

**CCC FINANCIAL SOLUTIONS PTY LTD**

**Submission to Treasury**

**Review of the Australian Financial Complaints  
Authority (AFCA)**

**March 2021**

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## **About CCC Financial Solutions Group**

The CCC Group (**CCC**) is an Adelaide based business specialising in debt purchasing, distressed consumer debt management and providing contingent debt recovery services. The group includes the following corporate entities:

- CCC Financial Solutions Pty Ltd
- CCC Financial Solutions (No 2) Pty Ltd
- CCC Financial Solutions (No 3) Pty Ltd
- CCC Financial Solutions (QLD) Pty Ltd

CCC is a family owned and operated Financial Firm and a member of Australian Financial Complaints Authority (**AFCA**), the Australian Collectors and Debt Buyers Association (**ACDBA**), the Institute of Mercantile Agents, the Australian Institute of Credit Management (**AICM**) and CCC Financial Solutions Pty Ltd is an Australian Credit Licence holder.

CCC has since 2013, purchased credit card contracts and personal loan ledgers. Since AFCA's inception on 1 November 2018, CCC has been involved in the management of 20 - 29 complaints per year lodged (against its various entities) by consumers with AFCA and has significant experience with the scheme.

CCC welcomes this opportunity to make submissions to Treasury about AFCA.

### **Have complaints managed by the AFCA scheme been resolved in a way that was fair, efficient, timely and independent?**

CCC is very dissatisfied with the management of consumer complaints by AFCA. Respectfully it does not consider that AFCA (as it currently operates) meets its statutory objectives by resolving complaints in a way that is fair, efficient, timely and independent. CCC's reasons and submissions are set out below.

Note that CCC has provided some specific case examples relating to its submission. If you would like further cases examples, these can be provided.

#### ***Efficient and timely***

1. The AFCA scheme at its inception promised to be a "one stop shop" which would provide fast, free and binding external dispute resolution for consumers and small businesses.
2. There are however, substantial delays with the provision of AFCA's assessments, determinations and general responses to consumer complaints. CCC has prepared a bar graph<sup>1</sup> comparing the response times of the Financial Firm, the complainant and AFCA during the management of all complaints which have been lodged against CCC with AFCA. CCC's experience has been that AFCA can take as long as 241 days to consider and respond to the Financial Firm and the consumer, and on average takes 60 days to respond/progress matters. In one instance, delays by AFCA have resulted in one complaint being open for 458 days<sup>2</sup>.
3. It is submitted that AFCA's failure to manage complaints and provide outcomes in a timely manner has:

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<sup>1</sup> See the bar graph at Annexure A

<sup>2</sup> We refer to case 626661 which is shown on the bar graph at Annexure A.

- 3.1 increased the cost of resolving disputes for both consumers and Financial Firms<sup>3</sup>
  - 3.2 made the AFCA scheme available for “abuse” by consumer complainants (or their unscrupulous “for profit” financial advisors) to delay payment of debts due to Financial Firms or to utilise AFCA as a “bargaining chip” to negotiate discounted settlements.<sup>4</sup>
4. CCC submits that AFCA could streamline its procedure responding to complaints and improve general efficiency by:
- 4.1. Management of its workload to ensure that it only accepts for consideration complaints that are within its defined jurisdiction and promptly exercising its discretionary powers to exclude complaints that are not within its remit. CCC has several case examples that show AFCA considers (and progresses to case assessment) complaints in circumstances where AFCA should not be managing the complaints or has failed to exercise discretion to exclude complaints that do not fit within the specified remit of the rules <sup>5</sup>
  - 4.2. Ensuring that its staff remains focused on resolving the subject of the complaint brought by the consumer. CCC has a number of examples where AFCA staff have taken an inquisitorial approach (finding new grounds for the consumer to pursue in its complaint), rather than reaching a satisfactory outcome in relation to the matter that the consumer has complained about.<sup>6</sup>
  - 4.3. Properly utilising its discretion to exclude claims that are frivolous, vexatious, misconceived or lacking in substance in accordance with Rule C.2.2(d). CCC has had several complaints where the complainant continues to complain, and AFCA has allowed (and sometimes even encouraged) the complainant to embark on a “fishing exercise” to find further additional grounds for complaint (which should have been evident when the original complaint was made)<sup>7</sup>.
  - 4.4. Promptly closing files where the complainant has failed to engage with the process or respond and has not provided any good reason for doing so. CCC has been involved in complaints where AFCA has left complaints open for a significant period of time.<sup>8</sup>
  - 4.5. Close files where the complainant has not gone through the Internal Dispute Review (IDR) Process with the Financial Firm First. CCC has received AFCA complaints where the Complainant has never raised any grounds of dispute with the Financial Firm. <sup>9</sup>
  - 4.6. Implementation of the former CIO “reasonable offer rule” which stated that:

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<sup>3</sup> Consumers continue to accrue interest on outstanding debts whilst AFCA consider the complaint. Financial Firms pay more fees to AFCA where claims are escalated for further assessment. Financial Firms incur legal costs (which are sometimes “thrown away”) where litigation is in process arranging for matters to be adjourned or dismissed. Financial Firms require more resources/staff/staff time to manage complaints as they become protracted and more complex.

<sup>4</sup> Complainants ask for discounted settlements “*or otherwise they will go to AFCA*”. They are aware that each complaint results in a charge to the Financial Firm, and that threatening to complain may force a settlement based on commercial considerations, rather than consideration of the merits. In Case 727821, the Complainant managed to sell her real property during the time that AFCA was managing her complaint.

<sup>5</sup> Please see Case examples 1 and 2 at page 1 of Annexure B

<sup>6</sup> Please see Case Example 3, 8 and 9 at pages 1 and 3 of Annexure B

<sup>7</sup> Please see Case Example 3 and 9 at pages 1 and 3 of Annexure B

<sup>8</sup> Please see Case Example 6 and 7 at page 2 of Annexure B

<sup>9</sup> Please see Case Examples 4 and 5 at page 2 of Annexure B

- “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”.

CCC has been in a position where it has made a reasonable offer to the complainant and AFCA was unable in these instances to facilitate a more favourable outcome for the complainant.<sup>10</sup> Without a reasonable offer rule there is no incentive at all for consumers (and in particular consumers with representation) to accept an offer at an early stage or accept a preliminary assessment that is not completely in their favour.

### ***Fair and independent***

5. CCC submits that AFCA has failed (in several cases) to resolve complaints in a way that has been fair or independent.
- 5.1. It has observed that increasingly AFCA case managers have taken on the role as a “consumer advocate”. This has prolonged finalisation of the complaint and increased the costs particularly for the Financial Firm.

*In Case Example 9<sup>11</sup> the complainant (who owed \$2,081.55) initially complained about a default listing (which was found by AFCA to be an appropriate listing). AFCA staff later expanded the complaint to allege the Financial Firm failed to provide hardship assistance. This was then ruled out and the Authorised third party (ATP) accused CCC of breaching irresponsible lending guidelines. The matter progressed through to a determination and there were no findings against the Financial Firm. The complaint took 458 days to resolve, and the Financial Firm had to pay a determination fee of \$10,915.00. The complainant later advised that it had brought the complaint against the wrong entity due to misidentification of the account. CCC still was required to pay \$10,915.00.*

*In Case Example 8<sup>12</sup>, the complainant requested the removal of the default listing and acceptance of a payment arrangement. During the conciliation, AFCA suggested to the complainant that they ask the financial firm to remove the default*

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<sup>10</sup> See Case Example 6 and 7 on page 2 of Annexure B.

<sup>11</sup> See Case Example 9 at page 3 of Annexure B.

<sup>12</sup> See Case Example 8 at page 3 of Annexure B.

*listing, reduce the outstanding balance as a goodwill gesture, agree to a short-term payment arrangement over 12 months, hold interest on the account moving forward, and allow the complainant to increase payments or make additional payments if and when he wishes. AFCA also made it clear to the financial firm that if the case progressed to the next stage, AFCA would be recommending removal of the default listing and that compensation be paid to the complainant. It is submitted, that the AFCA staff member, as an impartial mediator should not have been making these suggestions to the complainant.*

- 5.2. Complaints raised by Financial Firms about how certain case managers have managed certain matters appear to be escalated in a way where they end up being considered by the same team. When issues are raised they are escalated to the team manager who was involved in making the decision in the first place.
6. CCC submits that the AFCA scheme does not meet its statutory objective of producing consistent and predictable outcomes. Specifically:
  - 6.1. Complaints with similar facts do not appear to be adjudicated on with any reference to previous decisions or reasons.
  - 6.2. There is a lack of consistency and predictability about what “industry guideline” will be applied and what “best industry practice” may mean. For example CCC subscribes to the ACDBA Code of Practice although AFCA staff often refer to CCC needing to comply with the Australian Banking Association (ABA) Code.

**Identification of systemic issues**

7. CCC has no submissions to make on this topic.

**Funding and Fee service and the impact on competition**

8. CCC has no comments to make other than to submit that fees payable to AFCA and the costs of managing EDR complaints, have increased considerably each year and the cost to CCC is substantial.

	Reasonable Offer Rule in Place			No Reasonable Offer Rule in Place	
	2016-17 Financial Year	2017-18 Financial Year	2018-19 Financial Year	2019-20 Financial Year	01/07/2020 – 31/12/2020
No. of IDR complaints received	39	54	37	64	45
No. of EDR complaints received	26	20	29	28	26
Cost of EDR on the financial firm	\$26,129.00	\$35,871.00	\$52,383.00	\$157,617.40	\$91,530.00

### ***Internal Review mechanism***

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

9. CCC has submitted one matter to the Independent Assessor. It never received an outcome. Its comments are limited to this one experience.
10. On 13 June 2019, CCC emailed the Independent Adjudicator at AFCA in relation to case 18/3843. CCC raised some concerns with the approach in the decision-making process.
11. The Independent Adjudicator raised a concern about a potential systemic issue with CCC as part of its review. This was later managed and resolved through separate correspondence. The review sought by the Independent Adjudicator was never completed, and no reasons were provided.

#### ***Is there a need for an internal mechanism where the substance of its decision can be reviewed?***

12. CCC submits that there is a need for a mechanism to have the substance of some decisions reviewed (or be capable of review). At present, if a Financial Firm feels that the case manager or ombudsman has erred in making their decision, there is no independent review process to complain about the merits or substance of the decision.
13. CCC submits that there should be an independent review mechanism where decisions can be appealed where the party can demonstrate there has been an error in the application of law/ policy/ Rules or a material fact has not been considered.
14. It is submitted that an ability for the Complainant or Financial Firm to appeal a decision or review, may assist to ensure AFCA staff remain accountable for their decisions in relation to Complaint and ensure that decisions made accord with their Rules.
15. CCC submits that any independent reviewer or assessor needs to be externally appointed, perhaps by ASIC, and not by the AFCA Board.

## **Annexure A**





