

Submission

Review of insurance contract law Submission

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Submission on discussion document: Insurance contract law review

Your name and organisation

Name	s 9(2)(a)
Organisation	Private citizen

Regarding consumers' disclosure obligations

Were you aware of your general duty to disclose all material information when applying for insurance, and that the duty goes beyond the specific questions you are asked in your application for insurance?
<i>No. To what degree and range are you suppose to know that something may or may not be relevant. The average citizen is not trained and what may be relevant or material to an insurance company may not be obviously relevant to me. Surely the emphasis should be on the Insurance Company to ask the correct questions and if need be revisit the issue in more depth. You cannot answer a question that hasn't been asked or has been inferred in an ambiguous manner.</i>
If you were aware of your duty to disclose material information, who informed you of this duty?
<i>It is often "glided" over or read more as an afterthought as opposed to asked as a standalone question and clarity sort by the insurer representative ensuring you are aware and understood the question fully.</i>
When applying for insurance, do you understand what material information you need to give the insurer so they can assess the risk of providing you with insurance?
<i>Again, one would assume you need to diclose the obvious but often the insurance company often have a different definition of what is material. Also, until a claim is made, what is or is not material may not be obvious and you cannot know that before the incident occurs that results in a claim and then it becomes material to the application that may have been months</i>

	<i>or in some cases years prior.</i>
	Do consumers understand the potential consequences of breaching their duty of disclosure?
	<i>No, not often and this is why accidental nondisclosure occurs. Because all the above questions the insurance companies ask are ambiguous, open to interpretation and in terms that are not spoken in everyday language by many people.</i>
	Have you ever breached your duty of disclosure? What consequences were there for you in terms of the insurance cover you were able to obtain under the policy following the breach?
	<i>Not that I am aware of.</i>

Regarding conduct of insurers

	What do you think fair treatment looks like from both an insurer's and consumer's perspective? What behaviours and obligations should each party have during the lifecycle of an insurance contract that would constitute fair treatment?
	<i>Fair treatment is all about good faith honest and equitable outcomes and peace of mind that when you make a valid claim you are not messed about, have the claim continually denied but not officially denied and have to repeatedly repeat the same scenario over and over again until either the insurance company accepts the claim or until it goes to the Insurance Ombudsman. There is no fairness or treatment in this and there is no consequence in the insurer practicing the deny, delay and hope they will go away modum operandus. For the insurance company fair treatment is having the client answering honestly, paying the premium on time and not making false claims.</i>
	What has your experience been of the claims handling process? Please comment particularly on: <ul style="list-style-type: none"> • information from the claims handler about: <ul style="list-style-type: none"> ○ timeframes and updates on timeframes ○ reasons for declining the claim (if relevant) ○ how you can complain if declined • The handling of complaints (if relevant)
	<i>Often companies deny claims and quote many paragraphs, clauses and page numbers in various parts of the policy. Some are completely irrelevant, some are clearly wrong and often the very clause that covers the claim is used as to why the claim is being denied. This generally is designed to confuse and overburden the claimant into thinking their claim is not covered when it is covered. They always threaten claimants that if they do not withdraw their claim, it will be placed on the declined claims register and this will make it hard to get insurance in future, particularly if the claimant was to shop elsewhere. They also play the time game, where updates are sparse and not to the time frame they have committed to themselves. The process for complaining about declined claims is a long drawnout process that repeats the process over and over again. The difference being, that with each stage the claim is handled by a more experienced company representative who has more training in making claims go away. The current process is four tiers before you get to a final deadlock</i>

and then you can make a claim to the Insurance Ombudsman. At any point, and it usually is at the last two stages, the company can say, "sorry, we made a mistake, your claim is covered." There is no consequence for them denying the claim multiple times, delaying the reimbursement for what can be several months in an attempt to either make the claim disappear or secure less than contracted settlement of the reimbursement of costs of repair. It would appear to me, that any misjudgment by the company, even if it is multiple times it is merely a "mistake" but if it is an error by the client, it is accidental nondisclosure and claim denied. The odds and practises are stacked in favour of the insurance company on multiple levels. Handling of complaints is done in a manner to draw out the timeframe and having it passed on to the next level is delayed with reassessing the claim and constantly asking new and and more questions at every opportunity. Patial settlements at discounted rates compared to the prescribed reimbursement in the policy are common and designed to get you to settled without the claim being accepted knowing that your are suffering from claim fatigue and have been worn down by the ongoing drawnout claims process and quite possibly out of pocket and struggling financially as a result of the drawn out process stretching over months after the original incident and in many cases having had to pay for repairs immediately and then face months of protracted time wasting and denials, delays and aspertions about people involved in the claim that their actions were deliberate and malicious only for those aspertions to be disproven or withdrawn. Often the behaviour of the insurance company is at best questionable and could be argued to be a breach of contract. The insurance companies have access to many experienced staff and easy access to legal advice whereas the average citizen has none of this. The Insurance Ombudsmans office should have staff available to assist people with claims that are being messed about and denied and delayed by the Insurance Company. This would even the playing field and help educate the average citizen about the tactics and questionable practices they are likely to face when making a claim that is initially denied.

Have you ever been sold an insurance product that was inappropriate for your circumstances? Or are you aware of this happening to others?

Yes.

Have you ever felt undue pressure from an insurer or insurance intermediary (such as an insurance broker or salesperson) to buy or renew an insurance policy?

Yes.

Regarding difficulties comparing and changing providers and policies

When considering the purchase of insurance, what sources of information do you draw upon to make your decision? (e.g. comparison websites, talking directly to different insurance providers, talking to an insurance broker or financial adviser)

Talking directly to insurance companies representatives by phone.

How long do you think you typically spend reading an insurance policy before you purchase it?

If done by phone, you are reliant on what the persons says and their knowledge of the policy as you often do not see a policy until after you sign up and pay the premium.

	Do you think you have a good understanding of the insurance policies you currently hold?
	<i>I think I have a reasonable understanding of some of my policies, not all.</i>
	If not, what is the main barrier to you understanding your insurance policy?
	<i>Often, you do not find out about what the insurer reads between the lines of the policy. Its like with most things, there can be more than one interpretation of a policy, wording, paragraph, definition and all can be scewed by the circumstances.</i>
	Have you ever been in a situation where you thought you had a certain level of cover under your policy, but when you went to make a claim found you were not covered? If so, please provide us with a description of the situation.
	<i>Yes. A fence blew down in a storm as a result of the storm and the insurance company claimed it was due to Gradual Damage and put pressure on me to withdraw the claim. I was young and inexperienced and I withdrew the claim. With hindsight I quite possibly had a legitimate claim but was convinced to withdraw it.</i>
	Would you like to switch insurance providers? If so, what is your main barrier to switching?
	<i>I currently have a claim that has been ongoing for eight weeks with little progress and my premiums are due and I am concerned that the unsettled claim may affect my ability to switch providers and also affect the outcome of my unsettled claim.</i>
	What, if anything, should the government do to make it easier for consumers to compare and change insurance providers and policies?
	<i>A similar system to that used to compare and change providers as the government setup for comparing and changing electricity providers would be a good start. That system has introduced real competition in the electricity retail market. The Government should also setup a register of denied claims from the perspective of the consumer. The Insurancy Companies have one which they use in a questionable manner, so why should there not be one where the denied claims are listed where the reasons for declinage is of a questionable nature or on a technical but unethical nature.</i>

Regarding exceptions from the Fair Trading Act's unfair contract terms provisions

	Are you aware of instances where the current exceptions for insurance contracts from the unfair contract terms provisions under the Fair Trading Act are causing problems for consumers? If so, please give examples.
	<i>No.</i>
	More generally, are there terms in insurance contracts that you consider to be unfair? If so, why do you consider them to be unfair?
	<i>Multiple levels of declining a claim and then changing their mind as the complaint process approaches a deadlock is considered merely a mistake, whereas a mistake by the claimant is</i>

considered nondisclosure and a reason to deny the claim regardless of whether it was accidental or relevance. Also, where a third party is involved, ie. A rental unit, the details may well not be known by the insuring party and it is a fine line between asking relevant questions of a potential tenant and impinging on their rights of privacy.

Other comments

We welcome any other comments that you may have.

[Insert response here]

I am grateful for having the opportunity to make this submission and hope you understand the points I have made. I hope you can make improvements to the current system as insurance is necessary but not always fair and easy to understand and sometimes outcomes can be somewhat questionable.

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