



The CIP Society
Ethics Series

Note-Worthy

The CIP Society
Insurance Institute
of Canada

The CIP Society represents more than 17,000 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.

For insurance professionals, taking note-taking seriously is no laughing matter. Dealing with a difficult, demanding or even threatening claimant can be trying for claims adjusters, but professionalism and accuracy in note-taking is paramount. Failing to do so can put the impartiality and reputation of both the adjuster and the company at risk.

Over the course of their careers, insurance professionals tend to encounter a variety of people (customers, co-workers and the general public, among them). While most people are pleasant, sometimes professionals have to work with difficult personalities.

Such was the case for one particular adjuster who was forced to deal with a very unpleasant claimant. The claimant was demanding and impatient, and had unrealistic expectations about the outcome of his claim. This included both the time frame and amount of the claim.

It was becoming a concern for the adjuster because at each step of the process, the claimant threatened that if he did not get what he wanted, he would go over the adjuster's head. He even said he would go to the regulators and the press.

The adjuster felt that he and his company were acting fairly and responsibly, but simply did not want the aggravation of dealing with an unnecessarily and unwarranted escalated issue.

The adjuster sought advice from his mentor, who suggested that he take very good notes of each encounter and each step in the process. In this way, the adjuster would not have to rely on his memory later if everything went in the wrong direction.

Agreeing that this would be wise, the adjuster made copious notes of all meetings and interactions. In some instances, he would pepper the notes with brief comments, sometimes questioning the honesty of the claimant's remarks. The

Illustration by Scot Ritchie

adjuster would insert such comments as, "He's lying here" or "real jerk."

While the adjuster was away for an indefinite period because of jury duty, his company's legal department requisitioned the claimant's file because it was likely headed for court. The claimant's legal representative had an opportunity to view the file and found the supplementary and unflattering commentary.

Accusing the adjuster and the company of acting unprofessionally, the claimant's lawyer argued the comments should call into question treatment of the claimant in its entirety.

Is this accusation warranted? How could the entire situation have been prevented?

Darrell Mack, FCIP

Injury Claims Manager

Saskatchewan Government Insurance

A claims adjuster will deal with conflict and adversity many times over in his career, and handling a demanding claimant brings both challenge and opportunity. At all times, the adjuster must be a professional, including in the area of note-taking.

The insurer owes a duty to their customers and enters relationships with them based on the principle of utmost good faith, which is incumbent on both parties. Utmost good faith requires the insurer and all representatives to act fairly when investigating a claim.

Failure to abide by this principle opens insurers to claims for bad faith, including punitive damages. Plaintiffs' counsel will look for evidence of unreasonable behaviour on the part of the adjuster, including careless and prejudicial comments made about the insured.

This includes comments in letters, emails, notes and even deleted files.

If found in breach of his duty — and especially if punitive or aggravated damages are awarded — court decisions can affect the reputation and finances of an insurer.

Insurers must maintain an excellent standard of business ethics as it relates to consumer confidence. An employee's personal conduct has the potential to raise doubts about his integrity or abil-



ity to perform his job duties, and even discredit the insurer's reputation in the community.

In this scenario, the mentor gave sound advice to the adjuster to note the file. It is assumed the mentor did not guide the adjuster in proper documentation or inform that notes are legally accessible by the insured.

Is the allegation warranted? Yes. The adjuster's notes have compromised the insurer's position in the event the mat-



ter proceeds to court. The company lawyer will need to analyze the risk of taking this matter forward and provide his opinion to the claims manager.

This situation could be prevented by having a training program to help adjusters establish better note-taking skills and expectations around "dos and don'ts" for claims correspondence.

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

Executive Adjuster

Network Adjusters Ltd.

Independent adjusters are trained to take notes during claim investigations. This is both a rudimentary activity and a critical responsibility.

Comprehensive and accurate note-taking does not begin when the individuals involved in a claim adjustment first begin to disagree on an aspect of the adjustment process. Rather, it begins upon receipt of the claim assignment.

An adjuster will interact with a claimant in various ways, including in person, by telephone and by email. Some channels of communication naturally result in a record of that interaction, such as email. Where other forms of communication are involved, the adjuster should record each interaction thoroughly as that interaction occurs.

As an example, for telephone calls, the adjuster should record the date, time and length of the interaction, and, most importantly, the topics discussed.

Current technology makes the creation of file notes very easy. Most — if not all — independent adjusting firms employ some form of technology-based time management system that allows their adjusters to record daily activities on their claim adjustment files.

Like all professionals, independent adjusters are human, and as such, are subject to the myriad of emotions that everyone feels from time to time, especially when interacting with a difficult or even threatening individual.

As professionals, however, adjusters must maintain a level of composure during even the most difficult situations. That professional approach should continue when preparing file notes to

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record the interactions with claimants.

Objective records that are detailed and concise reflect an impartial attitude towards the claimant and the claim adjustment process. Subjective comments about the claimant in the adjuster's file notes are unprofessional, unproductive and a negative way of dealing with difficult situations.

The adjuster should communicate with his principal immediately when a claimant becomes unusually difficult, and especially when a claimant becomes threatening. Together, they can develop a strategic approach to handling the claim file in response to the difficult circumstances involved.

All the hours of objective professional interaction with the claimant can be lost by one simple derogatory comment in an adjuster's file notes. Keep it professional and keep it objective.

Marie Gallagher, FCIP, CRM

Branch Manager

Kernaghan Adjusters Ltd.

All good adjusters know that documenting a file with accurate notes is imperative regardless of the size or nature of the claim.

Noting the date and time of every telephone call placed or received produces a service record from which key performance indicators can be measured. This also helps circumvent a possible allegation down the road that the adjuster has not made initial contact or failed to return a call.

Three decades ago in the claims industry, there were no computers and

adjusters hand wrote all notes. Note-taking was just as important back then as it is today.

And equally as important is to record just the facts and nothing but the facts. This includes everything from comprehensive notes to quick written comments in the file.

An adjuster never wants to be put in a position of seeming prejudiced or biased if a file goes to litigation. Every file should be maintained with the idea that it could suddenly be plucked from an adjuster's drawer without notice to be used for litigation purposes.

Although the file may never end up in litigation, it is a valuable lesson to learn.

Having mentored and trained numerous adjusters, one of the first things new adjusters are taught is the need for accurate note-taking. When taking notes, they must record just the facts, and ensure there is nothing derogatory in the file notes about the person with whom they have spoken.

There may be times where adjusters will contact their principals to let them know verbally that it appears the insured or claimant will not make a good witness on their own behalf.

The information is meant as a heads-up to give them a better sense of the person they are dealing with to help with their decision-making.

THE LAST WORD

In ethical decision-making, three different approaches can help guide how insurance professionals respond to difficult situations in their workplaces,

such as the one in the aforementioned scenario.

A rules-based approach to solving ethical dilemmas involves an examination of the formal rules and principles that govern a scenario. For example, adjusters must abide by specific standards to ensure claimants are treated fairly throughout the claims process. This includes guidelines for handling claims notes.

In the scenario, the mentor should have emphasized that good notes are objective and free of personal commentary. Instead, the adjuster undermined the impartiality of the process by inserting his opinions about the claimant into the file notes.

A people-based approach to the dilemma aims to maximize outcomes for the individual stakeholders involved. This approach aligns well with the adjuster's difficult task of ensuring that the claimant and the insurer are in agreement about the claim.

To balance the relationship between the two parties, the adjuster must treat both with objectivity, even — or, perhaps, especially — when faced with difficult personalities.

Applying the situation-based approach, the focus shifts to final outcomes of the dilemma. By making comments in the notes that do not pertain to the facts of the case, the adjuster has not only upset the claimant, but has also undermined the position of the insurer in future litigation. The situation could have been prevented if the adjuster recorded just the facts — and kept his thoughts about the claimant to himself. ≡