

John Telford  
6 May 2020

The writer reserves the right to make this letter available to consumers and politicians.

To Australian Financial Complaints Authority (AFCA),

I write on behalf of financial fraud victims who lost superannuation and personal investments in the now closed and non-existent company called Trio Capital. Last year I made an inquiry to AFCA about the Compensation scheme of Last Resort and inquired about AFCA's suggestion of re-registering Trio Capital as then the victims would then be eligible to submit submission to AFCA. The victims made inquiries and one of the big accounting firms quoted \$50,000 to re-register Trio. Before proceeding the victims wanted clarification of AFCA's demands - expectations.

AFCA couldn't say whether the re-registering of Trio Capital meant the fund must operate publicly with Directors, Compliance Officers, Legal Team etc. etc. There is no information anywhere concerning the re-registering of a Company for the purpose of enabling 'victims of fraud' the 'right' to submit a submission to AFCA. AFCA did not or could not provide a single piece of information or offer any assistance about what is required in the re-registering of a company solely for the purpose of submitting a submission.

AFCA's Trevor Morris said in an email dated 22 November 2019, "Trio Capital Limited's AFCA membership ceased and as a result, we are unable to consider complaints lodged against them. Trio Capital Limited has the option of re-registering with AFCA but this is a decision for Trio Capital Limited. AFCA can not compel Trio Capital Limited to register with us."

Mr Morris added, "I therefore appreciate your comments on a potential compensation scheme. Unfortunately, AFCA remains in the same position as your last email in regards to this and encourages you to periodically check our website for new information. I understand the nature of this email is not what you had hoped for, however, if you have any questions, you're welcome to:

- call: 1800 931 678
- email: [info@afca.org.au](mailto:info@afca.org.au)."

AFCA did not say what the new information would be. AFCA's website appears to be constantly updating documents some as recently as April 2020.

AFCA's 2019 response to a complaint about financial fraud is reflected in Tori Yuksel's letter dated 29 November 2019. He states, "AFCA cannot provide advice about a company's legal obligations or requirements. As Trio Capital Limited has never become an AFCA member we would require that they apply online, you can see the application fee amounts on the apply for membership page and also can navigate to the application form.

Feel free to contact us with any further queries."

Now it's May 2020. Now I write with a new approach that meets AFCA's updated website. AFCA's website states that it considers complaints about financial products and services. In this letter the victims show they are the victims of a dangerous product – namely the managed investment scheme (MIS) that operated fraudulently. Because there was not a single warning about the dangers posed by MISs, the victims feel they have a right to claim compensation. Rather than A Compensation scheme of Last Resort, the victims now inquire about submitting applications for "legacy cases".

The victims feel eligible for legacy case status because various attempts were made to seek justice through the courts but the victims discovered they have no recourse under existing law, as illustrated by the following three legal actions:

1. Melbourne Law firm failed to secure financial funding for a class action against Banks / Auditor / Star Rating Firms and Research Houses.
2. Wollongong law firm ran small group action against a financial adviser, claiming poor financial advice. The adviser's insurance firm, under pressure that court costs would be higher, settled cases confidentially. This matter was based on misinformation.
3. Class action by Sydney based law firm against another financial adviser also claiming poor advice. This case failed to find the adviser negligent. The adviser's insurer wanted a guilty plea because the costs of court action were higher than what an insurance payout would be. The presiding Judge became angry that the case had run for many months and was wasting court time. He called the parties together and demanded they settle their stalemate that day. The financial adviser's terms were accepted. That meant the insurer's settlement would go to all Trio victims, not just the few in the class action. The law firm made millions and the few victims who went the distance and sunk tens of thousands of dollars, received like everyone else, a few hundred.

The victims ask AFCA to consider that they don't have a dispute with financial adviser(s) or with the man charged with operating Trio dishonestly or his overseas colleagues that were never questioned as to whether they received ill-gotten gains.

The victims ask AFCA to consider its website claim of considering complaints about financial products and services. The services must include regulatory services. Consumers depend on the regulators making sure the industry upholds the law when operating in the financial sector.

Consumers did not receive the expected governance by the Australian Securities and Investment Commission. When ASIC registered Trio in 2003, it opened the way for two businessmen who were based in Hong Kong, to run a financial services company in Australia. About one year earlier, ASIC had travelled to their Hong Kong office to collect documents that were used in an Australian Fraud against the Commonwealth case. That ASIC allowed the same two businessmen to purchase and operate Trio Capital was regulatory negligence that led to the loss of victims money.

The victims ask AFCA to consider that the failure of ASIC and The Australian Prudential Regulation Authority (APRA) to communicate their individual concerns about Trio with each other allowed the 'fraud' to continue. The Parliamentary Joint Commission (PJC) noted that had ASIC and APRA communicated their concerns to each other about Trio, the fraud could have been stopped much sooner.

The victims ask AFCA to consider further evidence showing the former Treasurer, Ms Kelly O'Dwyer misled the Trio victims and Australians by releasing a media statement dated 1<sup>st</sup> April 2016 that stated ASIC and APRA carried out their obligations appropriately in their handling of Trio. At the time Treasury had the aide memoire document, written by the panel responsible for providing Government with the, Fit for the Future: A Capability Review of the ASIC. The document was damning of ASIC.

In 2018 / 2019 The Productivity Commission and The Banking Royal Commission found ASIC and APRA reluctant to act against misconduct. These findings confirmed what the financial fraud victims already knew.

The government's narrative exploited the victims. Through the media the victims were made to appear that it was their choice to use an unprotected superannuation fund. What was not declared in the media is that at the time, there were no warnings about organized crime gangs siphoning superannuation money out of the reach of ASIC and APRA. There was not a single warning or guidance, distinguishing the difference between APRA-supervised superannuation and other types of superannuation or the informing about Part 23 of the Superannuation Industry (Supervision) Act 1993 (SIS Act). Therefore to suggest after the event that it was the choice of the investors to swim outside the flags in hope of better waves was wrong and dishonest.

Against the mountain of dishonesty, can the victims submit applications under "legacy cases"?

Cc Mrs J Butler  
Thank you  
John Telford  
on behalf of financial fraud victims

**From:** Info@afca.org.au info@afca.org.au  
**Subject:** RE: [EXTERNAL]Financial fraud victims to AFCA May6,2020  
**Date:** 11 May 2020 at 4:47 pm  
**To:** John Telford johnt@1earth.net



Dear Mr Telford,

Thank you for your correspondence.

While the situation of yourself and others is regrettable, Trio Capital would have to be member of AFCA for us to consider a complaint.

Legacy Complaints refer to complaints made against one of our current members which concern conduct of those current members which occurred on or after 1 January 2008. If a particular institution is not a member of AFCA, that institution would still not fall under AFCA's Legacy Jurisdiction. As such, Legacy Complaints are still subject to the requirement of the responsible financial firm being a current member of AFCA.

The reports you have referenced in your letter may have pointed towards the conduct of various institutions including Trio Capital, but the findings of those reports has not led to the registration of Trio Capital as a member. This is a crucial requirement for AFCA to consider a complaint and we simply cannot proceed with a complaint of any kind unless that financial firm is a current member.

You may wish to contact your state's association of Community Legal Centres so that you may access low or no cost legal services. Hopefully from there you will be able to find other alternatives to pursue Trio Capital.

Any questions?  
If you have any questions:

\* call: 1800 931 678  
\* email: info@afca.org.au

Yours sincerely,

Thomas Diprose  
Senior Complaints Consultant  
Registration and Referral Unit  
Australian Financial Complaints Authority  
Free Call 1800 931 678  
www.afca.org.au

Please note:  
The Australian Financial Complaints Authority (AFCA) has replaced the Financial Ombudsman Service (FOS), the Credit Ombudsman Service (CIO) and the Superannuation Complaints Tribunal.  
This means AFCA will now manage any open complaints previously lodged with FOS and CIO, and will deal with all new complaints received.  
Any communications regarding your FOS or CIO complaint will be sent to you on AFCA letterhead.

-----Original Message-----

From: John Telford <johnt@1earth.net>  
Sent: Wednesday, 6 May 2020 1:42 PM  
To: Info@afca.org.au  
Cc: [REDACTED]  
Subject: [EXTERNAL]Financial fraud victims to AFCA May6,2020

[EXTERNAL]

To AFCA,

Please find letter enclosed.

Thank you  
John Telford

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