VENT YOGA

'Yoga is a practice that connects the body, breath, and mind. It uses physical postures, breathing exercises, and meditation to improve overall health. Common types of yoga include Hatha, Ashtanga, Bikram, and Yin" (Google)

Lesser-known types include:

- Trench Yoga where the mind and the earth are connected by a shovel,
- Chainsaw Yoga where meditation is accompanied by the gentle hum of the saw, and
- Vent Yoga – Breathe in, breathe out, let fly. How's the serenity (Fullagar).

This article will partake of the last of these disciplines with its specific focus being the institution of Internal Dispute Resolution ("IDR") within life insurance companies. Other non de plumes for same include Consumer Relations Advocacy Procedures and, for some outside looking in "Are you serious!"

The genesis of IDR was the April 2017 Ramsay Review; not to be mistaken for comment about one of Gordon's restaurants.

At Page 189 said Review stated *"IDR is an important element of financial firms' overall relationship with their customers and is the primary avenue for aggrieved consumers to seek redress. Pressure on external dispute resolution is reduced when complaints are resolved directly between firms and their customers."*

This is good stuff. Tell me more .....

"We encourage all financial firms to cultivate a culture that welcomes feedback and values complaints. A positive complaint management culture can amongst other things:

- *Promote trusted relationships between the parties,*
- *Assist to identify emerging issues before they become systemic, and*
- *Lead to product and service delivery improvement."*

Wow, if this was the promo for a tech start-up, who wouldn't buy shares.

Wanting to calm things down, as only regulators can, in September 2021 ASIC issued its Regulatory Guideline ("RG") 271 which set out in moribund detail over fifty-seven glitzy pages the enforceable standards and requirements life insurance companies, amongst others, must have in place.

(i) Timeframes

"*A financial firm should acknowledge receipt of each complaint promptly. We expect that firms will acknowledge the complaint within 24 hours (or one business day) of receiving it, or as soon as practicable." (*paragraph 51)

It might be suggested that the provision of "as soon as practicable" renders all else redundant.

"A financial firm must provide an IDR response to a complainant no later than 30 calendar days after receiving the complaint." (paragraph 56)

Nothing like mixing business and calendar days in a document to create clarity.

" .... we consider that the pursuit of best practice should result in firms regularly meeting or outperforming the maximum IDR timeframes." (paragraph 63)

Unlike the Life Code of Practice where maximum timeframes are now promoted by insurers as their service standard.

(ii) Trained Staff

"We expect staff who deal with complaints to have the knowledge, skills and attributes to effectively perform their roles. This includes, knowledge of this regulatory guide, consumer protection laws, an understanding of the products and services offered by the financial firm; empathy, respect and courtesy .... and good judgement." (paragraph 148)

All else would be forgiven if only "empathy, respect and courtesy" existed.

(iii) High Standards

"We expect firms to develop processes that ensure each complaint is managed fairly, objectively and without actual or perceived bias." (paragraph 166)

Not sure insurers have quite nailed this one yet.

(iv) Active Interaction

"IDR processes should allow adequate opportunity for each party to make their case." (paragraph 167)

Yet, the writer's experience is that IDR deliberations more resemble Maxwell Smart's Cone of Silence than the above.

(v) Systemic Issues

"If an investigation confirms that a systemic issue exists, we expect the financial firm to take prompt action to identify affected consumers and provide fair remediation." (paragraph 121)

Is it possible that IDR itself is a systemic issue?

(vi) Complaint Rejection

"If a financial firm rejects or partially rejects the complaint, the IDR response must clearly set out the reasons for the decision." (paragraph 54)

It is unclear why the equivalent does not apply if the financial firm accepts the complaint is valid; unless, of course, that is not a foreseeable outcome.

(vii) Reporting

"To monitor the performance of the IDR process, firms should collect and analyse the following items of data at regular intervals:

- *number of complaints receive and closed,*
- *nature of complaints (e.g. product and problem),*
- *time taken to acknowledge, resolve and finalise complaints,*
- *possible systemic issues, and*
- *complaint outcomes"* (paragraph 182)

How about the % of complaints found in favour of the complainant or is that another foreseeable outcome issue?

(viii) Customer Permission

"A financial firm may wish to directly refer a complaint to AFCA for resolution. Firms wishing to make such a referral need to obtain the consent of the complainant(s) to do so." (paragraph 115)

"Consent" is a concept that will be revisited in a moment.

So, what is a complaint and who gets to choose? This is where things get interesting even if the article doesn't .....

"It is the complainant's expression of dissatisfaction made to or about an organization, related to its products, services, staff or the handling of a complaint, where a response or resolution is explicitly or implicitly expected or legally required that triggers a firm's obligation to deal with the matter according to our IDR requirements." (paragraph 35)

Insurers certainly appear to get trigger-happy about the above as they gleefully say they have no choice but to treat an expression of dissatisfaction as a complaint and send it off to IDR. But why would this make for happy?

Case Study 1

A claim was declined because the relevant definition had not been met arguably on a medical technicality. The insured disagreed with the insurer position. It is relevant to note that disagreement does not automatically equate to dissatisfaction.

The insured emailed the insurer and asked what additional information would need to be provided such that a review of the insurer's decision would be enabled. The email ended with:

"Please do not treat this request as a complaint. I am simply looking to work with you to resolve the matter of my claim in a mutually acceptable way."

Pretty clear, eh? Evidently not …. the very next day brought the response: *"I have referred this to our Internal Dispute Resolution team for an independent review"*

Again, why would an insurer do that?

A few days later IDR came back and (un)surprisingly maintained the decision to decline the claim but then crucially it stated, "*Please note this is our final response in relation to your complaint."*

By referring the matter to IDR, the insurer was apparently able to avoid responding to the insured's request about providing additional information, instead pulling down the shutters and forcing a referral to AFCA. A strange way to reduce pressure on external complaint bodies, eh.

Whilst not entirely clear, the triggering of a complaint within RG271 appears more to ensure financial firms do not actively seek to minimise the quantum of complaints being made against them rather than providing insurers with a nifty way to avoid ongoing discussion.

The question is thus reasonably asked, "*If an insured expressly states they do not want a matter treated as a complaint and so referred to IDR, is the financial firm able to act in line with the insured's instruction*?"

By way of example, an insured is on claim and states they do not feel a specific claim proof is necessary but, initially the insured indicates they wish to discuss the matter with the assessor or the assessor's manager in the hope the relevant issues can be resolved. In doing so, the insured still reserves the right to refer to IDR if the issues cannot be resolved.

In a situation such as this, for the insurer to override the insured's stated wishes and unilaterally refer the matter to IDR would place the insurer at odds with the Life Insurance Code of Practice requirement that the insurer act in a Fair and Respectful way towards the insured.

Maybe ASIC should be asked the question ……..

Case Study 2

Mr Gentile (not his real name) was the subject of a protracted investigation by his insurer that had accused him of breaching his duty of disclosure when his policy started. The questioning and demanding had continued for almost 12 months during which time benefit payments were withheld.

Enough was enough, so the decision was taken to refer the matter to the so-called independent IDR. For reasons that will become obvious, a precautionary call was had with the head of IDR.

"Again and again, over the last year, Mr Gentile has been accused by his insurer of breaching his duty of disclosure. In one email alone, on no fewer that eleven occasions he was told he had made misrepresentations in his insurance application. Not only were his honesty and character questioned but benefit payments were withheld which added extreme financial pressure to the already overwhelming psychological pressure.

"I am speaking to you on behalf of Mr Gentile as he is currently an inpatient at a mental health institution and is unable to speak for himself.

"Mr Gentile is looking to you to bring this investigation to an end so he can focus on his recovery."

What did IDR come back with? Because Mr Gentile asked to be advised in advance of information being requested from 3rd parties, IDR accused him of trying to restrict access to reasonably required information and selectively choosing what information was provided to the insurer.

IDR then concluded by questioning his credibility and accusing Mr Gentile of being in breach of his duty of utmost good faith. As required by RG271, paragraph 148, the IDR response fair dripped with empathy, respect and courtesy.

Ironically, Mr Gentile's insurer not long after, conceded that he had done nothing wrong and he had not breached his duty of disclosure. Benefit payments were brought up to date, and the insurer thanked him for his patience whilst the investigation had been undertaken. Made it all worthwhile ..... Not !!

Case Studies 3 to a Gazillion

Sadly, it seems the standard IDR response falls into a pattern where the position of the insured is detailed and duly ignored while the position of the insurer is restated and affirmed.

If all unsatisfactory IDR experiences personal and reported were included, this article would indicatively convert to a 15-part miniseries on Netflix. The writer can put it no more succinctly than state "*To this day, no referral to IDR made by myself on behalf of a person with whom I am working has resulted in the insurer's position being reversed."*

Maybe it is unfair to point the digit at IDR when the above statistic may represent a deficiency on the part of the writer? In the interests of balance, input from advisers, clients and others has been sought over many years but, to date, this has only served to support the perception.

Vent yoga ..... Breathe in, breathe out, let fly.

PS The above is a vent based on the personal experiences of, and feedback received by the author. It is acknowledged and hoped that the experiences of others differ.

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(1830 WORDS)