

NOT FOR PUBLICATION OR BROADCAST

BEFORE 00.01 17 July 2007

How do we make insurance contract law clear, up-to-date and fair?

The Scottish Law Commission and the Law Commission of England and Wales today open a consultation on modernising the law relating to insurance. The provisional proposals largely focus on misrepresentation and non-disclosure and explore the issues around what happens when claimants make mistakes in application forms.

The current law dates from 1906, a time when private insurance as we know it today was the preserve of the wealthy few. Today the insurance industry is a huge business and an integral part of our personal lives.

The industry, aware that the 1906 Act is outdated and inappropriate to a modern consumer market, has compensated with codes of practice. Regulation by the Financial Services Authority (FSA) and the dispute resolution service provided by the Financial Ombudsman Service (FOS) have also mitigated the harsh effects of the law. Whilst well intentioned, this is confusing for all parties. The law says one thing, the FSA rules require another and the FOS reaches decisions based on a third. This also leaves gaps in protection, and has little impact on business insurance.

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

“We have sought to bring insurance law up-to-date to reflect the reasonable expectations of insurers, policyholders and intermediaries. Our overriding objective has been to achieve fairness between both parties to an insurance contract, whilst recognising different levels of information about the insured risk and different bargaining strengths. We encourage all those interested in the future of the insurance industry to tell us what they think.”

The Commissions' proposals distinguish between business and consumer policyholders. For consumers, they largely reflect the FSA rules and FOS guidelines. A clear distinction is made between those who act deliberately or recklessly, those who act carelessly and those who act reasonably. In short, the proposals are tough on fraudsters, take a proportionate approach to those who acted carelessly, and provide proper protection for those who acted reasonably. A more detailed explanation of the proposals, using examples of real cases from the FOS, is available on the Commissions' websites together with the Consultation Paper

itself (Insurance Contract Law: Misrepresentation, Non-Disclosure and Breach of Warranty by the Insured) and a Summary of the Consultation Paper.

A similar suggestion is made for business policyholders although for them it would operate as a default regime, leaving the parties free to opt out.

The consultation closes on 16 November 2007.

Notes for Editors

1. The Scottish Law Commission and the Law Commission of England and Wales are non-political independent bodies, set up by Parliament in 1965 to keep the law of Scotland and of England and Wales under review, and to recommend reform where it is needed. The Law Commission is leading this joint project. The lead English Commissioner is David Hertzell. The lead Scottish Commissioner is Colin J Tyre QC.
2. For further details on this project visit <http://www.scotlawcom.gov.uk/html/cpinsurance.htm> or http://www.lawcom.gov.uk/insurance_contract.htm
3. A press conference will take place IN LONDON at the offices of the Law Commission which are at Conquest House, 37-38 John Street, Theobalds Road, London WC1N 2BQ on 17 July at 11.30 am.
4. To respond to the consultation email commercialandcommon@lawcommission.gsi.gov.uk . A response sheet, which can be used by anyone wishing to participate in the consultation process, is available on the Law Commission's website.
5. For all press queries please contact:

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