

Case Study 2020-1:

Pressure Selling by Third Parties

The following is a case study based on a matter considered by the Life Code Compliance Committee (Life CCC). The matter was a Code breach allegation relating to section 4.6 of the Code. This section relates to pressure selling of Life Insurance Policies.

The Code requirements:

Section 4.6 creates an obligation for the Subscriber to make clear to anyone distributing its policies that pressure selling is not permitted (where 'make clear' is not further defined).

Events and Life CCC decision:

In this matter, the policy was sold in 2018 by a third party distributor who was not an Authorised Representative of the Subscriber. This was because the third party distributor was selling the policies under its own AFSL.

In this instance, it was not disputed that the third party distributor engaged in pressure selling.

In relation to Code section 4.6, the Subscriber noted that it had made clear to the third party distributor that pressure selling was not permitted via:

- a contractual confirmation;
- requiring annual attestations from the distributor;
- reviewing and approving sales scripts;
- conducting annual audits of calls; and
- reviewing training documents.

The Life CCC determined that the actions taken by the Subscriber were sufficient to satisfy the requirement in section 4.6 of the Code to make clear that pressure selling was not permitted.

The Subscriber acknowledged that the third party distributor nonetheless engaged in pressure selling and once this had been identified, the Subscriber attempted to address this by requesting more frequent reporting on complaints and initiating a new process to review calls.

The other sections in Chapter 4 of the Code did not apply due to the third party distributor not being an Authorised Representative of the Subscriber.

Key Learnings:

The Life CCC acknowledges that there have been significant changes in industry practices since the events of this matter occurred, predominantly driven by the Royal Commission¹ final

¹ Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry

report recommendations and subsequent regulatory initiatives, such as ASIC's ban on unfair cold call sales of direct life insurance and Consumer Credit Insurance (CCI)².

As part of the Code review process underway, the FSC has indicated support for the Life CCC's recommendation that the Code is changed to bring third party distributors acting for a subscriber under the Code through a contractual arrangement. The Life CCC notes that Life Insurance Policies that are issued by subscribers but sold under another party's AFSL currently are not covered by the obligations in Chapter 4 of the Code.

In the meantime, the Life CCC considers that current best practice would be for a Subscriber to actively monitor the selling of all Life Insurance Policies issued by the Subscriber, regardless of which AFSL the policy is sold under. Where pressure selling or other inappropriate conduct is identified, the Life CCC encourages subscribers to pro-actively engage with relevant third parties and/or customers and consider appropriate compensation as part of remediation requirements.

² <https://asic.gov.au/about-asic/news-centre/find-a-media-release/2019-releases/19-335mr-asic-to-ban-unfair-cold-call-sales-of-direct-life-insurance-and-cci/>