

Press Release
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Improve remedies for late payment of valid insurance claims, say Law Commissions

In England and Wales today, if an insurance company takes a long time to pay a valid claim or refuses to pay it altogether, the policyholder can sue. But they cannot claim for any loss they may suffer because of the delay in receiving the money.

Individuals and very small businesses may complain to the financial ombudsman service (FOS), which may award compensation. But other businesses have no remedy. This is particularly harsh on small and medium businesses just above the FOS limits.

In a consultation opening today, the Law Commissions say that it is time to change the law.

As a general rule, if one party breaks a contract, the other may claim damages for any loss they have suffered, as long as it was foreseeable. Judges in England and Wales have decided that the same does not apply in insurance law. Evidence received by the Law Commissions indicates that there is wide support for reform, from insurers and policyholders alike.

The Commissions are proposing that insurance contract law in England and Wales should be brought into line with the law in Scotland and follow the principles of normal contract law. Specifically:

- an insurer's primary obligation should be to pay valid claims after a reasonable time;
- insurers who unreasonably delay or do not pay a valid claim should be liable for damages for foreseeable loss, as they would under general contract law;
- in business insurance, contract terms could be used to limit or exclude the insurers' liability to pay damages provided that the delay is due to an honest error made in good faith.

David Hertzell, the Law Commissioner leading the project for England and Wales, said:

"In this respect, insurance contract law is unfair, unprincipled and out of step with today's commercial realities. Small businesses, such as those struggling to get back on their feet after the recent riots, or after floods, are particularly vulnerable to late payment of insurance claims. We are seeking a solution that balances the insurers' need to investigate claims against policyholders' expectations that valid claims will be paid on time."

Professor Hector MacQueen, Scottish Law Commissioner, said:

“We believe the Scottish approach to damages for late payment is fair and could provide a good model for the law in England and Wales. However, we are seeking views on how helpful it would be to clarify the insurer’s duty of good faith in Scots law.”

The consultation is part of a wider review of insurance contract law, which also includes proposals to:

- extend the categories of life insurance;
- clarify the law on insurers’ remedies for fraudulent claims;
- simplify the law on policies and premiums in marine insurance.

The Commissions seek responses by 20 March 2012. The consultation paper is available at: <http://www.lawcom.gov.uk> and <http://www.scotlawcom.gov.uk>

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 more details on this project, visit the Insurance Contract Law project pages on <http://www.lawcom.gov.uk> or <http://www.scotlawcom.gov.uk>.
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