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Re: Themed Inspection into Third Party Personal Injury Claims

Dear

During 2011 the Central Bank of Ireland (“Central Bank”) undertook a themed inspection project in relation to the processing of third party personal injury claims by non-life insurance companies. The purpose of this letter is to provide you with feedback in relation to the findings of the themed inspection. We hope that it will be of assistance to you in developing and ensuring your own firm’s compliance. It is important that you consider the issues set out below and their relevance to your firm.

Initially, 25 insurers were identified for participation in the Third Party Personal Injury Claims theme and each of these insurers was requested to submit information to the Central Bank regarding claims that were closed in the period 1 April - 30 June 2010. Of the 25 insurers who were contacted, 18 were able to provide information, whilst the remaining 7 insurers indicated that no third party personal injury claims had been closed by them in the defined time period. We would like to take this opportunity to thank you for your co-operation in relation to this work.

Desk Top Analysis - Findings

An analysis of the data provided by the 18 insurers that had closed third party personal injury claims during the period 1 April - 30 June 2010 revealed the following findings:

- A total of 6,672 third party personal injury claims where a settlement was made were closed in the defined period.
- Of the 6,672 third party personal injury claims that were closed:

- 39% were settled without referral to the Injuries Board.
 - 9% which were referred to the Injuries Board settled during the interim period prior to an assessment being completed by the Injuries Board.
 - 15% were assessed by the InjuriesBoard.ie and the assessment award was accepted by both insurers and claimants.
 - 7% were settled after rejection of the InjuriesBoard.ie assessment but before the initiation of litigation.
 - 22% were settled following initiation of legal proceedings.
 - 6% were settled on the steps of the court.
 - 2% were settled following a court award.
- 24% of the total cost of all third party personal injury claims closed in the defined period was attributed to legal costs.
 - 42% of the third party personal injuries claim settlements were closed within 12 months of the claim notification date.
 - 20% of claims were closed within 3 months. Whilst the Central Bank is aware that some claims maybe more straightforward than others the Central Bank would expect all insurers to make every effort to establish the prognosis of an injury before making any settlement offer.

The Central Bank is not making public any of the insurer specific claims data previously provided. However the above industry wide statistics will be made public.

On-site Claim File Review - Findings

During the course of the themed inspection 11 on-site inspections were undertaken during May, June and July 2011 at which a total of 418 third party personal injury claim files, which included Motor, Employer and Public Liability claims, were reviewed.

The inspection indicated that insurers were, in general, processing claims in accordance with the Consumer Protection Code, however a small number of areas of concern are being followed up with the relevant insurance firms.

The findings of the review are as follows:

- A sample of third party personal injury claim files were selected for review and assessed against the InjuriesBoard.ie Book of Quantum and the Consumer Protection Code. The files reviewed indicated that settlement payments made by insurers varied according to injury type and level of seriousness of injury, but were spread across the appropriate settlement ranges as set out in the Book of Quantum.

For claimants who chose to refer their claim to the InjuriesBoard.ie and accepted their assessment it was noted that the assessment award was higher than insurers last recorded offer. Claims that were settled following assessment by the InjuriesBoard.ie took on average 20 months from the date of notification to the insurer to the date of claim payment. For claims assessments that were made by the InjuriesBoard.ie and subsequently rejected, it was noted that the ultimate settlement was higher than the InjuriesBoard.ie assessment. It was noted that claims which were settled following litigation took between 12 and 60 months from the date of notification to the insurer to the date of claim payment.

The varying differentials between the insurers last recorded offer and the InjuriesBoard.ie assessment award was mainly attributed by the insurers to the InjuriesBoard.ie having access to more up to date and reliable medical information. However, one insurer informed the Central Bank that their differential was in part due to an issue on their claims handling system.

- In a small number of instances, it was noted that some insurers had not effected payment of the settlement amount within 10 business days of the settlement agreement being reached.

The Central Bank would remind all insurers of Provision 23 to the Claims Processing section in Chapter 5 of the Consumer Protection Code which requires insurers to pay all claims to the claimant within 10 business days once conditions, as outlined in the Code, have been satisfied.

- It was noted that some insurers are in the practice of issuing a settlement cheque at the same time as informing the claimant of the terms of the settlement offer.

The Central Bank would advise insurers that the revised Consumer Protection Code, which will be published later this month, includes requirements that the terms of a settlement offer must be made in writing to the claimant and that the claimant must be allowed at least 10 business days to consider the terms of a settlement offer and to communicate acceptance or rejection of the offer.

- It was noted that one insurer was unable to provide complete claim file records for a small number of third party personal injury claims that were requested by the Authorised Officers.

The Central Bank would remind all insurers of Provision 49 to the Consumer Records section in Chapter 2 of the Consumer Protection Code which requires insurers to maintain consumer records.

- It was noted that a number of insurers outsource aspects of claim processing to an outsource agent, i.e. solicitors, once a claim is involved in litigation, for example in negotiations and the discharge of resulting payment cheques.

The Central Bank would remind insurers who use such outsource agents of the obligation to comply with Provision 10 to the General Principles in Chapter 1 of the Consumer Protection Code which requires a regulated entity in all its dealings with customers and within the context of its authorisation to ensure that any outsourced activity complies with the requirements of this Code.

- It was noted that certain data provided initially by a number of insurers was either incomplete or not in the format requested by the Central Bank. Furthermore, it is apparent that some

insurers are not capturing or retaining claims data in a format that is readily accessible. It is a concern to the Central Bank that some insurers were also unable to segregate claims data detail by claimant in instances where there were multiple claimants, examples of which include the grouping of the third party and insurer's legal costs, third party settlements and property damage etc.

The Central Bank would advise insurers that further themed inspections in this area will be undertaken in the future and that requests for information will be made accordingly. As a guide, the type of information that may be requested is identified in the Appendix to this letter.

It is appreciated that not all of the issues referred to in this letter may be applicable to your institution. These findings should be brought to the attention of your Compliance Officers and we would expect that they are incorporated into the review of your institution's compliance with the Consumer Protection Code.

Should you have any queries in relation to the contents of this letter, please contact Joe Morley at joe.morley@centralbank.ie or (01) 224 4540.

Yours sincerely

A handwritten signature in black ink, appearing to read 'A. O'Brien', written in a cursive style.

Adrian O'Brien
Deputy Head
Consumer Protection Codes Division – Insurance, Investments & Intermediaries Division

Appendix

- The Policy / Claim Number
- The date that the injury occurred
- The date of claim notification
- A description of the injury i.e. whiplash to the neck/ shoulder/ back, fractured arm / leg etc.
- Details of who has made the claim i.e. the claimant, solicitor or other
- An indication as to whether medical evidence was provided by the claimant
- Details of all settlement offers that are made to a claimant and the date of such offers
- Details of how claim settlements were made i.e. direct with the claimant, after referral to the Injuries Board but without an assessment award being finalised, following acceptance of the Injuries Board assessment award, following rejection of the Injuries Board assessment award, following the commencement of litigation, following a court settlement etc.
- Details of the general damages i.e. the settlement amount paid for the injury element only
- Details of a third party's legal costs, if settled by the insurer in the settlement of a claim
- Details of the insurer's own legal costs incurred in the settlement of a claim
- Details of all special damages e.g. loss of earnings, medication, counselling etc.
- Details of any fees e.g. Injuries Board application fee, medical fees etc.
- The date that a claim settlement was reached and notified to the claimant in writing
- The date that a claim settlement payment was made
- Where applicable, confirmation that the policyholder has been made aware in writing that a claim has been paid and the impact it may have on future insurances of a similar type

This is not an exhaustive list but is intended to provide insurers with an indication of the type of information that the Central Bank may well request on future themed inspection.