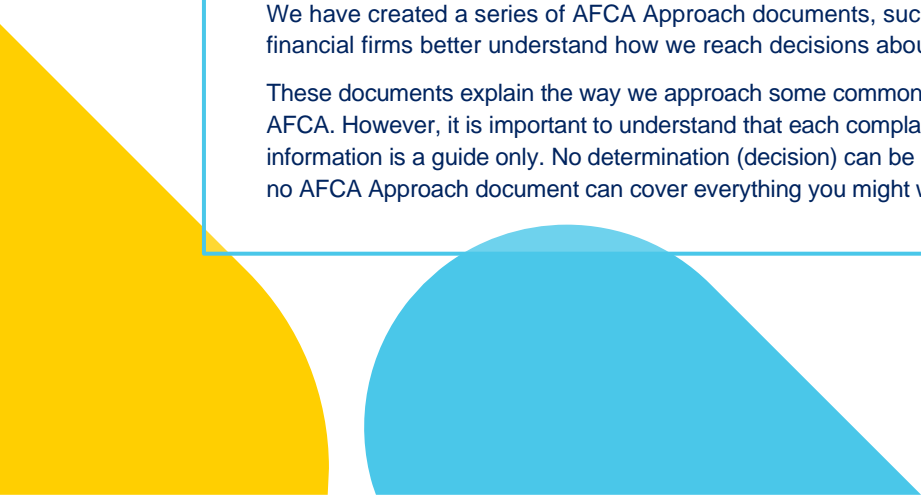


The AFCA Approach to non-financial loss claims

1	At a glance	3
1.1	Scope	3
1.2	Summary	3
2	Jurisdiction	3
2.1	Fair in all the circumstances – non-superannuation complaints	3
3	In detail	4
3.1	What is AFCA’s overall approach to claims for non-financial loss?	4
3.2	When can AFCA award compensation for non-financial loss?	4
3.3	What amount can AFCA award?	4
3.4	What is AFCA’s overall approach to assessing claims for non-financial loss?	4
3.5	Understanding AFCA’s governing principles	5
3.6	What information does AFCA need?	7
4	Context	7
4.1	Case studies.....	7
5	References	12
5.1	Definitions.....	12
5.2	Useful links	12



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

AFCA can require a financial firm to compensate a complainant for non-financial loss caused by the firm's conduct.

This document sets out our approach to assessing claims for compensation for non-financial loss by outlining:

- the circumstances in which a claim for non-financial loss can arise
- AFCA's expectations of a complainant in dealing with a problem
- limits on awards of compensation
- principles applied in awarding compensation.

1.2 Summary

1.2.1 Who should read this document?

This Approach will help financial firms, consumers and consumer representatives to understand the principles of compensation for non-financial loss.

1.2.2 Summary of our approach

When deciding whether to award compensation for non-financial loss, AFCA looks at the severity and duration of the impact of the financial firm's conduct on the complainant. Compensation is not designed to punish the financial firm.

The maximum amount AFCA can currently award for non-financial loss is \$5,400 per claim.

AFCA may also decide a non-financial remedy, such as an apology, is appropriate.

AFCA cannot award compensation for non-financial loss in superannuation complaints. AFCA Rule D.1.4 prohibits it.

2 Jurisdiction

2.1 Fair in all the circumstances – non-superannuation complaints

Our decisions reflect what is fair in the circumstances of each complaint.

The main focus of our investigation is to assess whether the financial firm breached its obligations to the consumer, however we also consider the consumer's conduct when determining a fair outcome.

In assessing what is fair, we will look at the financial firm's relationship with its customer and whether the customer received fair dealing, treatment and service.

3 In detail

3.1 What is AFCA's overall approach to claims for non-financial loss?

Compensation for non-financial loss is compensation AFCA can award for significant distress, delay and inconvenience. For non-superannuation complaints, AFCA can award non-financial loss compensation under AFCA Rule D3.3.

Every complaint involves some time and trouble, but not every complaint will be resolved with an award of compensation for non-financial loss.

AFCA takes a conservative approach to assessing compensation for non-financial loss.

In deciding whether to award compensation, AFCA expects complainants to be moderately robust, to bear the normal degree of inconvenience experienced when a problem occurs and take reasonable steps to manage the situation.

3.2 When can AFCA award compensation for non-financial loss?

AFCA will only award compensation for non-financial loss where there has been an unusual amount of:

- Physical inconvenience
- Time taken to resolve a situation
- Interference with the complainant's expectation of enjoyment or peace of mind; or
- In a privacy complaint, the complainant has suffered humiliation or injured feelings.

3.3 What amount can AFCA award?

AFCA takes a conservative approach to assessing compensation for non-financial loss.

An award of compensation for non-financial loss is unlikely to be large. The maximum amount AFCA can award for non-financial loss is \$5,400 per claim. However, many awards made by AFCA are in the hundreds, not thousands, of dollars.

AFCA may decide a non-financial remedy, such as an apology, is appropriate either in addition to, or instead of, compensation.

3.4 What is AFCA's overall approach to assessing claims for non-financial loss?

AFCA expects complainants to:

- be moderately robust
- bear the normal degree of inconvenience experienced when a problem occurs; and
- take reasonable steps to manage the problem.

Guide to compensation awards

The table below is a guide to how AFCA decides how much compensation to award. The duration refers to the duration of the impact on the complainant. The impact will be considered by reference to the severity of the impact of the firm's conduct on the complainant. This table is a guide only and the assessment of the duration and impact will be based on the specific circumstances of each case.

Impact / Duration	Short	Medium	Long
Very low	Tier 0	Tier 0	Tier 0
Low	Tier 1	Tier 1	Tier 2
Medium	Tier 2	Tier 2	Tier 3
High	Tier 3	Tier 4	Tier 4
Severe	Tier 4	Tier 4	Tier 4

Tier	Compensation
0	No compensation
1	\$0 - \$1,000
2	\$1,000 - \$2,500
3	\$2,500 - \$4,000
4	\$4,000 – maximum (\$5,400)

A short duration is likely to be only minutes, hours or days. Medium duration is likely to be from a few weeks to a few months. Long duration is likely to be more than six months.

Very low impact may include mild frustration, inconvenience and annoyance. Low impact may include more significant frustration, inconvenience and annoyance. Medium impact may include high levels of inconvenience, distress and some financial hardship. High impact may include more severe distress and hardship. Severe impact may include distress requiring medical treatment, physical injury, very severe financial hardship, and homelessness.

The case studies in Section 4 are examples of how AFCA assesses the severity and duration of impact.

3.5 Understanding AFCA's governing principles

AFCA will consider whether or not it is appropriate to award non-financial loss in each case.

It is not necessary for the complainant to ask for compensation for their non-financial loss; AFCA can award compensation if we consider this is appropriate, based on the information provided by the parties.

Compensation is usually limited to individuals

AFCA will generally only award compensation for non-financial loss to individuals. However, we may take a broader approach where this is necessary to provide a fair outcome in the circumstances of a complaint.

For example, if the complainant is a company, AFCA will not usually award compensation for non-financial loss. However, we may award compensation where the company is a small business that is effectively carried on by individuals.

Compensation can be applied to outstanding debt

Where AFCA awards compensation for non-financial loss and there is a related debt that is currently overdue and payable by the complainant to the financial firm, it will usually be appropriate to apply the compensation to reduce the debt. An example is where the complainant is in arrears under their home loan. The complainant benefits from having their debt reduced, which may also minimise additional interest and fees charged.

This depends on the circumstances, however, and sometimes it will not be appropriate to apply the compensation to reduce the debt. Examples may include where the complainant is bankrupt and a trustee is appointed, or where the compensation is for a breach that is discrete from the circumstances surrounding the outstanding debt.

AFCA may reduce compensation if the complainant contributed to their loss

Where a complainant has contributed to their loss arising from the financial firm's conduct, it may be appropriate for the financial firm and the complainant to share responsibility for the loss.

The complainant may still be entitled to compensation for non-financial loss, but the compensation may be reduced to account for their contribution to the loss.

A single complaint can include several claims for compensation for non-financial loss

The maximum amount AFCA can award for non-financial loss is \$5,400 per claim.

For this purpose, a 'claim' refers to the set of facts that, put together, gives the complainant the right to ask for a remedy. This means a set of separate events that led to the alleged loss.

When considering non-financial loss, for example, for inappropriate debt collection activity, AFCA will determine whether there is one claim or several. This will depend upon the connection between the various offending acts. For example, multiple, repeated telephone calls in a short space of time are likely to constitute one claim of harassment. However, where the complainant says that they received multiple, repeated telephone calls and the debt collector also contacted their employer inappropriately, this could constitute two claims.

Where there is repeated conduct by a financial firm that breaches its obligations, each event may cause the complainant additional non-financial loss, and so the amount of compensation awarded for each claim may increase. For example, repeated instances of debt collection activity while AFCA is dealing with the complaint.

As the \$5,400 compensation cap for non-financial loss applies to each claim, AFCA can award a complainant more than \$5,400 in total if they have several claims.

The impact of the financial firm's conduct will vary between complainants

When considering an award for non-financial loss, AFCA considers the severity and duration of the impact of the financial firm's conduct on the complainant, always bearing in mind that AFCA expects complainants to be moderately robust.

AFCA looks at the complainant's circumstances when assessing the impact of the financial firm's conduct. For example, if there is a delay in the financial firm's response to a complainant's reasonable request for documents, it may have a greater impact if the complainant is also in financial difficulty. If a complainant is young, inexperienced, and vulnerable, a financial firm's inappropriate debt collection activity may have a more significant impact on their peace of mind than it would on an experienced businessperson.

A complainant may be experiencing significant stress and inconvenience for reasons unrelated to the financial firm's conduct, for example, a marriage break-up. In these circumstances, AFCA will weigh up the additional stress the conduct caused the complainant and if appropriate, award compensation for it.

While inconvenience can lead to non-financial loss, AFCA does not award compensation for a level of inconvenience that is a normal part of dealing with a problem.

No non-financial loss compensation in superannuation complaints

AFCA cannot award compensation for non-financial loss in superannuation complaints. AFCA Rule D.1.4 prohibits it.

3.6 What information does AFCA need?

AFCA will need details of the impact of the firm's conduct on the complainant. For example, if:

- the complainant needed medical attention – medical records or reports
- the complainant suffered financial hardship – bank records or bills.

4 Context

4.1 Case studies

The case studies below are based on previous determinations by AFCA, in which awards were made for non-financial loss. While previous determinations (by AFCA or its predecessor schemes) are not binding on future AFCA decisions, where relevant they will inform AFCA's approach to an issue.

Case study 1 – Apology after problems in credit card application (804426)

The complainant applied for a credit card. The bank asked the complainant for information so it could assess her application. Over the course of three phone calls, a dispute arose about the information the bank wanted. AFCA found that the bank’s officers could have handled the problem better, but that it had apologised and no compensation was payable.

Impact / Duration	Short	Medium	Long
Very low	Tier 0	Tier 0	Tier 0
Low	Tier 1	Tier 1	Tier 2
Medium	Tier 2	Tier 2	Tier 3
High	Tier 3	Tier 4	Tier 4
Severe	Tier 4	Tier 4	Tier 4

Tier	Compensation
0	No compensation
1	\$0 - \$1,000
2	\$1,000 - \$2,500
3	\$2,500 - \$4,000
4	\$4,000 - maximum (\$5,400)

Case study 2 – delay in completing motor vehicle repairs (781598)

The complainant lodged a claim with the insurer after his business vehicle was damaged in an accident. The insurer accepted the claim and authorised an agreed repairer to carry out the repairs. The repairs were delayed but the complainant continued to use the vehicle.

Shortly after, the vehicle suffered engine failure which was unrelated to the accident. The complainant took the vehicle to a different repairer who said the accident-related damage needed to be repaired before the engine could be replaced. The insurer entered into discussions with the new repairer about the cost of repairing the accident-related damage but did not reach agreement for some months.

AFCA found the insurer unreasonably delayed the claim because it took 45 days longer than expected to reach an agreement with the new repairer. This meant the complainant was without his car for longer than was reasonable. The insurer had not provided an explanation for the delay. AFCA also found that the insurer’s overall handling of the claim was below the standard expected.

AFCA awarded the complainant \$750 as compensation for his non-financial loss caused by the insurer’s actions.

Impact / Duration	Short	Medium	Long
Very low	Tier 0	Tier 0	Tier 0
Low	Tier 1	Tier 1	Tier 2
Medium	Tier 2	Tier 2	Tier 3

Tier	Compensation
0	No compensation
1	\$0 - \$1,000
2	\$1,000 - \$2,500

Impact / Duration	Short	Medium	Long
High	Tier 3	Tier 4	Tier 4
Severe	Tier 4	Tier 4	Tier 4

Tier	Compensation
3	\$2,500 - \$4,000
4	\$4,000 - maximum (\$5,400)

Case study 3 – bank’s mistakes led to adverse credit report (784267)

The complainant closed his credit card account. At the time, there were pending transactions, which he had to pay after the account was closed. Communication failures and errors over the course of two months by the bank meant that the bank had contributed to the complainant’s failure to pay by the due date. As a result of the complainant’s failure to pay by the due date, the bank made an adverse credit report.

When the complainant complained, the bank initially closed the complaint without responding. It finally responded two and a half months after the complaint. AFCA awarded \$1,250 compensation for the delay, stress and upset suffered by the complainant.

Impact / Duration	Short	Medium	Long
Very low	Tier 0	Tier 0	Tier 0
Low	Tier 1	Tier 1	Tier 2
Medium	Tier 2	Tier 2	Tier 3
High	Tier 3	Tier 4	Tier 4
Severe	Tier 4	Tier 4	Tier 4

Tier	Compensation
0	No compensation
1	\$0 - \$1,000
2	\$1,000 - \$2,500
3	\$2,500 - \$4,000
4	\$4,000 - maximum (\$5,400)

Case study 4 – faulty repairs after insurance claim (818778)

The complainant’s home suffered storm damage and he made an insurance claim. The insurer accepted the claim and made repairs. The repairs were defective. The AFCA panel found that there were repeated failures to make the premises safe, resulting in the need for air purifiers and dehumidifiers until the repairs commenced. The parties agreed the initial repairs were not completed satisfactorily. The panel also found that the insurer’s contractors caused further damage to the home and contents.

The problems continued over many months. AFCA awarded the complainant \$2,500 compensation for non-financial loss.

Impact / Duration	Short	Medium	Long
Very low	Tier 0	Tier 0	Tier 0
Low	Tier 1	Tier 1	Tier 2
Medium	Tier 2	Tier 2	Tier 3
High	Tier 3	Tier 4	Tier 4
Severe	Tier 4	Tier 4	Tier 4

Tier	Compensation
0	No compensation
1	\$0 - \$1,000
2	\$1,000 - \$2,500
3	\$2,500 - \$4,000
4	\$4,000 - maximum (\$5,400)

Case study 5 – irresponsible lending (790097)

The complainant took out loans from a bank. The bank did not exercise due care and skill in assessing capacity to repay the loans. The complainant could not afford to repay the loans and they fell into arrears. He suffered financial hardship, stress, and anxiety, and strained relationships with his family, over more than a year. He contemplated selling his home. AFCA awarded \$3,000 compensation.

Impact / Duration	Short	Medium	Long
Very low	Tier 0	Tier 0	Tier 0
Low	Tier 1	Tier 1	Tier 2
Medium	Tier 2	Tier 2	Tier 3
High	Tier 3	Tier 4	Tier 4
Severe	Tier 4	Tier 4	Tier 4

Tier	Compensation
0	No compensation
1	\$0 - \$1,000
2	\$1,000 - \$2,500
3	\$2,500 - \$4,000
4	\$4,000 - maximum (\$5,400)

Case study 6 – insurance claim handling delays (788318)

The complainant’s home was damaged by fire. The AFCA panel found that the insurer took much longer to investigate and determine the claim than it should have:

- Time between lodgement of the fire claim and insurer’s acceptance – 17 months
- Time between attendances by the insurer at the insured property – 16 months
- Time between lodgement of the fire claim to the insurer’s payment of the contents claim – 26 months
- Time between claim acceptance and payment of the contents aspect – 9 months

The reasons for these delays were not adequately explained by the insurer and were not consistent with the timeframes set out in the General Insurance Code of Practice.

The panel found that the claim process and the long delays experienced were very stressful for the complainant. He waited over two years from the time of the fire to receive a payout relating to his contents claim. Rebuilding of the insured property was yet to be completed three years after the fire.

The complainant was entitled to a maximum award of compensation by the insurer for non-financial loss: \$5,400.

Impact / Duration	Short	Medium	Long
Very low	Tier 0	Tier 0	Tier 0
Low	Tier 1	Tier 1	Tier 2
Medium	Tier 2	Tier 2	Tier 3
High	Tier 3	Tier 4	Tier 4
Severe	Tier 4	Tier 4	Tier 4

Tier	Compensation
0	No compensation
1	\$0 - \$1,000
2	\$1,000 - \$2,500
3	\$2,500 - \$4,000
4	\$4,000 - maximum (\$5,400)

5 References

5.1 Definitions

Term	Definition
AFCA	the Australian Financial Complaints Authority
complainant	individual or small business that has lodged a complaint with AFCA
financial firm	a financial firm such as an insurer, who is a member of AFCA

5.2 Useful links

Document	Link
Rules	https://www.afca.org.au/about-afca/rules-and-guidelines
Code of Practice	General Insurance Code of Practice https://insurancecouncil.com.au/cop
Determination 804426	https://service02.afca.org.au/CaseFiles/FOSSIC/804426.pdf
Determination 781598	https://service02.afca.org.au/CaseFiles/FOSSIC/781598.pdf
Determination 784267	https://service02.afca.org.au/CaseFiles/FOSSIC/784267.pdf
Determination 818778	https://service02.afca.org.au/CaseFiles/FOSSIC/818778.pdf
Determination 790097	https://service02.afca.org.au/CaseFiles/FOSSIC/790097.pdf
Determination 788318	https://service02.afca.org.au/CaseFiles/FOSSIC/788318.pdf