ASIC
Australian Securities & Investments Commission

Life insurance claims handling

A speech by Peter Kell, Deputy Chair,
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CHECK AGAINST DELIVERY

Introduction

Last year was an important one for life insurance, and that seems likely to continue this year and beyond. We have recently seen the introduction of important reforms by the Government for raising standards around life insurance advice, although that is not my focus today.

Clearly there is also an increased public focus on the life insurance industry in respect of claims handling and that is what I want to discuss with you today.

The industry has recently been under intense media, government and regulatory scrutiny in relation to conduct and culture concerns.

One pleasing aspect of this is a positive response from many in the industry to address the concerns that have arisen. An example is the launch of the Life Insurance Code of Practice in October last year, which has sought to lift standards across the industry. We look forward to working with industry as the Code is implemented and further enhanced and more broadly applied across industry, and consideration is given to lodging with ASIC for approval.

Today I will focus on claims handling, and I have three main topics that I would like to talk about:

- First, I will talk about ASIC's 2016 claims handing review.
- Second, I will highlight some of ASIC's priorities for 2017.

- Third, I will comment on some aspects of claims handling particularly pertinent to life insurance in superannuation.

Clearly, claims outcomes are of key importance to consumers, as this is when the value of the policy is realised. Our work in this area confirms the importance of a strong firm culture that puts consumers first.

We are focusing on culture in our work at ASIC this year and we will embed this in our thematic reviews. A key issue in relation to culture is the linking of performance benefits to factors that can harm consumers; for instance, linking incentives to declined claims rates.

This is in conflict with the claims assessor's responsibility to assess claims on their merit, and can have a detrimental effect on genuine claims.

Where we see poor indicators of culture such as this, it indicates to us that there may be issues that we need to look further into. Culture is a key consideration for us in undertaking our work in relation to claims handling.

ASIC's 2016 claims handling review

The review

As you're no doubt aware, in 2016, ASIC conducted a thematic review to identify any systemic concerns with claims handling practices across the life insurance industry, and to understand whether particular products, insurers, distribution channels, practices or issues warranted a closer look.

ASIC's claims handling review was in part prompted by concerns from the public, media and Government.

We reviewed three years worth of data on claims handling in six months. In undertaking our review, we:

- analysed over 5,000 life insurance disputes from the Financial Ombudsman Service, the Superannuation Complaints Tribunal, and three consumer advocacy groups to identify the main reasons for disputes about declined claims
- reviewed medical condition and total and permanent disability (TPD) policy definitions in 11 product disclosure statements, to test concerns about appropriateness, currency and consistency
- analysed claims data for outcome rates (accepted, withdrawn and declined) from 15 insurers representing over 90% of total market share
- engaged with insurers on the independent review they undertook of their claims handling practices
- met with a broad range of industry experts and many other relevant stakeholders.

In October last year, we published our findings in Report 498 *Life insurance claims: An industry review* (REP 498). The report focused on life insurance claims by policyholders, assessing the outcome of claims and the nature of claims-related disputes.

While not finding evidence of cross-industry misconduct – with 90% of claims being paid in the first instance (a payout of around $8.2 billion) – we did identify particular areas of interest that we will explore this year.

These relate to us finding that:

- the rates of declined claims were highest for TPD cover (16% average) and trauma cover (14% average)
- across distribution channels, there were higher claims decline rates for life policies sold direct to consumers with no financial advice (compared to policies sold through financial advisers and group channels). Non-advised policies had a 12% average decline rate, compared with group, at 8%, and advised, at 7%
- some insurers had substantially higher declined claims rates than others for TPD and trauma covers, and for non-advised and group distribution channels. We will commence a review of these 'outlier' insurers, but more on that later
- the most common types of disputes about life insurance were about the evidence insurers required when assessing claims, and delays in claims handling
- a substantially higher than average number of disputes about evidence, delay and policy definitions involved only a small number of insurers.

Our review also identified areas of potential law reform to enable ASIC to better regulate claims handling. These include:

- extending ASIC's jurisdiction to regulate claims handling
- enabling the unfair contract terms provisions in the Australian Consumer Law to apply to insurance contracts
- changes to the duty of utmost good faith.

Regulation of claims handling

Currently, 'handling insurance claims' is explicitly excluded from the definition of a financial service in the Corporations Regulations 2001. This means that ASIC's powers under the *Corporations Act 2001* generally do not apply to claims handling.

This exclusion limits our ability to take action to seek changes in an insurer's conduct in a number of important circumstances. These include:

- unnecessary or extensive delays in handling claims
- incentives for claims handling staff and management, which may conflict with the insurer's obligation to assess each claim on its merit
- surveillance practices by investigators, particularly for mental health claims.

Removing the claims handling exemption would enhance ASIC's ability to seek improvements in claims handling practices. Therefore, ASIC has recommended that this exemption be removed and that more significant penalties for misconduct in relation to insurance claims handling also be considered. The Government has responded by including this issue in the broader review of ASIC's enforcement powers that is currently underway.

Changes to the duty of utmost good faith

As you know, the Insurance Contracts Act requires each party to an insurance contract to act towards the other party with the utmost good faith.

In June 2013, ASIC was given the power to take action in relation to claims handling where an insurer has failed to act in accordance with this duty.

This means that we can take action against an insurer in relation to a breach.

However there are limitations on ASIC being able to use this power. For instance, we cannot seek penalties for breaches of the duty of utmost good faith.

So while a breach of the duty of utmost good faith in the handling of a claim does activate ASIC's licensing powers, our capacity to take action for systemic conduct or seek broad improvements to current practices in relation to claims handling is limited.

Unfair contract terms

Finally, the application of unfair contract terms to insurance contracts is being considered as part of a review of the Australian Consumer Law. This is a further area which we identified in REP 498 as being appropriate to review to provide a broader range of remedies for ASIC and for consumers in relation to insurance contracts.

We look forward to working with Treasury to scope any future amendments to give effect to our recommendations around law reform.

Independent review of insurers' claims handling

As part of our industry review of claims handling, earlier last year we also wrote to the insurers which were part of our review, and they agreed to undertake an independent review of their life insurance claims management practices, procedures, and product design and structure.

To ensure a degree of consistency, we requested that the insurers review:

- the integrity of their claims handling system, including remuneration practices around claims handling and key performance indicators
- the product design processes, including the currency of policy definitions
- denied or withdrawn claims, going back at least five years, to ensure claims had not been inappropriately denied.

We are continuing to engage with insurers about the independent reviews, which we consider an important way to independently audit internal practices. We want to see insurers continue to monitor their claims handling practices and procedures. We are encouraged that as a result of the independent reviews, some insurers are looking at improving their claims processes and policy documentation.

ASIC's priorities for 2017

This leads me to ASIC's priorities for 2017 in relation to life insurance claims handling. Our claims handling review has led to a number of areas that we have started work on this year.

Public reporting on life insurance claims outcomes

One significant recommendation that we made in our report was the need for consistent public reporting of life insurance claims data, claims outcomes, dispute levels, and claims and dispute handling timeframes across all policy types on an industry and individual insurer basis.

Our findings in REP 498 indicated a clear need for better quality, more transparent and more consistent data on life insurance claims. Data limitations make it difficult to assess the industry's claims performance and make comparisons across insurers.

This work is a joint initiative between ASIC and Australian Prudential Regulation Authority (APRA), leveraging off our shared expertise and resources. Our objective is to:

- improve confidence and trust in the life insurance sector, by using enhanced transparency to drive accountability and improved performance
- facilitate an informed public discussion about the performance of the life insurance industry by providing credible, reliable and comparable data.

After an initial data collection template has been agreed on, we expect to commence the first round of collection this year. Iterative improvements and ongoing consultation should ensure the data that's being collected is consistent and comparable and help to simplify future collections.

Ultimately, we aim to report on insurer-level data to allow for meaningful comparisons of insurer performance and with sufficient context to effectively inform consumers.

Data will be made available as soon as it becomes sufficiently credible, comparable and reliable to support decision making. Transparency only drives accountability in the right way if the comparisons being made are meaningful, and the data used is reliable. This will be a challenge due to differing insurer practices, systems and constraints and complexity.

But we would not embark on this important work if we did not think it was possible and worthwhile to achieve.

We are encouraged that discussions with industry to date have indicated commitment to contribute to this work. Stakeholders have commented on the importance of data comparability, reliability, and the risks of data being released when it's not ready. We look forward to industry's continued cooperation.

Review of direct life insurance

Another important area of work that ASIC has started this year relates to the finding in our report that life insurance policies sold with no advice or general advice had higher rates of declined claims.

Our review will focus on these 'direct' life policies and consider sales practices and design features, to identify poor conduct and risks to consumers, as well as identifying 'better practice' where it is observed.

This will be a targeted review of a cross section of the market, however where appropriate we will make broader recommendations to help improve practices and reduce the risk of poor consumer outcomes. If we identify breaches of the law during the course of our review, we will take further action as appropriate.

This stage of our work will examine insurers' practices in more detail, which may identify further issues that could be addressed through law reform. Examples of the areas we may review include:

- the relationship between sales practices and product design, and adverse claims outcomes;
- whether current sales practices and product design align with consumer expectations
- aspects of insurers' culture, and how this may contribute to good or poor conduct and risks to consumers.

We plan to issue a report mid next year.

Life insurance – surveillance of TPD claims and 'outliers'

Two other areas that ASIC is focusing on this year are reviewing TPD claims handling, and insurers which are 'outliers' in the data we collected – particularly in relation to denied claims and disputes.

In REP 498, ASIC observed that TPD cover had higher declined rates than other lines, at 16% compared to 7% for income protection and 4% for life cover. For this reason we will undertake a review of TPD claims procedures and timeframes.

We also found that certain insurers had relatively high rates of declined and withdrawn claims for particular types of cover and distribution channels.

We are now scoping further work to target surveillances to understand the underlying reasons for insurers having relatively high declined and withdrawn claim rates for particular cover types and distribution channels.

Insurance in superannuation project

The last area I will cover today is the work ASIC is undertaking on insurance in superannuation. We will look at complaints handling and disclosure, as well as aspects of incentives, culture and conflicts.

ASIC's interest in insurance in super comes partly from last year's claims review work, but also from the information and insights gathered during the 2016 Member Experience and Effective Disclosure projects.

These projects found that there were vulnerabilities for consumers in relation to insurance in super – particularly around changes to cover, or where cover ceases. In super, changes can occur for members without their active consent.

We also found that disclosure about insurance could be improved. This includes making sure that product disclosure statements match policy documents and that all other trustee material about insurance aligns as well.

Disclosure about complaints handling could also be improved so that members understand what next steps they can take if they are concerned about a claim being denied.

In some instances, the disclosure we reviewed did not make it clear that people need to go through internal dispute resolution channels before trying to resolve a matter through the Superannuation Complaints Tribunal.

We will shortly be issuing notices to nearly 50 trustees, asking them questions about their insurance arrangements, including time frames for claims and complaints resolution and details about incentives such as premium rebates that may be made available to trustees by insurers.

The notice is designed is give ASIC some high level data about insurance in super. We also expect that a smaller number of trustees will be selected for more detailed review once we have analysed the responses to the initial notice.

We expect that we will report publicly on the findings from this project. Where we see misconduct, we may take stronger regulatory action.

I would also add here that the Life Insurance Code of Practice issued on 1 October last year does not cover financial advisers or to superannuation fund trustees.

However, after the Code was launched in October, we were pleased to see the establishment of a Superannuation Industry Working Group to consider the development of a code for life insurance in superannuation. The working group is made up of the Financial Services Council (FSC) and four peak superannuation bodies.

We certainly support steps taken by industry to adapt the Code standards to cover group insurance, whether as a standalone code or otherwise. It's important that consumers can expect substantially the same standards to apply whether they hold life insurance inside or outside of superannuation.

Conclusion

It is clear that there is a lot happening in life insurance and, in particular, claims handling this year.

We look forward to continuing to engage with industry on our work in this area as we progress our work on life claims data collection, direct life insurance, TPD claims handling and outlier insurers, and insurance in superannuation.

As the year progresses, we will aim to undertake work focusing on these areas of interest, and identify and take action to reduce, if not eliminate, consumer harm.