

## Introduction

This is the submission by the Financial Ombudsman Service ("FOS") in response to the discussion paper *Key Facts Sheet: Home Building and Home Contents Insurance Policies* released by the Treasury in February 2012 ("Discussion Paper").

This submission has been prepared by the office of FOS and does not necessarily represent the views of the Board of FOS. It draws on the experience of FOS and its predecessors in the resolution of general insurance disputes and responding to major insurance issues.

## Information about FOS

FOS commenced operations on 1 July 2008. It is an independent dispute resolution scheme that was formed through the consolidation of three schemes:

- the Banking and Financial Services Ombudsman ("BFSO");
- the Financial Industry Complaints Service ("FICS"); and
- the Insurance Ombudsman Service ("IOS").

On 1 January 2009, two other schemes joined FOS, namely:

- the Credit Union Dispute Resolution Centre ("CUDRC"); and
- Insurance Brokers Disputes Ltd ("IBD").

FOS is an external dispute resolution scheme approved by ASIC. Membership of FOS is open to any financial services provider carrying on business in Australia including providers not required to join a dispute resolution scheme approved by ASIC. Replacing the schemes previously operated by BFSO, FICS, IOS, CUDRC and IBD, FOS provides free, fair and accessible dispute resolution for consumers unable to resolve disputes with financial services providers that are members of FOS.

Members of BFSO, FICS, IOS, CUDRC and IBD are now members of FOS. The members of those schemes included:

- BFSO – credit providers, mortgage brokers, payment system operators, Australian banks and their related corporations, Australian subsidiaries of foreign banks and foreign banks with Australian operations;
- FICS – life insurance companies, fund managers, friendly societies, stockbrokers, financial planners, pooled superannuation trusts, timeshare operators and other Australian financial services providers;

- IOS – general insurance companies, re-insurers, underwriting agents and related entities of member companies;
- CUDRC – credit unions and building societies;
- IBD – insurance brokers, underwriting agents and other insurance intermediaries.

FOS and its predecessor schemes have over 20 years experience in providing dispute resolution services in the financial services sector, and it is estimated that FOS covers up to 80% of banking, insurance and investment disputes in Australia.

FOS provides services to resolve disputes between member financial services providers and consumers, including certain small businesses, about financial services such as:

- banking;
- credit;
- loans;
- general insurance;
- life insurance;
- financial planning;
- investments;
- stock broking;
- managed funds; and
- pooled superannuation trusts.

As well as its functions in relation to dispute resolution, FOS has responsibilities to identify and resolve systemic issues and obligations to make certain reports to ASIC. FOS also monitors compliance with a number of industry codes of practice.

FOS is a not for profit organisation funded by its members, which are financial services providers. It is governed by a board with consumer representatives, financial services industry representatives and an independent chair.

## **Submission**

FOS and its predecessors have, since the early 1990s, played a role in the insurance industry's responses to natural disasters and extreme weather events<sup>1</sup> as well as resolving a broad range of insurance disputes. Our experience allows us to respond to some of the consultation questions in the Discussion Paper. Our responses are set out below under headings that correspond with the headings in the Discussion Paper.

### **1. What is covered – 2.1.3**

Of the prescribed events in the standard cover regime, the events listed below are most likely to lead to consumer confusion about what a policy covers in our

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<sup>1</sup> This role is explained in our submission made in August 2011 to the Parliamentary inquiry into the operation of the insurance industry during disaster events – see [fos.org.au](http://fos.org.au) under "Submissions" in "Publications".



assessment. Our experience suggests that this confusion is more likely if cover under a policy is limited.

- Theft, burglary or housebreaking or an attempt to commit theft, burglary or housebreaking

Consumers may not understand how cover for theft is affected where they have invited people onto their property.

- Bursting, leaking, discharging or overflowing of fixed apparatus, fixed tanks or fixed pipes used to carry or hold liquid of any kind

Consumers may not understand limits that may apply due to factors such as weather, lack of maintenance or poor design.

- An action of a person acting maliciously

Consumers may not understand whether certain action may be classified as malicious or merely poor housekeeping, for example, where a tenant drops cigarette butts on a floor or keeps pets indoors that cause damage.

- Storm, tempest, flood, the action of the sea, high water, tsunami, erosion or landslide or subsidence

Consumers may not understand the distinction between a storm and a flood, the significance of that distinction, or the meanings of terms like:

- "storm"
- "storm created opening"
- "flood".

Of the prescribed events in the standard cover regime, the following events are most likely to have a significant financial impact on consumers in our assessment:

- storm and flood;
- malicious damage, including damage by tenants;
- theft, which may be by tenants or guests.

Given the points noted above, we consider that these standard cover events should be included in the key facts sheet ("KFS"):

- theft, burglary or housebreaking or an attempt to commit theft, burglary or housebreaking;
- bursting, leaking, discharging or overflowing of fixed apparatus, fixed tanks or fixed pipes used to carry or hold liquid of any kind;
- an action of a person acting maliciously; and
- (subject to the next paragraph) storm, tempest, flood, the action of the sea, high water, tsunami, erosion or landslide or subsidence.

In our view, to provide effective disclosure, the KFS should include flood and should only include other natural disaster events that are prescribed events in the standard cover regime if the policy seeks to exclude cover for those events.

## **2. What is NOT covered – 2.1.4**

Our experience indicates that complaints about cover generally relate to exclusions. It is more common for a dispute about a decision to decline a claim to relate to an accidental damage or loss policy than to an insured events policy. If the information about exclusions in the KFS is limited, we believe confusion would be more likely, especially where there is derogation from standard cover. We consider that any derogation from standard cover should be made clear in the KFS.

## **3. Sub-limits and Excesses – 2.1.5**

It is appropriate in our opinion to include in the KFS:

- information on specific excesses and sub-limits; and/or
- a statement acknowledging that excesses or sub-limits apply in relation to a policy.

We have seen from our involvement in dispute resolution that most consumers do not read insurance policies at the point of sale. This indicates that a KFS that merely refers to information in a policy may not effectively give that information to consumers.

## **4. Cooling off period – 2.1.6**

We consider that:

- the time period for the cooling off should be stated in the KFS; and
- the wording of the cooling off period statement is appropriate.

## **5. Warnings/Statements – 2.1.7**

In our view:

- a “How to use a KFS” statement is required; and
- the wording of the proposed “How to use a KFS statement” is appropriate.

We think the wording of the proposed “General consumer warning/Risk statement” should be reviewed. It would only be adequate if the KFS contains all of the information that a consumer would require to determine whether the policy covers their risks and needs. It suggests that, by considering specific parts of the KFS, a consumer can determine this. If the KFS does not contain all of the required information, we suggest alternative wording along the following lines:

“To ensure that this policy covers your particular risks and needs, you should consider the “what is covered” and “what is not covered” sections of this KFS and read the policy and PDS documents supplied by the insurer.”

A general health warning is required. We believe it should address the risks of failing to secure appropriate insurance as well as the adverse effects of underinsurance.

We think that the KFS should not include a statement outlining the application of the Wayne Tank principle because such a statement may confuse consumers due to its complexity.

We believe that the KFS should be kept uncluttered and that general statements should only be included if they do not jeopardise the integrity of the KFS.

#### **6. When the KFS is required to be provided – 2.4.1**

We consider that a KFS should be required to be provided in the situation described in the third dot point in paragraph 86 of the Discussion Paper. If provision is not required in this situation, we think disputes would be likely to arise about what information a consumer sought from an insurer.

If it is not possible to provide a KFS at the time of inquiry, it may be appropriate to let insurers provide a KFS at a later date. This may be appropriate, for example, where a quotation is given by telephone and cover is needed immediately or within seven days. Provision for electronic delivery of the KFS should be considered in our view.