

CommInsure case shows it's time to target reckless misconduct in banking

Written by The Conversation

Behind this week's expose by Fairfax Media journalist Adele Ferguson and the ABC's Four Corners program of the [insurance claims refused by Commonwealth Bank insurance arm, CommInsure](#), lies a bigger problem in the way the sector is regulated.

Ferguson has stopped the music and regulators APRA and ASIC have got to stop passing the insurance regulation parcel between them. It's time Australia got serious on "[conduct risk](#)" - the reckless misconduct in the management of a bank ASIC wants to regulate against.

The [Four Corners](#) program exposed a disturbing culture within CommInsure that, according to the insurer's ex-Chief Medical Officer, Dr Benjamin Koh, betrayed a drive for profit above people, the antithesis of the message given by Commonwealth Bank CEO, Ian Narev.

There is an inherent conflict of interest in insurance. The more promises (insurance policies) an insurance company makes, the more profit it makes. The more promises (claims) it keeps, the less profit it makes. There is an inbuilt inclination then for an insurance company to make lots of promises, and to keep as few of them as it possibly can.

When buying life insurance people often do so content in the knowledge that, if the worst were to happen, the insurance company would step in to protect them. But the reality can be very different.

In [one case](#) highlighted by Ferguson, the CommInsure claims management department admitted the claimant had indeed suffered the serious heart attack he had claimed, but was not covered under the Total Permanent Disability (TPD) policy he been paying for much of his adult life. CommInsure claimed it was just the "wrong sort" of heart attack. Instead of A\$1 million, he got A\$25,000.

How could such a tragic misunderstanding have happened?

Quite easily really. For example, the [Product Disclosure Statement](#) (PDS) for "CommInsure

Protection” runs to some 136 pages and while not in the finest of fine prints is not exactly easy to comprehend. The PDS dedicates 25 pages purely to definitions. While a valiant attempt has been made to introduce some “plain English”, the document contains so many weasel words and get-out sub-clauses that even experts disagree on the interpretation.

In [another example](#) , an employee of the Commonwealth Bank suffered a debilitating post-traumatic stress disorder after a violent attack. The bank’s own medical officer [recommended](#) the employee be retired from the bank and the general workforce due to ill-health. As a valued employee, the person assumed he would be covered by the firm’s total and permanent disability (TPD) policy, which was issued by CommInsure. But CommInsure interpreted it differently and argued the ex-employee might be cured if he underwent treatment by a specialist.

Catch 22 – you just might be cured by an expensive psychiatrist but, since you are not employed, you cannot afford it and, until you can, we won’t pay up.

Insurers have all the power

With a claim, an insurer always has the upper hand since, after all, they deal with stropky (if sick) claimants every day. After stonewalling for a bit, they often direct the complainants (if they have not died yet) to the Financial Ombudsman Service (FOS), a superb (if overworked) independent arbitrator in financial disputes.

At this point the claimant is usually ill, stressed, possibly not getting an income and easy prey to the promise of a quick settlement. Most claimants fold and take the insurer’s offer. But some of those with ticker (even if damaged) keep going and sometimes get a result by working with the Ombudsman.

Take the real case study on page 82 of the latest [FOS Annual Review](#) .

The claimant in that case suffered a lower back injury in 1999 which was accepted as catastrophic by the insurer but, in 2013, the insurer suddenly decided that “enough was enough” and cut off the payments. The Ombudsman found the insurer had been heavy handed and was “not entitled to refuse the claim because the applicant continued to meet the definition of total

disability under the policy”.

The FOS says there has been a surge in TPD claims in recent years - the problem is not going to go away. The Ombudsman says claims refusals (such as those uncovered by Fairfax/ABC) are not uncommon:

“Of continuing concern is the failure of FSPs to use correct policy provisions and to rely on more recent versions with less beneficial terms.”

The Four Corners program reported that after the claims of mismanagement and possible mistreatment of dying people were put to the bank, a number of the claims were settled. But what about the other claimants that were knocked back when Dr Koh found they should not have been? The scandal is likely to grow.

Past lessons

The expose by Fairfax/ABC is reminiscent of the early days of what became known as the Payment Protection Insurance (PPI) [scandal](#) in the UK.

For years, journalists and consumer advocates had been complaining about insurance companies reneging on income protection policies. Stung into action by repeated criticism, the UK financial regulator undertook an inquiry into the industry. The regulator found systemic issues related to misselling of PPI policies by the major banks, which resulted in real hardship to many insurance claimants.

In what proved to be one of the most spectacular own goals in banking history, the British Banking Association (BBA) decided to fight the regulator in court, but was sent packing and told to make redress to all of the customers who had been sold shoddy PPI policies, up to 20 million of them.

It was an expensive mistake. At the [latest count](#) the scandal has already cost the UK banking

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industry more than \$50 billion (yes billion) and climbing. Even NAB was caught up in the scandal as it had to [guarantee the future losses](#) from PPI claims when it sold its last [overseas lemon](#), Clydesdale Bank.

One of the major problems that caused the PPI fiasco to build up was that there were no mechanisms for recording complaints across the industry. Customers were complaining but no-one was listening. When the floodgates opened by the rejection of the BBA case, the UK FOS was [and still is](#) deluged with complaints. The market for PPI has collapsed and banks and insurers are under increasing regulatory pressure to [treat their customers fairly](#) (TCF), suffering fines if they do not.

CommInsure says it pays some 22,000 claims per year out of 4 million customers. But it is not the number of paid claims that is important, but the number of customer complaints about those claims. The systems to record and analyse complaints were missing in the UK and the banks' shareholders paid dearly for it.

Back in Australia, Peter Kell, deputy chair of ASIC, told Fairfax/ABC that ASIC has warned the life insurance industry to lift its game.

"We recognise that for too long there have been conflicts of interest in the way that life insurance is distributed... that the products have not necessarily been designed with the consumers' needs in mind."

ASIC [defines](#) "conduct risk" as the risk of:

"inappropriate, unethical or unlawful behaviour on the part of an organisation's management or employees."

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According to the whistle blower, Dr Koh, medical records were removed from the claims system, which may have been illegal; the actions were, as admitted by CEO Ian Narev, inappropriate; and if there was a deliberate policy of delaying claims, as indicated by the Fairfax/ABC report, then the actions were clearly unethical. As good an example of conduct risk as a regulator could find.

However, ASIC has not put any meat on the bones of its definition since the focus on conduct risk was announced last July. This may be because the regulator has been flat out chasing banks for [manipulating the BBSW benchmark](#). There is conduct risk in all sectors of banking, and ASIC must get the resources needed to tackle them all.

Pat McConnell does not work for, consult, own shares in or receive funding from any company or organization that would benefit from this article, and has disclosed no relevant affiliations beyond the academic appointment above.

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