

Subject: Reform of insurance contract law for consumers

Note of key matters:

Attendees:

Presenters	APPG	Others
David Hertzell, Law Commissioner Shradha Malkan, ABI Policy Adviser - Regulation	John Greenway Baroness Turner Lord Hunt	David Worsfold David Morey (PwC)

1. Law Commission briefing

David Hertzell briefed the Group regarding the background to the review of consumer law carried out by the Law Commission (in conjunction with the Scottish Law Commission), where the process had got to and where it was going from here. Key points were:

- The review has so far looked at the pre-contract stage (and not yet at the post contract stage) and included mis-representation and non disclosure by consumers, warranties and related terms and the role of intermediaries.
- The consultation on insurance law as a whole attracted over 100 responses from a wide range of interested parties including associations, consumer bodies and lawyers and is seen as representative of the marketplace. Most respondents are supportive of change, including insurers.
- The current law, which dates to the Marine Insurance Act 1906, is arguably out of date for today's world, and regulatory bodies have to rely upon other interpretations (e.g. the FSA's rules and principles, such as Treating Customers Fairly, and FOS cases etc).
- It is thought that the existing law is seen as unfair and there is an element of consumer mistrust of the insurance industry, as well as incidences of claims fraud arising as a consequence of this mistrust.
- The current situation is potentially confusing in that aspects of insurance law suggest the insurer can avoid a claim, the FSA's rules provide a further set of frameworks and the FOS bases its decisions on fairness. This mix of arrangements is not seen as sensible as a basis for issuing insurance contracts. In addition, in many cases, the law is now out of line with good insurance practices. As such there is wide support for the reform of the law.
- In undertaking its review, the Law Commission has had regard to comparative information from other jurisdictions, FOS cases and what insurers adopt as good practice.
- Key conclusions include:
 - There should be a mandatory regime (i.e. update the law) to ensure that honest and reasonable consumers get a fair deal such that claims are paid even where there has been an honest mistake at the pre-contract stage
 - As regards the insurance application process, consumers should be expected to act as reasonable consumers in the circumstances
 - Consumers should only be required to provide information to the extent it is asked for

- If an error is made and the consumer had been honest, the claim should be paid; if the consumer had been careless, then the insurer should treat the consumer as if the truth had been known at the point of contract conclusion (e.g. consumer's claim would be paid on a proportional basis); if the consumer was dishonest, then the policy should be voided.
- The Law Commission believes that, following reform of the law, insurers will be able to take the high ground and the reformed law will provide a legal framework for regulators.
- In response to a question, David Hertzell confirmed that responses from lawyers generally agreed with the consumer law reforms. However, their focus was more on business law issues.
- As regards next steps, the Law Commissions are meeting later in June and in early July to ratify the approach; subsequently work will be needed to draft a bill for Parliament.

2. ABI view

The ABI believes that the Law Commissions summary provides a good starting point for discussion and, whilst content to work with the Law Commission to progress recommendations, is concerned that reform may be unnecessary and duplicative. It feels that there is already ample consumer protection through FSA regulation and FOS, such that it may not be necessary to legislate. It notes that TCF is already driving necessary improvements.

3. APPG's view

- The APPG believes that the current arrangement whereby there appears to be an over reliance on the FOS as a referee on fairness, the case for law reform is persuasive.
- The APPG believes that reform of insurance law that delivers improved and consistent consumer protection, clarifies areas of uncertainty and provides a level footing for contract interpretation is a good thing, consistent with the aims of principles based regulation and FOS's approach to fairness.
- The Group is encouraged that there appears to be a good level of support amongst insurers for reform.

The Law Commission agreed to provide the Group with a copy of its draft bill relating to Unfair Terms in Insurance Contracts which was published in 2005.

DL Morey

11 June 2008