28 August 2019

Australian Securities & Investments Commission
By Email: unsolicited.sales@asic.gov.au

Dear Sir / Madam,

Re: ASIC Consultation Paper 317
Unsolicited telephone sales of direct life insurance and consumer credit insurance

We are grateful for the opportunity to comment on ASIC Consultation Paper 317 in relation to ASIC's intended ban on unsolicited telephone sales of direct life insurance and consumer credit insurance (CCI). Redfern Legal Centre's submission will focus on common issues arising from our casework experience of consumer credit law issues.

Redfern Legal Centre regularly assists people in vulnerable situations and those experiencing disadvantage who fall victim to unconscionable and misleading selling practices of insurance products. Our submission will focus on the ways in which the proposal will better protect all consumers, but particularly this demographic.

We would welcome the opportunity to meet with you to discuss our submission further.

Yours faithfully
REDFERN LEGAL CENTRE

Joanna Shulman
CEO

Redfern Legal Centre

Australian Securities & Investments Commission

Consultation Paper 317

Unsolicited telephone sales of direct life insurance and consumer credit insurance

Submission

AUTHORS:

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Laura Bianchi, Financial Abuse Service Solicitor

Introduction: Redfern Legal Centre

Redfern Legal Centre (RLC) is an independent, non-profit, community-based legal centre with a particular focus on human rights and social justice. Our specialist areas of legal practice include domestic violence and financial abuse, tenancy, credit and consumer, employment and discrimination and complaints about police and other governmental agencies.

By working collaboratively with key partners, RLC specialist lawyers and advocates provide free advice, conduct case work, deliver community legal education, prepare publications and submissions and advocate for law reform. RLC works towards reforming our legal system for the benefit of the community.

Since 1977, RLC has run a specialist practice to assist vulnerable and disadvantaged consumers address credit and consumer law problems. We regularly encounter vulnerable consumers who, for a range of reasons, are disproportionately affected by unconscionable and misleading selling practices of insurance products.

RLC offers free legal advice on credit and consumer law matters arising under the credit and consumer law. We assist clients from all walks of life on a broad range of common legal problems that involve rights and remedies and navigating the dispute resolution process.

General Comments

In summary, RLC supports the proposal as it will assist in preventing vulnerable consumers from entering into unsuitable insurance contracts while ensuring that consumers still have access to suitable insurance products.

In our experience, the targeted direct marketing and selling techniques adopted by the sellers of insurance and the unconscionable methods used to sign up vulnerable consumers to unsuitable insurance products (through both unsolicited and solicited means), often results in consumers being unaware or misinformed about the type of product they have purchased, leading to significant financial loss. This can impact on people in various ways, such as loss of secure housing, an increase in health problems and significant financial hardship resulting in the exclusion from social and economic participation, due to not being able to meet the basic cost of living.

Unsolicited selling and direct marketing

RLC would like to reiterate previous recommendations that unsolicited sales and direct marketing, in particular through door-to-door sales and cold call telemarketing, be banned in full for all financial products including insurance. In our view, there are significant risks for ongoing consumer harm, which are entrenched, in this marketing method.

The use of high-pressure and unfair sales tactics by unsolicited sales representatives has far-reaching consequences for very vulnerable people. These methods of sale invariably involve elements of undue influence, misrepresentation and coercion. Unsolicited sales through door-to-door sales practices, cold calling, unsolicited public approaches, and other innovative forms of unsolicited selling (as highlighted in the case study below), together constitute a key area of supplier behaviour that frequently causes serious financial and other harm to consumers. The easiest targets for unsolicited sales are people in vulnerable situations and those experiencing disadvantage including low-income earners and the unemployed, elderly people, people who have experienced educational disadvantage, Indigenous Australians, people suffering from mental illness or disability and people for whom English is not their first language.

Bella* was a victim of domestic and financial abuse, unable to work and on Centrelink payments due to injury and number of serious health problems when she received a Prize Opportunity Notice (PON) in the mail. The PON had an image of a cheque for $100,000 in Bella's name indicating that Bella was eligible to enter a prize draw for money and/or Mercedes-Benz luxury vehicles, with additional wording stating a response was 'Urgent' and the 'Opportunity Deadline' is within 7 days.

To enter the prize draw Bella completed her contact details on the PON and sent it back in the hope of alleviating her poverty. Bella did not notice that the PON form also contained a pre-ticked box with the words "Yes, I'd like to find out more about Funeral Insurance" in small print that could not be unticked.

Soon after Bella received an unsolicited call from an insurance provider's sales person who initially claimed they were calling about the prize draw. Bella was then asked to provide her personal details and financial situation to the sales agent and also provided details about her health/injury and Centrelink status.

Although Bella would regularly refuse other unsolicited calls selling products, Bella was misled into believing the call was about the prizes as her focus was on the prize draw which she mentioned multiple times during the call. Nevertheless, the sales person continued to take advantage of Bella's vulnerability at the time and insisted and persuaded Bella to sign up to a funeral insurance policy that was not properly explained to her and that she did not understand, despite the fact that Bella already had an existing funeral Insurance plan from another organisation.

Bella was paying for two funeral insurance plans on a Centrelink income and struggling to afford her food and rent. RLC assisted Bella to cancel the second plan and obtain a refund of the premiums she had paid.

***Name changed to protect client's privacy**

This case highlights the prevalence of targeted, dishonest and misleading conduct through unsolicited sales and direct marketing. Those affected by misleading unsolicited sales and direct marketing are invariably vulnerable consumers who are often unaware of or unable to exercise their rights under the law, and often results in people entering into financial commitments without arming themselves with the necessary information to make informed decisions.

Unsolicited selling and direct marketing benefits traders only and provides no benefit to consumers or to society in general. In our view, the only way of effectively minimising this area of harm is to impose a blanket ban on all unsolicited sales and direct marketing.

Specific Feedback

C1Q1 ***Do you have any feedback about our intention to use the modification power to prohibit unsolicited telephone contact to offer, issue or sell direct life insurance?***

Firstly, RLC believes the prohibition does not go far enough, and should include a prohibition on all forms of unsolicited sales, in addition to solicited sales of all types life insurance that do not incorporate further protections and mandatory information disclosures from sellers (to be agreed upon by ASIC). This can be in the form of a requirement for customers to seek legal advice to discuss suitable alternatives before the product can be purchased (or before the cooling off period has expired), or a pre-decision or pre-purchase checklists as a means of prompting individuals to address relevant considerations before making a financial commitment. These measures should apply to all customers likely to be in a specified category of vulnerability or disadvantage, such as a person who is in receipt of a Centrelink benefit, experiencing homelessness, is under or over a certain age, has mental health issues, has pre-existing medical conditions, is Indigenous, has difficulties understanding complex terms in English, or is not an Australian citizen.

With a growing market for insurance plans, and increasingly ferocious marketing tactics that play upon common anxieties, it's important for consumers (particularly those who are experiencing disadvantage and low-income) to be properly informed about what they are paying for. RLC has assisted with cases were inappropriate life insurance, most notably funeral insurance, has been sold to vulnerable people through harassing and high-pressure sales tactics, including from sales agents persisting with an insurance sales pitch to a consumer who has clearly indicated they do not wish to purchase the product. The selling of funeral insurance is considered a form of life insurance and is within the ambit of this discussion paper.

Funeral insurance providers tend to target people who are already anxious about illness and death. The elderly and members of the Indigenous community are particularly vulnerable targets for this kind of financial exploitation. Often there is a lack of transparency surrounding the conditions and content of a funeral insurance plan, making it unclear what one's rights and entitlements actually are. Funeral insurance requires policy holders to continue paying an annual premium until they die, and those payments will likely exceed the amount in fact paid out for funeral costs. The additional complexity and confusion surrounding the insurance process for disclosure and claims, including the risk that the funeral insurance company may refuse to pay a claim on a technicality, does not provide adequate comfort or certainty either.

Notable disadvantages of funeral insurance that have affected RLC clients include:

1. Increasing premiums
   Insurance premiums are not fixed, meaning over time the amount of money paid per instalment will increase. Premiums generally go up as a policyholder ages; which coincides with the decreased capacity of the policymaker to pay the larger amount. When this occurs, individuals tend to cancel the policy – losing all the money they have already paid. Many consumers will become forced to decide between paying for basic living expenses and paying their funeral insurance premiums.

2. Paying more over time than the actual cost of a funeral
   Depending on when one purchases the policy, the overall cost will likely end up outweighing the policy's benefit. If an individual purchases a policy at a younger age, they are required to make payments on a continuing basis in order to be eligible to claim. In many instances the cost of insurance over a lifetime will be more than that of a funeral.

3. Insurance benefits may be subject to approval
   Not all policies account for pre-existing medical conditions or cover people past a certain age. Similarly, failing to disclose a pre-existing medical condition at the time of purchase makes one liable for breach of disclosure obligations. Individuals who don't notify their insurance company of a medical condition – or who aren't aware that their medical condition isn't covered by their policy – are at risk of having their claim denied.

Danielle* was an aged pensioner whose first language is not English. After they death of her sister, in a position of vulnerability and grief, Danielle decide to make a phone call to an insurance provider about funeral insurance.

The recording of the phone conversation revealed Danielle's difficulty in understanding what she was being told by the sales person. It was clear she was confused throughout the call and was unable to effectively communicate to the sales person to advocate for her interests. During the conversation Danielle didn't ask one question and mainly provided single worded, agreeable answers when responding to the sales person. Despite Danielle's vulnerability being obvious throughout the entire phone call, the sales representative automatically recommended and sold Danielle the highest level of insurance cover worth $15,000 which included Accidental Injury Cover worth $45,000.

Instead of questioning Danielle about her needs; providing extra support or appropriate alternatives; making sure she understood the policy, the total costs, and the long-term risks; the sales representative employed selling tactics and language design to confuse and persuade Danielle into signing up for the funeral insurance policy recommended. The sales person also used the cooling-off period as a selling point using phrases such as “you can’t lose”, “you’re not locked in”, “it’s a win/win” and “you can cancel the policy at any stage” confusing Danielle into thinking she would be entitled to a full refund if she ever cancelled the policy. The reality was that Danielle was not provided with any information that she could understand, including the fact that she would not be entitled to a refund after the cooling-off period. Danielle was also not informed that due to her age, the Accidental Injury Cover would cease after 2 years.

After 3 years of paying premiums, due to illness, Danielle fell into financial hardship. When she asked to reduce her level of cover she was refused and was forced to cancel the policy. Danielle sought assistance from RLC when she was informed she would not be receiving a refund of the premiums she had paid.

***Name changed to protect client’s privacy**

RLC assisted Aunt Gloria,* an Aboriginal Australian woman in her early 60s who was born blind. As a result of her disability she has issues with literacy and she relies on the disability support pension.

Gloria already held a funeral insurance policy when she received several calls from another insurance provider about signing up for funeral insurance with an added accidental death benefit. From the first contact Gloria stated that she was not interested, but received calls daily and later every other day on her mobile and landline. Over the course of these calls, Gloria was not told about the cooling off period, was not told that she could hear the product disclosure statement read aloud, was erroneously told that premiums for the insurance would decrease over time, and was offered gift vouchers.

Gloria eventually accepted the policy because she wanted the calls to stop, and the gift vouchers were a strong incentive due to her difficult financial position.

***Name changed to protect client’s privacy**

C1Q2 Do you have any feedback about our intention to use the modification power to prohibit unsolicited telephone contact to offer, issue or sell CCI?

Again, RLC believes the prohibition does not go far enough, and should include a prohibition on all forms of unsolicited sales, in addition to solicited sales of all types of CCI insurance that do not incorporate further protections and mandatory information disclosures from sellers (to be agreed upon by ASIC). This can be in the form of a requirement for customers to seek legal advice to discuss suitable alternatives before the product can be purchased (or before the cooling off period has expired), or a pre-decision or pre-purchase checklists as a means of prompting individuals to address relevant considerations before making a financial commitment. These measures should apply to all customers likely to be in a specified category of vulnerability or disadvantage, such as a person who is in receipt of a Centrelink benefit, experiencing homelessness, is under or over a certain age, has mental health issues, has pre-existing medical conditions, is Indigenous, has difficulties understanding complex terms in English, or is not an Australian citizen.

RLC has observed that CCI Insurance is often sold to low income Australians who are already unemployed or on the Disability Support Pension and are thus excluded from being eligible to claim. They may also not meet the age, residency or employment requirements under a CCI policy. Other consumers may have insurance in their superannuation which would make the add-on CCI insurance unnecessary. In many cases consumers often don’t even know they’ve bought insurance in the first place with the cost of the insurance being deliberately masked in the loan repayment.

The experiences of RLC clients show that CCI and other ‘junk insurance’ policies are often sold without the genuine and informed consent of the consumer, particularly in relation to car finance. Brokers allude that these insurance policies are required as part of a loan agreement when in fact they are discretionary add-on products. Many consumers are often unaware they have purchased an additional ‘premium’ or ‘warranty’ on which they are unlikely to ever make a claim. With most of these policies, the insurance companies pay the agent commissions for each policy they sell – meaning that there is an incentive for the agent to sell the policy for their own benefit, regardless of whether it is suitable for the consumer. Cases consistently show that these unnecessary junk insurance policies are mostly sold unknowingly to customers with limited financial literacy who are already struggling to make ends meet.

In addition, rather than ‘clearly informing’ the customer of relevant policy terms of the insurance contract, there is little onus for an insurer to do more than provide a copy of the Product Disclosure Statement, which is highly ineffective. This is compounded by the fact that, section 37 of the *Insurance Contracts Act 1984* (Notification of unusual terms) does not apply to CCI insurance.

Kim* was a young single mother with four children receiving a Disability Support Pension, who was made homeless after escaping a relationship of domestic violence. After being enticed by unscrupulous online advertising promoting car finance to pensioners she visited a car dealership to enquire about a second-hand car.

Although Kim was not planning on purchasing a car on that day, the sales person took advantage of her vulnerable situation and signed her up to a luxury car loan for over $20,000. At the time of signing Kim was experiencing a manic episode as she had stopped taking her medication for her mental health condition, in addition to being heavily distracted managing a restless young child who had attended with her on the day.

Despite it being evident that Kim was not in the right state of mind to make big financial decisions, the sales person made her sign a number of documents that she didn’t read or understand. In addition, the sales person spent no time explaining information about the loan and did not provide any documents on the day to consider, spending most of his time with other customers.

Kim was first made aware when she visited RLC for assistance that her loan included a number of ‘junk’ add-on insurance products, including GAP Insurance and additional warranties.

***Name changed to protect client’s privacy**

C1Q3 Is there a risk of causing inadvertent consumer harm by banning unsolicited telephone contact to offer, issue or sell direct life insurance and CCI?

No. Deterrents against unscrupulous business and selling practices should be strengthened so that vulnerable people are not exploited and encouraged into commitments that they are unable to meet, are unable to afford, that they do not understand, and are of little or no value to them.

With respect the selling of funeral insurance, there are much better alternatives to help cover funeral expenses, which are not insurance products.

C1Q4 Do you think that the prohibition on unsolicited telephone contact should be extended to any other financial products currently captured by the hawking provisions (e.g. other insurance products, superannuation products)? If so, which products, and on what basis?

Yes, in addition to the selling of CCI, the prohibition should also extend to the selling of other forms of add-on or junk insurance products such as guaranteed asset protection (GAP) insurance (also called 'motor equity insurance' or 'shortfall insurance') and mechanical breakdown insurance/warranties.

Nevertheless, as discussed above, we agree that a ban on unsolicited sales practices (and certain solicited sales) should apply to all classes of insurance products because it will provide more certainty, increase protections for vulnerable customers, and create a fairer, more transparent and uniform system on how insurance can be sold.

Consumers are more than capable of making enquiries for insurance products if they are needed as long as they are suitably informed about the product and about appropriate alternatives.

C1Q5 ***If you are an insurer or distributor:***

(a) what are the likely compliance costs of the ban?
(b) what is the likely effect on competition?
(c) do you foresee any other impacts, costs and/or benefits of this proposal, or of any alternative approach you suggest?

We are of the view this question is best addressed by the insurers and distributers, although we do not believe there would be any adverse consequences.

We understand a number of banks and financial institutions have already prohibited the selling of certain types of insurance products, such as CCI insurance, as they recognise such products provide very little value for their customers. Insurers have been forced to adjust to this change accordingly, with no notable consequences to their business viability.