

Telephone: 020 7066 5268  
Email: [enquiries@fs-cp.org.uk](mailto:enquiries@fs-cp.org.uk)

Special Public Bill Committee on the  
Insurance Bill  
Legislation Office  
House of Lords  
London SW1A 0PW

27 November 2014

Dear Sir, Madam,

## **Evidence by the Financial Services Consumer Panel on the Insurance Bill**

This letter constitutes the submission of the Financial Services Consumer Panel to the call for evidence launched by the Special Public Bill Committee on the Insurance Bill on 20 November. We welcome this opportunity to outline our concerns about the lack of consumer protection afforded by the Bill, in particular as regards redress for consumers who face unreasonable delays or unfair refusals of their claims.

It will come as a surprise to most if not all consumers that, under English law, holders of indemnity insurance policies are not entitled to damages for an insurer's failure to pay an insurance claim or for an unreasonable delay in the processing of the claim.

In fact, in the case of indemnity insurance (such as property and liability insurance), the Court of Appeal held in *Sprung v Royal Insurance Ltd* that an insurer's obligation is not to pay claims, but to prevent a loss occurring in the first place. By contrast, Scots law provides that the insurer's primary obligation is to pay valid claims after the opportunity for a reasonable investigation.

As a consequence of this legal technicality, in England and Wales the insured is not entitled damages where an insurer delays payment or wrongly refuses to pay a claim.

Throughout the development of the draft Insurance Bill, the Law Commission and Scottish Law Commission have been very clear that the lack of entitlement to damages for late payment of valid insurance claims or an unreasonable refusal to pay such claims in England and Wales should be addressed in the Bill.

We recognise that the Financial Ombudsman Service, which makes decisions on fairness rather than strict application of the law, applies a remedy of damages for late payment or unreasonably refused claims, and says there is broad acceptance within the industry about its approach. However, this is inconsistent with the legal framework currently in place in England and Wales.

Therefore, we agree with the Law Commission that the current position is "hard to justify legally, commercially and intuitively, and statutory intervention is required". The British Insurance Law Association has described the current situation as "the principal defect in this part of English insurance law, requiring remediation as soon as possible".

The law as it currently stands is unfair and unexpected. In our view, the Insurance Bill was the obvious opportunity to put English and Welsh consumers on a level field with Scottish consumers. It is astonishing that the "principal defect" in the law is not mentioned in the current version of the Bill.

We understand that clauses relating to late payment of claims were excluded from the Bill very late in the process, because the insurance market was unable to achieve consensus with the Law Commission about how best to address this matter.

However, it would seem they successfully resolved issues to include clauses that provided their firms with increased protection. In fact, the majority of the Bill is devoted to increasing protection for insurers, for example as regards insurer's remedies for fraudulent claims.

The lack of willingness on the part of the insurance industry to resolve this matter in the interest of consumers is disappointing.

We would therefore urge you to introduce into the Bill clauses that give consumers in England and Wales the same legal entitlement as consumers in Scotland, and in many other jurisdictions. This would entitle English and Welsh consumers to remedy in the event of insurers refusing to honour valid claims, or failing to pay out claims within a reasonable time.

Sincerely,

A handwritten signature in cursive script, appearing to read 'S. Lewis'.

Sue Lewis  
Chair  
Financial Services Consumer Panel