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## **Insurance Contract Law**

### **SUMMARY OF RESPONSES TO ISSUES PAPER 6**

#### ***Damages for Late Payment and the Insurer's Duty of Good Faith***

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**This document summarises the responses to the Law Commissions' Issues Paper 6: Damages for Late Payment and the Insurer's Duty of Good Faith**

**November 2010**

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THE LAW COMMISSION  
THE SCOTTISH LAW COMMISSION

**Joint Review of Insurance Contract Law**

**SUMMARY OF RESPONSES  
TO ISSUES PAPER 6:  
*Damages for Late Payment and the Insurer's Duty  
of Good Faith***

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# NOTES

## APPROACH TAKEN IN THIS PAPER

### Describing responses

- N.1 This paper describes the responses we have received to the proposals set out in Issues Paper 6: Damages for Late Payment and the Insurer's Duty of Good Faith. We provide a short description of the current law in Part 1 and our proposals in outline throughout the document, but readers should refer back to the Issues Paper for a fuller explanation.
- N.2 This document aims to report the arguments raised by consultees. It does not give the views of the Law Commission or the Scottish Law Commission.

## COMMENTS AND FREEDOM OF INFORMATION

- N.3 We are not inviting comments at this stage. However, if having read the paper, you do wish to put additional points to the Commissions, we would be pleased to receive them.
- N.4 Please contact us:

By email at [commercialandcommon@lawcommission.gsi.gov.uk](mailto:commercialandcommon@lawcommission.gsi.gov.uk), or

By post, addressed to Christina Sparks, Law Commission, Steel House, 11 Tothill Street, London SW1H 9HL

- N.5 As the Law Commission will be the recipient of any comments, the Freedom of Information Act 2000 will apply and all responses will be treated as public documents. We may attribute comments and include a list of respondents in future response. Those who wish to submit a confidential response should indicate this expressly. Automatic confidentiality disclaimers generated by an IT system will be disregarded.

## THANKS

- N.6 Many people have devoted considerable time and resources to this project. We would like to thank all those who have sent written responses to the Issues Paper and who met us to discuss their views.

# PART 1

## INTRODUCTION

- 1.1 In March 2010, the Law Commission and the Scottish Law Commission published Issues Paper 6, “Damages for Late Payment and the Insurer’s Duty of Good Faith”.<sup>1</sup> We asked whether a policyholder should be entitled to damages where the insurer has refused to pay a valid insurance claim, or has paid only after considerable delay.
- 1.2 This document summarises the responses we received to that paper. We are currently revising our proposals in the light of these comments. We intend to publish further proposals in a joint consultation paper in Spring 2011.
- 1.3 We received 32 responses, as shown in the table below.

**Table 1: Respondents to Issues Paper 6, by category**

<i>Type of respondent</i>	<i>Number</i>
Insurers and insurance trade associations	12
Lawyers, legal associations and the judiciary	10
Brokers and brokers’ associations	3
Academics	2
Insureds and consumer groups	1
Other	4
<b>Total</b>	<b>32</b>

### BACKGROUND

- 1.4 Under ordinary contract law principles, where one party breaches a contract, the innocent party may claim damages for the loss suffered. The common law position is set out in *Hadley v Baxendale*.<sup>2</sup> The claimant must establish that the loss was foreseeable at the time the contract was made, and must take reasonable steps to mitigate that loss.
- 1.5 The English treatment of insurance contracts is out of step with these principles. In the case of *Sprung v Royal Insurance (UK) Ltd*,<sup>3</sup> an insurer failed to pay a valid claim within a reasonable amount of time, and Mr Sprung suffered a significant uninsured loss. The Court of Appeal found, with “undisguised reluctance”, that there could be no award of damages for late payment of a valid insurance claim.

<sup>1</sup> Insurance Contract Law, Issues Paper 6: Damages for Late Payment and the Insurer’s Duty of Good Faith (March 2010).

<sup>2</sup> (1854) 9 Exch 341.

<sup>3</sup> [1999] 1 Lloyd’s Rep IR 111; [1997] CLC 70.

- 1.6 The anomalous reasoning in *Sprung* arises because of the historic rule that an insurer's primary obligation is to "hold the insured harmless". An insurance contract is treated as analogous to a contract with a security firm, in which the security firm undertakes to prevent a break-in. Thus, an insurer's breach of contract occurs when the harm occurs, and the insurance payment is characterised as damages for that breach.<sup>4</sup> English law does not recognise a claim for damages on damages. Therefore, if payment is delayed, a policyholder who suffers loss has no remedy other than a claim for interest.
- 1.7 The Scottish courts have not followed the English approach. In Scots law, the insurer's obligation is characterised as a duty to pay a claim within a reasonable time.<sup>5</sup> Any delay suffered for late payment would therefore give rise to damages under *Hadley v Baxendale* principles of foreseeable loss.
- 1.8 The anomalous "hold harmless" approach is limited in its application. Life insurance is dealt with under normal contractual principles, as are policies which provide for reinstatement rather than payment for money and other claims over delay (for example, against a broker). The Financial Ombudsman Service (FOS) applies different rules to consumer disputes. The "hold harmless" approach is also not applied in any other major common law jurisdiction.
- 1.9 In the Issues Paper, we recommended reform of this area of law in England and Wales and invited consultees' views on the matter.

#### **CONTENTS OF THIS PAPER**

- 1.10 This paper is divided into four further parts.
  - (1) Part 2 looks at views on the case for reforming the law on damages for late payment, and on the two options for reform we presented.
  - (2) Part 3 discusses responses on three elements of our proposals: the duty owed by insurers; the test for good faith; and the exclusion of insurers' duties in business policies.
  - (3) Part 4 considers views on the quantum of damages, and on the approach taken by the FOS.
  - (4) Part 5 looks at consultees' views on the potential impact of the proposals.

<sup>4</sup> *Apostolos Konstantine Ventouris v Trevor Rex Mountain (The Italia Express (No 3))* [1992] 2 Lloyd's Rep 281.

<sup>5</sup> See *Strachan v The Scottish Boatowners' Mutual Insurance Association* 2010 SC 367.

# **PART 2**

## **REFORMING THE LAW ON DAMAGES FOR LATE PAYMENT**

### **THE LAW SHOULD BE REFORMED**

- 2.1 All consultees but one agreed that the law in this area should be reformed. It is noteworthy that all 12 of the insurers and insurance associations who responded thought there should be some change to the current law. As the Association of British Insurers (ABI) put it:

The ABI accepts that there is a need for reform in this area... If the insurer has declined a valid claim and has acted unreasonably, we accept that the law should be brought into line with general commercial contractual principles.

- 2.2 The British Insurance Brokers' Association (BIBA) echoed this view:

There is no justification for treating an insurance contract as different to any other contract in this respect. Consumers buy insurance to protect their possessions and businesses buy to protect their assets and liabilities. Any delay in payment can negate that protection.

- 2.3 The Bar Council argued that the existing rules were not perceived as fair:

We are conscious of the fact that we are regularly instructed in cases where clients find it remarkable that they cannot seek damages for loss to their businesses occasioned by insurers unreasonably refusing to pay insurance claims or delaying such payments.

- 2.4 Consultees pointed out that late payment could have a serious effect on policyholders, both large and small. The Association of Insurance and Risk Managers (AIRMIC) spoke for larger businesses in saying that:

Effective indemnity depends as much on the timing of payments as the adequacy of the final settlement if a business is to survive the post loss recovery period. In the event of unreasonable delays in the settlement process, there is currently inadequate opportunity for legal redress.

- 2.5 Covington & Burling noted that the current position may render English law uncompetitive internationally:

Those of our clients that have experience of both US and English Law justifiably regard English law, as it currently stands, as being excessively insurer-friendly, and therefore seek to agree, or argue for, the application of systems of law other than English law and to seek alternative fora for their disputes, other than the courts of England and Wales or London arbitration.

- 2.6 Several consultees agreed that some change was appropriate, but urged caution. The International Underwriting Association of London (IUA) commented:

The circumstances of decisions such as that made in *Sprung* lead to the conclusion that a review of the law in this area is appropriate. We note, though, that the Law Commission suggests that there has been 'limited evidence of policyholder detriment.' Thus, any proposed statutory change should be assessed in light of other potential reform options and considered against the principle of proportionality.

2.7 The Forum of Insurance Lawyers (FOIL) also urged caution:

It is essential that the rules concerning claims must allow insurers to properly investigate claims, and be in a position to challenge claims which they believe to be unfounded within a fair framework. There is a danger that the introduction of a claim for consequential loss in addition to the risks covered by the policy may make it very difficult for insurers to challenge claims, or repudiate liability for fear of disproportionate economic consequences if their decision were later found to be incorrect.

**The case against reform**

2.8 Only one consultee felt that reform was not necessary at all. Ince & Co were not persuaded the problem was more than a purely academic one.

[This proposal] has the effect of introducing, apparently deliberately, an imbalance requiring one party to act with greater scruple than the other in an adversarial situation. That is not mutual and fails the basic tests of fairness.

**TWO APPROACHES TO REFORM**

2.9 The Issues Paper presented two options for reform: to provide damages for the insurer's breach of duty of good faith (by amending section 17 of the Marine Insurance Act), and to reverse the decision in *Sprung*<sup>1</sup> and recharacterise the insurer's duty as the duty to pay a valid claim within a reasonable time ("the strict liability" approach).

2.10 Some consultees argued clearly in support of one approach and against the other. Others did not make the distinction and seemed to support both approaches. Of those who supported one approach, most offered qualified support for the "strict liability" approach and opposed reforming section 17. By contrast, four consultees supported reforming section 17 and argued against the "strict liability" approach.

**The case for "strict liability"**

2.11 Most consultees (20 of 25 who responded to the question) were in favour of reversing *Sprung*. The idea that the insurer's obligation was a duty to prevent harm from occurring was thought to be artificial and anomalous.

<sup>1</sup> *Sprung v Royal Insurance (UK) Ltd* [1999] 1 Lloyd's Rep IR 111. This is the leading Court of Appeal case which decided that an insured could not claim damages for the foreseeable effects of a late insurance payment.



- 2.12 Most consultees argued that change should not be left to the courts. This would be time-consuming and require a case to be taken to the Supreme Court. As the Bar Council commented:

We are strongly in favour of *Sprung* being reversed. Attempts have been made to do so through the courts but this has not been achieved. Our experience is that those who would wish to challenge *Sprung* do not usually have the financial means to pursue this through the appellate courts.

- 2.13 Most consultees therefore supported legislation to recharacterise the insurer's obligation as a duty to pay a valid claim within a reasonable time.

#### **The case against "strict liability"**

- 2.14 Four consultees argued against the "strict liability" approach whilst supporting reform of section 17. It was argued that delay may arise from a legitimate disagreement about the interpretation of a contract, and that an insurer who fairly and promptly investigates a claim and reasonably concludes that it is not valid should not risk having to pay damages.

#### **The case for good faith**

- 2.15 Most consultees (19 out of 23 who responded to the question) agreed that damages should be available to a policyholder who has suffered foreseeable loss as a result of the insurer's breach of its duty of good faith. However, as we discuss in Part 3, the content of good faith appeared to be more controversial.

#### **The case against good faith**

- 2.16 Ten consultees argued expressly against reforming section 17 to provide damages. For example, Herbert Smith noted:

It would be far better, in our view, to supplement the express terms of insurance contracts by an implied term, rather than burden this area of law with an extension of the duty of good faith.

- 2.17 Beachcroft cautioned that extending the duty of good faith risked the unintended consequence of creating a tort of "bad faith", leading to penal damages:

The proposed approach would mark the introduction of "bad faith" into insurance contracts. Whilst the proposals are a long way from the current position in the US, the floodgates could then open here, with damages straying from compensatory to penal and being used to force insurers to pay claims where there is no liability.

- 2.18 Consultees' views on the duty to pay within a reasonable time, and the duty of good faith are discussed in more detail in Part 3 below.

# **PART 3**

## **ELEMENTS OF OUR PROPOSAL**

### **THE NATURE OF THE DUTY OF INSURERS**

#### **The duty is not to hold the insured harmless**

- 3.1 All but two consultees agreed that the insurer's current duty to hold the insured harmless was mischaracterised. As one consultee said:

Given the objective of the Law Commission to review and reform insurance law to achieve a fairer balance of rights and responsibilities between insurer and insured, this concept has got to be high on the agenda for reform. It is an arcane and wholly indefensible concept.

- 3.2 Another consultee told us:

We find the concept of the insurer being expected, as far as legal principles are concerned, to hold the insured harmless a bizarre concept. Many experienced insurance men and women would be as astonished as we were when we discovered this to be the case. It is indefensible and is a severe impediment to the pursuit of equalisation of rights in an insurance contract.

- 3.3 By contrast, Ince & Co felt that the duty was rightly characterised at present:

[The duty to hold the insured harmless] is the correct analysis in the case of property insurance, as it is in many types of indemnity contract. It is the only analysis which provides certainty as to the accrual of a cause of action in these areas, without which both the commencement of proceedings and limitation becomes mere guesswork.

#### **The duty to pay valid claims within a reasonable amount of time**

- 3.4 Most consultees agreed that the correct interpretation of the insurer's duty ought to be the obligation to pay valid claims within a reasonable amount of time. However, there was controversy over how a reasonable time should be defined.

- 3.5 Some consultees felt that the precise definition could be left to the courts. Most consultees, however, emphasised the need for certainty. The ABI said:

We are concerned that there is the possibility for exposure to go beyond limits, for example if a claim arises from a business which due to a delay in payment has become bankrupt. These proposals therefore have implications for insurer's reserving and reinsurance arrangements.

- 3.6 Others noted that detailed reserve and capital processes placed on insurers by the Financial Services Authority (FSA) meant that it was essential for firms to assess their contingent liabilities properly. On this point, the British Insurance Law Association (BILA) suggested that it might be necessary "to sacrifice logic" for simplicity and certainty in defining specific elements of this duty.

- 3.7 Meanwhile, Swiss Re warned that “a reasonable time” might differ considerably from case to case.

Whilst it may be easy to determine whether a claim is valid in some instances (for example property), even if the quantum is unclear, this is not the case across the board. For example, catastrophe and liability claims can often take years to properly establish validity, even when the insurer is acting in good faith and following best practice. Claims must be properly investigated and issues in commercial cases are often hugely complex. It is unclear how the proposals would allow for this, unless different definitions of “good faith” were to apply in different types of claim (which would be difficult to make work in practice).

### **The need to investigate claims fully**

- 3.8 Several consultees anticipated an increase in “dubious” claims. The Lloyd’s Market Association (LMA) argued that a restrictive approach to what constitutes a “reasonable” time would impair an insurer’s legitimate right to investigate controversial claims thoroughly:

An insurer should be able to challenge a claim where it has reason to do so without “penalty” – ie a potentially disproportionate liability for consequential loss, which is not covered in the policy.

- 3.9 Several consultees argued that the time an insurer has to assess a claim should only start to run once the insurer is in possession of all the relevant information. As RGA put it:

In the US, many of the laws in the area state the time within which a claim must be paid beginning upon receipt of a “clean claim”, meaning that the clock does not begin ticking, so to speak, until the insurer is in possession of all the information necessary to assess the claim. Often, an insurer is dependent upon third parties, as well as the claimant him or herself, to provide certain information and therefore has no control over the period of time it takes to fully assess the claim.

## **GOOD FAITH**

### **The proposed guidelines**

- 3.10 We asked consultees whether legislation should include guidelines on the content of good faith. We then invited views on the suggested guidelines set out in paragraph 10.5 of the Issues Paper, which were based on FSA rules.<sup>1</sup>
- 3.11 Most consultees responded favourably to the guidelines, even if they argued against amending the duty of good faith. However, several consultees thought that the guidelines presented did not go far enough, and related merely to claims handling rather than to good faith in general. The Bar Council commented:

<sup>1</sup> See, for example, ICOBS Rule 8.1.1.

We agree with these guidelines so far as claims handling is concerned but we would wish there to be further guidelines regarding the content of the insurers' duty of good faith.

3.12 The International Underwriting Association (IUA) commented that the overall duty of good faith remained unclear. Similarly, the City of London Law Society (CLLS) did not consider the duty of "good faith" to have been sufficiently dealt with by the criteria under 10.5, which were essentially concerned with claims handling issues.

3.13 Many insurers emphasised that the elements of the test – "good faith," "fairly," "relevant circumstances," and "reasonable period of time" – needed to be defined clearly. The ABI said:

We are of the view that these reforms could cost tens of millions of pounds, or even more, if these terms are not clearly defined.

3.14 One insurer argued against the guidelines, pointing out that the FSA already issued many rules on treating customers fairly, and new legislative rules would only provide more opportunities for ambiguity and conflict.

#### ***Assessing claims "free from bias"***

3.15 In paragraph 10.5(2) of the Issues Paper we had suggested that an insurer should assess claims in a way which was "free from bias", taking into account relevant circumstances.

3.16 Several consultees argued that an insurer's assessment of a claim could never be unbiased, given the commercial reality that insurers are financially interested in the outcome of claims. The Faculty of Advocates noted that paragraph 10.5(2) had "doubtless commendable objectives" but would prove "unmanageable and costly" in practice.

#### **A test for bad faith?**

3.17 Two consultees felt that a test for "bad faith" would be more helpful than a test for "good faith". The LMA thought that "there should be a finding of 'intentional dishonesty' before it is found that the duty of good faith has been breached."

3.18 Similarly, the ABI argued that there should be clarification of "bad faith", accompanied by clear legislative guidelines and examples. While a non-exhaustive list of examples of bad faith would be preferable, it was argued that the list then needed to be sufficiently robust and not open to interpretation. They suggested a test for bad faith as follows.

"An insurer deliberately or maliciously seeking to deprive a policyholder of benefit against the relevant evidence available."

## **EXCLUDING LIABILITY FOR LATE PAYMENT**

- 3.19 We asked whether the parties to a business insurance contract should be permitted to exclude liability for breach of the duty to pay valid claims promptly. Consultees were fairly evenly divided on this issue. Almost half felt that insurers should not be permitted to exclude this liability. It was argued that prompt payment was often vital to the survival of businesses. As one consultee put it:

All insurers should be aware of the importance of cash flow and the fact that most companies are heavily geared so there is no excuse for not realising how vital the insurance will be in the event of a loss.

- 3.20 It was felt that businesses would only agree to such exclusions as a result of unequal bargaining power. The British Insurance Brokers Association (BIBA) argued:

The bargaining strengths of the respective parties within an insurance contract are not equal. Only a very limited number of very large companies would have an exclusion applied or be in an equal position to negotiate the removal of this term.

- 3.21 Covington & Burling echoed this point:

Even large corporate policyholders cannot be said to have equality of bargaining power in the context of negotiations of policy wordings with commercial insurers, who invariably display little flexibility in contract negotiations relating to basic policy terms other than premium or deductibles.

- 3.22 Many were concerned about the effect on small businesses. Professor John Birds emphasised small businesses in particular should be protected.

I do not see why, whatever its legal form, a genuinely small business, or at least one that buys direct and not through an intermediary, should not be fully protected.

- 3.23 By contrast, industry bodies and insurers mostly supported the ability to exclude the duty in business insurance contracts.

# PART 4

## QUANTUM OF DAMAGES

### LIMITATION OF DAMAGES

- 4.1 In the Issues Paper, we asked consultees whether damages should be limited to losses within the contemplation of the parties at the time of the contract, under the test in *Hadley v Baxendale*.<sup>1</sup> Most consultees agreed with this proposal.

#### The need for clarity

- 4.2 However, there was concern about the manner in which *Hadley v Baxendale* principles might extend to larger consequential losses. More widely, many consultees worried that the test would be unclear in practice, resulting in an increase in speculative claims, and potentially leading to excessively generous damages. It was important that the limitation on damages was clear and workable. Swiss Re asked:

Does the Law Commission propose that all consequent damages incurred by the insured as a result of delays by the insurer would be recoverable? How would these be monitored and approved? There may be a raft of litigation as insureds launch potentially opportunistic claims before proper guidelines have settled down.

- 4.3 We were warned to avoid or clarify references to “consequential loss.” It was pointed out that the FSA has required firms to remove references to “consequential loss” from policy terms as policyholders do not understand it.

#### Statutory limits?

- 4.4 Insurers pointed out that some losses may be out of proportion to the size of the claim. It was said, for example, that a typical mortgage payment protection claim might be in the order of £10,000. However, the consequences for a policyholder for failing to meet their mortgage commitments might run into “hundreds of thousands of pounds”. As a result, liability for foreseeable loss could become unpredictable and disproportionate.
- 4.5 Thus, most insurers argued for some form of statutory limitation on the quantum of damages. The LMA argued that if “strict liability” was introduced, this would need to be balanced out by some “control mechanisms” on consequential loss which would allow for certainty for insurers. For example, RGA suggested:

The law should contain specific elements to prove breach of good faith, and there should be a limitation on the award of any damages for breach of good faith. The limitation could be expressed as an amount not to exceed the policy sum assured, for example.

<sup>1</sup> (1854) 9 Exch 341. See para 10.8.

### **A substitute for business interruption cover?**

- 4.6 Some consultees expressed concern that if damages were not limited, the reforms could effectively provide business interruption cover for policyholders who had not purchased it. BILA, for example, warned against *de facto* business interruption cover:

For example, if the insured has bought a policy covering his business premises against the risk of fire, but has not bought business interruption insurance, and the premises are destroyed by fire but the insurer delays payment of the indemnity properly due to the insured, the insurer should be permitted to confine damages for consequential loss to matters such as increased rebuilding costs, and to exclude a loss in turnover or profit suffered by the insured for the period during which he was unable to reopen his business.

- 4.7 By contrast, Beachcroft reached a different conclusion.

We find it hard to believe that a policyholder would refrain from purchasing business insurance cover in the anticipation that (they can assert that) payment is delayed and therefore *Hadley v Baxendale* losses will be recoverable under their buildings cover. Any legislative change may, however, prompt insurers to reconsider how their covers are packaged.

### **Tortious damages should not be available**

- 4.8 In paragraph 10.8 we also asked whether consultees agreed that damages in tort or delict should not be available for breach of good faith. Four consultees supported making tort damages available, but most insurers and lawyers agreed that they should not be available.

### **Damages arising from delay in litigation should not be precluded**

- 4.9 The majority of consultees agreed that where damages would otherwise be available, they should not be precluded because they were caused by delay in the litigation process. However, three disagreed, arguing that there were no reasons why costs attributable to delays in litigation should be borne by the insurer. Beachcroft put the point as follows:

It is not possible to imagine every eventuality and we can foresee circumstances where there are considerable delays in litigation which are no fault of the insurer. These could arise from the court services, reporting obligations for money laundering or terrorism, or even incompatible claims control mechanisms in reinsurance arrangements. We are not convinced that these should be borne by insurers by way of damages.

[...] We believe that these issues should be decided by the courts on a case by case basis.

## **FINANCIAL OMBUDSMAN SERVICE**

### **The FOS approach is generally correct**

- 4.10 The FOS provides damages for distress, inconvenience, and discomfort where an insurer fails to respond promptly to a claim or at all. All but one consultee agreed that this approach was correct, though few consultees elaborated on their views. BIBA added that the approach should be enshrined in statute so that “it is a right rather than a whim.”
- 4.11 RBS Insurance felt that while the FOS approach was broadly correct, more guidance ought to be made available if the approach is to be enshrined in the law, albeit only in consumer insurance.

Whilst broadly we agree with the FOS approach on such matters, current FOS guidance on when it is appropriate to award compensation is quite broad. If the principles are to be formalised in law, then there needs to be clarity of what inconvenience is to be expected by a customer in a claim that is properly validated and investigated, and what should attract compensation.



# **PART 5**

## **IMPACT**

- 5.1 The Issues Paper welcomed comments on the costs and benefits of the proposals. Most consultees agreed that there would be relatively few successful claims for late payment. BIBA, for example, commented:

If insurers are meeting their obligations at the moment then the cost should be very little. However, those few insurers who fail in this will have increased costs incurred.

- 5.2 Similarly, the FOS said that they already provided damages for late payment in consumer and small business insurance, without undue cost:

We have been applying a remedy of damages for late payment for some time and there is broad acceptance of this within the retail insurance industry. We are not aware of any widespread concern that the costs are disproportionate to, or outweigh, the benefits of applying this remedy.

### **Costs**

- 5.3 Many consultees were concerned that a change in the law would lead to speculative claims, at least at the outset while the law remained unclear. Consultees worried that this would increase litigation and claims handling costs, which may affect premiums. As the IUA said:

The fact that the propensity for a damages remedy exists will, at least in the short term, likely lead to increased litigation and consequently increased legal and claims handling costs for the insurer, ultimately impacting premium. Should there not be suitable parameters in respect of what is a reasonable delay and definition of good faith then this short term impact will be duplicated over the longer term.

- 5.4 Furthermore, there was a danger that insurers would give less scrutiny to claims, leading to an increase in fraudulent claims. As Beachcroft put it:

If there is a knee jerk reaction by insurers so that they pay out more fraudulent claims where they simply feel they cannot be sure they have reached the necessary level of proof to be confident of success when weighing up the costs of running on to trial, surely this will increase the number of fraudulent claims.

### **Benefits**

- 5.5 Most consultees described the benefits in terms of fairness. Some consultees felt that reform would render the London insurance market more competitive internationally. The IUA noted it would lead to better claims handling:

Legislating or regulating in this area will require insurers to consider their existing claims handling procedures, which may help some insurers improve their performance.