



FINANCIAL PLANNING
ASSOCIATION of AUSTRALIA

3 May 2019

Mr David Locke
CEO and Chief Ombudsman
Australian Financial Complaints Authority Limited
GPO Box 3
Melbourne VIC 3001

Email: submissions@afca.org.au

Dear Sir / Madam

Proposed AFCA arrangements for comparative reporting of complaint data

The Financial Planning Association of Australia¹ (FPA) welcomes the opportunity to provide feedback in response to the Australian Financial Complaints Authority's (AFCA) consultation on proposed arrangements for comparative reporting of complaint data.

The availability of information about complaints involving financial services providers can assist consumers to make an informed decision about a potential (or existing) product or provider, and plays an important role in ensuring industry training programs address any issues that impact consumer outcomes.

Therefore complaints data needs to as meaningful and relevant as possible to the product or service the complaint relates to. This may require an approach that separates complaints data into categories based on services or products only. To enhance the consumer benefits of complaints reporting, information about the nature of the complaint, to whom it was directed and how it was resolved, should be prioritised over the use of league tables.

The FPA suggests the establishment of AFCA creates an opportunity to ensure its data reporting framework is consistent with existing data definitions and approaches used for ASIC's Financial Adviser Register, and by the Tax Practitioners Board.

We would welcome the opportunity to discuss with AFCA the issues raised in our submission. If you have any questions, please contact me on ben.marshan@fpa.com.au or 02 9220 4500.

Yours sincerely

Ben Marshan CFP® LRS®
Head of Policy and Professional Standards
Financial Planning Association of Australia

¹ The Financial Planning Association (FPA) has more than 14,000 members and affiliates of whom 11,000 are practising financial planners and 5,720 CFP professionals. The FPA has taken a leadership role in the financial planning profession in Australia and globally:

- Our first "policy pillar" is to act in the public interest at all times.
- In 2009 we announced a remuneration policy banning all commissions and conflicted remuneration on investments and superannuation for our members – years ahead of FOFA.
- We have an independent Conduct Review Commission, chaired by Dale Boucher, dealing with investigations and complaints against our members for breaches of our professional rules.
- The first financial planning professional body in the world to have a full suite of professional regulations incorporating a set of ethical principles, practice standards and professional conduct rules that explain and underpin professional financial planning practices. This is being exported to 26 member countries and the more than 175,570 CFP practitioners that make up the FPSB globally.
- We have built a curriculum with 18 Australian Universities for degrees in financial planning. Since 1st July 2013 all new members of the FPA have been required to hold, or be working towards, as a minimum, an approved undergraduate degree.
- CFP certification is the pre-eminent certification in financial planning globally.
- We are recognised as a professional body by the Tax Practitioners Board.



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FPA RESPONSE TO CONSULTATION PAPER

Question 1

1. Does our proposed approach achieve a reasonable balance between user-friendliness/accessibility and detail?

The FPA believes the AFCA proposal achieves a reasonable balance between consumer accessibility and the level of detail in the publication of complaints data.

Specifically, the FPA supports AFCA's proposal to:

- provide complaints outcome data in all tables
- publish comparative reporting on a six-monthly basis from 2019-2020 onwards
- make historical comparisons for financial firms' past comparative reporting results, commencing for 2019-2020 comparative reporting – noting the different processes, data structures and reporting arrangements that were in place for predecessor schemes, as stated in the consultation paper, the FPA suggests it would be inappropriate to make historical comparisons of AFCA complaints data and predecessor schemes' data. Hence, the FPA supports the commencement of historical comparisons for 2019-2020 comparative reporting as proposed by AFCA.
- the publication of information about the AFCA business sizing measures and how they are determined.
- the continued use of a minimum low threshold number of complaints of 5 or more complaints (4 or more on a pro-rata basis for 1 November 2018 – 30 June 2019) as used by FOS, for firms to be included in comparative reporting for a reporting period.
- the inclusion of only AFCA scheme complaint data for 2018-19 in relation to information about complaints accepted from 1 November 2018-30 June 2019.
- the inclusion of complaints closed by both AFCA and FOS schemes between 1 November 2018 and 30 June 2019 as part of the complaint outcome reporting.

However, the FPA raises the following concerns, with suggested solutions aimed at enhancing the transparency, comparability and user-friendliness of the data reported:

Number of complaints accepted

The FPA opposes the proposal to publish the number of complaints accepted for each relevant firm from 2018-19.

The FPA does not support reliance on complaints "accepted" as a measure for the public reporting of data. The requirement in Regulatory Guide 267: *Oversight of the AFCA* clearly states that:



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“AFCA must publish information about complaints received and closed, with an indication of the outcome, against each scheme member on an annual basis.”²

The term “accepted” means to agree to take something, or generally consider or agree something or someone as satisfactory or correct.

The requirement for complaints to have been “received and closed, with an indication of the outcome” clearly shows that ASIC expects the data that is included in public reporting to be based only on matters that AFCA has formally closed or resolved.

Reliance on complaints “accepted” by AFCA oversteps the regulatory requirement, is against the EDR principle of fairness, and puts at risk the reputation of innocent firms, as the following example (provided by an FPA member) demonstrates.

Multiple complaints were formally lodged against a firm by consumers using the EDR scheme’s online complaints portal. When submitting a complaint online, consumers must select a licensee from a list provided in a drop down box. However, the consumers had unknowingly selected the incorrect licensee name. The firm was informed by the EDR scheme that as the system was reliant on the consumer to actively change the complaint, the complaints would stand against firm even though there was clear evidence (including names and addresses in the documentation) that the complaints did not involve the firm. The EDR systems did not permit the scheme to change the details of the complaints.

In the example above, reporting of complaints “accepted” by AFCA would lead to this firm unfairly and incorrectly being publicly named as having complaints made against it.

Publishing data on complaints “accepted” over-steps the requirement set by ASIC in RG267.

The FPA recommends AFCA publish the number of complaints “received and closed, with an indication of the outcome” for each relevant firm from 2018-19.

The FPA also does not support the use of a “chance of complaint” metric.

[Business sizing measures](#)

While the FPA supports the use of a simpler business size metric based on business size information firms provide AFCA as part of the annual membership levy assessment, it is currently difficult to comment on the appropriateness of the sizing measures of ‘very large, large, medium, small’ in the absence of the AFCA business size metric and how these categories are defined and determined. It would be helpful and enhance transparency if this metric was published for all stakeholders to review.

AFCA complaints reporting requirements will apply to a diverse and vast range of business models and types, from large institutions providing multiple financial services to consumers, to small sole practitioner licensees. This raises the question as to the appropriateness of a one size fits all definition of ‘very large, large, medium, small’. For example, a small super fund will be much larger than a large financial planning practice.

² RG267.78



The FPA seeks clarity as to AFCA's business sizing metrics and measures and would welcome further consultation in this regard.

[Business size of each firm](#)

To enhance comparability for consumers, it is important that information about the size of the business includes the range of product and service groups the firm falls into under the AFCA product classification system; or appropriately details the proportional size of the firm's operations in relation to each product and service group. This would provide information for consumers about whether the complaints accepted about the firm relate to the service or product the consumer is seeking/received from the firm.

The FPA seeks clarity as to how AFCA intends to provide clear details of large multi-business licensees for consumers. Many larger licensees have multiple businesses operating under their AFSL. For example, Bridges, Shadforth, Lonsdale, all operate under the IOOF license.

The purpose of complaints reporting is to provide consumers with information about service providers so they can make informed decisions. AFCA should determine an approach that provides the most meaningful assistance for consumers, including whether reporting should be at the practice level, business or licensee level.

As with the business size metric, the most appropriate approach for consumers may need to be different depending on the services or products provided. For example, the most helpful information for consumers in relation advice providers may relate to the individual adviser or financial advice practice; which may differ from information in relation to product performance or the corporate product provider entity.

[AFCA's product classification system](#)

The FPA believes AFCA's product classification system is a key component to ensuring its complaints reporting is user-friendly and makes sense to consumers. Therefore we are concerned that it has not been included for feedback in the consultation paper. In particular, the FPA is concerned about how financial advice is classified under this system. Consumers do not seek out 'wealth management' or investment services, rather consumers seek financial advice. Similarly, financial advice may or may not include the provision of wealth management or investment services.

The FPA is concerned about the confusion that develops, for both consumers and industry, with the creation of different definitions by different oversight bodies. The establishment of AFCA offers a significant opportunity to implement existing definitions commonly used within the industry (processes and systems) and, importantly, understood by consumers.

The FPA recommends AFCA follow the classification included in the ASIC Cost Recovery model and include specific and separate complaint classifications for financial advice. This should include separate categories for personal financial advice and general financial advice. This will ensure that a complaint about a product provider who is authorised to provide general advice, will be appropriately categorised, even in instances where personal advice is provided outside the authorisation or the licensee.



The classification of product type is particularly important in relation to complaint history. The establishment of AFCA brings together superannuation fund complaints of the SCT, credit provider complaints of the CIO, and product and financial advice complaints of the FOS. Complaints data of such entities varies dramatically due to the size of the customer base they service. For example, a superannuation fund may have hundreds of thousands of members, where a sole practitioner financial advice provider would have less than one hundred. Combining the reporting of data of all entities could reduce the clarity and relevance of the information for consumers.

This issue is particularly problematic in relation to league tables that provide a combined list of the complaints data of all financial service providers, rather than separate information based on complaints in relation to type of product or service the complaint relates to.

2. [Do you have any feedback on our proposal to publish an overall comparative table listing all relevant financial firms that appear in a comparative table in a reporting period?](#)

The FPA is concerned that an overall comparative table listing all the financial firms could confuse consumers who may misread the data as providing a comparison of like firms. Consumers may not understand or be aware of the different types of services and products provided by each firm and therefore make inaccurate assumptions about the comparability of the data.

This issue may be overcome by including a list of the AFCA classifications each firm belongs to (based on the products and services provided) and the number of complaints accepted about the firm in each product/service classification. This would provide clarity for consumers about whether the complaints accepted about the firm relate to the service or product the consumer is seeking/received from the firm.

However, the FPA is concerned about the usefulness of league tables for consumers as they are limited in their capacity to provide the granular type of information that would help a consumer make an informed decision about a potential (or existing) financial services provider.

Information about complaints is likely to be of interest when a consumer is deciding to engage a financial services provider. Information about the nature of the complaint, to whom it was directed and how it was resolved would be pertinent to assisting consumers through this selection process. This should include the complaint history for the adviser, the business and the licensee.

In the financial advice context, complaints about a licensee, particularly a large licensee with a diverse business, may not relate to the services an individual planner is authorised to provide and therefore may be misleading for the consumer. This highlights the risks of league tables and the complexity of providing complaints data that is meaningful for consumers.

Historically league tables have not been capable of providing this granular level of information that is helpful and meaningful for consumers.



The purpose of public reporting is to provide transparent data that supports comparability between member firms that operate similar businesses to help consumers make an informed decision about potential or existing providers. With over 35,000 members³, including Australian financial services licensees, Australian credit licensees, authorised credit representatives and superannuation trustees, a league table of this size would not be particularly useful to consumers.

3. [Do you have any feedback on our proposal to publish comparative tables every six months rather than annually?](#)

The FPA supports six monthly publication of complaints data. However, the FPA is concerned that league tables will not provide enough granular information to a consumer investigating potential (or existing) financial services providers. The reporting of complaints history, if intended to assist consumers, must go beyond simple numbers and also report on the reasons for the complaint and the complaint outcome.

The FPA recommends this policy be reviewed every 3 years to ensure there is value for consumers in six monthly reporting of complaints data.

4. [Do you have any other comments about the proposed changes?](#)

[Legacy complaints](#)

As discussed in the FPA's submission to AFCA in response to the consultation on proposed changes to the AFCA Rules to allow consideration of legacy complaints, it is currently unclear how AFCA will treat and report data on legacy complaints accepted under the proposed Section F of the AFCA Rules

The proposed Rules change under Section F will allow consumers with eligible legacy complaints dating back over more than eleven years, to make a formal complaint between 1 July 2019 and 30 June 2020. AFCA's ability to consider legacy complaints is a 'one-off' extension of its jurisdiction to accept such complaints during a set period of time only - that is, the 2019 financial year. AFCA cannot accept legacy complaints after 30 June 2020.

The FPA believes legacy complaints would not be reflective of the standard reporting period statistics and therefore should be reported separately from the data for the standard reporting period.

The FPA seeks clarity as to how legacy complaints data will be treated and reported.

[Interaction with the ASIC Financial Adviser Register and TPB](#)

The FPA believes information about a financial advice provider that will be useful to a consumer, will differ to the type of information that will help a consumer make a decision about a financial product.

A consumer researching a financial product will be well informed by information about complaints relating to the sales and after sales performance of the product and the service and responsiveness

³ AFCA.org.au/members



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of the product provider. This information relates to the performance of a business, not an individual.

A consumer researching a potential (or existing) financial planner usually seeks information about the performance of the individual planner, the financial planning practice the planner represents, and the licensee who has authorised the planner.

Information about the individual planner is published by ASIC on the Financial Adviser Register (FAR) and by the Tax Practitioners Board. Whereas AFCA is required to publish information about its members, who are licensees.

From 1 January 2020, the FAR will include information about individual financial planners in relation to the new Code of Ethics, to be monitored by code monitoring bodies who have a requirement to report breaches to ASIC for public reporting on the FAR. It is likely that a complaint lodged with AFCA with an outcome awarding compensation payable to a consumer, would more than likely also result in a referral to a Code Monitoring Body for investigation of a potential breach of the Code of Ethics. This would mean that AFCA data would include the complaint registered against the licensee, and the FAR would register the complaint against the individual practitioner.

Different reporting methodologies of the oversight bodies may lead to consumer confusion and/or misinterpretation of the complaints information as each body is responsible for reporting data about adherence to different obligations:

The FPA seeks clarity as to the interaction and consistency of complaint methodologies used by ASIC, TPB and AFCA, and the collaboration of such reporting to minimise any potential confusion for consumers.

The FPA suggests the establishment of AFCA creates an opportunity to ensure its data reporting framework is consistent with existing data definitions and approaches used for ASIC's FAR, and by the Tax Practitioners Board.

[Vexatious complaints](#)

External dispute resolution is a vital service for consumers. However, history shows that there is a risk of vexatious complaints being filed against providers, with the complaint progressing either through the entire EDR process at the request of the consumer, even when the EDR scheme does not support the complaint, or paid out by the provider in order to avoid the expense of the claim progressing through the EDR process.

AFCA complaints data reporting relies heavily on league tables. The proposal is to report complaints accepted by AFCA. This will mean that vexatious complaints will be included in the complaints data reporting further impacting the firm subject to the consumer claim.

The FPA therefore recommends that any claims found to be vexatious should not be reported in the complaints data. Licensees and financial planners should have the opportunity to make a submission to AFCA to have vexatious complaints removed from the data related to the firm.

[Recording of complaints](#)

The registering of complaints accepted by AFCA must be accurately recorded against the appropriate classification of the complaint. For example, whether the complaint relates to product performance or



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the appropriateness of the financial advice provided, or both for example. The classification of the complaint should be re-assessed based on the outcome of the complaint to ensure it has been accurately recorded.

[Longevity of complaints data](#)

The FPA seeks clarity on the timeframe that AFCA will make publicly available the historical complaints data of the predecessor schemes. For example, will the information be available for at least the next seven years as is standard record keeping practice?