

What is a “significant breach” of the Fair Insurance Code?

June 2021

This document is designed to help the public understand how the Insurance Council of New Zealand defines ‘significant breaches’ of the Fair Insurance Code 2020.

The definition of a ‘significant breach’

Paragraph 34 says that a significant breach is a breach of any part of the code, or a number of breaches of the code, that could bring the insurance industry into disrepute, and for which there is no reasonable explanation. The code then gives three examples of circumstances which must be reported to ICNZ as possible significant breaches:

- a claim still being settled after 12 months (meaning there has not yet been any settlement agreed to,
- the handling of a claim or complaint causing serious hardship to the policyholder,
- a member not complying with the order from an external dispute resolution scheme, upholding a complaint against them.

These examples would only be significant breaches if there was no reasonable explanation for them. For example, a claim might not be settled after 12 months because the insurer is waiting for a report from a third-party such as the police, a council, or a court. This would not be a significant breach because it is out of the insurer’s control.

Not all breaches of the code are ‘significant breaches’

For example, a one-off failure by an insurer to meet the five-day timeframe for acknowledging a claim would be unlikely to be a significant breach, unless it could be shown that this delay caused loss for the claimant. It is also unlikely that a one-off, technical breach of the code such as this would bring the industry into disrepute.

However, if an insurer was consistently breaching the same timeframe in the code, then that may well be a series of breaches of the Code that have the potential to bring the industry into disrepute and could be considered ‘significant’.

Schemes interpret the code

Financial Services Complaints Ltd and the Insurance and Financial Services Ombudsman play an important role in the Fair Insurance Code process. If a complaint advances to an insurer’s external dispute resolution scheme following the internal dispute resolution process, the dispute schemes are able to make a

determination as to whether there has been a significant breach of the code, which then must be notified to ICNZ.

The other way that ICNZ becomes aware of breaches of the code is if they are self-identified and notified by one of our members. In this type of situation, there might not have been any complaints made by insureds. If ICNZ is notified of a self-identified significant breach, then our Code Compliance Committee can investigate the breach.

Some examples of significant breaches

According to the Code Compliance Committee, the following are significant breaches of the code:

- Failing to provide hundreds of insureds with their policy documentation after they took out an insurance policy.
- During the start of the Covid-19 pandemic, failing to decide whether or not to accept over a thousand claims within the specified 10-day timeframe in paragraph 17 of the code.
- Taking over a year to negotiate settlement documents for a claim, without there being a reasonable explanation for such a delay.
- Failing to respond to about 30 complaints within the 10-day timeframe specified in paragraph 26 of the code.