

Claim Focus

Mortgage & Finance Brokers

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(02) 9003 1660

\$2.9m

– in lending arranged

\$500k+

– in losses alleged

\$70,400

– awarded by AFCA

○ Background

An insured who operates as a mortgage and finance broker was engaged to arrange and refinance loans to assist a client with an estate settlement, debt consolidation and property improvements. The insured arranged lending facilities of approximately **\$2.9 million**, secured against several client-owned properties.

○ Complaint

The client later experienced financial difficulties and lodged a complaint with **AFCA**, alleging she was illiterate and had been taken advantage of by entering a loan with a 19% interest rate, which she would not have agreed to if she understood it. She claimed the insured should not have recommended or arranged the loan and sought compensation for her losses.

○ AFCA Investigation

Stage 1: Initial recommendation

In the insured's favour

AFCA initially found in favour of the insured as there was no evidence the client informed the insured of her literacy issues. It was also determined that the insured had fulfilled its obligations, was not found to have taken unfair advantage and no compensation was payable by the insured to the client.

Stage 2: Final determination

The documentation fell short

The client was not satisfied with the recommendation and requested that the matter proceed to a final determination. Further submissions were submitted and a formal determination process concluded that the insured had not adequately documented:

- ✗ Loan suitability assessments
- ✗ Alternative funding strategies considered
- ✗ Key client discussions and advice provided

AFCA **did not find any dishonesty, fraud or unconscionable conduct**. The issues were centred on documentation, record-keeping and advice processes. The client's alleged losses were exceeding **\$500,000**. AFCA ultimately awarded **\$70,400**, considering the client's own contribution to the outcome.

Claim Focus (cont.)

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○ Policy Response

The matter was notified under the insured's Mortgage & Finance Broker Professional Indemnity Policy. Cover was available because, the AFCA complaint constituted a Claim under the policy, the circumstances had been disclosed at renewal, preserving cover under s40(3) of the Insurance Contracts Act and the allegations arose directly from the insured's finance broking activities.

Policy exclusions relating to dishonesty, fees/commissions and delegated authority were considered but did not apply, as the conduct alleged involved negligence and inadequate documentation rather than intentional wrongdoing.

\$500,000+

potential claim



\$70,400

resolved

○ Outcome

Working closely with the insured, FTA:

- ✓ Accepted indemnity for the compensation award
- ✓ Facilitated resolution of the AFCA determination
- ✓ Secured a release from the claimant
- ✓ Achieved a final resolution without court proceedings

Key Takeaways

- Maintain detailed file notes and suitability assessments.
- Clearly document client discussions, recommendations and exit strategies.
- A potential claim exceeding \$500,000 was ultimately resolved for \$70,400, demonstrating the value of early notification, specialist legal support and robust claims management.

Contact us

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