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New insurance laws needed to protect consumers

New laws are needed to ensure that consumers are not prejudiced by confusion in current insurance rules.

The Law Commission and the Scottish Law Commission today publish a joint Report recommending clarification of the law about the information which a consumer should tell an insurer when taking out a policy.

The joint Report includes draft legislation to replace the current law which is more than 100 years old and was designed for ship owners insuring large vessels rather than today's consumer insurance market.

Under that statute, insurers can refuse to pay out if a policyholder failed to disclose any relevant information, even if the consumer answered all questions that were asked honestly and reasonably.

The draft Bill appended to the Report will clarify a raft of existing rules and guidance employed by insurers, the Financial Services Authority and the Financial Ombudsman Service.

Under the recommendations:

- Insurers must ask questions about any matter which they wish to know in order to assess the risk being insured.
- Consumers who take reasonable care to answer insurers' questions fully and accurately can expect to have any subsequent claims paid in full. It is only if they answer questions dishonestly or recklessly that insurers are permitted to refuse all claims and retain any premium.
- If a consumer makes a careless mistake when answering a question, he or she might still be entitled to have some of the claim paid; a consumer's entitlement is dependent on what the insurer would have done had it known the true facts at the time the policy was taken out.

The Commissions' recommendations follow a detailed consultation exercise which found widespread support for the proposed changes from major insurers, insurance brokers and lawyers as well as consumer groups.

David Hertzell, the Law Commissioner who is leading the project at the Law Commission for England and Wales, said:

"Our reforms would improve consumer protection, increase consumer confidence and enhance the reputation of the insurance industry. They have the backing of consumer groups and the insurance industry."

Professor Hector MacQueen, the Commissioner leading the project at the Scottish Law Commission, said:

"Although the majority of insurers already follow industry best practice, our recommendations will require the minority to follow suit as well. We think that the clarification of the rights and duties of insurer and insured alike will reduce the number of claims which are rejected unfairly."

The Association of British Insurers, whose members provide around 90% of domestic insurance services, has confirmed that it does not oppose reform.

Nick Starling, Director of General Insurance and Health at the Association of British Insurers, said: "We are pleased that the Law Commissions' proposals to reform the law are very similar to recent codes and best practice which ensure that customers are treated fairly."

At Prime Minister's questions on 11 November 2009, Jim Dobbin MP raised an issue related to the current law. The Prime Minister acknowledged that it was an area in which a change in the law was obviously required.

Consumer Insurance Law: Pre-Contract Disclosure and Misrepresentation (Law Com No 319, Scot Law Com No 219) will be published on 15 December 2009 when the Report and a Press Outline will be available to download free of charge from the Law Commission website at www.lawcom.gov.uk/insurance_contract.htm and the Scottish Law Commission website at <http://www.scotlawcom.gov.uk/html/cpinsurance.php>.

Notes for Editors

1. The Law Commission and the Scottish Law Commission are non-political independent bodies, set up by Parliament in 1965 to keep all the law of England and Wales and of Scotland under review, and to recommend reform where it is needed.

2. For all press queries please contact:

Phil Hodgson, Head of Communications 020 3334 0230

Dan Leighton, Communications Manager 020 3334 0231

Terry Cronin, Communications Officer 020 3334 0255

Email: communications@lawcommission.gsi.gov.uk