

26/03/2021

AFCA Review Secretariat
Financial System Division
Treasury

By email only: AFCAreview@treasury.gov.au

Dear Secretariat

RE: Review of the Australian Financial Complaints Authority - Submission

We refer to the above matter, and thank you for the opportunity to provide a submission to your review.

Should you wish to discuss this document, please feel free to contact Mr Jacob Maiore on [redacted] or [redacted].

Regards,

For and on behalf of Axess Group of Companies

Jacob Maiore
Executive Director
Encl.

Introduction

1. Axess Group of Companies is a privately-owned company located in Brisbane, Queensland, specialising in Debt Purchasing, Portfolio Management, and Legal Recoveries. Axess Group of Companies has developed from the Austwide Group of Companies originating in Brisbane in 1986. We initially specialised in process serving and Private Investigations before expanding in to debt recovery in 1993, and further becoming one of the first companies involved in debt purchasing in Australia.
2. Axess today is a fully licenced Debt Collection Agency, being the holder of an Australian Credit Licence, and memberships to (amongst other things) the Institute of Mercantile Agents, and Australian Collectors & Debt Buyers Association.
3. Axess is made up of numerous entities, being:
 - Axess Group Pty Ltd; and
 - Axess Australia Pty Ltd; and
 - Axess Debt Management Pty Ltd; and
 - Axess Recoveries and Collections Pty Ltd; and
 - ARC Collections Pty Ltd. (collectively **Axess Group**)
4. Axess Group has a proud history of being actively involved in the debt collection industry since early on, and encourages any improvements that have been, and can be, made to the industry to improve consumer experience, and encourage all stakeholders to ensure compliance with the relevant laws, industry guidelines, and good industry practice.
5. Axess Group proudly employs between 20 and 30 staff at any one time, and pride ourselves on constantly improving and moving with an exciting and constantly changing industry.

Overview

6. The Terms of Reference for the review of the Australian Financial Complaints Authority (**AFCA**) pose the question as to if AFCA have been effective in resolving complaints in a way that is fair, efficient, timely and independent. Regrettably, Axess would submit that despite what appears to be AFCA's best endeavours, the answer to this question is currently no.
7. This is due to the fact that, in Axess' experience, AFCA:
 - have expanded the administrative burden of complaints¹, thus reducing efficiency, and timeliness; and
 - have been extremely unlikely to use their discretionary powers in the Financial Firm's favour², thus reducing fairness; and
 - have impermissibly read in to and/or expanded complaints in a light which favours the complainant³, thus reducing efficiency, fairness, timeliness, and independence.
8. With the greatest respect to the AFCA Scheme, it would appear that they have misinterpreted their role as an independent Ombudsman Scheme, and instead appear to an observer to consider themselves a consumer advocate scheme. This can be seen in AFCA's focus on its awarding in the consumer's favour in their media releases⁴ and its history of expanding on complaints in the consumer's favour by investigating matters which have no relation to the text of the complaint⁵.

¹ See for instance service complaint reference 773322 in relation to complaint reference 763003

² See for instance complaint reference 761128 where a Debt Management Firm made a complaint about Axess' refusal (per ASIC advice) to deal with them as they were charging a fee for service while claiming the consumer was in severe financial hardship.

³ See for instance complaint reference 777315 where it was asserted the complaint was in relation to financial hardship where neither the text of the complaint, or the complainant himself reflect this, and AFCA have taken the word "arrangement", out of context, to mean that the complaint was about same.

⁴ See for instance AFCA Media Release: [AFCA Member Forums: two years of operations, future of membership experience](#)).

⁵ See footnote 3

9. Axess submits that, considering the above, the AFCA Rules should be amended to:
- limit AFCA's discretion and instead require AFCA to exercise its power in the Financial Firm's favour when appropriate; and
 - in an effort to avoid AFCA making matters overly complex, allow for Financial Firms to make a reasonable offer to resolve the complaint⁶; and
 - require AFCA to adhere to the text of the complaint lodged, and not expand on the complaint without the Complainant and Financial Firm having an opportunity to comment.
10. We further submit that AFCA's internal policies and template documents should be reviewed so as to reduce the administrative burden of AFCA's information requests.

Response to Questions Raised

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

11. For the reasons addressed above (at p.6-7) Axess submit that AFCA are not currently meeting this statutory objective. Axess would also like to note that they have read with pleasure, in draft, the submission of CCC Financial Solutions Pty Ltd, and would respectfully agree with and support their points in relation to this matter. Specifically, Axess would like to respectfully agree with our colleagues, at p.5 and p.5.1 of their submission and consider them to be another example of our points raised as 7.1 above.
12. Axess further submits that AFCA's process, which does not allow for the review of Financial Firm's IDR or EDR responses, prior to information gathering at the Case Management stage, and does not seek feedback from the Complainant as to why they disagree with the Financial Firm's assessment, goes against government policy, in that, as Financial Firms gain no benefit from investing time and resources in to their IDR and EDR responses (such as the early and easy resolution of complaints, or gaining a better understanding of the complainant's disagreement/argument), it does not encourage Financial Firms to better expand and tailor their IDR or EDR responses, and disadvantages both consumers and Financial Firms. Axess would submit that AFCA should have a practice whereby the Complainant should be required to comment on the Financial Firm's IDR response, and to review the Financial Firm's IDR, prior to requesting further information, so as to reduce the administrative burden on Financial Firms.
13. Axess notes that its complaint costs have risen in the past 3 years from \$41,365.00 regarding 50 EDR complaints in the 2018 Financial Year (approx. \$827.30 per complaint) to \$57,545 regarding 32 EDR complaints in the 2020 Financial Year (approx. \$1,798.28 per complaint). This means that in terms of both the cost of the Scheme, and the administrative burden imposed by unhelpful requests for information, the AFCA scheme appears to not be operating efficiently. The mischief here being that as the costs for Financial Firms increases, the willingness to assist consumers by offering settlements and the like becomes uneconomical, and unlikely, and further the cost is ultimately passed on to consumers by an increase in the cost of credit overall.
14. Before moving from this topic, Axess wish to observe generally that its leadership team and staff have received numerous reports from consumers that Financial Firms are increasingly choosing the "commercial option" and removing disputed default listings from the Credit Reporting Bodies so as to avoid the cost of complaints being raised with AFCA by Debt Management Firms (and in a small respect, consumers). Axess submit that this is, in its view, direct evidence of the cost of complaints directly impacting consumers. This follows because: the removal of otherwise correct default listings inevitably leads to data unreliability, which in turn makes creditors unlikely to rely on the information contained in the consumer's credit report, and instead act in a more risk adverse way when assessing lending. Axess submit that, as in its experience this is a new practice, there may be some force behind

⁶ See for example CIO Rule 20

an asserted correlation between the rising cost of complaint handling, and a creditors reluctance to adhere to their responsibility to only amend data on a credit report which is reasonably believed to be incorrect.

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

15. Axess submit that AFCA's dispute resolution approach generally produces unreliable and inconsistent results. This is due to AFCA's practice of allowing complaints to develop over time (e.g. allowing new claims to be introduced at any stage of the process, impermissibly reading in to the text of complaints, etc.), thus creating a "moving target" for Financial Firms, who are unable to develop consistent IDR practices, and unable to approach the AFCA process with assurance as to what "case" it is being asked to meet. Axess would submit that this practice should immediately cease so as to provide consistency to Financial Firms and Complainants alike.
16. Axess further notes that in its experience, AFCA's use of its ability to award "non-financial loss" is inconsistently applied, and as such, it is difficult to develop offers in an IDR or EDR context that adhere to likely AFCA outcomes. Axess submit that this will inevitably lead to Financial Firms being unlikely to make reasonable offers at an early stage so as to reduce complaint volumes and encourage consumer confidence.
17. Lastly, Axess submit that there appears to be a difficulty of understanding at the lower levels of case management at AFCA, whereby (in Axess' experience) AFCA employees do not understand the debt collection industry, and as such it can be difficult for them to understand the processes. Axess submits that this is due to AFCA staff being allocated various different types of industries at the same time, creating confusion. Axess submit that this has led to inconsistent application of law and processes.

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

18. Axess has had no experience with the AFCA systemic response process, and as such has no comment to make on same.

Do AFCA's funding and fee structure 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?

19. Axess would submit that, whilst not directly affected, it is worth observing that AFCA's "fixed" fee structure has the serious potential to impact competition in the Debt Collection Industry. This is because, in our experience, both we and our colleagues specialise in various different types of debt, at various different sizes. As such, it is not difficult to see why one of our colleagues may feel "hard done by" being charged such high fees, if they are a company which routinely works with debt of a small value (say for instance an average of \$500.00). This could lead to these companies, who are unlikely to have as much available capital as their colleagues who handle higher balances, being unable or unwilling to continue purchasing smaller value accounts. This in turn could create a monopoly whereby only the largest of our competitors are able to bid on, and successfully obtain, smaller value debt, and could potentially push smaller players out of the market entirely.
20. Axess would refrain from offering alternate funding suggestions, having no experience on the topic, however, would observe that it has had the pleasure of reading a draft of the submission of the Australian Collectors & Debt Buyers Association (ACDBA) and would respectfully agree with, and adopt their points in relation to this matter.

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?

21. Axess do not have any experience with this jurisdiction, and as such has no comment to make on same.

Is the scope, remit and operation of AFCA's Independent Assessor function appropriate and effective?

22. Axess notes that despite having raised service complaints in the past, it has had no direct experience with the Independent Assessor. That said, Axess notes that it may be somewhat of a misnomer to refer to the role as "Independent". This is due to the fact that:

- It is Axess' understanding that the assessor is appointed by AFCA, making their ability to be truly independent somewhat questionable; and
- There appears to be no public accountability, in the way of visibility, in relation to the Assessor's decision.

23. Axess would submit that, with the greatest respect to the Assessor, it is difficult to conceive of how Financial Firms, Complainants, and the public at large can rely on the Assessor's independence or place trust in the role, unless and until the Assessor is required to release their decisions in much the same way AFCA is required to publish its decisions.

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?

24. Axess would submit that whilst it would be desirable for there to be an ability for AFCA to review the substance of its decisions, it would be difficult to conceive of how such a practice could be put in to place without substantially increasing the timelines associated with decisions, and would further impose not insignificant cost to the Scheme which will ultimately result in higher costs overall to fee paying members.

25. Axess would submit that the Rules should be amended to allow for the Lead Ombudsman, or other appropriate role, to, of their own accord, review and/or alter determinations if there has been a material defect, misapprehension of law/code/policy, or other significant error, however in Axess' submission this should somewhat resemble the "Judicial Review" court jurisdiction, in that it should only be exercised in the most extreme cases, and only where a party is able to demonstrate an exceptional unfairness.