

Consumer Insurance (Disclosure and Representations) Bill

Briefing from the following organisations:

	<p>Age UK has a vision of a world in which older people flourish. We aim to improve later life for everyone through our information and advice, campaigns, products, training and research Contact: Jane Vass – 020 3033 1475, Jane.Vass@ageuk.org.uk</p>
	<p>British Heart Foundation is the nation’s leading heart charity. We are fighting against heart and circulatory disease – the UK’s biggest killer – and striving to create a world where people do not die prematurely from heart disease. Contact: Katie Chruszcz - 020 7554 0157, chruszczk@bhf.org.uk</p>
	<p>Consumer Focus is the statutory independent watchdog for consumers across England, Wales, Scotland, and (for postal services) Northern Ireland. Our role is to represent the interests of consumers, particularly those who are disadvantaged. Contact: Jill Johnstone 020 7799 7996, jill.johnstone@consumerfocus.org.uk</p>
	<p>Macmillan Cancer Support improves the lives of people affected by cancer. We provide practical, medical and financial support and push for better cancer care. Cancer affects us all. We can all help. We are Macmillan. Contact: Mike Hobday - 020 7840 4648, MHobday@macmillan.org.uk</p>
	<p>The MS Society is the UK’s largest charity for people living with MS, with approximately 38,000 members and 290 local branches. Our mission is to enable everyone affected by MS to live life to their full potential and secure the care and support they need, until we ultimately find a cure. Contact: Laura Weir, 020 8438 0998, lweir@mssociety.org.uk</p>
	<p>The Trading Standards Institute is a professional membership association formed in 1881. It exists to promote and protect the success of a modern vibrant economy, and to safeguard the health, safety and wellbeing of citizens by enhancing the professionalism of members in support of empowering consumers, encouraging honest business and targeting rogue traders. Contact: Suzanne Kuyser – 01268 582206, suzannek@tsi.org.uk</p>
	<p>Peter Tyldesley teaches insurance law at the University of Manchester and is Senior Research Fellow in Insurance Law at St Mary’s University College in Twickenham. Contact: Peter Tyldesley - 07973 210210, peter.tyldesley@manchester.ac.uk</p>
	<p>Which? is a consumer champion. We work to make things better for consumers. Our advice helps them make informed decisions. Our campaigns make people’s lives fairer, simpler and safer. Our services and products put consumers’ needs first to bring them better value. Contact: Lucy Widenka - 020 7770 7545, Lucy.Widenka@which.co.uk</p>
	<p>UNLOCK, the National Association of Reformed Offenders, is an independent charity led by reformed offenders. We run campaigns, develop projects and provide information and advice to overcome the economic and social exclusion and discrimination which prevents reformed offenders from re-integrating into society. Contact: Julie Harmsworth - 01634 247350, julie.harmsworth@unlock.org.uk</p>

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We urge Committee members to lend their support to the Bill in its current form.

Our support

We support the reforms contained in the Consumer Insurance (Disclosure and Representations) Bill, and believe that the fairer law and increased clarity and protection it will introduce will benefit both consumers and insurers. There are other aspects of consumer insurance law where reform remains highly desirable, but we are supportive of the parliamentary procedures to which this Bill has been subject, and do not suggest that the Bill should be amended or its implementation delayed.

The Bill in its current form enjoys broad support from a range of interested parties consulted in its development, including regulators and key industry bodies such as the Association of British Insurers and the Chartered Insurance Institute. It is a practical and worthwhile measure also supported by consumer and medical charities, insurance experts, and the forward-looking parts of the industry.

Amendments would put this consensus at risk. The Law Commissions are continuing their work in this area and we suggest it would be preferable for further legislation to be contemplated once their detailed research and consultation processes have been completed.

What is the Bill about?

The Bill will reform the rules on pre-contractual disclosure and representations and basis of the contract clauses in consumer insurance. Based on various commercial cases dating back to the 18th century and the Marine Insurance Act 1906, the current law was designed for the negotiation of contracts between two expert parties. It is out of date, unclear and unfair, and has proved to be unfit for purpose in the consumer context. This is unsurprising as it was largely settled in early commercial insurance litigation, long before modern mass-market consumer insurance policies existed. The result is a legal regime that provides insurers with excessive remedies that can be extremely detrimental to consumers. It places unreasonable demands on consumers and then punishes them disproportionately when they fail to meet the required standard.

Few consumers have the expert knowledge required to understand what information they are obliged to volunteer under the duty of disclosure or why. Industry best practice therefore requires insurers to ask clear and specific questions about relevant matters that would affect their decision on whether to provide insurance cover, and on what terms.

The proposals reflect industry best practice and the approach of the Financial Ombudsman Service. The Bill will bring the law into line with best practice by abolishing the duty of disclosure and replacing it with a statutory duty on the consumer to take reasonable care not to make any misrepresentation. Consumers will need to answer an insurer's questions fully and honestly, but will not be penalised for honest and reasonable mistakes. An insurer can only refuse to pay out in full if a breach of the statutory duty is deliberate or reckless, or if it is careless and the insurer would not have offered cover had it known the true position. In other cases of carelessness a proportionate approach will be taken.

Why is legislative change important?

We are particularly concerned by some of the medical cases we have seen where consumers who have made prudent provision against ill-health find their cover fails, on unfair grounds, when most needed. The Law Commissions highlight the case of a woman diagnosed with leukaemia, whose critical illness claim was rejected. Her insurer avoided the policy as she had innocently failed to disclose unrelated recurrent ear infections. We do not suggest that all insurers behave in this manner, but those that do not only inflict injustice in individual cases but also damage the reputation of the industry as a whole. Inevitably this has the unfortunate effect of reducing consumer confidence in the value of insurance.

Such reform is not an unprecedented step but is based on lengthy consideration of need for change and developments in good practice. In 2005 the Financial Ombudsman Service published guidance indicating that it would not support insurers who sought to rely on non-disclosure. This has caused no difficulties in practice, and indeed the better insurers have already adopted the Ombudsman's guidance on the issue. Reformed law will bring all insurers into line and will enable consumers to seek redress through the courts where a case falls outside the jurisdiction of the Financial Ombudsman Service.

We hope you will be supportive of the Bill in its current form, and we are happy to provide more detailed evidence on any aspect of the Bill should it be of assistance to the Committee.

For more information,
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