

# Member forums

Investments and Advice  
29 July 2021

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# Today's session includes



Statistics



CSLR, DH Flinders,  
Approach Documents



Case Study



Q and A

# Year at a glance AFCA

Between 1 July 2020 to 30 June 2021



Complaints received

# 70,507

complaints received



# 12.3%

decrease in complaints compared to 2019-20



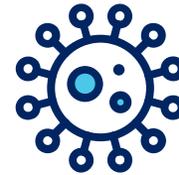
# 76%

of complaints lodged online



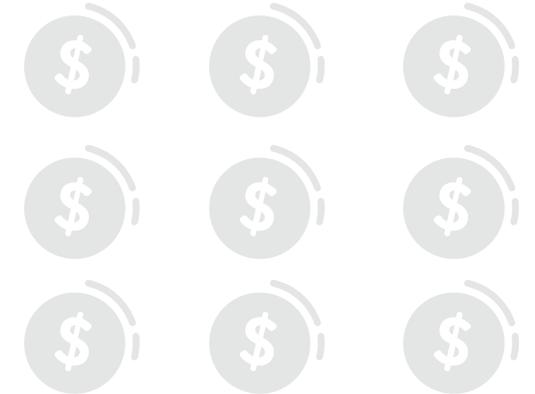
# 3,535

complaints from small businesses



# 8,303

complaints related to COVID-19



# 7.31%

complaints involved financial difficulty

## Products complained about



# 42,261

Banking and finance



# 16,912

General insurance



# 5,246

Superannuation



# 3,888

Investments and advice



# 1,623

Life insurance



# Investments and advice complaints

## Complaints received

**3,888** complaints received

**32%** resolved at Registration and Referral stage

### Top five investments and advice complaints received by product <sup>1</sup>

Product	Total
Shares	950
Foreign Exchange	431
Contracts for Difference	417
Superannuation Fund	302
Self-managed Superannuation Fund	272

### Top five investments and advice complaints received by issue <sup>1</sup>

Issue	Total
Service quality	674
Inappropriate advice	534
Failure to act in client's best interests	525
Incorrect fees/costs	331
Failure to follow instructions/agreement	229

## Complaints closed

**3,647** complaints closed <sup>2</sup>

More than **\$36.8** million <sup>3</sup> in compensation was awarded or obtained through AFCA

**54%** of complaints resolved by agreement, or in favour of complainants

Average time to close a complaint  
**118 days**

### Stage at which investments and advice complaints closed

Stage	Total
At registration	1172
At case management	1013
Preliminary assessment	364
Decision	505

### Average time taken to close investments and advice complaints

Time	Total
Closed 0–30 days	18%
Closed 31–60 days	22%
Closed 61–90 days	15%
Closed greater than 90 days	45%

<sup>1</sup> One complaint can have multiple products/issues.

<sup>2</sup> This includes 1,186 received before 1 July 2020, and 2,277 received from 1 July 2020 to 30 June 2021.

<sup>3</sup> This includes matters previously received by AFCA's predecessor, Financial Ombudsman Service, and resolved by AFCA between 1 July 2020 to 30 June 2021.

# Advice complaints



## Complaints received

**1,238** complaints received

**1.8%** of all AFCA complaints were advice complaints

Outcome amount for closed complaints:  
more than **\$23.6** million

## Complaints closed

**964** complaints closed

### Stage at which complaint resolved

Stage	Total
CM Level 2	179
Registration & Referral	178
Decision	173
Rules review	167
Preliminary View	135
CM Level 1	111
Before referral	17
Fast Track - Case Management Level 1	3

**154** complaints closed at Registration and Referral

**162** days: Average age of closed complaints

**38%** of complaints resolved by agreement

# DH Flinders v AFCA

- > The judgement was handed down in the NSW Supreme Court in November 2020.
- > The Court found that AFCA did not have jurisdiction to consider a complaint against a licensee when the conduct related to a service that was outside the authority of the representative to provide.
- > The Court found that the definition of “representative” was not the same as in the Corporations Act.
- > Following the decision ASIC issued a legislative instrument to amend the AFCA Rules, which now mean its definitions are in line with the Corporations Act. The updated AFCA Rules apply to new complaints received by AFCA from 13 January 2021 onwards.
- > There are a group of cases that are effected and AFCA working through these still.



# Compensation Scheme of Last Resort



- > On 16 July 2021 the Federal Government released the exposure draft legislation to establish the Compensation Scheme of Last Resort (CSLR).
- > Currently funded by levy on industry (calculated by adviser).
- > \$150,000 cap on claims.
- > Primarily focussed on insolvent firm claims.
- > Government initiative and the CSLR is a separate body to AFCA.
- > However, for AFCA this will mean that cases on pause since April 2020, will need to be finalised.

# AFCA Approach documents

- > AFCA has published a series of documents, that outline how we approach certain types of financial complaints we receive.
- > AFCA Approaches are based on the experience of our Ombudsmen in resolving complaints and aim to provide practical information and our approach on substantive issues.
- > Our aim in publishing the documents is to give more certainty regarding how certain matters are dealt with and is to help more complaints be resolved earlier, directly between the parties.
- > Examples: Fixed Interest Investments, How we calculate loss in financial advice disputes, misrepresentation.



# SOA Approach document

- > The Corporations Act 2001 (Corporations Act) requires financial firms to give a Statement of Advice (SOA) to retail clients who receive personal financial advice.
- > This is to ensure that retail clients are given enough information for them to understand the personal advice given to them and to decide whether or not to rely on it.
- > The statements and information in an SOA must be worded and presented in a 'clear, concise and effective' manner.

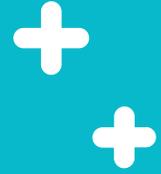


# SOA Approach Document



## What AFCA will consider

- > Did the SOA use the language the client was likely to understand?
- > Was the information explained in a logical sequence?
- > Did the SOA identify the client's objectives adequately?
- > Did the SOA adequately resolve any internal conflicts.
- > Did the SOA contain irrelevant information?



# Case study

# Case study 654354: Background



- > Complainant becomes client of a group of companies providing financial management services in 2002. He received accounting services initially and some advice from one arm of the firm on risk.
- > The complainant says the financial firm advised him to enter a property investment strategy and he purchased two properties, the first in 2008 and the second in 2009.
- > The properties lost and he holds the financial firm responsible on the basis the strategy was not appropriate for him and the financial firm had a conflict of interest in recommending two lines of credit for the investment properties.
- > The financial firm says if a client of the group decides to invest in direct property, the group is not licensed to advise on property selection. Rather its advice is limited to how to finance the investment in a tax effective manner and undertake an initial assessment of cashflow.
- > The financial firm as an AFSL and an ACL and it only worked in the latter capacity.

# Case study: Issues



What services did the financial firm provide to the complainant?

Did it breach any obligation in providing these services?

# Case study: Key findings



## What services did the financial firm provide to the complainant?

- > While the panel concluded that the adviser did most likely discuss wealth creation strategies with the complainant which included property, there is no evidence that the advisers made a specific strategy or property recommendation to the complainant, or otherwise induced him to purchase property. It was ultimately the complainant's decision to invest in the properties following discussions with his neighbour who was a property developer selling house and land packages in Geraldton WA.
- > In relation to Property 1 Mr R merely referred the complainant to a mortgage broker in the group and did not provide any other service to the complainant.
- > In relation to Property 2 Mr K provided advice on financing the asset in a tax effective manner and did an initial cashflow analysis. He also recommended the complainant use Westpac Loans for the Lines of Credit for the strategy.
- > In any event even if there was a breach the panel is not satisfied that the complainant would not have invested.

# Case study: Key findings



Did the financial firm breach any obligation in providing the services to the complainant?

- > No. Mr K's loan advice to maximise deductible debt and minimise non-deductible debt was, and remains, a tax effective strategy. Further the terms of engagement did not require Mr K or Mr R to advise the complainant on the risks of the strategy.
- > While it would have been prudent to re-confirm these terms of engagement at the time of the services in dispute, the SOAs provided to the complainant over the course of the relationship clearly explain the limitations on the services the financial firm could provide.
- > In this context, the complainant could not have reasonably believed that the financial firm would advise on the risks of the strategy.

# Wrap up and Questions

## AFCA contact details

- > Website: [www.afca.org.au](http://www.afca.org.au)
- > Email: [info@afca.org.au](mailto:info@afca.org.au)
- > Telephone: 1800 931 678
- > Address: GPO Box 3, Melbourne VIC 3001

## AFCA membership contacts

- > Telephone: 1300 56 55 62
- > Email: [membership@afca.org.au](mailto:membership@afca.org.au)
- > Secure services: [www.afca.org.au/members](http://www.afca.org.au/members)

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**Thank you**

