, and if you have any comments or article suggestions for our forthcoming editions, please contact us at publications@afca.org.au. Happy Easter from all of us here at AFCA and I hope you enjoy the break.



David Locke
Chief Ombudsman and CEO

Case Study

Inappropriate selling techniques

Issue: A customer held an accident insurance policy and lodged a claim for benefits as he was unable to work due to back pain caused by an earlier injury. The insurer rejected the claim stating the injury occurred before the policy commenced in 2015. The customer argued that his policy began before 2015 and therefore his injury was not a pre-existing condition. As the customer was confused by the start date of his policy and held two additional policies with the same insurer, we decided to review the circumstances in which this policy was taken out.

Outcome: The accident insurance policy was taken out over the telephone in 2015, AFCA received a recording of the call between the customer and the sales consultant. We found the call to be inappropriate for several reasons:

- It was a cold call
- Despite the customer repeatedly declining the additional policy, the sales consultant continued to use aggressive sales tactics to begin the policy and deduct premiums immediately

- Although the complainant eventually agreed to the policy, it is not entirely clear that he fully understood the implications of this decision

We accepted that the customer was not entitled to benefits under this policy as the claim was outside the scope of cover. However, we found the aggressive approach of selling to be inappropriate and required the insurer to refund all premiums paid since the policy inception and pay \$1,000 as compensation for non-financial loss.

Applications: The use of aggressive selling techniques, or 'pressure selling', over the phone reflects poor practice. It puts consumers - particularly those with hearing conditions, literacy issues or language barriers – at risk of not understanding what they are purchasing or feeling pressured into purchasing products they do not need. Insurers are required to act fairly and reasonably when selling their products. It is good practice to monitor and evaluate selling methods used by sales consultants and provide adequate training to ensure they follow good industry practice.

Conciliation can close cases quicker

Conciliation is one of the informal methods we use to resolve complaints, and in our experience, is usually the fastest and most effective way. We organise a telephone conference call that includes the complainant, the financial firm, and an AFCA Conciliator to talk about the complaint in an open and informal way. Our conciliators are independent and skilled in mediation. Having an experienced person guide the conversation makes it easier for everyone to talk about the complaint.

Case study

Issue: A complainant had incorrectly been receiving letters saying that their account was in default, when in fact the debt belonged to another person with the same name and birthdate. The complainant attempted to resolve the issue directly with the bank several times but continued to receive these letters for the next 18 months before they lodged a complaint with us.

Outcome: The complaint was not resolved during the bank's internal dispute resolution process, so we organised a telephone conciliation conference between the two parties and an AFCA Conciliator. During conciliation, a representative for the bank apologised for the bank's mistake and offered the complainant \$3,000 for the stress and inconvenience and \$500 for every incorrect letter received in future – which the complainant accepted.

Applications: Conciliation provides both parties with an opportunity to voice their concerns and hear each other's perspective in a facilitated conversation with the aim to try and resolve the complaint by agreement on the day. This doesn't always happen, but we find a conciliation conference can be an effective way for everyone to gain a better understanding of the issues and circumstances. We encourage all financial firms to be open to conciliation as a method to resolve complaints.

AFCA expectations when communicating with members

AFCA requires a primary point of contact for all our members so that we can send out relevant and important information. Our main method of communication will be emails and AFCA News, sent to the EDR Manager contact we have on our database for your financial firm. The EDR manager contact is not able to unsubscribe from these emails but you can easily update the primary contact [via secure services on our website](#).

We encourage you to circulate AFCA News to your colleagues as required, or they can subscribe to [receive a copy here](#). Additional subscribers will be responsible for advising us if they wish to be removed from this list.



Code Compliance update

Insurers need to deliver a strong and fair culture

Insurers need to accept the challenge of embedding a strong culture of fairness, honesty and transparency or risk being forced out of business, according to the General Insurance Code Governance Committee (the Committee). Their recently released report, General Insurance in Australia 2017-18 and current insights, found evidence that some subscribers were not taking the Code and its obligations as seriously as they should.

Lynelle Briggs AO, Independent Chair of the Committee in her foreword, said: "Industry now needs to step up, improve its game and take Code more seriously. Compliance failures need to be addressed; not just given lip service."

[Read the full report here.](#)

Life insurance industry receives report card of their code compliance

There were almost 38 million life insurance policies in force at 30 June 2018, according to the Life Code Compliance Committee's Annual Industry Data and Compliance Report. The report collated data from subscribers to the Life Insurance Code of Practice (the Code) and presented a snapshot of the life insurance industry and its compliance with the Code.

The report found there were 131,271 claims in 2017-18, with more than one-third of these relating to disability income insurance. There were 164 events of multiple breaches to the Code and almost 8,000 isolated breaches. This potentially impacted up to 1.8 million customers, indicating that subscribers need to improve their adherence to the Code.

Independent Chair of the Life Code Compliance Committee, Anne Brown, said "whilst subscribers appear committed to improved adherence to the Code, we encourage them to review and enhance the robustness and effectiveness of their Code compliance frameworks".

[Read the full report here.](#)



Communication to customers must be clear

AFCA receives numerous complaints from people who have been defaulted into a MySuper product by their employer. The complainants argue they never consented to membership and/or insurance cover, often not understanding that:

1. Their employer was required to enrol them in order to meet its Superannuation Guarantee obligations (unless they completed a choice of fund form)
2. The fund is required to provide death and permanent incapacity insurance cover for them, unless they tell the trustee they don't want it within 60 days.

It can be frustrating for customers to receive an internal dispute resolution (IDR) response from their trustee about deduction of insurance premiums to the effect of: "you didn't opt out, so we can charge premiums for the additional cover".

With these types of complaints, it is often clear that the complainant did not understand they were being placed into a financial product by default and therefore had no opportunity to "opt out".

At IDR stage, funds and trustees need to ensure they communicate the reasons for the premium deductions with their customers in language they understand and without any level of assumed financial knowledge.

Systemic Issues

AFCA is currently investigating 42 definite systemic issues. We have also identified 11 potential serious contraventions and other breaches.

Case study

Issue: AFCA received complaints from clients who opened foreign exchange trading accounts with the financial firm and began to trade over-the-counter contracts for difference (OTC CFD). As this type of trade is highly complex and risky, ASIC requires a high standard of disclosure is made to investors and for all prospective clients to meet several benchmarks – including minimum qualification requirements – before an account can be opened. The complaints centred around inappropriate investment advice from the financial firm, but all complainants were found to lack investment trading experience. The Systemic Issues team investigated whether the financial firm was applying the client qualification benchmarks appropriately.

Outcome: It was found that the financial firm had a phone script that was read to prospective clients just prior to their online assessment for suitability to trade. The script provided information to assist the customers in responding to the questions. The online

assessment additionally gave access to ‘more information’ via a button, to help clients during the test.

AFCA found the proximity of the phone script to the online assessment and the additional assistance provided by a ‘more information’ button to be akin to ‘coaching’. The financial firm removed their phone script and amended the client qualification assessment to increase difficulty.

Applications: Under ASIC Regulatory Guide 227 (RG 227), financial firms have a duty to protect unqualified members of the public from the high risks of OTC CFD trading. ‘Coaching’ or ‘guiding’ through a test does not appropriately assess a prospective client’s understanding and is in contravention of the intentions of RG 227. Financial firms are required to act honestly and appropriately when testing a client’s suitability and must restrict access to trade if the benchmark is not met.



AFCA Process eLearning Course

We have developed an AFCA process eLearning course for financial industry members and financial firms who would like to know more about our complaint resolution process. To complete the course, go to: learning.afca.org.au

If you have any difficulties logging into Connect Learning or accessing the AFCA process course, please email: peopleanddevelopment@afca.org.au

Upcoming AFCA member events

8 May

- Banking and Finance Forum, Brisbane
- Life Insurance and Superannuation Forum, Brisbane

9 May

- Investments and Advice Forum, Brisbane

10 May

- General Insurance Open Forum, Brisbane (this event is sold out)

Upcoming events we're attending

11 April

- Bring Your Bills Day and Community Expo, Woy Woy

12 April

- Bring Your Bills Day and Community Expo, West Wallsend

17 April

- NSW Royal Agricultural Show – Seniors Day, Sydney

13-17 May

- Law Week, Melbourne

20 May

- Communities in Control Conference, Melbourne

21 - 24 May

- EDR Twilight Forum and Financial Counselling Australia Conference, Melbourne

[Click here to view all upcoming events on our events calendar](#)

Conciliation at AFCA webcast

17 April 2019

Conciliation is one of the methods AFCA can use to resolve complaints. This webcast is designed to provide you with an overview of what to expect when participating in a conciliation conference at AFCA

[Click here to register now](#)

Current matters

[Digital Rebl Pty Ltd and Media Rebl Pty Ltd](#)

[Forex Capital Trading Pty Ltd](#)

[AGM Markets Pty Ltd](#)

[Berndale Capital Securities Pty Ltd](#)

[Bestjet Travel Pty Ltd \(Bestjet\)](#)

[Viewble Media and The Shoppers Network](#)

Feedback and questions

We want to hear from you! If you have any financial questions, article suggestions or want to know more about AFCA processes, please submit your question and we'll provide an answer in an upcoming edition. Email: publications@afca.org.au

Contact Us

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