



26 August 2011

FOSSIC SI Ref: 249558

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

Dear Mr [REDACTED]

**Definite Systemic Issue:
Flood Disputes: Misleading IDR Definition**

I refer to previous correspondence and discussions, and our discussion on Wednesday 24 August 2011, in relation to our review of this matter as a possible systemic issue.

Response

A summary of my understanding of your response is as follows:

Flood IDR letters issued by [REDACTED]

The relevant paragraph is:

"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."

1. CGU maintains that the wording about how FOS has dealt with flood disputes is factual and not inappropriate. CGU has not stated that FOS is bound by previous decisions.
2. CGU agreed to compromise by adding additional wording to state that FOS is not bound by its previous decisions.
3. Dependent on the outcome of FOS' consideration, CGU may wish to provide further submissions on this matter.
4. Neil Wood would have sent up to 46 letters to customers which contained the wording about FOS. It is believed that at least 10 of these customers have referred their disputes to FOS.

Flood IDR letters issued by [REDACTED]

The relevant paragraph is:

"Please note that the Financial Ombudsman Service Limited will not consider your dispute unless it is lodged, by documenting the basis on which you contend that our decision is incorrect and within their prescribed time frames. Furthermore, there are other qualifying criteria that you can obtain from FOS."

1. CGU has agreed to remove the above paragraph and has offered to replace it with one that informs a customer that they must lodge their dispute with FOS within two years of the date of CGU's final decision (IDR Response); and does not include the words *"by documenting the basis on which you contend that our decision is incorrect and within their prescribed time frames"*.
2. [REDACTED] would have sent up to 20 letters that contained the above paragraph. It is believed that at least three customers have referred their disputes to FOS.

Please let me know if my understanding of your response is not correct.

Our View about the Possible Systemic Issue

I have reviewed all the available information together with the Ombudsman General Insurance, John Price, and our conclusion is that this matter represents a definite systemic issue. This means that FOS is under an obligation to report this matter to the ASIC which it will do following the close of this quarter.

The following is a summary of FOS' reporting obligations to ASIC and is taken from the *FOS Operational Guidelines to the Terms of Reference (TOR)* (page 96):

"FOS is obliged, under RG 139 and its TOR, to report systemic issues to ASIC. FOS's reports do not identify FSPs but do include statistical information regarding possible and definite systemic issues identified together with details of the nature, progress and resolution of the definite systemic issues."

If the FSP does not rectify a definite systemic issue in accordance with FOS's requirements, FOS will take the following action:

- *FOS will notify the FSP that it believes a report, identifying the FSP, should be made to ASIC;*
- *FOS will give the FSP time to make submissions regarding the lodging of an identifying report with ASIC;*
- *if there is no response or the response does not satisfy FOS that the FSP has adequately rectified the definite systemic issue, FOS will lodge a report with ASIC.*

The report will contain the identity of the FSP, the details of the systemic issue and the action taken by FOS and the response from the FSP, if any."

Resolution of the Definite Systemic Issue

As highlighted in previous correspondence and discussions, in order to resolve this definite systemic issue, please undertake the following actions within the nominated timeframes:

Flood IDR letters issued by [REDACTED]:

The relevant paragraph is:

"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."

1. Please arrange for the immediate removal of the relevant paragraph from CGU's template flood IDR Response letter(s).
2. Please arrange for immediate notification to all IDR staff about this issue and that the relevant paragraph and similar paragraphs must not be included in future IDR Response letters, whether or not the dispute is about flood.

In relation to points 1 and 2, please confirm in writing with me when completed.

3. In relation to the 46 customers identified as having been sent IDR Responses by Neil Wood, containing the paragraph under discussion, please draft a letter notifying all affected customers that:
 - (a) The statement about FOS' approach to flood disputes is incorrect;
 - (b) FOS is not bound by its previous decisions; and
 - (c) When deciding a dispute and whether a remedy should be provided, FOS will do what in its opinion is fair in all the circumstances, having regard to each of the following:
 - Legal principles;
 - Applicable industry codes or guidance as to practice;
 - Good industry practice; and
 - Previous relevant decision of FOS or a predecessor scheme, although FOS is not bound by these.

Please provide the draft letter to me for review and feedback, prior to forwarding to affected customers, on or by close of business on Friday 2 September 2011.

Flood IDR letters issued by Steve Massey containing the following paragraph:

The relevant paragraph is:

"Please note that the Financial Ombudsman Service Limited will not consider your dispute unless it is lodged, by documenting the basis on which you contend that our decision is incorrect and within their prescribed time frames. Furthermore, there are other qualifying criteria that you can obtain from FOS."

1. Please arrange for the immediate removal of the relevant paragraph from CGU's template flood IDR Response letter(s).
2. Please arrange for immediate notification to all IDR staff about this issue and that the relevant paragraph and similar paragraphs must not be included in future IDR Response letters, whether or not the dispute is about flood.

In relation to points 1 and 2, please confirm in writing with me when completed.

4. In relation to the 20 customers identified as having been sent an IDR Response by [REDACTED] containing the paragraph under discussion, please draft a letter notifying all affected customers that:
 - (a) It was incorrect to state that FOS will not consider a consumer's dispute unless it is lodged by documenting the basis on which they believe the company's decision is incorrect. When a dispute is lodged, FOS will provide information to the consumer about its processes; and
 - (b) A consumer who wishes to pursue the dispute by taking it to FOS must lodge their dispute within two years of the date of the company's IDR Response (ie final decision).

Please provide the draft letter to me for review and feedback, prior to forwarding to affected customers, on or by close of business on Friday 2 September 2011.

Request for further information

Flood IDR letters issued by [REDACTED]:

You indicated that [REDACTED]'s letter had been sent to 46 customers. However, as highlighted in my first letter to you, FOS investigated this issue previously where a similar paragraph was included in four IDR Responses sent by [REDACTED] (see FOSSIC SI 240351). CGU had informed FOS that the use of such a paragraph was isolated to the four instances. While the wording of [REDACTED] paragraph differs from that used by [REDACTED], the import of the statements is the same.

As a result, please:

1. Explain CGU's failure to identify [REDACTED] paragraph when FOS recently raised this issue under FOSSIC SI 240351.
2. Review all flood IDR Response letters to determine whether similar paragraphs have been included in other IDR Responses and provide me with the outcome of the review, including the number of affected customers (if any) and examples of other paragraphs that have been used (if any).
3. Outline the company's proposal to address this (if applicable).

Please complete these actions by close of business on Friday 9 September 2011. Your response should also include any other information that may be relevant but has not been included in this request.

Flood IDR letters issued by [REDACTED]:

You informed me that all of CGU's IDR staff are aware that the two year timeframe applies and that the omission of the two year timeframe by [REDACTED] was an isolated oversight. However, your subsequent review of [REDACTED] letters showed that he had sent up to 20 letters that omitted the reference to the two year timeframe.

Further, as highlighted in my initial correspondence, it is important not to overlook the words "*...Financial Ombudsman Service Limited will not consider your dispute unless it is lodged, by documenting the basis on which you contend that our decision is incorrect*" which [REDACTED] had also included. A review of the flood IDR Responses issued by [REDACTED] and [REDACTED] shows that they have incorporated those words into their correspondence as well.

As a result, please:

1. Review all flood IDR Response letters to determine whether similar statements have been included in other IDR Responses and provide me with the outcome of the review.

Please note your review should encompass the omission of information about the two year timeframe and the reference to FOS not considering a dispute unless it is lodged by documenting the basis on which the customer is disputing CGU's decision.

2. Provide me with details of the company's proposal to address this (if applicable).

Please complete these actions on or by close of business on Friday 9 September 2011. Your response should also include any other information that may be relevant but has not been included in this request.

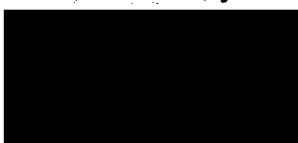
Code issues

I will respond to the issues raised with respect to the Code in separate correspondence.

Further assistance

I would be happy to meet with you again, if you have any queries about the actions that CGU has been requested to undertake in response to this matter.

Yours sincerely

A large black rectangular redaction box covering the signature area.
Manager – Systemic and Code Review Team, General Insurance