

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

CONSUMER INSURANCE (DISCLOSURE AND REPRESENTATIONS) BILL [*LORDS*]

Wednesday 22 February 2012

CONTENTS

Sittings motion agreed to.
CLAUSES 1 to 12 agreed to.
SCHEDULES 1 and 2 agreed to.
Bill to be reported, without amendment.

PUBLISHED BY AUTHORITY OF THE HOUSE OF COMMONS
LONDON – THE STATIONERY OFFICE LIMITED

£2.50

Members who wish to have copies of the Official Report of Proceedings in General Committees sent to them are requested to give notice to that effect at the Vote Office.

No proofs can be supplied. Corrigenda slips may be published with Bound Volume editions. Corrigenda that Members suggest should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor's Room, House of Commons,

not later than

Sunday 26 February 2012

STRICT ADHERENCE TO THIS ARRANGEMENT WILL GREATLY
FACILITATE THE PROMPT PUBLICATION OF
THE BOUND VOLUMES OF PROCEEDINGS
IN GENERAL COMMITTEES

© Parliamentary Copyright House of Commons 2012

*This publication may be reproduced under the terms of the Parliamentary Click-Use Licence,
available online through The National Archives website at*

www.nationalarchives.gov.uk/information-management/our-services/parliamentary-licence-information.htm

Enquiries to The National Archives, Kew, Richmond, Surrey TW9 4DU;

e-mail: psi@nationalarchives.gsi.gov.uk

The Committee consisted of the following Members:

Chair: MR DAVID AMESS

- | | |
|---|---|
| † Baldwin, Harriett (<i>West Worcestershire</i>) (Con) | † Joyce, Eric (<i>Falkirk</i>) (Lab) |
| † Barclay, Stephen (<i>North East Cambridgeshire</i>) (Con) | † Leslie, Chris (<i>Nottingham East</i>) (Lab/Co-op) |
| † Bradley, Karen (<i>Staffordshire Moorlands</i>) (Con) | † Murphy, Paul (<i>Torfaen</i>) (Lab) |
| † Crouch, Tracey (<i>Chatham and Aylesford</i>) (Con) | † Rudd, Amber (<i>Hastings and Rye</i>) (Con) |
| † Cruddas, Jon (<i>Dagenham and Rainham</i>) (Lab) | † Sharma, Alok (<i>Reading West</i>) (Con) |
| † Flynn, Paul (<i>Newport West</i>) (Lab) | † Sharma, Mr Virendra (<i>Ealing, Southall</i>) (Lab) |
| † Hands, Greg (<i>Chelsea and Fulham</i>) (Con) | † Williams, Stephen (<i>Bristol West</i>) (LD) |
| † Hemming, John (<i>Birmingham, Yardley</i>) (LD) | Wilson, Sammy (<i>East Antrim</i>) (DUP) |
| † Hoban, Mr Mark (<i>Financial Secretary to the
Treasury</i>) | Kate Emms, <i>Committee Clerk</i> |
| † Jones, Susan Elan (<i>Clwyd South</i>) (Lab) | † attended the Committee |

Public Bill Committee

Clause 1

Wednesday 22 February 2012

[MR DAVID AMESS *in the Chair*]

Consumer Insurance (Disclosure and Representations) Bill [Lords]

2 pm

The Financial Secretary to the Treasury (Mr Mark Hoban): I beg to move,

That the Consumer Insurance (Disclosure and Representations) Bill [Lords] Committee do meet on Wednesdays when the House is sitting at Two o'clock.

It is a pleasure to serve under your chairmanship, Mr Amess. The Bill implements a series of changes to the law that are widely supported and have long been necessary. The recommendations have been made by the Law Commission. In case the Committee does not fully consider the Bill today, the sittings motion enables us to sit every Wednesday at 2 o'clock while the House is sitting. So perhaps that is an incentive for us all.

Chris Leslie (Nottingham East) (Lab/Co-op): Does that include the provision to sit beyond this Session of Parliament? Could we carry the Bill over, for example? Most importantly, does the Minister have any idea about consideration on Report? Can he confirm that that will take place on the Floor of the House?

Mr Hoban: There is no carry-over motion attached to the Bill and clearly, if it were to be carried over to the next Session there would have to be a motion debated on the Floor of the House. The hon. Gentleman will be aware, as he participated in the debate on Second Reading, which was held in a Committee room rather than in the Chamber, that a special procedure relates to Law Commission Bills. I cannot confirm that the Bill will be considered on Report on the Floor of the House, because I am not entirely sure that I know what the procedure is myself. I would advise him to seek counsel, if not comfort, from the Clerks on this matter.

Chris Leslie: On a point of order, Mr Amess. It is a pleasure to serve under your chairmanship. Even though we had this rather bizarre arrangement of sending the Bill to a Committee for its Second Reading—a practice that should be avoided, especially when there is no other business going on in the House, the Government having mismanaged their programme so abysmally—I am pretty sure that Report and Third Reading will be on the Floor of the House. Can you confirm that? I do not have any other problems with the motion, but I am quite anxious for some clarification on this.

Mr Hoban: Further to that point of order, Mr Amess. Perhaps I can provide some clarification, having received a degree of illumination while the hon. Gentleman was speaking: consideration on Report will take place on the Floor of the House.

Question put and agreed to.

MAIN DEFINITIONS

Question proposed, That the clause stand part of the Bill.

Chris Leslie: It would be useful if the Minister explained the origin of the Bill, particularly for those members of the Committee who might not have been party to the rather byzantine Second Reading Committee arrangement. I do not wish him to repeat at length the rationale for the Bill, but clause 1 includes some important definitions about consumers of insurance products. Most of our constituents will be consumers of insurance products, whether motor insurance, flood risk insurance, household insurance, contents insurance and so on. So clause 1 is as good a place as anywhere to get a sense of the strategic overview of the Bill.

I welcome the Bill. It is an important piece of legislation. The 2009 Law Commission report, produced jointly with the Scottish Law Commission—it was obviously commissioned by the previous Administration—recommended this set of changes. It represents a small, but significant, change in the archaic nature of insurance law, which has hitherto been in an unwritten form. The Bill, as far as I can see, updates those provisions and ensures that a new burden is placed on the party giving insurance cover, the insurer, to ask more specific questions of the consumer when requiring the disclosure of relevant information, rather than the former caveat that the onus is on the insured party to disclose everything that might be relevant. If the insured party accidentally forgot to disclose even a small item, they potentially risked their insurance cover being invalid. The Bill is a generally welcome step forward, but I would be grateful if the Minister confirmed whether I am correct.

Mr Hoban: I do not think there is very much to add to what the hon. Gentleman has said, save that the Bill is supported by Age UK, the British Heart Foundation, Consumer Focus, Macmillan Cancer Support, the Multiple Sclerosis Society, the Trading Standards Institute, the University of Manchester, Which? and UNLOCK, which demonstrates the wide support commanded by the Bill. There has been a lengthy consultation process with the industry and consumer groups.

The Bill stems from the excellent work undertaken by the Law Commission, and I would like to place on record my thanks for the work it has done to promote those measures. The Bill is important for strengthening consumer protection and it reflects best practice in the industry. The definitions set out in clause 1, to which the hon. Gentleman referred, are drafted with the support of the industry and the Financial Services Authority.

Question put and agreed to.

Clause 1 accordingly ordered to stand part of the Bill.

Clause 2

DISCLOSURE AND REPRESENTATIONS BEFORE CONTRACT OR VARIATION

Chris Leslie: I beg to move amendment 1, in clause 2, page 2, line 14, at end insert—

(c) in the exercise of its functions under this section the insurer should have regard to the principle that a burden or restriction which is imposed on a consumer through any additional requests to confirm or amend particulars should be proportionate to the benefits, considered in general terms, which are expected to result from the imposition of that burden or restriction.’

The Chair: With this it will be convenient to discuss clause stand part.

Chris Leslie: Hon. Members may be glad to know that my amendment is the only one to have been selected. I tabled others, but—unfortunately—Mr Amess, you chose in your wisdom not to select them.

Amendment 1 would insert a provision on disclosure and representations before a contract is entered into or varied. Clause 2

“makes provision about disclosure and representations by a consumer to an insurer before a consumer insurance contract is entered into or varied.”

The clause makes a number of related provisions.

My amendment would ensure that the duties set out in the clause were applied in such a way as to avoid potentially perverse consequences of what is generally accepted to be a positive step forward—namely, the requirement that there be more precision and better specification of the items that need to be disclosed by a consumer of an insurance product.

I foresee circumstances—this is my only substantive concern with the whole Bill—in which some consumers, perhaps busy with family, children, jobs, second jobs and who knows what else, do not necessarily have the time, the luxury and the space to pore over the normal documentation that each of us will have to complete when entering into an insurance contract.

If hon. Members have recently taken out car insurance online or have renewed their house insurance, often they will have found there to be a lot of associated small print if they clicked to find extra information. We know that, generally, there are already problems in society with people not reading the small print of documents, but imagine a circumstance, when the Bill is enacted, in which, potentially, a series of 10, 20, 30 or 40 questions are presented to a consumer, who is required to answer all of them in great detail before the insurance contract can be completed. In theory, it is important to complete a full disclosure and ensure that everything is written out. In practice, I suspect there will be some consumers who will say, “I can’t be bothered with that question. I can’t be bothered with the paperwork involved. It’s only contents insurance, it’s only flood insurance—what are the chances of me being flooded anyway? I just can’t be bothered with the hassle of completing all the extra voluminous information that might be required.”

I therefore have a slight anxiety—it is only slight—that if the pendulum swings so far from having the whole burden entirely on the consumer to offer up, voluntarily and in an unstructured way, information about anything they should disclose, to a situation in which a series of specified individual questions have to be asked on disclosure, consumers might not enter into insurance cover when they would otherwise have done so, perhaps through inertia, being too busy, neglect, or any number of reasons.

What is the problem with that? I suppose it would be possible to say caveat emptor—it is the consumers’ problem, and if they find themselves uninsured or not covered for floods, accidents or whatever it might be that befalls them, they really should have taken more time and care. However, I think there is a duty on us, as far as possible, to make it convenient and relatively simple for consumers and ordinary householders to receive the cover they genuinely need; insurance that society expects them to have, and some insurances are mandatory; or insurance that is sensible and prudent for them to have.

We have heard many stories about customers or residents forgetting to complete their insurance renewals, leading to massive problems. In some circumstances—floods and so on—the taxpayer can end up picking up the bill, so this is partly about protecting taxpayers’ money too. How can we frame the arrangements in such a way as to ensure that the insurance is more specific about questions, but does not go so far as to deter customers from doing the necessary thing and getting the cover? I have tried to frame the amendment so that that is done on the principle that the insurer bears in mind the burden that could fall on the consumer, and that a proportionate approach is taken. I accept that that is difficult to frame in legislation, but that is the purpose of the amendment. I hope that the Minister accepts that it is important to raise this point, and it is my only substantive query with the Bill.

Mr Hoban: I am pleased that the hon. Gentleman presents the amendment as a probing amendment to elicit answers to those questions. He is right—it is important that insurers do not require burdensome or excessive disclosures from consumers, especially if that might put them off purchasing insurance. However, it is not necessary to make further provisions to achieve that. The Bill already encourages that, and simple, targeted questions are the most cost-effective for insurers.

The amendment refers to the burdens or restrictions created by requests to confirm or amend particulars, though the principle could apply to any question asked by insurers. Clause 2(3) refers specifically to requests to confirm or amend particulars, which is itself intended to reduce burdens on consumers. Currently, a consumer is commonly asked to confirm or amend particulars previously given when they are renewing their insurance policy. Best market practice is to send the consumer a letter containing all the information that they provided on first taking out the policy. The Financial Ombudsman Service is clear that this represents best practice. *Ombudsman News*, its regular newsletter, states:

“Customers cannot be expected to remember all the details of information they provided perhaps several years earlier.”

The consumer is asked to read and consider the list, and to contact the insurer if the facts have changed. That makes the process as simple as possible for the consumer.

2.15 pm

The Bill preserves the incentives for insurers to follow this practice by allowing failures to comply with their request to be regarded as a misrepresentation. In this instance, we need not be concerned that insurers will make burdensome requests. However, a wider set of factors influences whether they will do so.

It is worth reminding ourselves that the Bill brings statute into line with developments in the approaches of industry, the FSA and FOS. The law is catching up with market practice; this legislation will not significantly change market practice.

Chris Leslie: The Minister's comments are helpful and useful. I do not know whether I am being a conspiracy theorist, but the risk register paragraphs—in other words, the regulatory impact assessment—have been deleted, perhaps inadvertently, from the explanatory notes, on page 18. The explanatory notes as distributed do not say whether an assessment has been made of the costs and benefits to the insurance industry, or the cost to consumers, with regard to what the effect could be. I am sure that the Government are not—here as well— withholding the risk listings with respect to the Bill; that would be a churlish point to make. I would be grateful if the Minister elaborated, given that he is talking about the costs and benefits of the provisions, and told us what those will be.

Mr Hoban: I counsel the hon. Gentleman not to be so conspiratorial as to think that everything is about risk registers; this is a regulatory impact assessment. He will know from his preparation for the debate that the impact assessment is available to members—

Chris Leslie: It is not in the explanatory notes.

Mr Hoban: It may not be in those notes; there is clearly a misprint. However, the impact assessment has been available to members of the Committee, as I say.

The point to bear in mind here is that, perhaps rather unusually, statute is catching up with market practice rather than changing it. Because we are catching up, we do not expect insurers to respond to the abolition of the duty of disclosure simply by asking more questions. Consumers currently face that duty in law, but not in practice. The principle that insurers should ask clear questions about matters generally found to be material was set out 25 years ago in an Association of British Insurers statement of practice.

We can be further reassured that insurers will not ask a disproportionately burdensome set of questions. Incentives for them not to do so are included in the Bill and there are cost pressures, too, which will discourage them from doing so.

Any view that the Bill will lead insurers to ask a greater number or a more burdensome set of questions misses two things. Such a view does not take into account the role of inducement in questions of the type that entitle an insurer to a remedy. Clause 4(1)(b) sets it out that an insurer is not entitled to a remedy unless they can show that a consumer's misrepresentation induced them to enter into a contract, at all or on its current terms. As a result, insurers are unlikely to ask questions seeking answers that they do not need to rely on. If they were to do so, it would be of no advantage because they have no remedy under the Bill if that information was not provided or was incorrectly provided.

We expect questions to be asked only if the purpose is to elicit relevant information that the insurer needs to know. That will ensure that the questions asked will be proportionate to the benefit that insurers derive from them.

Chris Leslie: I am sorry to interrupt the Minister. He is right about clause 4(1)(b), but has he an estimate, in plain layman's terms, of how many questions I will be asked next time I want to take out household insurance or the Government Whip, the hon. Member for Chelsea and Fulham, wants car insurance?

Greg Hands (Chelsea and Fulham) (Con): I do not drive.

Chris Leslie: I apologise to the Government Whip, who says that he does not drive. He is driven, of course; that is the case for Ministers. If a typical hon. Member, such as the hon. Member for Chatham and Aylesford, is getting car insurance, how many questions, in layman's terms, will she be asked?

Mr Hoban: This is not about the number of questions. The insurer will normally send the policy holder a letter, seeking to clarify and confirm questions asked when the policy was taken out. It will depend on the type of policy and the insurer, no more so than now. We are trying to get insurers to ask sensible questions for a sensible policy. It is not appropriate to set out in the Bill a precise number of questions—it would be absurd to do so—and we must rely on the judgment of insurers, and their compliance with market practice and the ABI code, to determine that. The hon. Gentleman's question is therefore not entirely reasonable.

However, my next point perhaps addresses in part the hon. Gentleman's question: we should think about the effect of complex questionnaires on the reasonableness test set out in clause 3. If an insurer generates a long and comprehensive questionnaire, that may have a bearing on whether a consumer has taken reasonable care not to make a misrepresentation. Clearly, a long and voluminous 300-page questionnaire would contain so many questions that it might be fair to assume that any misrepresentation made was inadvertent. A shorter, more compact questionnaire would focus a consumer's mind. Therefore, there is an incentive on the part of the insurer to think about the issue carefully.

It is not in an insurer's interest to impose burdens on consumers, as doing so may undermine any right that it might have to refuse or alter claims. We are trying to achieve a sensible approach to asking the questions. As we discussed on Second Reading, insurers have sought to rely on incorrect answers given to questions that are not material to the claim being made as a reason for disallowing it. The Bill will move us away from that old practice, so it is important that an insurer gets the information it needs to enable the acceptance of a claim. If it asks irrelevant questions, its chances of getting a remedy will be lower. Therefore, there is an incentive in the Bill to get to the right point.

The Bill will not drive insurers to make more burdensome demands of consumers. There is also a strong market incentive for insurers not to overload consumers with too much paperwork. If a questionnaire looks too difficult to respond to, consumers will go elsewhere. If consumers receive a 300-page questionnaire, they will probably think, "I am not going to be bothered getting insurance from this company. I am going to get insurance from company x, which was a 10-question questionnaire." Market discipline will get insurers into the right place.

There is also an internal cost pressure: not only does an insurer think about comparing its questionnaire to those of its competitors, but it takes a lot of time and money to process questionnaires when they come back. Insurers will think about a cost-benefit analysis when developing their questionnaires and ask as few questions as possible appropriately to assess the risks of a policy.

If we were to try to prescribe or limit the number of questions that insurers may ask, we would risk increasing premiums. If insurers cannot ask enough questions to gather the information that they need to assess risk, they are likely to increase premiums to cover the increased uncertainty. There is a sense of proportion to the issue—part driven by the Bill, part driven by market and cost pressures.

Therefore, it is not necessary to include further provisions to force insurers to make proportionate demands. The Bill includes checks and balances, and sets out some high-level principles, rather than get into excessive detail. That approach will prevent the law from becoming outdated again. We are responding to a situation that was set in place in 1906, and it has taken us until 2012 to change the law to get it in line with market practice. We do not want to wait another 106 years to change the number of questions from 10 to 20. Let us deal with the high-level principles.

Finally, I pray in aid—as Ministers do occasionally, although not universally—the lengthy list of supporters of the Bill, who do not suggest that it should be amended or its implementation delayed. Clearly, there is a lot of consumer interest in ensuring that the Bill gets on to the statute book as quickly as possible and unamended. I shall therefore ask my hon. Friends to oppose the amendment should the hon. Gentleman choose to test the will of the Committee.

Chris Leslie: I appreciate the way the Minister has responded to the amendment, which was genuinely intended to be constructive. I am glad that the Bill has not only all-party support, but support from the Law Commission and the industry. It is important, however, to remind those outside the House that the Bill will become an Act of Parliament and that it is the duty of Her Majesty's Opposition to scrutinise it. The venerable Law Commission might propose a change in primary legislation, but that does not necessarily mean that that is the right thing to do. Therefore, it is our duty to ensure that we check what goes on. Otherwise, we would just whizz through legislation and rubber-stamp it, which is why I have misgivings about debates on Second Reading being held in Committee, for example.

I asked the Minister what I thought was a fairly straightforward question. I hoped that he might receive some inspiration or that some assessment might have been made of how many questions people will generally and typically be asked in relation to a bog-standard insurance product for a car, for contents or for a household. I wanted a flavour of the possible extra administrative burden on people. First, to paraphrase him, he said that people will probably have no more of a burden than they do now, but he then said that consumers might end up shopping around and that market discipline will bear down on the number of questions.

Perhaps that is the right way to minimise the number of questions. It might be successful or it might not, but I imagine that insurers have an obligation—not least to their reinsurers or wholesale or whatever—to ensure that they ask the right number of questions to fit the particular merits of particular insurance cover. We should be careful about disclosure issues being driven by a commercial imperative, rather than by the proper and full disclosure requirements necessary to fit particular circumstances.

The Minister made a helpful point about clause 3 applying in relation to vexatious or voluminous questions. On the point about inadvertence, a consumer might be allowed to continue with a claim, or an insurer might be unable to nullify it. Case law tests in court statements made by Ministers when they are quoted in proceedings, so his comments about the applicability of clause 3 are useful in so far as excessive questions might fall foul of its provisions.

We might want to reconsider these matters on Report, but for the time being, and following the Minister's assurances, I am happy to withdraw the amendment. The point has been made and taken into account, and we do not wish to delay proceedings, but I still have a worry in the back of my mind about people who might go without cover if an excessive number of questions is asked. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 2 ordered to stand part of the Bill.

Clauses 3 to 12 ordered to stand part of the Bill.

Schedules 1 and 2 agreed to.

Bill to be reported, without amendment.

2.30 pm

Committee rose.

