

Priorities in Consumer Protection: Consumer Insurance Law & Regulation

(14.30pm, 17 July 2012, London)

I would like to try and help set the scene for our discussion this afternoon, by mapping out some of the key challenges for the UK insurance industry, from the perspective of the **Financial Services Consumer Panel**.

First, the good news. Excellent progress has been made thanks to the work of the Law Commission and the Scottish Law Commission.¹ The *Insurance Contract Law Project* is the biggest legal shake-up in the sector since the 1906 Marine Insurance Act, and is a breath of fresh air for UK consumers.²

We have the **Consumer Insurance (Disclosure and Representations) Act 2012** coming into force next year.³

Removing complex layers of case law, guidance and voluntary codes on the consumer's duty to volunteer pre-contractual material information will provide greater clarity, and certainty, for both consumers and the industry.

Discovering that you are not covered by a policy due to a technicality can be devastating for anyone; and the new duty on consumers to

¹ <http://lawcommission.justice.gov.uk/areas/insurance-contract-law.htm>

² <http://www.hm-treasury.gov.uk/8932.htm>

³ <http://www.legislation.gov.uk/ukpga/2012/6/contents/enacted>

take reasonable care not to make a misrepresentation, which induces the insurer to enter into the contract, is fair and reasonable.

Likewise, the forthcoming Bill to amend the law on post contractual duties provides a welcome opportunity to update and improve a variety of technical aspects of insurance law.⁴

If I can highlight just a few opportunities that the Consumer Panel has identified for positive change or clarification in this second round of law reform:

- We support the case for policyholders seeking damages for late payment of claims – and we would like to see this extended to cover all claims wrongfully rejected;
- We are against the exclusion of liability for the late settlement of claims made in good faith; and
- The Consumer Panel supports the right of consumers to claim damages for distress and inconvenience where the insurer is in breach of contract;

Now for the more challenging news.

General insurance might not be '*high ticket*', but in the UK almost 20 million of us have contents insurance, 16.5 million have buildings insurance and almost 30 million vehicles have motor insurance. It's vital for consumers to have access to good, affordable insurance that pays out in critical or stressful times in people's lives.

⁴ The second part of the Insurance Contract Law Project:
http://lawcommission.justice.gov.uk/docs/ICL_project_flowchart.pdf

While payment protection insurance has taken much of the limelight of late, albeit as a *fallen diva* of the industry, we believe it's time to shine the spotlight on general insurance. We recognise the ever-increasing pressure on the industry, but it's important for the industry to be sustainable and deliver value for money products.

General insurance enhances people's lives, yet prices have escalated. Car insurance premiums have risen by 50% in the last two years, while the cost of buildings insurance increased by 14% in a similar time frame.⁵

Price is now the *Holy Grail* of the industry, but at what cost? Have products been '*hollowed out*' with less quality, more exclusions, caveats, hidden charges and an erosion of access?

Price comparison websites are a fantastic innovation for consumers, but they are largely unregulated and a focus on price alone can arguably lead to poor outcomes for consumers. And what of their funding arrangements and potential commission bias?

The European Supervisory Authority, EIOPA, is taking a keen interest in price comparison websites across Europe and its overview of consumer trends noted that there were 'significant drawbacks' to the use of comparison websites by consumers. ".⁶

⁵ <http://www.moneysavingexpert.com/news/insurance/2012/01/car-insurance-up-50-in-two-years>

⁶ https://eiopa.europa.eu/fileadmin/tx_dam/files/publications/reports/EIOPA-CCPFI-11029_Overview_of_Consumer_Trends_20120201.pdf

Other challenging areas include the withdrawal of protection – and hot topics include cover for flooding, and pet insurance. On flooding the industry is working hard for a solution, yet consumers need to be reassured that costs will not simply be added on an arbitrary basis, nor that they will not be treated as a crude postcode lottery.

Genuine transparency and fairness is needed. Equally, it's not fair to off-load systemic problems with flood defence to the insurance industry.

Insurance complaints are on the rise – a 16% year on year increase excluding PPI – with over 636,000 complaints for general insurance and pure protection in 2011.

All of the these factors have led to the **Financial Services Consumer Panel** deciding to treat general insurance as a priority area for work and research over the next 12 months. **Fundamentally, we need to think about the shape and type of market we want to have in the future.**

Should there be question marks about the value of certain products – identity theft insurance, and card protection insurance, for example?

Finally, before we get the chance to debate these issues more widely, I would like to conclude with a few observations on the **Insurance**

Mediation Directive (IMD2) Revision.⁷ The goal here is to upgrade consumer protection in the insurance sector by creating common standards across insurance sales, and ensuring proper advice.

We very much welcome the aims of IMD2 as the current Directive only covers sales by agents and brokers, and the inclusion of direct sales from firms must be right in principle. The provision of clear information about the professional status of the person selling the product is welcome, as is full disclosure of fees and commission and rules to manage conflicts of interest.

We very much hope these provisions make it through the legislative process unscathed.

Articles 24 of the Revision ties in with MiFID⁸, and will require all insurance sales to be undertaken *'honestly, fairly and professionally in accordance with the best interests'* of the customer. **Who can argue against that?**

Significantly, Article 25 will introduce a suitability and appropriateness test for all sales by agents, brokers, or authorised firms, including execution only, as presently drafted. We welcome these changes as a counterbalance to preventing future misselling of insurance products.

⁷http://ec.europa.eu/internal_market/insurance/consumer/mediation/index_en.htm

⁸ Markets in Financial Instruments Directive:
http://ec.europa.eu/internal_market/securities/isd/mifid_en.htm

Finally, if time permits today, we may wish to discuss the proposed ban on tying-in insurance products with non-insurance products, in relation to the consequences this would have for the UK packaged bank account market.

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