



FINANCIAL PLANNING
ASSOCIATION of AUSTRALIA

22 April 2022

Mr David Locke
Chief Ombudsman and Chief Executive Officer
Australian Financial Complaints Authority
GPO Box 3
Melbourne, VIC 3001

Email: fundingmodel@afca.org.au

Dear Mr Locke

AFCA proposed funding model

The Financial Planning Association of Australia¹ (FPA) welcomes the opportunity to provide feedback on the Australian Financial Complaints Authority (AFCA) proposed funding model.

The AFCA Engagement Charter applies to users of the service, including AFCA as the operator of the scheme, and obliges all users to engage with each other and AFCA in a way that is:

- Transparent and honest
- Respectful and fair
- In good faith
- Efficient and cooperative²

Embedding a “*funding model based on a ‘user pays’ principle to promote fairness, responsiveness and efficiency*” as indicated in AFCA’s consultation presentation, is consistent with the principles of the AFCA Engagement Charter.

FPA position:

- The FPA broadly supports the proposed funding model and AFCA’s intent to embed a funding model based on a ‘user pays’ principle to promote fairness, responsiveness and efficiency.

¹ The Financial Planning Association (FPA) is a professional body with more than 12,000 individual members and affiliates of whom around 8,500 are practising financial planners and 5,207 are CFP professionals. Since 1992, 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 the Future of Financial Advice reforms.
- The FPA was 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.
- 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.
- We built a curriculum with 18 Australian Universities for degrees in financial planning through the Financial Planning Education Council (FPEC) which we established in 2011. Since 1 July 2013 all new members of the FPA have been required to hold, or be working towards, as a minimum, an approved undergraduate degree.
- When the Financial Adviser Standards and Ethics Authority (FASEA) was established, the FPEC ‘gifted’ this financial planning curriculum and accreditation framework to FASEA to assist the Standards Body with its work.
- We are recognised as a professional body by the Tax Practitioners Board.

² <https://www.afca.org.au/about-afca/engagement-charter/expectations-for-engagement>

- The FPA seeks clarity on how AFCA intends to collect business statistical data from FSPs for AFCA reporting purposes and to enable comparative reporting of complaints statistics in the AFCA Datacube.
- The FPA recommends further consultation, including examples of the application of the proposed new AFCA funding model that demonstrate the interaction of the complaints fees, free complaints, and large user charge. This would be helpful and provide greater transparency and certainty on how the proposed model will work in practice.
- The FPA seeks clarity on the treatment of how legacy and existing complaints will be charged under the proposed funding model.
- The FPA seeks clarity on whether any changes will be made to the current definitions or fees for systemic issues. This is unclear based on the information released to date by AFCA on its proposed new funding model.
- The FPA recommends AFCA release a formal consultation paper and a draft AFCA Complaint Fee Guide updated with its proposed funding model including the annual registration fee, complaints fees, changes to policies and definitions, and examples of the application of the new model. The underlying modelling for the proposed funding model and a glossary of terms should also be included.

The rationale for FPA's position is detailed below.

Proposed funding model

The FPA's feedback is based on AFCA's confidential consultation presentation and webinar opening address from David Locke, Chief Ombudsman and Chief Executive Officer, and Justin Untersteiner, Chief Operating Officer³.

Registration fees

The FPA welcomes and supports AFCA's proposed changes to remove the tiered registration fee and introduce a flat registration fee for all members of \$375 (\$66 for credit representatives).

While we agree that the flat fee approach will significantly reduce the administrative burden on members in relation to the annual registration, we note that the current AFCA registration survey seeks to understand the size, scale and type of operations of its members. The AFCA Datacube provides all AFCA stakeholders with a statistical understanding of how each financial services provider (FSP) compares with their counterparts. A key aspect of this comparison is understanding the business size, scale and type of each provider to allow users to examine similar types of FSPs.

As stated by AFCA:

*In accordance with ASIC Regulatory Guide 267 (RG 267) and our Rules, AFCA must publish information about the complaints we receive and close against each scheme member, including comparative complaint data.*⁴

The FPA strongly supports the improvements AFCA has made to the transparency and comparability of financial services complaints data through its reporting methodology.

³ <https://www.afca.org.au/news/speeches/funding-model-webinar>

⁴ <https://www.afca.org.au/news/statistics/comparative-reports>

Recommendation

The FPA seeks clarity on how AFCA intends to collect business statistical data from FSPs for AFCA reporting purposes and to enable comparative reporting of complaints statistics in the AFCA Datacube.

Complaints fees, larger user charge and free complaints

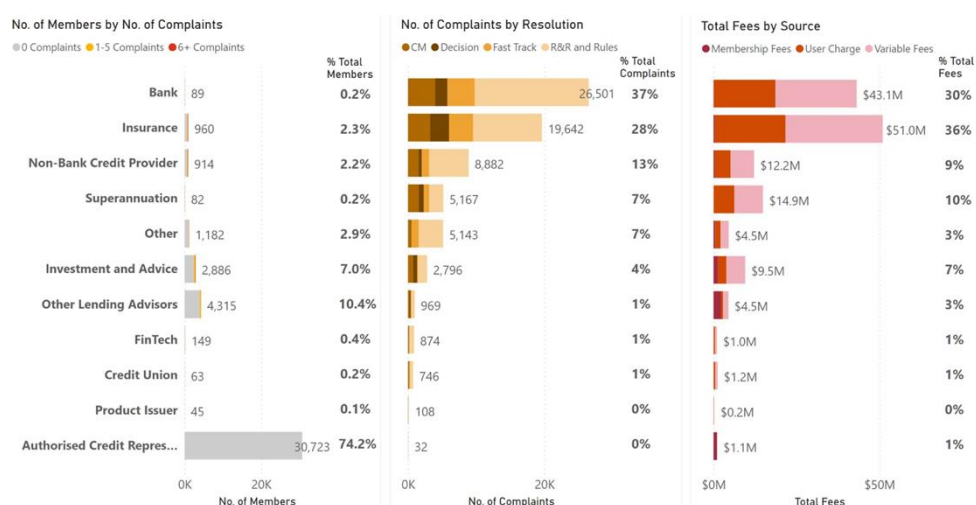
The FPA welcomes and supports AFCA's proposed changes:

- to significantly reduce the complexity of the methodology for charging for complaints by removing the multi-level system and introducing a flat fee complaints charging methodology, with reduced rates for case management and the cost of a determination.
- that would see larger users of the EDR scheme pay a proportion of the total user charge based on their usage in the previous year - if a member had six or more complaints and represented 1% of complaints in the previous year, they would pay 1% of the total user charge for the current year.
- to introduce five free complaints for all members, renewing every year, to help address the issue of members paying for complaints lacking merit by reducing the pressure on FSPs to settle complaints early even though they feel they have a strong case.

We also welcome the new processes currently being rolled out by AFCA to better scrutinise complaints to identify early complaints where it is clear a financial firm has not been in error or where the consumer has not suffered loss. The FPA strongly encourages AFCA to consider if such complaints continue to fall within the jurisdiction of the scheme.

Slide 7 of AFCA's presentation uses a 'stacked chart' to present the percentage of complaints by resolution type (case management, decision, fast track or rules review) and percentage of total fees by source (membership fees, user charge, variable fees) recovered from each product type of AFCA members based on FY21 data. However, it is difficult to compare the current fee model with how the proposed new fee model will differ at a firm, business size, and product type level. It is also unclear why each product group would attract the percentage of user charges and variable fees as indicated in the chart.

Given this chart is based on FY21 data, it is also unclear if legacy complaints were included.



Recommendation:

The FPA recommends further consultation, including examples of the application of the proposed new AFCA funding model that clearly show the interaction of the complaints fees, free complaints, and large user charge, would be helpful and provide greater transparency and certainty on how the proposed model will work in practice.

Systemic issues

The current AFCA Charging Guide includes detailed definitions and fees of three different charging levels plus circumstances in which a discretionary fee may be charged for systemic issues.

The presentation on the proposed new funding model states that “Systemic issue fees remain a feature”.

Recommendation

The FPA seeks clarity on whether any changes will be made to AFCA’s current definitions or fees for systemic issues. This is unclear based on the information released to date by AFCA on its proposed new funding model.

Legacy complaints

Legacy complaints are about conduct of financial firms dating back to 1 January 2008 and therefore understandably may take an extended period of time to investigate. It is unclear how such complaints will be treated under the proposed funding model.

Recommendation

The FPA seeks clarity on the treatment of legacy complaints under the proposed funding model.

AFCA Complaint Fee Guide

While the FPA appreciates AFCA’s “*focus on having direct conversations and good engagement with stakeholders*”, as stated by David Locke, Chief Ombudsman and Chief Executive Officer⁵, it is challenging to provide complete feedback on the proposed model due to the consultation process undertaken by AFCA, particularly for those who were not able to attend the AFCA webinar on the changes to the model.

The current AFCA Complaint Fee Guide details AFCA’s fee structure and policies, including important definitions, on the following matters:

- Complaint fees
- Invoicing of complaint fees

⁵ <https://www.afca.org.au/news/speeches/funding-model-webinar>

- AFCA 2008 Legacy complaints, including fees
- The AFCA complaint resolution points
- Joinder Complaints
- Complaint re-openings, including administration arrangements for complaints reopened
- Fee Adjustments
- Systemic issues.

The current AFCA Complaint Fee Guide also clearly states that:

- all fee figures include GST
- all fees have an annual CPI related increase applied
- complaint fees are not cumulative.

The proposed funding model does not clarify the treatment of the new fees in relation to GST, CPI increases, or the cumulative nature of the proposed fee schedule.

Outside of the proposed new fees released in the presentation slides, it is unclear if or how AFCA's policies and definitions in the current Complaint Fee Guide will be amended. Given the current Guide is also only available to FSP members of the EDR scheme, it would be helpful and assist in providing more informed feedback to be provided with consultation paper including:

- a side by side comparison of the existing and proposed fees
- disclosure of the underlying modelling showing how the proposed model would appropriately recover AFCA's costs
- changes to the current AFCA Complaint Fee Guide with reasons for any amendments.

While we appreciate the use of formal consultation papers commonly used by government agencies may be time consuming, the FPA strongly suggests that, given AFCA's role as a non-government organisation approved by ASIC to administer the EDR scheme for Australian's using financial services and products, the introduction of a proposed new funding model for AFCA would warrant using a more detailed and formal consultation paper to improve transparency of the proposed changes and illicit more detailed and helpful feedback from all stakeholders.

Recommendation

The FPA recommends AFCA release a formal consultation paper and a draft AFCA Complaint Fee Guide updated with its proposed funding model including the annual registration fee, complaints fees, changes to policies and definitions, and examples of the application of the new model. The underlying modelling for the proposed funding model should also be included.

Glossary

The use of acronyms and terminology is very high in financial services. While many organisations use common terms, some may use terminology specific to that entity. Given the breadth of

AFCA's stakeholders, it would be useful if the updated Complaint Fee Guide included a glossary with definitions for FSP and the following terms used in the datacube:

All members of AFCA, except superannuation members, provide us with business size information which is classified depending on the type of member they are.

AFCA uses this data to categorise members within 5 categories:

- *Very Small*
- *Small*
- *Medium*
- *Large*
- *Very large*

This ensures that the complaint data published for each financial firm can be compared appropriately, taking into account the relevant business size of each firm.

Recommendation

The FPA recommends AFCA include a glossary of terms in its updated Complaint Fee Guide.

Given AFCA's role as the ASIC approved EDR scheme for Australian's using financial services and products, the FPA suggests it would be appropriate for the new AFCA Complaints Fee Guide to be publicly available on the AFCA website.

The above recommendations and suggested consultation approach would be in line with the AFCA Engagement Charter obligations to engage with each other in a way that is:

- Transparent and honest
- Respectful and fair
- In good faith
- Efficient and cooperative

Conceptually, the proposed funding model is a positive development supported in principle by the FPA. However, more detail is needed to properly assess the proposal.

The FPA would welcome the opportunity to discuss with AFCA the matters raised in our submission and looks forward to continuing our discussions with AFCA on this important and welcomed initiative. If you have any questions, please contact me on 02 9220 4500.

Yours sincerely



Ben Marshan CFP® LRS®

Head of Policy, Strategy and Innovation
Financial Planning Association of Australia