

22 May 2023

Executive General Manager Jurisdiction
Australian Financial Complaints Authority
GPO Box 3
Melbourne VIC 3001

Delivered via email: consultation@afca.org.au

Dear Sir / Madam,

The Loan Market Group welcomes the opportunity to respond to the consultation on the proposed amendments to the AFCA Rules and Operational Guidelines released last month.

About Loan Market Group

Loan Market Group (The Group) is a family-owned business and has, over 29 years, grown to be what is now considered Australasia's biggest aggregator. The Group offers services and support to a community of over 4500 independent mortgage and finance broker businesses (credit assistance providers) across Australia, approximately half of which are authorised representatives of one of The Group's three (3) Australian Credit Licences (ACL). The remaining broker businesses represent individual small businesses who hold their own respective ACL.

The Group's network of brokers have helped a large and growing number of Australians who are choosing the services of a mortgage broker. The latest report¹ by the Mortgage and Finance Association of Australia (MFAA) identifies nearly 70% of mortgages written in Australia between October and December 2022 were facilitated by Brokers. Given this reach - it is pleasing to see that AFCA's Data Cube reporting (for period 1 July to 31 December 2022) shows that the mortgage broking industry as a whole, continues to have a very low number of complaints when compared to banking and finance overall.

¹ Source: MFAA's quarterly survey of leading mortgage brokers and aggregators October - December 2022, (<https://www.mfaa.com.au/news/mortgage-broker-market-share-reaches-new-december-quarter-record>)

Comments about AFCA & the Consultation

AFCA operates in a complex environment that includes a changed regulatory landscape that ensued since it began operations in 2018. AFCA plays an important role in resolving complaints made by consumers or small businesses and key will be that its operations evolve appropriately over time to ensure a strong, fair and efficient resolution process for all parties.

We thank you for the opportunity to provide this submission. Please see the Appendix with the questions posed in the consultation, and our feedback.

If you have any questions or require any further information, please do not hesitate to contact me on either [REDACTED] or by email to [REDACTED].

Kind regards,

Stefania Riotta

Stefania Riotta
Head of Broker Regulation & Policy, Loan Market Group
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Appendix

Question posed in consultation	Our Feedback
<p>Q1. Do you think that the proposed Rules amendments in relation to Paid Representatives appropriately address Recommendation 4?</p>	<p>We are supportive of this proposal.</p> <p>We believe AFCA's ability to ban an entity or individual (depending on the circumstances) will allow for an appropriate outcome. We do however,</p> <ul style="list-style-type: none"> • suggest more clarity for how AFCA determines that the paid representative is not acting in the complainant's best interests. We have seen instances where paid representatives need the money they charge, or when paid representatives unnecessarily prolong the process and the financial firm invariably, and often unfairly, incur higher costs than necessary. • Suggest guidance or examples be provided. • Guidance or information as to who at AFCA determines that an individual be banned? • With regards to process, item B.6.7: we would expect this would be the shortest possible 'reasonable' time as this would ensure it aligns with AFCA's charter to resolve complaints in a timely manner.
<p>Q2. Do you think that the proposed new provisions in relation to Complainant conduct are appropriately drafted and achieve the right balance in their application?</p>	<p>Yes, we think this strikes the right balance allowing the complainant to appoint a representative with whom AFCA can deal with understanding that threats of violence are never acceptable and no-one should be subject to that kind of behaviour.</p> <p>This extends too, to poor conduct or behaviour directed to staff of the financial firm involved. The financial firm should have the ability to notify AFCA of such occurrences - all parties to the process deserve protection from threats of violence and inappropriate conduct.</p> <p>We welcome the new discretion for AFCA to refuse to consider a new complaint that is substantively the same as a previously excluded complaint under rule A.8.4.b) and we welcome the provision of examples of where AFCA is likely to exercise this discretion.</p> <p>Further to this, we would expect that the financial firm be promptly notified where a complainant or complaint is excluded and informed as to whether the complaint will be automatically closed as a result.</p>

	<p>With regards to excluding a complainant - we support AFCA in its acknowledgement it will in its decision making on this rule - be cognisant of ensuring that its service remains accessible to complainants in vulnerable circumstances.</p>
<p>Q3. Do you think that the proposed change to Rule A.8.3 is appropriately drafted and will assist in delivering early and fair resolution of complaints?</p>	<p>We are supportive of this proposal and feel it is drafted appropriately, however suggest AFCA provide more clarity on what it deems as “reasonable”, particularly in some cases where no financial loss is incurred and the financial firm offers a complainant a goodwill payment. We don’t want a loophole created, i.e., where customers identify a way to complain about a mortgage broker in order to elicit a goodwill payment.</p> <p>Even prior to determining whether to exclude a complaint where a complainant has failed to accept an appropriate settlement offer from the financial firm, AFCA needs to identify if the complaint has merit. We have had many examples where no financial loss was incurred but the complaint process continued through AFCA processes. This does not contribute to timely and effective resolution, rather it often becomes inefficient use of resources both for AFCA and the financial firm involved. An example:</p> <ul style="list-style-type: none"> • A complainant was complaining about something their mortgage broker had said to a third party about the complainant. There was no financial loss incurred, rather it was a case of ‘he said’ ‘she said’. It took many resources to gather versions of events and evidence (or determine lack thereof). The determination was to exclude the complaint but it gave the complainant a couple of weeks to object if they wish. <p>Complaints like this cause ineffective and prolonged resolution of complaints, cost all parties unnecessary time and money, contrary to the objective of AFCA’s intentions for fair and timely resolution.</p> <p>We recommend more due diligence by AFCA of complaints received relating to mortgage brokers - If there is no financial loss, AFCA should be able to close out the complaint sooner.</p>
<p>Q4. Do you think that the proposed new (Rule C.2.2g) and the Operational Guidelines discussion of settlement agreements is appropriately drafted?</p>	<p>Though lengthy, we think it is appropriately drafted.</p>

<p>Q5. Do you think that the proposed amendment to the Operational Guidelines appropriately responds to the Review Recommendation 6?</p>	<p>Yes, it makes sense to exclude professional or sophisticated investors as they better understand the risks associated with the products and are better able to absorb those risks. On the surface those complaints are likely more time consuming and technical and are likely better suited to formal mediation or court proceedings than to come under AFCA's jurisdiction.</p> <p>More information on how AFCA will determine that a complainant is a sophisticated or professional investor is welcomed, particularly if the definition is intended to differ based on which segment of financial services the complaint relates to. We note ASIC² provides a definition of a sophisticated investor:</p> <p>Gross income or net asset level <i>The Corporations Regulations prescribe the asset and income criteria which must be met before you can issue a certificate. A person is only eligible to be the subject of a certificate if they have:</i></p> <ul style="list-style-type: none"> • a gross income of \$250,000 or more per annum in each of the previous two years or • net assets of at least \$2.5 million (reg 6D.2.03 and reg 7.1.28) <p><i>The rationale is that people meeting one of these criteria are more likely to be able to evaluate offers of securities and some financial products (such as interests in managed investment schemes) without needing the protections of a regulated disclosure document.</i></p> <p>More guidance on whether AFCA would consider a borrower that is a regular investor (purchasing and mortgaging multiple investment properties) a sophisticated or professional investor is welcomed.</p>
<p>Q6. Are the proposed changes to the Operational Guidelines appropriately drafted and in keeping with Recommendation 9 of the Review Report?</p>	<p>We are supportive of AFCA providing more guidance about how to apply for a review, and removing the requirement for external legal advice assists with making the processes more accessible.</p> <p>In publishing the outcomes, we recommend financial firms and individuals involved should be de-identified, and that the purpose of publishing the outcomes is to describe and promote the desired behaviours to mitigate future complaints of the same nature.</p>

² <https://asic.gov.au/regulatory-resources/financial-services/financial-product-disclosure/certificates-issued-by-a-qualified-accountant>.

<p>Q7. Do you think that proposed new Rule (A.15.3b) is appropriately worded and provides clarity about the effect of a determination not being accepted by a Complainant?</p>	<p>Yes, we believe the rule is appropriately worded.</p> <p>We do however, suggest AFCA provide guidance to explain to the complainant that by not accepting a determination also results in the complaint being finalised by AFCA. Arriving at a resolution takes time and resources by all parties to the complaint, and if AFCA's process has provided sufficient reasonable time for participants to act, then if the determination is not accepted by a complainant, the complaint should be formally closed and will not be revisited or subject to a review.</p> <p>Our experience has been that once AFCA resolves or closes a complaint, the financial firm is advised in a timely manner. However, in instances where AFCA indicates the complaint will be closed, a larger time lag applies because the complainant is allowed further time to challenge AFCA's decision to close. If AFCA decides they will close a complaint, they should just do so - the complainant had more than sufficient time during the process to challenge AFCA in the lead up to its decision.</p>
<p>Q8. Do you think the Rules wording is appropriately drafted and provides clearer guidance and transparency about the existing slip rule?</p>	<p>Yes.</p>
<p>Q9. Are there other areas in the AFCA Rules that you consider require similar administrative or minor changes?</p>	<p>We recommend two areas for consideration that will help align AFCA to its objective of timely resolution of complaints</p> <ul style="list-style-type: none"> ● That AFCA refreshes the due diligence it completes upon receiving a complaint to align <ul style="list-style-type: none"> ○ more accurately ascertain the financial firm that is to be attributed, ○ more accurately identify if a financial loss was incurred or not <p>Delays arise when an incorrect financial firm is involved, in addition to potential breaches of privacy for the complainant.</p> <ul style="list-style-type: none"> ● Better identification of vexatious complaints, and clearer guidance on consequences for those lodging them.
<p>Q10. Do you think that the proposed Rules A.8.5 and A.8.6 are appropriately drafted</p>	<p>Proposed changes to rule A.8.5 are drafted appropriately.</p>

<p>and replicate the existing provisions under A.4.5 and A.4.6?</p>	<p>With regards to rule A.8.6, it requires multiple attempts to understand the first sentence. If it can be re-written to simplify the message, the rule will more clearly be understood. We would also expect that AFCA will identify the reasonable grounds from which to pursue the submissions from the financial firm so as to minimise the time and resources spent on a complaint that AFCA will ultimately not continue.</p>
<p>Q11. Are there additional assessment criteria that AFCA should consider adopting to meet the stated objective?</p>	<p>We support the intention of an AFCA Panel for deciding complaints under certain circumstances and for complex issues.</p> <p>We seek guidance by AFCA to understand if (and/or when) the input or preferences of the financial firm that is party to the complaint will be considered by AFCA when making its decision to proceed to a decision by an AFCA Panel or not.</p>