



osti's interns on osti's role in resolving disputes

OSTI is an independent and impartial, non-profit industry ombud-scheme. The office does not represent either party in a complaint. Instead, the office acts independently and impartially. OSTI cannot investigate or gather evidence on behalf of complainants. It will therefore not contact service providers or obtain expert reports.

The general expectation of almost every complainant in our office is that, because they are paying their premiums, their claims, which are true and honest, should be honoured by the insurers.

As a starting point, in order for an insured to have a valid complaint against the insurer, the insured is required to demonstrate that she/he has a valid claim in terms of the insurance policy. This means that the insured carries the primary burden of proving that the loss or damage claimed for falls within the scope of cover provided by the policy. In other words, the insured is required not only to allege but also to prove the claim, which involves the presentation of substantive evidence.

The onus is on complainants to provide OSTI with the evidence on which they rely to support their matters.

The outcome of a complaint is determined by weighing the version of events on a balancing scale of fairness, reasonableness and human experience to establish what is more likely or probable. This exercise is called deciding a case on a "balance of probabilities" and refers to the standard test used when deciding civil disputes.

As an ombud scheme our aim is to provide an informal and easily approachable forum for the resolution of disputes whilst using alternative dispute resolution methods. This encompasses the use of a range of different and flexible techniques that promote access to free, effective and efficient dispute resolution mechanisms. The idea of alternative dispute resolution is to provide a bridge between no redress at all, and costly and complicated court procedures.

OSTI's approach is to apply flexible standards and principles such as equity or fairness, reasonableness and human experience to the particular circumstances

of every individual complaint. This enables us to consider each matter on its own merits rather than by simply and strictly applying the law. OSTI is mandated in its terms of reference to resolve complaints using the criteria of law, and where appropriate, equity and fairness.

Our office cannot give legal advice to the parties about a specific complaint, as this would compromise its ability to act independently in resolving the dispute. OSTI is not a court of law and therefore does not conduct formal hearings in the same way a court does.

Complainants are not bound by our decisions and our decisions are only binding on the insurers. If either the complainant or insurer is unhappy with a decision by OSTI, the complainant or insurer has the option of escalating the matter in terms of our escalation process, which can be found on our website under the heading "Complaints Handling Process".

As OSTI is an alternative to the court system, it is easily approachable, has a more flexible process and our service is free for complainants. More often than not we are able to resolve matters to the satisfaction of both parties. The forum gives both parties a chance to present their case and tell their story which mitigates against the escalation of the conflict.

When policyholders submit claims to insurers they expect insurers to finalise their claims as soon as possible. Complainants have the same expectation of our office when they lodge their complaints.

Whilst OSTI has an effective complaints handling process, this can be impacted by the quality of and speed at which a complainant provides information and documentation. Complainants therefore have a significant role to play in the processing and finalisation of their complaints.

The cooperation of the insurer also has a bearing on the time it takes to resolve a complaint against it. Insurers, like complainants, are required to provide evidence to support their stances and defences on each matter.

In circumstances where the insurer avoids liability because of an exclusion or exception in the policy, the duty to prove the exclusion or exception lies with the insurer. All three parties to a complaint, namely OSTI, the insured and the insurer, play a role in how efficiently complaints are resolved.