

Client complaints: shades of grey



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Learning Outcomes

- On completion of this session attendees will
 - Have greater insight into the stance AFCA takes in relation to a range of issues that can drive case outcomes
 - Develop an understanding of skills enabling better response to, and prevention of, situations giving rise to regulated complaints
 - Gain insight into when the personal advice obligations apply to client interactions
 - Be able to explain the need to highlight benefits and drawbacks when prioritising different client goals, circumstances and attitudes to risk
 - Understand the value of clear communication and record keeping in complaints management

Overview

Introduction	Robert Kimberly
IDR Process	Rebecca Weavers
AFCA Process	Shail Singh
Review of a Complaint 1: Mr and Mrs F	Shail Singh
Key Learnings	Panel
Review of a Complaint 2: Mrs C	Shail Singh
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Internal Dispute Resolution	Rebecca Weavers
Key Learnings	Panel
Conclusion	Robert Kimberly

Internal Dispute Resolution (IDR)



What is a complaint?

RG271 definition:

"[An expression] of dissatisfaction made to or about an organization, related to its products, services, staff or the handling of a complaint, where a response or resolution is explicitly or implicitly expected or legally required."



Timeframes

Standard complaints resolved in 30 calendar days



Reportable Breaches

May occur if a customer complaint is not resolved within the required timeframe



Customer internal dispute resolution

Complaints handling expertise to meet the highest professional standards.

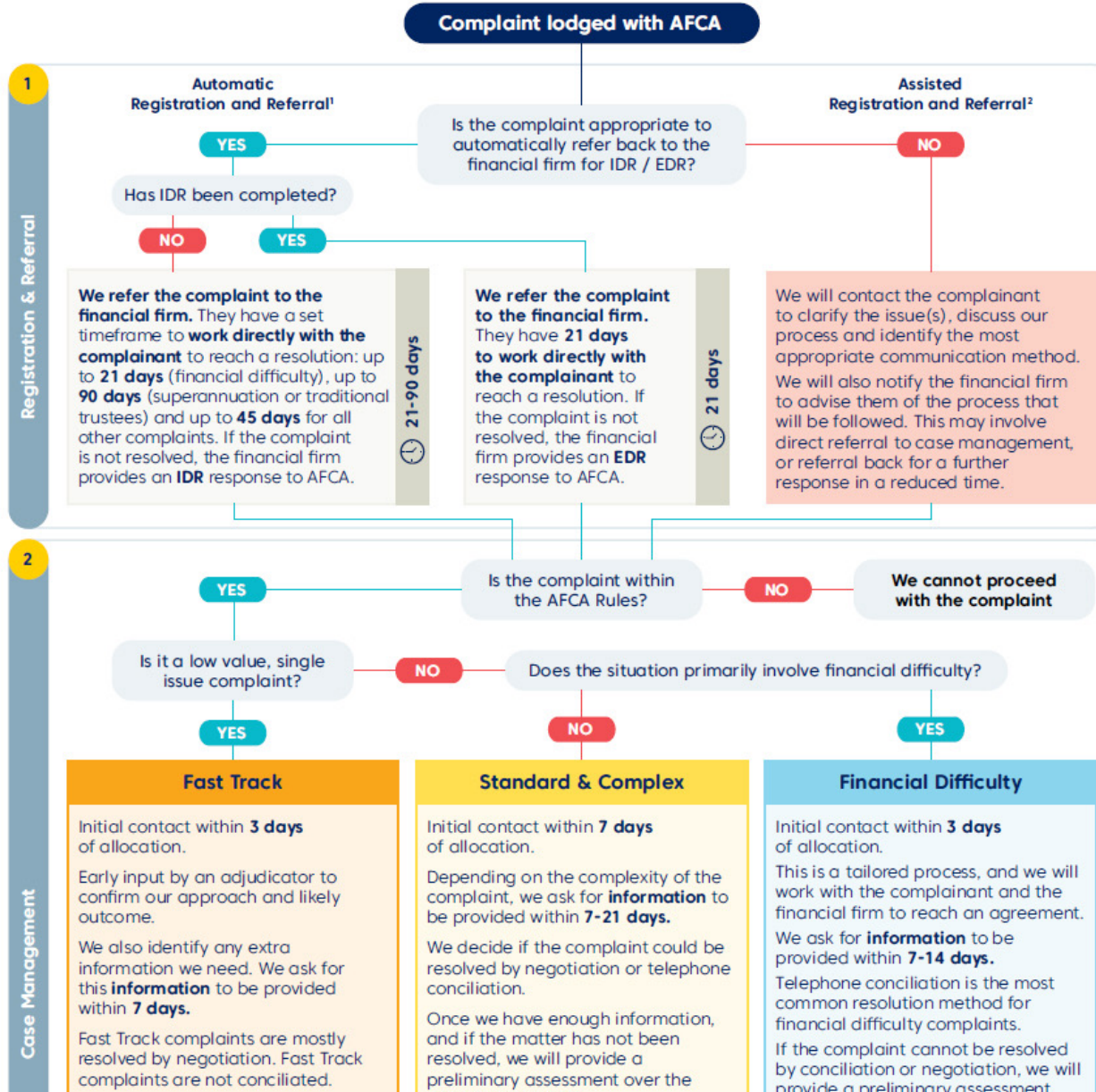


EXPERTISE TO SUPPORT YOU AND YOUR CLIENTS

- We help practices effectively navigate customer complaints and remediation.
- Expert support at every stage of the complaints process to ensure timely and compliant responses.
- Ensures best practice approach to case management, client engagement and resolving issues.



AFCA complaint resolution process



Criterion to get to panel

- Panel members appointed by AFCA Board
- All Panels have a minimum of three reps – AFCA, Consumer and Advisor
- Panels to make determinations about particularly complex complaints
- Advise Ombudsman on findings from investigation
- Panel has no interaction with clients or financial services provider

AFCFA Example 1

Mr and Mrs F

- Mr and Mrs F complained that the Financial Firm had not:
 - Properly assessed their risk profile in 2019
 - Placed assets according to appropriate asset allocation
 - Caused losses
- FSP Response
 - Client's requested asset allocation, investment strategy and risk profile was well documented (including client amendments to each)
 - SOA clearly outlined risks associated with client choices, including market volatility



AFCA Findings

Mr and Mrs F

- After consideration of the evidence and representations from both sides, AFCA found:
 - The firm had properly assessed the clients risk profile, but this was specifically altered by the clients to take on more risk
 - Client awareness confirmed by advisor file note
 - The asset allocation was aligned with the amended risk profile (selected by the clients)



AFCA Findings Mr and Mrs F

- Finding in favour of firm
- The advisor in this case had fully set out risks and options for clients, and clearly documented how this had been done:
 - The fact find recorded a verbal warning about potential volatility
 - The SOA highlighted the misalignment between the clients' goals and risk profile and set out options of amending one or the other
 - The SOA clearly set out the enhanced risks and potential downsides of adopting a higher risk profile

AFCA Findings Mr and Mrs F

- Asset allocation was within appropriate tolerance for variation as set out in the SOA:
 - SOA had clearly set out for clients that there was a potential that assets could be invested with up to 15% variation from stated percentage

Discussion Mr and Mrs F

Advisor Jenny Diggle	Consumer Mary-Beth McFarlane	AFSL Rebecca Weavers
All the facts fell in favour of the advisor	When there is mis-alignment between client and advisor views as to the client's best interest, advisor must <i>either</i> choose not to act, <i>or</i> ensure clients informed consent	IDR assessment outcome was to decline the case, based on the strength of the records within the client file
Good files notes supported the advisor	Choice as to which is appropriate is for the advisor's judgement	Client was firm in their position and despite clear explanation in IDR letter on why case declined, client proceeded to lodge a case with AFCA
A long time to resolve	Either way, the advisors decision and the reasons must be clearly documented and communicated	The strength of the record keeping resulted in AFCA confirming the same outcome

Key Learnings

- In the event of a conflict between key factors such as goals, circumstances and attitude to risk, it is crucial to highlight the benefits and drawbacks of prioritising one over the others
- The explanation *and* the clients understanding and consent, should be clearly set out in the SOA and file notes

AFCA Example 2

Mrs C

- Mrs C complained that the firm's 2004 advice to take out life insurance was not in her best interest as it did not consider long term affordability of premiums
- There was further interaction between the firm and the client in 2016 and 2021, at which times comparative quotations were provided, as client had said she struggled to meet increasing premiums
- The advisor also noted awareness of client's medical conditions in email correspondence



AFCFA Example 2

Mrs C

- Although minimal, the interactions in 2016 and 2021 did constitute personal advice:
 - the advisor considered the client's *“objectives, financial situation and needs”* when explaining that a lower premium would not be available from an alternative provider due to her medical history.



AFCA Findings

Mrs C

- The clients 2004 goal of bequeathing a benefit to her children had not changed in 2016 or 2021
- The advice in 2016 and 2021 was not appropriate as maintaining the now unaffordable policy did not align with the clients' best interests
- The appropriate advice would have been to cancel the policy and instead placing the premiums in an investment portfolio



AFCA Findings

Mrs C

- Unlike the 2016 and 2021 advice, the original advice in 2004 was outside AFCA's jurisdiction; the complaint had been made more than 6 years after the point of reasonable awareness
- *But...* the potential alternative strategies for meeting the client's goals available in 2004 were relevant to how the advisor should have proceeded in 2016 & 2022.



Discussion Mrs C

Advisor Jenny Diggle	Consumer Mary-Beth McFarlane	AFSL Rebecca Weavers
Red flags - Mrs C had queried the cost of the premiums on a number of prior occasions	Again, importance of clarity between advisor and client as to goals (and how these might have changed)	Crucial that planner carefully consider whether a client interaction would constitute advice.
Low value transaction for advisors with increasing income due to increasing commission – value for service?	An advisor's job is not easy – this case illustrates why!	If the advisor had done a review and formalised their advice, (rather than simply providing quotes and commentary on the clients ability to achieve better rates due to her health) this would ensured that the advice was in the clients best interest and prompted a decision point.
This issue had been around since clients started to age; premiums went up and CPI increasing level of cover. Effective reviews puts the client back in control of the level of cover and level of premiums	Financial literacy amongst general public is woeful – helping client bridge gaps in their understanding is a fundamental part of advisor role	

Key Learnings

- Considering factors such as goals, financial situation and needs, or undertaking actions that **should have considered** the client's goals, financial situation and needs, will bring client interactions within the definition of personal advice, which requires as a minimum an SOA if there are changes.
- Advisor's responsibility here was to do a full review of the circumstances and provide advice accordingly.
- Findings in favour of client



Internal Dispute Resolution Example 3

- Mr X made an income protection claim – was concerned that the claim was going to be declined due to a non-disclosure of a history of mental health on the initial application.
- The insurance provider did decline the claim and the policy was voided (with all premiums paid for the policy refunded to Mr X).
- Mr X alleged they informed the advisor regarding their history of mental health conditions at the time of advice.
- Mr X was seeking to be paid out the income protection policy benefits that he believed he was entitled to.



IDR Background Mr X

- In 2017 several meetings occurred between Mr X and the advisor to review existing insurance cover, with cost being a factor.
- The advisor recommended Mr X replace the existing Income Protection Policy with a new (less expensive) policy
- The cover that was replaced had been in force since 2010 and did not have an exclusion for mental health. The client disclosed a history of mental illness when applying for this cover.
- File notes indicated that Mr X had informed the advisor of a prior significant mental health event – no record that the advisor informed the client of their disclosure obligations for the application.
- The mental health history was not disclosed in the 2017 insurance application.

IDR Background Mr. X

- At the time of the complaint Mr X was diagnosed with a serious mental health condition and was unable to work.
- As part of the IDR investigation, a doctor's report was obtained to confirm the low likelihood of Mr X's ability to return to work for up to 5 years from the date of the report.
- Based on clients age (~61) this meant that they may not be able to return to work prior to age 65 (this being the IP cover end date).



IDR Resolution Mr. X

- The process followed RG 271 Internal dispute resolution.
- The original policy from 2010 was in place without a mental health exclusion.
- If appropriate advice was provided to the customer in 2017, this policy would have been retained.
- FSP was unable to reinstate the lost insurance cover for the client and as such compensation was required.

Complaint Outcome

- **Part One** - immediate payment made for income protection benefits that would have been payable under the IP policy from the stop work date, to the date of complaint finalisation.
- **Part Two** – given the uncertainty over clients inability to return to work in the future, the instalment approach to future payments is being worked through with the client, the new Advisor and in partnership with the PI.



Discussion Mr X

Advisor Jenny Diggle	Consumer Mary-Beth McFarlane	AFCA Shail Singh
A classic dilemma where the advisor is trying to reduce the cost of cover for the client and hoping existing medical conditions do not re-occur	Clearly from a consumer perspective working with them from outset to resolve at IDR stage is going to reduce distress, inconvenience and improve outcome	AFCA would always endorse a firm seeking to proactively resolve matters at the IDR stage
Use existing policy as alternative strategy in SOA so that revised terms can lead to enacting alternative strategy	Stepping back early on and trying to find a pragmatic solution can prevent an issue becoming entrenched	Clear that working with both client and PI insurer helped achieve this
Reviews provide opportunities to discuss these issues	IDR is the best place to try to find a collaborative resolution	If this case had been referred to AFCA, AFCA would have sought to obtain an actuarial report to assess loss. Case would have been likely to have been upheld in favour of the client, due to the Adviser's knowledge of the mental health condition

Key Learnings Mr X

1

Acknowledge error where it exists

2

Partner early with PI insurer – approach with collegiate mindset

3

Engage positively with client – understand their limitations, particularly due to ill health, when assessing compensation

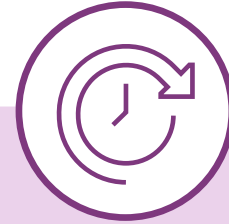
Conclusion



Early engagement with all stakeholders – including PI – is key



Ensure all staff are trained to recognise and deal with complaints – ref ASIC's RG 271



Consider the time involved in managing a complaint and the cost of that time



Record keeping is paramount

Q&A

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