FINANSINSPEKTIONEN

Personal injury claims handling

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Summary

FI has found during its mapping and analysis of insurance undertakings' processes and procedures for personal injury claims that the handling of personal injuries to a large extent functions well, but there is room for improvement. The outcome of personal injury claims can have a considerable effect on the injured party, and some injured parties do not have confidence for the claims handling process at insurance undertakings. Given the total number of personal injury claims, there are a relatively few complaints regarding claims handling. FI will monitor the claims handling process through its ongoing supervision and dialogue with the insurance undertakings. This will contribute to the further development of the meaning of the concept, "good insurance standards". FI also believes that there is a need for supervision to ensure independent quality assurance and greater confidence in medical advisory services.

FI was given an assignment to map and analyse whether the insurance undertakings follow good insurance standards in personal injury claims handling. FI has reviewed the processes, procedures and system support used by insurance undertakings in their claims handling, internally and in review boards, and assessed whether they function satisfactorily or there is a need for improvement. The assignment tasked FI in particular with highlighting the handling of traffic injuries, but FI does not consider there to be cause for a separate report on claims handling for traffic injuries since these processes are in general in line with the processes for other personal injury claims handling.

FI has not been tasked in either its ongoing supervision or this assignment from the Government to review individual cases. FI's position in this report is forward-looking and focuses on continuous improvement.

FI takes the position that:

- there is a need for supervision of medical advisory services in order to assure their quality and inspire confidence in them. Such supervision as minimum should include criteria for how and on what grounds doctors are selected, requirements on the doctor having the correct and adequate competence, including insurance medicine training, and questions about conflicts of interest. FI also considers there to be a need to evaluate whether the medical assessments are objective, uniform, performed on a proper basis and sufficient in scope. The supervision requires medical knowledge to assess whether a doctor's competence is correct and adequate, the assessment of a medical case is performed on a proper basis and the scope of the assessment is sufficient.

FI takes the position that:

- the review boards must consider the conflicts of interest that may arise and through its composition safeguard consumer interests. It is also important for the boards to ensure that they have sufficient access to medical competence in order to be able to decide on the claims they are handling.
- the undertakings ensuring that their system support is adapted to their operations to achieve an efficient and legally sound claims handling.
- the undertakings ensuring that claims are properly investigated. Direct claims handling and desktop assessments should not become overly simplified.
- the undertakings actively and continuously working on developing the information they provide to and dialogues with injured parties. The undertakings should provide clear and comprehensible information throughout the entire claims handling process, and material decisions should be provided in writing and with the underlying reasoning. Furthermore, all calculations should be accompanied by an explanation.
- the undertakings assuring the quality of the entire claims handling process on a regular basis, regardless of whether the claims handling is performed in-house or outsourced. This requires documented processes and procedures as well as follow-up of both.

FI will start a dialogue with the insurance industry on the basis of that set out above.

Claims handling

Claims handling is the delivery of an insurance contract. The outcome of the claims handling process can have a major impact on the injured party. It is therefore important for insurance undertakings to handle personal injury claims in a satisfactory manner. There are occasions where the insurance undertakings do not handle claims adequately or in a timely fashion. The latter applies in particular with regard to liability damages, where a policyholder’s insurance must reimburse an injured party, for example with regard to third party motor insurance, occupational injury insurance or patient insurance. A personal injury claim can be very complicated. It sometimes takes the undertaking a long time to be able to adequately assess an injury and its consequences, for example with regard to future loss of income and when children or youth are affected. The injured party bears the burden of proof for the insurance to cover the event that has occurred. If the insurance undertaking makes the assessment that it should not make a payout or that the compensation should be lower than what the injured party believes there is a right to, the process to have this right assessed can be difficult and expensive. Injured parties may therefore feel that they are being judged by the insurance undertakings.

Good insurance standards

Insurance undertakings are subject to a statutory obligation to follow good insurance standards. “Good insurance standards” refers to a qualitatively satisfactory practice that is carried out by a representative group of insurance undertakings. However, the meaning of this

concept is to some extent ambiguous, and the intention is to develop it over time, primarily through practice from FI and to some extent the insurance industry. FI's supervisor practices are to date limited in nature. However, FI can contribute through greater clarity of what constitutes "good insurance standards", for example by communicating in reports various positions FI takes in its supervision.

FI considers the standards within the industry as whole to function well, but there is a need to further develop this concept in order to be able to handle personal injury claims reliably and efficiently. FI encourages the industry to continue its work with self-regulation. If self-regulation were to prove to be insufficient, FI could take measures in its supervision and then also issue regulations and general guidelines.

Medical advisory services

A considerable portion of the criticism that has been raised by injured parties is directed to the doctors providing medical advisory services for insurance companies. Some injured parties do not have confidence in the medical assessments and question how and on what grounds the insurance undertakings select the doctors they hire, as well as how the undertakings compensate the doctors financially. It can also be difficult for injured parties to understand why the undertakings' decisions are not solely based on conclusions from the treating doctor, i.e. the doctors they have met.

The medical advisors are hired either directly by the undertakings or via medical advisory consultancy firms. Medical advisors have a different role than the treating doctor in that they express an opinion about the causal relationship and ability to function based on the medical basis in the claim in relation to the evidentiary requirements in legal proceedings. The medical advisors' opinions are only advisory, but they are often followed by the insurance undertakings and thus are a deciding factor in the outcome of the claim.

There has not been any indication that the compensation structures are inappropriate. The criticism the injured parties have raised, however, indicates that the undertakings have not successfully explained how a medical advisor – who has not met the injured party – is able to make an impartial and correct assessment of the problems experienced by the injured party and the connection between the problems and the injury. Injured parties need to understand why a medical assessment is necessary and how this assessment is performed.

Medical advisory services are a part of the personal injury claims handling process and fall under FI's supervision. However, FI does not have the correct competence to assess the handling of medical assessment in terms of, for example, whether a doctor has the proper competence for the assessment or whether an assessment is performed on a proper basis or is sufficient in scope.

Insurance undertakings assess the quality of their claims handling, but there is no independent audit. Without an independent audit to establish the fundamental quality, confidence in the medical advisory services will continue to be subject to complaints. With the objective of assuring the quality of medical assessments, and thus improving confidence in them, FI recommends that the medical advisory services be subject to special supervision. In order for it to possible to intervene, there must be an authority that is responsible for the

supervision. Such supervision as minimum should include criteria for how and on what grounds doctors are selected, requirements on the doctor having the correct and adequate competence, including insurance medicine training, and questions about conflicts of interest. FI also considers there to be a need to evaluate whether the medical assessments are objective, uniform, performed on a proper basis and sufficient in scope. Supervision requires medical knowledge to assess whether a doctor's competence is correct and adequate, whether the assessment of a medical case is performed on a proper basis and whether the scope of the assessment is sufficient.

Reviews by review boards

Injured parties who are dissatisfied with the insurance undertaking's decision, in addition to submitting a complaint internally within the undertaking, may request a review by a review board.

Injured parties have criticised some boards that are tasked with evaluating the insurance undertakings' decisions in personal injury claims. It can be unclear for injured parties how the boards function and how the injured parties' interests are safeguarded.

It is primarily traffic victims who have complained about the Road Traffic Injuries Commission's close links to the insurance industry in its governance, composition and lack of consumer influence.

The Road Traffic Injuries Commission employs two medical advisors for its assessments. An increase in the number of medical advisors at the Road Traffic Injuries Commission should lead to less vulnerability and shorter handling times for the matters that require an opinion from a medical advisor.

The results of the survey have shown that the Patients Claim Panel, due to deficiencies in the forecasts submitted by insurance undertakings, has underestimated its need for staffing. As a result, handling times in the panel have grown.

FI takes the position that the review boards must consider the potential conflicts of interest that may arise and through their composition ensure the protection consumer interests. It is important for the boards to ensure that they have sufficient resources for medical assessments in order not to jeopardize the quality of such assessments.

Review boards must have access to an accurate forecast in order to be able to calculate their personnel resources in such a manner as to handle incoming claims.

Handling by insurance undertakings

FI has noted that the claim handling periods at the insurance undertakings in general have become shorter during the period of FI's analysis, 2007–2016. However, this may have occurred to some extent at the expense of the quality of the claims handling. The analysis shows that there has been an increase in direct claims handling, which is when injured parties often do not need to show any documentation for their reimbursement requests. This type of settlement can occur without any written documentation. Desktop assessments have also increased, which is when the undertaking does not request an opinion from a medical advisor in a medical matter.

Communication with injured parties may be limited due to limited time. This also applies to the investigation itself. Sometimes a medical opinion is not obtained due to time restrictions. A development that

prioritises the speed of the handling rather than whether it is correct and uniform is not in the interest of the injured parties.

The undertakings provide information that in general is very extensive, and it can be difficult for individuals to absorb all of the information. The information is also sometimes mixed with the social insurance process's information. For example, information from the Swedish Social Insurance Agency affects the insurance undertakings' claims handling process. Changes in social insurance can have a major impact on the claims handling.

The undertakings' information should be more adapted to the individual in order to make it easier for injured parties to understand their specific claims handling process, the outcome of the process and how they can appeal a decision. This could limit both misunderstandings and complaints.

Injured parties are dependent on individual claims adjustors, whose methods for effectively providing information about the claims adjustment process may vary. It is therefore particularly important to have clear guidelines and procedures for the information provided to individuals.

System support in the undertakings is not always as sophisticated and well-developed as FI had expected. A modern, user-friendly environment with integrated and clear user support functions is sometimes missing. The analysis also shows that there are deficiencies in the follow-up of claims and statistics related to them.

There are also deficiencies in the undertakings' analysis of their claims handling processes. There must be efficient and regular quality assurance procedures in place to handle the complexity of personal injury claims and efforts to streamline the claims handling process. For example, this can apply to the follow-up of desktop assessments compared to the assessments made on the basis of a medical advisor's opinion and review statistics for these claims.

FI therefore considers there to be a need to further develop the industry's practices to ensure that personal injury claims are handled reliably and efficiently by:

- the undertakings ensuring that their system support is adapted to their operations to achieve an efficient and legally sound claims handling.
- the undertakings ensuring that claims are properly investigated. Direct claims handling and desktop assessments should not become overly simplified.
- the undertakings actively and continuously working on developing the information they provide to and dialogues with injured parties. The undertakings should provide clear and comprehensible information throughout the entire claims handling process, and material decisions should be provided in writing and with the underlying reasoning. Furthermore, all calculations should be accompanied by an explanation.
- the undertakings giving injured parties the opportunity, when relevant, to comment on the basis in the claims handling that is of importance for the outcome of the matter.
- the undertakings assuring the quality of the entire claims handling process on a regular basis, regardless of whether the claims

handling is performed in-house or outsourced. This requires documented processes and procedures as well as follow-up of both.

Capitalisation of annuities

FI considers a fixed interest rate assumption of 4 per cent for the capitalisation of annuities to be too high compared to today's low interest rates.

FI believes that the insurance industry should review the methods used for determining the interest rate and calculating the capitalisation of annuities to a lump sum. The interest rate should follow the general interest rate level more closely, and the undertakings should use generally accepted methods of calculation.