

New Consumer Representatives for the ISO Commission

For the last 6 years, Deborah Rundle has been a consumer representative on the ISO Commission, coming to us with a background in the Disputes Tribunal. Deborah has been a valuable Member of the ISO Commission and we wish her well in her future endeavours.

The ISO Commission looks forward to continuing Deborah's work with the appointment of Claire Dale as a consumer representative on the ISO Commission from 3 August 2006. Claire is a researcher at Auckland University. She has been an executive member of the Child Poverty Action Group and involved in various other groups related to children.

The other consumer representative is Raewyn Fox. Raewyn is the Chief Executive of Family Budgeting Services and is a valuable member of the ISO Commission. Sam Huggard will take over from Raewyn as a consumer representative from late March 2007. Sam is currently the Communications and Campaigns Organiser for the Council of Trade Unions.

ISO Conference – “Best Practice”

On Tuesday, 26 September 2006, we are holding our second conference in **Auckland**. The theme of the conference is “Best Practice” – in complaints handling and industry practice generally.

The programme for the Conference is as follows:

- 8:30am Registration and coffee
9:00am Welcome – ISO Staff
Aspects of good and bad practice
9:15am Keynote Speaker: Nina Harding
Sponsored by *ING Life (NZ) Ltd*
10:00am Morning tea
Sponsored by *Medical Insurance Society New Zealand Ltd*
10:30am Split session
Life and Savings Workshop
(1) Nina Harding (10:30 – 11:30 am)
(2) Trevor Slater (11:30 – 12:30 pm)

Fire & General and Health Workshop
(1) ISO and Daniel McLellan – Reasonable care (10:30 – 11:30 am)
(2) Nina Harding (11:30 – 12:30 pm)
12:30pm Lunch
Sponsored by *AMI Insurance Ltd*
1:30pm Creative Policy Wording session
1:45pm Plain English in Policy Wordings – David Russell
Sponsored by *Asteron Life Ltd*
2:00pm Unreasonable Complainants – Dr Grant Lester
Sponsored by *CIGNA Life Insurance New Zealand Ltd*
3:00pm Afternoon tea
Sponsored by *Lumley General Insurance (N.Z.) Ltd*

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In this publication, the Insurance & Savings Ombudsman is referred to as “the ISO” and the ISO Terms of Reference are referred to as “TOR”. In the case studies, “P” is used to denote Participant and “C” to denote Complainant.

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- 3:30pm Industry Standards – Codes of Practice
 ICNZ (Chris Ryan)
 ISI (Vance Arkinstall)
 HFANZ (Claire Austin)
 David Russell (Chair)
- 4:10pm Creative Policy Wording results
- 4:20pm Panel – “The Way Forward”:
 Nina Harding, Trevor Slater, Grant Lester, Rieny Marck, Sean Carroll and David Drillien
- 4:45pm Closing Address and Welcome to Annual Meeting
 ISO Chairperson
- 5:00pm ISO Commission’s Annual Meeting – all delegates are invited to attend
 Guest Speaker: Beverley Wakem CBE
 Sponsored by *EIG-Ansvar Ltd*
- 5:30pm ISO Commission’s Cocktail Party – all delegates are invited to attend

ISO Staff Travel Sponsored by *AMP Services (NZ) Ltd*

We are delighted to have the following guest speakers:

Nina Harding

Nina Harding has worked as a full-time resolution specialist for over 10 years. She is a Harvard Law School trained mediator and is currently completing a Master of Laws. Nina has mediated numerous business and community disputes. She has facilitated over 70 workshops. Nina is on various mediation panels including the Hong Kong International Arbitration Centre. Nina was formerly the Project Manager for the Centre for Dispute Resolution in London. Nina has designed and conducted over 100 training programmes in dispute resolution, mediation and negotiation. Nina has taught mediation and negotiation around Australia, in the Philippines and in Hong Kong. She has conducted training programmes for several Australian universities and law societies and for the University of Hong Kong. Nina has written several papers on ADR, including an annotated bibliography on international economic disputes between Australia and Japan for the Foundation for International Dispute Resolution in Virginia, USA.

Trevor Slater

Trevor Slater commenced with Financial Industry Complaints Service Ltd (“FICS”) in November 2001 as a Case Manager. He was appointed to his current role of National Relations Manager in September 2003. His primary role is to act as a conduit between FICS members, consumers of financial products and the staff at FICS. Before joining FICS he was the Negotiations Manager for AMP Life Ltd, which involved the resolution of high level complaints. Prior to this he was a Visitation Officer from the Claims Unit of AMP. Trevor is a qualified mediator and negotiator. He holds a Graduate Diploma in Conflict Resolution from La Trobe University and is also a Senior Associate of the Australian and New Zealand Institute of Insurance and Finance. He has conducted training courses in complaint handling and customer relations in Australia and the UK.

Dr Grant Lester

Dr Grant Lester is a Consultant Forensic Psychiatrist and a Fellow of the Royal Australian and New Zealand College of Psychiatry, employed by the Victorian Institute of Forensic Mental Health (Forensicare). He has had extensive experience in the rehabilitative management of serious and severe psychiatric illness. Since 1998, Grant has been treating and researching a group of individuals who might be simply described as unusually persistent complainants. While government agencies, businesses and professional organisations have established formal mechanisms for responding to complaints, a small but vocal group of complainants have emerged who by their persistence and insistence consume disproportionate amounts of time and energy. As a result of numerous requests from Ombudsman offices and complaints organisations for advice regarding management of this group, he began a research project with a number of Ombudsman and complaints organisations into the modern presentation of this group and the organisations’ experiences. In the course of the research, he developed various guidelines for the management of

Case Study 1

In May 2003, C applied for health insurance with P. On 22 May 2003, cover commenced, subject to the terms and conditions of P’s policy document and product brochure. On 15 November 2005, C applied for pre-approval for a hip replacement to be performed on 5 December 2005. On 5 December 2005, the surgery was performed.

P declined the claim, on the basis the surgery related to a pre-existing condition. P believed C had osteoarthritis before the commencement date of the policy and, therefore, it believed osteoarthritis was an excluded pre-existing condition.

The relevant exclusion excluded pre-existing conditions for 3 years. Having regard to the policy wording, P was entitled to decline the claim if C was “aware of”, or had “sought treatment or medical advice” for a pre-existing condition, prior to the commencement date of the policy on 22 May 2003.

The medical evidence indicated C had sought treatment or medical advice for osteoarthritis of his right knee and left ankle, prior to the commencement date of the policy.

The Case Manager discussed C’s medical history with C’s orthopaedic surgeon, X, and she explained that the condition of osteoarthritis must be associated with the relevant joint/s, or the person can have generalised osteoarthritis. In this instance, X did not believe that C had generalised osteoarthritis; rather, X believed that he had osteoarthritis in his left ankle and right knee.

On this basis, the Case Manager believed C had a pre-existing condition for osteoarthritis in his left ankle and right knee. However, X said the osteoarthritis in C’s hip did not medically relate to, was not traceable to or did not arise from, the osteoarthritis in his left ankle and right knee. Having regard to the expert evidence of X as an orthopaedic surgeon, the Case Manager did not believe P had proven, on the balance of probabilities, that the exclusion applied to the claim. Therefore, the Case Manager did not believe P could decline the claim.

Other issues

The policy provided that P “will process your pre-approval within five working days of receiving it unless it is necessary to obtain further information.” C completed the pre-approval application on 15 November 2005, for the surgery which was to be performed on 5 December 2005. According to P’s records, it had 10 working days within which to process the pre-approval. However, the claim was not declined until 9 January 2006. According to C, he contacted P on numerous occasions to determine whether the claim had been accepted and at no time was he provided with a decision.

unusually persistent complainants. Grant has been consulted by a number of complaints organisations and Ombudsman offices for both general training of staff and specific case conferences, including the Victorian Department of Human Services and training for Consumer Affairs, Victorian Department of Justice. He gives regular presentations to the judiciary in Victoria and interstate. He has most recently been consulted by and presented to the Financial Ombudsman Service, Local Government Ombudsman and the Parliamentary and Health Ombudsman of the UK.

Annual Report

Following the Annual Meeting on Tuesday, 26 September 2006 at 5.00pm, the Annual Report will be made available. The theme of “Best Practice” runs through the Annual Report and links to the ISO Conference. Best practice in complaints handling grows consumer confidence. The more responsive a company is to complaints, the more likely it is that customers will be satisfied. Customer satisfaction is essential for the success of any business – not only with the products provided, but also with the service. Good complaints handling is an important aspect of delivering good service to customers.

A Note to Participants

Are claimants entitled to a copy of independent reports obtained by insurers?

ISO Case Managers have noted that some insurers refuse to provide claimants with copies of independent reports, when such reports are used to support the insurer’s stance on a particular matter. A recent example of this involved an engineer’s report supporting the insurer’s view that cracks in floor tiles had occurred gradually, as a result of “normal” earth movement and not suddenly, as a result of vibrations from nearby earthmoving machinery. Another example related to a fire investigator’s report, suggesting the insured had set fire to his house.

Legally, insurers are not entitled to deny copies of independent reports to claimants, if the insurer is relying upon the report to support its decision. The only time an insurer can refuse to provide a copy of such a report, is when it has been obtained through its legal advisers and legal action was being contemplated at the time the report was prepared, so the report attracts legal privilege.

The authors of some reports include a clause limiting who can be provided with copies of the report, but the ISO believes insurers cannot use such a clause as grounds for refusing to provide claimants with a copy of the report.

We are not suggesting claimants must be provided with copies of independent reports in the first instance. However, when a claimant challenges an insurer’s decision and requests a copy of the report, the claimant is entitled to such a report under the Privacy Act 1993. Of course, care needs to be taken to ensure any personal information about anyone other than the claimant, is deleted from the report. Depending on the circumstances, it may be appropriate to only provide the claimant with all relevant personal information contained in the report.

C said the surgery was not urgent and, if he had been told the claim was declined, he would have elected to go on the public waiting list.

On 30 November 2005, P’s medical adviser, wrote a file note and made the following comments:

“With respect to this ... claim, if we consider the disease process, osteoarthritis, then [C] is not able to claim until May 2006 anything related to osteoarthritis as it was a pre-existing disease. He has been booked to have a THR on 5th Dec therefore we cannot accept the claim.”

The Case Manager understood from this file note that P’s medical adviser believed the claim could and should be declined on the basis of the exclusion. However, if C was to claim after May 2006, the claim could be payable. Having regard to the above file note and other relevant file notes, the Case Manager believed P had processed the pre-approval application and did not require further information before making a decision to decline the claim.

The Case Manager believed that P should have alerted C to the fact his claim was to be declined or, at the very least, indicated the likelihood that the claim would be declined. Also, the policy provided that P would process the pre-approval application within 5 working days and, implicitly, communicate the outcome of this process to the insured. Because P did not do so, the Case Manager believed it was in breach of the terms and conditions of the policy.

Accordingly, even if the Case Manager believed P was entitled to apply the exclusion to the claim, on a fair and reasonable basis, the Case Manager did not believe it would be entitled to decline the claim.

Complaint upheld

Case Study 2

In September 2004, C arranged insurance for his 1989 Nissan 300ZX (“the vehicle”) with P. The policy was arranged at a car sales yard. In August 2005, the vehicle was stolen and C made a claim to P for the vehicle. P avoided the policy and declined to consider the claim, on the basis C did not disclose that the vehicle had been modified, with a new stereo and mag wheels (“the modifications”). C argued that the Car Sales Manager (“B”) spoke to P and notified P of the modifications. B wrote to P on C’s behalf and confirmed he had discussed the modifications with P’s representative when the policy was arranged. Therefore, C believed P had been notified of the modifications. However, P was unable to retrieve the telephone call to confirm this and maintained its decision to avoid the policy.

Consumer Fact Sheets

We have prepared a series of Fact Sheets for consumer information on issues which are frequently the subject of complaints to the ISO. The Fact sheets will be available from the ISO Office from late October 2006. The Fact Sheets will cover the following topics:

1. Breach of conditions of driver's licence;
2. Modifications to vehicles;
3. Proving your loss;
4. The law – duty of disclosure;
5. Disclosure – material facts;
6. Sudden or gradual damage;
7. Basis of settlement – motor vehicle claims; and
8. Policy excesses.

Staff Changes at the ISO Office

We are pleased to welcome Judy Scrivener, Administration Assistant, to the ISO Office, from the end of October. For the last few months, we have been pleased to have Miriam Rynn working with us on a temporary assignment. Miriam is returning to Dublin for Christmas, after touring around NZ in November.

Direct telephone link to the Banking Ombudsman

We are now able to take enquiries from consumers about banking and transfer the calls directly through to the Banking Ombudsman (“BO”). Our communications person introduces the caller to her equivalent at the BO’s Office and there is a seamless transition. This provides consumers with a single entry point in the few cases where they contact the ISO Office with a complaint about a bank. So far, we have only had a couple of calls, but they have been connected with the BO’s Office and received assistance, without having the inconvenience of having to call again or be redirected.

Review of Financial Products and Providers

The Ministry of Economic Development (“MED”) has just released 9 discussion documents, including “Consumer Dispute Resolution and Redress”. Submissions are due by Friday, 1 December 2006. Documents are available to download from <http://www.med.govt.nz/rfpp/stage-3/>. Hard copies are also available, by calling 04 4742668.

It is important for the industry to make submissions.

Of particular interest to us, is the Dispute Resolution paper because, in it, are suggested options for the future structure of dispute resolution for the industry. The options range from keeping the status quo to a single financial ombudsman type scheme, with a government appointed board. It is intended that all of the options for industry-based dispute resolution schemes (including the single scheme) will be funded by the industry.

Case Studies for all complaints considered in the year ending 31 December 2005 are now on the ISO's website – www.iombusdman.org.nz

At law, if P was put on notice about the modifications by B, C would not have breached his duty of disclosure and P would not be able to avoid the policy.

P provided the ISO Office with its vehicle insurance underwriting guidelines (“the guidelines”), on which it relied to justify its decision to avoid the policy. The guidelines listed the Nissan 300 ZX Twin Turbo as a “**High Theft Risk Vehicle ... and must be fitted with an immobiliser**”. More specifically, the guidelines listed the Nissan 300 ZX Twin Turbo in the “**Sports and High Performance Vehicles**” category which, according to the guidelines, were “*a higher than average underwriting risk because they are specifically designed to go fast and can be attractive to thieves and joyriders.*”

The guidelines stated that, where factors combine to worsen the risk (such as use by a young driver or driving offences connected with speed), such applications should be declined. The policy schedule provided to the ISO Office showed that C was 23 years old; C held a restricted licence; and he had 3 traffic convictions (1 for breach of licence and 2 for speeding) and the vehicle had no immobiliser.

The Case Manager believed P had made a commercial decision to accept a risk which, on the basis of the guidelines, was unacceptable in a number of respects. Consequently, the Case Manager did not believe P was entitled to rely on the guidelines as evidence it regarded the modifications as material information.

The Case Manager believed the risk presented by the vehicle (both the driving risk and the theft risk), taken together with C’s age, restricted licence and his traffic convictions, was always an unacceptable risk in terms of the guidelines. However, P elected to offer C cover. In this context, the Case Manager believed it was significant that, even without considering the modifications, 2 independent underwriters had commented they would have declined to offer cover for the vehicle, merely because of the age, traffic convictions, inexperience of the driver and the performance of the vehicle. The Case Manager believed P elected not to rely on disclosed information when it accepted the risk and issued the policy. The evidence given by B indicated information about the modifications was provided to P when the policy was arranged and, therefore, P was on notice about the modifications.

Accordingly, the Case Manager did not believe P was entitled to avoid the policy.

Complaint upheld
