



CONDUCT IN FOCUS

Insurance Authority

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Conduct In Focus is a periodical publication which presents statistics and commentary on complaints received by the Insurance Authority (“IA”) and examines topical regulatory issues regarding the way in which insurance business is conducted.

In this, our inaugural edition published to coincide with the one-year anniversary of the IA taking on the regulation of insurance intermediaries on 23 September 2019, we present the statistics for complaints received during the year (from 23 September 2019 to 22 September 2020). We also examine lessons to be learned from a particular

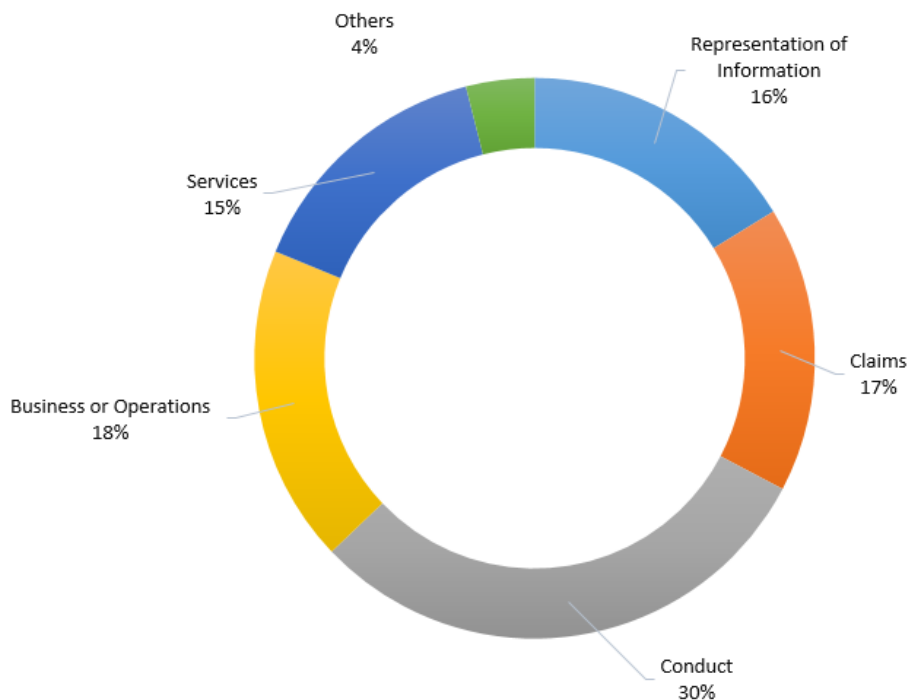
category of complaint, provide an update on the IA’s disciplinary approach and take an in depth look at the importance of ethical business practices across the insurance market.



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Complaint Statistics

23rd September 2019 to 22nd September 2020



The IA received **1,571 complaints during the period from 23 September 2019 to 22 September 2020**, being the first full year following the new regulatory regime for licensed insurance intermediaries coming into force. In terms of category, the most significant number of complaints were received in the category of “conduct”.

Explanation of Complaint categories

Conduct – refers to complaints arising from the process in which insurance is sold, the handling of client’s premiums or monies, cross-border selling, unlicensed selling, allegations of fraud, allegations of forgery of insurance related documents, commission rebates and “twisting” (i.e. insurance agents inducing their clients to replace their existing life insurance policy(ies) with another life insurance policy(ies) by misrepresentation, fraudulent or unethical means).

Representation of Information – refers to complaints relating to the presentation of an insurance product’s features, policy terms and conditions, premium payment terms or returns on investment, dividend or bonus shown on benefit illustrations, etc.

Claims – refers to complaints in relation to insurance claims. The IA cannot adjudicate insurance claims or order payment of compensation. It can, however, handle complaints related to the process by which claims are handled (e.g. delays in processing, lack of controls or weaknesses in governance, areas of inefficiency in the claims handling process).

Business or Operations – refers to complaints related to business or operations of an insurer or insurance intermediary (e.g. cancellation or renewal of policy, adjustment of premium, underwriting decision, or matters related to the management of the insurer, etc.).

Services – refers to complaints regarding insurance related servicing by insurers or intermediaries, such as complaints related to the delivery of premium notice or annual statement, dissatisfaction with services standards etc.

TOPIC IN FOCUS –

Handling of Premiums by Licensed Individual Insurance Agents

The IA from time to time receives complaints regarding the way in which licensed individual insurance agents handle premium which clients pay to them in order for agents to pass the monies onto insurers. These complaints (which are included in the category of “conduct” in the statistics) highlight the

type of problems which can arise when a policyholder pays premium to an individual insurance agent, rather than making payment directly to the insurer. These types of problems are illustrated below:

Problems which can arise from paying premiums via insurance agents rather than insurers directly

- The agent may mix the client’s premium with the agent’s own funds (e.g. the agent paying the premium into his/her personal bank account), thereby creating the risk of the agent losing track of the premium paid or not properly accounting for it;
- The agent may delay paying the premium onto the insurer, leading to confusion and uncertainty when the policyholder contacts the insurer about his/her policy status;
- This mixing of monies by the agent may, depending on the circumstances, prompt anti-money laundering enquiries from the Joint Financial Intelligence Unit; and
- In extreme cases, the agent may misappropriate the premium monies and disappear with it.

As stated in the **Code of Conduct for Licensed Insurance Agents**, a licensed individual insurance agent may only receive payment of premiums where he or she is authorized to do so by his/her appointing insurer. Where the agent is authorized to collect premium by his/her appointing insurer, the agent must handle the payment of premium (and pay it onto the insurer) in strict conformity

with the requirements, controls and timing set by the appointing insurer. Depending on the circumstances of each case, a failure to do so may amount to misconduct on the part of the agent, if such failure is likely cause prejudice to the interests of policyholders or potential policyholders or the public interest. This, in turn, would expose the agent to potential disciplinary action.

Top Tip for Policyholders

Insurers, in their quotations, premium and renewal notices, often indicate several methods in which a policyholder can make payment directly to them. Policyholders who have purchased an insurance policy through an insurance agent, should use one of the official methods specified by the insurer to make payment of premium **directly to the insurer**.

Responsibilities of Insurers

Given that individual insurance agents may only collect premium if they are given authority do so by their appointing insurers, insurers must consider carefully whether or not to provide such authority to their agents.

If an insurer does decide to grant authority to collect premium to their agents, the insurer must put in place adequate controls and procedures to ensure premium payments by policyholders to individual agents are safeguarded. This is especially the case given that the insurer is likely to bear the ultimate responsibility for collection of any premium by its individual insurance agents, given that the insurer serves as the agent's principal.

The insurer should also make it clear to policyholders what authority agents have to collect premium and the limits of that authority. If the insurer does not give authority to its agents to collect premium, the insurer should make it clear in its premium or renewal notices that payment of premium should be made directly to the insurer by one of the methods provided and must not be made to the agent. Insurers should ensure such notices are sent directly to policyholders by the means which the policyholder is most likely to view of the notice.

Responsibilities of licensed individual insurance agents

If an individual insurance agent is given authority by an insurer to collect premium, it is imperative that the agent only collects premium within the limits of that authority and handles the premium in strict conformity with the controls and procedures specified by the insurer. Further the agent must not mix the premium collected with his/her own money (by paying it into his/her personal bank account, for example). The agent must maintain records of any premiums received in

accordance with his/her appointing insurer's controls and requirements. Any failures in this respect could result in disciplinary action.

If an agent is in any doubt on issues of collection of premium, he/she should err on the side of caution and advise the client to make the payment directly to the insurer by one of the payment channels specified by the insurer.

TOPIC IN FOCUS –

The Insurance Authority's approach to enforcement

The IA takes a multifaceted approach to its regulation of conduct. Primarily, through issuing Codes of Conduct, Guidelines, interpretation notes, explanatory notes and circulars, we work with authorized insurers and licensed insurance intermediaries to ensure the insurance market is founded on a culture of trust and ethical business practices. Secondly, through supervisory interaction and formal inspections we monitor and assess the business practices and culture of insurers and insurance intermediaries. Thirdly, where misconduct, regulatory contraventions or offences occur, the IA is empowered to (and will) take enforcement action.

Compliance Advice Letters and Letters of Concern

In addition to its formal enforcement powers (being the prosecution of offences in the Insurance Ordinance (Cap. 41) and taking disciplinary action in the form of private or public reprimands, pecuniary penalties or suspension or revocation of licences), the IA utilizes **Compliance Advice Letters** and **Letters of Concern** as part of its supervision and enforcement approach. These are not formal disciplinary actions, but serve to highlight areas of improvement which the recipient insurer or insurance intermediary should implement, based on matters which have come to the IA's attention through its fact-finding on complaints, its day-to-day supervision, or its inspection or investigation work.

A Compliance Advice Letter is issued where the non-compliance is considered less serious, inadvertent and/or technical in nature, and where full and immediate remedial action has been taken with there being no consequent prejudice to policyholders. Recipients of Compliance Advice Letters are required to make improvements to their compliance controls and procedures (as highlighted in the letter) so as to avoid a repeat of the occurrence highlighted.

A Letter of Concern, although not a formal disciplinary action, is more severe than a Compliance Advice Letter and is deployed where the non-compliance (although not considered sufficiently serious for formal disciplinary action) highlights an issue of concern which it is imperative for the recipient to rectify and never repeat. A Letter of Concern cautions the recipient to cease and eliminate the undesirable activities or behaviour, admonishes that any repeated non-compliance will not be tolerated by the IA, and puts the recipient on notice that the failure to heed the caution will be taken into account in determining the severity of any penalty to be imposed in the future.

Compliance Advice Letters and Letters of Concern allow for a proportionate approach to contraventions and an efficient use of the IA's enforcement resources. In addition to alerting recipients to regulatory concerns, they provide an opportunity for the recipients to review and improve relevant practices, policies and procedures, and as a result enhance compliance awareness and culture.



When the IA took over the direct regulation of insurance intermediaries from the three Self-Regulatory Organizations ("SROs") on 23 September 2019 ("Commencement Day"), 280 cases under preliminary review or investigation by the SROs were transferred to the IA. During this past year, the IA has focused on these cases and as at the end of September 2020, 194 cases have been resolved. In resolving these cases, and as part of its ongoing supervision, the IA has issued 47 Compliance Advice Letters and 494 Letters of Concern covering a multitude of different types of cases. These include (in relation to insurance intermediaries) late submission of audited financial statements, failure to maintain (albeit subsequently rectified) sufficient indemnity limit under professional indemnity insurance policies, alleged misrepresentations in the selling process, late delivery of the insurance policy to the client during the cooling-off period, and alleged unresponsiveness to client's instructions/enquiries.

The IA's Disciplinary Panel Pool and Expert Advisor Panel

As at the end of September 2020, the IA has initiated 37 statutory investigations. The nature of these cases include allegations of the use of forged academic certificates for registration, misrepresentations during the selling process, mishandling of clients' premiums, contraventions of requirements imposed under the Insurance Ordinance, alleged breaches of the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (Cap. 615) and other alleged misconduct.

Decisions on disciplinary action will be taken by the IA through its Disciplinary Panels, made up of personnel selected from the IA's newly established Disciplinary Panel Pool ("DPP"). The DPP consists of the majority of executive and non-executive directors of the IA and external experienced professionals from the legal, financial services and other sectors appointed by the IA for this purpose.

The IA has also appointed an Expert Advisor Panel ("EP"), which consist of experts on insurance practice to assist the IA in giving technical advice during investigations, providing input on the level of sanction required to deter specific types of misconduct and serving as a valuable source of market intelligence.

As we move into the second year of the new regulatory regime for licensed insurance intermediaries, now that the architecture of the IA's disciplinary process is in place, a gradual stepping up of formal enforcement actions can be expected, so as to reinforce policyholder protection in Hong Kong.

SPECIAL REPORT –

Building a high integrity insurance market

Insurance is vital to the functioning of society. Through the mechanism of entering into thousands of contracts we call insurance policies, families and businesses are able to manage the risks of everyday life.

For the insurance market to function, people and businesses must be able to source their insurance and obtain advice from insurance intermediaries and insurers they can trust. High integrity and strong ethics are therefore imperative qualities of an insurance professional and ensuring ethical business practices for employees and insurance intermediaries is a key priority for every organization in the insurance market, be it an insurer, insurance broker company or insurance agency. Put simply, the insurance market depends on a culture of trust and ethical business practices to safeguard policyholder interests.



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The responsibility for building this trust and conducting business in an ethical manner is personal and every insurance practitioner is accountable for their own actions and behaviour. A career in insurance, therefore, requires an individual to commit to building and maintaining good character, having integrity and being ethically minded in dealings with clients. This is how reputation is built and, in insurance as with any financial services, reputation is everything.

General principles of good conduct

This is why, since taking on the regulation of insurance intermediaries, the Codes of Conduct and Guidelines issued by the IA focus on **general principles of good conduct** which the public are entitled to expect of insurance practitioners and which every insurance practitioner should demand of themselves. These general principles include following:

General principles of good conduct

- Acting with honesty and integrity with clients
- Acting in the client’s best interests and treating clients fairly
- Acting with due care and diligence
- Possessing appropriate levels of professional competence and continuously developing professional knowledge
- Disclosing accurate and adequate information to clients
- Giving advice suitable to the client’s interests
- Avoiding or managing conflicts of interest
- Safeguarding client’s assets

The Codes of Conduct for Licensed Insurance Agents and Licensed Insurance Brokers and the Guidelines issued by the IA also lay down detailed standards and requirements which are context specific, providing guidance of the minimum requirements expected of an insurance practitioner in a given situation. But the general principles of good conduct on which Codes and Guidelines are based are universal and serve as articles of faith which insurance practitioners should instinctively display across every element of their insurance business practices, even those which are not covered by any specific compliance requirement.

General principles of good conduct go beyond mere compliance with law and demand far more than a mere tick-box compliance mentality. They require insurance practitioners to use their judgement to do the right thing by their clients. They serve as the foundation for the good character of an insurance practitioner and ethical business practices across the insurance industry.

A high integrity culture

At the corporate level, insurers, insurance broker companies and insurance agencies are responsible for ensuring their employees, individual agents and technical representatives to conduct themselves ethically at all times when dealing with clients on behalf of their principals. It is for this reason that the Codes of Conduct and Guidelines require insurers, insurance broker companies and insurance agencies to implement governance frameworks that incorporate adequate controls and procedures. This responsibility lies with the board of directors, the controllers of the company, responsible officers (in the case broker companies and agencies) and key persons in control functions (in the case of insurers).

Governance controls and procedures are important to achieve this, but alone they are insufficient and, in isolation, can be counterproductive. An approach which says “just simply follow this list of actions” can remove ethical decision-making from the equation and is conducive to amoral behaviour, which in turn can create a breeding ground for unethical business practices. The question “is this the right thing to do” becomes replaced with the question “is this allowed.” This tick-the-box-only mentality to compliance is detrimental to a company and should be avoided at all costs.

A strong governance framework and effective controls and procedures begins with a sound **organizational culture** which promotes personal accountability for acting at all times in accordance with the general principles of good conduct, fosters ethical decision making and gives confidence to employees, individual insurance agents and technical representatives to make the right judgement calls. Organizational culture, in the business context, means the values and norms that are shared by people who work for or represent a company, demonstrated through the way they interact with their clients.



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It is the attitudes, values and norms of the employees, agents and technical representatives (and which make up the company’s culture) that drives the manner in which a company deals with clients and sets the company’s reputation for trust (or otherwise).

Ensuring that a high integrity culture is embedded across the company, must be a key objective for every director, controller, responsible officer and key person in control function (particularly those in the control functions of compliance, risk management and the management of intermediaries). A high integrity culture is not formed overnight and there is no one-size-fits-all approach to doing this, but an approach to consider would include the following steps:

Suggested steps to building a high integrity culture

- Establish a bespoke company **code of conduct or mission statement** which adopts the general principles of good conduct that are expected of all employees, agents or technical representatives representing the company and communicate it to all relevant stakeholders. The board of directors should take the lead on this, setting the right “tone from the top”. The entire governance framework of the company should be based on the company’s code of conduct or mission statement.
- Controllers, responsible officers and key persons in control functions should model the general principles of good conduct in their day-to-day behaviour in the company and in their dealings with all relevant stakeholders. The example set by the actions of top level of management is visible to all across any company. Nothing erodes a culture faster than members in management who do not act in line with the company’s stated values. Controllers, responsible officers and key persons in control functions should act like **chief ethical officers** in this respect.
- Embed the importance of adhering to the general principles of good conduct in the **onboarding process** for new staff, agents or technical representatives, helping them internalize the principles so they can apply them to the decisions they will be making.
- Design and implement **governance controls and procedures** which are based on and tied to particular general principles of good conduct. When implementing the control/procedure, clearly explain how that control or procedure is intended to achieve the general principle. The answer to the question “why do we have this control or procedure in place?” should not be “because that’s the way we have always done it” or “the regulator requires us to do it”. Rather, the answer should be tied to the particular general principle of good conduct which the control aims to achieve. Doing this reinforces an understanding across the company of the importance of complying with the control or procedure for the good of clients and the reputation of the company and helps tie compliance to the mentality of “doing the right thing for the client”.
- **Communicate** the general principles of good conduct not only formally but in everyday informal conversations with employees and stakeholders. Highlighting good behaviour and admonishing bad behavior sends the message to all regarding how important adherence to these general principles of good conduct are to the reputation of the company and the individuals working for and representing it.
- Be aware of potential sources of ethical weakness. **Ethical fading** refers to a condition in a culture which enables people to act in unethical ways whilst falsely believing that they have not compromised their own principles. It starts with small contraventions of the general principles of good conduct, by well-intended people who succumb to the pressure to hit targets or meet deadlines and rationalize their behaviour (“others are doing it too, so why should I?”). This is a slippery slope. **Every time someone crosses “over the line” to unethical behaviour, the line becomes more blurred until it disappears altogether.** Holding firm to the general principles of good conduct, recognizing when rationalization for poor behaviour is taking place and calling it out, is an important function for any controller, responsible officer or key person in control function. It is also imperative that the design of Key Performance Indicators factor in qualitative measures based on the general principles of good conduct to incentivize good behaviour.
- Create a climate where employees and representatives of the company can speak up and express their uneasiness about a particular business practice they see or situation that they face.

Reinforcing the importance of ethical business practices

To demonstrate and reinforce the insurance industry's commitment to ethical business practices and from 1 August 2021 onwards licensed individual insurance agents, technical representatives (broker) and technical representatives (agent) (apart from those who are licensed to carry on regulated activities in restricted scope travel business only) will be required to carry out at least 3 CPD hours in "Ethics or Regulations" as part of their annual CPD requirements.

Adherence to general principles of good conduct and ethical business practices is about maintaining and building good character (or as the regulators refer to it, "fitness and properness"). In the insurance market, trust is everything. Policyholders depend on trust in insurers and insurance intermediaries to fulfil their insurance needs. It is the duty of every insurance practitioner to build and provide that trust in their business practices.

Insurance Authority

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