

14 July 2011

FOSSIC SI Ref: 249558

Mr [REDACTED]  
Compliance Manager  
CGU Insurance Limited  
GPO Box 390D  
Melbourne VIC 3001

Dear Mr Beeston

**Possible Systemic Issue: Flood Disputes - Misleading IDR Definition**  
**Possible Code Issue: section 6.9(b)**

A dispute has been referred to me as raising a possible systemic issue. I will be responsible for investigating the matter.

**The Dispute**

The applicants' dispute arises from CGU Insurance Limited's (CGU) denial of indemnity on the basis that the damage and/or loss was caused by flood. They lodged a dispute with FOS, with the reference number 241679. CGU's reference is: Claim No. CGQUH11/01892.

**Possible Systemic Issue**

CGU's IDR Response letter to the applicants, dated 18 March 2011, was issued by Neil Wood, Senior Case Manager, Decision Review Office. The letter included the following paragraph, after his signature:

*Please also note that the FOS have reviewed cases of flood previously and have maintained the insurer's position in cases where the insurer has demonstrated that flood, as defined by the insurance policy, has occurred.*

This statement was highlighted by the applicants when they referred their dispute to FOS and were deeply upset by it.

It is the use of this statement in CGU's IDR Response letter(s) that may be possibly systemic. The statement about FOS is potentially misleading as FOS is not bound by its previous decisions. Paragraph 8.2 of the FOS Terms of Reference outlines the criteria applicable to dispute resolution, noting that FOS will do what in its opinion is fair in all the circumstances, having regard to each of the following:

- a) legal principles;
- b) applicable industry codes or guidance as to practice;

- c) good industry practice; and
- d) previous relevant decisions of FOS or a Predecessor Scheme, however FOS is not bound by these.

As a result, please arrange for the immediate removal of the relevant paragraph from CGU's template flood IDR Response letter(s) and ensure that all IDR staff are directed not to include this statement and similar statements in future IDR Response letters, whether or not the dispute is about flood. Please notify me in writing when you have completed these actions.

This possible systemic issue was investigated recently in relation to FOSSIC SI 240351. Another person from CGU's IDR area had issued IDR Responses to four customers, stating that FOS used a definition of flood that is also used by CGU.

As a result, so that we can assess whether this matter represents a definite systemic issue, please:

1. Determine whether this statement has been included in other IDR Responses and if this has occurred, provide me with the total number of affected customers.
2. Draft a letter notifying affected customers that the statement about FOS' approach to flood disputes is incorrect and that FOS is not bound by its previous decisions. Please provide me with the draft letter for review prior to forwarding to affected customers.
3. The reason for CGU not identifying this particular IDR Response letter (and others if any) when FOS recently raised this issue.

**Possible Code Issue: section 6.9(b)**

Section 6.9(b) of the Code requires a Code participant to provide information about how to access available external dispute resolution schemes, which in this case is FOS. In my view, CGU's actions may have breached section 6.9(b).

**The Next Step:**

Given the nature of this issue, please provide the requested information outlined in points 1 to 3 above as soon as possible, but by no later than close of business on Monday 18 July 2011, as this will assist in making a prompt decision about whether a systemic problem exists. This decision will be made in consultation with the Ombudsman General Insurance. A summary of our approach to systemic issues and our obligation to report systemic issues to the Australian Securities and Investments Commission is set out in pages 94 - 96 of the Guidelines to the Terms of Reference.

Your response should also include your comments about the possible breach of section 6.9(b) of the Code, in addition to any further information you may have regarding this issue which has not been included in our request for information.

If you wish to discuss the contents of this letter please contact me via [REDACTED] or on [REDACTED]

Yours sincerely

[REDACTED]

[REDACTED]

**Manager – Systemic and Code Review Team, General Insurance**