

22 May 2023

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

By email: consultation@afca.org.au

Dear Sir/Madam

AFCA Rules and Operational Guidelines – Proposed Amendments

We refer to the proposed amendments to the AFCA Rules and Operational Guidelines and AFCA's request for responses to the questions outlined in its March 2023 consultation paper. Resolution Life's responses are outlined below:

Proposal 1: Paid Representatives

1. Do you think that the proposed Rules amendments in relation to Paid Representatives appropriately address Recommendation 4?

Rule C.2.2(g) as presently drafted gives AFCA the discretion to not entertain a complaint where a complainant is represented or assisted by an agent, such as a lawyer or accountant, who may receive remuneration for this service where AFCA considers the agent is engaging in inappropriate conduct which is not in the best interest of the Complainant. By replacing Rule C.2.2(g) with A.8.4 and defining Paid Representative in a manner which specifically excludes lawyers and accountants, AFCA will no longer have this discretion insofar as it relates to lawyers or accountants.

Resolution Life considers that the definition of Paid Representatives should extend to both lawyers and accountants. This will ensure that if there are lawyers or accountants representing complainants at AFCA who are engaging in inappropriate conduct, AFCA has the discretion not to entertain a complaint or to exclude the lawyer or accountant from participation in the AFCA process.

Proposal 2: Complainants

2. Do you think that the proposed new provisions in relation to Complainant conduct are appropriately drafted and achieve the right balance in their application?

While the proposed amendments to Rule C.2.2 would give AFCA the discretion not to entertain a complaint where a complainant is acting inappropriately towards AFCA staff, it does not contemplate a scenario where a complainant is acting inappropriately towards the representative of a financial firm. There are no other Rules which appropriately address such a scenario, noting that Rule C.2.2 only gives AFCA the discretion to not consider a complaint where the complaint being made is frivolous, vexatious, misconceived or lacking in substance. Resolution Life submits that the Rule should be extended so that AFCA has the discretion to not entertain a complaint where a Complainant's conduct towards the representative of a financial firm is threatening, intimidating, abusive, bullying, discriminatory or otherwise unreasonable.

Proposal 3: Appropriate Settlement Offers

- 3. 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?**

While Resolution Life strongly supports the proposed amendment to Rule A.8.3 which would give AFCA the discretion to exclude a complaint where a complainant has failed to accept an appropriate settlement offer from a financial firm, Resolution Life requests that AFCA provide more detailed information regarding the criteria it will use to will determine what an appropriate settlement offer is.

Resolution Life considers financial firms should also be given an opportunity to respond to AFCA's reasons should it determine that a settlement offer is not appropriate.

Proposal 4: Previous Settlement Agreements

- 4. Do you think that the proposed new Rule C.2.2g) and the Operational Guidelines discussion of settlement agreements is appropriately drafted?**

Resolution Life supports the proposal to amend Rule C.2.2 to give AFCA the discretion to exclude a complaint if the Complainant has reached a full and final settlement with the financial firm about the subject matter of the complaint.

Resolution Life notes that AFCA has outlined that the previous settlement must be documented and clearly includes the subject matter of the complaint to AFCA. Resolution Life believes clarification should be provided as to whether AFCA would specifically require evidence that the complainant has signed settlement documentation such as a Deed of Release or whether evidence of settlement without formal documentation would be sufficient. If formal settlement documentation is not available, Resolution Life submits that financial firms should be given an opportunity to provide other evidence and information evincing the settlement.

Proposal 5: Sophisticated Investor and Professional Investor Complaints

- 5. Do you think that the proposed amendment to the Operational Guidelines appropriately responds to the Review Recommendation 6?**

Resolution Life does not propose to provide a response to this question due to relevance.

Proposal 6: Forward Looking Review Mechanism

- 6. Are the proposed changes to the Operational Guidelines appropriately drafted and in keeping with Recommendation 9 of the Review Report?**

Resolution Life strongly supports the proposal to remove the requirement for an applicant to demonstrate an error of law before the forward-looking review mechanism can be accessed.

Given there are extremely limited rights of appeal from an AFCA determination, the right to have a forward-looking review of a determination is extremely important. It should not depend on any evidence of an error of law, particularly when it is unclear what an error of law is in relation to AFCA's jurisdiction and powers.

Resolution Life considers the Rules should provide financial firms with the right to ask for a forward-looking review if:

- there is a reasonable possibility that similar complaints will be made to AFCA; or
- the determination will have a significant adverse effect on the financial firm.

Resolution Life also thinks the AFCA Rules or Operational Guidelines should set out the effect of a review. In particular, the findings of a review should be published (as proposed) and they should provide important guidance for future determinations. In Resolution Life's view, a decision maker should be required to follow the findings in a review in considering future complaints dealing with the same issues and if there are reasons not to do so, the financial firm should be given an opportunity to respond to those reasons, and they should be explained in the determination.

Proposal 7: Complainant Non-Acceptance of Determination

7. 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?

Resolution Life does not consider the old Rule A.15.4 or the new Rule A.15.3b) are appropriately worded.

Resolution Life recommends that the Rule is amended to require a complainant to either accept or reject the Determination within the 30-day timeframe. This positive obligation gives a financial firm some certainty as to whether a complainant will bring an action in the courts or take other available action against the financial firm following an unfavourable determination.

There is uncertainty for financial firms in circumstances where a Complainant does not respond to AFCA within the requisite timeframe to confirm either their acceptance or rejection of a Determination. The wording '*does not accept a Determination*' is also confusing. It is unclear if failure to respond AFCA in the requisite timeframe equates to acceptance of a determination or a scenario where a complainant '*does not accept a Determination*'.

Resolution Life strongly recommends that the wording in Rule A.15.3b) is amended so that a Complainant is required to accept or reject a Determination within 30 days. Resolution Life also requests that the wording '*does not accept*' in Rule A.15.4 is replaced with 'rejects'.

Proposal 8: Accidental Error in a Determination – Slip Rule

8. Do you think the Rules wording is appropriated drafted and provides clearer guidance and transparency about the existing slip rule?

Resolution Life supports proposal 8 and considers the proposed amendment to Rule A.14.6 has been appropriately drafted.

Proposal 9: Consistency of Language about AFCA's Monetary Limits

9. Are there other areas in the AFCA Rules that you consider require similar administrative or minor changes?

Resolution Life considers the proposed amendments to Rule D.4.1 and the heading in the monetary limits table are appropriate.

With respect to question 9 specifically, this question is extremely broad and Resolution Life suggests that AFCA should undertake a detailed review of its Rules in the first instance to determine if there are similar administrative or minor changes which need to be made before asking financial firms for their commentary. Once AFCA has undertaken this review and identified any further inconsistencies, Resolution Life is agreeable to providing a more detailed response.

Proposal 10: Clarifying the Objection Process for Rule A.8.3

10. Do you think that the proposed Rules A.8.5 and A.8.6 are appropriately drafted and replicate the existing provisions under A.4.5 and A.4.6?

Resolution Life considers the proposed amendments to Rule A.8.5 and A.8.6 are appropriate.

Proposal 11: AFCA Banking and Finance Panels

11. Are there additional assessment criteria that AFCA should consider adopting to meet the stated objective?

Resolution Life does not propose to provide a response to this question due to relevance.

We look forward to discussing the proposed amendments to AFCA's Rules and Operational Guidelines further.

Yours sincerely



Karen Malzard
Chief Risk Officer
Resolution Life Australasia Limited