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General insurance claims: The Consumer Duty's easy target?

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In March 2024 the FCA published its "**Findings of [a] multi-firm review into insurers' valuation of vehicles**". This was the most recent stage in a process starting in 2020 as the FCA has turned its attention to the way that general insurers have treated policyholders making claims.

In the FCA's words: "This review is... likely to interest... insurance firms and third parties involved in valuing other insured items." 'Items' suggests that review is relevant to property damage insurance, and this article considers issues for claims handling more broadly.

This article is the first in a series looking at the implications – especially in the context of the Consumer Duty ("CD") – of the FCA's review and the processes underpinning it. We consider key CD propositions from the review, especially the need to take an unsparing data-led approach from the individual customer's – and the overall customer cohort's – perspective.

Further articles will expand the exploration of how the FCA may be building up a 'head of steam' in respect of supervisory or enforcement action in respect of general insurance claims, and how firms might take steps to avoid or mitigate adverse outcomes.

1. Treating adjustment and settlement as a negotiation risks CD breach

"A firm's first offer for the settlement price of a written-off vehicle should be its best estimate of its market value...

... firms would sometimes... [have an] expectation... that they would... increase [their settlement] offer if the customer challenged the original one or complained, even if the customer provided no additional information. This approach can lead to systematically different outcomes for different customers, largely based on their propensity to challenge and/or complain. We therefore consider this can be unfair."

On the latter point, firms should be mindful of the proposition in the 2018 Liberty Mutual final notice) that there should not be a 'two-stage' claims process (in that case, customers were highly likely to have their rejected claims paid if the customers complained, in breach of Principle 6 – treating customers fairly).

"Where a firm knowingly makes settlement offers below the value the customer is entitled to under their policy then this is likely to be a breach of regulatory requirements ... [including] to handle claims promptly and fairly (ICOBS 8.1.1R(1)) and to act in good faith towards retail customers (PRIN 2A.2.1R) ..." – and, by the same token, also PRIN 2A.2.8 R (avoid causing foreseeable harm) and 2A.2.14 R (enable and support customers' financial objectives).

Even if a firm is making its best offer, it must take care over how it phrases this to avoid an "unreasonable barrier" which only some customers might overcome: "... firms should ensure they are not dissuading customers from challenging the valuation. For example, if the firm says its vehicle valuation approach reflects the Financial Ombudsman's approach, there is a risk that customers may believe there is no prospect of a valuation increase even if the Financial Ombudsman subsequently assesses their case."

Firms must remain mindful that potential CD issues are amplified for vulnerable customers, who "are at greater risk of harm... as they may have less financial knowledge or experience... to [enable them to] challenge their insurer's initial settlement offer..."

2. A customer's fair treatment relies on direct evidence of individual circumstances

"When determining settlement value, most of the firms reported making deductions based on the pre-accident condition of the vehicle, which we consider may be unfair ... [including] blanket deductions of set amounts or percentages without sufficiently considering the individual vehicle. Examples ... [which] could mean that firms are not handling claims fairly ... include:

- Wear and tear – Deducting for wear and tear that would reasonably be expected for a vehicle of similar age and mileage, as this is already reflected in the guide price...
- Retail preparations – In policies that define settlement value as the cost to replace with a like-for-like vehicle, applying deductions for cleaning or paint imperfections (eg valeting and polishing) without demonstrating legitimate and objective justification. For example, without inspecting the vehicle to assess if the issues are actually more significant than would be expected with its age or mileage...

3. No MI, no proof of CD compliance

"Some firms reported average settlement values that were lower than the available guide prices ... [which could] indicate that some customers' claims may have been handled unfairly ...

Most firms that used ... different methodology[ies] in a [settlement process] could not demonstrate, through MI, that this did not result in systematically different outcomes for customers. Firms should consider how best to use MI to satisfy themselves that using a different methodology ... produces fair and comparable outcomes for customers that go through this process, and those who accept the original valuation ...

... We found that some firms did not have sufficient oversight arrangements over third-party providers. For example, one firm's monitoring activities were limited to reviewing complaints data to detect emerging issues. Another firm relied on an annual audit of only a small sample of cases, despite outsourcing elements of claims handling for most of its total loss claims. As well as implementing appropriate system and controls, firms should also have sufficient internal expertise to effectively monitor third parties' activities and their outcomes.

Firms must manage conflicts of interest fairly (PRIN 8) and ensure they can demonstrate how they have done so. Firms that outsource all or part of their claims-handling activities will need to identify potential conflicts of interest between third party providers and the firm's customers, to be able to manage them fairly. As an example, some of the firms in our review outsource to a third party which also salvages vehicles for resale. Although the third party's dual role has potential to give rise to a conflict of interest, not all firms showed they had taken steps to manage this fairly.

Where firms outsource parts of their claims processes, they should take steps to assure themselves, including through MI, that this does not lead to systematically different customer outcomes. Most of the firms we reviewed could not demonstrate this. Where firms determine settlement value through different parties, they should monitor the impact of this to ensure this does not result in significantly different outcomes for different customer groups and therefore customer harm.

Most firms did not collect basic data on total loss claims, such as the number, scale and reasons for increases to initial settlement offers. Firms sometimes relied on complaints data to establish if there were systemic issues in claims processes.

Some firms did not monitor the average deviation between vehicle valuations and their corresponding guide prices.

Where firms use multiple valuation methodologies or outsource vehicle valuation for only some total loss claims, they could not demonstrate that appropriate MI was collected and analysed to ensure this does not result in systematically different customer outcomes."

4. Insurers must go further than simply standing on their policy rights

"Where a customer pays their premium monthly, half of the firms we reviewed deducted the remaining instalments from the settlement payment rather than allow customers to continue making monthly payments of the outstanding premium. While this may be in line with the

policy terms, we consider that there is a risk that this approach may not deliver good outcomes for customers. Customers may not have budgeted for paying the outstanding premium in one go ...”

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