



Press Release – Embargoed until 00:01 on 24 March 2010

Law Commissions consult on insurance law reform: should insurers pay damages for late payment?

If an insurance company refuses – or takes a long time – to pay a valid claim, a policyholder can sue. But they can't claim for any loss they may suffer because of the delay in receiving the money. That is how the law stands in England and Wales.

With today's launch of their consultation on Damages for Late Payment, the Law Commissions are asking whether it is time for a change. Should English law:

- be brought into line with the law in Scotland and other common law jurisdictions, where policyholders can make such a claim, and
- follow the principles of normal contract 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. But judges in England and Wales have decided that the same does not apply in insurance law.

The paper also looks at an insurer's duty to act in good faith. It asks whether the law should spell out that insurers should, for example, investigate claims fairly, and give reasons for rejecting claims. It also asks whether a policyholder should be entitled to damages if an insurer breaches its duty of good faith.

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

“In this area, English law is out of step with today's commercial realities. We are seeking a solution which balances the insurer's need to investigate claims against the policyholder's expectation that valid claims will be paid on time.”

Professor Hector MacQueen, Scottish Law Commissioner, said:

“We think the Scottish approach to damages for late payment is fair, and it seems to work well. However, we are seeking views on how helpful it would be to clarify the insurer's duty of good faith in Scots law.”

The Commissions seek responses by 24 June 2010. The Issues Paper, including a full list of questions, can be found on the Law Commissions' websites at:

http://www.lawcom.gov.uk/insurance_contract.htm and
http://www.scotlawcom.gov.uk/downloads/cpinsurance_issue6.pdf.

The Law Commissions intend to publish a second paper later this year, looking at the policyholder's duty to act in good faith.

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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. More details on the Law Commissions' project can be found at:
http://www.lawcom.gov.uk/insurance_contract.htm, and
<http://www.scotlawcom.gov.uk/html/cpinsurance.php>
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