CONSUMER INSURANCE: KEY PROVISIONAL PROPOSALS WITH EXAMPLES

1.1 The case examples below are taken from our survey of final decisions made by the Financial Ombudsman Service (FOS) in disputes between consumers and insurance companies. In the examples, the strict law currently states that the insurer is entitled to reject a claim because of the policyholder's non-disclosure or misrepresentation. However, the FOS is not bound by the strict law and must decide cases with reference to what is "fair and reasonable". Broadly speaking, the Law Commissions propose to bring the law in line with the approach taken by the FOS.

1.2 Many of the complaints brought to the FOS for misrepresentation and non-disclosure relate to critical illness or income protection cover. The number of complaints about critical illness insurance is at least fifty times greater (per £1 million of premium income) than for other forms of insurance, such as contents insurance. Many complainants are therefore seriously ill when they bring their case to the FOS. Of the 190 cases we surveyed, two-thirds of policyholders suffered from some form of illness or disability and one quarter suffered from cancer.

ABOLISHING THE DUTY TO VOLUNTEER INFORMATION

1.3 At present, the law requires policyholders to disclose any information that would influence a prudent underwriter in assessing the risk. The Law Commissions are proposing to abolish consumers' duty to volunteer information. The FOS already requires insurers to ask questions about what they want to know, and the law should reflect this.

1.4 The duty to volunteer information is a particular issue on renewal, when insurers sometimes ask no questions, or may ask very general questions, along the lines of "has anything changed?".

Case 020 – the undisclosed county court judgment

When he took out contents insurance, Mr C was asked whether there were any county court judgments registered against him. At the time there were not. Two years later, Mr C renewed his contents insurance, by which time three county court judgments had been registered against him. However, the insurer asked no specific questions at renewal. Instead the form stated "we would remind you of the importance of informing us of any material changes that may have taken place since the inception of your insurance policy".

The insurer refused to pay Mr C's claim on the grounds of non-disclosure. However, the FOS found that it was not fair or reasonable to expect Mr C to know that a county court judgment would be material to an insurer. It found that the insurance company should pay the claim as it had not asked specific questions at renewal.

PROTECTING THOSE WHO ACT HONESTLY AND REASONABLY

1.5 The consultation paper aims to protect policyholders who act honestly and reasonably. This would change the law to reflect FSA rules and ombudsman guidelines

Case 073 -– numbness in the leg

Mrs R took out income protection insurance. She was asked: “have you ever had cancer, a stroke, kidney disease, high blood-pressure, multiple sclerosis, Parkinson’s disease, any condition affecting the nervous system, a heart murmur, any other disorder of the heart or any eye or ear disorder?”

Mrs R answered no. She said that she did not report occasions of numbness in her leg as she had been told it was due to a virus. She had no idea that this was connected with her nervous system. She later developed multiple sclerosis and made a claim but the insurer refused to pay on the ground of misrepresentation. The FOS found that the claim should be paid as Mrs R had answered questions honestly and reasonably.

WHERE A CONSUMER ACTS CARELESSLY, THE REMEDY SHOULD BE PROPORTIONATE

1.6 Under the strict letter of the law, when a policyholder has made a material mistake on an application form for insurance, the insurer may reject all claims. The Law Commissions are proposing to change the law to reflect ombudsman practice. The court should ask what an insurer would have done had it known the truth. If it would merely have imposed an exclusion, it should pay all claims that do not fall within the exclusion.

Case 055 - breast cancer

Mrs G took out critical illness insurance. The application form asked a wide question: “have you ever suffered from…stress, anxiety or depression, neck, back or spinal trouble…joint problems or any form of disability?” Mrs G did not disclose back pain that she suffered from following childbirth more than 5 years previously.

She then made a claim for breast cancer, which the insurer turned down on the grounds that she had not disclosed the back pain. The ombudsman found that if the insurer had known of an old back condition they would have excluded back problems from cover. The insurer was told to re-instate the policy subject to a back exclusion and to pay the claim for breast cancer.

INSURERS SHOULD BE RESPONSIBLE WHERE THEIR REPRESENTATIVES GIVE BAD ADVICE

1.7 Where a consumer buys insurance through an intermediary who gives bad advice on filling out the form, the law is extremely unclear. The Law Commissions are proposing to clarify that insurers should be responsible for the mistakes of tied agents that sell the products of only a limited range of insurers.

Case 088 – the asthma inhaler

Mr M took out a loan protection policy and a representative of the insurance company helped him to fill out the form. One of the questions was “in the last 12 months, have you consulted a doctor, specialist or other medical advisor or have you been advised to do so or have you received any treatment including current treatment e.g. tablets, pills, injections, diet?” Mr M told the representative that he used an inhaler for his asthma. The representative said that it was not necessary to disclose the asthma in answer to the question as inhalers were not mentioned in the list of treatments.

Mr M later suffered a heart attack and died. The insurance company refused to meet his claim on the grounds of misrepresentation. The ombudsman found that Mr M had given the representative the relevant information and ordered that his claim be paid.