



**Submission by the
Financial Rights Legal Centre**

The Insurance in Superannuation Working Group

Member communication and engagement, May
2017

June 2017

About the Financial Rights Legal Centre

The Financial Rights Legal Centre is a community legal centre that specialises in helping consumer's understand and enforce their financial rights, especially low income and otherwise marginalised or vulnerable consumers. We provide free and independent financial counselling, legal advice and representation to individuals about a broad range of financial issues. Financial Rights operates the National Debt Helpline, which helps NSW consumers experiencing financial difficulties. We also operate the Insurance Law Service which provides advice nationally to consumers about insurance claims and debts to insurance companies. Financial Rights took over 25,000 calls for advice or assistance during the 2015/2016 financial year.

Financial Rights also conducts research and collects data from our extensive contact with consumers and the legal consumer protection framework to lobby for changes to law and industry practice for the benefit of consumers. We also provide extensive web-based resources, other education resources, workshops, presentations and media comment.

This submission is an example of how CLCs utilise the expertise gained from their client work and help give voice to their clients' experiences to contribute to improving laws and legal processes and prevent some problems from arising altogether.

For Financial Rights Legal Centre submissions and publications go to www.financialrights.org.au/submission/ or www.financialrights.org.au/publication/

Or sign up to our E-flyer at www.financialrights.org.au

National Debt Helpline 1800 007 007
Insurance Law Service 1300 663 464
Aboriginal Advice Service 1800 808 488

Monday – Friday 9.30am-4.30pm

Introduction

Thank you for the opportunity to comment on member communication and engagement in superannuation. The Financial Rights Legal Centre (Financial Rights) has provided comment or answers to only those questions where it feels it is able to provide input.

At the top though, Financial Rights wishes to reiterate our strong expectation of four principles in developing the Superannuation Code of Practice.

Firstly, the Superannuation Code of Practice will be a consumer-facing document that, at a minimum, fills all the gaps left by the Financial Services Council's (FSC) Life Insurance Code and addresses those issues specific to the relationship between the member and the Superannuation Trustee. The superannuation industry needs to work closely with the FSC and the life insurance industry to ensure that similar provisions included in the Life Insurance Code of Practice cover the entire industry, and that each section of the Superannuation Code of Practice works symbiotically with the Life Insurance Code of Practice to ensure a consistency in consumer experience.

Secondly, the Superannuation Code of Practice will push the industry to make best practice commitments to consumers that are beyond current legal and regulatory obligations.

Third the Superannuation sector will seek approval of the eventual Superannuation Code of Practice in accordance with the Australian Securities and Investments Commission's (ASIC's) *Regulatory Guidance 183*.¹ We note that the Minister for Revenue and Financial Services, the Hon. Kelly O'Dwyer MP stated in response to the launch of the Life Insurance Code of Practice in October that:

...she expects the FSC and life insurance industry will take the necessary steps to ensure that the Code is enforceable across the whole industry, by gaining ASIC approval of the Code.

*ASIC should work collaboratively with the FSC and the industry to approve the Code. Once the Code is approved, the Government will give ASIC the necessary powers to enforce the Code, so as to ensure financial services licensees' compliance with the Code.*²

Given our first expectation described above (that is, we expect the Superannuation Code of Practice to work symbiotically with the FSC's Life Insurance Code) we expect the Superannuation sector to similarly be expected to gain approval of the Code.

¹ <http://download.asic.gov.au/media/1241015/rg183-published-1-march-2013.pdf>

² Minister for Revenue and Financial Services, *Media Release: Key life insurance reforms to assist consumers*, 12 October 2016 <http://kmo.ministers.treasury.gov.au/media-release/091-2016/>

Finally, we wish to state clearly that any competition issues that may arise in the development of an eventual Superannuation Code of Practice should not be considered a barrier to making significant commitments under the Code. Similar competition issues arise in all the financial services Codes of Practice and there is a simple process largely administered by the Australian Competition and Consumer Commission (ACCC) and ASIC that is available to ensure that all relevant competition issues are appropriately considered and approved by Government in finalising a Code. In fact competition issues have recently arisen in the development of the Life Insurance Code with respect to Funeral Insurance, Consumer Credit Insurance and medical definitions. The FSC has publicly stated that it is submitting these for approval with the ACCC.³ Financial Rights recommends the Insurance in Superannuation Working Group make early contact with the ACCC and ASIC on this point to ensure that no hurdles are in the way of the sector to make significant commitments under the Code of Practice that will benefit consumers.

B.1. Incorporate Plain Language and Consumer Testing

1. Should the current policy design and disclosure standards (plain language and consumer testing principles) in the FSC Life Insurance Code of Practice be extended to insurance in superannuation communications?

Yes.

As the discussion paper notes the FSC Life Insurance Code of Practice requires insurers to improve disclosures to customers, provide greater transparency in communications and higher standards regarding disclosure. The Paper then refers to the:

- regular review of insurance information and documentation;
- incorporation of plain language principles;
- provision of specific key information upon purchase of a policy and
- consumer testing of level of understanding

The Paper references clauses 3.4 and 3.5 of the Life Insurance Code. Financial Rights strongly supports the inclusion of these principles.

³ <https://www.fsc.org.au/entity/annotation/fe078546-30a7-e611-80c9-00155d252c17> n

However Financial Rights feels that the Working Group has taken the wrong approach with this Discussion Paper. There are a number of aspects and principles of communicating and engaging with consumers that have not been addressed or considered in this Paper, and are included in other Codes of Practice, including the FSC Life Insurance Code of Practice.

Before detailing what is missing, Financial Rights notes that this paper is primarily “focused on general member communications prior to a member lodging an insurance claim” and that communications with claimants will be dealt with by the working group on claims handling. Financial Rights has made a number of recommendations with respect to communications in the claims handling process in our previous submission and remain concerned that some basic aspects of the communication and engagement process have not been addressed. For example, neither that paper nor this one address the general lack of PDS availability for consumers.

Financial Rights will detail our expectations for communications and engagement with members in this submission both with respect to general member communications prior to a member lodging an insurance claim as well as after the lodgment of a claim. It is important that the approach to communications be holistic, seamless and consistent. To separate this out is in our view, the wrong approach.

This Discussion Paper is focused on introducing a couple of new principles and possible new tools to improve communications – all of which have strong potential and are not necessarily the wrong or right approach to better engagement with consumers.

Nevertheless, Financial Rights recommends the Working Group take a step back and focus on general communications and engagement principles, and the communications and engagement journey taken in the relationship between superannuation companies and consumers. Only from this solid foundation can particular outcomes and tools be workshopped, considered and potentially implemented.

Financial Rights recommends the Working Group develop overarching communications and engagement principles that should both improve the Code and the consumer/superannuation fund relationship and be key promises or objectives under the Code. The Working Group also should systematically identify every step of the consumer/superannuation fund relationship to identify what commitments can and should be made to improve the relationship with consumers, build trust and confidence and ensure that fewer disputes and issues arise in the future.

Communications and engagement principles

Superannuation Trustees have a poor relationship with members in terms of communication and engagement. It is commonly understood that most consumers are disengaged with their superannuation. This is also the case with their insurance. The reasons for this disengagement were recently detailed by the Productivity Commission in its November 2016 Research

Report: *How to Assess the Competitiveness and Efficiency of the Superannuation System*.⁴ The report identifies four key reasons for consumer disengagement with superannuation.

1. *The compulsory nature of the system means that most members contribute to their superannuation, regardless of their personal preferences.*
2. *Cognitive constraints and behavioural biases may impede member engagement and optimal decision making. Examples include, lack of financial literacy, myopia, complexity of long-term decision making, loss aversion, reliance on mental shortcuts, a tendency to procrastinate and general apathy.*
3. *The superannuation system uses a default model to address member disengagement, but it may also act to increase that disengagement. That is, reducing the penalty for disengagement may cause some members to disengage.*
4. *Under some circumstances, members may be constrained from making an active choice. Regulations prevent about 20 per cent of the workforce – particularly employees under some modern awards and enterprise bargaining agreements – from choosing a superannuation fund other than the default.*

There has also been a significant fall in consumer confidence and trust in the financial services sector more generally arising from a raft of financial scandals. Financial Rights notes that the superannuation sector has not been immune to these scandals. Serious issues have been raised in the media including the lack of value in the life insurance products made available by superannuation funds, claims handling delays and problems, unfair contract terms, account balance erosion, the lack of communication with members, payments to super funds by life insurers with low claims rates labelled as “bribes,” the trading away of member rights rendering the insurance policies as junk insurance and more.⁵

The Code of Practice is an opportunity for the superannuation industry to acknowledge these issues, examine their engagement with members and enact principles to ensure better and more effective communication strategies, *not as a spin exercise but one of genuine transparency, honesty and respectfulness.*

⁴ <http://www.pc.gov.au/inquiries/current/superannuation/competitiveness-efficiency/report/superannuation-competitiveness-efficiency.pdf>

⁵ Adele Ferguson, Ruth Williams Devils are in the detail in super life insurance, SMH, 6 August 2016 <http://www.smh.com.au/business/consumer-affairs/devils-are-in-the-detail-in-super-life-insurance-20160805-gqlnlk.html>

Ruth Williams, Australia's super funds scrambling to fix super life insurance, SMH, 15 October 2016, <http://www.smh.com.au/business/banking-and-finance/australias-super-funds-scrambling-to-fix-super-life-insurance-20161013-gs220b.html>

Jessica Irvine, Many of us don't even know we have life insurance. Often it's worthless SMH, 27 February 2017, <http://www.smh.com.au/comment/many-of-us-dont-even-know-we-have-life-insurance-often-its-worthless-20170224-gul0ow.html>,

One of the “Key Code Promises” of the Life Insurance Code of Practice (in fact the first key promise) is that insurers:

“will be honest, fair respectful, transparent, timely and where possible we will use plain language in our communications with you.”

Financial Rights expects a similar set of Key Promises to be made in a Superannuation Code of Practice and that these promises make up a part of the actual Code (as they do under the General Insurance Code of Practice). Furthermore, Financial Rights expects that the Superannuation sector commit to the same or similar principles as expressed above with respect to communicating and engaging with their members.

The objectives of the Life Insurance Code of Practice also includes a commitment to:

“a) ...high standards of customer service throughout your relationship with us;”

It is critical that the Superannuation industry also commit to similar high standards of customer service throughout its relationship with a member. Customer service or member engagement generally – outside of plain language documentation – is important to build trust and confidence in the sector. This is particularly so given the low levels of trust in the financial services sector.

Furthermore the life insurance Code commits to applying the following principles to their products and services:

- a) clarity and transparency;*
- b) fairness and respect;*
- c) honesty;*
- d) timeliness; and*
- e) communications in plain language.*

These principles should similarly apply to all products provided to members and all communications and engagement with members.

Recommendations

The Superannuation Code should enunciate communications and engagement principles through key promises and objectives. These principles include

- honesty
- fairness
- respect
- clarity and transparency
- timeliness
- plain language
- high standards of customer service.

Intermediate communications between life insurers and members

Financial Rights notes that under the Life Insurance Code, insurers have committed to communicating with policyholders but notes at section 2.13 that some of those interactions will have to be with the Superannuation Trustee.

“Where an employer or superannuation fund trustee owns the Life Insurance Policy on your behalf, some of our interactions will be with them and they will communicate with you as appropriate.”

The superannuation industry needs to acknowledge this intermediary role and make a strong commitment to ensure that they will pass on any and all communications directed at a beneficiary member from the life insurer in a prompt fashion. We strongly suggest a clear time frame is also included in this commitment.

Recommendations

The Superannuation industry must commit to passing on all information to members from an insurer in a prompt manner subject to time limits. We recommend all information is passed on within 3 days.

Taking up the life insurance option

In contrast to direct insurance where there is a sales and advertising process, consumers may be “sold,” “defaulted into” or “actively choose” a superannuation fund, at which point they then choose to opt into an insurance product, opt out an insurance product or actively seek an insurance product as part of their superannuation. Members may also wish to seek further information to change their policy with the superannuation fund, be it boosting coverage, taking up a different offer, reducing coverage or withdrawing altogether from the product. There are a large variety of ways these processes can occur.

For example, some consumers simply take up the default superannuation of an employer and tick a box on the form on their first day of work. They may take the form home and consider it overnight. They may not know what to choose, seek out further information and subsequently have information sent out to them. For many, insurance is automatically provided and members are not even aware that they are beneficiary under the policy.⁶ In these

⁶ Under the *Superannuation Industry (Supervision) Act 1993*, all MySuper products are required to provide life and TPD insurance to members, and may choose to provide income protection insurance, by default,

circumstances consumers are provided with the option to opt-out. For others still, life insurance is an option that is not automatic at all and is made available only if it is sought after explicitly (eg Future Super).

Financial Rights believes that this process needs to be streamline and improved. The industry needs to examine closely how it communicates with consumers at this initial take up process – be it when they are choosing to opt-in or opt-out of an insurance product.

In our experience with clients, a large number of consumers are unaware that they have an insurance product via their superannuation and are surprised – sometimes pleasantly, sometimes unpleasantly – when they find out. The Productivity Commission too confirms this impression.⁷ Financial Rights has even heard from callers who claim that they never ticked the box to take up the insurance product. Financial Rights recommends that at the very least, superannuation trustees need to record this information better and maintain these records for the lifetime of the policy.

Superannuation trustees must take a close look at this process and provide more appropriate information, easier to understand information to better communicate with consumers at the inception of insurance coverage. Superannuation trustees need to take steps to empower members and potential members to make better informed decisions and raise greater awareness and financial literacy levels.

Some ideas raised in the discussion paper include a Key Fact Sheet and a Welcome Pack. These options may or may not be effective and should be consumer tested. Nevertheless the sector does need to commit to minimum communications standards at the inception stage. The sector needs to ask itself whether, for example, a mere tick-a-box is an appropriate form of communication? Should there be delay? Should more or less information be provided at this point? Should there be a self-initiated cooling off period? The Superannuation sector must examine closely the aims of the MySuper policy and their own objectives with respect to providing insurance products.

Again, Financial Rights notes that the two key communications proposals put forward in this paper are a Key Fact Sheet and a Welcome Pack. Both of these tools are presented as post-purchase communications. The Key Fact Sheet is proposed for “members who obtain automatic insurance ...so that they have a user-friendly guide to clearly explain what they are covered for.” While a KFS may be useful to a member at the inception stage (although this

as long as ‘... the cost of the insurance does not inappropriately erode the retirement income of beneficiaries’: SIS Act, s. 52(7)(c)). MySuper members may elect to opt-out of the insurance cover.

⁷ “many members are unaware whether they have insurance through their superannuation; even those that are aware tend to lack a good understanding of their cover” p. 189
<http://www.pc.gov.au/inquiries/current/superannuation/competitiveness-efficiency/report/superannuation-competitiveness-efficiency.pdf>

should be consumer tested), it is important to note that KFSs were originally developed to compare products and assess products *prior* to their purchase.

This Code must commit to providing full disclosure of information before the consumer chooses to take up the option of insurance under their superannuation, be it in the sign up form, at the seminar they attend, on-line or otherwise. Some or even all of the proposals could in fact be provided before or at the time of deciding to take up the insurance option. Fundamentally the Superannuation sector needs to make a commitment to better communicate with consumers prior to taking up an insurance option and provide appropriate information to empower consumers in their choice. At the very least the insurance product's PDS, KFS and welcome pack should be available online and provided upon request to all members and non-members at any point in time.

The basic disclosure information provided about an insurance product offered should include:

- the type of insurance
- coverage inclusions and exclusions
- how much the member is insured for
- costs
- the impact upon the member's superannuation funds over time
- information about product options
- waiting periods
- information about the claims process
- information about the complaints process
- claims success ratios

In addition to this, Financial Rights believes the following information needs to be explicitly included in this material:

- The basic nature of insurance under superannuation and its consequences, ie that the member is a beneficiary not the policyholder, and the Superannuation Trustee plays a key role in deciding whether to argue on your behalf or not. This is an important distinction not well understood by consumers.
- The reasons the superannuation fund have bought the particular product to which the member is a beneficiary. As stated in the discussion paper

"Policy features are determined by each superannuation fund based on their assessment of the collective needs of members, specific design requests from employers and compliance with MySuper requirements."

For the sake of transparency, members and potential members need to be informed of this information to ensure that it is appropriate to their specific needs as opposed to the collective needs of those in their industry, workplace or retail fund.

Recommendations

Superannuation trustees must take a close look at take-up process for insurance products under superannuation and commit to providing more appropriate, easier to understand information to better communicate with consumers prior to inception. Superannuation trustees must make commitments to take steps to empower members and potential members to make better informed decisions and raise greater awareness and financial literacy levels.

Policy Changes

Superannuation funds either set up associated insurance companies to provide insurance products or outsource them an external provider. Most fall into the latter category.⁸ It is Financial Rights' understanding that superannuation trustees have been renegotiating and changing the policies that they have bought for their members including the reduction of benefits, decrease in coverage and increasing exclusions. This was recently raised in the media:

An investigation by Fairfax Media reveals that a slew of super fund trustees have recently been renegotiating life insurance contracts with insurers at a time when premiums are surging up to 200 per cent in some cases. Negotiations have become tense, forcing some super fund trustees to cop a massive hike or trade away some of their member's rights.⁹

The investigation suggests some, but not all, super fund trustees have given too much ground in these crucial negotiations, potentially rendering some policies junk insurance.

Financial Rights believes that the Superannuation Code should commit all Trustees to transparently and clearly informing all members of any policy change before it occurs, providing full details of the coverage change and comparison to previous cover. There will be member's whose specific coverage is something they pay close attention to, and rely on for personal and family risk management. Giving them notice about coverage changes gives them the capacity to change Super Funds or take out direct insurance policies to meet their needs.

The FSC Life Insurance Code of Practice includes a section on Policy changes that includes communication with the policyholder during the term of the policy: section 6. However subsection 6.1 makes it clear that this does not apply to Group Policies. Again, Financial Rights

⁸ p. 35, <http://www.pc.gov.au/inquiries/current/superannuation/competitiveness-efficiency/report/superannuation-competitiveness-efficiency.pdf>

⁹ <http://www.smh.com.au/business/consumer-affairs/devils-are-in-the-detail-in-super-life-insurance-20160805-gqlnlk.html>

strongly believes that Superannuation Trustees need to step up and commit to all the same communications as the Life Insurance Code and to provide full information about policy changes to members. To not similarly commit would be unfair and not act in good faith with their members.

Financial Rights recommends that Superannuation Trustees make similar commitments to members as under subsection 6.3:

6.3 We will provide you with an annual notice in writing each year prior to the anniversary of your Life Insurance Policy.

The annual notice will include:

- a) the types of cover you are insured for and how much you are insured for;*
- b) an explanation for any increase in your premiums in accordance with the terms of your Life Insurance Policy;*
- c) information about the risks of cancelling and replacing an existing Life Insurance Policy;*
- d) information about how to contact us to discuss options if you want to change the terms of your Life Insurance Policy or are having difficulty meeting your payments; and*
- e) what to do in the event of a claim.*

6.4 If your Life Insurance Policy has an automatic upgrade of benefits and we pass an automatic upgrade on to you, we will notify you of the relevant changes to the key information detailed above at section 3.4.

Recommendations

The Superannuation Code of Practice must commit all Trustees to transparently and clearly inform all members of any policy change before it occurs, providing full details of the coverage change and comparison to previous cover;

In addition, the Superannuation Trustees must commit to providing detailed annual insurance statements to their members including:

- the types of cover you are insured for and how much you are insured for;
- the costs of the policy;
- the coverage, exclusion and inclusion (including the highlighting of any changes)
- an explanation for any increase in the premiums;
- information about the risks of cancelling and replacing an existing Life Insurance Policy;

- information about how to contact the Trustee to discuss options if you want to change the terms of the Policy; and
 - what to do in the event of a claim.
-

Consumers requiring additional support

The Life Insurance Code of Practice includes communications and engagement commitments specifically to consumers requiring additional support: section 7.

7.1 We recognise that some groups may have unique needs, such as older persons, consumers with a disability, people from non-English speaking backgrounds and Indigenous people, when accessing insurance, making an inquiry, claiming on their insurance, making a Complaint and communicating with us. Where we identify that a customer requires additional support, we will take reasonable measures to ensure that we provide additional support.

7.2 We will have processes in place to train our staff to help identify and engage appropriately with consumers who are having particular difficulty with the process of buying insurance, making an inquiry, making a claim or making a Complaint, or who may not be capable of making an informed decision, and to refer these consumers for appropriate additional support where required.¹³ We will take into account someone's capability when making decisions that impact them.

7.3 We acknowledge that we will not always be able to identify when someone requires additional support at the time of their insurance application. If we later become aware that we or our Authorised Representative has sold a Life Insurance Policy to a customer who was not provided with the additional support they needed to make an informed decision, we will investigate this and if the Life Insurance Policy was sold inappropriately, we will remedy this in accordance with section 4.9. If the person who recommended our Life Insurance Policy (for example, your financial adviser) is not our staff or our Authorised Representative, we will tell you how you can have the matter addressed.

7.4 We recognise that some groups of consumers (for example, people from Indigenous communities or those from non-English speaking backgrounds) may require support in meeting identification requirements when buying insurance or making a claim or Complaint. We will undertake reasonable measures to assist those consumers and still meet our obligations under the law.

7.5 We recognise that people living in remote and regional communities may have trouble meeting their obligations to provide us with documents and to take part in assessments in the timeframes we set. We will take this into account when going through the underwriting and claims processes.

These commitments are an explicit acknowledgement that there are certain members of the community who have unique needs and require more appropriate forms of communications

and engagement throughout entire relationship with an insurer and superannuation fund. The FSC identifies (but does not limit these to) “older persons, consumers with a disability, people from non-English speaking backgrounds and Indigenous people.” Those with mental health issues too are an important segment of the community that have particular needs that need to be acknowledged and appropriately acted on.

We also note that providing this additional support is one of the Key Promises made under the FSC Life Insurance Code.

We will provide additional support if you have difficulty with the process of buying insurance or making a claim.

We strongly recommend that the Superannuation Code of Practice include commitments to best practice communication and engagement with consumers requiring additional support. This should also address the use of interpreters where appropriate.

Recommendations

The Superannuation Code of Practice must commit to best practice communication and engagement with consumers requiring additional support include (but not be limited to):

- older persons,
- people with a disability
- people from a non-English speaking background
- Indigenous people
- people with a mental health issue.

These should be concrete commitments ranging from the use of interpreters, accessible websites, to explicit support for financially experiencing hardship or disadvantages arising from distance and location.

When making a claim

Financial Rights has made a number of recommendations to the Claims Handling working group, many of which center on communications. We recommend that the Communications Group also closely examine our submission. It is attached.

Suffice it to say here that what is required are strict, hard time limits on communicating with claimants and the provision of basic information including the PDS. We list the key communications and engagement recommendations here:

Recommendations

The Code of Practice should include a commitment to provide every member or beneficiary with the appropriate Product Disclosure Statement for their group insurance product. This should be in both soft copy and hard copy form.

Product Disclosure Statements should be provided to members or beneficiaries upon becoming a member or beneficiary (be it automatically or otherwise).

Product Disclosure Statements should be made available online for members or beneficiaries.

The issuing of claims forms at the request of the person claiming should be provided with a 2-3 day time frame. PDS documents should be automatically provided with a claims form when a claims form has been requested.

The Code of Practice should include a commitment not to discourage a member or beneficiary from making a claim.

Complaints and disputes

Financial Rights strongly recommends that Superannuation Trustees commit to ensuring the clear and transparent availability of information relating to complaints and disputes. The life Insurance Code of Practices states that Life Insurers will:

make information about your right to make a Complaint and our process for handling Complaints available on our website and in our relevant communications.

The same should be committed to by Superannuation Trustees.

Recommendations

The Code of Practice should include a commitment to ensuring the clear and transparent availability of information relating to complaints and disputes.

Trigger points and events based communications

There are a number of important points in the relationship of a consumer with the Superannuation fund that should oblige the Trustee to make actively take steps to contact the consumer and provide information. Some have been touched upon under the Account Erosion Discussion Paper. These include:

- the period before and after the cessation of insurance cover;
- recommencement of cover;
- ceasing work with an employer;

- after a periods of significant inactivity.

Financial Rights recommends that Superannuation Trustees acknowledge, address and make commitments to appropriate communications at each of these times. As detailed in the Account Erosion paper, the communications should include the consequences of continuing insurance cover including the impact of premiums on retirement savings, providing options to the member regarding consolidation, cancellation and other important information. The Code should include appropriate specific hardline timeframes for these communications to take place. Financial Rights, for example, recommends that in the case of periods of inactivity, communication should perhaps begin at 3 months before cessation, with a follow up before the final cessation date.

Recommendations

The Code of Practice should include a commitment to minimum communications and engagement standards with respect to trigger events including:

- the period before and after the cessation of insurance cover;
- recommencement of cover;
- ceasing work with an employer;
- after a periods of significant inactivity.

The Code should include appropriate specific hardline timeframes for these communications to take place.

Appropriate forms of communication

One of the key commitments under the Code of Banking Practice is that banks will:

“communicate with you and/or your representatives in a timely and responsible manner whether by written or electronic communications (including by telephone).” (clause 3(e))

Financial Rights strongly believes that a commitments must be made with respect to ensuring all significant communication is provided in writing and that electronic communication be encouraged but not mandatory.

It should not be assumed that electronic disclosure is the most appropriate means of communication. People on lower incomes, those with disabilities, older clients, culturally and linguistically diverse customers and others should be able to request all communications in a format they can access without the penalty of a fee. Given the recent changes to postal delivery times by Australia Post, banks must also allow for adequate turnaround times for customers to respond.

While Consumer Representatives support the use of electronic communications in most circumstances on the basis that it is better for the environment, can be easier and more convenient for many people and can lead to cost savings, we do so subject to the following:

1. Superannuation trustees should provide notification to consumers that paper documents may no longer be given, that the consumer must remember to regularly check for electronic communications, and that consumers can withdraw their consent at any time. This notification should be given at the time the consent is obtained.
2. Trustees should be required to make electronic communications available for a reasonable period, and in a format that allows the electronic communication to be saved to an electronic file and printed.
3. Trustees should have a reasonable expectation that the intended recipient would be able to access, save and print the electronic communication. It is particularly important that the Trustee checks that the email address is in use or can be accessed easily. When electronic communication fails there should be a procedure for members to follow to contact a customer and update details and provide appropriate disclosure.
4. That electronic communication cannot be used as a method to exclude consumers from products and services. For example, a refusal to provide a service or product on the basis that the consumer does not have an email address.

Further, superannuation trustees need to acknowledge that there are many people who need to opt for paper communications and should not be penalised for doing so through the levying of a fee. There are many reasons why people may opt for paper communications. For instance, they may not be able to afford access to the internet at home or via their phone. These people tend to be lower income Australians whose sources of income are, for example, Centrelink payments, disability payments or the aged pension. According to the Australian Bureau of Statistics (ABS) only 70 per cent of those not employed were internet users.¹⁰ For those in the lowest income quintile almost only 67 per cent were internet users. Households located in remote or very remote parts of Australia were less likely to have internet connections (79 per cent). Among the main reasons given for not accessing the internet at home were a lack of confidence or knowledge (22 per cent), and cost (16 per cent).¹¹

There are others who simply cannot access the internet, be it because it is not available in rural and remote areas or they do not have the requisite knowledge or experience to use electronic

¹⁰ ABS, 8146.0 - Household Use of Information Technology, Australia, 2014-15, 18 February 2016 <http://www.abs.gov.au/ausstats/abs@.nsf/mf/8146.0>

¹¹ *ibid*

communications, for example older Australians. According to the ABS only 51 per cent of people over 65 use the internet.¹²

Charging a fee on those on the wrong side of the digital divide is disproportionate and only exacerbates financial hardship. They are in a sense being penalised for being poor.

Recommendations

The Code of Practice should include a commitment to:

- not excluding members from products and services simply because they do not have an email address;
 - informed consent of the customer will be gained to deliver its documents electronically;
 - introducing a procedure for consent and notification that covers simple withdrawal of consent, change of email address and the need to check the email address regularly;
 - introducing procedures to get documents in a paper format simply and easily if the electronic communication failed; and
 - a prohibition on charging fees for paper communications.
-

Training

All front line staff of a superannuation fund including sales, call centres, claims assessors/handlers etc, should be trained to appropriately communicate and engage with members. This should include training to understand and implement the Superannuation Code of Practice and working with consumers who require additional support.

Similar minimum commitments are made under the Life Insurance Code of Practice and should be under the Superannuation Code of Practice.

Recommendations

The Code of Practice should include a commitment to training all front line staff including training to understand and implement the Superannuation Code of Practice and working with consumers who require additional support.

¹² ibid

2. Should the current policy design and disclosure standards (plain language and consumer testing principles) in the FSC Life Insurance Code of Practice be extended to all superannuation fund communications?

Yes. See above.

3. Should these requirements apply just to the PDS and KFS only, or to all material containing insurance related information?

Yes they should apply to all communications with members. As argued above, this is an opportunity for a significant re-think and re-balance in communications and engagement with members and the superannuation industry must examine every aspect of that relationship and make significant commitments under the Code to implements this.

4. Should all insurance in superannuation communications be consumer tested?

Yes. However this should not be seen as a barrier to introducing changes. Testing can take place in the real world.

B.2. Develop a Standard Key Facts Sheet

5. Would consumers benefit from a simplified statement about the insurance offering a superannuation fund provides and, if so, when should it be provided to them?

Yes.

A simplified statement about the insurance policies in a superannuation fund should be made available to consumers and superannuation funds should commit to creating and consumer testing new KFS's.

KFS's for home building and/or home contents insurance¹³ were introduced in late 2012 with the *Insurance Contracts Amendment Regulation 2012 (No.2)* amending the *Insurance Contracts Regulations 1985*. The requirement commenced after a generous transition period in November 2014.

It requires that the insurer provide a consumer with a one page key fact sheet for insurance contracts containing certain home building and/or home contents insurance. Under the regulation, a KFS must be provided by the insurer when:

- a) the consumer seeks information about a contract (as soon as reasonably practicable, but not later than 14 days, after the consumer first requests information about the contract) and;
- b) and when a consumer enters (including renewals) into a contract or potential contract (again as soon as reasonably practicable, but not later than 14 days, after the consumer enters the contract). It excludes any extension, variation or reinstatement of the contract.

If it is not practicable to provide the KFS the requirement to provide the KFS as soon as reasonably possible will be considered to be before or at the same time as the provision of other disclosure documentation such as the PDS was provided (that is within 5 days).

The insurer may provide the KFS by electronic means at the consumer's request.

Financial Rights is currently undertaking research in collaboration with Monash University examining, in part, the effectiveness of the KFS for in terms of consumer engagement, comprehension and decision-making.

Financial Rights suggests that superannuation funds take this opportunity to innovate and consumer test new short form disclosure documents or KFSs. The KFS should be available on the Super Fund's website and on request. The KFS should also be provided before making the choice to take up the offer, provided once it has been taken up as part of the official documentation and at provision of the annual statement. Consideration should also be given to providing at the end of a job or during periods of no activity.

Financial Rights would however reiterate that the creation and provision of a KFS should not be seen as a replacement or substitute for a PDS, which should also be made available at any time, upon request or when it is updated.

¹³ as defined in the Insurance Contracts Regulations 1985 (regulations 9 and 13)

Recommendations

The Code of Practice should include a commitment to making available a KFS and a PDS at any time, upon request and at appropriate trigger events.

A new KFS for insurance products in superannuation should be consumer tested to ensure that it does in fact enhance consumer understanding and engagement.

6. Would the introduction of a KFS assist consumers in comparing the insurance offerings between superannuation funds?

Maybe, but that is unlikely to occur. There is no evidence that insurance offerings is a big contributor to consumers choosing different superannuation funds.

The most important function of the KFS is to assist consumers understanding what they are covered for, and what may be excluded from their policies. A KFS in combination with a PDS will enable a member to know if they need to take out additional cover, or if they should simply opt out of policies that are going to be of no benefit to them.

Financial Rights would point to recent ICA research where it was shown that KFS use in pre-purchase decisions was low, ranking 8th most used source of information (23%) in purchasing a Home Building policy and 9th most used source of information (23%) in purchasing a Home Contents policy. This could be explained by the current non-consumer friendly, non-consumer tested form which is mandated under legislation to be written in Arial font of particular sizes. The KFS's are also difficult to find it and the document is generally poorly designed and unhelpful. This should not discourage the industry to implement, consumer test and reviewing a Key Fact Sheet of its own design in 18 months.

7. How can superannuation funds encourage members to consider the full PDS when making a decision relating to their insurance?

By providing the PDS to members in the first place. Financial Rights has mentioned this a number of times and many of our clients are not provided with the PDS when they request it.

Presuming that hurdle can be gotten over, there are other issues that need to be considered. In recent years, there has been a marked shift in the insurance industry's thinking about what constitutes effective disclosure. It has been almost unanimously agreed by regulators, the industry, consumer advocates and the Government that the PDS regime is not working as a pre-purchase information source (as opposed to an important source at claims time).

Consumers continue to face significant complexity, confusion and exhaustion when purchasing insurance products. Consumers know they need insurance but shopping around is difficult and time consuming. This leads to people choosing on price or brand rather than detailed consideration of features and coverage.

The Insurance Council's own research has confirmed that the PDS is not a widely used pre-purchase information source, and maintaining a predominant focus on the PDS will continue to result in missed opportunities to engage consumers through these other sources.¹⁴

However, Financial Rights does not support eliminating the PDS entirely. It is important that consumers always have access to the full terms and conditions of their insurance policies when they need to check something specific. But it has become clear that these documents can no longer be expected to serve the purpose of helping consumers choose the right policies for them at the time of purchase.

We submit that although improvements of disclosure are sorely needed, they are not sufficient to deliver adequate consumer outcomes in insurance markets. Having said that, Financial Rights believes that insurers and superannuation funds can commit to some obvious improvements relating to disclosure.

Recommendations

PDS documents should not be eliminated, and should continue to be available to consumers for every insurance policy that they have purchased.

9. Should the KFS include member specific information or be limited to fund specific information?

For a KFS to be useful to a consumer it needs to include member specific information. A consumer should be able to look at a KFS and understand what coverage each policy offers, what is excluded, where to find more information and how to make a claim.

Fund specific information which is not relevant to the individual consumer would only confuse that consumer as to what they are covered for.

¹⁴ Consumer Research on General Insurance Product Disclosures, February 2017
http://www.insurancecouncil.com.au/assets/report/2017_02_Effective%20Disclosure%20Research%20Report.pdf

B.3. Introduction of an Insurance Welcome Pack

10. Will an Insurance Welcome Pack increase member engagement and improve understanding of their insurance cover?

Yes, it certainly can't hurt. However the timing of the Welcome Pack should be closely considered and consumer tested. Giving consumers a lot of information about insurance offerings in their super at the start of a new job runs the risk of overwhelming them with too much information at a time when they are probably more focused on their new job than they are on their superannuation benefits. Perhaps giving consumers this Welcome Pack a few weeks or months after they have started a new job would be more effective. But again, this should be tested.

Similar information should also be made available to consumers and maybe even sent to the consumer at other times

Financial Rights also strongly submits that the PDS needs to be included in any Welcome Pack, or at least a link to the most up to date PDS online.

Recommendations

A copy of the consumer's PDS (or multiple PDSs) or at least a link to the most up to date PDS must be included in any Welcome Pack, as well as any follow-up communications with the consumer about their insurance cover.

11. Should the Insurance Welcome Pack be sent with or separately to the Superannuation Welcome Pack?

Probably separately to avoid confusion but this should be consumer tested.

12. In what format should the Insurance Welcome Pack be delivered to members?

The Welcome Pack should be in paper format when it is first delivered, and any later communications regarding changes to the consumer's insurance coverage can be electronic if

the consumer has consented to being contacted electronically. See our recommendations regarding appropriate form of communications above.

13. How can superannuation funds ensure the Insurance Welcome Pack is delivered to members via their preferred communication channel?

Ask them.

B.4. Introduction of Standardised Language and Terminology

14. Should the industry develop standard language and terminology to assist members to better compare products?

Yes. It is confusing and should be cleaned up as soon as possible.

The superannuation industry however should also support the consumer movement's position that there be standard terms in insurance products, particularly with respect to medical definitions, and work with the life insurance industry and Government to ensure this is implemented. The Discussion Paper touches upon this under further considerations.

15. Would standardised terminology reduce the risk of members failing to understand a product or policy's key features and limitations?

Probably, but there are a whole range of other factors that will also need to be taken into account including plain language principles and information design.

18. Should the standard terminology only apply for insurance terms and benefits available to automatic insurance members or should it apply to all insurance products offered through superannuation?

Standard terminology only works to clear up consumer confusion if it is used uniformly across all insurance products. To suggest otherwise would be ridiculous.

B.5. Develop a Member Education Website and/or Develop Minimum Education Requirements for Superannuation Fund Websites

19. Do you support the development of online member education tools focused on improving financial literacy, including education on insurance?

20. Who would be the best provider of information? Should government sites such as ASIC's MoneySmart be further developed? Should existing superannuation fund websites be further enhanced or developed?

As the discussion paper points out, there is already a lot of information already available online regarding the importance of adequate insurance coverage. There are a number of websites where consumers can go to use calculators (including the ICA Understand Insurance website and ASIC's MoneySmart website) and most major insurers have information and calculators on their sites as well. Clearly there is always room for improvement and to ensure that literate and motivated consumers can find trusted sources of information. However, Financial Rights does not believe that more insurance information being available to consumers online would necessarily be effective at improving the risk awareness of superannuation members.

Further sites like the ICA's Understand Insurance end up becoming a self-interested advertisement for insurance rather than a genuine source of independent information. We do not believe that this site has added much to the financial literacy landscape. The Understand Insurance Facebook page for example has 758 followers, 16 subscribers to the YouTube channel and 442 followers on Twitter. ASIC's Money Smart on the other hand has 119,756 Facebook followers, 37,100 Twitter followers and 1622 YouTube Subscribers. Money Smart features some videos that have been seen over 264,000 times. The highest on Understand Insurance's Facebook page is 798. An online member education website will be looked upon with cynicism.

We think that another potentially more effective option could be to standardise the information that Superannuation Trustees commit to placing on their websites. For example, Superannuation Trustees should commit under the Code placing the following elements prominently on every subscriber's website including:

- a standard Superannuation and Insurance FAQ;
- a standard glossary;

- the Code of Practice;
- standard complaints, IDR and EDR information that is clear and understandable.

Recommendations

Superannuation Trustees should commit under the Code placing the following elements prominently on every subscriber's website including:

- a standard Superannuation and Insurance FAQ;
 - a standard glossary;
 - the Code of Practice;
 - standard complaints, IDR and EDR information that is clear and understandable.
-

B.6 Develop Standard, Member Focused Event Based Communications Guidance or Rules

22. Should the industry define the key events that will trigger the requirement for superannuation funds to actively communicate with members about their insurance arrangements?

Yes.

In our experience advising callers to our Insurance Law Service, information about insurance coverage is only effective if it is provided to consumers at specific useful times. For example, research has shown that in general insurance the renewal letter is the most commonly used and highly rated source of information, and presents opportunities to provide targeted information.¹⁵ We believe this research indicates that similar to insurance renewal notices, insurance risk information could be effective if included on annual superannuation statements. The most important thing is that this information should be consumer tested, both in terms of content and the timing of its provision.

¹⁵ Consumer Research on General Insurance Product Disclosures, Research findings report, February 2017; available at: http://www.insurancecouncil.com.au/assets/report/2017_02_Effective%20Disclosure%20Research%20Report.pdf

23. If so, what should these key events be (e.g. entry into the superannuation fund, exit, when employer SG contributions cease or other events)?

Each of the suggestions above would be good trigger events. Financial Rights also supports providing better communication about insurance coverage with superannuation annual statements.

C.2. Standard Definitions

Financial Rights strongly supports the development of consistent standard definitions for common terms such as “TPD” and “pre-existing conditions” as mentioned above.

Standardising definitions will also assist in ensuring that the insurance products developed or negotiated by Superannuation Trustees do not become junk products as trustees and insurers amend definitions, introduce more exceptions and trade away member rights.

C.3. Benchmarking member engagement and member experience studies

Financial Rights supports the idea of measuring member engagement and awareness of insurance inside superannuation and benchmarking this data between funds. Without regular data collection and benchmarking there will be no way to know if communication and engagement enhancements are working to encourage greater consumer understanding of their insurance coverage.

C.4. Member data and maintaining contact details

Financial Rights supports the idea of making commitments under the Code to communicate with members to validate the accuracy and completeness of their member contact information, sharing information with other Superannuation Funds and leveraging information from the ATO as long as the Code also makes explicit commitments with respect to adhering to privacy laws and meeting best practice Privacy standards.

C.6. Launching the Insurance in Superannuation Code of Practice

Yes, Financial Rights supports developing an industry funded and supported campaign to launch the Code and any new material, tools and websites available to members.

However, Financial Rights asserts that the Superannuation Code of Practice should also build into it commitments by Trustees to promote the Code.

Under Clause 10 of the current Code of Banking Practice, the ABA will “promote this Code” (although it does not spell out how this could take place, nor how such promotion is measured) and make public which banks subscribe to the Code and how consumers can get a copy of the Code. Clause 11 of the Code of Banking Practice commits banks to displaying copies of the Code in branches, making it available on request, publishing this Code on their website and sending it to a customer by mail or by electronic communication on request.

Similar commitments need to be made under the Superannuation Code of Practice.

With respect to publishing of the Code on websites, Financial Rights notes that they can sometimes be very difficult to find and in unintuitive spots. Financial Rights believes that thought must be put into where the Code can be accessed on Superannuation Funds website. We recommend that a link to the eventual Code should be displayed prominently on the front page of a subscriber’s website.

Further a copy of the Code should be provided to every new superannuation member. It is upon first joining a fund that a customer is likely to either read or save a copy of the Code to use at a future date, if required. Financial Rights believes that Trustees should commit to providing a copy of the Code with every new account or service provided. We also believe that Trustees should commit to promoting the Code themselves through their electronic and mail communication with their customers, social media accounts and other appropriate means.

Finally we recommend that the industry undertake a significant advertising campaign to promote the Code.

Recommendations

Superannuation Trustees should commit to:

- promoting the Code of Practice
 - displaying the Code prominently on the front page of the Fund’s website;
 - ensuring that a copy of the Code will be provided to every new customer of a banking service;
 - undertaking a significant advertising campaign to promote the Code
-

Concluding Remarks

Thank you again for the opportunity to comment. If you have any questions or concerns regarding this submission please do not hesitate to contact the Financial Rights Legal Centre on (02) 9212 4216.

Kind Regards,



Karen Cox
Coordinator
Financial Rights Legal Centre
Direct: (02) 8204 1340
E-mail: Karen.Cox@financialrights.org.au