

THE CANADIAN LIFE AND HEALTH INSURANCE OMBUDSERVICE

Terms of Reference

The Canadian Life and Health OmbudService (“CLHIO”) is an independent organization that deals with Consumer Complaints about life and health insurance products and services. The CLHIO provides a forum for the impartial, prompt resolution of Complaints for Consumers who have completed the internal complaints-handling processes available within their individual life and health insurance companies.

The CLHIO is not an advocate for either the life and health insurance company or the consumer. Rather, the CLHIO is a separate corporation governed by its own Board of Directors, the majority of whom are independent of the life and health insurance industry. The CLHIO is funded through assessment fees paid by the life and health insurance industry, and its complaint-resolution service is provided free of charge for Clients.

The CLHIO is a member of the Financial Services OmbudsNetwork (“FSON”), an industry-based integrated consumer assistance system launched in November 2002 to provide Canada’s financial services consumers with recourse when they have concerns or complaints. The FSON is an independent organization endorsed by financial services regulators and sponsored by the financial services industry.

The following Terms of Reference are intended to set out the principal powers and duties of the CLHIO, mandate of the CLHIO and a general statement of the procedures to be followed in filing a complaint against a life and health insurance company.

TERMS OF REFERENCE

Purpose

1. These Terms of Reference describe the principal powers and duties of the Canadian Life and Health Insurance OmbudService (“CLHIO”), the CLHIO’s mandate, and the CLHIO’s process for receiving, considering, investigating and seeking a resolution of a Complaint brought by the Consumer about a Life and Health Insurance Service and/or Product.

Definitions

2. In these Terms of Reference
 - (a) the following expressions have the following meanings:

“**Board**” means the Board of Directors of the CLHIO;

“**CLHIA**” means the Canadian Life and Health Insurance Association;

“**CLHIO**” means the Canadian Life and Health Insurance OmbudService;

“**Complainant**” means an individual Consumer of a Member or its representative making a Complaint to the CLHIO and includes the authorized representative(s) of the Consumer, such as a personal representative, guardian, trustee or executor;

“**Complaint**” means a complaint about the provision within Canada of a Life and Health Insurance Service and/or Product provided by a Member to a Consumer;

“**Consumer**” or “**Client**” means an individual who applied for or received a Life and Health Insurance Service and/or Product from a Member or its representative;

“**Dispute Resolution Process(es)**” means an alternative method of resolving a Complaint outside of the traditional adjudicative court process, and includes mediation, conciliation and arbitration;

“**FSON**” means the Financial Services OmbudsNetwork, a national dispute resolution system for Consumers of financial services that is endorsed by

insurance, banking and securities regulators. It includes the Ombudsman for Banking Services and Investments (“OBSI”), the Financial Services OmbudsNetwork (“FSON”), the CLHIO, the General Insurance OmbudService (GIO), and any other participating ombud entity, and Financial Services Providers (“FSPs”);

“**Industry OmbudService**” means any of the OBSI, the CLHIO, the GIO, and any other ombud entity participating in the FSON;

“**Life and Health Insurance Service and/or Product**” means a life and health insurance industry service and/or product for individuals or groups and includes life insurance, supplementary health insurance, disability insurance, travel insurance, pensions, annuities, segregated funds, and investment products;

“**Member**” means any Life and Health Insurance Company admitted as a member of the CLHIO;

“**Non-Binding Recommendation(s)**” means a recommendation(s) made by the CLHIO’s Senior Adjudicative Officer regarding the resolution of the Complaint that is not binding upon the Member or the Complainant;

“**OmbudService Officer**” means a person who works on behalf of the CLHIO to try to resolve the Complaint related to a Life and Health Insurance Service and/or Product;

“**OmbudService Information Kit**” means an Authorization and Agreement Form sent by the CLHIO to the Consumer for signature upon the Consumer’s initial contact with the CLHIO;

“**Protocol For Consumer Complaint Handling**” means the case referral procedures that govern life and health insurance enquiries, concerns or Complaints that come into CLHIO;

“**Senior Adjudicative Officer**” means a person with an appropriate skill set and experience who is appointed by the CLHIO to try to resolve the Complaint, as described herein;

“Senior Adjudicative Phase” means the CLHIO process in which the Senior Adjudicative Officer prepares a report concerning the resolution of the Complaint that includes a Non-Binding Recommendation(s);

“Standards” means any standards, including performance standards, adopted by the Board of Directors from time to time for the handling and resolution of Complaints and includes a Code of Ethics;

“Systemic” means systems, policies and/or practices within one or more life and health insurance companies discovered in the course of considering an individual complaint, that may have caused a loss or inconvenience to one or more of the Member’s other customers in a similar fashion to that experienced by the original Complainant; and

“Team Review Meeting” means a meeting between the Executive Director of the CLHIO, the OmbudService Officer and the Senior Adjudicative Officer that takes place where informal conciliation has been terminated.

(b) references to the provision of a Life and Health Insurance Service and/or Product include, where the context admits, references to their non-provision;

(c) references to the male gender include, where the context admits, the female gender and vice versa and references to the singular number include, where the context admits, the plural number and vice versa; and,

(d) references to sections and paragraphs are to sections and paragraphs of these Terms of Reference.

Principal Powers and Duties of the CLHIO

3. The CLHIO shall at all times serve as an independent and impartial forum within which Complaints can be resolved and shall not act as an advocate for the Member, the Complainant or for any other person or entity.
4. As a matter of general practice, the CLHIO will not comment upon the business practices and/or the design of business products of a Member including the interpretation of contracts, technical information and/or medical information. If during the course of the handling of a complaint,

the CLHIO finds it necessary to explain to the Consumer business practices or product design of a particular Member, the CLHIO will first seek any necessary confirmation of these facts from that Member.

5. The CLHIO shall:
 - (a) act within these Terms of Reference;
 - (b) adhere to any Standards and/or Codes of Ethics adopted by the Board of Directors;
 - (c) receive Complaints, as appropriate;
 - (d) subject to sections 8 to 12, consider and review Complaints and try to resolve them through appropriate Dispute Resolution Processes;
 - (e) make reports, where applicable containing a Non-Binding Recommendation(s), to Members and to Consumers regarding the resolution of Complaints;
 - (f) advise the public about the procedures for making a Complaint to the CLHIO; and
 - (g) not provide legal, medical, accounting or any other professional advice.
6. The CLHIO will comply with all applicable legislation protecting the privacy of personal information as well as the privacy policies and procedures of the CLHIO.
7. The CLHIO shall ensure that all officers, employees, consultants, independent contractors, and agents of the CLHIO periodically acknowledge their understanding and compliance with any Standard and/or Code of Conduct and privacy policies and procedures adopted by the Board of Directors.

Mandate of the CLHIO

8. Subject to sections 9 to 12, the CLHIO may consider and review any Complaint received if it is satisfied that:
 - (a) the Complaint is made to the CLHIO by the Complainant to whom or for whom the Life and Health Insurance Service(s) and/or Product(s) in

question was or were provided or denied by the Member. The Complainant should be a person who is directly affected by the decision of the Member that is the subject matter of the Complaint. The CLHIO may decide that the non-participation of a person with an interest in the Complaint does not prevent the CLHIO from considering the Complaint, provided that all necessary consents to release confidential information have been obtained;

(b) the Member has rejected the Complaint or made a recommendation for resolution of the Complaint, but the Complainant has not accepted the recommendation proposed by the Member;

(c) the subject matter of the Complaint by the same Complainant (or any one or more of them) against the same Member was not previously considered by the CLHIO. Where a Complaint has been previously considered but, in the opinion of the CLHIO, relevant new information is available, the CLHIO may request that the Member reconsider the Complaint in light of the new information. After the Member reconsiders the Complaint or if the Member declines to reconsider the Complaint, the Complainant may request that the CLHIO reconsider the Complaint;

(d) the subject matter of the Complaint by the same Complainant (or any one or more of them) has not been or is not the subject of any proceedings in or before any court of law, tribunal or arbitrator, or any other independent dispute resolution body;

(e) the CLHIO has received appropriate consents and/or authorization forms concerning the release and treatment of confidential information from all necessary parties and any other agreements or releases that the CLHIO considers appropriate in the circumstances; and

(f) the Complaint is being pursued reasonably by the Complainant and not in a frivolous, vexatious or threatening manner.

9. The CLHIO shall not consider or review or shall cease to consider or review a Complaint:

(a) to the extent that the subject matter materially relates to:

i. an allegation(s) of misconduct against a non-member third party(ies); and/or

ii. the Member's pricing of products and/or services.

(b) when in the opinion of the Executive Director, the Complaint is being pursued in a frivolous, vexatious or threatening manner;

(c) brought by a collective group of unrelated Complainants, although such Complaints can be dealt with individually or the Executive Director could suggest that another Dispute Resolution Process be used;

(d) where the Executive Director of the CLHIO decides that there is a more appropriate place for the Complaint to be dealt with, such as a court of law, a regulator, an arbitration procedure or any other Dispute Resolution Process; or

(e) where the subject matter of the Complaint by the same Complainant (or any one or more of them) has been or is the subject of any proceedings in or before any court of law, tribunal or arbitrator, or any other independent dispute resolution body, unless the Member consents to the CLHIO considering it.

(f) the subject matter of the Complaint relates to an uninsured plan where the policy is administered by the Member (Administrative Services Only – "ASO").

10. The Executive Director of the CLHIO may defer the consideration and review of, or may decline to consider, a Complaint the subject matter of which is being investigated by any regulator having authority over the Member. The Executive Director of the CLHIO shall notify the Complainant and the Member of any deferral, any further steps that the Executive Director may consider taking following the completion of the regulatory investigation, and of any other dispute resolution alternatives that may be available to the Complainant.

11. In those circumstances where the Executive Director of the CLHIO has or may reasonably be perceived to have a material interest and/or conflict of interest, the Executive Director of the CLHIO shall notify the Complainant and the Member of that interest, and shall refer

the Complaint to a designated OmbudService Officer to act in his place. The Executive Director of the CLHIO thereafter shall not have any further involvement in the consideration, review or settlement of the Complaint.

12. In those circumstances where the subject matter of which the CLHIO OmbudService Officer or Senior Adjudicative Officer has or may reasonably be perceived to have a material interest and/or conflict of interest, the Executive Director of the CLHIO shall notify the Complainant and the Member of that interest, and shall refer the Complaint to another designated OmbudService Officer or Senior Adjudicative Officer designated by the Executive Director. The OmbudService Officer or the Senior Adjudicative Officer, as the case may be, thereafter shall not have any further involvement in the consideration, review or settlement of the Complaint.
13. The CLHIO may investigate a Complaint involving a claim for a monetary amount, provided that the Complaint falls within the CLHIO's mandate under these Terms of Reference.
14. To promote recourse to alternative dispute resolution, where a statutory limitations period issue may arise, the Member and the Complainant should agree in writing that they will suspend the application of the limitations period until the CLHIO has had an opportunity to attempt to resolve the dispute (where the law permits).
15. Where, in the opinion of the CLHIO, the subject matter of a Complaint (in whole or in part) is one in which another Industry OmbudService has expertise and the Complainant and the Member consent, the CLHIO may cooperate with that Industry OmbudService in the investigation of the Complaint and may, if appropriate, make a recommendation jointly with the other Industry OmbudService for the resolution of the Complaint. Similarly, the CLHIO may cooperate with another Industry OmbudService in the investigation and resolution of a Complaint referred to the CLHIO by that Industry OmbudService.

16. In the course of dealing with individual complaints, the CLHIO may identify possible Systemic issues. While continuing to pursue the original complaint in accordance with the CLHIO Protocol, the possible Systemic issue involving the Member will be dealt with in the following manner:
17. If a potential Systemic issue is identified, the CLHIO will refer the matter to the Member to determine, by way of an investigation with their legal, compliance and/or other business area whether the matter is Systemic, and to advise the CLHIO of their findings within sixty days from the date of referral. If a Systemic issue is confirmed, the Member will advise the CLHIO of:
 - i. The measures taken by the Member to rectify the matter for the Complainant and all others affected,
 - ii. The measures taken by the Member to prevent a future occurrence of the issue; and
 - iii. Confirmation that, where applicable, the Member has met their obligation to report the matter to the regulator.
18. In the event that the Member fails to respond in accordance with section 17, above, the CLHIO shall take the following steps to ensure the matter is dealt with by the Member:
 - a) The CLHIO will send a follow-up letter to the CEO of the Member providing a copy of the original letter and requesting their cooperation. The letter to the CEO of the Member will note that the matter will be referred to the appropriate regulatory authority if no response has been received within a period of 30 days.
 - b) If the Member fails to respond within a period of 30 days from the date of the final letter to the CEO of the Member, the CLHIO will refer the matter to the attention of the appropriate regulatory authority. In doing so, the CLHIO undertakes not to identify the Complainant so as to preserve consumer confidentiality and in accordance with CLHIO's Privacy Policy.

19. In the course of dealing with individual complaints, the CLHIO may also identify possible Systemic issues affecting more than one life and health insurance company. Should this occur, the matter will be referred to the industry's trade association, the CLHIA, for coordination of a consultative review if and as necessary with representatives of the life and health insurance industry.
20. The purpose of the consultative review will be:
 - a) To determine if the matter is Systemic and affecting more than one life and health insurance company; and
 - b) To determine what measures, if any, should be undertaken to address the issue.
21. The CLHIO will be advised of the results of the industry review including whether the matter is Systemic and affecting more than one life and health insurance company, and if so, the steps that will be taken to address the matter.

Case Referral and Management Procedures

General Provisions:

22. The CLHIO will follow the procedures set out in its Protocol for Consumer Complaint Handling ("the Protocol") and may determine any additional procedures and/or revisions to the Protocol for filing a Complaint with the CLHIO and for considering and reviewing Complaints, having regard to these Terms of Reference and any Standards or Codes of Conduct.
23. The CLHIO shall decide, in its sole discretion, whether a Complaint falls within its mandate or jurisdiction as set out under these Terms of Reference and, in reaching this decision, may consider oral and/or written representations from the Complainant and/or from the Member, as it deems appropriate.
24. The CLHIO:
 - (a) expects the full cooperation and assistance of the Member, and the

Complainant, in the consideration and review of the Complaint;
(b) requires a Member to provide all relevant non-privileged information regarding the Complaint in its possession or control as soon as is reasonably practical; and
(c) shall promptly provide to the Member any consents of the kind referred to in paragraph 8(e) received by the CLHIO.

25. The CLHIO's Dispute Resolution Process is confidential and without prejudice to the parties to the Complaint and to the CLHIO. The discussions and correspondence of the Complainant, the Member, and the CLHIO Executive Director, OmbudService Officers, and Senior Adjudicative Officer that form part of the Dispute Resolution Process will not be disclosed or used in any subsequent legal, other proceedings or Dispute Resolution Processes. The files of the CLHIO are confidential and are protected from disclosure for all purposes. In addition, the Executive Director, the CLHIO staff, and the Senior Adjudicative Officer will not be called to testify in any subsequent legal, other proceedings, or Dispute Resolution Processes. These terms are a condition of participation in the CLHIO Dispute Resolution Process by the Complainant.

Case Intake:

26. Where the Complaint has not been resolved through informal contact between the Member and the Complainant, the Complainant can elect to contact the CLHIO directly to proceed further with the resolution of the Complaint. During the initial contact with the CLHIO, the Complainant will speak with a counsellor to obtain information and advice regarding a resolution of the Complaint. If the counsellor is unable to resolve the problem, the Complainant will be sent a CLHIO Information Kit, containing an Authorization and Agreement Form. The CLHIO will open a file upon receipt of the signed Authorization and Agreement Form from the Complainant. Each new file will receive a preliminary review by the Executive Director prior to assigning the case

to an OmbudService Officer. Once assigned, the OmbudService Officer will send the Member a copy of the Authorization and Agreement signed by the complainant.

Informal Conciliation:

27. The OmbudService Officer will conduct a review of the file material, provide the Member with a written summary of the Complaint, and discuss the issues with the Member and the Complainant, in an effort to identify mutually agreeable outcomes to try to resolve the Complaint.
28. Where the Complaint is resolved through informal conciliation, the OmbudService Officer will prepare a written report for the Complainant and the Member indicating the nature of the Complaint and the agreement reached, and will thereafter close the file.
29. Where the Complaint has not been resolved through informal conciliation, the OmbudService Officer will advise the Complainant and the Member that informal conciliation efforts are being terminated. Thereafter, if there is a basis on which to pursue the matter, the Complainant can elect to proceed to the Senior Adjudicative Phase of the CLHIO Dispute Resolution Process.

Senior Adjudicative Phase:

30. Where attempts at informal conciliation have failed, and if there is a basis on which to pursue the matter, the Executive Director of the CLHIO will refer the Complaint to the Senior Adjudicative Phase to be dealt with by the Senior Adjudicative Officer of the CLHIO who will prepare a report in accordance with the process set out in this Phase.
31. Prior to scheduling a meeting with the Senior Adjudicative Officer and the Executive Director, the OmbudService Officer will send a letter to the Member confirming that the Complainant has elected to pursue the matter and providing fifteen (15) days notice that the CLHIO will

transfer the Complaint to the Senior Adjudicative Phase of the CLHIO process.

32. Where the Executive Director of the CLHIO has not received a request from the Complainant to withdraw or suspend the Complaint by the end of the notice period specified in paragraph 31 above, the Executive Director of the CLHIO will arrange a Team Review Meeting with the OmbudService Officer assigned to the case and the Senior Adjudicative Officer to ensure that the Senior Adjudicative Officer is fully apprised of all aspects of the Complaint.
33. Following the Team Review Meeting referred to in paragraph 32 above, the Executive Director of the CLHIO will notify the Member and the Complainant by letter to: confirm that a Team Review Meeting was held; provide a list of documents reviewed at the Team Review Meeting; request that the parties submit any additional documentation that may not have been previously provided within ten (10) days; and, advise that the documents reviewed will form the basis for the Senior Adjudicative Officer's Report which may contain a Non-Binding Recommendation(s). The parties are also provided with an opportunity to speak with the Senior Adjudicative Officer if either party wishes to do so.
34. After the expiry of the ten (10) day period outlined in paragraph 33 above, the Senior Adjudicative Officer will consider and review the Complaint. While the Senior Adjudicative Officer is considering the Complaint, he may seek to promote a resolution of the Complaint by agreement between the Complainant and the Member, and/or the Member and the Complainant may continue to seek to resolve the Complaint themselves.
35. If the Member and the Complainant do not resolve the Complaint, the Senior Adjudicative Officer shall complete the review of the Complaint and prepare a report which may contain a Non-Binding Recommendation(s) regarding the resolution of the Complaint.

36. The Senior Adjudicative Officer's Report :
- a) shall be in writing;
 - b) shall include a summary of the Senior Adjudicative Officer's reasons;
 - c) may be made jointly with another Industry OmbudService in the circumstances described in section 15;
 - d) is not binding on the Member or the Complainant; and,
 - e) is final and is not subject to further review, consideration or appeal.
37. The Senior Adjudicative Officer shall make Non-Binding Recommendation(s) regarding the resolution of the Complaint with reference to what is, in the Senior Adjudicative Officer's opinion, fair in all the circumstances to the Complainant and to the Member. The Senior Adjudicative Officer shall not be bound by any previous recommendation made by the Senior Adjudicative Officer or by any predecessor in that office.
38. Any report and where applicable Non-Binding Recommendation(s) made by the Senior Adjudicative Officer should seek to achieve a resolution of the Complaint that is satisfactory to the Complainant and to the Member, and should be made in accordance with these Terms of Reference.
39. If the Member does not accept the Non-Binding Recommendation(s) of the Senior Adjudicative Officer, the Executive Director of the CLHIO shall make that information public.

Reporting

40. The CLHIO shall prepare and provide an annual review as well as other reports containing statistics, case studies of Complaints for educational purposes (with all personal identifiers removed), and other information that the Board of Directors considers appropriate to the interests of interested parties and the general public.