AIDA DISPUTE RESOLUTION WORKING PARTY QUESTIONAIRE

INSURANCE OMBUDSMAN SCHEMES

1) Name of Country

Australia

2) Name and contact details of the author of the answer

Christopher Rodd- Melbourne Australia

chrisjrodd@gmail.com

3) Do you have an Insurance Ombudsman's Scheme to handle insurance disputes in your country?

Yes- The Australian Financial Complaints Authority (AFCA) previously known as the Financial Ombudsman's Scheme

4) Is the scheme regulated by statute and subject to any independent review ? (eg a review by a government statutory authority)

Yes AFCA is the external dispute resolution scheme that deals with complaints from consumers and small business about financial products and services , including general insurance .It is authorized by the responsible federal government minister to operate the AFCA scheme in accordance with the Australian Corporations Act 2001 (Cwlth)

5) Are all insurers mandated to participate in the scheme or is it voluntary ? (eg is participation a condition of their license to operate ?)

Membership of AFCA is required under law or a licence condition of a financial firm . For insurers membership is a condition of its insurance licence under the Insurance Act 1973 (Cwlth) . Membership is not voluntary.

6) List the classes or types of insurance on which the Ombudsman is authorized to adjudicate or make recommendations (eg health , social pensions , liability , motor , domestic , travel ins etc)

Most classes of general insurance are covered including extended warranties . AFCA cannot consider disputes under private health insurance , workers compensation or compulsory third party motor insurance (motor vehicle personal injury claims)

7) Can the Ombudsman adjudicate on both claims and underwriting disputes ?

It can handle claims disputes and some underwriting disputes , such as incorrect application of an excess , cancelation of cover , failure to act on instructions in relation to cover , but not an insurers refusal to insure .

8) What is the maximum amount in dispute, upon which the Ombudsman can adjudicate ?

General insurance broking – amount claimed limited to $1 million and can make a binding decision up to $250,000 . A general insurance claim – amount claimed limited to $1 million and can make a binding decision up to $500,000

Uninsured motorist where a claim is made against an insured motorist – up to $15,000

Claim for direct and indirect financial loss – up to $5,000

9) Are the Ombudsman's decisions binding on one or both parties or does the Ombudsman merely issue Recommendations ?

The decisons (Determinations) are binding on the Insurer or Broker . Recommendations are not . No decision is binding on an applicant /claimant , who is entitled to pursue a remedy through litigation against the insurer if they choose

10) Is the applicant (claimant /insured) required to make any payment to lodge a dispute with the Ombudsman ?

No – there is no cost to the applicant / claimant

11) Who pays the costs of the scheme ?

The scheme is fully funded by the insurers and brokers with fees charged to the insurer or broker , dependent upon the stage the dispute has reached when resolved

12) Are the Ombudsman's decision subject to any right of appeal and if so in what circumstances ?

No . No decision can be appealed (or has been successfully to date)

13) What is the criteria that determines the Ombudsman's decisions ? eg Applicable law , fairness and reasonableness in all the circumstances, prior decisions as precedent ?

Decisions are based on –

What is fair and reasonable in all the circumstances and having regard to

a) Legal principles
b) Applicable industry codes and practices
c) Good industry practice ;and
d) Previous relevant determinations of AFCA or a predecesser scheme. Previous decisions are not binding and neither is the relevant law

14) Do the parties have the option to litigate before , during or after the Ombudsman's involvement ?

A complainant . applicant can with draw a complaint at any stage in the process and is entitled to litigate . An insurer or broker , cannot . If both parties agree to litigate they can , but a binding decision of AFCA cannot be appealed against by an insurer or broker .

Chris Rodd – Chair AIDA Dispute Resolution Working Party

Melbourne – Australia

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