Life Code
Compliance
Committee

Annual Report 2017–18

LIFE
CODE
COMPLIANCE
COMMITTEE

SEPTEMBER 2018

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Chair's message

As Chair of the Life Code Compliance Committee (the Committee) – the independent body that administers and enforces the Life Insurance Code of Practice (the Code) – I am pleased to present the Committee's inaugural Annual Report for 2017–18.

The life insurance industry developed the Code to improve service standards and build customer trust. The Code came into formal effect on 1 July 2017, when the FSC Members became bound by the Code. This has proven timely, with mounting community concern and increased government and regulatory scrutiny culminating in the establishment of a financial services Royal Commission in late 2017.

The Committee's overarching purpose is to help achieve the objectives of the Code – improve the life insurance industry's service to customers - by independently monitoring and enforcing the Code. We aim to be a robust monitoring body that adds value by assessing how well subscribers are complying with the Code; highlighting both good and bad practice and emerging risks and issues, and guiding compliance improvements.

This work depends on positive relationships with subscribers and other stakeholders, and establishing these relationships was a Committee priority in 2017–18. The Committee has been pleased with how industry has accepted our role and engaged with us this year. We will continue to work with industry to embed and achieve the Code's standards, while holding subscribers to account for their compliance obligations.

This year, we began monitoring subscriber compliance, drawing on subscribers' self-reported breaches, referrals of alleged Code breaches and a targeted audit of subscribers' websites. Subscribers self-reported 23 breaches. These most often concerned policy changes and cancellation rights, including several breaches of the requirement to provide an annual written notice containing specified information. This is an important protection that alerts consumers of the cover they hold, prompts them to review the policy, and reminds them of their options.

Most self-reported breaches concerned non-compliance in legacy products that, while no longer open to new customers, continued to affect existing customers. Although some transition issues were to be expected, subscribers should be aware that their obligation to comply begins when they adopt the Code. Subscribers must continually ensure that legacy products and IT systems are compliant, and crucially, must remediate any consumer detriment that occurs while they address non-compliance.

Anyone can approach the Committee to allege that a subscriber has breached the Code. The Committee then has discretion to investigate, determine whether a breach has occurred, and work with the subscriber on remediating the breach. This year, the Committee began developing its processes for investigating, determining and reporting on alleged breaches.

In 2017–18, the Committee received 747 referrals of alleged Code breaches, including 711 referrals made in bulk by a plaintiff law firm. Initially the Committee is investigating a sample from the bulk referral while taking measures to examine the potential compliance concerns it alleges. The Committee also began investigating the other 36 individual referrals of alleged Code breaches.

Most alleged Code breaches related to claims, with the vast majority concerning the requirement to make a decision on non-income protection claims within six months. These breaches highlighted an issue with how claim assessment duration is recorded, which the Committee has raised with the FSC as part of our role suggesting improvements to the Code.

As well as assessing self-reported and alleged Code breaches, the Committee can initiate targeted monitoring. Subscribers have an obligation to inform consumers about the Code on their websites and in relevant marketing materials. This year, the Committee examined compliance with this obligation via a desktop audit of subscribers' websites. Most subscribers are complying, however, we did identify and help to remediate two breaches, and noted that the overall quality of information provided by subscribers could be improved.

Looking ahead, key activities for the coming year will include participating as a key stakeholder in the FSC's Code review and delivering our inaugural Annual Data and Compliance Programme report. High-quality industry data can provide powerful insights into emerging trends, issues and risks, thereby supporting improved decision-making and better outcomes. However, recognising the challenges involved in collection and analysis of a complex and likely imperfect dataset, we have taken a pragmatic and collaborative approach to the initial ADCP, aiming to minimise industry impacts. Accordingly, our first ADCP report, due for release in the first half of 2019, will present a basic overview of industry compliance that we will enhance and expand upon in future years.

I would like to thank our administrator, the Code Compliance and Monitoring team (Code team) at the Financial Ombudsman Service Australia (FOS), for its excellent work during the year. The Code team, ably led by General Manager, Sally Davis, and Compliance Manager, Katy Rall, has been a valuable source of expertise and assistance as we established our approach and tackled our first year of compliance monitoring. The then FOS CEO, Shane Tregillis, was also extremely helpful in supporting me as the new Chair and keeping the Committee appraised of progress in FOS's transition to the Australian Financial Complaints Authority (AFCA). I look forward to working with the new AFCA CEO, David Locke.

The Committee and Code team also worked closely with key FSC executives during the year, in particular Allan Hansell and Nick Kirwan, and I thank them and look forward to building on these mutually beneficial relationships.

Finally, I also extend my thanks to my fellow Committee members, Alexandra Kelly and David Goodsall, who have very capably and diligently contributed to Committee activities and decision-making.

I look forward to working with you all for another challenging and productive year.

Anne T Brown
Independent Chair
Code Compliance Committee

Year at a glance

Monitoring activities

23

Code breaches self-reported by subscribers

747

Referrals of alleged Code breaches, alleging a total of 785 individual breaches

2

Code breaches identified through the Committee's proactive, targeted investigations into compliance in specific areas

Committee achievements

- ✓ Raised awareness and clarified compliance obligations by meeting with and inducting all subscribers
- ✓ Launched the inaugural Annual Data and Compliance Programme
- ✓ Developed an initial framework for investigating Code breach allegation referrals
- ✓ Built awareness and engagement by presenting at the 2018 Financial Services Council Life Insurance Conference and attendance at other conferences and events
- ✓ Improved outcomes for consumers by working with subscribers on rectifying breaches and implementing remedial action
- ✓ Supported subscribers by developing the Committee's first Guidance Note, on how to report non-compliance
- ✓ Shared its experience and suggestions with submissions to the Financial Services Council and the Australian Prudential Regulation Authority
- ✓ Supported improvement of the Code by providing suggestions to the Financial Services Council
- ✓ With the Financial Services Council, developed an online Code breach allegation facility for consumers

Introduction

2017–18 was the first year of operation for the Life Insurance Code of Practice (the Code) a new voluntary code of practice for the life insurance industry. The Code is monitored by the independent Life Code Compliance Committee (the Committee). This report details subscribers' compliance with the Code in 2017–18 and the Committee's activities and achievements in its first year.

The Code

In 2017–18, the Code saw its first full year of operation. Developed voluntarily by the life insurance industry through the Financial Services Council (FSC), the Code was introduced on 1 October 2016 for a transitional period of 9 months, coming into formal effect on 1 July 2017, when the first 22 subscribers agreed to be bound by its standards. The Code commits subscribers to continuous improvement and a high standard of customer service.

The Code includes ten Key Code Promises:

1. We will be honest, fair, respectful, transparent, timely, and where possible we will use plain language in our communications with you.
2. We will monitor sales by our staff and our authorised representatives to ensure sales are appropriate.
3. If we discover that an inappropriate sale has occurred, we will discuss a remedy with you, such as a refund or a replacement policy.
4. We will provide additional support if you have difficulty with the process of buying insurance or making a claim.
5. When you make a claim, we will explain the claim process to you and keep you informed about our progress in making a decision on your claim.
6. We will make a decision on your claim within the timeframes defined in the Code, and if we cannot meet these timeframes you can access our complaints process.
7. If we deny your claim, we will explain the reasons in writing and let you know the next steps if you disagree with our decision.
8. We will restrict the use of investigators and surveillance, to ensure your legitimate right to privacy.
9. The independent Code Compliance Committee will monitor our compliance with the Code.
10. If we do not correct Code breaches, sanctions can be imposed on us.

These general principles underpin the Code's specific obligations, which cover the many aspects of a customer's relationship with an insurer, namely:

- policy design and disclosure
- sales and advertising
- buying insurance
- policy changes and cancellation
- customers requiring additional support
- claims
- complaints and disputes
- third party underwriting and claims
- information and education
- access to information.

CODE SUBSCRIBERS

Life insurers that were members of the FSC were required to adopt the Code by 30 June 2017. As at 30 June 2018, there were 25 life insurers and one non-insurer who subscribe to the Code (listed at **Appendix A**).[1]

The Committee

Subscribers' compliance with the Code is monitored by the Committee, an independent body established on 1 July 2017. The Committee's purpose is to support the Code objectives of high customer service standards to increase trust and confidence in the life insurance industry. The Committee does this by:

- monitoring, enforcing and reporting on Code compliance
- working collaboratively to improve Code standards and promote industry best practice.

In doing this, the Committee is bound by obligations set out in its Charter[2] and in the Code.

MEMBERS

The Committee is made up of three members:

- **independent Chair**, Ms Anne T Brown, co-appointed by the FSC and the Financial Ombudsman Service Australia (FOS) Board
- **independent industry representative**, Mr David Goodsall, appointed by the FSC
- **Consumer representative**, Ms Alexandra Kelly, appointed by the FOS Board.

The Committee Chair, Ms Anne T Brown, was appointed in January 2018 after the inaugural Chair, Professor David Weisbrot, resigned in November 2017. CVs of current Committee representatives are at **Appendix B**.

1 An up-to-date register of subscribers is also available on the FSC website.
2 Financial Services Council, Life CCC Charter.

ADMINISTRATOR

The Code Compliance Monitoring team (Code team) at FOS acts as administrator for the Committee under an outsourcing agreement. The Code team is led by the General Manager, Sally Davis, and supported by an Investigations Manager and Code Analysts. Katy Rall is the Compliance Manager for the Committee. CVs of key Code team staff are at **Appendix B.**

The Code team supports the Committee by:

- providing administrative and secretariat support
- engaging with subscribers and stakeholders
- investigating alleged Code breaches
- undertaking Code monitoring work
- requesting and analysing aggregated industry data
- preparing reports for the Committee
- promoting compliance with the Code
- undertaking other work as directed by the Committee.

The Code team, ably led by General Manager, Sally Davis, and Compliance Manager, Katy Rall, has been a valuable source of expertise and assistance as we established our approach and tackled our first year of compliance monitoring.

- ANNE T BROWN
INDEPENDENT CHAIR
CODE COMPLIANCE COMMITTEE

Monitoring of subscriber compliance

In 2017–18, the Committee commenced monitoring of subscribers' compliance with the Code. The Committee has a number of ways of monitoring compliance: collecting self-reported breach data from subscribers; receiving and investigating referrals from consumers and others that a subscriber has breached the Code; and undertaking proactive, targeted investigations of compliance in specific areas.

In this report the term 'referral' means a referral to the Committee of one or more alleged Code breaches by a subscriber.

In 2017–18, 747 referrals alleged 785 separate breaches, contributing the bulk of the Code breaches reported to or identified by the Committee. Subscribers self-reported an additional 23 breaches and the Committee identified 2 breaches with a targeted audit of subscribers' websites (**Table 1**).

TABLE 1.

Code breaches self-reported, alleged and identified via website audit, by Code chapter, 2017–18

Code chapter	Self-report	Alleged	Web audit	Total
Claims	5	651		656
Complaints and disputes	1	117		118
Policy changes and cancellation	7	1		8
Sales and advertising	4	3		7
Access to information		6		6
Code objectives		3		3
Buying insurance	3			3
Additional consumer support		3		3
Policy design and disclosure	2			2
Third party underwriting and claims	1	1		2
Information and education			2	2
Total	**23**	**785**	**2**	**810**

Self-reported breaches

In 2017–18, nine subscribers self-reported 23 breaches. The Committee confirmed 17 of these self-reported breaches; on three matters it determined that there was no breach; and the remaining three matters were still being assessed at the close of the financial year (**Table 2**).

A more detailed breakdown of all self-reported and confirmed breaches by Code chapter and section is at **Appendix C**.

TABLE 2.

Self-reported and confirmed breaches by Code chapter, 2017–18

Code chapter	Self-reported	Confirmed
Policy changes and cancellation	7	6
Sales and advertising	4	4
Policy design and disclosure	2	2
Buying insurance	3	2
Claims	5	1
Complaints and disputes	1	1
Third party underwriting and claims	1	1
Total	**23**	**17**

POLICY CHANGES AND CANCELLATION

The largest number of self-reported breaches concerned policy changes and cancellation rights, covered in Code chapter 6 (**Table 2**). This accounted for 6 confirmed breaches, most of which concerned the obligation to provide consumers with an annual written notice before the policy anniversary. This is an important protection: a renewal notice enables a consumer to review whether the product is still suitable for their needs; alerts them to the cover they hold and the claims process, potentially triggering a claim; and gives them information about their options, including hardship assistance.

Non-compliance with section 6.3 is unlikely to have a severe financial impact as the consumer retains coverage; however, there may still be detriment if the cover is not suitable or if the consumer continues paying premiums, unaware of any increase and potentially unaware that they continue to hold the cover and may be able to make a claim. When assessing the consumer detriment caused by these breaches, subscribers also need to look beyond financial losses to consider any non-financial impacts and how they should be remediated.

Case study

An ongoing breach caused by legacy policies and IT systems

A subscriber reported that during its transition to the Code, it would not be compliant with the obligation to provide consumers with an annual notice containing specific information before the anniversary date of their policy (section 6.3). This was because the subscriber held a book of legacy policies that historically had not provided consumers with an annual notice. Furthermore, these policies existed on legacy systems that made it difficult to bring the policies into compliance.

The subscriber reported that although it was moving the legacy policies to a new IT system, this process would take more than two years. In the interim, the subscriber did not propose any remediation for impacted customers. The Committee has been working with the subscriber to identify appropriate remedial action to implement during this interim period.

SALES AND ADVERTISING

Non-compliance with the Code's sales and advertising obligations (chapter 4) contributed 4 self-reported and confirmed breaches. In particular, two subscribers recorded breaches of section 4.7 (d)(i), which applies to a consumer credit insurance life insurance policy sold as an add-on to another financial product. The obligation requires subscribers selling this type of insurance to give consumers the option of a non-financed premium, rather than adding the premium to the loan as a lump sum (which then accrues interest).

TRANSITIONING TO THE CODE

Most of the breaches self-reported by subscribers in 2017–18 related to legacy IT systems and products – that is, products that are still held by some customers but are no longer open to new customers. Breaches have occurred where legacy products and systems do not comply with the Code but have not yet been phased out. While some issues were to be expected at Code adoption, legacy polices and IT systems do not excuse non-compliance. The Committee expects subscribers to focus on remediating consumer detriment while addressing legacy issues.

Case study

A subscriber provides required information despite a non-compliant annual notice

A subscriber reported that following transition to the Code, it was not compliant with two requirements concerning information about options for consumers having trouble meeting their premium payments. Firstly, it reported that it was in breach of the requirement, in section 6.5, to **inform consumers about their options** if they are having trouble meeting their premium payments. Secondly, it reported that as it was still updating its annual notice templates and IT systems, it was currently in breach of the section 6.3(d) requirement to include in annual notices information about how a consumer having difficulty with premium payments could **contact the subscriber** to discuss their options.

Assessing the self-reported breaches, the Committee learned that the subscriber had trained all call centre staff to identify any consumers having difficulty with premium payments, and to transfer such callers to an appropriately skilled person for a discussion of the options outlined in section 6.5. The subscriber also had a process for proactively identifying policies at risk of lapse due to non-payment and calling these consumers to discuss their options.

The Committee found that the subscriber was indeed in breach of the section 6.3 requirement to provide information, in an annual notice, about how to contact the subscriber to discuss options in relation to difficulty with premium payments. The subscriber was in the process of updating its annual notices to correct the breach.

However, the Committee also noted that section 6.5 of the Code does not stipulate **how** the subscriber must inform the consumer of their specific options, and in particular, does not specify that this information be provided annually in writing. Thus, the Committee found that the subscriber was complying with section 6.5 by providing this information over the phone. Moreover, the Committee considered that the subscriber's approach to meeting section 6.5 obligations was more proactive and consumer-centred than simply providing that information in the annual written notice.

Subscribers also reported some breaches arising from business as usual after the transition period. This included breaches related to claims, complaints, and policy changes and cancellation rights. It is crucial that subscribers sustain a focus on compliance beyond the initial adoption period. Subscribers can do this by promoting the Code's obligations and benefits internally and implementing Code compliance, process improvement and monitoring processes. The Committee will continue to engage with subscribers on their compliance and monitoring processes.

CLASSIFYING AND REPORTING SIGNIFICANT BREACHES

The Code distinguishes between 'breaches' and 'significant breaches', defining the latter as follows:

Significant breach means a breach that is reasonably determined by us [the subscriber] to be significant by reference to:

a) the number and frequency of similar previous breaches;

b) the impact of the breach on our ability to provide our services;

c) the extent to which the breach indicates that our arrangements to ensure compliance with Code obligations are inadequate; or

d) the actual or potential financial loss caused by the breach.

Subscribers are required, under section 13.4, to report such significant breaches to the Committee within 10 days of identification.

However, a peculiarity of the Code is that it does not allow the Committee to form a view as to whether a breach is a significant breach; instead, subscribers alone are relied upon to form this view ('determined by us'). In 2017–18, 10 of the 23 self-reported breaches were considered by subscribers to constitute significant breaches (detailed at **Appendix C**).

This approach is inconsistent with other industry codes. To better fulfil its purpose, the Committee considers it should have the authority to decide whether a breach is classed as significant. The Committee has recommended that the Code owner, the FSC, review how significant breaches are defined under the Code. In the meantime, where a subscriber is unsure of the significance of a breach, the Committee encourages subscribers to err on the side of caution and report the breach as significant so that the Committee can more quickly assess the breach, provide guidance on the matter and agree on appropriate remediation.

Alleged Code breaches

Anyone can refer an alleged breach of the Code to the Committee. The Committee then has discretion to investigate the allegation; determine whether a breach or breaches occurred; agree with the subscriber on corrective measures; and monitor their implementation.

Alleged Code breaches: from referral to investigation

1. The Committee receives a referral from a consumer, consumer representative or FOS.
2. The Committee notifies the subscriber of the referral, as required by the Code. (To protect the consumer's privacy, the Committee asks the consumer to sign a privacy form to consent to sharing of their private information. If this consent is not provided, the Committee de-identifies the referral before sharing it.)
3. The Committee uses a triage process to determine whether the referral is covered by the Code, and if so, whether and how to proceed.
4. If the Committee decides to investigate, it asks for additional information from the consumer and the subscriber.
5. The Committee reviews all referral information to determine whether a breach or breaches have occurred and whether the issue may be systemic or serious.
6. The Committee issues a Determination, circulating this to the person who made the referral and the subscriber, as well as to all subscribers on a de-identified basis.
7. If a breach has occurred, the Committee works with the subscriber to identify appropriate remediation.
8. When it is satisfied that the remedial action has been completed, the Committee closes the investigation.

During 2017–18, the Committee received 747 referrals alleging a total of 785 Code breaches. As part of the investigation process, the Committee may also identify additional potential breaches and investigate these.

CLAIMS ISSUES IN ALLEGED CODE BREACHES

Most of the alleged breaches related to claims, with the claims standards in chapter 8 accounting for 651 alleged breaches, or 62% of the total (**Table 3**). These alleged claims-related breaches were diverse, spanning 13 separate sections (detailed in **Appendix D**). However, the vast majority (623) related to the requirement, in section 8.17, to make a decision on a non-income protection claim within six months, or twelve months in unexpected circumstances.

TABLE 3.

Alleged Code breaches by Code chapter, 2017–18

Code chapter	Alleged breaches No.	%
Claims	651	83%
Complaints and disputes	117	15%
Access to information	6	<1%
Code objectives	3	<1%
Sales and advertising	3	<1%
Additional consumer support	1	<1%
Policy changes and cancellation	1	<1%
Third party underwriting and claims	1	<1%
Total	**785**	**100%**

Sections 8.16 and 8.17 relate to claims assessment duration timeframes. When the Committee was consulting on the ADCP it became apparent that most subscribers measure duration from the 'claim received' date – that is, the date they receive claim documentation.[4] This approach does not align with sections 8.16 and 8.17, which require subscribers to measure duration from the point at which the subscriber is 'notified' of a claim. The term 'notified' is not defined in the Code,[5] which further complicates the matter. Accordingly, the Committee is concerned that subscribers may be incorrectly measuring their compliance. The Committee has recommended to the FSC that either the Code obligations under 8.16 and 8.17 be clarified or revised, or that subscribers need to better understand and comply with the Code as written.

COMPLAINTS AND DISPUTES ISSUES IN ALLEGED CODE BREACHES

With 117 alleged breaches, the Code's complaints and disputes obligations in chapter 9 accounted for 15% of alleged breaches. Almost all of these (112) concerned section 9.10, which requires subscribers to respond in a timely way to consumer complaints received via a superannuation fund trustee. The Committee will look more closely at subscribers' compliance with their complaints and disputes obligations, with the aim of identifying any trends and opportunities for improvement.

All subscribers should ensure that they have robust processes to comply with Code sections 8.16, 8.17 and 9.10, and to monitor this compliance.

4 It appears that some subscribers begin assessment when they receive a claim form, whereas others do not begin assessment until they have received **all** claim documentation.

5 Moreover, the term appears to be used with different meanings in different Code sections.

Case study

A subscriber fails to provide required information in its written response to a complaint

The consumer had life insurance with the subscriber as part of her superannuation fund membership. The life insurance policy was a group policy held by the trustee for its members, which included the consumer.

The consumer lodged a total and permanent disability claim, which the subscriber declined. Dissatisfied with the decision, the consumer sought a review by lodging a complaint with the trustee, which referred the complaint to the subscriber.

Section 9.10 sets out obligations that apply to subscribers when communicating with consumers about a complaint. Firstly, the subscriber, where possible, has to respond to the superannuation fund trustee within a reasonable timeframe that enables the superannuation fund trustee to provide a final response to a consumer within 90 calendar days, beginning from the date the trustee receives the complaint. This timeframe includes the time taken for the:

- trustee to refer the complaint to the subscriber
- subscriber to review and provide a final response to the trustee
- trustee to review the subscriber's response, form its own view, and provide a final response to the consumer.

As such, the exact timeframe for a subscriber's response to the trustee is not defined, and will depend on the circumstances of each matter. In this case, the Committee considered that the subscriber had responded to the trustee within a reasonable timeframe.

However, section 9.10 also requires that when responding, the subscriber must provide certain information in writing. In this case, the subscriber did not set out in writing:

- the final decision and the reasons for it
- advice that the consumer could ask for copies of the information used to assess the complaint
- advice that the consumer could take their complaint to the Superannuation Complaints Tribunal, and its contact details.

The Code specifies that this information must be given to 'the consumer'. However, the Committee's view is that this written response should be given to the consumer directly or to the superannuation fund trustee, depending on what communication arrangement is in place. To meet its obligations in this case, which concerned a group policy, the Committee formed the view that the information should have been provided to the trustee (although there is currently no obligation on the trustee to pass that information on to the consumer).

The Committee made a determination that the subscriber had breached section 9.10 by failing to include the required information in its response to the trustee. The Committee is working with the subscriber to understand its process for complying with section 9.10, and to determine whether the issue is systemic. It will also follow up to ensure that the subscriber provides appropriate redress to the consumer.

INVESTIGATING AND DETERMINING ALLEGED CODE BREACHES

During 2017–18, the Committee's first year of operation, it began developing the processes and procedures for investigating, determining and reporting on alleged Code breaches in line with its Charter obligations. It also took some time for consumers to become aware of the Code and their right to refer alleged breaches. As a result, most referrals were received in the second half of the financial year 2017–18.

In particular, in February 2018 a plaintiff law firm submitted, in bulk, 711 referrals concerning 11 subscribers. Each referral alleged a single Code breach.

As the Committee lacked the resources to individually investigate each of the 711 alleged Code breaches, it asked the plaintiff law firm to provide more information on a representative sample of referrals for fact-checking and, potentially, for full investigation. The sample of 20 referrals selected for investigation included at least one referral from each of the 11 subscribers and for each Code section allegedly breached.

From the total of 747 referrals received, the Committee opened 56 investigation files in 2017–18 (**Table 4**). This total includes the sample of 20 from the bulk referrals.

Although the Committee will not individually investigate each alleged breach from the bulk referrals, it is taking other action to examine and improve compliance. The 11 subscribers concerned were informed of the alleged breaches. The Committee also asked each of these subscribers to explain their processes for complying with sections 8.17 and 9.10, which accounted for most of the alleged breaches. The Committee will assess these responses and complete its investigations before publishing its findings in the second half of 2018–19.

Of the 56 investigation files the Committee opened in 2017–18, the majority (33 cases or 59%) remained open and under investigation at the close of the financial year (**Table 5**). Some 16 investigation files were closed at an early stage because the referrer withdrew the case or did not provide privacy authority forms to proceed, or because the Committee found the referral to be outside the scope of the Code. A further 5 investigation files were placed on hold, typically because the matter was being considered by a court, FOS or the Superannuation Complaints Tribunal. The Committee completed two investigations, determining that a breach had occurred (see case study on **p. 15**).

TABLE 4.

Code breach referrals and investigation files opened, 2017–18

	Code breach referrals	Investigation files opened
Bulk referrals	711	20
Individual referrals	36	36
Total	**747**	**56**

TABLE 5.

Status of investigations at 30 June 2018

	Cases	
	No.	%
Open and under investigation	33	59%
Closed (did not progress to full investigation)	16	29%
On hold	5	9%
Determined to be a breach	2	4%
Total	**56**	**100%**

TABLE 6.

Source of investigations, 2017-18

Source	Cases	
	No.	%
Lawyer	42	75%
Consumer	9	16%
FOS	5	9%
Total	**56**	**100%**

SOURCES OF REFERRALS

Under the Code, anyone can refer an alleged Code breach. Considering only those allegations opened for investigation, most (42 or 75%) were received from lawyers (**Table 6**). Consumers were the source of 9 referrals open for investigation (16%), while FOS referred a further 5 (9%), of which one was made by the FOS Systemic Issues team.

Website desktop audit

The Code introduces an important set of obligations intended to promote a high standard of service to consumers. For the Code to be effective, it is crucial that consumers are aware that it exists and know that they can make a Code breach allegation if they believe that a subscriber has not complied with its obligations. Accordingly, under section 11.1, subscribers are required to make customers aware of the Code by providing information about it on their websites and in relevant marketing materials. In 2017–18, the Committee assessed subscribers' Code promotion efforts with a desktop audit of the Code information presented on subscribers' websites.

FINDINGS

The Committee found that most subscribers did reference the Code on their websites. However, two subscribers were found to be in breach of this obligation, and the Committee worked with them to implement remedial action.

Although most subscribers complied with the section 11.1 obligation, the quality of the information and ease with which it could be accessed by users was variable. The Committee encourages the life insurance industry – including third party sellers of subscribers' products – to promote the Code and its benefits. However, in order to avoid confusion or misrepresentation, it is important that subscribers and third party sellers make it clear to consumers which entity is the subscriber, especially where the Code is promoted on third party websites. For subscribers, this means monitoring the representations made about by the Code by third parties who issue their products.

Subject to resourcing, in 2018–19 the Committee aims to further explore good industry practice on Code promotion and where relevant, provide additional guidance on how subscribers can best present Code information on their websites.

Sanctions

The Committee has the power to impose sanctions on subscribers, however this is triggered only:

- after a subscriber has failed to implement the corrective measures to address a Code breach within the timeframe agreed in accordance with the Committee's formal determination, **or**
- where the Committee fails to reach agreement in a reasonable time with a subscriber about the corrective action to be taken to address a Code breach.

For the 2017-18 reporting period, the Committee did not impose any sanctions as no events occurred which gave rise to the use of its sanction powers.

Committee activities and achievements

2017–18 was a busy and successful year for the Committee, despite some challenges. Following the resignation of the Committee's inaugural Chair early in the reporting period, the Committee was unable to convene or make decisions from mid-November 2017 until mid-February 2018, limiting the time available to plan and implement new processes and produce core deliverables. The Committee therefore focused its time and resources on essential operational activities and outputs. This meant delaying full establishment of operational frameworks and policies, as well as some important but not time-critical activities, such as creation of a Committee website.

Despite these constraints, the Committee has had a successful first year of operation. It established a governance structure and initial processes and procedures, and set a direction for the Committee's work over the year. The Committee also initiated compliance monitoring and established constructive relationships with stakeholders.

SETTING THE DIRECTION

The Committee's strategic priorities for 2017–18 included establishing the foundations for the Committee's work, developing the Committee's branding, its procedures and administrative processes, and its secretariat and reporting functions, which were performed by the FOS Code team. Establishing stakeholder relationships and raising awareness of the Code was another foundational priority.

The work plan also set out how the Committee intended to initiate its Code monitoring, enforcement and reporting in 2017–18. This included developing baseline data requirements in consultation with subscribers, the FSC and regulators. The Committee also planned to establish a framework for Code breach allegation referrals and to begin investigating alleged breaches. Publishing an annual report and reporting regularly to the FSC were also identified as priorities. Carrying out its workplan, the Committee met seven times in 2017–18 (details are at **Appendix E**).

Initiating compliance monitoring

During 2017–18, the Committee began monitoring subscribers' compliance with the Code, managing and assessing Code breach allegation referrals and self-reported breaches and conducting a targeted website audit **(p. 17)**.

As part of its compliance monitoring, the Committee also launched its inaugural Annual Data and Compliance Programme (ADCP) to enable it to efficiently and effectively collect, analyse and report on pertinent compliance data across the whole subscriber cohort for the reporting period. The ADCP was developed in consultation with the FSC Code working group. Aware that the Australian Securities and Investments Commission (ASIC) and the Australian Prudential Regulation Authority (APRA) were also undertaking work on claims data, the Committee also consulted with these bodies with the aims of avoiding duplication and adding value.

Once completed by subscribers, the ADCP will provide data on cover, claims, claims assessment duration, complaints and breaches. The inaugural ADCP also contains qualitative questions about subscribers' processes for complying with sections 8.16 and 8.17. Subscribers' reliance on the 'unexpected circumstances' exception to extend claim assessment duration timeframes will be a particular focus. Subscribers need to identify such unexpected circumstances and communicate them to consumers at the latest by the time the initial time period[6] expires, rather than referring retrospectively to unexpected circumstances at a later point.

In the context of the resourcing of the Committee, we don't expect to be able to publish the results until the beginning of the second quarter of 2019.

The Committee also provided guidance to subscribers aimed at improving the quality and consistency of their compliance reporting. Examining subscribers' self-reported breaches in July 2017, the Committee found that the level and quality of reporting was highly varied. As a result, the Committee published its first Guidance Note, 'Self-reporting non-compliance with the Life Insurance Code of Practice'. The guidance explains how to report non-compliance, including what information to provide when reporting Code breaches.

Engaging with stakeholders

In 2017–18 the Committee and Code team established engagement with industry, consumers, regulators, policymakers and FOS. The focus was on establishing effective relationships, raising awareness of the Code and gathering input to help guide the Committee's work.

SUBSCRIBERS AND INDUSTRY

The Committee and the Code team engaged extensively with subscribers during 2017–18. At the start of the year, the Code team held induction meetings with all subscribers. At these meetings, the Code team on behalf of the Committee, explained the Code, the Committee's role, and subscribers' compliance and reporting responsibilities. Subsequently, during the year, the Code team met with individual subscribers about specific non-compliance matters.

6 This time frame is 2 months for section 8.16 and six months for section 8.17

The Committee was also pleased to be invited to meet with one subscriber's board, and encourages other subscribers to consider this type of high-level engagement with the Committee.

The Committee also worked closely with the FSC this reporting year. The Code team met regularly with FSC executives and also engaged with the Code working group in two useful and constructive ADCP development sessions. The Committee met twice with the FSC Life Board Committee and provided it with regular activity updates. All Committee members attended the March 2018 FSC Life Insurance Conference, at which the consumer representative, Alexandra Kelly, also spoke on a panel about the next iteration of the Code. A key achievement from the Committee's collaboration with the FSC was the development of an online Code breach allegation function on the FSC website. The Committee will also provide this function on its own website, once developed.

Beyond monitoring compliance, the Committee also has a role in identifying and recommending improvements to the Code itself. In early 2018, the FSC informally announced that it would review the Code in 2018–19, and identified focus areas for the review. The Committee looks forward to participating in the formal review process as a key stakeholder. Ahead of the formal review process, the Committee has provided the FSC with both formal and informal feedback on suggested improvements to the Code. Among the Committee's recommended enhancements are:

- amendments to the definition of a significant breach to allow the Committee to form such an opinion
- inclusion of a definition of the term 'notified' and clarification of how it is used in relation to claim assessment duration (see discussions on **p. 14**)
- extension of some Code obligations to relevant third parties or extension of obligations on subscribers to monitor and be accountable for the actions of third parties with whom its consumers interact (for example, third party distributors of subscribers' products)
- clarification of timeframe requirements around notification of claims decisions (see discussion on **p. 14**)
- clarification of the applicability of the Code obligations regarding re-opened claims.

CONSUMER GROUPS

Consumer groups are an important source of intelligence about consumer issues in life insurance. They also play a useful role in promoting awareness of the Code and, in particular, consumers' rights to refer alleged breaches to the Committee. To better understand consumer concerns about life insurance, the Code team engaged with a number of consumer representative groups in 2017–18: the Consumer Action Law Centre, CHOICE, the Cancer Council, Australian Lawyers Alliance and Berrill & Watson Superannuation and Insurance Lawyers. The Code team presented to consumer audiences about a range of financial services industry codes, including the Code, at conferences and events throughout the year.

REGULATORS AND POLICY

On behalf of the Committee, the Code team met with regulators on ten occasions in 2017–18. This included quarterly meetings with ASIC, as well as three meetings with ASIC and the APRA specifically about respective data collection initiatives. The Committee also made a submission to APRA on its discussion paper, Towards a transparent reporting regime for life insurance claims information. The Chair of the Committee attended the ASIC Forum in March 2018 and met informally with ASIC Commissioners.

FOS

As a potential referrer of Code breaches, FOS is an important stakeholder. In 2017–18, the Code team provided internal training on the Code to FOS systemic issues and external dispute resolution staff. The Code team also presented on the Code at two FOS Life Insurance Liaison group meetings. FOS and the Committee also worked together on arrangements related to FOS's transition into a new body, the Australian Financial Complaints Authority.

Complying with the Charter

The Committee complied with its Charter for the 2017-18 period except for two occasions – (1) where, due to exigent and unexpected circumstances involving the Chair, a periodic update report to a stakeholder was not approved by the Committee prior to issuance in accordance with Charter section 2.3(d) and (2), because compliance processes were not yet fully in place, the Committee did not undertake formal consultation with subscribers prior to release of its Guidance Note 1 on procedural matters in accordance with Charter section 12. 1. The Committee has now established processes to ensure and monitor full compliance.

Looking ahead

In 2018–19, the Committee aims to further develop and embed its robust Code monitoring, providing assurance to consumers that subscribers are being held to account. In a recent consultation paper, ASIC set out what it sees as the key functions of a code monitoring body: proactive and reactive monitoring; making determinations on matters investigated; ensuring remedial action is carried out; and imposing sanctions if required.[7] These standards will remain front of mind for the Committee as it begins its second year of operation.

The Committee has developed its annual work plan for 2018–19. The Committee plans to continue the important compliance monitoring and investigations work begun in 2017–18 and develop an Investigations Framework and Delegated Decision Matrix for Investigation and Monitoring. The Committee will support subscribers to improve compliance by sharing de-identified determinations and case studies, and providing guidance on the interpretation of their Code obligations.

Within the budget provided, the Committee will prioritise its 2018–19 work as follows:

1. investigating Code breach allegation referrals and assessing self-reported breaches
2. publishing the ADCP report
3. investigating the bulk alleged Code breach referrals and publishing a report on the Committee's findings
4. contributing as a key stakeholder to the FSC's review of the Code.

7 ASIC (2018) Consultation Paper CP 300 Approval and oversight of compliance schemes for financial advisers.

Appendix A.
List of subscribers

As at 30 June 2018, the Code had 26 subscribers. Of these, 22 adopted the Code on 30 June 2017 and four additional subscribers adopted the Code during the year.

Name	Date of adoption
AIA Australia Limited	30/06/2017
Allianz Australia Life Insurance Limited	30/06/2017
AMP Life Limited	30/06/2017
ClearView Life Assurance Limited	30/06/2017
General Reinsurance Life Australia Ltd	30/06/2017
Hallmark Life Insurance Company Ltd	30/06/2017
Hannover Life Re of Australasia Ltd	30/06/2017
MetLife Insurance Limited	30/06/2017
MLC Limited	30/06/2017
Munich Reinsurance Company of Australasia Limited	30/06/2017
NobleOak Life Limited	30/06/2017
OnePath Life Limited (Wealth Australia, ANZ)	30/06/2017
RGA Reinsurance Company of Australia Limited	30/06/2017
SCOR Global Life Australia Pty Ltd	30/06/2017
St Andrew's Life Insurance Pty Ltd	30/06/2017
St George Life Limited	30/06/2017
Suncorp Life & Superannuation Limited (trading as Asteron)	30/06/2017
Swiss Re Life & Health Australia Limited	30/06/2017
TAL Life Limited	30/06/2017
The Colonial Mutual Life Assurance Society (trading as CommInsure)	30/06/2017
Westpac Life Insurance Services Limited	30/06/2017
Zurich Australia Limited	30/06/2017
QInsure Limited	15/09/2017
EMLife*	14/03/2018
HCF Life Insurance Company Pty Ltd	22/05/2018
Integrity Life Australia Limited	22/05/2018

* Although it is not a life insurer, EMLife voluntarily agreed to subscribe to the Code, joining under section 2.1(b).

Appendix B. Committee members and administrator staff

MS ANNE T BROWN,
BA CA GAICD

COMMITTEE CHAIR

Anne has substantial knowledge and practical experience of Australian regulatory environments, risk management, corporate governance and financial markets infrastructure.

Anne is a non-executive director of the Clean Energy Regulator, a member of the Australian Securities and Investments Commission's Markets Disciplinary Panel and a member of the Finance, Audit and Risk Committee of Monte Sant' Angelo Mercy College Limited.

Previously Anne was Chief Risk Officer with ASX Limited following its merger with SFE Corporation Limited, where she also chaired a range of broader group executive committees and oversaw integration strategy, risk management and policy for ASX's two clearing houses. Anne also represented ASX as the Chair and executive committee member of CCP12, an influential global industry association of all major international clearing houses. Prior to the ASX/SFE merger, Anne held senior management positions with SFE and KPMG.

Anne holds a double major degree in accountancy and computer science from Heriot-Watt University, Edinburgh. She is a member of the Institute of Chartered Accountants of Scotland and a graduate member of the Australian Institute of Company Directors.

MS ALEXANDRA KELLY, LLM, BPSYCH

CONSUMER REPRESENTATIVE

Alexandra is the principal solicitor of the Financial Rights Legal Centre, which operates the National Debt Helpline in NSW, the Mob Strong Debt Help line, a dedicated national service for Aboriginal and Torres Strait Islanders, and the National Insurance Law Service.

As a solicitor at Financial Rights Legal Centre for the last 10 years she has had the privilege of speaking to consumers about their lived experiences of financial services products, including life insurance; advocating on individual and systemic issues; and lobbying and advocating from an evidence-based position.

Alexandra is a non-executive director of CHOICE and a member of the Australian Consumer Law Subcommittee of the Law Council. She is committed to social justice, consumer advocacy and consumer education as to their financial rights.

Alexandra has a Bachelor of Laws (Hons) and Bachelor of Psychology from Australian National University and Master of Laws from Sydney University.

DAVID GOODSALL, BA

INDUSTRY REPRESENTATIVE

David Goodsall has spent his career advising institutions in the financial services, general insurance and health insurance industries in Australia and overseas.

David is an actuary and co-founder of Fiduciary Dynamics, a specialist advisory firm that provides strategic governance and risk management advice to financial services companies, and is an independent director and chair of the Audit and Risk Committee of BrightsideCo Insurance. Previously David was a senior partner in the Financial Services Practice leading the Actuarial practice of Ernst & Young, as well as an independent director of ClearView Wealth, and Medical Insurance Australia.

David holds a BA majoring in actuarial studies, is a fellow of the Institute of Actuaries of Australia, a Chartered Enterprise Risk Analyst, and a fellow of the Australian Institute of Company Directors.

SALLY DAVIS,
BCOMM, LLB, GRAD DIP (ARTS) GAICD

GENERAL MANAGER – CODE COMPLIANCE AND MONITORING

Sally Davis is General Manager – Codes at the Financial Ombudsman Service (FOS) Australia and CEO of the Banking Code Compliance Monitoring Committee. Her role includes oversight of the work plans and budgets of five independent Committees which monitor compliance with codes of practice across the financial services industry covering the banking, customer owned banking, general insurance, life insurance and insurance broking industries.

Sally previously worked as Senior Manager of Systemic Issues at FOS and has worked at FOS and its predecessor schemes since 2000. Sally has extensive experience in the financial services industry, as well as good relationships with regulators, industry and consumer groups. Sally is passionate about providing community assurance and ensuring continuous improvement through her role supporting the Life Code Compliance Committee.

KATY RALL, MBBS,
ANZIIF SNR ASSOC CIP

COMPLIANCE MANAGER –CODE COMPLIANCE AND MONITORING

Katy originally trained and worked as a medical doctor before transitioning to work in the life insurance industry and specifically claims management. She holds a Bachelor of Medicine and Bachelor of Surgery as well as subsequent qualifications of a Diploma in Life Insurance. Katy has worked in the life insurance claims environment for over 12 years covering group and retail insurance, for a number of organisations and across a number of roles, including the assessment of claims, management of a claims team, management of complaint and litigated claims, and technical roles. She joined the Code team at FOS in August 2017 as the Compliance Manager for Committee.

Appendix C. Self-reported breaches

TABLE 7.

Self-reported and confirmed Code breaches by chapter and section, 2017–18

Code section		Self-reported		Confirmed	
		BREACHES	OF WHICH SIGNIFICANT	BREACHES	OF WHICH SIGNIFICANT
3.4 (f)	Pre-sale documentation to specify whether trauma benefits payable on diagnosis or severity	1	0	1	0
3.6 (c)	Funeral insurance key facts sheet	1	1	1	1
Policy design and disclosure total		**2**	**1**	**2**	**1**
4.7 (d)	Requirement to offer non-financed premium payment for add-on CCI*	2	2	2	2
4.7 (f)	CCI minimum cooling-off	1	1	1	1
4.7 (g)	CCI provide annual notice	1	1	1	1
Sales and advertising total		**4**	**4**	**4**	**4**
5.2	Consent before communicating personal medical information	1	1	0	0
5.14 (b)	Information if insurance not offered	1	0	1	0
5.14 (c)	Information if insurance not offered	1	0	1	0
Buying insurance total		**3**	**1**	**2**	**0**
6.3	Issue a written annual notice before policy anniversary	5	2	5	2
6.4	Notify of automatic upgrades to policy	1	0	1	0
6.5	Life insurance policy changes & financial hardship	1	0	0	0
Policy changes and cancellation total		**7**	**2**	**6**	**2**
8.4	Update on claim every 20 business days	1	1	0†	0†
8.9 (f)	Inform consumer of income protection payment delay	1	0	1	0
8.17	6 months to make claim decision; 12 if unexpected circumstances apply	1	1	0†	0†
8.20 (a) and (b)	Minimum standard medical definitions	2	0	0‡	0
Claims total		**5**	**2**	**1**	**0**
9.3	Inform consumer of right to make a complaint; process on subscriber website	1	0	1	0
Complaints and disputes total		**1**	**0**	**1**	**0**
10	Standards for third parties dealing with underwriting or claims	1	0	1	0
Third party underwriting and claims total		**1**	**0**	**1**	**0**
Grand total		**23**	**10**	**17**	**7**

* Consumer Credit Insurance.

† One self-reported significant breach remains under consideration.

‡ One self-reported breach remains under consideration.

Appendix D. Alleged Code breaches

TABLE 8.

Alleged Code breaches by chapter and section, 2017–18

	Code section	Alleged breaches
1.6	Act in utmost good faith, honestly and fairly	3
Objectives total		**3**
4	Sales and advertising	3
Sales and advertising total		**3**
6.7	May be entitled to refund when cancel; reimburse in 15 business days	1
Policy changes and cancellation total		**1**
7.1	Reasonable measures to support customers with unique needs	1
7.2	Staff training to identify customers who need additional support	1
7.5	Take regional and rural into account in considering timeframes	1
Additional consumer support total		**3**
8.2	Consider all policy features and benefits related to claim; not discourage making a claim	1
8.3	Within 10 days of being notified; explain cover and claim process; provide contact details	1
8.4	Inform of progress of claim every 20 days; respond to requests for claim information within 10 days	5
8.5	Request and use relevant information for claim assessment	2
8.7	Request claim information early; avoid multiple requests	5
8.9 (a)	May need ongoing information for income-related claims	1
8.10 (b)	Customer can request copies of medical examination reports	1
8.13	Address any errors promptly	1
8.15	Make claim decision within 10 business days once have all information	3
8.16	2 months to make decision on income-related claims; 12 if unexpected circumstances apply	4
8.17	6 months to make claim decision; 12 if unexpected circumstances apply	623
8.19	Claim decline decision and reasons for it, in writing	3
8.29 (b)	Advance payments for immediate hardship	1
Claims total		**651**
9.4	Complaints handled by someone different than subject of complaint	1
9.5	Provide contact details for complaint liaison	1
9.10	Respond to super fund trustee to allow complaint response in 90 days	112
9.8	Update regularly on progress of complaint	1
9.12	Provide final written response to a non-superannuation related complaint in 45 days	2
Complaints and disputes total		**117**
10	Standards for third parties dealing with underwriting or claims	1
Third party underwriting and claims total		**1**
14.2	Customer can access information about them in relation to their claim, complaint or underwriting decision	3
14.3	Customer can access information from ISPs relied on	1
14.7	Promptly provide policy documents upon request	2
Access to information total		**6**
Grand total		**785**

Appendix E.
Committee meetings

TABLE 9.

Date	Location	Attendance			
		DAVID WEISBROT*	ANNE T BROWN†	ALEXANDRA KELLY	DAVID GOODSALL
20 July 2017	Sydney	✓		✓	✓
25 August 2017	Sydney	✓		✓	✓
17 October 2017	Melbourne	✓		✓	✓
16 February 2018	Sydney		✓	✓	✓
13 April 2018	Sydney		✓	✓	✓
22 April 2018	Melbourne		✓	✓	✓
19 June 2018	Teleconference		✓	✓	✓

* Resigned 15 November 2018.
† Appointed 18 January 2018.

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Further information:
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