



Scottish Law Commission

promoting law reform

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ISSUED ON BEHALF OF THE SCOTTISH LAW COMMISSION

NOT FOR PUBLICATION OR BROADCAST

BEFORE 0001 HOURS 18 JANUARY 2006

LAW COMMISSIONS REVIEW INSURANCE CONTRACT LAW

Insurance law has long been criticised for its lack of clarity, archaic rules and potential to cause unfairness to the policyholder. Some of these difficulties have been addressed by codes of practice, statutory regulation and the Financial Ombudsman Service. However, these measures are not a complete response, and the need to consider such a wide range of sources makes the position complex and inaccessible – particularly to consumers.

Example 1

When Mr and Mrs C took out a critical illness policy they inadvertently failed to disclose that Mrs C had reduced hearing caused by ear infections. Subsequently, Mrs C was diagnosed with leukaemia, which sadly led to her death. The insurer exercised its legal right to reject the resulting claim on the basis that the unconnected hearing loss had not been disclosed. Fortunately, Mr C referred the matter to the Ombudsman, who instructed the insurer to deal with the claim. Not every case of non-disclosure can be referred to the Ombudsman, and it would be more satisfactory if the underlying law produced a fairer outcome.

The law is also unsatisfactory for insurers. There is, for example, a lack of clarity on important issues such as fraud, and a perception that the rules on insurable interest are unduly restrictive and hinder the writing of legitimate business. On such issues it would clearly be advantageous to insurers if the law were to be developed to better reflect modern market practices and conditions.

Example 2

A couple who have married or entered into a civil partnership have the right to insure each other's life. There is doubt whether mere cohabiting couples have this right in the absence of any financial dependency. Some insurers will issue policies to cohabitants, others believe that such policies are void under the Life Assurance Act 1774 and illegal. This uncertainty is undesirable, particularly as

those who have bought policies may be unaware that there is any debate as to their validity.

The Law Commission and the Scottish Law Commission today published a scoping paper inviting views as to which areas of insurance contract law give rise to potential difficulties. Opinions are welcome from all perspectives – industry, consumers, regulators, lawyers, academics and others. **The closing date for responses is 19 April 2006.**

This is the first stage in a project which later will review those areas believed to be problematic and recommend reform if appropriate. The review will extend to life and general insurances, and to commercial and consumer policyholders. It has already been decided that non-disclosure, misrepresentation and breach of warranty will be considered. Other areas for review will be identified during this first consultation period.

In the second stage of the project we will consider perceived problems in the law and consult on possible solutions.

NOTES TO EDITORS

1. The Scottish Law Commission was set up in 1965 to promote the reform of the law of Scotland. The Chairman is the Hon Lord Eassie, a Court of Session judge. The other Commissioners are Professor Gerard Maher QC, Professor Joseph M Thomson and Mr Colin J Tyre QC.

2. We are inviting responses to the scoping paper by 19 April 2006. The Commissions will take the responses into account and issue a consultation paper later in the year.

3. Example 1 given above was taken from Ombudsman News, Financial Ombudsman Service Case 27/5. Details are available at: <http://www.financial-ombudsman.org.uk/publications/ombudsman-news/27/27-ins-nondisclosure.htm>

4. Further information can be obtained by contacting Mrs Gillian Swanson, Scottish Law Commission, 140 Causewayside, Edinburgh EH9 1PR (Tel: 0131 668 2131, Fax: 0131 662 4900, email: info@scotlawcom.gov.uk).

5. The paper is also on the websites of both Commissions:

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