Codes of Practice as an Advocacy Tool – Case Studies

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Case Study – General Insurance Code of Practice

Case Study	**How the General Insurance Code of Practice responded**
A Consumer was an uninsured Third party, from whom Insurer X was attempting to recover a debt following a motor vehicle accident. The Consumer asked Insurer X to waive the debt due to his financial circumstances. The Consumer's representative, a Consumer Advocate contacted the Code Team because of concerns that Insurer X failed to comply with section 8 of the Code after the Consumer asked Insurer X to waive the debt. The Consumer Advocate was also concerned that Insurer X failed to respond to a request for financial hardship assistance and that Insurer X's recovery agent failed to respond to a subsequent complaint.	**Issues and key findings** ***Did Insurer X respond in accordance with the relevant standards in section 8 of the Code when the Consumer asked for a debt waiver?*** No. Insurer X did not respond appropriately when the Consumer asked for a debt waiver due to financial hardship, and as a result it breached subsections 8.4, 8.6, 8.7 and 8.12. Insurer X: • Did not provide a form for financial hardship assistance or details of the financial counselling hotline, • Did not assess the Consumer's financial hardship assistance request in a timely manner,

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The Code Team also raised concerns about Insurer X's subsequent response to the request for financial hardship assistance. Insurer X refused the Consumer's application for assistance and noted the following as relevant to its decision:

- From the information provided, the Consumer's expenses significantly exceeded their Income. It was not possible for the Consumer to spend more money than what they would have had physically available.
- Insurer X was "unable to fathom" how the Consumer was able to sustain their circumstances based on their statement of financial position.
- Referred to the Consumer's status on a student visa and that they have an obligation to ensure that they have the ability to financially support themselves.
- As the Consumer's expenses exceeded their income, the only logical conclusion was that they "have other financial capability which [they] have yet to disclose".
- The information submitted by the Consumer was not an accurate reflection of their true circumstances and so have not satisfied Insurer X that they are in a position that requires Financial Hardship assistance.

- Did not contact its collection agent and put recovery action on hold, and
- Contacted the Consumer directly after it should have been aware that the Consumer had a representative.

Did Insurer X's collection agent comply with the Code when the Consumer's representative made a complaint?

No. Insurer X's collection agent did not notify it when it received a complaint from the Consumer's representative, and therefore breached subsection 6.7 of the Code.

Did Insurer X handle the complaint from the Consumer's representative regarding the status of the financial hardship application in a fair manner?

No – Insurer X failed to comply with subsection 10.4 of the Code.

- Insurer X has an obligation under the Code to help consumers overcome their financial difficulties.
- Insurer X's approach in this matter indicates a fundamental misunderstanding of the causes of financial hardship and its Code obligations.
- Insurer X concluded that the consumer must have undisclosed sources of income and did not provide them with an opportunity clarify his position or provide further information.
- The references to the Consumer's visa status were inappropriate and irrelevant to whether they were entitled to financial hardship assistance.
- Insurer X's approach did not reflect a genuine commitment to reviewing the Consumer's request for financial hardship

	assistance and it did not adequately assess the Consumer's financial circumstances. • Insurer X's approach to financial hardship may have affected other Consumers. **Did Insurer X handle the complaint from the Consumer's representative in a timely manner?** Due to the delay caused by Insurer X's collection agent failing to notify it of the complaint, Insurer X did not handle the complaint in a timely manner. As a result Insurer X breached subsection 10.4 of the Code.

Case Studies – Banking Code of Practice

Case Study One	**How the Banking Code of Practice responded**
Personal loans in 60 seconds A member of the Code Team received a marketing letter from a bank regarding personal loans. The letter stated the bank would let a customer know if it had approved the loan within 60 seconds of an application being received. The message also appeared on the bank's website. The Code Team was concerned that, given the short time for approval, the bank would be unable to fulfil its obligations under *clause 27 Provision of Credit* and the need to verify a customer's financial position.	***Clause 27 Provision of Credit* – the need to verify a customer's financial position** The Code Team contacted the bank for further details. The bank confirmed that in only some cases did it hold enough information about a consumer to make a lending decision within 60 seconds - in other cases it would ask the customer for more information. The bank agreed to revise the wording of its letters and website to state that a response would be provided in 60 seconds, rather than a decision. The CCMC was happy with this approach and took no further action.

Case Study Two	**How the Banking Code of Practice responded**
Removing direct debit fees The Code Team asked banks if they charged a fee for cancelling a direct debit, following concerns raised by consumer advocates. Four banks confirmed that they charged a fee, ranging between $10 and $15.	***Clauses 2.1 – application of the Code to banking services & 3.2 – act fairly and reasonably and in a consistent and ethical manner*** Three banks confirmed they no longer charged the fee for costs reasons. The fourth bank stated its fee was a fair reflection of its

The Code Team wrote to each of the four banks to establish: • How and when the fee was disclosed to the customer. • The process and timeframe for cancelling a direct debit. • Fee waiver policies e.g. financial difficulty. • If their approach aligned with clauses 21 and 3.2 of the Code.	operational costs when cancelling a direct debit but that it had procedures to waive all fees for customers in financial difficulty.

Case Study Three

Guarantors Frank's bank failed to provide him with copies of bank statements for a loan facility related to his company. Frank was the director of a company that had formed a syndicate to develop a company. The syndicate had borrowed funds from the bank for the development and Frank was a guarantor for the loan. After a series of repayment difficulties and loan extensions, Frank wanted to review the payment history. When he asked for copies of the bank statements, bank staff informed him that, as a guarantor, he was not entitled to copies of statements.	***Clause 31 – Guarantees*** The bank's approach was correct in relation to guarantors. However, bank staff should have identified that Frank was also one of the borrowers in the syndicate and was therefore entitled to request copies of the statements in his own right. The bank acknowledged it had breached its Code obligations and arranged for the statements to be sent to Frank. It also reviewed its processes and training.

Case Study Four

Extending a loan facility	***Clause 27 – Provision of credit requires exercise of care & skill of diligent & prudent banker***
The customer was 69 years old and self-employed in a physically demanding occupation when she refinanced a previous home loan. The customer wanted to extend the loan a short time later.	The bank's decision to extend the loan facility showed that: • at that stage the bank still only had limited information about the customer, and • it should have been obvious that the customer was making her loan repayments using the surplus from her refinancing, not from income. The bank had failed to comply with its Provision of Credit obligations because a prudent and diligent banker would have made further enquiries about the customer's circumstances, long-term financial plans and her the ability to continue to repay the loan, before making a decision to approve the loan – especially as the loan was a 30 year facility.