

23 March 2021



The Director
AFCA Review Secretariat
Financial System Division
Treasury

AFCA case number: - 650583

REST Member number: [REDACTED]

Re: - The matter of the Estate of the Late Michael Ian Rex Pankhurst.

I wish to lodge a submission into the Treasury's review of AFCA (Australian Financial Complaints Authority) being undertaken and the time that AFCA and the Ombudsman has taken to respond to my complaint between REST and AFCA and come to a final decision on the matter.

I have enclosed a copy of correspondence dated 8 February 2021 between my Solicitor [REDACTED] of [REDACTED] that was sent to Susan Templeman MP Member for Macquarie and give my permission for you to contact [REDACTED] if you require further information. We have documentation to substantiate the above timelines and can provide numerous other documents to substantiate my claim.

Further to this correspondence we had lodged an Application for Hardship on 13 September 2019 with AFCA and when we asked [REDACTED] the AFCA case worker in the conciliation call on 3 February 2020 how the Financial Hardship application was progressing she said that she couldn't remember receiving it so [REDACTED] said that he would resend it to them. To date we still have not received any indication from [REDACTED] if it is or has it been processed. The figures provided in that application have now changed substantially since it was first lodged due to the delay in processing the application and my financial position is now dire.

AFCA has not provided any updates on how the matter is progressing to either me or my solicitor unless we contact them requesting updates on how the matter is progressing and this therefore increases my solicitor's costs.

The time taken to make a decision in this matter has caused me great financial and emotional distress and as stated by [REDACTED] I may have to sell the home that Michael and I bought together to be our family home if the matter is not settled promptly. Michael nominated me as his Binding Death Benefit nominee in case anything should happen to him to help cover the mortgage so that I would be able to comfortably cover repayments to keep our home.

Date	Opening Balance	Interest Charged	Balance of Loan
May 2016	\$413,000.00	Interest only payments	\$394,000.00
March 2021		Interest only payments	\$400,727.74

As of May 2021 payments revert to Interest and Principal which will cause me financial stress. Had this matter been finalised in a timely manner I would have been able to pay a substantial amount of the Principal owing on the loan enabling my loan repayments to be of a manageable amount.

Due to the length of time this matter has taken to be resolved and the fact that it has not been resolved in a timely manner as indicated on the AFCA website I am looking at what further options can pursue.

For further information or clarification of any details please contact me at the above.

Sarah Johnstone

Our Ref: AJW:MA:17276

Your Ref:

8 February 2021

Mrs S Templeman MP
Member for Macquarie

By Email: susan.templeman.mp@aph.gov.au

Dear Susan,

RE: AUSTRALIAN FINANCIAL COMPLAINTS AUTHORITY (AFCA) DELAYS

We refer to the writer's telephone conversation with [REDACTED] of your office last Thursday. [REDACTED] suggested we correspond with you regarding delays experienced by a client we represent with AFCA.

We act for Sarah Johnstone.

Sarah was the partner of the late Michael Pankhurst who died on 14 July 2017.

Michael had superannuation with REST Industry Super Fund (REST) and made a Binding Death Benefit Nomination (BDBN) dealing with his death benefit. The BDBN nominated Sarah as to a 92% share, Michael's Sister [REDACTED] as to a 5% share, and Michael's best friend [REDACTED] as to the remaining 3% share.

Michael's mother, [REDACTED], challenged the distribution claiming that she was in a financial interdependent relationship with Michael. Ultimately, after an extensive investigation as to the circumstances surrounding Sarah's relationship and financial interdependency with Michael, REST made a determination on 9 August 2018 proposing that 100% of the benefit be paid to Sarah.

[REDACTED] objected to this determination on 12 September 2018, and the matter was reviewed by REST's Trustee. Because of the delay, Sarah made a complaint to AFCA on 15 January 2019. On the 28th of February 2019, the trustee's review determined that the death benefit be payable as to 50% to Sarah and the remaining 50% to [REDACTED]. On 28 March 2019 Sarah objected to the decision. The matter was then referred to AFCA.

On 26 July 2019, REST advised Sarah that they were maintaining their payment decision. On 13 August 2019, AFCA wrote to this firm confirming that the complaint had been made and advising us as to AFCA's process in dealing with the claim. On 13 September 2019, we provided AFCA with a statement of Sarah's financial position. On 25 October 2019, AFCA advised us that [REDACTED] had joined as party to the complaint.

On 28 October 2019, AFCA wrote to us requiring that we provide additional information to it by 18 November 2019. This timeline was later extended and we provided AFCA with the required information under cover of our letter of 6 December 2019.

On 15 January 2020, we were advised by AFCA that the matter would be conciliated on 3 February 2020. The conciliation took place and, as the complainants could not reach an agreed outcome, the matter was left to be determined by AFCA.

On 25 March 2020, AFCA made a recommendation that the Trustee should pay 100% of the benefit to Sarah.

On 27 April 2020, AFCA advised us that [REDACTED] rejected the assessment and the matter was referred to an ombudsman for determination.

On 4 May 2020 AFCA advised that *this complaint has progressed to an ombudsman who will review all the information on file to issue a determination that is binding. I do not have an anticipated timeline as this depends on the ombudsman's queue.*

Despite many and continuing representations to the AFCA case officer ([REDACTED]) we are still not able to advise our client when the matter may be dealt with.

The most recent correspondence we have received from the AFCA case officer provides as follows:

This complaint is within the ombudsman's queue and has been assigned.

There is no further update on the file that I can provide you. I am unable to provide a reliable timeframe as to when it will be completed by the ombudsman as it is outside of my scope.

AFCA appreciates it is a difficult time and we apologise for the significant delay.

Feel free to contact me on the below details should you have any concerns.

Sarah is understandably frustrated at the delay in determining what should be a fairly straight forward matter. She and Michael were engaged to be married at the time of Michael's death and it was clearly his intention that she receive the bulk of the death benefit.

Sarah and Michael had purchased a home in Katoomba, and the mortgage on that home reverts from interest only to principal and interest in May this year. Sarah, whilst employed at a local real estate agency, is not highly paid and the financial strain of

paying principal and interest payments on her mortgage will be considerable. It may mean, in fact, that she will have to sell her home. Once the AFCA ombudsman has determined the payment of the death benefit, she proposes to use these funds to pay down the mortgage to ensure that she can continue to live in her home.

By way of summary:

1. It will be 4 years in July since Michael died;
2. It will be over 3 years since Sarah made the initial Application to REST for the death benefit;
3. It is 18 months since we commenced the review of REST's decision with AFCA;
4. It is 1 year since the AFCA sponsored conciliation;
5. It is 6 months since the case officer advised the matter had progressed to the Ombudsman's queue; and
6. It is over 4 months since the case officer advised the matter was in the Ombudsman's work flow.

These timeframes are considerably outside the timeframes indicated on AFCA's website, and the delay is causing Sarah real financial and emotional distress.

We would appreciate it if you could make representations to the appropriate minister who has responsibility for AFCA to ensure that the matter is dealt with in timely and expedient manner.

We have documentation to substantiate all of the above timelines, but assume that you would not need to be swamped with this information at this stage. Should you require any copies of the documentation we referred to we are, of course, able to provide the same.

Should you require any further information, please do not hesitate to contact the writer.

Yours faithfully,

[REDACTED]

[REDACTED]
[REDACTED]