



Treating The Customer Fairly And Duty Of Care

East West Insurance Brokers Pty Ltd
T/As Shieldcover



ShieldCover is a division of East West Insurance Brokers Pty Ltd. ABN 83 010 630 092 AFSL No. 230041

shieldcover.com.au

EAST WEST INSURANCE BROKERS PTY LTD T/as SHIELDCOVER

TREATING THE CUSTOMER FAIRLY AND DUTY OF CARE

1. Provision Of Services

1.1. Efficient, Honest, Transparent And Fair

Your role at East West Insurance Brokers Pty Ltd T/as ShieldCover (EWIB/ShieldCover), as an insurance intermediary, is to provide advice and guidance to enable clients to make informed decisions about their insurance.

You must ensure that at all times the insurance services are being provided efficiently, honestly, transparently and fairly. This obligation is imposed by the Australian financial services laws and is broader than the common law responsibility to use due, skill, care and diligence.

1.2. Industry Codes Of Practice

You need to be aware of the Insurance Industry Codes of Practice which include how you must treat your customers fairly in all areas of your job role including the handling of claims and complaints. They are the:

- General Insurance Code of Practice, which regulates the conduct of insurers who adopt the Code;
- Insurance Brokers Code of Practice which regulates the conduct of insurance brokers; and
- National Insurance Brokers Association of Australia (NIBA) Code of Practice.

1.3. General Insurance Code Of Practice

As EWIB/ShieldCover acts on behalf of certain Underwriters at Lloyd's, who have subscribed to the Code, we must comply with Code whenever selling Lloyd's products or handling claims on behalf of Lloyd's. If we do not comply, the insured can report EWIB/ShieldCover to Lloyd's or directly to AFCA.

Where there is a co-insurance arrangement, all of the insurers must have adopted the Code for the policy to be covered by the Code. Both the 2014 and 2020 Code can be found at the following link: www.codeofpractice.com.au.

The Code covers all general insurance products with the exception of:

- Workers compensation;
- Marine insurance;
- Domestic builders insurance or domestic builders warranty/indemnity insurance;
- Medical indemnity insurance;
- Compulsory third-party insurance; and
- Life and health insurance products issued by life or registered health insurers.

As an Underwriting Agency that acts on behalf of insurers that subscribe to the **Code** EWIB/ShieldCover must include clear and accessible information about the **Code** in our product information and on our website. From 1st July 2020 EWIB/ShieldCover also has policies to support insureds who are experiencing family violence or financial hardship, or who are otherwise 'vulnerable'.

An updated General Insurance Code of Practice was approved in October 2019. **Code** subscribers (and their brokers and agents) must transition to the updated **Code** by 1st July 2021.

AFCA's **Code** Compliance and Monitoring team provides code monitoring, secretariat and administrative services to the General Insurance Code Governance Committee (CGC), which is ultimately in charge of monitoring the **Code**. Alleged breaches of the **Code** can be reported to CGC, which will then:

- Investigate the breach;
- Provide the opportunity for the insurer to respond;
- Determine whether a breach has occurred;
- Reach agreement with the insurer about what corrective action should be taken, by when it will be taken and how it will be monitored; and
- Monitor if corrective measures have been implemented within the agreed time frame.

The CGC can impose the following sanctions:

- A requirement that particular corrective action be taken within a specified time frame;
- A requirement that a compliance audit be undertaken;
- Corrective advertising;
- Publication of the non-compliance (where there is a significant breach);
- A requirement to compensate an individual for direct loss; and/or
- Community benefit payment orders up to a maximum amount of \$100,000 (for significant breaches of the Code).

A significant breach is a breach that is determined to be significant by reference to:

- the number and frequency of similar previous breaches;
- the impact of the breach, or likely breach, on EWIB/ShieldCover's ability to provide our services;
- the extent to which the breach, or likely breach, indicates that EWIB/ShieldCover's arrangements to ensure compliance with the Code are inadequate;
- the actual, or potential, financial loss caused by the breach; and
- the duration of the breach.

When imposing a community benefit payment, the CGC must take into account any remediation awarded by AFCA and an investigation of serious misconduct by ASIC. The decisions of the CGC are binding on Code subscribers.

For more information on Breaches please refer to EWIB/ShieldCover's Incident and Breach Reporting Manual.

1.3.1. EWIB/ShieldCover as a Lloyd's Coverholder

The Code applies to business written under binder by Lloyd's Coverholders located in Australia, as well as binder claims adjusted either by a Lloyd's Coverholder or a claims administrator located in Australia.

The Code does not apply to Lloyd's business where:

- The business is placed via the open market and written outside Australia; and
- The claims are adjusted outside Australia.

1.4. Best Interests Duty

As an intermediary, you must:

- Act in the best interests of your clients when giving advice;
- Provide advice which is appropriate to the client; and
- Warn the client when the advice is based on incomplete or inaccurate information.

1.5. Common Law Duty Of Care

1.5.1. What is the Duty?

You also owe a duty to clients to exercise reasonable care and skill in the provision of your services. If you fail to do so, EWIB/ShieldCover may be liable for any loss suffered by the client because of that failure.

No duty of care is owed unless injury or loss to the client is reasonably foreseeable. However, in the context of professional negligence claims, injury or loss to a client as a result of careless conduct by an intermediary is nearly always foreseeable.

While a letter of engagement is an important indicator of the nature and scope of your duty, it is not conclusive. In some circumstances, your duty of care may require you to take further steps beyond the specifically agreed task or function to avoid a real and foreseeable risk of loss for the client.

1.5.2. What Standard Is Expected?

The standard of care required that is expected of you, is that of a competent, experienced, well-informed intermediary - not someone with an extraordinary degree of skill. However, you are expected to have specialist knowledge of insurance when compared to the ordinary person. The degree of care you must take depends on the circumstances and the particular client.

You will be liable for errors of judgement if the error is a lapse from the standard of care and skill expected of a reasonable intermediary in the circumstances. Not all errors of judgement will amount to such a lapse. This is why you need to fully appreciate your client's requirements and understand the insurance you are advising on and arranging.

What you need to do to fulfil this duty will depend upon the circumstances of each client, including the scope of your engagement e.g. have you agreed to give general or personal advice, the quality of instructions given by the client and the sophistication of the client, e.g. are they retail or wholesale, do they have experience in insurance matters.

When advising wholesale or business clients, there is an expectation that you will collect relevant information about the client's business and undertake additional research regarding the industry in which the client operates to properly assess the risks facing the client and their business when formulating an insurance program.

If you have represented yourself as an expert in a particular insurance class or a particular industry, you may be held to a higher standard – for example, if you profess to be an expert in a particular type of insurance or insurance for a particular industry, occupation or profession.

The standard does change for someone who is less experienced or is being supervised by a more experienced intermediary.

A more knowledgeable or expert client on insurance may not be owed the same standard of care,

as a client who has little or no insurance experience or is looking to you to provide all of this expertise. Likewise wholesale clients that regularly purchase commercial and business insurances may be owed a different duty to retail clients who are less sophisticated and knowledgeable buyers of insurance.

Your advice and service need to be tailored to the client taking into account these things.

Clients are never responsible for checking an intermediary's work or identifying mistakes. Clients are entitled to assume that you have carried out their instructions, e.g. clients are not required to check a certificate of insurance provided by EWIB/ShieldCover.

1.5.3. Specific Elements of the Common Law Duty

As an intermediary you are liable for giving incorrect advice about cover under a policy. An insured's failure to read the policy does not affect EWIB/ShieldCover's liability as the insured is entitled to rely upon your advice. You should check the terms of the policy received to ensure it matches their instructions.

You also have a duty to advise of exclusions or limitations in cover arranged for the insured, particularly terms that are considered to be unusual or that are restrictive in relation to geography, limits of liability, or extent of cover. This is particularly the case where the insurer identifies important conditions on a renewal notice to EWIB/ShieldCover.

Ensure that you discuss or advise about risks which are uninsured and confirm in writing when the client decides not to cover them. Similarly, if the client does not wish to act on our recommendation of an improvement to their cover, confirm this in writing.

If all the class of an insurance or product on which you are authorised to advise are not appropriate for the client, then do not recommend any insurance to the client. If appropriate, refer the client to another intermediary who can assist. If the advice is to replace one policy with another, ensure that you are satisfied that the overall benefits from the new policy would be greater than the old.

It is not enough to supply a copy of the policy and instruct the insured to read it closely to check it is suitable and it is not relevant that such details may have been advised previously or on an earlier renewal. You should inform clients about any actions which may affect their insurance e.g. the insurance risks involved in letting premises to a tenant engaged in a hazardous occupation.

Always advise clients of the differences between a new and existing policy. This applies on renewal and any mid-term changes. Take care when selecting an insurer. You will be liable for recommending an insurer you know to be in financial difficulties, or for placing cover through an underwriting agency which does not have agreements with underwriters.

1.5.4. To Whom Is the Duty Owed

Usually the duty is owed to the person who is instructing you – the insured (i.e. the person who is the party to the insurance contract with the insurer).

1.5.5. Duration of Duty

Your duty continues from the time of your first engagement by the client and after the date the insurance has been arranged, if there is a continuing business relationship. Usually, this from the time the client signs a Letter of Engagement or otherwise instructs to act as their intermediary until you formally terminate the relationship or the client or someone else (e.g. the insurer)

informs you that the client has engaged a new intermediary. So, if you stop acting for an insured, you must notify the insurer.

1.5.6. Providing Ongoing Sales Service

Control procedures must be in operation to ensure that advantages in minimizing exposures to your Clients which evolve out of new product launches, product changes, legislative changes and court decisions are implemented in an expeditious manner.

1.5.7. Sales and Service Standards

To measure the success of your Client contact, measurement standards must be established to monitor and record:

- Strike rates on leads and telephone enquires;
- Lapse rates;
- Business retention (number of years business held);
- Number of policies per Client;
- Number of complaints/disputes.

1.6. GUIDELINES FOR HANDLING COMPLAINTS

There are certain steps to follow when speaking to a complainant. These include:

- Listen to what the complainant has to say;
- Empathise with the complainant, without making admissions;
- Never blame the complainant, or another person or department in our organisation;
- If the complainant has poor communication skills, offer them the opportunity to have an interpreter or representative speak on their behalf;
- Obtain full relevant facts. Write them down and read them back to the complainant. Ask the necessary questions in a polite and even-handed manner to obtain the most detailed response;
- Confirm the information received to ensure that it is correct;
- Attempt to resolve the problem with an explanation or information;
- Ask the complainant if they are satisfied;
- If the complaint cannot be resolved immediately, tell the complainant that our Complaints Managers are dedicated to resolving client problems and that the matter can be referred to them to see if they can help the insured further. Seek to obtain the insured's agreement to this. Tell the insured the name of our Complaints Managers and that one of our Complaints Managers will contact them within 24 hours;
- Immediately complete a Complaints Form, and provide it to one of our Complaints Managers; and
- Keep the complainant informed of the progress of the complaint. Don't wait for them to make contact.

When you receive a complaint, follow these golden rules:

- Try to remain calm even in the most demanding situations. Help the client maintain their control, no matter how angry they are;
- Treat the complainant courteously and fairly at all times;
- Be convincing in your expressions and actions to earn their trust;
- Listen to the client – while they are not always right, a dissatisfied client is a liability, not an asset;
- Be patient if the client communicates poorly and help them to get their meaning across;
- Understand when to say "no" and be firm without antagonising the client.
- Always say, "Thank you";
- Explain why you appreciate the reasons for the complainant calling;
- Apologise for the mistake;
- Promise to follow up on the problem immediately;

- Ask for the necessary information;
- Correct the mistake - promptly;
- Check client satisfaction; and
- Prevent future mistakes.

For further information on the handling of complaints you can refer to EWIB/ShieldCover's Complaints and Disputes Procedures Manual.

1.7. DEALING WITH VULNERABLE INSURED

For retail insurances as Lloyd's is a Code subscriber, EWIB/ShieldCover must have internal policies to support those who are affected by vulnerabilities, including family violence and mental health conditions.

The aim is to engage with those affected in a compassionate, sensitive, dignified and respectful way. EWIB/ShieldCover's policies will include identifying and understanding when someone is vulnerable and how to consider their needs or vulnerability and arrange additional support, for example, referring the vulnerable person to people, or services, with specialist training and experience.

A person's vulnerability can be due to any of the following factors:

- Age;
- Disability;
- Mental health conditions;
- Physical health conditions;
- Family violence;
- Language barriers;
- Literacy barriers;
- Cultural background;
- Aboriginal or Torres Strait Islander status;
- Remote location; or
- Financial distress.

We are required to provide support measures to those who are vulnerable including:

- Finding a way to work with the person that is suitable, sensitive and compassionate, protect the person's privacy and makes it easier for them to communicate with us;
- Identifying whether the person requires additional support and working reasonably with that support person – for example, a lawyer, consumer representative, interpreter or friend or a financial counselling or community support service;
- Implementing these support measures as early as possible and ensuring EWIB/ShieldCover's processes are flexible enough to recognise the authority of a support person who is helping the person;
- Supporting those who may have difficulty providing identification and providing flexible alternatives for verification of identity – especially for people from the Aboriginal or Torres Strait Islander community or a non-English speaking background;
- Access to interpreter services where this is requested by the person or reasonably necessary for us to communicate with the person and providing information on EWIB/ShieldCover's website about how to access these services for people who have language barriers.

For those who have a past or current mental health issue condition, LUAW will have internal policies to:

- Design and sell our insurance products and apply their terms in compliance with the requirements of the Disability Discrimination Act 1992;
- Treat people with any past or current mental health condition fairly;
- To ask only relevant questions when deciding whether to provide cover for a pre-existing mental health condition and if we cannot provide the intending insured with cover for that condition, we will tell them about their right to ask us for the information we relied on when assessing the application.

More guidance on the internal policies, training and resources required is in the 'Guide on mental health to support the Insurance Council of Australia's General Insurance Code of Practice'.

1.8. FAMILY VIOLENCE POLICY

From 1st July 2020, we have a family violence policy in place which is publicly available on our website. Family violence is "violent, threatening or other behaviour by a person that coerces or controls a member of the person's family or causes the family member to be fearful".

EWIB/ShieldCover's family violence policy provides for:

- Making sure that safety is paramount for anyone affected by family violence;
- Early recognition of family violence and training to improve our responses to someone affected by family violence;
- Protecting the private and confidential information of customers affected by family violence;
- Minimising the number of times, a customer affected by family violence needs to disclose information about family violence;
- Ensuring appropriate and sensitive claims handling processes for claimants affected by family violence;
- Ensuring collection arrangements are handled sensitively;
- Arranging access to financial hardship help;
- Informing customers, our employees, brokers and service suppliers about information and assistance that is available to people experiencing family violence;
- Referring customers, our employees and brokers information about specialist services supporting people experiencing family violence; and
- Supporting employees and brokers who:
 - » are themselves affected by family violence; or
 - » experience vicarious trauma after serving affected customers.

All relevant staff have received training so that you are aware of the policy that applies to family violence policy.

1.9. FINANCIAL HARDSHIP

Financial hardship is where the insured, or another person that EWIB/ShieldCover may be dealing with, has difficulty meeting their financial obligations to EWIB/ShieldCover, as the agent of the insurer.

For example, if the person is an insured or a third party beneficiary who owes EWIB/ShieldCover money — including an excess — under an insurance policy EWIB/ShieldCover has issued, or we are seeking to recover money from the person as an insurance recovery (because we believe the person caused damage or loss to our insured, or a third party beneficiary, or their property, which is covered by the insurance policy).

We are not required to provide financial hardship support with paying premiums.

For more information on Financial Hardship please refer to Part 10 of the **Code** at www.codeofpractice.com.au.



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