

ABI/ CILA Protocol for Loss Adjusters under FSA regulation

FSA has detailed rules for handling general insurance claims. It should be noted that the rules:

- are primarily for the protection of Retail Customers defined as “an individual acting outside his trade, business or profession.
- include limited rules for Commercial Customers defined as “not a retail customer.”
- do not give Third Party claimants similar status to a Retail Customer, but the Insured under the contract of insurance does have rights as though they were either a Retail or Commercial Customer.
- When an *insurer* deals directly with a third party who *claims* against his *customer* because the third party has a legal right to bypass the *customer* and *claim* directly against the *insurer* the *rules* do not require the *insurer* to treat the third party as a *customer*, however regard must be given to *Principle 1* (Integrity), *Principle 2* (Skill, care and diligence) and *Principle 5* (Market conduct) in dealings with the third party and the *claim* should not be dealt with in any way less favourably than would have been done had the *claim* been proceeded against its *customer*.

Regulated Insurers are required to comply with FSA rules. In order to do so they will in turn require adjusters to provide evidence of compliance.

The following rules identify the conduct of the adjuster and the evidence required to help Insurers satisfy the Regulator. The FSA have not specified what evidence of compliance is required in ICOB apart from certain specific record keeping requirements. The ABI and CILA have drawn up this protocol to assist firms in this but they are for guidance and are not a substitute for the rules themselves.

Nothing contained within this protocol shall prevent Insurers seeking to agree greater requirements by way of Service Level Agreements.

Training & Competence (TC)

Adjusters will need to provide Insurers with evidence that :

- its employees are competent for the work that they do
- its employees authorities are defined appropriately for the work they do
- there are adequate controls over the allocation of claims
- its employees are appropriately trained & supervised
- its employees' competence is regularly reviewed

Claim Handling

In relation to **Retail Customers** Adjusters must act so as to enable Insurers to

- handle claims fairly and promptly (in practice respond within 5 business days or less if appropriate);
- give a customer reasonable guidance to help them make a claim under their policy;
- respond promptly to a notification of a claim by a retail customer with information on how the claim will be handled;
- keep a customer reasonably informed about the progress of his claim;
- explain why a claim is being refused or the amount offered differs from the amount claimed, giving the customer the option of receiving this information in writing; and
- settle a claim promptly once settlement terms have been agreed.

In relation to **Commercial Customers** adjusters must act so as to enable Insurers to:

- handle claims fairly and promptly;
- keep a commercial customer reasonably informed about the progress of their claim; and
- settle the claim promptly once settlement terms have been agreed.

In addition, adjusters must explain how to make a complaint.

Where loss adjusters acting on behalf of Insurers receive claims direct from Retail Customers, they must:

- disclose they act as agent for the Insurer and in what capacity
- advise whether the type of claim is normally covered under the policy or not

- what action will be taken and when
- identify other parties who will contact the Insured on behalf of the Insurer, their name, function, and the work they will do. If the purpose of the appointment is to investigate the validity of the claim, this information need not be given if to do so would limit or prevent the effective investigation of the claim or any part of it.

Loss Assessors / Adjusters acting for a Retail or Commercial Customer in the preparation and presentation of their claim should be authorised by the FSA. Loss Adjusters acting on behalf of Insurers will seek to establish whether anyone fulfilling this role on behalf of their Policyholder is authorised by the FSA. In accordance with the FSA advice, Loss Adjusters will report any unauthorised loss assessor to their Principal for further instruction (there being no statutory or regulatory restriction on dealing with unauthorised assessors, although the unenforceability provisions of the Financial Services and Markets Act 2000 may apply to any settlement). Loss adjusters also undertake to report any unauthorised loss assessor to the FSA either directly or via CILA.

File Management

Loss adjusters must keep in accessible form, for the duration of the claim and for a minimum of three years after it has been settled, at least the following:

- details of the claim
- a record of each communication with the customer including the date
- the date the claim was settled and details of settlement

This provision exceeds the FSA requirement, but is deemed more practical than merely keeping elements of an Adjusters file.

Complaints

- A complaint is any expression of dissatisfaction, whether oral or written, and whether justified or not, from or on behalf of a policyholder about the provision of, or failure to provide, a financial service. A complaint is not a query, a statement of fact, a debate, discussion or negotiation solely in relation to a claim settlement process, or value, including liability. Complaints are either non-reportable or reportable.
- A reportable complaint is one made by an eligible complainant (able to refer a complaint to the FOS) of alleged financial loss, material distress or material inconvenience **and** it is not possible to resolve the complaint within 24 hours. All other complaints are deemed non-reportable.
- Once a reportable complaint is made, it must be notified to instructing Insurers.
- Loss adjusters must keep a register of both non-reportable and reportable complaints which shall be subject to audit, audit trail and monthly reporting to instructing principals (format located in FSA Complaints Sourcebook)
- Loss adjusters must retain records of complaints together with underlying documents for a minimum period of three years from the date of the complaint.

Business Continuity

- Loss adjusters must have an up to date written business continuity plan and it shall be available for inspection upon request.
- In the event that a business continuity plan is activated, loss adjusters must immediately notify instructing principals and provide brief details of all claims they are instructed upon.
- Within five working days, loss adjusters must notify all affected policyholders of changed arrangements.

Surge Plans

- Loss adjusters must have a written contingency plan that shall be reviewed annually and will be available for inspection upon request. It is envisaged that this plan will outline the extent to which service provision can be escalated.
- In the event of a localised emergency, loss adjusters must keep instructing principals and policyholders advised of the arrangements in place during the emergency.
- In the event of widespread emergency, ABI/CILA shall publish arrangements for handling the emergency.

Non-Compliance

Insurers must be notified immediately of any regulatory circumstances that may lead to non-compliance, and as examples this may include insolvency, major systems failure, or incapacity.