

To: [REDACTED] [AFCA Review](#)
Subject: RE: AFCA Review Submission
Date: Friday, 26 February 2021 6:53:42 PM
Attachments: [REDACTED]
Importance: High

As per attached declined letters from AFCA received in Nov, 2018 and FOS in Dec, 2017, we have been betrayed and no longer trusting an Australian consumer protection system since both of our complaints relating to general insurance Small Business Product policy held in place with QBE were declined. Due to no sufficient funding to pursue this matter legally against QBE or to legally seek further clarifications regarding AFCA jurisdictions, please consider this matter during AFCA review – failing to protect the same Australian consumers which were failed to be protected by previous FOS.

Please contact me if further documentation required to clarify nature of our complaint against QBE who declined all our claims for material losses between June, 2016 – Nov, 2017.

Kind regards,

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

23 November 2018

[REDACTED]
[REDACTED]

Dear [REDACTED]

[REDACTED] [REDACTED]
[REDACTED] [REDACTED]
[REDACTED] [REDACTED]

I refer to the complaint you recently lodged.

We respectfully advise you that AFCA cannot consider the complaint because it falls outside of our jurisdiction. In this letter I set out my understanding of the complaint and why we cannot consider it.

My understanding of the complaint

You lodged a claim under your Business Insurance Policy number EGU018701BPK for property damage and personal injury caused to a third party by your business.

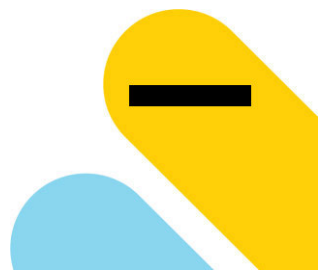
You stated the following:

- you believe your insurance policy covered you for the loss and damage caused by your business to the third party's property
- property/possession will be restored to the point of condition it was before the event
- you want compensation for the loss and damaged caused to the third party and funds for legal actions.

Why we cannot consider the complaint

It appears that AFCA (previously known as FOS) already dealt with the issues you have raised in your current complaint under reference 507298 in December 2017.

In 2017, we advised you that the reason we could not consider your complaint because your dispute was lodged under the Broadform liability.



Which means that if a contract of insurance is in regarding legal liability (including public liability and products liability), we cannot consider the complaint.

Under section C.1.4, AFCA must exclude a complaint about a General Policy other than a:

- Retail General Insurance Policy;
- Residential Strata Title Insurance Product;
- Small Business Insurance Product;
- Medical Indemnity Insurance Product; or
- Title Insurance Policy.

In the context of your dispute, we need to first assess whether your Business Insurance Policy falls within the defined meaning of *Small Business*. The term Small Business is defined under section E of AFCA rules and excludes claims under Legal Liability.

Consequently, from the information provided, your complaint does not raise any new concern or facts additional to those dealt with previously and there is nothing to suggest that the outcome of the earlier complaint is not fair in all the circumstances.

The complaints that AFCA can consider are set out in our Rules. My decision about the complaint is referred to in paragraph C1.4 and C.22 of our Rules. If you would like more information you can find our Rules on our website at www.afca.org.au/rules. I have attached a fact sheet with further information.

Your options

If you have any information which may change my view, please write to me within 30 days. If I do not hear from you by **31 December 2018** I will close our file.

Alternatively, you may wish to obtain independent legal advice about any other options available to you. I have provided some referral information for you below;

Insert relevant referral information for complainant here

Any questions?

If you have any questions or want more information about our approach to your complaint, please quote the case number when you:

- call: 1800 931 678
- Email: [REDACTED]

Yours sincerely



Case Officer
Australian Financial Complaints Authority



When AFCA cannot consider a complaint

This fact sheet gives information about your options when we cannot consider a complaint.

AFCA cannot consider my complaint – what does this mean for me?

When a complaint falls outside our jurisdiction, we do not have the power to consider it. You may still be able to pursue your complaint somewhere else. For example, you might be able to take your complaint to court instead. You may want to seek legal advice about your options. More information is below.

How does AFCA decide whether it can consider a complaint?

Our jurisdiction is set out in our Rules. Our Rules set out what kinds of complaints we can consider and how we consider them.

After you lodge your complaint, we review whether our Rules allows us to consider it. If we can't consider your complaint we will tell you why.

If we are not able to consider your complaint, we do not make any assessment about the merits of the complaint.

What should I do next?

When we decide we cannot consider your complaint, you can:

- not respond and accept this
- object and provide new and relevant information which you think may change our view
- seek legal or other advice about your options outside AFCA.

Accept our view

If you accept that we cannot consider your complaint, you do not need to do anything. We will close your file after the objection period ends.

Object

You can object to our view within the time set out in our letter.

If you object you should explain why and provide any new and relevant information to support your objection. It is not necessary to repeat things you have already told us or provide documents you have already provided.

If your objection makes us change our view, the complaint may progress through the AFCA process. If it does not make us change our view, we will write to you letting you know why.

Seek legal advice

You may want to contact your own lawyer to discuss your options outside AFCA.

Alternatively, our website has links to the following services, which may be of assistance to you:

- National Debt Helpline
- Community legal centres
- Insurance Law Service
- Consumer credit legal centres
- Legal Aid commissions

afca.org.au/what-to-expect/other-places-to-get-help/

Why did my financial firm tell me to contact you?

Financial firms that are members of AFCA must refer people with unresolved complaints to AFCA. AFCA then assesses whether the complaint is one it can consider under its Rules.

What is AFCA's role?

AFCA is an independent complaint resolution service offered as a free alternative to the courts. Our role is to investigate and resolve complaints about financial firms that are AFCA members that come within our Rules. You can find out more about AFCA's role on our website: afca.org.au/what-to-expect/consumers/

AFCA does not regulate the Australian financial services industry. The regulator is the Australian Securities and Investments Commission (ASIC). You can find out more about ASIC's role on its website: asic.gov.au/for-consumers

Want more information?

AFCA Rules and Operational Guidelines: afca.org.au/about-afca/rules-and-guidelines/
Publications: afca.org.au/about-afca/publications/

29 December 2017

[REDACTED]
[REDACTED]

Dear [REDACTED]

[REDACTED] [REDACTED]
[REDACTED] [REDACTED]
[REDACTED] [REDACTED]

I refer to the dispute you lodged against Elders Insurance.

Your dispute has been allocated to me to determine if it is a dispute that the Financial Ombudsman Service (FOS) Australia can consider. Our Terms of Reference set out the types of disputes that we can consider.

We cannot consider the dispute

I am writing to let you know FOS cannot consider the dispute because your policy is not a general insurance product for the purposes of our Terms of Reference.

My understanding of the dispute

You lodged a claim under your Business Insurance Policy number EGU018701BPK for the alleged property damage and personal injury caused to a third party.

You want your claim approved and for your policy to cover the claim brought against you by the third party.

Why we cannot consider the dispute

Paragraph 4.3 of our Terms of Reference sets out limitations regarding the types of Retail General Insurance Products we are able to consider disputes about.

4.3 FOS may only consider a Dispute in relation to a General Insurance Policy that is a:

- a) Retail General Insurance Policy;*
- b) Residential Strata Title Insurance Product;*
- c) Small Business Insurance Product;*
- d) Medical Indemnity Insurance Product.*

With the exception of medical indemnity insurance, each of the policy types in paragraph 4.3 of our Terms of Reference is a defined term, meaning it is defined

in paragraph 20.1 of our Terms of Reference. In considering our jurisdiction, we need to apply the defined term that is relevant to your dispute.

In this instance we consider whether your Business Insurance Policy falls within paragraph 4.3(c) of our Terms of Reference and within the definition of a 'Small Business Insurance Product'.

Where the small business dispute is not against a general insurance broker, the term 'Small Business Insurance Product' is defined in paragraph 20.1 of our Terms of Reference as a policy that provides cover in respect of certain specified matters.

"Small Business Insurance Product" means:

For disputes lodged on or after 1 January 2016, the following:

...

b) for other types of Disputes involving a Small Business – a policy or part of a policy that provides insurance cover (whether or not the cover is limited or restricted in any way) in respect of one or more of the following:

...

but excluding cover in relation to any of the following:

- (x) Contractors All Risks;*
- (xi) Fidelity Guarantee;*
- (xii) Legal Liability (including Public Liability and Products Liability);*
- (xiii) Professional Indemnity; and*
- (xiv) Industrial Special Risks.*

This means that if a contract of insurance relates to cover in respect of one of the excluded interests highlighted above, it is not a Small Business Insurance Product for the purposes of our Terms of Reference.

In this instance, the claim is lodged under the Broadform Liability section of your policy. As a liability claim falls under one of the excluded interests above, FOS is unable to consider the dispute further.

The disputes that FOS can consider are set out in our Terms of Reference. My decision about the dispute is in accordance with paragraph 4.3 of our Terms of Reference. If you would like more information you can find our Terms of Reference on our website at www.fos.org.au/tor.

If you disagree?

If you have any information which may change my view, please write to me within 30 days.

If I do not hear from you by **28 January 2018** I will close our file and we will not consider the matter further.

Alternatively, you may wish to obtain independent legal advice about any other options available to you. For example, you may choose to contact your nearest Community Legal Centre on (07) 3392 0092 or by visiting www.communitylegalqld.org.au.

Any questions?

If you have any questions or want more information about our approach to your dispute, please quote the case number when you:

- call: 1800 367 287

- [REDACTED]

Yours sincerely

[REDACTED]

[REDACTED]

Case Officer

Financial Ombudsman Service Australia

[REDACTED]