AIDA DISPUTE RESOLUTION WORKING PARTY QUESTIONAIRE

INSURANCE OMBUDSMAN SCHEMES

1) Name of Country

   New Zealand

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

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

   Yes, there are two approved dispute resolution schemes akin to an Ombudsman scheme for the insurance market. All insurers that provide policies to retail (i.e. consumer) clients must belong to one of the two approved dispute resolution schemes.

   (a) The Insurance and Financial Services Ombudsman (IFSO) Scheme was established to help consumers who are in dispute with their insurers or financial services providers. The scheme is free and independent. It is intended to deal with complaints from policyholders once an insurer's internal complaints procedure has been exhausted.

   Although the IFSO bears the name 'Ombudsman' it is not a statutory Ombudsman in the true sense. IFSO does not answer to Parliament. In New Zealand, the statutory Ombudsman is focused on the conduct of government bodies, agencies and officials. Under s 13 of the Ombudsman Act 1975 the Ombudsman cannot investigate complaints about private individuals and private organisations, such as insurers.

   (b) Financial Services Complaints Limited (FSCL). FSCL is a not-for-profit external dispute resolution scheme that resolves complaints against financial service providers, including insurers.

Insurers are required to have an internal complaints process which is the first port of call for a customer wishing to make a complaint. If the customer and the insurer are unable to resolve the complaint, the complaint may be taken to the insurer's elected independent, external dispute resolution scheme. FSCL and IFSO investigate complaints and attempt to resolve them through negotiation, conciliation, mediation or a decision-making process.

As these external dispute resolution schemes are established for the benefit of the consumer there are limitations on the complaints they can consider. Complaints can only be taken by individuals or small organisations with 19 or fewer full-time equivalent employees. Cases where the disputed financial loss is more than $200,000 must be addressed through the courts.

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

Yes, the position is regulated by the Financial Service Providers (Registration and Dispute Resolution) Act 2008 (the **Act**).

Under the Act any insurer who provides services to retail clients must belong to an approved dispute resolution scheme, being one of the two aforementioned schemes: IFSO or FSCL.

These dispute resolution schemes are licensed by the Minister of Consumer Affairs. Under the Act the schemes must be accessible, independent, fair, accountable, efficient, and effective. Both IFSO and FSCL are subject to an independent review every 5 years and must publish annual reports. This information is provided to the Minister.

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

Yes, insurers are required to participate in a dispute resolution scheme. Membership of a scheme is compulsory and is regulated by the Act.

The Act establishes a compulsory public register of financial service providers to enable the public to access information such as scheme membership details. The public register also allows the Registrar and other regulators to regulate financial service providers.

An insurer's membership details must be added to the New Zealand Companies Office Financial Service Providers Register within 10 working days of that insurer registering as a financial service provider. Insurers cannot be in the business of providing financial services otherwise. Being knowingly in breach of this requirement and the requirement to be a member of a dispute resolution scheme is an offence under s 11(2) of the Act. This could lead to imprisonment and/or a fine of up to $100,000 for an individual, and a fine of up to $300,000, for a person who is not an individual.

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)

IFSO responds to insurance complaints including house, vehicle, contents, travel, health and life insurance. They have the power to consider complaints about a participant in their scheme who may have breached a contract, statutory obligation, industry codes or has not complied with best practice.

FSCL has the power to conciliate and determine complaints about any act or omission by a scheme participant, in relation to a financial service.

Neither scheme is limited to a specific type of insurance. Their focus, however, is on consumer lines of insurance.

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

Yes. For the IFSO scheme, generally IFSO has the power to consider complaints relating to: a) breaches of contract by the insurer; b) breaches

of statutory obligations by the insurer; c) breaches of industry codes by the insurer; and d) non-compliance with relevant industry practice.

FSCL lists typical complaint types as involving:

- Misleading information or inappropriate advice
- Non-disclosure of fees and/or terms of the contract
- Debt recovery and repossession action
- Decline of an insurance claim
- Suitability of product for the consumer's needs
- Transaction disputes.

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

IFSO and FSCL have jurisdiction to consider complaints up to the value of $200,000 (NZD).

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

The complainant must elect whether to accept a recommendation of the Scheme. If they accept the recommendation or award, then they are bound by it. Any determination or recommendation is then binding on the insurer. Under s 49F of the Act the District Court may make an order requiring a member to comply with the Scheme's rules and binding resolutions.

Where an insurance provider fails to meet their obligations to comply with a recommendation or an award, FSCL or IFSO may take actions they consider appropriate. This can include terminating the insurer's membership to the scheme and/or referring the matter to the Financial Markets Authority.

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

No. Both schemes are operated as free services to their members' policyholders. The schemes can only be accessed once an insurer's internal complaint's procedures have been exhausted.

11) Who pays the costs of the scheme ?

The schemes are free to policyholders and funded by the member insurers.

Member insurers of the IFSO and FSCL schemes are required to pay annual fees and levies as part of their membership. For FSCL, the membership fee varies depending on the insurer's premium revenue. IFSO has a fixed fee for investigating a complaint.

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

If a complainant chooses not to accept the Scheme's recommendation or determination then they are able to take other action, including legal action. If the complainant accepts the recommendation or determination, it must be in full and final settlement.

No FSCL or IFSO decision can be reviewed or appealed in any form except as contemplated by the Act.

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 ?

When resolving a complaint, FSCL states they will investigate the complaint in accordance with their Terms of Reference and in a manner consistent with the rules of natural justice.[i] When deciding a complaint, they may consult with industry and consumer advisors as appropriate. The FSCL is not bound by rules of evidence and their decisions do not create precedents.

The IFSO states that when making a decision about a complaint they will do so "by reference to what is, in IFSO's opinion, fair and reasonable in all the circumstances." In determining what is fair and reasonable IFSO may consider matters such as the educational and cultural circumstances of the complainant and the manner in which the complaint has been dealt with by the insurer. Again, the IFSO is not bound by legal rules of evidence or their previous decisions. They will have regard to applicable rule of law, rules of natural justice, relevant industry practice and any Codes applicable to the complaint.

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

When a customer lodges a complaint with FSCL the insurer must not instigate legal proceedings against the complainant that relate to any aspect of the complaint. They must not pursue litigation initiated prior to the complaint being lodged, apart from to the minimum extent necessary to preserve their legal rights. For example, they may issue proceedings where the relevant limitation period is due to expire. However, the proceedings may only be pursued to the minimum extent necessary and the insurer must not seek judgment in the proceedings. If the complaint is decided by FSCL subsequently they must abandon proceedings that are inconsistent with FSCL's decision. If a complaint is resolved by FSCL they must not instigate proceedings that are inconsistent with that agreement.

Under the IFSO a complainant may take alternative legal action against an insurer at any time, including if they reject an assessment, recommendation or award. If a complainant makes this rejection the Scheme must cease to consider the complaint.

An insurer may issue proceedings if they determine the complaint involves an issue which has important consequences for the insurance industry, or is an important or novel point of law. Insurers have to notify the Scheme prior to an award being made that they intend to do so. They must provide an undertaking that they will institute proceedings within three months, pay

the complainant's costs and disbursements, and will pursue the proceedings expeditiously. The Scheme will cease to consider the complaint as long as the insurer complies with the required undertaking.

Chris Rodd – Chair AIDA Dispute Resolution Working Party

Melbourne – Australia

November 2019

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[i] Terms of Reference of the Financial Services Complaints Limited Scheme.
Terms of Reference of the Insurance and Financial Services Obudsman Scheme Incorporated.