

# Life insurance code a cruel scam for vulnerable customers

The life insurance industry claims that its customers are protected by ethics and conduct standards enshrined in the Life Insurance Code of Practice, however in reality this is a cruel scam. This was the experience of Rob, a real estate developer who developed a devastating medical condition in 2017, which rendered him an incomplete quadriplegic.<sup>1</sup> When Rob tried to make a life insurance claim, he was treated horrifically by his insurance company, which cannot be named because of ongoing legal proceedings. Rob's insurance company has unreasonably delayed and even refused to pay out his claims, causing his family extreme financial hardship and ultimately causing him to lose his home.

Rob tried to complain about his insurance company's misconduct to politicians, regulators, and consumer watchdogs, with no result. Rob also attempted to hold his insurance company accountable for myriad breaches of the Life Insurance Code of Practice (the Life Code). The Life Code describes itself as "the life insurance industry's commitment to mandatory customer service standards", and includes an entire section on the industry's commitment to supporting customers experiencing vulnerability or financial hardship. Subscribers to the Life Code include Rob's insurance company, which declares its commitment to these so-called "mandatory" standards on its website.

In reality, as Rob unfortunately discovered, the Life Code does not guarantee any consumer protections. Insurance companies can violate the Life Code at will, as the Code is not legally enforceable. Moreover, the organisation charged with ensuring Code compliance is limited by a governing charter which was designed by the life insurance industry's own lobbyist.

## Life Code not enforceable

The original Life Insurance Code of Practice, which was introduced in 1995-1996, was initially intended to be monitored by a regulator, the Insurance and Superannuation Commission (ISC), a predecessor to the Australian Securities and Investments Commission (ASIC). The Life Code's consumer protection provisions were also intended to be enshrined in law. However, the 1996 announcement of the Financial Services Inquiry (the Wallis Inquiry), which recommended that the financial industry should self-regulate through voluntary codes of conduct, derailed the proposed legislation, and the original Life Code fell into disuse.

In around 2016, in response to public pressure over cases of industry misconduct and the looming threat of government regulatory intervention, the life insurance industry's lobbyist, the Financial Services Council (FSC), developed a new Life Insurance Code of Practice. Members of the FSC, which include most of Australia's life insurance providers, were required to adopt the new Life Code in 2017. In submissions to a 2016-18 parliamentary inquiry into the life insurance industry, various law firms, community legal organisations, and consumer advocate groups identified significant shortcomings in the Life Code, arguing that it did not provide sufficient consumer protections, had limited scope, and fell far short of ASIC's regulatory guidance for industry codes.

Although it is claimed that the Life Code is binding on life insurance companies which subscribe to it, the Code does not form part of a customer's contract with their life insurance company. The Life Code explicitly states that it does not apply in a court or tribunal. The Life Code only creates legal rights between Code subscribers (insurance companies) and the FSC (their lobbyist). The FSC, the developer and owner of the Life Code, includes the CEOs and senior management staff of large life insurance providers on its board of directors. It is unclear exactly what legal rights or obligations, if any, exist between the FSC and subscribers in relation to honouring the Life Code. When the AAS contacted the FSC to inquire if insurance firms are required to enter into a contractual relationship with the FSC in order to become Members, the FSC's legal team only replied "no comment". The FSC's Constitution only mentions the Life Code in reference to the FSC's role in developing industry codes of practice, and does not require FSC Members to comply with the Life Code.

## Life Code Compliance Committee

The body responsible for monitoring and enforcing compliance with the Life Code is the supposedly "independent" Life Code Compliance Committee (LCCC). The LCCC is composed of three members, including an industry representative, who is appointed by the FSC; a consumer representative, who is appointed by the Australian Financial Complaints Authority (AFCA); and a chair jointly appointed by the FSC and AFCA. The LCCC is funded by Code subscribers (insurance companies), via the FSC.

The LCCC's code enforcement activities are significantly restricted by its governing Charter, which was developed by the FSC. For example, when investigating breaches, the LCCC must ensure that a Code subscriber's business "is not disrupted unduly". The Charter requires the LCCC to submit its determinations to the firm in question, "so that the [LCCC] and the Code Subscriber *can agree* on any corrective measures and the relevant timeframes for implementing these" (emphasis added). Although the LCCC can impose sanctions on an insurance company for breaching the Life Code, this power can only be exercised if the firm has failed to implement corrective measures. The sanctions available to the LCCC are a slap on the wrist: the LCCC can publicly name a non-compliant firm; issue

a formal warning; or require a subscriber to undertake a rectification process, a compliance audit, corrective advertising or write to anyone involved in the breach. Although an additional sanction has been added to a new version of the Life Code due to be implemented mid-2023, which is the requirement to pay a \$100,000 “Community Benefit Payment”, it is doubtful that there is any real danger this sanction will ever be imposed. In its five years of existence, the LCCC has only ever sanctioned one company, by issuing a public notice of a Code breach on its website.

The Charter also effectively gags the LCCC. Members are prohibited from making any statements on behalf of the LCCC, except in annual reports or as required in the performance of the committee’s functions, which are set out in the Charter. The LCCC’s annual reports can only include de-identified information about Code compliance. The LCCC is required to keep an insurance company’s compliance or non-compliance with the Life Code, or any actual or alleged breaches of the Code, strictly confidential.

Consumers can submit Code breach complaints to the LCCC, which is the only body which can determine if a firm has breached the Life Code. However, the LCCC cannot provide any assistance to wronged customers or award compensation.

The LCCC’s day-to-day duties are outsourced to a “separately operated and funded business unit” of AFCA, called the Code Compliance and Monitoring Team (Code Team), which is appointed under contract by the FSC. The Code Team is funded by insurance firms (through the FSC), to provide Code monitoring, compliance investigations, and administrative services to the LCCC. The Code Team “work[s] with code subscribing financial firms to ensure they comply with their code obligations”, and engages with financial firms to “support” them to improve complaints handling and service delivery.

The Code Team affirms that it does not provide compensation to customers, as this is the role of (purportedly separate) AFCA, an organisation which is the official dispute resolution body for consumers to lodge complaints against financial firms. AFCA describes itself as “impartial and independent”, however the AAS has previously raised concerns over AFCA’s evident bias in favour of financial firms and poacher-turned-gamekeeper staff appointments.<sup>2</sup> If a complaint regarding income protection insurance reaches the stage where an AFCA decision-maker makes a determination, AFCA decides in the firm’s favour 78 per cent of the time. Similarly, if an AFCA decision-maker makes a determination regarding total and permanent disability insurance, AFCA rules in the insurance company’s favour 82 per cent of the time.<sup>3</sup>

AFCA itself is not bound to consider breaches of industry codes when making a determination. An AFCA decision-maker only must do what *they* consider is “fair in all the circumstances”, “having regard to ... applicable industry codes”. The LCCC’s Charter prohibits it from investigating a Code breach if the breach in question is the subject of a dispute before AFCA or the subject of an investigation by a regulator; instead, the LCCC must await the final determination of AFCA or a regulator “before deciding to carry out its investigation”.

The Code Team also states that it does not issue fines or penalties, as this is the role of the financial industry regulator, the Australian Securities and Investments Commission (ASIC). However, the Life Code has never been submitted to ASIC for approval, and the regulator has no oversight or enforcement role over the Life Code.

## **No consequence for breaches**

It is evident that insurance companies do not fear enforcement action by the LCCC. In the first four years after the Life Code was introduced, Code breaches impacted around 2.4 million customers, but the LCCC has only ever issued one sanction for non-compliance. In its annual reports, the LCCC has repeatedly raised discrepancies in breach reporting data and concerns that firms under-report breaches. In 2018, the LCCC initiated its own review after receiving over 700 alleged breaches from a plaintiff law firm, 315 of which were confirmed breaches (according to insurance firms). The LCCC reported that insurance firms’ response rate to the LCCC’s inquiries regarding the matter were “generally poor”. Most firms had not made any attempt to review or improve their frameworks for preventing Code breaches. The LCCC asked the firms to review a sample of the allegations and report back, but most subscribers failed to even respond, which the LCCC said was “perplexing and disappointing”.

In June 2020 the LCCC announced in its 2018-19 Annual Industry Data and Compliance Report that a number of life insurers were not taking their obligations under the Life Code seriously, stating that “the corporate culture of many subscribers appears not to align with the standards set out in the Code”.

Several years on, the situation had not improved. In March 2022, the LCCC released its 2020-21 Annual Industry Data and Compliance Report, which documented that 430,000 life insurance customers had been impacted by Code breaches during that year, an increase of 197 per cent over the previous year. The LCCC documented significant discrepancies in breach reporting. For example, while insurance companies had self-reported 40 per cent fewer claims-related breaches compared with the previous year, the number of breaches reported by other sources, such as customers,

increased by almost 36 per cent. Despite the massive number of Code breaches documented in this compliance report, the LCCC merely wagged its finger at insurance companies, stating: “The Code is a voluntary Code that is based on a self-regulation model. The Committee reminds subscribers that self-regulation is a privilege, not a right, and that self-regulation can only work if subscribers to the Code have robust processes and procedures in place to identify, report and remediate breaches.”

The following year, in 2021-22, almost 200,000 customers were affected by Code breaches.

## **Insurance companies ‘disciplined’ by their own lobbyist?**

The Life Code assures customers that if insurance companies breach the Code, they are also answerable to the Financial Services Council (FSC), the industry’s lobbyist, which can purportedly “discipline” firms if they do not correct a Code breach, because non-compliance with an LCCC sanction is “regarded as a breach of an FSC standard”.

The Life Code is referring to the FSC’s own set of standards with which their Members are “encouraged” to comply, “as far as practicable and as circumstances permit”. However, the FSC affirms that it is not a regulator and “intends to monitor compliance with the FSC Standards with a minimum of formality”. The FSC’s Standard No. 1, the Code of Ethics and Code of Conduct, gives the FSC Board “discretion to carry out disciplinary action if the Member does not correct a Code breach”. But because the FSC’s board is composed of the CEOs and senior management staff of major life insurance companies, and asset managers who manage the investment portfolios of insurance companies, it is improbable that they will publicly censure or fine an insurance company. Even in the unlikely event that a firm were suspended or expelled from the FSC for violating the FSC’s ethics standards, the firm could re-apply for membership after a period of time.

The FSC’s Standard Oversight and Disciplinary Committee (SODC) is responsible for overseeing member compliance with the FSC’s ethics standards, including assessing complaints and initiating disciplinary action. Although Rob attempted to make a complaint to the FSC about his insurance company’s breach of the FSC’s ethics standards, the FSC does not accept complaints from customers. Instead, Rob was directed to complain to his insurance company, AFCA, or the LCCC. Even in the FSC did accept complaints about Member conduct from customers, it is unlikely that Rob’s case would be considered impartially, because the CEO of Rob’s insurance company serves on the Standard Oversight and Disciplinary Committee. Similarly, the same CEO is conveniently positioned to gatekeep as co-chair of the FSC’s Life Board Committee, which oversees the FSC’s relationship with regulators.

### **Footnotes**

[1.](#) The AAS reported on Rob’s story in “[No help for victims of financial misconduct](#)”, AAS, 24 Mar. 2023.

[2.](#) “[Financial complaints umpire AFCA is part of the problem](#)”, AAS, 26 Jan. 2022.

[3.](#) From the period 1/07/2021–30/06/2022; figures sourced from AFCA Datacube.

*By Melissa Harrison, Australian Alert Service, 29 March 2023*