

# getting cases on the books

*a view from the financial ombudsman service*

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## our role

- **independent statutory alternative dispute resolution service – not a regulator**
- **100,000+ complaints resolved last financial year**
- **14,270 insurance-related complaints (13% of all complaints)**
- **13.5% of insurance complaints concern critical illness/income protection insurance**
- **significantly greater proportion of ombudsman's decisions concern protection insurance**

## **complaints involving e-underwriting**

- **electronic submission of application forms**
  - **by customer**
  - **by intermediary**
- **tele-underwriting**
- **“instant” cover and interactive underwriting**

# opportunities and risks of e-underwriting

- **opportunities**
  - **customer preference**
  - **quicker turnaround times**
  - **easy to compare prices**
- **risks**
  - **customers don't understand what they're buying**
  - **may not understand the implications of non-disclosure**

# avoiding pitfalls of e-underwriting

- **ABI guidance**
- **consider process from customer perspective**
- **good application and process design**

## **signatures – are they necessary?**

- **robust audit trail required**
- **onus of proof on firm**
- **customer has benefit of any doubt**

## advantages of signatures

- **contributes strongly to evidential trail**
- **customers still see signing a piece of paper as significant**
- **allows customers to check details**
- **could highlight the implications of non-disclosure**

## **on-line application by customer**

- **a permanent record of the sale process**
- **product information/webpages saved**
- **proof of questions asked and answers given**
- **proof that confirmation schedule sent to customer –  
and obtain signature unless sufficient evidence  
elsewhere**



## **tele-underwriting**

- **telephone recordings provide strong audit trail**
- **scripts may be unreliable**

## **on-line application by intermediary**

- **shifting responsibility away from customer**
- **declarations and signatures**
- **lack of accountability: “but I told him that...”**

## **continuing duty of disclosure**

- **time-lag can be disastrous for disclosure**
- **warnings not clear – do all visits to doctor need to be disclosed?**
- **confusion over role of intermediaries**
- **further disclosure – letter/email to intermediary and customer?**

## **insurance by text message?**

- **yes, provided good practice/regulatory requirements satisfied**
- **however, inherent risk in providing/obtaining limited information:**
  - **may not be able to rely on exclusions**
  - **may not be able to avoid on ground of non-disclosure**

## Case study 1

- **On-line application direct by customer for household insurance – signature free**
- **Customer confirms that he has no more than 2 claims/losses in the past 3 years**
- **In fact, customer has 4 claims in the past 3 years**
- **Firm voids policy for non-disclosure**
- **Customer complains, saying he did not have time read the “small print” and was rushed into acceptance**

## **Case study 1, cont\***

- **Complaint rejected**
- **The confirmation statement that he had no more than two claims was clear and unambiguous**
- **It was not buried in the small print**
- **The complainant was not rushed – there was a facility for the quotation to be saved and submitted later**

## Case study 2

- **On-line application for life cover via intermediary**
- **Confirmation schedule asked customer to notify any changes *in writing***
- **Day before inception, customer consults GP with sore throat – immediately referred to hospital and admitted**
- **Diagnosed a week later with throat cancer – customer subsequently submits terminal illness claim**
- **Firm declines claim and avoids policy for breach of ongoing duty of disclosure**

## Case study 2, cont

- **Complaint referred to FOS\***
- **Complaint upheld**
- **Impractical for customer to notify firm of change, especially in writing**
- **Confirmation schedule gave no fax, email or telephone contact details**
- **Customer given no indication of when policy would incept**



## Case study 3

- **Telephone application for joint life/CI cover made by customer's wife**
- **Confirmation schedule records that customer never took anti-depressants**
- **Customer submits claim for heart attack – firm discovers that he failed to disclose treatment for depression**
- **Firm avoid policy and reject claim**

## Case study 3, cont

- **Complaint referred to us – call recording obtained**
- **Customer’s wife was asked “Have *you* ever taken anti-depressants” – she said no, which was true**
- **No question re customer, no warnings were given, the format of the confirmation schedule was confusing\***
- **Complaint upheld – inadvertent failure to spot error on form**
- **Proportional remedy applied – firm to pay claim as would have only excluded depression**

## Case study 4

- **On-line application for mortgage protection insurance via intermediary – face to face**
- **Customer only given declaration page to sign – no copies of health questions were printed**
- **Claim submitted for heart trouble**
- **Firm decline claim and avoid policy on basis of non-disclosure of (amongst other things) psoriasis**
- **Customer says he told agent about psoriasis but agent said it was not necessary to disclose it**

## Case study 4, cont

- In referral form, customer says he showed agent a tube of psoriasis cream because he could not spell it, and the agent admitted that he himself had had heart trouble
- Firm asked to provide statement from agent – agent’s comments imply he could not spell psoriasis and that he did suffer from heart trouble\*
- Complaint upheld - customer’s story plausible - no non-disclosure re psoriasis

# insurance at the click of a button

- books, CDs, electrical items, groceries ... and insurance?
- 18<sup>th</sup> century law meets 21<sup>st</sup> century technology
- changes on horizon
  - law commission report
  - non-contestability
- building in safeguards

**any questions?**