AUSTRALIAN COLLECTORS & DEBT BUYERS ASSOCIATION

26 March 2021

Director
AFCA Review Secretariat
Financial System Division
The Treasury
Langton Crescent
PARKES ACT 2600

By email: AFCAreview@treasury.gov.au

Dear Sir/Madam,

## Submission in response to Review of the Australian Financial Complaints Authority

The Australian Collectors & Debt Buyers Association is pleased to provide the attached Submission in response to Treasury's consultation for the above review.

Please do not hesitate to contact the writer to discuss any aspect of the Submission.

Yours sincerely
**AUSTRALIAN COLLECTORS & DEBT BUYERS ASSOCIATION**

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# *Submission to Treasury*

# *Review of the Australian Financial Complaints Authority*

**March 2021**

# Contents

## Introduction

Australian Collectors & Debt Buyers Association (ACDBA) welcomes this opportunity to respond to the Review of the Australian Financial Complaints Authority released by Treasury on 19 February 2021.

Established in 2009 for the benefit of companies who collect, buy and/or sell debt - ACDBA's members (refer Appendix 1) represent the majority of the collection market in Australia.

The core business of our members within the financial services industry is in the credit impaired consumer segment, whether as collectors or debt purchasers, working with consumers who for various reasons, have found themselves in default of their credit obligations.

ACDBA members purchasing debt, each hold an Australian Credit Licence and are members of the Australian Financial Complaints Authority (AFCA). Our members do not provide financial advice.

References to 'complainant', 'customer' or 'consumer' in this Submission generically refer to both individuals and small business.

## Debt purchasing

Accounts assigned to debt purchasers typically involve debts where an acceleration clause in the financial agreement has been triggered by the customer's default in making repayments.

Many with accelerated debts are in hardship giving rise to complex, contested and unresolved issues. Debt purchasers are specialists in dealing with and managing hardship as they almost exclusively interact with customers in some form of financial difficulty.

An expanded explanation of how debt purchasing operates in Australia is included at Appendix 2.

## Observations

The establishment of AFCA followed a recommendation of the Ramsay Review[1] to simplify access for complainants to external dispute resolution. Merging three predecessor complaints resolution bodies, AFCA was designed to provide a 'one stop shop' for complaint resolution, designed to be underpinned by the objectives of being 'fair, free to complainants and independent'.

To succeed in the design objectives, AFCA must serve the needs of industry users, as well as complainants. Financial firms need predictable decisions and cost efficiency to promote the wide availability of financial services at the lowest prices.

Credit related complaints in the experience of ACDBA members are more likely to surface once a consumer has stopped paying their account. Although the majority of complaints relate to events which occurred with the original credit providers prior to the sale/assignment of accounts to the ACDBA member, it is the responsibility of debt buyers to resolve those complaints.

On the basis the Ramsay Review identified that cost savings by eliminating duplication and realising economies of scale would be delivered through the formation of a single scheme, AFCA must be accountable to its members in delivering the intended efficiencies. This requires efficient processes and effective controls to constrain the scheme's costs passed onto financial firms and to prevent abuse of the 'free to complainant' nature of the scheme.

ACDBA in its submission to the Ramsay Review contended *"the risk of a monopoly industry ombudsman in the absence of proper legislative and governance controls… the scheme would have the power to make up its own version of the law, apply subjective concepts of fairness and without any accountability impose costs on members…AFCA would have more influence over the financial services industry than either the courts or the parliament, but without any of the accountability which applies to those institutions".* Regretfully these very outcomes have already been experienced in the operations of AFCA.

[1] Final Report of the Review of the financial system external dispute resolution and complaints framework, April 2017, www.treasury.gov.au

## Responses to consultation

### Delivering against statutory objectives

**1. Is AFCA meeting its statutory objective of resolving complaints in a way that is fair, efficient, timely and independent?**

Response:

No.

While the debt collection and purchase sector are resolving 59% of AFCA complaints during the Registration and Referral stage[2], of the complaints escalating beyond that stage, the significant majority have been offered fair and reasonable resolutions to the issues in dispute.

This is supported by AFCA's data, which post Registration and Referral, resolved only 1.4% of complaints[3] against the financial firm. Our members' experience is that most of these AFCA outcomes were less favourable than the original offer proposed by the financial firm.

The AFCA process allows consumers to continue to agitate complaints in circumstances where the financial firm has made an objectively reasonable offer to remedy any detriment, adding significant expense to financial firms, with some complaints costing the firm up to $13K, in circumstances where they had proposed an outcome that was fair in the circumstances.

This unnecessary cost burden on financial firms allows complainants to use escalating AFCA fees to force firms to provide outcomes beyond any amount that would be awarded by AFCA.

A meaningful way by which to achieve fair, efficient, timely and independent outcomes for all parties, we submit, would be an amendment to AFCA's Rules to include a non-discretionary rule based on one, which was for many years within CIO's Rules[4] and operated very efficiently and successfully for both complainants and financial firms, namely:

**20. Recommendation on reasonable offer**

*20.1 Where the scheme reasonably considers that an offer made by a financial services provider to a complainant to resolve a complaint is reasonable having regard to the information before the scheme, the scheme may recommend to the complainant that they accept the financial services provider's offer in full and final settlement of the complaint. Any such recommendation must be done in writing and be accompanied with the scheme's reasons for making the recommendation.*

*20.2 The scheme will only do so after undertaking a review of the complaint to enable it to form a view as to the range of likely outcomes that might be achieved if the complaint were to proceed to determination.*

*20.3 If the complainant does not accept the offer, the scheme may close the complaint in the absence of further information from the complainant that would justify the complaint remaining open. If the scheme closes the complaint, it will notify the complainant and financial services provider that it has done so.*

[2] https://data.afca.org.au/resolution-process - AFCA Data Cube 01/07/2020 – 31/12/2020
[3] https://data.afca.org.au/resolution-process - AFCA Data Cube 01/07/2020 – 31/12/2020
[4] Credit and Investments Ombudsman Service - Rules 10th edition

The adoption and use of such a rule by AFCA will operate to ensure that complainants have an incentive to accept reasonable offers, and will support expeditious outcomes of the real issues in dispute. The financial firm being incentivised to provide reasonable offers to achieve certainty in outcomes. The resultant improved efficiencies will reduce the costs to industry, which are ultimately passed on to consumers in the form of higher costs for financial services.

Whereas allowing complainants to continue to agitate complaints, where the financial firm has already proposed an adequate remedy, does not support the objectives of the cost-efficient scheme envisioned by the Ramsay Review and echoed in the AFCA Rules, but rather, leads to an unreasonable impost of costs and time on financial firms while offering no better outcome or benefit to consumers with on occasion the consumer being worse off.

In simple terms, the proposed "Reasonable Offer" Rule would apply for complaints wherever an objectively reasonable offer is made by the financial firm. Circumstances that should be taken into consideration in deciding whether to apply the proposed "Reasonable Offer" Rule include:

- a delay in complaint resolution would cause the accrual of interest or some other detriment to the consumer such as devaluation of the security asset;
- any AFCA determination would offer no better outcome to the consumer than the reasonable offer;
- the outcome from the reasonable offer would be better for the consumer.

Specifically, in complaints where the financial firm's offer provides a remedy matching the complainant's proposed resolution, such offer should automatically trigger AFCA's application of the proposed "Reasonable Offer" Rule.

Reference is drawn to Case Examples 1, 2, 4 and 7 in Appendix 3 - the proposed "Reasonable Offer" Rule could have been applied to these cases to deliver more expedient, favourable and efficient outcomes for all parties.

Under its complaint resolution approach[5] AFCA currently has the discretion specifically at A.8.3 to discontinue a complaint where the complainant "has suffered no loss (or has been appropriately compensated for such loss and ***AFCA would not award any further amount***)" [emphasis added].

ACDBA members report repeatedly and unsuccessfully requesting AFCA to use its discretion under A.8.3 to discontinue a complaint on the basis a reasonable offer has been made where AFCA would not award any further amount.

However, AFCA have advised ACDBA members a reasonable offer will not be considered until AFCA completes a Preliminary Assessment. Rule A.12.3.(b) then becomes the issue adding cost and delay to resolution of the complaint, as it states:

> *A.12.3 The complaint must proceed to a Determination by an AFCA Decision Maker:*
>
> *a) ….*
>
> *b) for all other complaints, if:*
>
> *(i) the Financial Firm fails to accept AFCA's preliminary assessment within the timeframe specified by AFCA; or*
>
> *(ii) …*

[5] Australian Financial Complaints Authority Complaint Resolution Scheme Rules, 13 January 2021 – Rule A.8

The consequence of AFCA's current procedures is that having made a reasonable offer, meeting or exceeding the complainant's proposed resolution, AFCA's processes unnecessarily escalate the complaint to a Decision thereby incurring fees of at least $11K whereas if the proposed "Reasonable Offer" Rule was applied at the Case Management stage, the fees payable by the financial firm would in the range of $1K to $3K.

These experiences identify the need for the adoption and use of a more formal and non-discretionary "Reasonable Offer" Rule so as to improve efficiencies and outcomes for all parties to a complaint.

***Recommendation 1:***

*AFCA should introduce and adopt a non-discretionary "Reasonable Offer" Rule based on the former CIO Rule 20 such that a financial firm in making a reasonable offer to remedy a complaint is entitled to request AFCA apply the Rule or alternatively be provided with reasons for a decision not to apply the Rule.*

### 1.1 Is AFCA's dispute resolution approach and capability producing consistent, predictable and quality outcomes?

Response:

Not yet.

The need for transparency and consistency of decision making by AFCA is paramount to allow financial firms to confidently develop systems and processes to minimise and ideally avoid the risk of complaints from consumers. Further, complaint costs are minimised where the parties reach resolution through the firm's IDR processes.

The resultant outcomes ultimately benefit consumers and achieve the intended policy objective of AFCA. These outcomes are yet to be consistently achieved by AFCA.

A financial firm may make an error which produces a poor consumer outcome. A good firm will rectify the problem and promptly compensate the consumer.

For this outcome, financial firms and consumers require certainty in how complaints will be considered and resolved through EDR. AFCA as a "one-stop-shop" for complaints provides a new standard for handling complaints (other than superannuation complaints) not based on the "rule of law".

Consistency in EDR outcomes previously based on the "rule of law" ensured fairness and equitable consumer protection whilst minimising adverse and unintended impacts for all parties.

To the present time, this same consistency and predictability in EDR outcomes under AFCA has been elusive - we submit this is primarily due to the absence of the "rule of law" and a limited entitlement[6] for parties to test or challenge AFCA determinations on questions of fact and/or legal principles.

AFCA members have no freedom (as existed previously) to move to an alternative EDR scheme to effectively keep the extent of any fairness/legal error over-reach in check.

[6] Refer AFCA Rule C.2.2.(f)

Unshackled from this accountability to its members and without adequate alternate checks and balances, AFCA potentially and inevitably exposes financial firms to adverse consequences stemming from any inconsistent and erroneous decisions.

An experience ACDBA members comment on with respect to AFCA is that there is often a disparity between what AFCA's senior staff explain and maintain are the bedrock principles and considerations for decisions and the consistent application of those principles by frontline AFCA case officers - leading to frustration with inconsistencies in expectations, processes, delivery and outcomes.

More specifically:

**Maintaining impartiality**

Underpinning the AFCA scheme is the expectation that as a complaint resolution service, it will be fair and just for all parties.

ACDBA members reviewing their experiences with the AFCA process rightly raise a number of reasonable considerations as to whether the scheme manages to achieve a fair balance of impartiality, including:

- Do AFCA's financial results contribute to an implicit bias towards actions including escalation through complaint stages so as to maximise revenue?
- Do the former work experiences of AFCA Case Managers and Decision Makers from for example banking, financial counselling or consumer legal practices support inherent biases towards one or other party to a dispute?

Specifically, members raise concerns that individual Case Managers have on occasions exceeded Rule A.3.2 which provides "*AFCA may assist Complainants to submit a complaint*" by moving more towards strong advocacy on behalf of a complainant.

Accepting there may be a genuine need for assistance to be provided to some complainants, this really should be the exception rather than a regular work practice of Case Managers in order to minimise the risk of AFCA assuming an advocacy role.

A risk in AFCA assuming and fulfilling an advocacy role is that financial firms genuinely working towards fair and just outcomes for their customers through the complaint resolution process are confronted by a situation where the goal posts keep moving, making resolution through IDR processes difficult to achieve.

This potential over-stepping by AFCA into an advocacy or advisory role to complainants in a manner likely to be in breach of its obligation of impartiality and fairness was commented on by Stevenson J in *D H Flinders Pty Ltd v Australian Financial Complaints Authority Limited [2020] NSWSC 1690:*

> *"16 Accordingly, it is not necessary to decide whether AFCA has acted in breach of its obligation of impartiality and fairness. Were it necessary for me to decide that question, I would been inclined to conclude that AFCA did act in breach of those obligations."*

***Recommendation 2:***

*To meet its obligation of impartiality and fairness, AFCA should introduce and/or maintain adequate checks and balances including effective training and review of Case Managers to ensure their actions are on balance always fair and just for all parties.*

### Complaint creep

A common concern raised by some ACDBA members in respect to their experiences with AFCA is that the basis of complaints lodged with AFCA are expanded by Case Managers either initially or during the course of the complaint resolution process.

Essentially for financial firms these changes to the original complaint amount to moving the goal posts frustrating their genuine efforts during IDR processes to provide a suitable remedy to the complainant.

Further, if additional elements are added to the complaint during Case Management or later stages, the financial firm is disadvantaged by being denied the opportunity to resolve such additional issues with its customer through IDR.

To ensure fairness and due process, the basis for a complaint should not be expanded by AFCA and rather should deal with the complaint as originally lodged as otherwise where it is expanded under the Case Manager's initiative, this amounts to AFCA stepping into an advocacy or advisory role to complainants in a manner likely to be in breach of its obligation of impartiality and fairness.

It is acknowledged there may be circumstances where a complainant will raise additional issues during the resolution of a complaint lodged.

***Recommendation 3:***

*To ensure impartiality and fairness, AFCA should introduce and/or maintain adequate checks and balances to ensure Case Managers are not adding to the substance of a complaint as lodged by a complainant or otherwise engaging in an advocacy or advisory role in support of complainants.*

### Specialist debt collection team

At a meeting with senior management of AFCA in April 2020, ACDBA was pleased to learn AFCA intended to look at the feasibility of establishing a specialist team for debt purchase complaints – no further developments on this proposal have to date been advised.

ACDBA maintains there is real efficiency for all parties if the EDR scheme have a specialist team with specific product knowledge and understanding of the unique nature of transactions relating to accounts assigned by original credit providers to debt purchasers.

Efficiencies were evident during the former operations of the Credit and Investments Ombudsman Service which maintained a specialist team to resolve debt purchase complaints.

The majority of debt purchase complaints relate to events prior to the assignment of accounts to the debt purchaser which assumes responsibility to respond to the complaint but is wholly reliant upon the gathering of original documentation and records from the originating credit provider in order to respond to AFCA documentation requests. The involvement of the originating credit provider adds additional complexity and time to the document collection process.

ACDBA members encounter situations with more junior and inexperienced AFCA Case Managers not having any understanding of or experience with debt collection matters and more particularly debt purchasing transactions.

This directly creates inefficiencies as those case managers are unaware of realistic timeframes required to gather historic documentation and the specific legislative requirements and/or timeframes applicable for accelerated debts and in responding to hardship requests.

Members explain dealing with inexperienced Case Managers when compared to those with debt purchase complaint experience is burdensome due to the need to provide information and explanation to assist their understanding of assignment of accounts, the effect of acceleration clauses in finance agreements and what is involved in gathering requested documentation from originating credit providers.

Reference is drawn to Case Example 3 in Appendix 3 – a specialist Case Manager experienced with and aware of debt purchase issues would have been better placed to deliver more a more expedient and efficient handling of this complaint.

The creation of a specialist debt collection team at AFCA would facilitate expertise in issues uniquely relevant to accounts which have been assigned from originating credit providers, improving the efficiency, quality and consistency of outcomes for such complaints.

***Recommendation 4:***

*AFCA should immediately establish and train a specialist debt collection team to handle all credit complaints relating to debt collection and debt purchase so as to improve the outcomes for all parties including AFCA in terms of efficiency, quality and consistency.*

**Non-responsive complainants**

ACDBA members express concern that in many complaints lodged with AFCA the complainant does not respond to the financial firm during attempts to resolve the complaint through the firm's IDR as required by the AFCA processes. Further members report often the complainants also cease to respond to all communication attempts by AFCA for contact and/or the provision of information.

Of issue is the apparent reluctance by AFCA to shut down such complaints in a timely fashion and without unreasonable escalation to later complaint stages, despite a lack of communication with the complainant and notwithstanding its discretion to do so under Rule A.9.5.

Allowing complaints to remain open where the complainant is non-responsive, effectively absorbs AFCA resources and contributes directly to the delay of just and timely resolution of other complaints where complainants are actively engaged in the resolution process.

Reference is drawn to Case Example 6 in Appendix 3 which illustrates the inefficiency and consequence of a failure to close a complaint when the complainant is non-responsive to communication and information requests.

There is a need for the adoption and use of a more formal and non-discretionary "Non-responsive Complainant" Rule requiring AFCA to close a complaint in circumstances where neither the financial firm nor AFCA has been able to contact the complainant for more than 21 days.

This will improve efficiencies and consistencies in the process and ensure complaints are not escalated in the AFCA process in the absence of continuity of engagement by the complainant.

Timely resolution of complaints is an important factor in assisting persons in genuine financial hardship supporting the rationale to exclude complaints where the complainant is non-responsive.

***Recommendation 5:***

*AFCA should introduce and adopt a non-discretionary "Non-responsive Complainant" Rule requiring a complaint be closed in circumstances where neither the financial firm nor AFCA has been able to contact the complainant for more than 21 days.*

Additionally, AFCA should be required to place an embargo on reopening complaints closed due to the lack of response by the complainant unless there is a compelling valid reason the complainant was non-responsive, for example due to being hospitalised or overseas.

***Recommendation 6:***

*The "Non-responsive Complainant" Rule should provide the complaint will not be reopened by AFCA unless and except on evidence of a compelling valid reason explaining the complainant's genuine basis for not responding to communications.*

**Discretion not to consider complaints**

AFCA has discretion under Rules A.8.3 and C.2.1 to exclude a complaint and/or to not continue to consider a complaint, however ACDBA members report these discretionary rules are rarely applied despite clear evidence of complaints meeting the circumstances set out in Rule A.8.3 and/or in Rule C.2.2.

In particular Rule A.8.3 provides that it is inappropriate to continue to consider a complaint where:

a) *the complaint is without merit;*

b) *the Complainant has suffered no loss (or has been appropriately compensated for such loss and AFCA would not award any further amount); or*

c) *the Financial Firm has committed no error.*

The consequence of a failure to use these discretionary rules is that complaints are unnecessarily escalated through the AFCA process imposing an unreasonable and inappropriate financial impost upon the respondent financial firm by way of AFCA fees relating to the escalated stages of the complaint process.

Reference is drawn to Case Examples 1, 2, 4 and 6 in Appendix 3 – the discretionary Rules A.8.3 and/or C.2.1 should have been applied in each complaint given the circumstances of failure by the complainants to respond/participate.

Ideally, AFCA processes need to be improved to make best use of the available discretionary rules but if necessary, to ensure consistency, fairness and efficiency is delivered in the process for all parties, consideration should be given to making discretionary Rules A.8.3 and C.2.1 non-discretionary.

***Recommendation 7:***

*AFCA should review and amend its Operational Guidelines to ensure existing Rules A.8.3 and C.2.1 are consistently and appropriately applied. Further AFCA should regularly review and instruct Case Managers to remain vigilant and responsive to making best use of these discretionary rules.*

*AFCA should report on its use of each of its discretionary rules to provide transparency in the scheme's application of those rules, including the number of times each rule is exercised, and the number of times a request to use each rule has been rejected.*

*In the alternative, AFCA should consider updating Rules A.8.3 and C.2.1 to be non-discretionary so as to ensure best practice is maintained in the resolution of complaints meeting the criteria of those rules.*

ACDBA members have experienced situations where complainants and their third party representatives have refused to agree to resolution of a complaint solely to incur escalated AFCA fees to the financial firm.

It appears from anecdotal reports some third party representatives are escalating complaints without allowing any opportunity for genuine negotiation either at IDR or through the AFCA conciliation process, with the view that escalated costs will provide a commercial imperative for the financial firm to waive the debt.

An egregious example was reported to both AFCA and ASIC by a member with a relevant call recording, where a third party for-profit debt manager threatened to escalate all complaints involving the financial firm solely for the intention of causing commercial harm and expense to the financial firm.

Another member reports that on several occasions being informed by AFCA Case Managers that the complainant had no intention of coming to an amicable agreement and was willing to exploit the AFCA system and let the complaint process run all the way to Determination for the sole purpose of using the fee impost to penalise the financial firm. Despite this advice, none of those complaints were excluded by AFCA under its discretionary rules.

We submit it is incumbent upon AFCA to ensure its processes are not being weaponised in this way against financial firms as these coercive and intimidating behaviours will have an adverse impact upon financial firms, consumers and ultimately the wider economy.

A consequence of parties misusing AFCA in this way, is their unmeritorious complaints will clog the system and devalue the purpose and effectiveness of the EDR process - this is a major issue, given the importance of ombudsmen services to consumers.

For these reasons, it is appropriate that existing Rule C.2.2 which deals with examples where AFCA may consider excluding a complaint should be expanded to include the situation where a complainant or a complainant's representative unreasonably avoids resolution of a complaint principally for the reason of imposing higher costs on and/or reputational damage to the financial firm.

***Recommendation 8:***

*AFCA should expand Rule C.2.2 to include as an example the situation where a complainant or a complainant's representative unreasonably avoids resolution of a complaint principally for the reason of imposing higher costs on and/or reputational damage to the financial firm.*

### Credit default complaints

ACDBA on behalf of members has made multiple unsuccessful requests to AFCA to instigate a review of the process by which complaints relating to credit defaults are handled, including recommendations for AFCA to issue short form determinations for complaints solely relating to the removal of default listings.

By way of background, membership and access to credit reporting by financial firms as well as the operation of the credit reporting bodies is subject to the Privacy (Credit Reporting) Code 2014 (version 2) which includes specific obligations in relation to default information[7] and correction of information[8].

Credit providers are required to ensure that the credit information and default information recorded by them on credit files is properly recorded and maintained.

If credit files include incomplete or inaccurate credit information or omit relevant information, there is a very real risk to the integrity of the Australian credit reporting regime, which is relied upon by credit providers in meeting obligations pursuant to responsible lending legislation for credit approval decisions.

In FY2020[9], 27% of the total 16,465 complaints referred for resolution through IDR and EDR of ACDBA members were credit file listing related. The majority of those complaints were raised by for-profit third party debt managers which as part of their business model are taking unfair advantage of the no-cost AFCA jurisdiction to prosecute unfounded claims in the hope the financial firm will amend the consumer's credit record to remove a correctly listed default rather than incur escalating AFCA fees.

Debt managers utilising escalating AFCA complaint fees to achieve unjustified complaint outcomes is an issue that needs to be addressed for a variety of reasons including that this practice ultimately will undermine the integrity of the credit reporting system.

All consumers (including those who don't complain unjustifiably) will pay through higher prices and more limited availability of financial services when this sort of dysfunction and inefficiency exists unchecked in the system. AFCA has an important role to play to ensure the complaint resolution scheme is not being misused in this manner.

To achieve improvements in time and cost efficiencies and minimise the risk of complainants and their representatives taking unfair advantage of the free complaint scheme, short form determinations for complaints solely relating to the removal of default listings should be adopted by AFCA.

***Recommendation 9:***

*AFCA to introduce and adopt the use of a streamlined short form determination process involving minimal formality and costs for complaints solely related to the removal of credit default listings.*

[7] s9 of Privacy (Credit Reporting) Code 2014 (version 2)
[8] s20 of Privacy (Credit Reporting) Code 2014 (version 2)
[9] Australian Collectors & Debt Buyers Association Member Data Survey FY2020, www.acdba.com

### Definition of financial difficulty

In responding to AFCA in respect to specific complaint involving hardship and long term financial difficulties, ACDBA members have identified the AFCA Rules do not provide a definition as to what constitutes financial difficulty.

All parties to a complaint will be assisted by AFCA providing a clear and constant definition as to what constitutes financial difficulty so as to provide consistency and predictability to assist in achieving fair, efficient and timely resolution of complaints.

***Recommendation 10:***

*AFCA should update its Rules at Section E – Defined Terms to include a definition for Financial Difficulty.*

Another issue involving complaints where financial difficulty is raised, often for the first time is that AFCA only allows 21 days for the financial firm to work directly with the complainant to reach a resolution, whereas under the National Credit Act[10] a credit provider responding to a hardship notice pursuant to s72 has the following timeframes to respond[11]:

| **If the credit provider:** | **the provider has:** |
|---|---|
| has enough information to decide whether to change the contract | 21 days after the date of receiving the hardship notice |
| requests more information but *does not* receive the required information | 28 days after the date the information was requested |
| requests more information and *does* receive the required information | 21 days after the date the information was received |

***Recommendation 11:***

*AFCA timeframes should be amended to match the timeframes under the National Credit Act for responding to a hardship notice pursuant to s72.*

### Rules Review

Another concern raised by some ACDBA members is the situation of a financial firm asking for a Rules Review to establish whether the complaint is within AFCAs Rules or otherwise - the timeline for such consideration reportedly varies from one week to as many as eight weeks. There are consequences of a complaint being referred to the Rules Review process, which include but are not limited to:

- Collection activity is required to cease for all complaints lodged with AFCA, including any scheduled Court hearings. If a complaint is outside the Rules, the financial firm's will be disadvantaged by any Rules Review delay.
    - Where jurisdiction under the Rules is being questioned it is not reasonable to require a financial firm to discontinue scheduled court hearings and although the Rules allow a firm to seek AFCA permission to continue with such scheduled commitments, ACDBA members report in their experience such applications are not generally approved.

[10] *National Consumer Credit Protection Act 2009* (National Credit Act)
[11] https://asic.gov.au/regulatory-resources/credit/credit-notices-and-offences/faqs-dealing-with-consumers-and-credit/#responding-after: FAQs: Dealing with consumers and credit – Table 1

- Where the Rules Review decides the complaint is within Rules, AFCA progresses the complaint directly to Case Management resulting in the financial firm missing the opportunity to attempt resolution of the complaint through IDR processes as provided at Registration and Referral stage.

In the interest of fairness for all parties where AFCA's jurisdiction is uncertain, financial firms should not be required to unreasonably delay legal proceedings including scheduled court hearings while AFCA decides whether it has jurisdiction for the complaint within its Rules. Such a decision should be made within a finite period of say 14 days.

The onus on AFCA to make Rules Review decisions within 14 days would also be in the interests of complainants as delays can potentially disadvantage them with many complainants ceasing repayment of their account upon lodging a complaint - a delayed decision excluding the complaint may mean they are not in a position to then bring the missed payments up to date.

***Recommendation 12:***

*AFCA Rules should be amended to require Rules Review decisions to be finalised by AFCA within 14 days.*

Reference is drawn to Case Example 5 in Appendix 3 which illustrates the financial impact upon a financial firm when a matter was not closed down efficiently and appropriately at the Rules Review stage.

### 1.2 Are AFCA's processes for the identification and appropriate response to systemic issues arising from complaints effective?

Response:

Acknowledging AFCA's statutory obligation is to identify and report systemic issues primarily to inform regulatory and other bodies of matters where regulatory action may be required and given the likely serious ramifications for any financial firm reported by AFCA for a systemic issue, it is important AFCA's processes always be transparent, effective and accountable when identifying and responding to any potential systemic issues.

The absence of the right of review or external appeal process for financial firms in relation to the decisions and reporting of AFCA denies natural and procedural fairness for a financial firm in gathering an objective independent review of the purported facts giving rise to an alleged systemic issue.

Although ACDBA members have not to date reported any specific issues relating to the effectiveness of AFCA's processes for systemic issues, we submit it is essential a review or appeal process in relation to systemic issues be provided for in AFCA's Rules.

***Recommendation 13:***

*AFCA Rules should provide financial firms a review or appeal process in relation to systemic issues given the potential financial and reputational ramifications of an error in identification of a systemic issue by AFCA.*

**1.3 Do AFCA's funding and fee structures impact competition? Are there enhancements to the funding model that should be considered by AFCA to alleviate any impacts on competition while balancing the need for a sustainable fee-for-service model?**

Response:

Potentially AFCA's funding and fee structures are impacting competition in financial services. Larger incumbent operators are in a better position to absorb costs associated with any dysfunction or poor performance AFCA may create, while smaller operators (including some of ACDBA's members) operating on thinner profit margins may ultimately be forced out of the market, leading to a less competitive financial services market.

The maintenance of a single fee structure for complaints across all sectors of financial firms, ignoring the complexity or quantum of individual disputes has the consequence that those financial firms handling lower value accounts based upon relatively simple and well established financial agreements face disproportionately higher fees per complaint stage than those firms handling more complex and/or higher value disputes.

The simplistic "one size fits all" AFCA fee structure gives direct rise to inequitable cross subsidisation by financial firms in different industry sectors.

ACDBA members have generally reported their EDR costs with AFCA are more significant than those encountered with the predecessor schemes (most were previously members of CIO).

We note aggregated figures across ACDBA members reveal a low average value per account handled as only $5,184 (refer Appendix 2) - this average value being well below the quantum for accounts involved in disputes before AFCA from other financial service providers such as the banks, insurers and superannuation funds.

Funding arrangements for AFCA must accommodate the significant differences in how complaints are considered and determined. There are differences beyond just a simple breakdown of superannuation and non-superannuation complaints – there should be arrangements in place for appropriate and fair scale fees to apply for complaints from each of the financial services sectors including for example complaints relating to banking, insurance, investment products and debt purchasing.

Further under the current funding model for AFCA its fees are determined by the escalation of complaints – concern is raised as to whether this funding model favours escalation and in so doing effectively stands in the way of early resolution.

A funding model based on appropriate flat membership fees teamed with lower complaint fees would appropriately incentivise AFCA to use available discretionary rules and the proposed "Reasonable Offer" Rule for early resolution of complaints, thereby improving efficiencies and outcomes of the scheme for all parties.

***Recommendation 14:***

*AFCA must review and amend its funding and complaint fee structure so as to deliver fairness to financial firms and remove inequitable cross subsidisation of complaints having regard to the significant differences in the nature of financial products and the complexity of complaints.*

**Monetary jurisdiction in relation to primary production businesses**

**2. Do the monetary limits on claims that may be made to, and remedies that may be determined by, AFCA in relation to disputes about credit facilities provided to primary production businesses, including agriculture, fisheries and forestry businesses remain adequate?**

Response:

As ACDBA does not have direct experience in these types of complaints it offers no response to this question.

**Internal review mechanism**

**3. AFCA's Independent Assessor has the ability to review complaints about the standard of service provided by AFCA in resolving complaints. The Independent Assessor does not have the power to review the merits or substance of an AFCA decision. Is the scope, remit and operation of AFCA's Independent Assessor function appropriate and effective?**

Response:

The existing role of the Independent Assessor as noted is limited. Within this scope some ACDBA members have reported raising matters of concern about AFCA's service delivery to be considered by the Independent Assessor but received no follow up in response.

ACDBA does have a concern that to be truly independent, the Independent Assessor should not be appointed by AFCA's Board as is currently the situation under Ruled A.16.3 but instead should be independently selected and appointed by ASIC as the regulator.

***Recommendation 15:***

*AFCA should amend Rule A.16.3 to change the method of appointment for the Independent Assessor to be independently selected and appointed by ASIC as the regulator.*

Please see response to question 4 below in relation to the need for an independent review process in relation to the merits or substance of AFCA decisions.

**4. Is there a need for AFCA to have an internal mechanism where the substance of its decision can be reviewed? How should any such mechanism operate to ensure that consumers and small businesses have access to timely decisions by AFCA?**

Response:

Yes.

We submit it is imperative in the interests of procedural fairness that AFCA introduce a rule allowing financial firms, consumers and small business the right to seek a review of the merits or substance of an AFCA decision.

This is particularly relevant in circumstances where the party seeking the review regards there has been an erroneous decision. The importance here is not only in respect to an individual matter, but also to mitigate possible significant damage for other complaints caused by reliance upon precedents set by erroneous and uncorrected determinations.

Just as important as an internal review mechanism is the need to include a right of review or external appeal process for financial firms, consumers and small business in relation to decisions which are considered wrong in law and/or fact and further to provide for transparency in reporting and disclosure of the outcomes of such appeals and reviews.

The absence of an external appeal process for all complaints and not just superannuation complaints we respectfully submit directly amounts to an inherent lack of fairness and accountability for the AFCA process.

There may be significant financial and reputational consequences for a financial firm affected by a decision considered wrong in law and/or fact, as decisions are binding on financial firms whereas complainants are not bound to accept AFCA decisions.

***Recommendation 16:***

*The Treasury Laws Amendment (Putting Consumers First - Establishment of the Australian Financial Complaints Authority) Act 2018 be amended to provide that a party to a decision made by AFCA may appeal to the Federal Court on a question of law and/or fact.*

## Concluding comments

In this submission, on behalf of our members ACDBA has worked through a number of their concerns with the current AFCA processes and offered considered recommendations as to how the operation of ACFA can be amended and enhanced so as to facilitate the resolution of financial services complaints in a way that is fair, efficient, timely and independent.

Many of the concerns financial firms raise about the AFCA process involving inefficiencies, lack of fairness and escalation of complaints without likelihood of a better outcome for the complainant but attracting increased fees for financial firms would be addressed by the adoption of Recommendation 1 in this submission, namely the creation of a non-discretionary “Reasonable Offer” Rule.

Timely resolution of complaints is the most important factor in assisting persons in genuine financial hardship.

The adoption and use of a non-discretionary “Reasonable Offer” Rule by AFCA will operate to ensure that complainants have an incentive to accept reasonable offers, and will support expeditious outcomes of the real issues in dispute.

To ensure fairness and due process, the basis for a complaint should not be expanded by AFCA in any advocacy or advisory role to complainants but instead AFCA must deal with the complaint as originally lodged.

This focus together with the adoption and use of a non-discretionary “Reasonable Offer” Rule will ensure financial firms are incentivised to provide reasonable offers to achieve certainty in outcomes thereby delivering AFCA efficiencies and outcomes for all parties to a complaint on a fair and impartial basis.

## Contact

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# Appendix 1 - Members of Australian Collectors & Debt Buyers Association

- Axess Australia Pty Ltd
- CCC Financial Solutions Pty Ltd
- CFMG Pty Ltd
- Charter Mercantile Pty Ltd
- CollectAU Pty Ltd
- Collection House Limited (ASX: CLH)
- Complete Credit Solutions Pty Ltd
- Credit Collection Services Group Pty Ltd
- Credit Corp Group Limited (ASX: CCP)
- Lyndon Peak Pty Ltd t/as Access Mercantile Services
- PF Australia Pty Ltd
- PRA Australia Pty Ltd
- Prushka Fast Debt Recovery Pty Ltd
- Shield Mercantile Pty Ltd

# Appendix 2 - Debt Purchasing explained

Debt sale contracts exhibit the features of outsourced service provision rather than asset divestment - the contracts contain substantial ongoing conduct obligations and restrictions imposed on the purchaser, which are supported by warranties, indemnities and other potential penalties. The conduct obligations deal with matters such as ongoing compliance with laws, codes, guidelines, data security, principles of fairness and policy directives of the seller.

These contractual requirements are supported by ongoing reporting obligations for matters including breaches, complaints and the identification of customers in sensitive circumstances. There are provisions for extensive auditing, on-site visits and regular review meetings to share emerging issues. Sellers retain substantial discretion to recall individual customer accounts at any time.

The contractual elements create an outsourcing relationship granting the seller substantial control over the ongoing conduct of the purchaser and the experience of individual consumers.

It is appropriate to note ASIC as the regulator for the financial services industry provides guidance in respect to conduct relating to a debt[12]:

> *A creditor may also remain liable for conduct regarding a debt despite having sold or assigned the debt. Liability will generally remain for misconduct occurring before the sale or assignment of the debt.*

Accounts assigned to debt purchasers by original credit providers typically involve debts where an acceleration clause in the financial agreement has been triggered by the consumer's default in making repayments. Once a debt has been accelerated, the amount owing is immediately due and payable.

Many, if not most consumers with accelerated debts are likely to be in hardship giving rise to complex, contested and unresolved issues.

Debt purchasers are specialists in dealing with and managing hardship as they almost exclusively interact with customers in some form of financial difficulty.

Debt purchasers do not establish separate hardship teams and do not need to implement protocols and systems to identify hardship. Rather, they proceed on the basis that every customer is in hardship. This means that every customer receives an empathetic and understanding experience designed to reach mutual agreement on a sustainable repayment arrangement.

The debt purchase business model includes two key features being:

a. The model is uniquely suited to the promotion of affordable and flexible long-term payment arrangements which most effectively respond to individual customer circumstances

b. Debt purchasing involves the assignment of permanent tenure to defaulted loans at prices which represent a substantial discount to the face value outstanding

The benefit of these two features is allowing debt purchasers to agree to longer-term payment arrangements with lower and more affordable repayments for the customer in hardship and to take a patient approach to understanding and accommodating individual customer circumstances.

[12] Equifax Default Information Guide version 23.0 - February 2019

Each year ACDBA members and other industry firms participate in a data survey to provide industry wide demographics. Reviewing the data survey for FY2020 reveals there were 2.99 million accounts with a total face value of $15.5 billion under collection that had been purchased from originating credit providers.

These aggregated figures reveal a low average value per account of only $5,184.

Debt purchasers handle a range of debt values in their portfolios from lesser amounts in respect to telecommunication debts through to larger amounts for higher value credit card and other banking product debts.

Survey respondents in FY2020, reported for both debt purchase and contingent collections collecting $2.37 billion of defaulted consumer credit obligations, restructuring $2.86 billion into sustainable repayment arrangements together with a $1.46 billion in hardship arrangements and waiving a further $31.3 million owed by vulnerable customers in financial hardship.

# Appendix 3 - Deidentified case examples

**Example 1: AFCA Case Number 644699**

Case summary:

- Customer (B) was a joint Guarantor with former wife (A) for a loan. Legal proceedings were brought against A & B following unsuccessful debt recovery attempts.
- B lodged a complaint with AFCA against the Financial Firm (FF) in early June 2019 after being served with the Court documents detailing: he was divorced from A; his divorce settlement included a Binding Financial Agreement (BFA) releasing him from the debt; A continued to acknowledge responsibility for the debt and FF should only pursue her.
- Legal proceedings against B were suspended upon receipt of the AFCA complaint.
- FF negotiated with B in an attempt to resolve the complaint resulting in B agreeing that the BFA did not bind the FF and advising that he was in financial difficulty.
- No resolution of the complaint was reached with B and FF updated AFCA which then progressed the complaint to Case Management stage.
- Case Manager confirmed AFCA could not look at the liability perspective due to the BFA and agreed with FF on this point. He further advised having informed B of this and that it was something B needed to deal with in the Family Court with A. AFCA reached agreement with B to assist in dealing with his financial difficulty.
- AFCA moved the complaint to the next stage (Case Management 2) and organised a conciliation call.
- AFCA requested from FF further information
- FF provided the requested information and reiterated a willingness subject to an SOFP and supporting documents from B, to resolve his complaint by way of:
    - Subject to judgment against B to secure and protect FFs rights in relation to the deb and acceptance of an offer to pay the judgment debt by way of instalments, FF offered a moratorium on the enforcement of the judgment against B for an agreed period of time.
- SOFP was completed by B with AFCA over the phone and forwarded to FF with advice B was unavailable to attend the conciliation call and further would not be available to attend one in the future.
- FF regarded the information in the SOFP was inaccurate and incomplete and that this should have been evident to AFCA.
- Additional documentation was requested and provided to AFCA.
- FF made a further attempt to resolve the complaint direct with B, with a copy of the communication provided to AFCA together with an advice that B was not meaningfully engaged in the complaint process.
- AFCA's Case Manager advised whilst appreciating FFs concerns, AFCA was unlikely to exercise its discretion to discontinue the case.
- AFCA advised FF it held information regarding B's personal situation which it would not be sharing with FF, but did mean AFCA would provide more time to B to respond.

- FF continued to attempt to resolution including a discounted settlement direct with B without success.
- The Case Manager provided his Preliminary Assessment in November 2019 which was in FFs favour. The Case Manager noted in relation to the discounted settlement offer to B that yielded no response, AFCA would not comment other than noting that it was a substantial reduction of the debt but they would focus on B's ability to pay the full amount.
- FF accepted the preliminary assessment.
- B rejected the Preliminary Assessment and the complaint was referred to the Ombudsman for a determination.
- In March 2020 FF received the Ombudsman's Determination that was in FF's favour.
- On 16 April 2020 FF was advised AFCA had closed its file at the status "Closed Decision" and recorded the outcome as "Discontinued" and the outcome type(s) as "Failure to Respond (Discontinued)" as B had not responded to the Determination.

Issues

- The complaint related to a dispute about an issue (the BFA) that AFCA said it would not investigate.
- The complaint then turned into a financial hardship matter.
- AFCA's unwillingness to use its discretion to discontinue the complaint due to the complainant's non-engagement.
- The Financial Firm's inability at any time to make an informed decision about the complainant's financial position despite AFCA apparently holding information that could not be divulged showing the complainant vulnerable.
- The offers made by the Financial Firm were objectively reasonable in the circumstances.
- The offers were not responded to by the complainant.
- AFCA would not comment or make any recommendations to the complainant about the numerous offers for settlement put forward by the Financial Firm to the complainant.
- The AFCA preliminary assessment and the Ombudsman's determination were less favourable to the complainant than any of the prior offers provided by the Financial Firm.
- It was open to, and reasonable for AFCA, to conclude that the offers(s) were reasonable based on what AFCA knew (and certainly immediately prior to or immediately after the preliminary assessment).
- The Financial Firm incurred substantial fees with the matter going all the way to Determination when it appeared appropriate at various times that AFCA should have discontinued the complaint.
- The Determination dealt with the BFA (which AFCA said it would not initially look into) and also commented on the financial position of the complainant (not part of the initial complaint and not supported in its entirety or at all as AFCA noted at various times during the complaint resolution process).
- If the proposed "Reasonable Offer" Rule had existed and been applied, the outcome for B would have been better and the outcome for the Financial Firm more expedient and ultimately considerably less in AFCA fees.

**Example 2: AFCA Case Number 723012**

Case summary:

- AFCA complaint lodged by a third party representative (TPR) seeking the removal of a default listing for his client (C).
- FF's IDR response outlined the default listing was valid but FF would assist C with meeting his financial obligations relating to the account (by way of settlement, arrangement or hardship variation).
- Complaint progressed to Case Management stage (CM1).
- AFCA requested documentation from FF which was provided.
- AFCA transferred complaint to Financial Difficulty as C was impacted from COVID 19 and was seeking financial assistance
- AFCA then requested additional documentation from FF
- FF made a further offer based on the advice C was in financial difficulty due to COVID-19 which AFCA agreed to forward to TPR and determine whether conciliation needed to occur.
- AFCA advised C unable to attend conciliation but TPR would attend as representative.
- At conciliation TFR claimed to be unaware of C's position regarding FF's offers.
- C and his friend (Friend) (a previously appointed third party representative but not TPR) contacted FF. They were unaware of the AFCA complaint and FF's IDR offer.
- FF notified AFCA of C being unaware of the AFCA complaint, unaware of who lodged the complaint, unaware of FF's IDF offer and that C appeared receptive and acceptable to the resolution proposed by FF.
- TPR did not accept FF's offer on behalf of C.
- In response to the contact by TPR, FF brought to the attention of AFCA that C had already paid a substantial proportion of the debt and was prepared to pay the balance and that TPR was unaware of this and at odds with the information provided by C and Friend. Additionally FF raised concern the signature provided to support TPR's authority with AFCA did not appear to match the signature of the previous authority for Friend held by FF.
- C subsequently paid the balance and FF commenced the process of removing the default listing.
- FF again raised with AFCA concern about the legitimacy of the complaint and of TPR to act as an authorised representative of C. FF raised with AFCA the complaint should be (at a minimum) rolled back to an IDR stage as only one call needed to resolve the matter once the customer was aware of FF's offer and the involvement of TPR was removed.
- AFCA sought instructions from TPR as to whether he wished to discontinue the complaint before closing the case. Complaint was closed at Case Management 1 stage.

Issues

- The complaint in and of itself would have been resolved at an IDR stage had the consumer been aware of the complaint and the Financial Firm would have incurred AFCA fees at the lowest level rather than incurring the quantum of fees invoiced at the escalated complaint stage.
- Despite indications the consumer was unaware of the AFCA complaint and unaware of the third party representative having any authority on his behalf, AFCA Case Manager continued to engage with the third party representative rather than directly with the consumer.

**Example 3: AFCA Case Number 763003**

Case summary:

- Customer with overdue credit card facility had been non-responsive to contact for several years. Legal proceedings had recently been commenced by the Financial Firm (FF).
- Customer lodged complaint with AFCA which advised *"(Customer) would not have been able to service the debt"* due to a number of personal issues. The requested outcome was *"to suspend enforcement proceedings. And contact the complainant in writing confirming legal proceedings are on hold"*.
- Legal proceedings placed on hold upon notification of complaint.
- FF provided written responses to the customer and AFCA including requested documentation and attempted to speak with the customer to pursue IDR without success. SMS sent to customer - a brief response was received.
- Case escalated to Case Management with no reasons provided.
- AFCA reported customer likely to settle under a payment arrangement and would pursue a separate complaint against the original credit provider.
- AFCA scheduled a conciliation call and requested FF provide a further 21 items of additional documentation within 7 days. Customer was also asked to provide additional documentation.
- FF raised concerns regarding the additional documentation request by AFCA and queried the purpose and value of the conciliation call.
- AFCA cancelled conciliation call and provided an extension of time for additional document provision.
- AFCA discontinued the complaint with the explanation "*Failure to Respond*" by *X*.

Issues:

- AFCA provided no reason for escalation to Case Management, instead providing several either/or possibilities.
- The request for additional documentation in only seven days, was unreasonable.
- Some of the documentation requests by AFCA were to give context around matters which were not relevant to the complaint investigation (e.g. information on how the customer used the credit card), and in one aspect requesting information that would breach the Privacy Act, namely the provision of information on any other accounts the customer held with the original creditor.
- Proposal by AFCA for a conciliation call would not have been helpful to resolve the complaint as complainant not actively participating in complaint resolution process.
- Customer had been continually unresponsive over the carriage of the account.
- The request for additional information caused the Financial Firm a considerable expenditure in time and resources that could have been reduced or avoided had
- AFCA did not seek an explanation for why the customer did not agree with the Financial Firm's initial complaint response, but made assumptions on a broad range of matters, many of which were either already explained or else disputed, and none of which had been raised by the customer with the Financial Firm direct.

**Example 4: AFCA Case Number 715768**

Case summary:

- Customer has two accounts with an electricity provider (EP) and lodged an AFCA complaint disputing the first account as fraudulent, wanting a settlement for the second account and asking for the default listings removed for both accounts.
- EP requested both accounts be recoursed (transferred back from the financial firm to the originator), which was approved by AFCA. The accounts were recoursed and a letter issued by FF to the customer advising same and confirming the default removals.
- Customer requested an amendment to the letter, which was issued by FF.
- Case then progressed to Case Management.
- Customer requested confirmation from EP that it would not resell the account to FF.
- Customer then confirmed the default listings had been removed and he was satisfied with the outcome but wanted to wait for his finance with his bank to go through before closing the complaint.
- It then remained open for another 3 ½ months with multiple follow-ups before the account was finally closed from the original resolution.

Issues:

- This complaint was escalated to AFCA Case Management despite a resolution of the initial complaint being achieved during the IDR process. This escalation increased the AFCA fee charged to the Financial Firm.
- The complainant confirmed he was satisfied with the outcome but AFCA kept the complaint open for a further 3 ½ months until the complainant agreed to close it after his unrelated financial transaction was completed.
- AFCA should have closed the complaint pursuant to Rule A.8.3.(b) and not kept it open for a further 3 ½ months.

**Example 5: AFCA Case Number 758020**

Case summary:

- Customer had a joint finance company (FC) account for a camper trailer. Customer lodged a complaint asking for her liability to be historically removed or for the account to be refinanced solely in the other joint debtor's name.
- There had previously been an IDR complaint where the Financial Firm (FF) had removed the default listing and offered to de-identify her contact details and not pursue her for the account.
- The complaint was sent for Rules Review as neither FF nor AFCA were able to provide requested outcome.
- Escalated to Case Management for further information and immediately escalated to Preliminary Assessment.
- Preliminary Assessment confirmed the requested outcome was unable to be provided and AFCA supported FF's offer to de-identify the customer's contact details and not pursue her for the account.
- Customer did not accept this response and account was escalated to Decision where the same outcome was reached.

Issues:

- The Rules Review should have determined the complaint was outside of AFCA's jurisdiction as the remedy requested could not be provided either by the Financial Firm or by a decision from AFCA.
- The escalation ultimately to Decision greatly increased the AFCA fee charged to the Financial Firm, when the matter should have been excluded at the Rules Review stage.

**Example 6: AFCA Case Number 734064**

Case summary:

- Customer raised AFCA complaint as he believed that he was involved in a class action with a bank (Bank). This was advised by the customer to the Financial Firm (FF) prior to the AFCA case and was placed on hold awaiting the customer providing further information, which was never received.
- No information or correspondence was received from the customer to any of FF's correspondence throughout the AFCA process.
- No information was ever provided by the customer to AFCA during this complaint either.
- FF advised AFCA in its Registration and Referral response that the customer had mentioned the "class action" previously but provided no further evidence and FF at that time believed this to be a stalling tactic as it had commenced legal proceedings on the account.
- The account then went through to Preliminary View with only the same information as previously provided by FF with AFCA confirming that there was no evidence to substantiate any class action and FF had acted in accordance with the Debt Collection Guidelines.

Issues:

- This complaint was escalated to AFCA Preliminary View despite there being no new information provided by either party and given the non-response by the complainant. This escalation increasing the AFCA fee charged to the Financial Firm.
- The complaint should have been closed by AFCA during Registration and Referral under its Rule A.8.3.(a) as it was without merit or alternatively under Rule A.9.5 due to the failure of the complainant to respond with requested information.

**Example 7: AFCA Case Number not supplied**

Case summary:

- Complaint was made to AFCA in January 2019.
- The complainant disputed the assignment of the debt (on the basis she had not provided consent).
- In March 2019 the Financial Firm (FF) offered to reduce the current balance of the debt to $13,600.
- In April 2019 AFCA issued a Preliminary Assessment finding the complaint was not made out and the complainant was liable for the debt.
- In December 2019 AFCA issued a Determination upholding finding that complainant was liable for full outstanding debt.

Issues:

- The complaint was a very straightforward one but still took nearly 11 months to resolve.
- The Determination in December that the complainant was liable for the full debt left her worse off than the offer made by the Financial Firm in March.
- Substantial AFCA fees of $8535 were incurred by the Financial Firm.