

Case Study 2019-1:

Apply the Spirit of the Code

The following is a case study based on three matters considered by the Life Code Compliance Committee (Life CCC). The matters were self-reported to the Life CCC by one subscriber (Subscriber). No formal Determinations were issued as the matters were determined by the Life CCC to be outside the scope of the Code.

However, in order to share the learnings with all subscribers, the Life CCC has converted the matters into a case study on a de-identified basis.

The Code requirement:

Sections 4.7(a) to 4.7(g) of the Life Insurance Code of Practice (Code) set out the obligations for a subscriber when a consumer applies for a consumer credit insurance (CCI) life insurance policy as an add-on to another financial product, either with the subscriber directly or through the subscriber's Authorised Representative.

An Authorised Representative is defined under the Code as a person, company or other entity authorised by the subscriber to provide financial services on its behalf under the subscriber's Australian Financial Services License (AFSL).

The matters

The Subscriber self-reported three significant breaches of subsections 4.7(d), 4.7(f) and 4.7(g) of the Code. The three self-reported significant breaches were in relation to CCI products which the Subscriber issued in conjunction with third parties who were not subscribers under the Code.

The self-reported Code breaches were due to the Subscriber:

- failing to offer a non-financed option, as required under subsection 4.7(d).
- having a cooling off period shorter than 30 days, in breach of subsection 4.7(f).
- failing to provide consumers with an annual notice in writing, as required under subsection 4.7(g).

As part of its remediation, the Subscriber proposed to implement additional processes in order to be compliant with section 4.7 of the Code.

During its review, the Life CCC identified that the policies were sold by third parties under their own Australian Financial Services Licence (AFSL). This meant that the third parties did not fall under the definition of an Authorised Representative under the Code. As a result, section 4.7 of the Code did not apply as the CCI policies were not sold under the Subscriber's AFSL. However, the Subscriber has nonetheless implemented improved procedures, consistent with the spirit of the Code.

Although the matters were determined to be outside the scope and jurisdiction of the Code, the Life CCC welcomed the Subscriber's pro-active monitoring and reporting approach and the opportunity to work with the Subscriber on the matters.

The Life CCC acknowledges that the Subscriber in this case did not apply a strict black letter law approach to the Code in relation to these matters. Instead, current procedures were remediated by the Subscriber to reflect good practice and a positive outcome for consumers.

The Life CCC encourages subscribers who are dealing with a similar situation to handle and remediate any such matters in a similar way to this example.

The Life CCC's expectation

As a matter of good practice, the Life CCC encourages subscribers to consider and apply the spirit of the Code rather than a black letter law approach to compliance.