

It pays to keep cool with insurers

KEEP cool if you want to fight back effectively when your insurance claim has been turned down or "repudiated" by your insurance company.

That advice runs through a list of pointers from short-term insurance ombudsman Michael Bennett to help consumers decide whether, and how, to challenge insurance companies.

"Contrary to popular belief, most reputable insurers do not have hearts of stone," says Bennett.

Even if the facts and the "small print" are strictly legally against you, the insurer may take a more generous view and possibly meet the claim if fairness and equity suggest it.

"It helps in this context if, from the outset, you put your case on the grounds of what ought to be fair and right, rather than trying to justify a legal contention which is just not properly arguable."

Top of Bennett's list of advice is to insist on seeing a formal letter of repudiation from the insurer.

In other words, do not just accept what the broker tells you. This applies especially when brokers act on "scheme" policies offering blanket coverage for accident, medical and funeral expenses.

ARGUS ACTION

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get confirmation that the terms of the broker's letter carry the authority and approval of the insurer.

Next, the letter must spell out the grounds on which the insurer has repudiated the claim.

"If the grounds are not clear, ask for clarity, and if you do not receive it, this is probably a good reason to approach the ombudsman or your legal advisers," says Bennett.

Read the grounds in conjunction with the policy itself, he adds.

"If you do not have a copy of the policy you are entitled to one from your broker or insurer.

"Having examined the policy and the reasons for turning you down, you must decide:

"Are the facts correct?"
"Do the facts, in terms of the policy conditions or exclusions, entitle the insurer to repudiate?"

"If not, you may well have valid grounds for complaint, but remem-

stand up against the insurer's.

"Because insurance policies are not easy to understand, where there is ambiguity the version that most favours the insurer will usually be applied by a court," says Bennett.

"The format of many policies, which seem to give with one hand in one provision, take away with another, and then give back again, does not make for easy interpretation.

"You may well need professional advice in some cases to get clear answers."

If the facts are correct and entitle the insurer to repudiate your claim, the prospects for a successful challenge are still not completely hopeless, adds Bennett.

A section in the Insurance Act says any misrepresentation must have been "material to the assessment of the risk".

If it is not, it cannot be used to justify the repudiation.

For instance, if you answered yes to the question, "are you now and have you always been in perfect

because five years ago you were treated for an ingrown toenail, it is very unlikely that the court would hold that the answer was material to the assessment of the risk.

In practice, the actual facts often may make it more difficult to say with certainty what the answer is going to be.

"If the insurer is repudiating because it alleges fraud or fraudulent misrepresentation on your part, it is much less likely that the ombudsman can help you, unless you have very strong evidence to

disabuse the insurer of its belief."

If fraud is alleged against you it is often better to take legal advice on whether to challenge the insurer

in court, says Bennett.

"Don't delay in dealing with the matter. There is probably somewhere in the policy a clause which states that if you don't institute legal proceedings within a certain period after the repudiation you are precluded from doing so thereafter. See your attorney for advice if that period may expire shortly."

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'Reputable insurers do not have hearts of stone'
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