

Claims advocacy ripe for regulatory reform

May 27, 2020
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<https://www.professionalplanner.com.au/2020/05/claims-advocacy-ripe-for-regulatory-reform/>

In an industry thick with oversight, the lack of contractual or regulatory rigour for insurance claims advocacy sticks out as a glaring anomaly and one that may be ripe for change given the forces shaping the industry today.

What an insurance adviser does for a client in the event of a claim is arguably the most important aspect of their service. Advisers usually help in the event of a claim, but if that aspect of the service isn't contracted it's technically arbitrary.

There have been ructions hinting at better contractual rigour for claims advocacy. Treasury is finalising a Bill to make the handling of insurance claims a financial service, for instance, yet this is more about getting claims handlers to operate efficiently, honestly and fairly than making sure advocacy is pinned to insurance advice.

FASEA's Code of Ethics may also have an impact as several of the twelve standards – including those that spruik best interest duty and integrity – could be interpreted as compelling advisers to make the full service offering clear.

“I expect under FASEA it may have to be stated more explicitly now,” says Jordan Vaka, a specialist insurance adviser at Planning Solo. “It would be better for clients and advisers to know where they stand in the event of a claim – what work the adviser will do, what the client will have to do and what the guardrails are around the process.”

The Code's impact on this issue remains to be seen, and probably will at some legal juncture. But if it doesn't have a bearing, and regulators and policymakers continue to swerve the issue, the industry may evolve itself in a number of ways.

Problematic fee models

One of these ways could be that insurance advisers outsource claims advocacy. Indeed, businesses catering to this are prevalent. Or, as suggested by Charmian Holmes, a solicitor at The Fold Legal, “it's possible that advisers will start to provide that service specifically”.

“What hasn't been explored yet is what the implications are for advisers because they are making a recommendation about the claim,” Holmes adds.

The other option is for insurance advisers – many of whom are moving to a fee-for-service (FFS) model – to both recommend policies and offer claims advocacy, but charge separately for the services.

Vaka, who operates under a FFS model, says he's still mulling how to deal with the claims advocacy issue.

“Under a FFS structure we'd still advocate for clients,” he says. “But it'd also be on a FFS basis. How this would be done is something I'm still working out in my mind.”

The prospect is commercially tricky, he explains. If it's a fixed cost and the claim is rejected, this is a poor outcome for the client. If the fee is only paid for a successful claim, the adviser could be “thousands of dollars” out of pocket if the claim is denied.

Vaka says he could charge a percentage on the claim, but this is problematic as it presents a “powerful conflict” for the advocate to settle quickly.

For now, FFS insurance advisers like Vaka remain in the minority while most still operate on a commission model and use the revenue to fund claims advocacy. These commissions-based insurance advisers may currently be sanguine about the lack of contractual rigour around claims advocacy, but ASIC's scheduled review into the life insurance industry in 2021 does pose a looming threat to the model.

A ban on commissions would be an unlikely outcome of the insurance review, given the ramifications to both the industry and consumers, but it's not outside the realm of possibility – and that would make the regulation of claims advocacy everyone's problem.

“One of the unintended consequences of an end to regular income would be that advocacy gets chopped off,” says Kris Mason from MBS Insurance. “I don't think that would be a great outcome.”

The last thing we need

Despite the regulatory deficiencies around claims advocacy, many feel the last thing the industry needs is more regulation.

“We've had substantial regulation in the last few years,” says Don Trapnell, chief executive at licensee Synchron. “What has that caused? Fewer advisers and less insured, which ultimately means higher health bills for Australia.”

Trapnell's point is a fair one; the industry is still grappling with the 2018 Life Insurance Framework laws, which decreased the amount of commission insurance advisers could receive.

This doesn't negate the fact, however, that insurance advice clients currently aren't guaranteed claims advocacy. Asked if his insurance advice contracts contain information about claims advocacy, Trapnell says 'No, because it's a given.'

If the provision of a service is such a given, it's feasible that it could be written into contracts.

Trapnell agrees, but identifies a further danger in reform.

"There's nothing wrong with regulating claims advocacy," he says. "My concern is that the government, in trying to make it better for consumers, may in fact make it harder for consumers where an adviser would normally assist in the process."

It's a conundrum, then. The issue needs addressing, but doing so could add yet another layer of regulation that actually makes things worse.

Vaka readily admits that he doesn't have any answers.

"I suspect the challenges of thinking through these issues might be part of the reason many advisers still approach it all in the traditional way," he says.