

Submission on discussion document: Insurance contract law review

Your name and organisation

Name	S9(2)(a)
Organisation	RESIDENTIAL HOME OWNER

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?
Yes
If you were aware of your duty to disclose material information, who informed you of this duty?
<i>I have a law degree</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?
Yes
Do consumers understand the potential consequences of breaching their duty of disclosure?
Yes
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?
No

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' needs to include a time frame within which an insurer must settle a claim. We personally are still living an insurance nightmare following the Canterbury Earthquake sequence. Our home was placed over-cap and into our insurer's hands (Tower) in 2011.</i>

Through a litany of errors, fraud and incompetence by our insurer/their agents, we are still, 7 years on, living in a broken home with no end in sight. We do not have any right to compensation for the physical disruption and inconvenience and emotional stress and distress that this has created for us – it is simply a nightmare and we are unable to move forward with our lives. 7 years is too long.

What has your experience been of the claims handling process? Please comment particularly on:

- information from the claims handler about:
 - timeframes and updates on timeframes
 - reasons for declining the claim (if relevant)
 - how you can complain if declined
- The handling of complaints (if relevant)

Getting information from our insurer has been like getting blood out of a stone. I am left uncertain as to whether our insurer is simply incompetent or if the delays, fudging and stalling are a tactic to wear the claimant down. We have had to point out to our insurer their obligation under the Fair Insurance Code to keep us updated.

Certainly I acknowledge that if an insurer elects to 'repair' a house themselves then they are at the mercy of the competency of the agents they select to manage this process (the Project Management Firms, Building Firms, Sub-Contractors). The real impact though is on the consumer at the receiving end of the process, who has no power and must sit and wait for fraud/incompetence/errors to be put right. In such circumstances financial compensation needs to be a right of claimants – both as a form of damages for them and also as an incentive for insurers (and their agents) to act competently.

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

Yes. But this is a small side issue to our real problem of the inordinate amount of time it is taking our insurer to settle our claim.

Our insurer's agent (a bank) sold us an insurance policy that did not cover all of our property – specifically the policy did not provide adequate cover for all retaining walls, despite the bank having full knowledge of the particulars of our property.

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?

No.

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)

Comparison websites, talking to different insurance providers.

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

1 hour.

Do you think you have a good understanding of the insurance policies you currently hold?

Yes.

If not, what is the main barrier to you understanding your insurance policy?

[Insert response here]

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.

Yes. Retaining walls. Our insurance policy did not contain a definition of 'retaining wall'. There are many types of retaining walls, some are part of a house, others are integral to the building platform/access, while others are simply part of landscaping. It was unclear which ones were and which ones were not covered (particularly as there was a \$ limit to the amount of coverage for 'retaining walls').

Would you like to switch insurance providers? If so, what is your main barrier to switching?

Yes, we would LOVE to, but we have been stuck with our insurer for the last seven years, unable to move. Our barrier to switching is that until our insurer completes the repairs to our home (going on for 7 years see response above) we are stuck with them.

What, if anything, should the government do to make it easier for consumers to compare and change insurance providers and policies?

Put a time limit within which an insurer must settle a claim. And if the time limit is not met then the insured should be entitled to financial compensation for physical inconvenience and emotional stress and distress.

Consumers have to pay their premiums on time, but the insurer has no time-frame obligation within which they must repair a home. Our nightmare scenario of 7 years is TOO LONG.

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.

No.

More generally, are there terms in insurance contracts that you consider to be unfair? If so, why do you consider them to be unfair?

Insurance contracts do not contain a time-frame within which a claim will be settled. Neither does the Fair Insurance Code (which says that claims must be settled within a reasonable time). Who referees what 'reasonable' means creates a serious problem for claimants due to the cost of access to justice.

The general public probably don't even notice this omission from the insurance contract. There is an assumption that claims will be settled within a reasonable amount of time. But if they are not then the insured is left without recourse to any compensation for the physical inconvenience, stress and distress of a claim going on and on in our case 7 years so far with no end in sight.

Other comments

We welcome any other comments that you may have.

Self-regulation by the insurance industry (ie: the Fair Insurance Code) does not result in any compensation to consumers for the physical inconvenience and emotional stress and distress of being unable to move forward with their lives when an insurer does not settle their claim within a reasonable time.

In other words this self-regulation is ineffective.

The consumer suffers and should be entitled to financial compensation as a form of damages for physical inconvenience and emotional stress and distress and their loss of freedom in being able to move forward with their lives.

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