



ASIC RESPONSE TO QUESTION ON NOTICE

**PARLIAMENTARY JOINT COMMITTEE ON
CORPORATIONS AND FINANCIAL SERVICES**

Date of hearing: Friday, 13 September 2019

Hansard Page Ref: 48

Topic: Life insurance code of practice

QUESTION

Senator BRAGG: I wish to flag that in a prior life I was involved with the first iteration of the life insurance code of conduct. The government has accepted the royal commission's recommendations around that particular code of conduct, so what type of input would ASIC have at this stage with that very troubled industry, vis-a-vis its code of practice, which is currently a totally voluntary industry code, on its pathway to becoming an ASIC approved code?

Mr Kirk: We will be involved in negotiations with the industry about the content of their code, their monitoring arrangement and the like.

Senator BRAGG: What sorts of expectations would you have in mind?

Mr Kirk: We've set out standards in guidance, in terms of the sorts of things that need to be in effective codes, so that would be the touchstone.

Senator BRAGG: It may be good if you were to come back on that one.

Mr Shipton: This is something that we can speak to our subject matter experts in the insurance space—who aren't here—on. **The SEL, the senior executive leader, of insurance is not with us today, but we'd be happy to come back to you on notice on these matters and give you a briefing.** Of course, the expectations are set out in the guidelines, but, as my colleague Mr Kirk was saying, there is an interactive conversation to be had—taking how the code looks today and then working from that in an interactive sense—to develop it to a point where we, at a commission, would be comfortable to have that imprimatur, which we take very seriously, because, actually, the thresholds and the expectations as to when we would give the imprimatur of an ASIC approved code are quite high.

Mr Kirk: One other relevant thing that's happening in parallel is that also coming out of the royal commission there was a recommendation, which the government responded positively to, that there be reforms to enhance the enforceability of these codes of practice and to give the regulator a role in enforcing some of the provisions of these codes. Which provisions that would be would have to be determined, but the regulator would enforce them as part of the law, with penalties and the like. It would be a very different type of enforceability to the common inter partes contractual enforceability.

ANSWER

In response to the matters raised by Senator Bragg, ASIC responded that we would provide a brief on these matters. Attached is a brief addressing ASIC's approval of industry codes of conduct, and

expectations in relation to minimum standards that we consider should be included in the Financial Services Council's Life Insurance Code of Practice.

TOPIC: LIFE INSURANCE CODE OF PRACTICE

PURPOSE

To provide a brief in response to a question taken on notice at the Parliamentary Joint Committee on Corporations and Financial Services hearing on Friday 13 September 2019, in relation to ASIC approved codes and ASIC's expectations of the Life Insurance Code of Practice.

KEY POINTS

- ASIC's approach to code approval is set out in ASIC *Regulatory Guide 183 Approval of financial services sector codes of conduct* ([RG 183](#)). If we are satisfied that an applicant's code meets the 'threshold criteria' for a code (see RG 183.20)—we will then consider whether it meets the general statutory criteria for code approval in s1101A(3) of the Corporations Act (see RG 183.28).
- The Government is currently implementing FSRC Recommendation 1.15 to introduce an enforceable codes regime. This law reform, once passed, is likely to result in changes to the code approval process and our policy in RG 183.
- ASIC has engaged with the Financial Services Council (FSC) on the Life Insurance Code of Practice (LI Code), and has publicly called on industry to lift minimum standards to address consumer harms in:
 - the sale of direct life insurance (see: *Report 587 The sale of direct life insurance* ([REP 587](#)));
 - the insurance claim investigation process (see: *Report 621 Roadblocks and roundabouts: A review of car insurance claim investigations* ([REP 621](#))); and
 - consumer credit insurance (CCI) sold to consumers with credit cards, personal loans and home loans (see: *Report 622 Consumer credit insurance: Poor value products and harmful sales practices* ([REP 622](#))).
- ASIC continues to engage with the FSC as the life insurance industry reviews the LI Code.

ADDITIONAL INFORMATION

ASIC's approach to approving Codes of Conduct

ASIC considers that industry codes of conduct can play an effective role in the financial system, by raising standards of conduct and service and thereby helping to promote trust and confidence in an industry sector. Where codes enjoy the support and commitment of the sponsoring industries, they can deliver real benefits to both consumers and those who are bound by and must comply with the provisions of the code to which they subscribe.

ASIC's approach to code approval is set out in RG 183. To be considered for approval, a code must first meet the 'threshold criteria' for what we consider to be a code, which are as follows:

- the rules contained in the code must be binding on (and enforceable against) subscribers through contractual arrangements;
- the code must be developed and reviewed in a transparent manner, which involves consulting with relevant stakeholders including consumer representatives; and

- the code must have effective administration and compliance mechanisms: RG 183.20.

If we are satisfied that an applicant's code meets the 'threshold criteria' for a code – we will then consider whether it meets the general statutory criteria for code approval under s1101A(3) of the Corporations Act. Under the general statutory criteria, ASIC may only approve a code of conduct if:

- the code (or the code as proposed to be varied, in the case of amendments) is not inconsistent with the Corporations Act or any other law of the Commonwealth under which ASIC has regulatory responsibilities; and
- we consider that it is appropriate to approve the code given:
 - the ability of the applicant to ensure that persons who claim to comply with the code will comply with the code; and
 - the desirability of codes of conduct being harmonised to the greatest extent possible.

In deciding whether or not to approve a code, we may also consider any other matters that we think are relevant in addition to the general statutory criteria for code approval: see s1101A(3)(b). As set out at RG 183.43, the other matters we will consider when exercising our approval power include:

- *development*—whether there has been an appropriate process for developing the code;
- *content*—whether the code contains plain language provisions that deal with the code's scope, objectives and core rules;
- *enforceability*—whether the code provides for adequate dispute resolution procedures, remedies and sanctions;
- *administration*—whether the code has effective arrangements for monitoring and reporting on compliance; and
- *review*—whether the code provides for regular, independent reviews at intervals of no more than three years.

In the FSRC Final Report, Commissioner Hayne recommended that the Government implement an 'enforceable codes regime' (see Recommendation 1.15) which would see certain provisions of approved codes made enforceable by ASIC. A breach of these provisions would constitute a breach of the law. The Government agreed with this proposal and Treasury released a consultation paper on the proposed regime in April this year. ASIC continues to work with Treasury on implementation of this reform. This law reform, once passed, is likely to result in changes to the code approval process and our policy in RG 183.

Engagement with the FSC

In addition to formal approval of Codes, ASIC will often engage with industry when they are developing or reviewing an industry Code, whether or not they intend to seek ASIC approval. Over the past year, ASIC has made a range of recommendations to the FSC in relation to adopting minimum standards and improving the strength of the LI Code to address some concerns identified by ASIC in recent reviews.

Direct life insurance

ASIC's REP 587 called on industry to respond promptly to the issues identified in the report by raising standards in the next iteration of the LI Code and increasing professionalism across the industry.

We called on industry, through the LI Code, to commit to:

- a) Provide adequate explanations of key exclusions and future cost;

- b) Clearly define and prohibit pressure selling, including that firms stop using the cooling-off period and deferred payment arrangements to conclude sales;
- c) Introduce a deferred sales model for ‘downgrades’ (where a consumer is not eligible for a policy so the firm offers a much more restricted or limited policy);
- d) Stop using techniques that frame consumers’ choices, such as bundling cover into a quote without seeking explicit consent from the consumer upfront;
- e) Establish a clear target market for limited value products and only sell these products where there is genuine consumer need;
- f) Strengthen protections for vulnerable consumers, for example by setting clearer expectations about how sales staff should behave when dealing with vulnerable consumers, including when it will be appropriate to end a call;
- g) Ensure that automatic cover increases do not result in the consumer paying for more cover than they could ever claim;
- h) Implement training and quality assurance frameworks that establish standards, monitor sales conduct, and resolve poor consumer outcomes.

Insurance claim investigations

In July 2019 ASIC published [REP 621](#) *Roadblocks and roundabouts: A review of car insurance claim investigations*. While this review looked at car insurance claim investigations, the findings were applicable to all types of insurance claim investigations. We wrote to the FSC in relation to the minimum standards developed as part of this project and recommended that they be considered for incorporation into the LI Code, as outlined below:

- (a) Consumers are told why their claim is being investigated, what to expect from the investigation, their rights and responsibilities, and where they can get more information;
- (b) Consumers can select convenient interview locations (that are also acceptable to the interviewer), and can invite an independent support person, an interpreter and/or a legal representative;
- (c) Consumers can terminate an interview early or suspend the interview to take a break, in addition to providing a 5 minute break every 30 minutes, investigators seeking insurer approval for interviews longer than 90 minutes, and subsequent interviews within a 24 hour period;
- (d) All decisions involving investigation are made within 6 months, otherwise the claim is referred to internal dispute resolution for review and the consumer is advised what else is required to make a decision; and
- (e) Insurers review records to determine whether an interpreter or support person is required and interviewers suspend interviews if the need for an interpreter/support person is identified during the interview.

The sale of CCI

In July 2019 ASIC released [REP 622](#) *Consumer credit insurance: Poor value products and harmful sales practices*. We called for industry action to strengthen consumer protections. Given that CCI is both a general and life insurance product, and is often sold through banks, we called on all the life insurance, general insurance and banking industries to increase standards through their respective Codes. We called on life insurers to:

- (a) Include a four-day deferred sales model and minimum standards for CCI sales into the LI Code, in line with the Code of Banking Practice (CoBP);

- (b) Adopt product design and distribution principles to address and manage mis-selling and unfair sales practices; and
- (c) Bolster formal agreements and strengthen standards relating to monitoring and oversight of third party distributors where they are making direct contact with consumers.

ASIC Action

- ASIC continues to engage the Financial Services Council as the industry reviews the LI code. In September 2019, at a meeting with the FSC Life Board Committee, ASIC requested that the FSC provide updated timeframes on the LI code review, and reiterated some of our recommendations.
- If ASIC receives an application to approve the LI Code we will consider that application in line with RG 183. We note that while the Government's current consideration of law reform relating to the enforceability of Codes may be relevant to ASIC's approach to code approvals in the future, at present we will continue to review and approve any applications received consistently with the criteria set out in RG 183.
- ASIC continues to work with Treasury on the implementation of the enforceable code recommendations set out by Commissioner Hayne in the FSRC Final Report.

Background

- ASIC issued [RG 183](#) *Approval of financial services sector codes of conduct* on **1 March 2013**.
- ASIC published [REP 587](#) *The sale of direct life insurance* and [REP 588](#) *Consumers' experiences with the sale of direct life insurance* on **30 August 2018**.
- ASIC published [REP 621](#) *Roadblocks and roundabouts: A review of car insurance claim investigations* on **4 July 2019**.
- ASIC published [REP 622](#) *Consumer credit insurance: Poor value products and harmful sales practices* on **11 July 2019**.
- The Code of Banking Practice, incorporating the deferred sales model and minimum standards for CCI sold with personal loans, was [approved by ASIC](#) on **31 July 2018** and commenced on **1 July 2019**.