

The CIP Society
Insurance Institute
of Canada

The CIP Society represents more than 16,000 graduates of the Insurance Institute of Canada's Fellow Chartered Insurance Professional (FCIP) and Chartered Insurance Professional (CIP) Programs. The CIP Society, through articles such as this, is working to bring ethical issues to the forefront and provide learning opportunities that enhance the professional ethics of all insurance professionals.

The Reluctant Claimant

What are the ethical considerations in a situation where a policyholder, having experienced a serious car accident, displays tell-tale signs that he just wants the claims process to be over and done. What if an adjuster responds to that vulnerability by making a settlement offer that is too low?

Insurance professionals — particularly adjusters, both company and independent — deal with all kinds of people, at times when they are most vulnerable. It may be tempting to allow a claimant's inexperience, lack of understanding or even demanding personality to influence

the claims process. But should it?

Consider the following example: After experiencing a serious car accident, a policyholder was rattled and wanted to erase any memory of the upsetting event. Constant reminders, including an impending court date for careless driving, made the client simply wish the accident had never happened. Not being a strong negotiator at the best of times, at this stage, he was particularly vulnerable.

Conversations between the client and an adjuster began soon after the accident occurred. It was quickly determined his car would be written off and a settlement offer would be prepared. Following several discussions between the adjuster and the nervous client, it became clear to the adjuster that the client was not going to reject any offer. Taking advantage of the situation (and the client), the adjuster provided an offer of settlement that was a fraction of what it should have been.

Justifying her actions, the adjuster reasoned

she was providing value to the company and its shareholders, and she felt it was the responsibility of the client to stand up for himself.

In this scenario, the client's frame of mind became a factor in the adjuster's decision-making. Under what circumstances does the client's manner, awareness or negotiating skills become factors in an adjuster's decision-making process? Did the adjuster act unethically? Are there circumstances in which a company's bonus structure, meant to help keep costs low, represents a conflict of interest for the adjuster's support of the settlement? Are there circumstances under which a situation (or a client) might merit a lower settlement?

Gavin Mascarenhas, BA, CIP

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The Dominion

The presentation of any claim should be viewed as "a time to shine" or the time to fulfill the promise made as an insurer. Protecting the interests of our policyholders and guiding them through the claims experience is the essence of our commitment to them. In this situation, the adjuster took advantage of the policyholder to reduce the amount paid.

It is the obligation of an insurer to honour the contract completely — to fully indemnify — regardless of the level of knowledge of the insured person.

The insurance contract is one of utmost good faith. Allowing a policyholder's knowledge or congeniality to influence the claim settlement amount could be considered an act of "bad faith." This would put the insurer at risk of punitive damages and certainly does very little for the reputation of the insurer and the industry as a whole.

Insurers have a responsibility to effectively manage costs to protect the shareholder interests and the premium dollars paid by policyholders. In the context of loss costs, this means paying only what is owed — no more or no less.

It would be very difficult to believe

that any insurer would have or support any agenda that would result in paying less than what is owed to any policyholder in any situation.

Any decision regarding the amount owed to a claimant should be guided solely by the obligations, terms and limitations of the contract. Assuming those have been met, the objective is to pay

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100% of what is owed, as well as ensure that the claims experience is a positive one and that everything possible has been done to restore the insured to the financial position he or she was in prior to the loss. It is as simple as that.

Darrell Mack, BAC, FCIP

Claims Manager

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In this scenario, the adjuster took advantage of the customer and this has compromised her integrity, values and trust. The adjuster has a duty to act in good faith and her actions prejudice the insured.

The adjuster must inform and treat each customer with the same level of care, regardless of the customer's status in life. The adjuster must provide the benefits to which the customer is entitled under the contract of insurance. Failure to do so is acting in bad faith.

Offering a lower settlement to save her company money, or because she can get away with it, will only damage

the public confidence in insurance companies. There are no circumstances that warrant this action.

The boss — when he or she becomes aware of the situation — should discipline, counsel and retrain the adjuster for breaching this trust and for placing the company's reputation at risk, whether or not it is exposed.

There is an old saying — if you lie for me, you will lie to me — and the same can be said about cheating or stealing. As a boss, how could I trust this employee to do the right thing next time?

Does the bonus structure create a conflict of interest? Even if not directly, the insured could perceive it as such because the adjuster's actions can result in a gain or advantage by virtue of her position. Imagine what would happen if the customer found out he was duped and decided to go to the media, or to bring a legal action for bad faith?

Business ethics are for the benefit of the customer and the employee. Employees have a responsibility to treat people fairly and with respect. Employees are expected to exercise good judgment and common sense. Employees must fulfill their duties in the best interests of the insured and the company.

This employee is a moral, legal and ethical risk to her company, and her behaviour should not be condoned by her manager or by the organization.

Miles Barber, B. Comm. (Hons.), FCIP, CRM

Executive Adjuster

Network Adjusters Ltd.

The claim adjustment involves the negotiation and settlement of the value of the car that was damaged beyond economic repair; in effect providing indemnity to the policyholder for the value of his car.

Ideally, the vehicle's value would have been appraised and the settlement parameters would have been established through reporting by the adjuster to the insurer. An independent adjuster

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receives instructions from the insurer related to the low/high ends of the settlement parameters and these should reflect the value of the vehicle given the usual considerations of mileage, age, mechanical and cosmetic condition, etc.

Although, it would not have been unethical for the adjuster to commence negotiations at or near the lower value of the settlement parameter spectrum, deliberately undertaking discussions outside these parameters would contravene the insurer's instructions and would be unethical in regards to the policyholder.

In this scenario, the naïveté of the client became a factor in the adjuster's decision-making, but delivering indemnity through the loss adjustment process should not be done in a manner that is "punitive" to the policyholder. The adjuster should respond by providing the client a detailed explanation of the adjustment process, as well as conduct an ethical negotiation of appropriate indemnity owed.

The policyholder has paid a premium for the insurance product and is entitled to delivery of that insurance product.

Claims vary file by file. They have their own attributes and nuances with respect to claim settlement value — indemnity. If there is a desire by an insurer to reduce operating costs, the most homogeneous approach would be to control costs on the expense side of claim files.

Reducing claim-handling expenses is where some form of consistent cost control, or even cost reduction, may be able to be achieved, as opposed to punitively reducing claim settlement indemnity to individual policyholders. Delivering the insurance product to the client should be at the forefront of consideration.

Tammie Norn, FCIP
CEO

Proformance Group Inc.

It is the adjuster's duty to act in utmost good faith at all times in her negotiations with the policyholder. It is unethical to take advantage of a person simply because he is unfamiliar with the system or has limited negotiation skills.

The naïveté or, on the other end of the spectrum, pushiness of a client should neither increase nor decrease the value of the claim. At claim time, the car is worth the same regardless of who the owner is.

If there are no policy exclusions or extenuating circumstances that would affect the value of settlement, then the offer should be made based on the fair market value or replacement cost of the vehicle, depending on the specific policy wording.

If the adjuster's boss adheres to the adjuster's code of ethics and acts with utmost good faith at all times, the adjuster's actions should never be justified and, in fact, should be reprimanded. In addition, the company's business objectives and bonus structure should not present a conflict of interest for the adjuster because the mandate to keep costs low spans across multiple business objectives.

The expense loss ratio is within the control of the company. For example, the adjuster can contribute to lower costs by working overtime only as needed and approved, saving on hotel costs and limiting the use of office resources, among other things.

The loss ratio can also be controlled by ensuring prompt and fair claim handling: the adjuster should investigate, evaluate, negotiate and settle her claims in an expeditious and fair manner.

An unfair settlement can lead to litigation down the road, which is extremely costly and time-consuming, and may end up damaging the company's reputation. This could result in bad publicity, non-renewals and decreased penetration in the marketplace.

LAST WORD

By (incorrectly) assuming she was providing value to her company and that the company and shareholder needs somehow superseded those of the policyholder, the adjuster acted unethically. She violated two fundamental principles of insurance contracts: good faith and indemnity.

By doing so, she not only put her own reputation at risk, she represented both her company and the insurance industry as a whole in a bad light.

When in doubt, adjusters, like all insurance professionals, have a number of ethical guidelines at their disposal. The Insurance Institute of Canada's *Code of Ethics* guides industry professionals in all roles, and is applicable to all elected FCIPs, CIPs and HCIPs.

Independent adjusters should refer to the Canadian Independent Adjusters' Association *Code of Ethics*, as well as to their respective provincial regulator's guidelines governing licensure.

In British Columbia, for example, the Insurance Council of B.C.'s *Code of Conduct* includes wording very specific to our scenario: "(All licencees) must not take advantage of inexperienced or unsophisticated insureds."

Living by example, acting in utmost good faith and practising professional ethics everyday, with everyone, will go a long way toward inspiring good faith and greater confidence from insurance consumers. ☐