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General insurance claims: The consumer duty's easy target? (part 2: 'a history of warnings')

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In March 2024 the FCA published its "Findings of [a] multi-firm review into insurers' valuation of vehicles" (the "**Review**").

This article is the second in a series looking at the implications – especially in the context of the Consumer Duty ("**CD**") – of the Review and the processes underpinning it.

Read part 1 →

Our previous article considered key CD propositions from the Review, especially the need to take a data-led approach from the individual customer's perspective. The article below considers how references in the Review to previous Financial Conduct Authority's ("**FCA**") publications could be a factor in the FCA's approach to supervisory, and even enforcement, action against general insurance firms. The Review could mean that the FCA is paving the way to 'make an example' of a motor insurance firm – or even another general insurance firm – in order to make messaging on the CD more potent, and compliance more effective.

A history of regulatory points on claims handling

The FCA's webpage for the Review (FCA finds concerns over insurers' valuation of … vehicles) includes reference to a previous publication from December 2022: Insurance providers warned not to undervalue cars or other insured items when settling claims. That 'warning' raised the following points of potentially broader application:

"[Rising costs] may be putting … pressure on insurers to control claims costs but some of the ways that insurers may look to reduce … costs could … be harmful to consumers.

Attempts to control claims costs by making offers lower than the customer is entitled to under the policy is unfair and is likely to disproportionately affect consumers in vulnerable circumstances."

The 'warning' also contained a link to a 'Dear CEO letter: Our expectations on cost of living and insurance' from September 2022, which contained the following points of broader application for claims:

"Some firms may seek to cut costs in response to financial pressures, which could have an impact on the level of customer service. This could affect a firm's ability to handle claims in an efficient and timely way, and delays in paying claims can cause significant financial hardship, both for consumers and SMEs. This could be exacerbated by higher levels of fraudulent claims and increased claims investigation costs."

"Under the Consumer Duty firms will need to design and deliver support to retail customers, such that it meets the needs of retail customers and ensures they do not face unreasonable barriers during the lifecycle of the product, including when customers submit a claim ...

We remind firms of our requirements to handle claims promptly and fairly. While firms may see an increase in fraud, it is important that firms do not introduce additional processes which unreasonably delay or potentially decline payments for valid claims."

In short, making assumptions as to the occurrence and extent of fraud, and taking a defensive approach in response, will not comply with the CD. Suspicions of fraud need to be addressed by reference to the data on specific circumstances, not just imputed from broader propositions as to patterns of behaviour.

The Dear CEO letter made a particular point of the following:

“During the Covid pandemic, there was concern about the lack of clarity and certainty for some customers making BI [business interruption] insurance claims, and the basis on which some firms were making decisions. We sought clarification from the High Court (and ultimately Supreme Court) through our ‘BI Test case’ to resolve the uncertainty around such claims and will shortly be issuing a publication on lessons learned.”

(Our next article will address the implications of recent reported cases on claims handling.)

The FCA’s Claims handling lessons learned from business interruption insurance were published in October 2022, and stated:

“Firms did not produce clear and robust conduct-focused management information (MI) … [so] were not able to have effective oversight of … the end-to end customer claims experience. For example … where delays were occurring in the claims journey … [which] resulted in some customers suffering harm in not receiving interim or final settlements in a reasonable time frame …”

Where are we now?

The FCA made various findings in the Review which are adverse to industry practices. On claims, the FCA seemed especially troubled by the practice that:

“firms would sometimes provide initial settlement offers that are below the insured vehicle’s estimated market value … [but] would then increase the offer if the customer challenged the original one or complained, even [with] no additional information.”

As such, it is easy to reach a view that significant sections of the insurance industry have not changed in the ways, or as quickly, as the FCA has wanted.

Why might a history of regulatory pronouncements matter to firms?

The FCA expects firms to be familiar with wider regulatory developments. This is highlighted at DISP 1.4.2 G (2) in relation to complaints resolution:

“Factors that may be relevant in the [fair] assessment of a complaint under DISP 1.4.1R (2) include the following …

relevant guidance published by the FCA , other relevant regulators, the Financial Ombudsman Service or former schemes …”

Moreover, the context of regulatory guidance, and a firm’s failure to operate in line with that guidance, is a factor in the calibration of a regulatory sanction – and, by inference, the prior decisions to investigate and pursue enforcement.

For general insurance, an example of this can be found in the 2021 Final Notice as to Lloyds Banking Group (“**LBG**”). This noted that:

“Towards the end of the Relevant Period [2009 – 2017], the [Financial Conduct] Authority issued publications specifically referring to the need for insurers to pay due regard to the information needs of home insurance customers and the importance of communicating information to them in a way that is clear, fair and not misleading, in particular …

(1) a Discussion Paper titled ‘Smarter consumer communications’ (June 2015) … This … noted that the Authority … had identified that consumers are often heavily focused on price, but … did not necessarily well understand the difference between price and value. The paper reiterated that the Authority expects firms to … help … consumers … [to be] able to make informed decisions…

(2) in December 2015, the Authority consulted [in CP15/41] on new rules and guidance for general insurance renewals … to address concerns about levels of consumer engagement across the industry as a whole and the treatment of consumers by firms at renewal, and the lack of competition that results from this …

In particular, the Authority was concerned that, across the industry, prices increased in a way that was not transparent at renewal, and longstanding customers paid more than new customers for the same product …

In its Policy Statement … [including] feedback on CP15/41… the Authority explained the feedback it had received and published new rules ... [which] required firms, from 1 April 2017, to disclose last year's premium at each renewal, so that it can be easily compared to the new premium offered …"

The above background was specifically identified as an 'aggravating' factor capable of applying an uplift to LBG's fine.

Conclusions

The LBG notice deploys a 6-year timeline on general insurance value to show what should have been known and done (or not done). The CD's history is short, but broad and detailed, with enough to have significant effect for enforcement action.

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