From: Josh Mennen
Sent: Tuesday, 26 July 2016 7:15 PM
To: 'Sarah Phillips'
Cc: 'Jane Campbell'
Subject: RE: Life Insurance Code of Practice

Dear Sarah,

We refer to your email dated 9 May 2016 with the latest iteration of the FSC Code of Practice (the Life Code) and thank you for inviting our ongoing feedback. Apologies for the delay in responding.

Although the latest iteration demonstrates that some meaningful progress has been made, it is our belief that many concerns remain, such that the Life Code is inadequate in its current form. We note the following by way of explanation:

1. Claims provisions:

1.1 As to the claims section, further to the **attached** marked up changes, we note as follows:

(a) We reiterate that a large and increasing proportion of life insurance claims are made by members of Super Fund's against group life policies owned by the Fund Trustee. Whilst the Life Code refers to Fund Trustees who are policy owners, it does not automatically bind them to the Life Code but contemplates opt in arrangements through formal agreement with the FSC and the Life CCC. It is concerning that many or all Trustees will not agree to do so, which would in turn complicate and frustrate the Super claims process due to inconsistent obligations of the life insurer vis-a-vis the Trustee. We believe the FSC should seek agreement with Trustees who are policy owners prior to implementation of the Life Code. That could be done through their peak bodies such as ASFA and IFSA, to ensure their binding participation in the Life Code from the outset.

(b) As to the proposed amendments to clause 8.10(c) in particular, the word "avoid" is non-committing and should be replaced with definitive language. The proposed clause would enable an insurer to send a claimant to multiple health practitioners of the same discipline as long as the consultations are 6 months apart. That is inappropriate and does not sufficiently prevent Doctor shopping. If a further consultation is genuinely needed after 6 months due to some development in the claimant's condition, the insurer should only be entitled to send claimant back to the original IME for supplementary opinion, not to a new IME. That accords with the principal that Courts are generally loathe to permit a multiplicity of experts on a specific issue: Tvedsborg v Vega (2009) NSWCA 57; Hinset Pty Ltd v Lane Cove Council (2011) NSWLEC 120.

(c) The General Code [at clause 7.10(c)] requires that an insurer provide the insured within 10 business days 'an initial estimate of the timetable and process for making a decision'. An equivalent clause concerning 'an initial estimate of the timetable', given at a relatively early stage of the claims process, should be included in the Life Code in addition to clause 8.3 which provides that the insurer will 'explain to you your cover and the claims process'.

(d) The General Code provides a number of triggers for the specific provision by the insurer to the insured of details of the insurer's Complaints Process. For example, where a claim decision has not been made within timeframes stipulated in the Code [refer Clause 7.17 and 7.18]. The Life Code contains no equivalent triggers other than where the insurer has declined a claim). Such a requirement should be added, for example to Clause 8.16 where:

- a decision has not been made within two months after the end of the insured's waiting period; or
- in exceptional circumstances, a decision has not been made within 12 months.

(e) As to clause 10.5, this is, with respect, a timid response to the CommInsure scandal. It is submitted that there needs to be specific mention of employed professionals such as doctors, rehab providers, etc not just “third party” providers. There needs to be a specific statement that insurers will respect the opinion of the professional employee and not seek to have them change their opinion where they are required to exercise professional judgment in reaching their conclusions.

(f) As to clause 14.5(c), that should removed or changed. If information is prejudicial to the insurer then that is exactly the type of information that ought to be disclosed by an insurer acting in good faith.

(g) Other suggestions ate marked up in the attached bringing the Life Code into line with important clauses in the General Code.

2. Sales and financial advice provisions:

2.1 We have not suggested changes to the sections dealing with product design, financial advice, sales, and other pre claims functions. That is because those issues are in need of comprehensive redrafting to address important consumer concerns which are well known to cause conflicts of interest leading to poor customer outcomes, and been the basis for much litigation and criticism of industry. These including:

- cross selling/vertical integration;
- Approved Product Lists (APLs);
- the FOFA best interests duty;
- Policy ‘churning’;
- Fee disclosure obligations;
- Compliance with the ‘suitability rule’.

2.2 To deliver customer confidence and achieve broad support, any Life Code dealing with financial advice, as yours purports to, will need to engage with these issues.

We confirm that we otherwise support the feedback you have received from the Financial Rights Legal Centre and the Consumer Action Legal Centre.

Regards,

Josh Mennen
ALA SIG