

Update Note on Initiative from BCFSa around Life Insurance / Health Insurance and Adjusters

August 13, 2024 Meeting

- BCFSa reached out to me / CAFII in mid-July, 2024 requesting a meeting in mid-August on a Regulatory Statement on the Adjusting and Settlement of Insurance Claims.
- My initial response was that adjusters were in the P&C space and not in the life insurance space, but BCFSa said that they felt their Regulatory Statement was relevant to CAFII members. A meeting was set up for August 13, 2024.
- The Regulatory Statement was released to me on an embargoed basis, meaning I could not share it with others; however, it is very high level and it was only at the virtual meeting on August 13 that the full intent of the BCFSa became clear.
- At the meeting on August 13, Harry James, Director, Regulation Advisory Service, did most of the talking for BCFSa. Sean Sisett, Director, Inspections & Case Management also spoke, while Marina Macknach, Director, Market Conduct Financial Institutions, and Kari Toovey, Manager, Policy Team were quiet. (Kari Toovey was previously with the BC Ministry of Finance where CAFII has had several meetings with her.)
- Based on new language in the BC Financial Institutions Act (FIA), BCFSa has interpreted the Act to require individuals who act as adjusters to be individually licensed.
- I explained that while in P&C actual decisions are made by adjusters, in life and health insurance individuals are confirming eligibility as part of the claims process. Harry James said that this was not the view of BCFSa, and that life and health insurers who make decisions about claims would be considered adjusters and would need an individual license.
- Mr. James also said that this was not a consultation but a clarification and that BCFSa was not asking for comments on its interpretation but rather wanted to discuss how to implement it, over what timeline, and to get industry feedback on who is captured as an adjuster as there could be grey areas.
- Specifically he said that the test of someone adjusting is whether they are making either of the following decisions: 1. Will the claim be paid? 2. How much of the claim will be paid?
- He also said that he understood that some individuals would be “checking off boxes” in a claims centre as part of a claim adjudication and that those individuals would not be viewed as adjusters.
- It was also stated that third parties that are administering claims, like a TPA, would also be captured by this definition and individuals making decisions about claims in those organizations would need to be individually licensed.
- There was discussion of the intent for the Insurance Council of BC to implement a new Restricted Insurance Agency regime and Mr. James said that this corporate license was for distributors operating in the sales channel, and that the claims settlement process would not be captured by the RIA regime.
- Mr. James said that this interpretation applied to life insurance, employee benefits, health insurance, and travel insurance.
- Sean Sisett said that this was an existing requirement and that the industry was currently in “pre-existing non-compliance.”
- I was asked to get member feedback and share input with BCFSa, however when I requested that be able to share the Regulatory Statement I was told that was not possible at this time.

Analysis and Next Steps

- I met with Luke O'Connor on August 14, 2024 prior to CLHIA's meeting with BCFSa to provide him with an update on the meeting I had held.
- Luke O'Connor said he would reinforce the importance of being able to share the Regulatory Statement.
- Luke O'Connor shared the following aspects of the BC FIA:

*Section 168 of the FIA now defines "insurance adjuster" to mean "a person who makes any adjustment **or settlement of a claim** under a contract of insurance other than a contract of marine insurance.*

Subsection 180 of the FIA states that no person shall act in the province as an insurance adjuster or as an employed insurance adjuster unless the person is licensed as such, unless exempted by regulation.

*Section 6 of the Insurance Licensing Exemptions Regulation provides exemptions from the requirement to obtain an adjuster's licence in certain circumstances. Section 180(1) does not apply to a person **who...(e) is a salaried employee of that insurer, who in either case is acting for that insurer.***

- Based on these clauses, it seems clear that a **salaried employee** is exempted under the legislation and cannot be expected to be individually licensed, regardless of what role they play in claims.
- Less clear is the situation for third-party administrators, and sometimes retired employees/contractors work for an insurer in claims and are not a salaried employee.
- The definition of insurance adjuster (Section 168 of the FIA) could be interpreted differently from how BCFSa is interpreting it, and it is not clear what customer protections are offered by requiring life and health claims staff to have an individual license.
- While I cannot release the Regulatory Statement at this time, it does state that "Breach of section 180(1) of the FIA may be subject to an administrative penalty or attract additional enforcement action under the FIA."
- I will be consulting with the EOC Chair and Vice Chair and the Market Conduct & Licensing Chair and Vice Chair about next steps by CAFII.