

## Consumer Insurance Contracts

Following on from its [Consultation Paper on Insurance Contracts \(LRC CP 65-2011\) \(3rd Programme of Law Reform, Project 34\)](#), the Commission's 305 page report [LRC 113-2015 Report on Consumer Insurance Contracts](#) makes 105 recommendations for reform of the current rules in consumer insurance contracts. The Report recommends the enactment of legislation to reform and re-balance the duties of insurers and consumers. The legislation would apply to insurance contracts between insurance companies and individual consumers or SMEs with a turnover of less than €3 million. The Report's recommendations include the following.

### *Recommendations on consumer's duty of disclosure and on proportionate remedies*

The Report's recommendations to reform the consumer's duty of disclosure and the insurer's current right to repudiate liability for non-disclosure are related.

The current law imposes an onerous duty on a consumer to disclose information that a hypothetical "prudent insurer" might rely on in deciding whether to insure the consumer. The Report recommends that the law should be reformed so that the insurer would be required, by asking consumers specific questions, to identify what information it actually considers is relevant in its decision whether to insure the consumer and/or what premium to charge. A corresponding obligation should be imposed on consumers to answer, carefully and honestly, those specific questions.

The Chariot Inns case illustrates that, under the current law, where a consumer has not complied with the duty of disclosure, the insurance company can repudiate liability, that is, refuse completely to pay anything out under an insurance contract. The Commission's Report recommends that this "all or nothing" approach should be replaced by a system of proportionate remedies.

This would mean that, where a consumer's non-disclosure, misrepresentation or other breaches of contract are innocent or due to negligence, insurers should not be able to repudiate all liability under the insurance contract but should be required to make proportionate payments to the consumer.

The Commission recommends, however, that where a consumer's non-disclosure, misrepresentation or other breaches of contract are fraudulent (that is, where made intentionally or recklessly), the insurer's right to completely repudiate liability should remain. There must be clear provisions within our laws which will deter fraudulent insurance claims.

### *Recommendations on insurance warranties (including "basis of contract" clauses) to protect consumers from unfair and unjust outcomes*

Warranties in insurance contracts are special terms or conditions that permit a party to an insurance contract (usually the insurer) to repudiate the contract and refuse to meet the claim if the particular provision (the warranty) is breached. They include any statement made by a

consumer which the insurance policy states is the “basis of the contract” between the consumer and the insurance company.

This means for example that if a consumer wrongly “warrants” that a particular type of burglar alarm has been installed (or states will be the “basis of the contract”) and the premises subsequently burns down as a result of faulty electrical wiring, the insurer will probably be entitled to repudiate liability under the policy even though there has been no connection between the breach of warranty (the absence of a burglar alarm) and the event giving rise to the claim (a fire).

The Commission recommends the abolition of the concept of warranties in consumer insurance contracts and their replacement with statutory rules that will enable insurers to continue to include provisions in contracts that (a) precisely identify or define the risk insured and (b) protect consumers from the unfair and unjust effects of the current law.

*Recommendation to permit third parties intended to benefit under an insurance contract to make a direct claim against the insurer*

The privity rule can make it difficult (and sometimes impossible) for third parties to obtain the benefits to which they should be entitled under certain insurance contracts (such as public or employer’s liability contracts).

The Commission recommends in the Report that third parties should be allowed to bring claims directly against insurers where that is necessary and appropriate; that they should be able to pay any excess under a policy where this is required to proceed with a case; and to obtain relevant documentary and other information directly from insurers where that is required.

*Recommendation on subrogation in family and close relationships*

Subrogation (which means substitution) entitles an insurer to “step into the shoes” of its policyholders in order to provide indemnity and secure its own rights as insurer. In road traffic claims, subrogation allows insurers to defend or settle claims made against their policyholders and then to initiate claims in the names of those policyholders in order to recover some or all of the compensation. The Report does not make any recommendation to reform this application of subrogation.

However, subrogation can give rise to some difficulties in insurance claims involving family and close relationships. For example, if a homeowner makes an insurance claim for damage to a dwelling caused by the carelessness of a visiting relative or close friend, subrogation entitles the insurer to bring a claim against the offending (and possibly uninsured) relative or friend in the name of the insured homeowner. This may result in unfair pressure being placed on the insured homeowner by an insurer not to make an otherwise perfectly valid claim for compensation. To avoid this, the Report recommends that subrogation should not be permitted in such cases.

Other recommendations

Among the other recommendations in the Report are:

- insurers should be required: to provide consumers with plainly written documents containing the essential terms of the contract; to provide clear warnings of the consequences of non-compliance with the statutory duties proposed in the Report; and to provide consumers with policy documents as soon as possible after the contract has been completed.
- there should be a duty on consumers to pay premiums within a reasonable time and a duty on insurers to handle claims and complaints promptly and fairly.
- the general statutory provisions on unfair contract terms should be suitably adapted to consumer insurance contracts (including that insurance contract terms will not be deemed unfair where they have actually been considered by the insurer in the calculation of the premium and where they have been drawn to the attention of the consumer).
- the requirement that a consumer must have an “insurable interest” in the risk being insured (on which the law has been described as an “illogical mess”) should be abolished, and there should instead be a rule that the consumer should simply be asked to prove what actual loss has been sustained when a claim is made.