

18 November 2019

By email: unsolicited.sales@asic.gov.au

Darien Williams
Financial Services Group
Australian Investments and Securities Commission (ASIC)

Dear Darien

Interim ban on unsolicited sale of direct life insurance and consumer credit insurance: Draft legislative instrument and revised Regulatory Guide 38

Thank you for the opportunity to comment on a draft legislative instrument and revisions to ASIC *Regulatory Guide 38: The Hawking Provisions (Draft RG38)* relating to ASIC's proposed interim ban on outbound telephone sales of direct life insurance and consumer credit insurance.

The submission should be read together with our joint submission¹ with Financial Rights Legal Centre (FRLC) to ASIC *Consultation Paper 317: Unsolicited telephone sales of direct life insurance and consumer credit insurance* (July 2019).²

About Consumer Action

Consumer Action is an independent, not-for profit consumer organisation with deep expertise in consumer and consumer credit laws, policy and direct knowledge of people's experience of modern markets. We work for a just marketplace, where people have power and business plays fair. We make life easier for people experiencing vulnerability and disadvantage in Australia, through financial counselling, legal advice, legal representation, policy work and campaigns. Based in Melbourne, our direct services assist Victorians and our advocacy supports a just marketplace for all Australians.

Endorsement of FRLC submission

We have had the opportunity to read the submission to this consultation by FRLC dated 31 October 2019. Consumer Action endorses its comments and recommendations. We make additional comments below.

Other forms of unsolicited contact

The interim ban should apply to all forms of unsolicited contact, not just outbound telephone sales. If ASIC's ban only applies to outbound calls, insurers could simply use other—potentially more problematic—pressure selling methods. These include circumstances where a consumer:

¹ <https://consumeraction.org.au/20190829-asic-life-insurance/>.

² <https://asic.gov.au/regulatory-resources/find-a-document/consultation-papers/cp-317-unsolicited-telephone-sales-of-direct-life-insurance-and-consumer-credit-insurance/>.

- receives targeted advertising after a distressing life event, such as the death of loved one or home repossession proceedings, inviting the consumer to call. The consumer calls and is signed up over phone to unsuitable or low value products such as funeral insurance or unregulated debt management services;
- is approached by sales representatives while on holiday (e.g. at Seaworld or in a hotel lobby) and the cooling-off period concludes while the consumer remains on holiday (e.g. timeshare);
- is approached at their place of residence (e.g. nursing home) for the unsolicited sale of mattresses;
- is approached when attending community events (e.g. the sale of funeral 'expenses only' products, which would be covered by the proposed ban after implementation of Financial Services Royal Commission (FSRC) Recommendation 4.2).

Offer of different product to that initially requested by the consumer

We strongly agree with FRLC's concerns that Draft RG38 does not include updated guidance on the offer of a different product to the one initially requested by the consumer. This can occur when a person contacts a company after seeing or hearing an advertisement, but is upsold a different product.

Unless clear and specific guidance is provided on this issue in RG38, there is a significant risk that insurers will increasingly engage in this tactic once outbound phone sales are banned. This sales tactic is likely to have the similar consequences to those that the ban is trying to prevent – chiefly that people end up in unsuitable products because they weren't in the headspace to consider that particular product at the time of the contact.

Bundled products

We strongly agree with FRLC that Draft RG38 requires further guidance on bundled policies that include both life and general insurance components.

One example of a bundled policy is bill protection insurance. For example, the GIO Bill Protect includes a disability benefit (a life insurance product) and a redundancy benefit (a general insurance product).³ In our experience, bundled products can be problematic for consumers, such as where the policy is unsuitable for the consumer.

Timeshare

We continue to hold serious concerns about the mis-selling of timeshare arrangements. We strongly recommend that RG38 include an example of an unsolicited meeting based on a timeshare sales model, among other reforms.

Case Study – Claire

In July 2011, a major life insurer telephoned Claire (name changed) after she had previously enquired about a funeral insurance "plan". During the call, the life insurer's representative said to Claire:

"What happens if every now and again we give you a call? Just to make sure you are happy and updated. This will happen only two times a year, if that. So are you happy for us to contact you from time to time in relation to products we offer until you tell us otherwise?"

Claire agreed to being contacted. The representative then asked our client:

"So at the moment you said you are not working Claire is that correct?"

Claire replied that she was not working.

The representative then proceeded to upsell unsuitable bill protection insurance, which purported to provide her with insurance cover should she become "out of action" (i.e. not able to work) as a result of "sickness or injury". This insurance was unsuitable for Claire as she was unemployed at the time and therefore largely unable to claim on the policy.

³ GIO Bill Protect: Product Disclosure Statement and Policy Document, prepared 1 March 2019.

Timeshare schemes allow points or credits to be redeemed for holiday accommodation and can cost upwards of \$20,000. Timeshare is a complex concept. It is not unusual for consumers to be confused about what they are purchasing. Any confusion experienced by a consumer can be made worse by the seller's conduct at the point of sale. In our clients' experience, the sale of timeshare frequently involves very high pressure sales and conduct which could be regarded as unconscionable, misleading and/or deceptive. No assessment appears to be made as to the suitability of the product for the relevant consumer despite the fact that the product is relatively expensive and may often be financed with a high interest loan. Our clients' understanding of how the scheme works is often limited with minimal or incomplete explanations having been provided by the timeshare sellers.

From our casework, the seminars and meetings attended by consumers may be unsolicited depending on the circumstances. In the common circumstance of a consumer attending a timeshare seminar in response to a request and the promise of some form of reward, it is often difficult to reconcile that meeting (i.e. attending the timeshare presentation) with the requirement that it be in response to a positive, clear and informed request from the consumer. In our view, where an incentive is offered for attending a timeshare seminar, then it cannot be considered to genuinely be in response to a positive request. Further, it is likely that most requests are not sufficiently clear and informed given the numerous cases we have seen of consumers being caught off guard when attending the seminars.

For more information on our views on timeshare, including examples from our casework, please see our submission to ASIC *Consultation Paper 272: Remaking ASIC class orders on time-sharing schemes*.⁴

Interaction with other reforms

ASIC should consider the interaction of the proposed ban with:

- the forthcoming ban on unsolicited selling of insurance (FSRC Recommendation 4.1), including Commissioner Hayne's statement that it is 'desirable' to introduce a statutory definition of what is 'unsolicited';⁵
- Treasury's proposed model to implement an economy wide deferred sales model for add-on insurance (FSRC Recommendation 4.3),⁶ noting that many people have been sold add-on insurance that they did not intend to buy – thus falling within a common understanding of what is 'unsolicited'; and
- the deferred sales model under the Australian Banking Association's revised Code of Banking Practice (at para 67-68).

Contact details

Please contact Senior Policy Officer Cat Newton on 03 9670 5088 or at cat@consumeraction.org.au if you have any questions about this submission.

Yours Sincerely,

CONSUMER ACTION LAW CENTRE



Gerard Brody | CEO

⁴ Consumer Action Law Centre and Financial Rights Legal Centre, 24 January 2017: <https://consumeraction.org.au/wp-content/uploads/2017/02/Consumer-Action-CP-272-Submission-Final.pdf>.

⁵ Financial Services Royal Commission, *Final Report: Volume 1*, above n 4, page 283.

⁶ For our views on the proposed model, please see our joint submission to The Treasury, 4 October 2019: <https://consumeraction.org.au/20191008-insurance-sales-practices/>.