

Welcome to new Participants

This issue of Assessment gives me an opportunity to welcome the 1300 new Participants in the ISO Scheme. The increase is a consequence of changes to the financial services industry brought about by a suite of legislation designed to increase public confidence in the sector.

The ISO Scheme is an approved dispute resolution scheme under the **Financial Service Providers (Registration and Dispute Resolution) Act 2008**. The Act came into force on 1 December 2010 and all financial advisers were required to be registered by 31 March 2011. Membership of an approved dispute resolution scheme is a requirement of registration.

The new Participants in the ISO Scheme have chosen a Scheme with over 15 years' experience in the industry, and one of only two industry schemes in the country that are able to use the name "ombudsman". Participants and their customers have the reassurance of knowing we provide independent and impartial service that is free to consumers. Another advantage of participation in the Scheme is that we work with Participants to improve their internal complaints handling and have **on-line complaints handling training resources** available at special rates.

The ISO Scheme looks forward to more new Participants from the Canterbury region. Financial advisers there have been given a further three months, to 30 June 2011, to register, in recognition of the substantial disruption many have suffered because of the earthquakes. The Financial Markets Authority website has information about the Canterbury deadline, and general information on financial adviser regulations, www.sec-com.govt.nz

Levels of insurance and Earthquake Commission cover have been much discussed since the Canterbury earthquakes. Paula Rebstock, Chairperson of the ISO Commission, and I met with the Christchurch mayor and city councillors in April to get an understanding of the issues the region is facing. You can see how we have dealt with an earthquake related complaint in one of the case studies, and read about our response below.



Earthquake response

Insurance & Savings Ombudsman Karen Stevens has publicly praised the industry's response to the Canterbury earthquakes. "The insurance industry is doing a very good job in terms of the huge catastrophe that has occurred. They simply haven't got more resources that they can throw at it at the moment to be able to process things any more quickly," Ms Stevens said in an interview for businessday.co.nz.

The companies are in the difficult position of dealing with high demand for their services when their own staff and premises have been affected. Insurance companies have worked together since the 22 February earthquake to set up mobile service centres hosting multiple companies. The response is a great example of working together to get on with the job.

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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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The volume of claims from the earthquakes is likely to see an increase in workload for this Office. To date, we have recorded over 70 enquiries related to the Canterbury earthquakes, but only three of these have been investigated. It may take some months before people work through the EQC process, then their insurance company's process, before bringing an unresolved dispute to the ISO service.

We have a Consumer Information Sheet, [Christchurch Earthquakes – Residential](#), on our website. This gives people an overview of what to expect when they make an earthquake-related claim.

Consumer Rights Days

The Ministry of Consumer Affairs is organising a series of Consumer Rights Days around the country this year, following on from successful events in Otahuhu and Porirua last year.

The Insurance & Savings Ombudsman Scheme will again be represented in the 2011 series, with the Ombudsman speaking at several of the events.

The events are an opportunity to keep other organisations, both national and community-based, informed about our work. We'll put out media releases nearer the time with details of the venues and when Karen will be speaking, but you might want to note the May dates in your diary:

- South Auckland - Friday 20 May
- Gisborne - Wednesday 25 May
- Napier - Thursday 26 May

New Zealand National Agricultural Fieldays 2011, 15-18 June

ISO is going to Fieldays with fellow NZ members of the Australian and New Zealand Ombudsman Association. If you are at Fieldays, be sure to visit us in the Bledisloe rural living area, site 35.

New CE for the Investment, Savings and Insurance Association (ISI)

Peter Neilson took up the role of Chief Executive of the ISI on 1 May 2011. Mr Neilson has been CE of the New Zealand Business Council for Sustainable Development since 2004. He has a background in politics, serving as a Minister in David Lange's cabinet in the 1980s.

The Financial Markets Authority

The Financial Markets Authority (FMA) began operating on 1 May 2011. The FMA is the market conduct regulator for New Zealand's financial markets. The consolidated authority was established under the [Financial Markets Authority Act 2011](#) (formerly part of the Financial Markets (Regulators and KiwiSaver) Bill).

The FMA takes over the existing functions of the Securities Commission, which is dis-established. It also assumes the responsibilities of the Government Actuary and some of the regulatory functions of the Registrar of Companies, and has a role in the oversight of registered securities exchanges.

Sean Hughes is the chief executive and Simon Allen is the chair. The other FMA board members are Shelley Cave, Colin Giffney, Mary Holm, Murray Jack, James Miller, Justine Smyth, Michael Webb, and Mark Verbiest. Three associate board members are Bruce Sheppard, Rebecca Eele, and Arthur Grimes.

The FMA is focused on promoting fair, efficient, and transparent financial markets.

Case studies

118838

Damage – house, earthquake, loss of rent, scope of cover (This case study is not yet on the website.)

Background

In September 2006, C insured her rental house with P.

In August 2010 C's tenants moved out of the house. C carried out some refurbishment work on the house with the intention of placing it on the market for sale. If the house did not sell, C intended to re-tenant the house. In September 2010 the house was damaged by the earthquake and rendered uninhabitable. Therefore, C was unable to sell or rent the house. C made a claim to the Earthquake Commission ("EQC") which, following inspection, confirmed the house should be condemned.

C made a claim to P for the damage, notwithstanding EQC's involvement. C also made a claim for loss of rent, which P declined.

Assessment

For a claim under the loss of rent benefit, the policy required that, when the damage occurred, "[the] house is let, lent, leased, rented or tenanted".

Tenancy of the house ceased in mid-August 2010. P declined the claim because, when the damage occurred in September 2010, the house was vacant and was in the process of being prepared for sale. Therefore, as there was no tenant in the house, no tenancy agreement in force and C was not receiving any rent, there could not be a claim for loss of rent.

In all the circumstances, the Case Manager believed P was entitled to decline the claim.

Result – complaint not upheld.

Commissioner for Financial Advisers steps down

David Mayhew, Commissioner for Financial Advisers, stepped down from the role in anticipation of the establishment of the Financial Markets Authority.

The Commissioner for Financial Advisers was created under the Financial Advisers Act 2008.

Since taking up the role in January 2010, Mr Mayhew fulfilled its purpose: to oversee the drafting, approval, and implementation of the Code of Professional Conduct for Authorised Financial Advisers.

The code sets out the minimum standards of competence, knowledge and skills, ethical behaviour, client care, and professional training requirements that authorised financial advisers must comply with. The code came into effect on 1 December last year.

How do customers choose a financial adviser?

People looking for financial advisers have plenty of choice. They can also get plenty of advice on choosing an adviser.

A recent story from Reuters and Businessday.co.nz compared the process of choosing a financial adviser to choosing a doctor or lawyer. It is the kind of decision that people don't make very often, and that will have a significant effect on them.

The advice, from a range of international sources, emphasised the need for people to choose an adviser they felt they could trust. It also recommended thorough investigation of the adviser's fee structure, and research of their experience and track record.

Consumer NZ has done a report on choosing financial advisers. Its advice included doing research on what you want to achieve, checking the adviser's skill base, checking how the adviser gets paid, and making sure a written plan is provided.

We think the decision to be a Participant in the ISO Scheme is a selling point for a business. Our Participants have chosen an approved dispute resolution scheme with over 15 years' experience. This will help potential customers have confidence in the business and to develop trust. As a Participant, the business has access to complaint handling resources and training to help improve its internal complaints process.

Internal complaints process

An internal complaints process should be:

- Visible – customers need to know where to complain.
- Accessible – customers need to know how to complain.
- Responsive – you need to deal with complaints quickly; the quicker they are dealt with, the more satisfied the customer.
- Fair and objective – the complaint should be judged on its merits and dealt with fairly and objectively, without being pre-determined.
- Customer-focused – you need to encourage complaints and indicate commitment to resolving them by words (you publish the process) and actions (staff are made aware of the policy and process).
- Accountable – someone must be responsible for complaints handling.
- Continually improving – use complaints data to look at the root causes of the problems and address them.

118685

Casebook Index: Scope of cover

Background

In December 2005, C arranged cover for his house with P.

In March 2010, four days before the settlement date for the sale of the house, the sun shone through large glass balls in C's garden and directed sunlight on a concentrated area of the dried hardwood deck and dry branches underneath. This ignited, resulting in damage, particularly to the decking. C made a claim to P for the damage. P got a quote for \$20,823.75 (GST inclusive) to repair the damage. Some of the damage was repaired before the settlement date, at a cost of \$9,357.76. However, the purchasers did not want the insurance company to finish the work, and C dropped the purchase price by \$25,000 to reflect the cost of replacing the deck and decrease in its value. P then offered C \$12,230.74 in settlement of the remainder of the claim. C declined the settlement offer, on the basis that it was less than half of his financial loss.

Assessment

The Case Manager explained to C that, because the policy only covers physical rather than financial loss, P had correctly applied the terms and conditions of policy to the claim. Because this Office could only consider whether P had correctly applied the terms and conditions of the policy to the claim and had no power to require P to make any payments outside the terms of the policy, the Case Manager believed \$12,230.74 was fair and reasonable in all the circumstances. C agreed to accept \$12,230.74 in full and final settlement of the claim.

Result - complaint settled.

There is no point having a complaints process if no one knows about it, or how to use it. The most common complaints we get about Participants are about the lack of communication on how the complaint is being handled, and the time it takes to reach a position of "deadlock". These two observations are inter-related, because often it is just a matter of informing the customer what stage their complaint is at in the process.

If customers are kept up-to-date about the consideration of their complaints, they feel informed and included. It is always good practice to inform customers about the reasons for any delay. Unexplained delays cause unnecessary frustration and can prevent easy resolution at an early stage of the process.

Under the Rules of the ISO Scheme, Participants have to make sure customers are aware of the Scheme and their internal complaints process. This customer-focused approach to complaints handling means all staff need to know about the internal and external dispute resolution processes.

A Participant's membership of the ISO Scheme should be of interest to customers, because a free dispute resolution service adds value to the relationship (see [How do customers choose a financial adviser?](#)). For that reason, we believe Participants should publicise their complaints handling process and the approved external dispute resolution service offered by the ISO Scheme. Customers should be given the ISO brochure "Can we help you with your insurance or savings complaint?" Customers should not have to make a formal complaint before getting this information.

Managing and resolving any complaints well and as soon as possible will create loyal and satisfied customers.

On-line complaint handling training resources

Nina Harding is a dispute resolution expert who has over 20 years' experience in the Asia-Pacific region. She is a law graduate, a Harvard Law School trained mediator, holds a Master of Laws and is a LEADR Advanced Mediator. Nina specialises in resolving business or commercial disputes. She has mediated numerous complex workplace disputes as well as large public and community disputes.

Participants in the ISO Scheme can access Nina Harding's on-line complaint handling training resources at a reduced rate (33% below the normal price, with a further discount for groups of 30 or more).

You can see a video about the resources on the Insurance & Savings Ombudsman website, www.iombudsman.org.nz, or go to www.ninaharding.com.



118808

Casebook Index: Interpretation - Specific words/expressions, Policy excess, Scope of cover

Background

In August 2010, C arranged insurance on her house contents with P.

In September 2010, C's car was broken into and a large number of CDs, a pair of sunglasses, and a \$20 note were stolen. C made a claim to P for the loss.

P declined the claim, because the policy only provided cover for items stolen while temporarily away from C's house if the items were "Personal effects", or specified on the policy schedule. The policy defined "Personal effects" as "... items which are personal in nature and are normally worn or carried". P said the CDs did not meet the policy definition of "Personal effects" and the remainder of the claim fell below the policy excess of \$200. C said that music was personal in nature and it was common to carry CDs in a vehicle.

Assessment

The Case Manager believed a fair and reasonable interpretation of "normally ...carried" had to be in the context of the surrounding words. In the context of "personal in nature", the Case Manager believed "normally ... carried" referred to items normally carried on a person, not in a vehicle. While a music storage device, such as an iPod, would have met the definition, CDs did not.

Result - complaint not upheld

For full versions of the case studies, go to the publications page of our website and "search the casebooks".