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Mediation in insurance claims

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The General Insurance Enquiries & Complaints Scheme (GIECS) began in 1991 with the formation of the first General Insurance Claims Review Panel. A company, Insurance Enquiries & Complaints Ltd (IEC), was formed in 1993 and now administers the GIECS.

The GIECS is a national scheme which is funded by the insurance company members through a levy and a fee per referral. There is no charge to consumers.

The GIECS operates at two tiers. At the first tier are consumer consultants who provide advice and information to policyholders and the general public. If a policyholder is unhappy with a decision then they will be asked to give their insurer an opportunity to resolve the dispute through their insurer's internal dispute resolution (IDR) process. The general insurance code of practice (the Code) requires that all insurers have an IDR process in place.

If a consumer is dissatisfied with their insurer's IDR decision in relation to a claim, then they may refer the dispute to the second tier of the GIECS for determination.

At the second tier of the GIECS, a case manager will prepare the dispute for determination. This preparation includes requesting a response from the insurer (required within 15 business days) and ensuring that the policyholder's case is adequately presented. Additional material, including experts' reports, may be sought from either party or obtained independently.

When the dispute is ready for determination it will be referred to a claims review panel, referee or adjudicator. Most disputes are referred to a panel. Disputes including allegations of fraud are referred to the referee and non-complex disputes, where the amount in dispute is $3,000 or less, are referred to the adjudicator. Panels and adjudicators will usually make a determination based on the written material, photographs and other documentation supplied by the parties. A referee, however, will usually interview the claimant and may interview other parties to the dispute, witnesses and the insurer.

Jurisdiction

The GIECS can determine general insurance claims disputes only. An insurer's marketing or underwriting practices cannot be determined unless they directly relate to a claim. The GIECS may determine disputes for claims up to $290,000. The decision of the GIECS is binding on the insurer if the dispute concerns $120,000 or less. Recommendations may be made where the disputed claim is $120,000 to $290,000. To date, all but one recommendation of the GIECS have been complied with.

The general insurance business covered by the GIECS includes home building, home contents, motor vehicle, caravan, travel, residential strata title, sickness and accident, pleasure craft, consumer credit, valuables and personal property. The GIECS also resolves disputes in relation to some small business policies where the business has no more than five employees and annual turnover does not exceed $400,000. Small businesses not falling within this definition may have a dispute determined by the GIECS with the permission of the insurer.

Statistics

During 1998, 55,890 contacts were dealt with by the first tier and the second tier of the GIECS received 2,203 referrals.

In the early years of the GIECS, policyholders received a result in their favour in more than 50 per cent of referrals. Over time insurers have improved their performance and during 1998 their success rate was 65 per cent. Factors influencing this include the wide dissemination of the GIECS's determinations and the introduction of the Code on 1 July 1995. The industry has learnt from the determinations, reports, newsletters and other material published by the GIECS. The introduction of mandatory IDR with the Code has meant that insurers consider a dispute carefully before the dispute has the potential to be referred to the GIECS. This has resulted in better outcomes for consumers, with disputes being settled earlier.

Independence

The independence of the GIECS is ensured by the composition of the IEC Board, the procedures for appointments to the Board and the panels, and for referees and adjudicators, and the scrutiny of the GIECS by its stakeholders.

The IEC Board is comprised of an independent Chair, three consumer representatives, three industry representatives, the chief executive of the Insurance Council of Australia (ICA) and a government representative.

The terms of reference for the GIECS provide that 'a Chair or referee shall be an independent person appointed by the Board and nominated by ICA after ICA has consulted with the Federal Minister for Consumer Affairs and the ISC [now ASIC]'.

Each panel consists of an independent Chair, a panel member with expertise in consumer affairs appointed by the Federal Minister for Consumer Affairs after consultation with ASIC and the IEC and a panel member with expertise in insurance practice, appointed by the ICA after consultation with the Federal Minister for Consumer Affairs and the ASIC.

Case studies

1. *Non-disclosure*

The 60 year old house of Ms G was destroyed by fire. Some years after the initial policy was issued, and after several renewals, the insurer denied liability on the ground that the house was not 'in good condition and repair'. In the panel's view the insurer could not deny the claim. The age ➢

The ADR Bulletin

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➢ of the house was accurately disclosed at the time of the proposal and the insurer's records would have shown this. If the age and condition of the property were critical to the insurer's acceptance of the risk, it could have satisfied itself through inspection or other enquiries as to whether the property was an acceptable risk.

2. *Non-disclosure*

A husband and wife had a joint contents policy. There was a burglary in which furniture and various other items were stolen, including the wife's personal belongings and jewellery. After the claim the insurer discovered that the husband had failed to disclose his criminal record at the time the policy began. The wife did not know she needed to disclose this. It was not possible for the panel to interpret the policy other than as a joint contract and the wife was unable to recover for her share of the property.

3. *Policy not in existence (deadline for renewal not met)*

Mr and Mrs X's car insurance was due for renewal at 4 pm on 1 February. They posted the cheque on the morning of the 1st. At 6pm that day they were involved in a collision which left their car a total wreck and damaged another. When they lodged a claim, they were astonished to learn that the insurer was not prepared to meet it because the policy was no longer current at the time of the collision.

The Xs came to the panel, which undertook some investigation. The cheque arrived at the insurer's office on the morning of the 2nd. It was processed by the insurer and by day's end it had been banked and debited against the Xs' bank account.

Despite the panel's efforts, the insurer refused to change its position. It pointed out, correctly, that the renewal notice made it clear that payment of the renewal premium was due at 4 pm on 1 February. Between then and the time the cheque was received the car was uninsured. The panel found in favour of the insurer.

4. *Policy condition*

Mr H took out a policy on a 1985 BMW. The proposal was negotiated with the insurer over the telephone by Mr H's broker and the completed proposal showed a tick against the 'garage' box. The garage was subsequently turned into an office by Mr H and the car was parked in a carport when it was stolen. This happened before the first renewal. The insurer denied indemnity for the theft on the ground that its underwriting guidelines excluded liability because the car was not parked in the garage and the security requirements for carport parking had not been met. Neither Mr H nor the broker had been informed at any stage of the garage security requirements. Given the age and condition of the car, they could hardly be expected to know that it merited a 'prestige' classification. The panel decided that Mr H should be indemnified for the loss.

5. *Proof of loss*

Mr L's home was burgled, the thieves breaking and entering through a laundry window. Mr L was away at the time and his son informed the police who attended the scene. He subsequently claimed $6,450 in respect of: Pye stereo ($1,100), National VHS video camera ($2,000), Panasonic TV ($1,550), two leather jackets ($620), Sanyo video recorder ($600) and two gold chains ($580).

The company admitted the video camera and recorder but denied liability for the remaining items. The following issues were brought to the panel's attention. The items advised to the police differed substantially from the items claimed; while the date on a 'duplicate' receipt for a leather jacket was 1990, an original receipt produced by the claimant had been altered from 1991 to 1990; the valuation for a gold chain showing a weight of 12 grams was disputed by the jeweller; there was confusion on the make of the TV — the specified retailer had no record of the sale but it was established that the particular model had never sold at the price claimed; and there were alterations to the dollar amount on the receipt for the stereo.

The panel determined that the company was entitled to deny liability on the ground that there was insufficient acceptable evidence to support the loss. ●

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