

Insurance/
Reinsurance

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INSURANCE BULLETIN



Welcome to HFW's Insurance Bulletin, which is a summary of the key insurance and reinsurance regulatory announcements, market developments, court cases and legislative changes of the week.

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UK: Third party insurers' claims handling obligations

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UK: Developing a common language for cyber

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hfw 1. Regulation and legislation

UK: Third party insurers' claims handling obligations

The Financial Conduct Authority's (FCA) Insurance Conduct of Business Sourcebook (ICOBS) contains the FCA's expectations of firms. The overall aim of ICOBS is to ensure that customers are treated fairly. ICOBS is therefore, essentially what the FCA considers to be good customer service.

The extent to which ICOBS applies to third party insurers dealing with consumers that are not their customers was the subject of a recent complaint to the FCA and onward consideration by the Office of the Complaints Commissioner (OCC). The concern was that the FCA does not have or enforce rules regarding third party insurers' obligations to consumers who deal with them.

When contacted by a member of the public who had been in an road traffic accident, the complainant was told by the FCA that the FCA does not have any specific rules relating to third party assistance claims but that it would expect insurance companies to follow its general rules around claims handling and principles. The complainant was referring to his experience of dealings with a third party insurer in relation to repairs to his car.

The point of issue was that the complainant could not refer to the ICOBS for guidance, as he was not a policyholder, and, contrary to what the FCA had advised the complainant, nor could the complainant refer his complaint to the Financial Ombudsmen Scheme (FOS) as the complainant was not the direct customer of the insurer with whom he was dealing.



This decision highlights the fact that the OCC has the appetite to find against the FCA and is willing to investigate claims relating to the regulators carrying out, or failing to carry out, their statutory duties under the Financial Services Act 2012.

NAZIM ALOM, ASSOCIATE

During the investigation by the OCC the FCA agreed that the FCA's high-level principles are capable of applying to insurers processing claims for third parties but the OCC urged the FCA to consider whether its existing rules and principles are sufficient to cover the situation of vulnerable consumers dealing with third party insurers, and whether those rules are sufficiently clear to consumers. In its decision, in favour of the complainant, the OCC held that the FCA should have informed the complainant that the issue was looked at in 2009 and guidance was issued to firms.

The FCA responded that it accepted the OCC's findings and that the FCA was arranging the recommended ex gratia payment to the complainant. The FCA also confirmed that it would consider whether its existing rules and principles were sufficiently clear to consumers.

This decision highlights the fact that the OCC has the appetite to find against the FCA and is willing to investigate claims relating to the

regulators carrying out, or failing to carry out, their statutory duties under the Financial Services Act 2012. The OCC is able to investigate allegations of mistakes, lack of care, unreasonable delay, unprofessional behaviour, bias or lack of integrity and is able to investigate claims from anyone that was directly affected by the issue in contention, or anyone acting on their behalf.

For a full copy of the OCC's complaint, please see <http://fsc.gov.uk/wp-content/uploads/FCA00141-FD-13-05-16.pdf> and to view the FCA's immediate response, please see <http://www.fca.org.uk/static/documents/foi/response-complaints-commissioner-report-fca00141.pdf>. For a copy of the FCA's guidance from 2009, go to http://www.fsa.gov.uk/pubs/other/third_party_capture.pdf.

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hfw 2. Market developments

UK: Developing a common language for cyber

The new European President for Berkshire Hathaway Specialty Insurance, formerly Lloyd's performance director, Tom Bolt, has commented that insurers are becoming increasingly aware of the cyber risks they may be exposed to through writing other classes of business. Bolt was speaking at the Verisk Risk Symposium, and stated that the development of a common language for cyber exposures and losses would be an important part of product development across the London market.

In his role at Lloyd's, in November 2015, Bolt oversaw the launch of a market wide assessment of syndicate exposures, which required each syndicate to report its cyber exposures across all classes of business. The assessment was part of a goal to develop an oversight framework for cyber, with the market targeting structured processes for understanding cyber attack exposures by class of business which will form part of syndicates' formal risk management frameworks. In addition, all syndicates had to submit a risk appetite for cyber attack business signed off by their boards. Lloyd's, in collaboration with the Lloyd's Market Association

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(LMA), is working towards developing probable maximum loss methodologies for cyber exposures by class, which will be fed into the development of new realistic disaster scenarios. In January, Lloyd's announced that common core data requirements for cyber risks have been agreed through modelling firms AIR Worldwide and RMS and the Cambridge Centre of Risk Studies.

Although the majority of policies written in the London market address cyber risks, many US policies are silent on it, containing no language to either exclude or cover cyber risks. The extent to which cyber exposures may be covered by policies without underwriters realising it may be far more widespread than underwriters might think.

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