Dear Sirs, 10th January 2011

Re: Submission regarding 'Review of Consumer Protection Code - Consultation Paper CP47'

There are a number of comments and points we would like to make regarding unfair commercial practices that are pertinent to our dealings with property damage insurance claims on behalf of the consumer.

Firstly, we would like to propose the following amendments to definitions under Chapter 13:

"Vulnerable consumer" should include by virtue of their circumstances, **any** consumer who suffers damage to their property and needs to make an insurance claim. Reason: The greater level of care should not just apply to vulnerable consumers at the point of sale of a product or service, but equally (if not more importantly) at the point of claim. Courts have recognised the inequality in the relationship of claimants with their Insurers, but abuse of the powerful position is prevalent.

"Outsourced activity" should specifically include outsourced service providers, including loss adjusters and network builders, who should be subject to full compliance with the Consumer Protection Code, the Insurance Mediation Directive and with Minimum Competency Requirements.

"Person" should include an incorporated body.

Under Chapter 8, Claims Processing, Point 9. (d) "the regulated entity must offer to assist in the process of making a claim" – in the majority of cases this is clearly not happening. In fact, the process of notifying and submitting a claim is often treated in a very adversarial way. We would like to see a stricter responsibility being imposed on underwriters, brokers, call centre operators etc who often are the first point of contact for people reporting claims, to inform of the availability of third party representatives, at the insured's cost, in a manner that does not attempt to deter such representation.

Under Chapter 8, Claims Processing, Point 12 – "In the case of motor insurance and property insurance claims, and other claims where relevant, the regulated entity must inform the claimant in writing that the claimant may appoint a loss assessor to act in their interests and that any such appointment shall be at the claimants expense". We would like to add, "and the regulated entity must deal with the loss assessors claim as submitted". We would also like to add: "and that loss assessor must be a regulated entity".

The proposed point as it is currently written was in the previous Code. However, Insurers, where they were complying with this point, were putting the words "at their own expense" in bold to actively discourage the claimant from seeking to appoint someone to represent their interests. In many cases they were not complying with the Code. We would like to see a stricter responsibility being imposed on underwriters, brokers and call centre operators who often are the first point of contact for people reporting claims, to inform them verbally and in writing of the availability of third party representatives. The fact that Insurers can employ someone to represent their interests, without the claimant having the same resources to have representation, is clearly prejudicial to the principles of natural justice, equal representation and fair procedures. The "vulnerable consumer" should be offered assistance in the process of making a claim in the form that allows them to engage the services of a loss assessor, whose remuneration is paid by insurers as a legitimate expense under the policy of insurance.

Reason: A Loss Assessors role is to compile, submit and negotiate settlement on behalf of the claimant. However, despite the position in the CPC that the claimant may appoint a loss assessor to act in their interests, some loss adjusters and insurers are failing to deal with the loss assessor's claim and instead appointing their own approved repairer and saying that the insured can get their own builder to tender for the repairs and that the cheapest quote will get the job. This is clearly prejudicial and against the spirit of the regulations entitling the claimant to appoint their own assessor. We are aware anecdotally from several insurance brokers that there has been an orchestrated campaign by a powerful Insurer lobby who have been repeatedly 'spinning a line' to insurance brokers, that Loss Assessors are driving up the cost of claims and loss ratios. They have been actively discouraging brokers from recommending loss assessors to their clients. They quote statistical facts regarding loss ratios on their broker business compared with their Direct channels. They have threatened brokers with commission level cuts if they recommend clients to use loss assessors.

It may be the case that the cost of claims through loss assessors is statistically higher than those who do not engage one. That of itself is not proof of anything, other that small claims may not economically warrant the engagement of a loss assessor. So, by definition, the average cost of a claim through a loss assessor will be higher. It may also be proof that those who do not engage loss assessors do not claim or do not receive their full entitlement under the terms of the policy.

If regulated entities are supposed to assist claimants in the process of making a claim, how come the loss ratio is lower where there is no loss assessor involved? Could it be that the direct customer is left without proper advice or assistance and consequently are not getting what they are entitled to receive? Regulated entities cannot be "for" the claimant and "against" the claimant at the same time. In our experience, regulated entities and their appointed loss adjusters and direct repairers endeavour to minimise the claim payment, and sometimes pro-long the process and frustrate the claimant. In fact, individual loss adjusters have told us that they are told to "go hard" on assessors. If loss adjusters are being instructed not to 'adjust' a loss assessors claim then they are breaking the spirit of the Code that is not in the best interests of the claimant and is clearly designed to be in the best interests of the Insurer.

If the regulator wants to protect claimants (who are a very lone and isolated voice), they need to ensure full and proper representation for the claimant.

Under Chapter 8, Claims Processing, Point 14 – "Where a method of direct settlement has been used, a regulated entity must not ask the claimant to certify any restitution work carried out by an expert appointed by the regulated entity". We would go further – the regulated entity choosing to opt to re-instate directly should pay the claimant to appoint a regulated loss assessor and/or to appoint a competent person to supervise and certify the reinstatement works. The regulated entity, choosing to opt to re-instate by direct methods takes on the role of Employer of the builder and should be obliged to sign a contract for the extent and value of agreed works with the builder appointed and a copy given to the claimant, prior to commencement of the job.

Insurers should be obliged to pay Professional Fees for the agreement of a "schedule of works" with an attached specification and sketches where relevant, and for the supervision of the repairs. This is in particular where Builders are being provided by Insurers. If a Builder is insisted upon by Insurers then the schedule of works suggested by Adjusters/Builders must be made available to the Insured and his representative. We believe that Insurers are trying to opt out of their obligations in the matter of paying Professional Fees, which are already part of the Policy conditions. There should be no lower limit for such fees to be paid. Even in smaller jobs the Consumer is vulnerable and needs independent advice.

Reason: What very often occurs at present is anti-competitive and smacks of a cartel-like arrangement and an abuse of a dominant position. The claimant submits a claim for damage by way of a builder's quote or a bill of quantities prepared by a loss assessor. The loss adjuster requests a direct repairer from their network builders' panel to quote. The network builder's price is issued to the loss adjuster and the claimant is told that the network builder is doing the job, unless the claimant wants to submit their own builder's quote and if it is lower he will get the job. The claimant/loss assessor is not being shown a copy of the quote, or even being told how much the approved builder is quoting. The claimant's right to receive indemnity is being undermined. Their right to have their claim dealt with by a loss assessor is being undermined. The loss adjuster is no longer 'adjusting' the loss assessor's claim. The loss assessor is being told "these are our agreed rates" (agreed by/with whom???) or "if you want to submit a builders quote and it is lower than the price we have then the cheapest builder will get the job". Insurers are in a position to exercise undue power over claimants, using their panel of builders and their new processes. Opting to appoint direct repairers to control the repairs/cost of repairs etc is a very concerted effort to drive Loss Assessors out of business, and undermine a claimant's decision to appoint a loss assessor. It is effecting a 'race to the bottom' in terms of policyholder's entitlement under the terms of the policy. This is a recent development and results in less consumer protection, greater control and power in the hands of insurers, and will ultimately lead to direct repairers cutting prices to stay on the panel resulting in sub-standard workmanship/repairs and disadvantaged claimants. In the real world the cheapest price doesn't always get the job. Consumers take a lot of other things into consideration, like personal recommendations, quality, reputation, service etc.

Under Chapter 8, Point 18 we would suggest the following addition: "within 10 working days of the request for such information". Similarly, this same addition should also be tagged on to Chapter 11, Point 10 (b).

Reason: There is often a 'fob-off' by the loss adjusting firm and it is unclear as to who is the appropriate point of contact to initiate an internal appeal within he regulated entity.

Under Chapter 8, Point 19 we would suggest the following amended wording: A regulated entity must pay all agreed claims ***in full*** to the claimant within 10 business days……

Reason: The practice of agreeing a settlement figure as being the measure of the loss and holding a retention pending the production of VAT invoices has crept into the property insurance claims market over the past few years. Very often this causes extreme difficulty for claimants who are not able to obtain a VAT invoice, or the contractor is not VAT registered, or the invoice doesn't have a Vat number on it, or they are unable to get the job done without paying cash for some of the labour or materials; yet there is no saving to the claimant who is endeavouring to get the work done within a fixed budget i.e. the agreed value to the loss.

There is a whole additional level of bureaucracy attached to trying to draw down the retention, which is designed to put off claimants from choosing to pursue it, or making it difficult to obtain it. The result is that the insurer gets to hold onto a percentage of the agreed value of the loss to the detriment of the claimant, who can be left short on a technicality. If the value of the loss is agreed by experts appointed by the insurer – then the amount should be paid in full.

Additional Points:

The following should be included to reflect market practice in the UK: Where there is a breach of policy warranty, the regulated entity must not decline the claim where the breach of the warranty is unrelated to the loss. (This is mentioned in an Irish Insurance Federation agreement but is not readily transparent to consumers and should be included in the Consumer Protection Code).

Insurers must meet time frames for acceptance of liability e.g. 30 days (irrespective of the complexity of the investigation). If liability is being declined then reasons must be given, which if found to be invalid results in a **Penalty, e.g. costs, interest or uninsured losses must be paid**.

Time frames should also apply to issuance of settlement proposals, e.g. 10 days after acceptance of liability or submission of claim details.

Under Chapter 2, General Principles in particular points 3,9 and 10; how do the Central Bank intend to deal with offenders?; also point 41 on page 38—do loss adjusters and/or brokers gain additional sums of money or benefits from achieving certain targets or limiting the involvement of public loss assessors? Are there bonuses for outsourcing certain levels of business to network builders? Are there bonuses for achieving savings on claims payouts? What happens if the 'Spirit of The Code' is breached?

Are there plans in relation to including a Whistle Blowers Charter to protect loss assessors or individual claimants from any adverse back-lash for reporting breaches of the Code?

In relation to Subsidence claims we would propose the following: "an unreasonable burden of proof of the cause of subsidence must not be put on the claimant. If a regulated entity are appointing an engineer to investigate cause of subsidence, their report and recommendations should be made available to the claimant."

Reason: Subsidence claims can take 12 to 24 months on average to conclude as the system is adversarial and anti-consumer. Unlike other perils, where the damage is evident, the insurers do not admit policy liability without engineering evidence and various further proofs all of which are daunting for a claimant to have to produce in order to test if the policy will cover the damage. There is no help given to policyholders and this type of claim is dealt with in a very adversarial way. Usually engineers are engaged by both parties and are pitted against each other in terms of proof of cause, scope of repairs and extent of remedial works.

An additional principle should be added as follows;

'A regulated entity must pay due regard to the interests of its customers and treat them fairly'

The rationale for including this additional principle is that the current CPC does not specifically target treating customers fairly. The FSA in the UK has initiated a specific programme called "treating customers fairly" and is central to their 11 principles. As part of expanding the general principles in the Republic of Ireland to include a specific reference to treating customers fairly it is deemed necessary that the following outcomes should be appended to this additional principle to ensure that all regulated entities embody the principal of treating customers fairly;

Outcome 1: Consumers can be confident that they are dealing with firms where the fair treatment of customers is central to the corporate culture.
Outcome 2: Products and services marketed and sold in the retail market are designed to meet the needs of identified consumer groups and are targeted accordingly.
Outcome 3: Consumers are provided with clear information and are kept appropriately informed before, during and after the point of sale.
Outcome 4: Where consumers receive advice, the advice is suitable and takes account of their circumstances.
Outcome 5: Consumers are provided with products that perform as firms have led them to expect, and the associated service is of an acceptable standard and as they have been led to expect.
Outcome 6: Consumers do not face unreasonable post-sale barriers imposed by firms to change product, switch provider, submit a claim or make a complaint.

A culture of treating customers fairly needs to be developed and nurtured within the Republic of Ireland. We would suggest that the Treating Customers Fairly charter should be included within an amended Consumer Protection Code.

Chapter 2, Point 7 of the General Principles states: "A regulated entity .....seeks to avoid conflicts of interest". We would suggest that this principle should be expanded to the following principle as stated by the UK FSA; "A regulated entity must manage conflicts of interest fairly, both between itself and its customers and between a customer and another client". A regulated entity should disclose to the consumer any arrangements or contracts between itself and a service provider and any costs associated with those arrangements/contracts.

We would also wish to see a specific inclusion referring to Unfair Contract Terms.
In the UK, The Unfair Terms in Consumer Contracts Regulations 1999 specify a number of terms that would be deemed as unfair by the FSA and the OFT. We would suggest that the unfair contract terms referred to within the UK regulations should be included within an amended Consumer Protection Code.

The regulator identified in themed inspections in June 2010 the following as regards 'home insurance claims'.

Home Insurance Claims

The Financial Regulator inspected the eight largest firms in terms of the number of claims processed for the inspection into home insurance claims. The firms chosen were responsible for over 98% of the claims processed during the review period.

The main finding of the home insurance inspection was that while the majority of claims are processed in line with the requirements of the Code, there were a small number of cases where claims cheques were not issued to claimants within 10 business days. The Code requires that firms pay all claims to the claimant within 10 business days of an agreed settlement as it is important for consumers payment is made promptly.

It was also found that some firms are moving to a process where claims can only be settled using the firms' approved repairers. Firms are expected to satisfy themselves that their use of approved repairers is consistent with the Code and where firms intend using approved repairers, they must ensure that consumers are aware of this at the time of entering into an insurance contract. There are also concerns that as the claimant is not an expert, a claimant should not have to sign a document for the insurer attesting to the quality of the work completed or to give a view on whether it was completed in accordance with the scope of the work, as per the firms' specifications. Firms should make it clear to claimants that where the firm appoints a repairer, the firm is ultimately responsible for the work undertaken.

The Financial Regulator has recommended that firms write to claimants when a payment is made to builders or other similar third parties, to inform claimants of the amount paid in respect of their claim, as this could impact on their future premiums.

We would expect that if a firm wants to use an approved repairer that the firm should write to the claimant before the work is carried out detailing the scope of work that has been approved and the cost. This will give the claimant an opportunity to know what the cost of the claim impact is to be on their policy and whether they agree to have some unknown contractor undertake work to that value done in their property.

Whilst the payment deadline of 10 working days is embodied within the Consumer Protection Code it is our contention that the code should be expanded to include the following;

"The consumer/claimant has the right to appoint his/her own service provider on the proviso that the costs are reasonable and agreeable to all parties concerned and that the service provider is competent".

There are a lot of points contained above that should be detailed into any revised CPC to recognise the consumers rights and protect them more fully at the time of a claim when they are in the most vulnerable position and when the inequality of the relationship inevitably gives rise to a dominant position and the risks of an abuse of power by the regulated entity.

Joint Submission compiled by and/or endorsed by the following Loss Assessors:

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