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# THE LIFE INSURANCE CODE OF PRACTICE COVERAGE AND COMPLAINTS AND CODE GOVERNANCE

PART  
**1**



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# Introduction

The FSC's Life Insurance Code of Practice opens a new dialogue with the industry's customers about how the industry will work with them.

It is intended to:

- Promote high standards of service to consumers
- Provide a benchmark of consistency within the industry
- Establish a framework for professional behaviour and responsibilities

The Code contains ten "Key Code Promises" which are reflected in the individual sections of the Code. Because the Code is a promise to the customer it is not written in a way that is function specific for the individual business units of companies. This guide extracts the parts of the Code in a way that allows people that work in insurance companies to see how the Code will apply to what they do on a day-to-day basis.

It doesn't reproduce every provision in the Code, but is our selection of the things that we think are most important and which companies will need to incorporate if they need to change their procedures to comply.

We have not designed it as a commentary or explanation of the Code, as the Code speaks for itself and it will be up to each company to decide how it achieves (and hopefully exceeds) the standards and objectives set out in the Code in its own way.

Though the Code is now live on the FSC website (you can download a copy [here](#)), companies have until 1 July 2017 to be compliant. Individual companies may choose to make their activities subject to the Code earlier than this if they wish.

We hope you find this guide helpful in your journey toward successful implementation.



John Myatt  
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## SUBJECT 1

# Governance of the Code

## Governing body

- The Life Code Compliance Committee ('Life CCC') is the body responsible for monitoring and enforcing compliance with the Code. Its functions and powers are set out in its Charter. (12.4)
- The Life CCC is made up of:
  - a consumer representative;
  - an industry representative; and
  - an independent chair. (12.6)
- The Life CCC may outsource functions to appropriate bodies with the exception of its powers to sanction. (12.7)

## Reports and reviews

- The Life CCC is responsible for providing regular reports to the FSC's Life Board Committee, and making recommendations about Code improvements and industry issues. (12.8)
- The FSC is responsible for commissioning formal independent reviews of the Code at no less than three year intervals. The Life CCC may also recommend to the FSC Life Board Committee that the Code be reviewed, if it believes the Code is not meeting its objectives. (12.2)
- In addition to formal independent reviews of the Code, the FSC will consult with the Life CCC, Financial Ombudsman Service ('FOS'), Superannuation Complaints Tribunal ('SCT'), consumers and industry representatives, relevant regulators and other stakeholders to develop the Code on an ongoing basis. (12.3)

## SUBJECT 2

# Commencement

## When does the Code apply to a company's interactions with customers?

- The Life Insurance Code of Practice became available for adoption by companies from 1 October 2016 but it does not apply to a company's interactions with customers until the company notifies the FSC and Life CCC that it agrees to be bound by it. (2.8)
- Events that took place before the date of adoption are not governed by the Code but the Code applies to all customer interactions from that date, including further interactions stemming from a pre-existing claim or complaint. (2.9)
- It is a requirement that registered life insurance companies that are members of the FSC transition to the Code by 30 June 2017. (2.1 and 2.9)

## It does not apply once external disputes resolution is engaged

- The Code ceases to apply to interactions with a customer after legal proceedings are commenced or an external dispute resolution process (such as the FOS or the SCT) in relation to a matter in dispute has begun. The Code does not say so expressly, but presumably interactions about other matters in relation to the customer will still be subject to the Code. (2.21)

## SUBJECT 3

# Who is bound by the Code?

## FSC Member Companies

- FSC member companies that are registered life insurance companies are bound by the Code<sup>1</sup>. (2.1)

## Other industry participants

- Reinsurers that are members of the FSC are bound by the Code but only to comply with the principles in 1.5 and 1.6 (the guiding principles underpinning the Code, such as clarity, honesty, timeliness and the obligation to act in the utmost good faith). The Code states reinsurers must also assist insurers to meet their commitments under the Code. (2.7)
- The Code does not apply to: superannuation trustees financial advisers and other industry participants. They will only be bound by the Code if they agree to adopt it. (2.2 and (2.1(b)))
- Industry participants that are not FSC members can become bound by the Code by entering into a formal agreement with the FSC and Life CCC. (2.1(b))

## SUBJECT 4

# What products does the Code cover?

## Life insurance policies

Once a company adopts the Code, it applies to all the products that are Life Insurance policies as defined in the definitions section of the Code<sup>2</sup>. This is basically adopted in the definition's in Section 9 of the *Life Insurance Act 1995*, with some exceptions (see below). It also applies to policies that are deemed by APRA to be life insurance business under section 12A of that Act.

## Funeral Insurance and CCI

There is a list of common policy types the Code applies to which specifically includes funeral insurance and consumer credit insurance ('CCI'). (2.10)

- term life insurance/death and terminal illness;
- total and permanent disability (TPD);
- trauma/critical illness insurance;
- disability insurance;
- funeral insurance;
- income protection/salary continuance;
- business expense cover; and
- CCI issued by a life insurer.

## What products are excluded?

The Code does not apply to interactions with customers in relation to:

- annuities and investment life products, except any component consider as a Life Insurance Policy;
- whole-of-life and endowment insurance products;
- general insurance products (including but not limited to sickness and accident covers); and
- health insurance products issued by health insurers; and
- other products that can be issued by someone who does not need to be registered as a life insurance company with the Australian Prudential Regulation Authority (APRA) under the *Life Insurance Act 1995*.

(2.11)

<sup>1</sup> See Subject 1 for when the Code applies to such a company.

<sup>2</sup> Definitions appear in section 15 of the Code.

## SUBJECT 5

# Legal effect of the Code

## Minimum standard

- The Code sets out the life insurance industry's key commitments and obligations to customers on standards of good conduct. To the extent that the Code requires a higher standard of behaviour than the law, companies must comply with both the law and the higher standard required by the Code. (2.19)
- Companies may agree service standards with group policy owners that are higher than the Code standards, in which case the company will be bound to perform to that higher standard. (2.20)

## Not intended to create new legal rights

- Nevertheless, the Code states that it is not intended to create any new legal rights between the company and the customer. It also confirms that it does not place any limits on a customer's existing rights. (2.14, 2.16)
- However, the Code says that the FOS and the SCT may consider whether companies have complied with the Code when determining disputes before them. (2.17)
- Where there is any conflict or inconsistency between the Code and any law or regulation, that law or regulation prevails over the provisions of the Code. (2.18)

## Does not apply once external disputes resolution is engaged

- The Code ceases to apply to interactions with a customer after legal proceedings are commenced or an external dispute resolution process (such as the FOS or SCT) in relation to a matter in dispute has begun. The Code does not say so expressly, but presumably interactions about other matters will still be subject to the Code. (2.21)

## SUBJECT 6

# Complaints

## What is a Complaint?

- A "complaint" is defined as an "expression of dissatisfaction related to the company's products or services", or the complaint's handling process itself, "where a response or resolution is explicitly or implicitly expected." (15)
- The Code describes a complaint as being made to the company, but it is apparent from other references (see 9.10), the concept also includes complaints made indirectly by members of superannuation funds relating to insured benefits and submitted to the company through the fund's trustee.
- A customer may seek to access the company's complaints process, which is set out in section 9 of the Code, if they are "unhappy with any aspect" of their "experience" with the company. If they are concerned about a possible breach of the Code, they may complain to the Life CCC. (2.15)

## Company's complaint process

- The right to make a complaint to the company under the process in section 9 of the Code specifically relates to "any aspect" of the customer's policy, claim or "customer experience". This extends to their experience with the company's "Authorised Representatives"<sup>3</sup> or Independent Service Providers<sup>4</sup>. (9.1)
- The company must place information about the customer's right to make a complaint and its process for handling complaints on its website and in relevant communications with customers. (9.3)
- A company must notify a customer who lodges a complaint of the name and contact details of the person that it has assigned to handle the complaint. They must be someone different from the person whose conduct is the subject of the complaint. (9.4, 9.5)

<sup>3</sup> Defined in the Code having the same meaning as it does in the Corporations Act 2001.

<sup>4</sup> Defined broadly as an external party the company contracts with to provide underwriting, administration or claims management services. It includes independent medical and rehabilitation professionals, accountants, investigators, and providers of claims management services. It does not include reinsurers. Definitions appear in section 15 of the Code.

## Complaints made to the company that are not resolved within 5 days<sup>5</sup>

### *Retail Policies*

The company will (where possible) investigate and provide a final response to the complaint in writing within 45 days, outlining the reasons for the company's decision. (9.12)

The decision letter must also notify the customer:

- that they have a right to copies of the documents and information the company relied on in evaluating the complaint within ten business days of making a request; and
- of their right to refer the complaint to an external disputes resolution body and provide the contact details for the FOS. (9.12)

If the company is unable to respond to the complaint within 45 days, it must inform the customer of the reasons for the delay before the end of that period and inform the customer of their right to refer the complaint to an external disputes resolution body. (9.13)

### *Policies owned by Superannuation Funds*

Companies will respond to the superannuation fund trustee so the trustee can provide a final response to the complainant in writing within 90 days of the trustee receiving the complaint. (9.10)

The content of the letter the trustee must receive is comparable to a decision letter provided in response to a retail complaint, except the relevant external disputes resolution body is the SCT. (9.10)

## Code Breaches and Complaints to the Life CCC

### *Complaints involving alleged breaches of the Code*

Anyone, (including an external dispute resolution body such as the FOS or SCT) can report alleged breaches of the Code direct to the Life CCC. (13.1, 13.2)

The Life CCC has discretion to refer any complaint it receives back to the company in question to be dealt with under the company's own complaint system. (13.1)

### *“Significant” Breaches*

If a company becomes aware that it has committed a “Significant Breach” of the Code it must report it to the Life CCC within ten business days of becoming aware of the breach. This requirement doesn't apply if the breach has already been reported to a regulator and the regulator was told it may involve a breach of the Code. (13.4)

Whether a “Significant Breach” has occurred must be reasonably determined by the company having regard to:<sup>6</sup>

- the number and frequency of similar previous breaches;
- the impact of the breach on the company's ability to provide services;
- the extent to which the breach indicates that the company's ability to ensure compliance with the Code may be inadequate; and
- the magnitude of the actual or potential loss caused by the breach.

<sup>5</sup>These procedures still apply (by implication in a modified form) to complaints resolved by the end of the fifth business day after the complaint was received if the customer requested a written response to the complaint, or if it relates to financial hardship. (9.9(b) (Financial hardship is dealt with in our publication “What the Code of Practice means for Claims”).

<sup>6</sup>Definition of Significant Breach (15).

## SUBJECT 7

# Sanctions and Enforcement

## What the Life CCC does with complaints

- The Life CCC:
  - receives allegations about breaches of the Code;
  - must notify the company complained about and provide it with an opportunity to respond;
  - in its discretion investigate alleged breaches (or remit the complaint back to the company – to be dealt with in accordance with its complaints process – see above). (13.8a-c)
- Having received the company's response and investigated a complaint the Life CCC will:
  - determine whether a breach has occurred;
  - agree fair and reasonable corrective measures and the relevant timeframes with the company<sup>7</sup>. (13.8d & e)
- The Life CCC will also monitor the progress of the corrective measures the company has agreed to take against the agreed timeframes. (13.8f)

## Company must have an opportunity to respond

- If the Life CCC considers that a company has failed to correct a Code breach in accordance with section 13.8, or if the company does not agree on corrective measures, the Life CCC will notify the company CEO in writing; and provide them with an opportunity to respond within 15 business days. (13.10)
- The Life CCC can, after considering any response, at the expiration of the 15 day period make a final determination and can impose sanctions. (13.11)

## Nature of sanctions

- The Life CCC must notify the company CEO and the FSC in writing of its decision and any sanctions it will seek to impose, which may be one or more of the following:
  - a formal warning (presumably to the effect that other sanctions will be applied in the event of further breaches);

Or require;

- particular rectification steps be taken within a specified timeframe;
- a Code compliance audit be undertaken;
- the company to undertake corrective advertising;
- the company to write directly to customers impacted by the breach;
- a publication on the company website and on the FSC website that the company has breached the Code. (13.12,13.14)

<sup>7</sup>The Life CCC must take into account any corrective measures imposed by a regulatory body when it negotiates corrective measures with the company.

## What the Life CCC has to take into account in making a decision on sanctions

- When determining any sanctions to be imposed, the Life CCC must consider:
  - the principles and objectives of the Code;
  - the appropriateness of the sanction;
  - any rectification measures related to the breach imposed on the company by any regulatory body<sup>8</sup>;
  - any rectification imposed by any regulatory body related to the breach;
  - whether the breach is a Significant Breach<sup>9</sup>. (13.13)

## What are the consequences of a sanction?

- A decision of the Life CCC is binding on a company and if it does not comply with a sanction this is regarded as a breach of an FSC Standard. The FSC Board has the power to undertake disciplinary action in accordance with FSC Standard No. 1.  
(13.15, 13.6)

<sup>8</sup> Any regulatory corrective measures agreed to or imposed on the company take precedence. (13.17)

<sup>9</sup> See what is a "Significant" breach in Subject 6.

# Contact Us

To discuss any aspect of the Life Insurance Code and what it means for you, please contact a TurksLegal team member.



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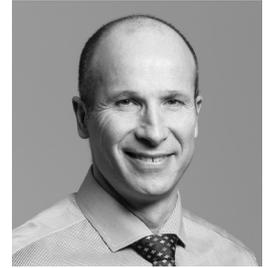
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