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Insurance Contract Law Analysis of Responses and Decisions on Scope

August 2006

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The Law Commissioners are:

The Honourable Mr Justice Toulson, *Chairman*¹
Professor Hugh Beale QC, FBA
Stuart Bridge
Dr Jeremy Horder
Kenneth Parker QC

The Chief Executive of the Law Commission is Steve Humphreys and the offices are at Conquest House, 37-38 John Street, Theobalds Road, London WC1N 2BQ.

The Scottish Law Commissioners are:

The Honourable Lord Eassie, *Chairman*
Professor George L Gretton
Professor Gerard Maher QC
Professor Joseph Thomson
Colin Tyre QC

The Chief Executive of the Scottish Law Commission is Michael Lugton and the offices are at 140 Causewayside, Edinburgh EH9 1PR.

Enquiries regarding the insurance contract law project may be sent

By post to:

Peter J Tyldesley
Law Commission
Conquest House
37-38 John Street
Theobalds Road
London WC1N 2BQ

By email to:

peter.tyldesley@lawcommission.gsi.gov.uk

Tel: 020-7453-1201

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The text of this paper is available on the Internet at:

http://www.lawcom.gov.uk/insurance_contract.htm
http://www.scotlawcom.gov.uk/downloads/analys_insurance_scoping.pdf

¹ Until 31 July 2006. He was succeeded as Chairman on 1 August 2006 by the Honourable Mr Justice Etherton.

LAW COMMISSION AND SCOTTISH LAW COMMISSION
INSURANCE CONTRACT LAW

ANALYSIS OF RESPONSES AND DECISIONS ON SCOPE

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PART 1

INTRODUCTION

BACKGROUND

- 1.1 The English and Scottish Law Commissions are conducting a joint review of insurance contract law.
- 1.2 On 18 January 2006 we issued a Scoping Paper in which we stated that misrepresentation, non-disclosure and breach of warranty would be included within the review and invited views on other topics which might be included. We asked nineteen questions, which may conveniently be categorised into three groups:
 - (1) Questions 1 to 13, 15 and 16 each specified an area of law or a statutory provision and asked whether it should be considered.
 - (2) Questions 14 and 17 were open, and asked whether there were additional areas of law or statutory provisions that should be included within the review.
 - (3) Questions 18 and 19 asked whether codification should be attempted for the law as it applies respectively to consumer and small business policyholders ("CSBs") and medium and large business policyholders ("MLBs"). It was made clear in Part 3 of the Scoping Paper that if there is to be codification it will be dealt with as a later phase of the project.
- 1.3 The Scoping Paper included a questionnaire which invited respondents to answer "Yes", "No" or "Don't Know" to each question, and to indicate whether the matter should be given a "High", "Medium" or "Low" priority. Additional comments were welcomed. The formal deadline for responses was 19 April 2006.

SCOPE

- 1.4 This paper gives extracts of the responses we received to the Scoping Paper and gives our decisions on scope. It has been drafted by the teams working on the project at the English and Scottish Law Commissions and has not been subject to formal scrutiny by Commissioners.
- 1.5 We have concluded that the review should have a wide scope. Our decisions are set out in Part 3. As well as misrepresentation, non-disclosure and breach of warranty we will be looking at most of the other issues mentioned in the Scoping Paper. There are additional matters raised by respondents that also seem worth considering. It follows that the project will cover the greater part of insurance contract law as it applies to insurance and reinsurance, life and general risks, business and consumer policyholders and international and domestic business.
- 1.6 Given the considerable support for reform that we have encountered, we believe a wide scope is viable. In addition to issuing the Scoping Paper we have gathered valuable information through two less formal consultation initiatives:

- (1) We have held a series of meetings with interested parties and given some public lectures – the latter usually followed by open debate. A list of such occasions is given in Appendix A.
 - (2) We have also had the benefit of information and advice from a small advisory panel of experts, the membership of which is listed in Appendix B. Further experts may be invited to join as seems desirable during the course of the project. The views expressed in this paper are of course our own, and do not necessarily represent the views of all members of the panel.
- 1.7 The advice and technical information that we have received — particularly about specialist sectors of the market – is invaluable. We recognise that it is vital that we maintain the interest of stakeholders in the project, and that their continued participation in the consultation process is encouraged.
- 1.8 A wide scope has obvious implications for our timetable. We believe that it will not be practicable to publish a Final Report before 2010. By this stage the two Commissioners currently leading the project will have left their posts. For the reasons given in Part 2 of this paper, we have decided to divide the project into at least two stages. We will therefore publish two Consultation Papers – the first in summer 2007.

SUPPORT FOR REFORM

- 1.9 There appear to be three main drivers behind the support for reform:
- (1) A desire to give a fairer deal to policyholders. This particularly applies to the law of misrepresentation, non-disclosure and breach of warranty. It should be noted that this wish is not limited to those representing policyholders. It was also expressed by some insurers who wished to drive up standards and improve the general reputation of the industry.
 - (2) A recognition that archaic and uncertain law is in some respects impeding the effective conduct of business.
 - (3) A concern that the current law may weaken the position of the United Kingdom should harmonisation of European insurance contract law become a reality. This point was put by Davies Arnold Cooper in the following terms:

Since 2001, the European Commission has, with questionable success, been examining the potential for reform of contract law principles, including insurance contract law, with a view to adopting new comprehensive legislation at EU level. Our concern is that whatever the pace the European Commission moves at, the harmonisation of European insurance contract law is on the agenda and the United Kingdom should be leading the way, laying down the principles for such harmonisation. In its current form however, United Kingdom insurance contract law does not provide a proper footing to provide the foundations for the future of European insurance contract law and that is a position which needs to be remedied if the United Kingdom is to remain at the forefront of developments in this area.

- 1.10 There are of course those who object to reform in a particular area or who think that such problems as exist are best addressed through regulation. Even amongst those who support reform, differences of opinion as to its nature and extent are inevitable. These are matters that will be considered in our Consultation Papers.
- 1.11 The fact that an area of law is selected for review does not mean that it is inevitable we will recommend reform. It may be that review will confirm that the law is in practice operating satisfactorily. Even where there are clear problems it may be that they are better addressed through regulatory measures than by reform of the law.

PRESENTATION OF DATA

- 1.12 We were pleased to receive 118 responses from a wide variety of firms, organisations and individuals with an interest in insurance contract law. A full list of respondents is given in Appendix C.
- 1.13 In Appendix D we set out in tabular form the basic "Yes", "No" or "Don't Know" answers given by each respondent to each question. Not all respondents answered all 19 questions. However, all but one question received between 92 and 102 responses. The exception was question 14 which asked whether there were further statutory provisions that could be considered for repeal. It received 86 responses. This question also received the highest number of "Don't Know" answers — 26 out of the 86 responses. Given the open nature of the question this result is perhaps not surprising.
- 1.14 For ease of reference, in Appendix E we record for each question the total number of respondents who gave each answer — "Yes", "No" and "Don't Know". We give in each case the percentage of respondents in each group. When calculating the percentages for any particular question we have ignored any responses which did not answer that question.

- 1.15 Most respondents went beyond simple answers to the questions we had asked. Many outlined the type of reforms that they would like to see, or gave reasons as to why they thought reform was undesirable in a particular area. In Part 3 of this paper we have given extracts from the responses received to each question. Some responses comprised just a few lines. At the other extreme we received two lengthy and interesting treatises submitted by individuals with an interest in the marine insurance market — Mr Richard Cornah and Mr Stephen Goodacre.
- 1.16 Some responses were made by representative bodies. For example, the Association of British Insurers responded on behalf of nearly 400 insurance companies, and the Association of Insurance and Risk Managers responded on behalf of around 1,000 commercial policyholders. In the figures we give in this paper we have not attempted to apply any weighting to reflect the nature of such responses. We do not believe that it would be practicable or desirable to do so.
- 1.17 Four general points should be borne in mind by those reading this paper:
- (1) The extracts from responses were not selected to be representative in a strict statistical sense. Instead, the aim was to give readers a flavour of the comments received and to highlight what we felt were some of the more important and interesting points made. In some cases we have given significant attention to minority views. For example, most respondents are against a definition of insurance, but the respondents from the warranties industry are very strongly in favour.
 - (2) 14 responses have been recorded as containing no answers to any of the questions we have asked. In some cases the response was indeed little more than an acknowledgment. However, in a small number of cases a significant response was received, but it did not directly address the questions we had asked. We were left with the choice of attempting to infer from general comments the answers that would have been given, or recording such responses as containing no answers. Neither approach is entirely satisfactory, but we opted for the latter.
 - (3) The raw data in Appendix D may not give the full picture. For example, one respondent answered "No" to Question 18 not because he objected to a code for CSBs, but because he thought that any code should apply equally to businesses. In response to six of our questions, another respondent indicated that it "does not object" to us considering the relevant areas but put forward factors that it felt should be taken into account if we decided to do so.
 - (4) We have not provided tables showing whether respondents regarded issues as "High", "Medium" or "Low" priority. Our decision to adopt a wide scope rendered these assessments redundant, and it was not felt that the work involved was a worthwhile commitment of resources.

THE MARINE INSURANCE ACT 1906

- 1.18 In Questions 10 and 11 of the Scoping Paper we raised two specific provisions of the Marine Insurance Act 1906. We did not, however, indicate what action might be taken with regard to the remainder of the Act. Our current thinking is that the provisions of the Act should be split into three groups:

- (1) Provisions dealing with general principles of insurance contract law. These will be considered as part of the review, since marine insurance is not being treated separately for these purposes.
- (2) Provisions dealing with issues specific to marine insurance which we have been asked to consider. These will be looked at as part of the review. See, for example, paragraphs 3.52 to 3.55.
- (3) Provisions dealing with issues specific to marine insurance which we have not so far been asked to consider. At the consultation stage we may ask whether any of these provisions give rise to problems, or are likely to do so if any other reforms we recommend are implemented. Otherwise there is a presumption that these provisions will be left in place, or imported into a new Insurance Contracts Bill without changes of substance.

PART 2

SCHEME OF WORK

SHOULD THE PROJECT BE DIVIDED INTO TWO OR MORE PARTS?

- 2.1 In our Scoping Paper we indicated that we would be reluctant to undertake codification of the law if the result was to delay reform where it was most needed. We said that if there were to be codification, it would be dealt with as a later phase of the project.
- 2.2 Some respondents queried whether it would be preferable for the main body of the work to be conducted in a way that would allow reform in stages. In other words, should we divide the review into two or more parts that would be addressed consecutively, with each part potentially having its own Consultation Paper?
- 2.3 A division of this sort has the immediate attraction that it could assist with the management of what is clearly going to be a substantial project. Those in favour of dividing the project suggested two ways in which it might be done:
 - (1) The law as it affects consumers and small businesses ("CSBs") could be considered separately from the law as it affects medium and large businesses ("MLBs").
 - (2) The most pressing issues could be considered immediately, followed by less important issues as time allows.
- 2.4 We swiftly reached the view that it would be undesirable to divide the review by type of policyholder. Although we accept that the law should not necessarily be the same in every respect for, say, large businesses and consumers, any difference will need to be justified. In our view, proposed differences may most effectively be assessed if the impact of the law can be concurrently considered in respect of all types of policyholders.
- 2.5 A split between important and less important issues would have several advantages:
 - (1) It would assist with the management of the project.
 - (2) It would enable rapid attention to those areas that are perceived as giving rise to the greatest number of problems.
 - (3) It would enable us to consolidate progress before the departure of the current lead Commissioners.
- 2.6 However, it would also carry two disadvantages:
 - (1) We doubt that Parliamentary time will be available to consider more than one Bill. This could mean that the less important issues would in practice never be addressed. Alternatively, implementation of our recommendations on more important issues might be delayed until the entire project is complete.

- (2) We are not convinced that there is a sharp line between important and less important issues. First, many issues are interlinked. For example, a definition of insurance might be considered a less important issue. However, as we pointed out in our Scoping Paper it might need to be considered as part of a review of insurable interest, since it could achieve some of the same objectives. Secondly, even those issues generally perceived as less important give rise to problems, which can cause significant hardship in individual cases.
- 2.7 The arguments are finely balanced. However, we have concluded that the project should be divided. As a result, we will issue two Consultation Papers. The first, to be published in summer 2007, will deal with misrepresentation, non-disclosure and breach of warranty. A second will deal with all other issues except codification. We leave open the option of dealing with codification as a third phase of the project.

ISSUES PAPERS

- 2.8 Over the course of the project we will issue a short series of informal Issues Papers, each inviting discussion of one or more key areas within insurance contract law. Our intention is to hold seminars based around each paper.
- 2.9 Between now and the publication of the first Consultation Paper we intend to produce Issues Papers on misrepresentation and non-disclosure by the insured and on warranties.

PERVASIVE TOPICS

- 2.10 We believe that there are some matters that are pervasive, and should be considered within two or more Issues Papers. For example, it has been suggested to us that group policies need to be considered in the context of non-disclosure and insurable interest. The policyholder, in many cases an employer, may not have direct access to the information required – for example the health record of an employee. There may also be questions of insurable interest. For example, benefits may be provided for a partner of an employee — even though that partner is not in a contractual relationship with either the insurer or the employer.
- 2.11 We have currently identified four pervasive topics, others may be added as the project proceeds:
- (1) Agency.
 - (2) Group policies.
 - (3) Joint insureds.
 - (4) Reinsurance.

COST BENEFIT ANALYSIS

2.12 Any formal proposals that we make in our Final Report will be accompanied by an impact assessment. Although we will not be publishing our findings until the Final Report, we need to begin the assessment at an early stage. Our Consultation Papers are therefore likely to include questions seeking the required information.

2.13 HM Treasury has made it clear that it regards such an assessment as an indispensable element of our work:

Others will no doubt be commenting in depth on the scope of your proposed review, and we do not think it is appropriate for HM Treasury to comment in detail at this stage. However, we look forward to seeing the results of your work and, as we have made clear in previous discussions, view it as important that any recommendations that the Law Commission puts forward are accompanied by proper cost-benefit analyses and market impact assessments.

2.14 Other respondents also argued that a cost benefit analysis was desirable. The Association of British Insurers (“ABI”) pointed out that statutory regulation had already imposed substantial costs:

The reforms that are proposed should, however, be guided by the principles of good regulation as articulated by the Hampton and Arculus Reports and now enshrined within the Legislative and Regulatory Reform Bill that is currently before Parliament. They should also be subject to rigorous cost benefit analysis — the industry has already faced substantial costs in implementing the FSA rules.

2.15 We have held preliminary meetings with two academic economists, a consultancy firm with expertise in this area, and an economist within the Department of Constitutional Affairs.

2.16 These meetings have to some extent confirmed our concerns that some of the potential effects of reform may not be readily susceptible to measurement. If any reforms that we recommend would lead to insurance law being seen as fairer, for example, it could reasonably be thought that implementation would lead to confidence increasing, and more insurance being bought. However, it is difficult to see how an effect could accurately be estimated. Furthermore, a significant part of our work on consumer insurance will be about simplification. At the moment to establish a party’s rights and obligations it is necessary to consider the law, certain of the rules from the Financial Services Authority, the Statements of Practice from the ABI and guidance from the Financial Ombudsman Service. We intend to replace these layers with a single source of law. Again, the measurement of the financial impact of simplification appears problematic. At this stage we therefore caution against expecting too much from an impact assessment.

PART 3

RESPONSES AND DECISIONS

- 3.1 In this part of the paper we outline some of the responses we received to each of the 19 questions asked in the Scoping Paper. We indicate in each case whether we believe the issue should be included within the review.

QUESTION 1: DO YOU AGREE THAT INSURABLE INTEREST SHOULD BE INCLUDED IN THE REVIEW?

- 3.2 We received 101 responses to this question. Of these respondents, 88% agreed that we should review insurable interest. It was generally accepted that there is a particularly strong case for reform of the law of insurable interest as it affects life insurance. This reflects widespread concerns regarding the Life Assurance Act 1774, and the fact that in general insurance the principle of indemnity may achieve some of the objectives of the requirement of insurable interest.

- 3.3 Those in favour of the review raised three issues:

- (1) It was widely agreed that the current law is antiquated, sometimes unclear and prevents legitimate business. In the Scoping Paper, we discussed the anomalous position of cohabitants. Respondents mentioned other situations where practical difficulties arose — for example, construction contracts where it is convenient to have all parties covered under a single policy, and trust arrangements where trustees may wish to purchase single premium bonds.
- (2) Some respondents saw the fact that the law is largely ignored in practice as an argument for reform, rather than against. The Insurance Law Committee of the City of London Law Society described the difficulties its members currently face:

It is in our view a highly unsatisfactory state of affairs that commercial lawyers practising in this area should have to advise their clients, in complex and legitimate transactions that (a) there is a risk that the contract might be void because the present legal requirements are not clear, but (b) it is unlikely that a point will be taken.

- (3) At the time the Gambling Bill 2005 was considered by Parliament, the potential impact on insurance was not discussed.
- 3.4 So far as moral hazard is concerned, Zurich Financial Services took the view that life insurers should be left to decide for themselves how they might best address the issue:

We recognise that a complete relaxation of the law in this area may result in an increase in claims being made following suspicious deaths (moral hazard). Accordingly, underwriting decisions in respect of life policy applications will become more important (and possibly more expensive for us). Nonetheless, we would prefer to make our own decisions in relation to which life policy applications we accept or decline rather than being constrained by the Life Assurance Act 1774, as is presently the case.

3.5 A range of possible reforms were suggested:

- (1) Abolition of the requirement of insurable interest.
- (2) For life business, the replacement of the Life Assurance Act 1774 with an updated list of relationships giving rise to an insurable interest, and/or a new requirement that the consent of the life to be assured is obtained before any policy is granted.
- (3) For general business, a test of economic disadvantage or reasonable expectation rather than that of a legal or equitable interest.

3.6 A minority of respondents was in favour of retaining the principle of insurable interest. Three points were raised:

- (1) Insurable interest may still provide useful protection against both gambling and moral hazard. Royal and SunAlliance (UK Commercial) argued this point:

We note the broader concern to prevent gambling under the guise of insurance, and do not see any necessity to review the principle of insurable interest in relation to non-life insurance. We do not believe that any legal uncertainty around the principle leads to difficulties in practice or in the availability of cover. We would be concerned if any relaxation of the requirement for an insurable interest led to an increase in fraudulent claims, or to duplicate payment of the same claim by more than one insurer.

- (2) Particular concern was again voiced about the possibility of "fronting" — that is when, typically, a car is insured in the name of a parent although it is in reality intended for the use of a child. We mentioned this practice in our Scoping Paper, and recognise its significance for insurers.
- (3) It was argued that while a relaxation of the rules on insurable interest may enable innovation, innovation is not always of a desirable nature. Previously our attention had been drawn to the existence of corporate-owned life insurance in the USA. Clifford Chance LLP suggested a different example — the possibility that thousands of people might be able separately to insure Wembley Stadium:

It is no use saying "this will not happen". One can say at present that it will not happen because the law prohibits it, but if it were permissible, insurers somewhere would be persuaded they could make money on it — after all, insurers were persuaded to ensure the film finance deals, mortgage indemnity deals, viaticals and computer leasing.

3.7 The Financial Services Authority ("FSA") took issue with one suggestion in the Scoping Paper:

The Scoping Paper suggests that there may be a regulatory interest in maintaining requirements for insurable interest "to separate those who are using insurance to order their affairs prudently from those who are merely gambling". The FSA doubts there is a strong regulatory interest in the use to which insurance (or any other financial instrument) is put. The FSA guidance in chapter PERG 6 of the FSA's Handbook of rules and guidance makes clear that the purpose for which a policyholder buys a contract of insurance is not relevant to the identification of a contract of insurance.

The FSA has a regulatory interest in factors that change the scope or extent of insurers' liabilities and so impact their capital requirements. To the extent that insurable interest requirements reduce moral hazard (the risk that the existence of insurance increases the likelihood or the size of claims) the FSA favours the retention of the requirement for insurable interest. If that requirement were not maintained, the FSA's view is that there might be a consequent increase in the cost of classes of insurance in which moral hazard is prevalent. But it is a moot point whether insurable interest requirements in fact reduce moral hazard, or whether insurance pricing is sufficiently sensitive to move in response to this issue.

3.8 *Decision: Insurable interest should be included within the review.*

QUESTION 2: SHOULD WE CONSIDER INTRODUCING A STATUTORY DEFINITION OF INSURANCE?

3.9 We received 101 responses to this question. Of these respondents, 52% thought that we should not attempt to introduce a statutory definition of insurance. However, where reasons were given they related mostly to two issues:

- (1) There is a fear that an over-restrictive definition might stifle the development of new types of business. The Commercial Court Users Committee put this point in the following terms:

We are conscious of the danger of inhibiting innovation in the market, for which Lloyd's in particular is renowned. Some insurers are therefore very opposed to any definition and the question of whether to introduce a definition requires careful weighing. It is critical therefore that any definition should be very general in its terms.

- (2) There is concern about the purposes for which any statutory definition might be used. Royal and SunAlliance (UK Commercial) pointed out that currently different approaches are taken in different contexts:

The Regulated Activities Order defines classes of general insurance for the purpose of FSA regulation. Other "definitions" apply for the purpose of references to the FOS, or for applications to the FSCS. Taxation law determines the divide between the application of VAT and IPT. Lack of a statutory definition has not been a handicap, and a general statutory definition applicable to all circumstances is probably impractical.

- 3.10 In addition, we received a response from the International Swaps and Derivatives Association which warned of the possible impact on those markets:

ISDA considers that a review aimed at creating a statutory definition of insurance could have significant unintended consequences on the derivatives markets, in particular on the rapidly growing credit derivatives market. This market enables one market participant to transfer credit risks to another by a contract which provides for a payment or other benefit should a debtor default in payment.

- 3.11 We regard these as legitimate concerns which should undoubtedly be taken into account in deciding whether a statutory definition should be introduced and what form it might take. However, we do not think that they are sufficient grounds for us to refrain from reviewing the area.

- 3.12 Furthermore, we did receive some strong representations in favour of a statutory definition. These fell into two groups:

- (1) The Society of Motor Manufacturers and Traders and other respondents involved in the provision of warranties suggested that it was not always clear whether such contracts were insurance or not and that this uncertainty placed both them and consumers in a difficult position. Interestingly, in contrast to concerns that a definition might inhibit innovation, Warranty Direct Ltd suggested that the current uncertainty was already having this effect:

It is essential that the highest priority be afforded to the definition of the contract of insurance. This is a very major issue that has hindered the development of many businesses due to the high degree of uncertainty of what contracts will be considered as contracts of insurance.

- (2) Some respondents felt that the inhibition of certain types of new business would be a positive aspect of a statutory definition of insurance. For example, Mr Robert Ridgewell expressed the following criticism:

Mortgage indemnity "insurance" and film finance "insurance" do not depend upon a fortuitous intervention but are the essential business risk (their *raison d'être*) of the business concern — this is an improper use of insurance principles and privileges.

- 3.13 The FSA supported a definition for the purposes of defining the scope of regulation, and argued that it should be principles-based rather than detailed:

The Commissions may be better served by focussing on the reason for having a definition of a contract of insurance in the first place. Defining a contract of insurance as such is significant for the application or otherwise of the private law of insurance. But the definition of a contract of insurance is also a key component of the definition of insurance business, the primary purpose of which is to enable the FSA (and the regulated community) to identify which contracts fall within the scope of the general prohibition. An important purpose of a definition is, therefore, to enable the FSA to achieve the purpose of FSMA 2000, as elaborated in the FSA's statutory objectives. There is a related purpose, which is to ensure that the UK (as a Member State) gives proper effect to the consumer protection and freedom of establishment objectives that underpin the Insurance Directives.

In summary, in the FSA's view, it would be desirable to have a principle-based definition, the operation of which was explicitly linked to the purpose of regulation.

- 3.14 Finally, we are conscious that we have suggested that the review should be broad in scope. No decisions have yet been reached as to whether reform is required in any area. However, broad scope clearly opens the possibility that broad reforms will be recommended — perhaps in the form of a code. In this event, a statutory definition will be required, even if its only purpose is to identify those contracts to which the code applies.
- 3.15 *Decision: The possibility of a statutory definition of insurance (or definitions — for different purposes) should be considered within the review.*

QUESTION 3: DO YOU AGREE THAT WE SHOULD CONSIDER THE LAW OF AGENCY INsofar AS IT RELATES TO INSURANCE?

- 3.16 We received 101 responses to this question. Of these respondents, 76% thought that we should consider the law of agency insofar as it relates to insurance.
- 3.17 Many of the points raised by respondents in support of a review were covered in a succinct submission from Freshfields Bruckhaus Deringer:

There is a great deal of confusion as to the relationship between brokers, insureds and insurers and to whom the broker owes a duty and in respect of what activity. This can have serious ramifications in the context of non-disclosure, claims-handling and document retention (see for example the Court of Appeal's recent decision in *Goshawk v Tyser*) and conflicts of interest. As the FSA is currently considering the last point we agree that any review in this area should take into consideration the effect of any rules issued by the FSA.

3.18 The judges of the Court of Session suggested one way forward:

This whole issue is extremely complicated in respect of the question of "who acts for whom". Since the *uberimae fidei* aspect of insurance falls principally upon the insured, the law should be stabilised upon the basis that an agent acts for the insured rather than the insurer. On any view of the matter, who is acting for whom in any case should be specifically defined in any contract.

3.19 In our Scoping Paper we drew attention to the situation that may arise where an applicant for insurance discloses material facts to the broker, but the broker fails to pass on the information to the insurer. We mentioned that the Insurance Ombudsman had indicated that in appropriate cases he would not allow the insurer to rely on the non-disclosure. Some respondents were clearly unhappy with this approach. The Liverpool Underwriters and Marine Association, for example, commented as follows:

There was absolutely no support as to the theory that knowledge in the broker's possession being imputed to the Underwriter. Indeed this was seen as producing great difficulties with potential multi actions, one against the Underwriter where the broker was witness and then one by the Underwriter against the broker although it was difficult to identify the cause of action.

3.20 One insurer, Allianz Cornhill Insurance plc, suggested that a broker should carry professional indemnity insurance. Another, Scottish Widows plc, added that if a broker was unable to meet its liability, the policyholder would have a claim against the Financial Services Compensation Scheme.

3.21 The wider implications of any review of the law of agency were raised by some respondents. Marsh and McLennan Companies Inc, for example, support a review but see the likely way forward as regulation rather than law reform:

We anticipate that reform of the law would be problematic as it would be difficult to prevent the review from extending into other agency relationships which have no connection with insurance.

- 3.22 *Decision: Issues of agency impact on several areas that we will be reviewing, especially non-disclosure. We will consider agency as a pervasive issue, to be examined throughout the review, rather than as a topic in its own right.*¹

QUESTION 4: DO YOU AGREE WE SHOULD CONSIDER THE LAW OF SUBROGATION?

- 3.23 We received 101 responses to this question. Of these respondents, 75% thought that we should consider the law of subrogation.
- 3.24 There is general support for consideration of the implications of subrogation where family members are concerned, coupled with a "tidying up" exercise in respect of the Lister v Romford Ice Agreement. We were particularly interested in the comments of the Association of British Insurers ("ABI"), as it is responsible for maintaining that Agreement:

A review should not only achieve greater clarity and understanding in the mortgage indemnity example, but could also consider that the extension of the application of the principles enshrined in the market Lister v Romford Ice Agreement and clarify subrogation rules in scenarios, for example, involving members of the policyholder's family.

- 3.25 One insurer, NFU Mutual, argued that the subject could potentially be much wider, including the operation of construction policies where it felt most difficulties have arisen. It thought, however, that this might be an unwise diversion of effort.
- 3.26 A response from Xchanging Claims Services suggested that we should consider whether the subrogating insurers should be permitted to sue in their own name rather than in that of the insured. It stated that insureds will often object on commercial grounds to their names being used in this way. This point was echoed by the Liverpool Underwriters and Marine Association:

There was considerable support for revisiting the law of subrogation not least in all following continental procedural rules allowing the insurer to sue in his own name. It was also considered that thought should be given as to the French procedure of Action Directe against a liability insurer at the commencement of any action.

¹ See paras 2.10 to 2.11.

- 3.27 *Decision: The law of subrogation causes problems, but it is not necessarily a priority for reform. We will only look at this as a separate topic if time allows after our other work has been concluded.*

QUESTION 5: DO YOU AGREE THAT WE SHOULD REVIEW THE ISSUE OF "WORTHLESS" POLICIES?

- 3.28 We received 101 responses to this question. Of these, 64% thought that we should not consider "worthless" policies, with those who accepted there was a problem generally suggesting that it was best addressed through regulation.
- 3.29 In our Scoping Paper we referred specifically to payment protection insurance ("PPI"). One response, from the Finance and Leasing Association, accepted that PPI policies could be rendered worthless by poor selling methods, but argued that the product itself was of value:

PPI is an inherently sound and helpful product, which provides many people taking out loans with valuable protection... We do, however, recognise that there are concerns around the selling of PPI, and we take these issues seriously. We acknowledge that if sold incorrectly, as in the example provided, that the insured is unable to derive any benefit from having paid the premiums. However, we believe that any regulatory attention should focus on the selling of the product itself, and not the underlying insurance contract.

- 3.30 Some queried whether there was any such thing as a "worthless" policy. Mr Malcolm Padgett expressed doubt in strong terms:

It would appear that the Commission may here be the subject of some consumerist propaganda. Much insurance (PPI included) is packaged as a convenient secondary purchase on "take it or leave it basis" where the worth of a package to one customer will be different to the next. Provided sales are compliant with ICOB as to disclosure then the customer should be left to make a judgment — it is quite wrong for such insurance to be described as "worthless" still less for this to be an issue for the Commission.

- 3.31 Others accepted that there might be an issue, but thought it would be best addressed by means other than law reform. The Insurance Law Committee of the City of London Law Society took the following line:

We believe that this question is best addressed through a combination of regulation, regulations relating to unfair terms and to determination of individual cases by the Ombudsman. Whilst we accept that "worthless" is a label of convenience it is, we believe, an elusive concept which is capable of application to all types of products and services, and not merely insurance products; to consider how the law should deal in terms of contractual responsibilities to "worthlessness" is a wide ranging and general matter and it would, in our view, be wrong to consider it simply in the context of insurance contracts.

- 3.32 We appreciate that it might not be straightforward to find a suitable means of addressing this problem. One possibility, raised by Professor Beale in a lecture to the British Insurance Law Association in a lecture on 19 January 2006 is the use of an implied warranty:

It might be appropriate to ensure that the cheated consumer also has a remedy that does not depend on proof of fraud, for example by means of a warranty that the policy sold will be reasonably fit for the consumer's purposes as far as they are known to the insurer.

- 3.33 Ultimately, our views as to whether the issue of "worthless" policies should be included in the review were strongly influenced by a response from Mr Peter Hinchliffe, the Lead Ombudsman for Insurance at the Financial Ombudsman Service ("FOS"). Mr Hinchliffe described the current concerns relating to critical illness insurance. He gave credit to the industry for developing good practice to address perceived flaws in the law. Nevertheless, his overall assessment was damning:

Whilst there is no good overall analysis of the marketplace, these facts suggest that it may be reasonable to conclude that hundreds of thousands of consumers with critical illness policies will continue to pay premium under long term contracts under which they will never be legally entitled to receive any benefit. The insurance sector is unique both in the scale of the problem and in the fact that a full refund to the consumer buying the service does not represent an adequate remedy. The position is regarded as unsatisfactory by insurers and consumer representative bodies. We would suggest that the scope of the review must therefore include an analysis of the problem and of any legal and contractual reforms that might help to resolve the issue.

- 3.34 *Decision: There is evidence of a problem with worthless policies, though it is not clear that the solution lies in contract law. We intend to comment on this issue in a Consultation Paper, but may well conclude that the problem is best addressed through regulation.*

QUESTION 6: DO YOU AGREE THAT WE SHOULD CONSIDER THE POSITION OF JOINT INSURED?

- 3.35 We received 100 responses to this question. Of these respondents, 76% thought that we should consider the position of the joint insureds. Many were concerned with the problems that arise in commercial insurances. Kirkpatrick and Lockhart Nicholson Graham LLP gave the following view:

The practice of insuring a number of individuals under a single policy is now widespread, including professional indemnity, directors and officers liability, pension trustee liability and contractors all risks policies, and it is essential that the interests of those individuals should be adequately protected and that they should be accorded independent rights under the policy as appropriate. The fact that it is a matter of construction whether such policies are to be treated as composite policies can lead to uncertainty, while many such policies include an express severability provision, to the effect that the conduct of one insured cannot be attributed to another for the purpose of determining policy cover, policyholders may not always recognise the importance of having such a provision included.

3.36 Two respondents, Ms Emily Bourne and Barlow Lyde and Gilbert, asked whether there should be a presumption that certain types of joint policy are divisible unless it is expressly agreed otherwise.

3.37 Whilst supporting the review, some respondents warned of practical problems. A reinsurer, Scottish Re, agreed that the examples given in the Scoping Paper demonstrated an inequitable outcome for consumers. However, it suggested that:

Joint life policies may not be easy to divide, in particular in relation to applicable premium rates where the original rate was a composite one.

3.38 Both Aviva plc and the ABI pointed out that without changes the automated systems operated by insurers would not necessarily be able to deal with severed policies. The Association of International Life Offices mentioned that severance could have taxation implications.

3.39 Those who opposed a review of this area typically suggested that policyholders should reach their own judgments as to whether a joint contract was advisable. For example, Mr Alan Prescott said:

Joint insurance is the same as having a joint bank account. If you don't trust your co-insured you should insure in your own right.

3.40 *Decision: We will consider the position of joint insureds as a pervasive issue, to be examined throughout the review, rather than as a topic in its own right.²*

² See paras 2.10 to 2.11.

QUESTION 7: SHOULD WE CONSIDER THE ISSUE OF CONTRACT CERTAINTY?

- 3.41 We received 101 responses to this question. Of these, 66% thought that we should not consider contract certainty. There was a widespread view that current regulatory and self-regulatory initiatives offered the best means of dealing with this issue. The International Underwriting Association, for example, commented as follows:

The market has been working extremely closely with the FSA over a lengthy period to implement market-based measures to improve certainty at inception of the contract. FSA has set the market a number of objectives, principally that 85% of contracts should be certain by the end of 2006. The regulator is monitoring insurers' and brokers' progress in implementing an agreed market code of practice and guidelines (for both London and non-London market business). In the event that the market does not meet the stated objectives, or the FSA believes that there has not been sufficient commitment from firms to the initiative, then a range of sanctions are available to it. Given this we do not see any reason whatsoever for the Law Commission to consider an issue on which the industry is fully engaged, with the potential for action by the regulator as necessary. Indeed, proposals from the Law Commission at this stage would be counter-productive.

- 3.42 In the light of this and similar responses we do not believe we should consider contract certainty at this stage. However, we will review the position in consultation with the FSA at the beginning of 2007. By that stage, it should be clearer whether current initiatives have been successful.
- 3.43 *Decision: Contract certainty should not be included in the review at this stage.*

QUESTION 8: DO YOU AGREE THAT WE SHOULD REVIEW THE POST-CONTRACTUAL DUTY OF GOOD FAITH?

- 3.44 We received 102 responses to this question. Of these respondents, 88% thought that we should consider the post-contractual duty of good faith. Many saw it as only logical given that we had already decided to consider the pre-contractual duty of good faith.
- 3.45 Herbert Smith LLP queried whether there should be a post-contractual duty of good faith:

There is considerable uncertainty as regards the scope of the post-contractual duty. In truth the duty largely appears to raise its head in circumstances where, in the case of other types of contracts, an implied term would arise, or to supplement express terms of the contract. It is, in our view, questionable whether such a duty should exist.

- 3.46 Aon Ltd went further:

We think there is a threshold question about the suitability of a good faith doctrine in either pre or post contractual relations.

- 3.47 We were encouraged by Ms Alison Green to consider not just the duty owed by the insured:

The Law Commissions should not simply concentrate on the duty of good faith owed by the insured, but also consider recent judicial dicta on the post-contractual duty of good faith owed by insurers, notably by the Court of Appeal in *Drake Insurance plc v Provident Insurance plc*. Some thought should be given as to what should be the appropriate remedy for breach of the post-contractual duty of good faith. The remedy of avoidance of insurance may well not be appropriate (see *The Star Sea*), particularly where an insured may wish to rely on some breach of the duty of good faith on the insurer's part.

- 3.48 *Decision: The issue of post-contractual good faith should be included in the review.*

QUESTION 9: DO YOU AGREE WE SHOULD REVIEW THE LAW AS IT RELATES TO FRAUD IN THE MAKING OF A CLAIM, AND THE DEFINITION OF FRAUD FOR THIS PURPOSE?

- 3.49 We received 101 responses to this question. Of these respondents, 90% thought that we should consider the issue of fraud. It is clear that fraud is a major concern for insurers. HBOS Group commented as follows:

Fraud has become so prevalent that it is a debate worth having. I would be very concerned to make sure that any such debate should not be seen to be indulgent in any way of policyholders who perpetrate fraud. As stated, it is honest policyholders who pay the price of the antics of the dishonest.

- 3.50 Davies Arnold Cooper argued for greater certainty and for a robust response to the fraudsters:

Remedies for fraudulent conduct by a policyholder are uncertain; there is no consistency in approach in policy terms and conditions. Uncertainty can lead to a defensive approach by insurers towards policyholders which undermines the relationship. There is a need for a clear statement by the legislature that fraudulent conduct during the currency of an insurance policy at placement or during the claims process, will lead to an immediate cessation of the contract with no monies refunded to the fraudster but all monies paid to the fraudster from the time the fraudulent conduct occurred should be refunded to the insurer.

- 3.51 *Decision: The issue of fraud causes real problems in English law (though may be less problematic in Scotland). It is closely linked to the question of post-contractual good faith, which is included within the review. We propose that fraud will be considered at least to the extent necessary in connection with post-contractual good faith, and we may find that other issues concerning fraud also require review.*

QUESTION 10: DO YOU AGREE THAT SECTION 22 OF THE MARINE INSURANCE ACT 1906 SHOULD BE REVIEWED?

- 3.52 We received 92 responses to this question. Of these respondents, 84% thought that the provision should be included within the review. This places the provision into the second of the categories identified in paragraph 1.18. We therefore believe that it should be considered.
- 3.53 *Decision: Section 22 of the Marine Insurance Act 1906 should be included in the review.*

QUESTION 11: DO YOU AGREE THAT SECTION 53 OF THE MARINE INSURANCE ACT 1906 SHOULD BE REVIEWED?

- 3.54 We received 93 responses to this question. Of these respondents, 77% thought that the provision should be included within the review. This places the provision into the second of the categories identified in paragraph 1.18. We therefore believe that it should be considered.
- 3.55 *Decision: Section 53 of the Marine Insurance Act 1906 should be included in the review.*

QUESTION 12: DO YOU AGREE THAT THE MARINE INSURANCE ACT 1788 SHOULD BE REVIEWED?

- 3.56 We received 92 responses to this question. Of these respondents, 82% thought that we should include this statute within the review.
- 3.57 The statute is the remainder of an early attempt to address insurable interest. Given our conclusion on Question 1 we think it inevitably follows that it should be considered within the review.
- 3.58 *Decision: The Marine Insurance Act 1788 should be included in the review.*

QUESTION 13: DO YOU AGREE THAT SECTION 83 OF THE FIRES PREVENTION (METROPOLIS) ACT 1774 SHOULD BE REVIEWED?

- 3.59 We received 92 responses to this question. It was notable that only two respondents were against such a review, and that 82% of respondents thought we should consider the issue (The Act does not apply in Scotland).
- 3.60 Zurich Financial Services set out what it saw as the purpose of the section and then gave a useful example of the sort of situation that can arise in practice:

The objective of this section is to deter landlords from removing their tenants by deliberately setting fire to the premises and, at the same time, collecting the insurance monies. Section 83 requires insurers to settle these types of claims by reinstatement when requested by interested parties or where there are suspicions of fraud or arson.

In our experience, the operation of this section can sometimes result in the inflation of claims and delays in settlement, which is detrimental to both insurers and policyholders.

As an example we recently received a fire claim in respect of a converted mill which was approximately 150 years old. The cause of the fire was arson, but there was no suspicion that the policyholder was involved. It was unlikely that the local planning authority would have allowed the premises to be rebuilt in a similar manner. In any case, the policyholder preferred that the premises were rebuilt in a contemporary format using modern materials. From our perspective there were benefits to rebuilding the mill in this manner as it was likely to result in significant cost savings.

In this particular case, a tenant raised an objection pursuant to section 83 as an interested party (the tenant had been contributing to the payment of premiums). Ultimately we were able to negotiate a settlement with the policyholder which satisfied the tenant, but this settlement resulted in additional costs to Zurich.

This case highlights the potential for section 83 to be used to inflate and delay the resolution of claims, which may ultimately affect premiums to be paid by policyholders. With more sophisticated forensic techniques available to detect arson, there is less of a need for legislation to address this issue.

- 3.61 On a lighter note, Professor Robert Merkin agreed that the section should be reviewed but suggested that "it would be a shame to see such elaborate language expunged from the statute book".
- 3.62 *Decision: Section 83 of the Fires Prevention (Metropolis) Act 1774 should be included in the review.*

QUESTION 14: ARE THERE OTHER EXISTING STATUTORY PROVISIONS WHICH SHOULD BE REVIEWED WITH A VIEW TO AMENDMENT OR REPEAL?

- 3.63 As noted in paragraph 1.13 above, we received 86 responses to this question. 36% of respondents said that there were other statutory provisions which should be reviewed. Not all, however, went on to identify such provisions. Those who did mentioned the following pieces of legislation:
- (1) The Marine Insurance Act 1906 — one respondent referred to sections 10 and 43 in particular, others felt a general review of the entire Act should be considered.
 - (2) The Road Traffic Acts 1988 and 1991.
 - (3) The Forfeiture Act 1982.
 - (4) The Policies of Assurance Act 1867.
- 3.64 We will consult further on these suggestions and remain open to further possibilities being suggested during the course of the review.

- 3.65 *Decision: There are other statutory provisions in insurance law which may cause problems, but which are not necessarily a priority for reform. We will only look at the Forfeiture Act 1982, the Policies of Assurance Act 1867 and the remaining provisions of the Marine Insurance Act 1906 if time allows after our other work has been concluded. In the course of our work we may encounter other provisions that also require review.*

QUESTION 15: DO YOU AGREE WE SHOULD CONSIDER THE REMEDIES AVAILABLE TO A POLICYHOLDER WHEN AN INSURER UNREASONABLY DELAYS THE SETTLEMENT OF A CLAIM?

- 3.66 We received 102 responses to this question. Of these respondents, 75% thought that we should consider the remedies available to a policyholder when an insurer unreasonably delays the settlement of a claim.

- 3.67 A joint response from Mr Derrick Cole and Mr Geoffrey Lloyd suggested that English law should be brought into line with that applicable in Scotland:

The right to sue for damages must be introduced in a similar manner to the act in Scotland. Due account should be taken of any delay caused by an insured's actions or failure to provide the insurer with required details of the claim and documents associated therewith.

- 3.68 In the Scoping Paper we indicated that we felt the introduction of punitive damages was neither appropriate nor likely. Most respondents agreed. Berwin Leighton Paisner said:

Any award tantamount to punitive damages would be detrimental to the insurance and reinsurance market and would ultimately lead to a rise in premiums for the consumer/insured.

As the Commission is no doubt aware, the threat of US style punitive damages can be used to effectively force insurers into paying claims where there is no clear liability leading to large market issues such as the King v Brandywine decision. This can lead to the unravelling of many already paid losses.

- 3.69 However, Mr Adam Samuel suggested that punitive damages had a place:

I personally would support punitive damages when an insurer declines a claim in bad faith. Something needs to be done to stop intentional low-balling.

- 3.70 Some insurers supported the development of a suitable remedy for policyholders. Royal and SunAlliance (UK Commercial) suggested that there were some related issues which needed to be considered to ensure fairness for insurers. However, subject to these matters being addressed, it felt the area should be reviewed:

Payment of interest will not always be an adequate remedy for a policyholder where an insurer unreasonably delays settlement of a claim. In that situation it appears right and fair that a policyholder should be able to recover consequential losses in accordance with common law rules. We do not believe that it is necessary to seek to limit such a right according to the gravity of the consequences for the policyholder. We would therefore be sympathetic to consideration of treating the obligation of the insurer as a debt: a contractual obligation to pay a sum of money equivalent to the policyholder's loss.

- 3.71 The ABI was against this area being reviewed, but did recognise that reform might bring some advantages for the insurance industry:

We do recognise that there might be merit in considering restricted circumstances where damages could be awarded for late payment (as is the case in some jurisdictions, including Scotland). It is arguable that the award of damages could be in the interest of the market as a whole otherwise those insurers who unreasonably delay payment enjoy a competitive advantage at the same time as bringing the industry potentially into disrepute.

- 3.72 Some respondents suggested that the issue was already adequately addressed by regulatory provisions and the general obligation to treat customers fairly. We did not find this a compelling argument, and other respondents pointed out that such measures only provide a partial solution.

- 3.73 A variety of practical issues were raised. The ABI explained that delay could occur for legitimate reasons — for example, in connection with statutory reporting obligations relating to the Proceeds of Crime Act 2002, money-laundering regulations or anti-terrorism legislation. Other respondents mentioned that in some cases insurers were bound by claims control mechanisms in their reinsurance arrangements.

- 3.74 Finally, some respondents suggested that any initiative in this area should not extend to delay in settlements under reinsurance contracts.

- 3.75 *Decision: The remedies available to a policyholder when an insurer unreasonably delays the settlement of a claim should be reviewed.*

QUESTION 16: DO YOU AGREE THAT THE REVIEW OF GENERAL PRINCIPLES OF INSURANCE LAW SHOULD INCLUDE THEIR APPLICATION TO REINSURANCE?

- 3.76 We received 100 responses to this question. Of these respondents, 84% thought that we should consider reinsurance. The typical view was reflected in the response from Ms Alison Green:

As the law and principles that apply to insurance law often apply to reinsurance, it would be desirable to consider them in the context of reinsurance too. The Law Commissions have already decided to review non-disclosure, misrepresentation and warranties, which are also frequently issues in reinsurance disputes. Indeed, many of the leading cases on the law of non-disclosure have been reinsurance cases. Further, as many reinsurances incorporate the underlying insurance provisions and tend to follow the settlements of the insurers, it would be desirable to consider reinsurance in conjunction with any review of insurance, as this is likely to impact on reinsurers.

- 3.77 A small number of respondents felt reinsurance should be excluded from the review. Three factors appeared to cause particular concern — a perceived danger that considerations appropriate to the consumer context might spill over into a review of reinsurance, a belief that the parties to reinsurance contracts are commercial concerns who are more than capable of looking after their own interests, and the international implications of any review. These points were summarised by the International Underwriting Association:

The case for fundamental change in reinsurance is not at all strong and it is eminently possible that proposals based on the consumer considerations will adversely impact the reduced barriers to entry promoted by the Reinsurance Directive. Any consideration of reinsurance should take into account the inherently international nature of the business, the relative position of the parties and legislation in other jurisdictions.

- 3.78 However, one reinsurer, Scottish Re, argued that reinsurance should be reviewed:

Reinsurance is an important part of the UK insurance market and it is essential that the UK maintains its competitiveness in the global reinsurance market. Separate consideration should be given to the application of each proposed medium and large business insurance reform to reinsurance transactions. The default position should be that reinsurance should be treated the same as medium and large business insurance but there may be areas, such as the ongoing duty of good faith in proportional reinsurance, where a different result may be appropriate.

- 3.79 *Decision: Reinsurance should be included within the review.*

QUESTION 17: WHAT OTHER AREAS OF THE LAW WOULD YOU LIKE US TO REVIEW?

- 3.80 We received 95 responses to this question. 63% of respondents felt that there were other areas we should consider. Here we list some of the suggestions made:

- (1) Conditions precedent.
- (2) Waiver and estoppel.

- (3) The categorisation of the policy terms.
- (4) Group policies.
- (5) Assignment.
- (6) The noting of interests on policies.

3.81 It seems to us that these suggestions are all worth further consideration, and we therefore intend to assess them for possible inclusion within the review.

3.82 *Decision: We will examine the first three issues — conditions precedent, waiver and estoppel, and the categorisation of policy terms — insofar as they have an impact on other areas we are considering. Group policies, like the law of agency and the position of joint insureds, are a pervasive issue to be looked at as the review progresses. We will consider assignment and the noting of interests only if time allows after our other work has been concluded.*

QUESTION 18: SHOULD WE SEEK TO PRODUCE A STATUTORY CODE FOR INSURANCE CONTRACT LAW AS IT APPLIES TO CONSUMER AND SMALL BUSINESS POLICYHOLDERS?

3.83 We received 96 responses to this question. 45% of respondents were in favour of a code, and 38% were against. The Liverpool Underwriters and Marine Association set out some of the possible benefits:

It was generally thought that a statutory code drawing together the law as it applies to consumers to be of some assistance and in particular the law as to material non-disclosure as found in sections 17 through 20 of the Marine Insurance Act 1906, ICOB and the Ombudsman's guidance. It was recognised that there is an expectation that Europe will give consideration to a new Directive or Regulation in respect of insurance contracts and clearly it was considered consumer law is an area where the United Kingdom could be a market leader.

3.84 Some respondents were concerned about the delay that the preparation of a code might entail. The ABI made this point strongly:

It is possible to make persuasive arguments both in favour and against codification. However, given the potential magnitude and complexity of this matter and attendant burden upon time and resource, we are not convinced that pursuing such an outcome would be worthwhile. It should not delay consideration of other matters and should certainly not be pursued during the first phase of the project.

3.85 The FOS is in favour of a code but raised the same point:

We would be concerned that the considerable benefits of the review of issues and principles that is to be carried out might be delayed if further work were required in order to prepare such a statutory code.

- 3.86 *Decision: The Final Report is unlikely to include a statutory code for consumers and small businesses. However, we should keep open the possibility of such a code being prepared in a subsequent phase of the project.*

QUESTION 19: SHOULD WE SEEK TO PRODUCE A STATUTORY CODE FOR INSURANCE CONTRACT LAW AS IT APPLIES TO MEDIUM AND LARGE BUSINESS POLICYHOLDERS?

- 3.87 We received 96 responses to this question. 52% of respondents were against a code. 33% were in favour. The ABI suggested that it would be an unwelcome level of intervention in the market:

The arguments for codification appeared stronger in relation to consumers and small business policyholders rather than for large enterprises where the guiding principle should be freedom to contract.

- 3.88 Respondents commonly linked their answers to question 19 with their answers to question 18. Some felt that there should in fact be a single code. The Commercial Court Users Committee took this line:

We consider that the Commission should give serious consideration to undertaking a general statutory (re)codification of insurance contract law and whether it should apply to all categories of insurance (e.g. marine and non-marine insurance). This would significantly enhance the prospects of the English system being held up as an example to follow, in the event of future moves to harmonise European insurance law. The present situation, whereby a large body of insurance contract law does not apply in the consumer sphere, is unsatisfactory. Our view is that if reform of the law can be achieved, the necessity for a distinction between the law applied to consumers/small businesses and that applying to medium/large businesses, will to a large extent disappear.

- 3.89 However, Willis Group, which supports the introduction of a code, questioned whether an acceptable result would always be achieved by leaving matters to the market:

The concept of the bargaining power of MLBs may be over-estimated in certain classes of business where market capacity and/or scope of cover is limited, and when insurers do use the threat of avoidance/discharge to delay and ultimately reduce claim payments.

Generally speaking the production of a statutory code may have the benefits of being:

- (a) Quicker to implement.
- (b) Influential in Europe.
- (c) User-friendly, with greater clarity of language and manageable in content and length.

3.90 We appreciate that there is significantly less support for a code for medium and large businesses than for consumers and small businesses. However we do not at this stage think that such a code should be ruled out. A final decision will be made once the scale of any recommended reforms is clear.

3.91 *Decision: The Final Report is unlikely to include a statutory code for medium and large businesses. However, we should keep open the possibility of such a code being prepared in a subsequent phase of the project.*

APPENDIX A

MEETINGS AND LECTURES

MEETINGS

13/06/05	Association of British Insurers – Mr Mark Allen
14/06/05	Financial Ombudsman Service – Mr Peter Hinchliffe and Ms Reidy Flynn
28/06/05	Lloyd's – Mr Julian Burling
06/07/05	Financial Services Authority – Dr Robert Purves
11/07/05	Association of British Insurers – Mr Mark Allen and Heads of Legal
12/07/05	Mr Ken Davidson
13/07/05	Professor John Birds
19/07/05	London Economics
02/08/05	Mr Julian Miller
04/08/05	British Insurance Law Association – Ms Alison Green and Mr Stephen Lewis
04/08/05	The Association of Insurance and Risk Managers
23/08/05	International Underwriting Association of London – Mr Chris Jones
30/08/05	Mr Derrick Cole and Mr Geoffrey Lloyd
31/08/05	Financial Services Compensation Scheme
02/09/05	Association of British Insurers – Mr Jamie Bell
14/09/05	Forum of Insurance Lawyers – Ms Cathy May
20/09/05	Professor Paul Fenn – Nottingham University
03/10/05	Financial Ombudsman Service — Peter Hinchliffe
04/10/05	Which? – Ms Teresa Fritz and Ms Ingrid Gubbay
23/11/05	Professor John Lowry and Dr Philip Rawlings – University College London
29/11/05	Professor Robert Merkin – Southampton University
05/12/05	RBS – Mr Gerry Kelly and Mr Gerard L'Aimable

20/12/05	Professor Malcolm Clarke – Cambridge University
17/01/06	British Insurance Law Association – Mr Adrian Hamilton QC and Ms Alison Green
09/02/06	Association of British Insurers — Legal Panel
10/02/06	Ms Shelly Shachter – AON
27/02/06	Group Risk Development — GRiD
07/03/06	City of London Law Society
14/03/06	Scottish Law Commission
15/03/06	Scottish Law Commission, Professor Angelo Forte, Ms Sarah Wolfe, Advocate and the Scottish Consumer Council
05/04/06	Ince and Co
05/04/06	Reynolds Porter Chamberlain – Mr Paul Nicholas
10/04/06	British Insurance Brokers' Association
09/08/06	City of London Law Society – Mr Ian Mathers and Mr Martin Bakes
15/08/06	Professor Paul Fenn and Professor Neil Rickman

LECTURES

19/01/06	British Insurance Law Association
15/02/06	Exeter Chartered Insurance Institute
21/03/06	Liverpool Underwriters and Marine Association
21/03/06	Complinet
27/03/06	Society for Advanced Legal Studies
19/05/06	AIDA Reinsurance and Insurance Arbitration Society of the UK

APPENDIX B ADVISORY PANEL

Mr Mark Allen	Manager, Legislation — Association of British Insurers
Professor John Birds	University of Manchester, co-editor of Modern Insurance Law, MacGillivray and Parkington on Insurance Law, and The Encyclopaedia of Insurance Law, insurance editor for the Journal of Business Law
Mr Ken Davidson	Chairman of Crispin Speers and Partners (Lloyd's Brokers), past Chairman of the British Insurance Law Association and past President of the Chartered Insurance Institute
Professor Angelo Forte	University of Aberdeen. Author of the section on Insurance in the Stair Memorial Encyclopaedia of the Laws of Scotland.
Ms Alison Green	Barrister, 2 Temple Gardens, Vice-President of the British Insurance Law Association
Ms Ingrid Gubbay	Principal Campaigns Lawyer — Which?
Mr Martin Hill	Groves, John and Westrup Ltd and Chairman of the Liverpool Underwriters and Maritime Association
Mr Peter Hinchliffe	Lead Ombudsman, Insurance — Financial Ombudsman Service
Mr Chris Jones	Aviation Manager — International Underwriting Association
Mr Gerard L'Aimable	Head of Group Insurance Risk — Royal Bank of Scotland
Professor Robert Merkin	Southampton University
Mr Robert Purves	Chief Counsel, Insurance — Financial Services Authority
Ms Sarah Wolffe	Advocate. Contributor to MacGillivray and Parkington on Insurance Law

APPENDIX C

LIST OF RESPONDENTS

- 1 Associated Insurance Experts
- 2 Professor Robert Merkin
- 3 Professor John Lowry and Dr Philip Rawlings
- 4 Professor Malcolm Clarke
- 5 Ms Ling Ong
- 6 Emily Bourne
- 7 Mr Derrick Cole and Mr Geoffrey Lloyd
- 8 City of London Law Society
- 9 Ms Jo Swinson MP
- 10 Professor Angelo Forte
- 11 Mr Philippe Chennaux
- 12 Professor Iain MacNeil
- 13 Mr Malcolm Padgett
- 14 Richards Hogg Lindley
- 15 Mr Stephen Goodacre
- 16 Professor Gerard McMeel
- 17 The Rt Hon Lord Justice Tuckey
- 18 Zurich Financial Services
- 19 Crown Office Chambers
- 20 Jardine Lloyd Thompson
- 21 Clifford Chance LLP
- 22 Mrs Anne Logan
- 23 Davies Arnold Cooper
- 24 International Underwriting Association
- 25 Mr Graham Charkham

26	Allen and Overy
27	The Faculty of Advocates
28	Mr Tom McGrath
29	Tindall Riley Ltd
30	Stoke-on-Trent Insurance Institute
31	London Market Insurance Brokers' Committee/British Insurance Brokers' Association
32	The Association of Insurance and Risk Managers
33	Association of International Life Offices
34	Mr Alan Prescott
35	HBOS plc
36	Mr Mark Wibberley
37	Mr Peter Dalton
38	Lloyd's Market Association
39	Munich Re
40	The Rt Hon Lord Justice Longmore
41	Kirkpatrick and Lockhart Nicholson Graham LLP
42	Financial Ombudsman Service
43	Mr Peter Franklin
44	Scottish Re Holdings Ltd
45	Finance and Leasing Association
46	Professor Howard Bennett
47	Ince and Co
48	Mr Timothy Pope
49	Mr Jonathan Noble
50	Mrs Nora Papworth
51	The Rt Hon Mr Justice Cooke
52	Royal and Sun Alliance

53	NFU Mutual
54	Liverpool Underwriters and Maritime Association
55	The Rt Hon The Lord Chief Justice of England and Wales
56	Warranty Direct Ltd
57	Mr Adrian Pinington
58	International Swaps and Derivatives Association
59	The Institute of Insurance Brokers
60	Mr Adam Samuel
61	HM Treasury
62	The Rt Hon Sir Mark Potter
63	Xchanging Claims Services
64	Citizens Advice
65	Munich-American Risk Partners
66	Association of British Insurers
67	Willis Group
68	AIG Europe (UK) Ltd
69	Freshfields Bruckhaus Deringer
70	Berwin Leighton Paisner
71	Reynolds Porter Chamberlain
72	International Group of P and I Clubs
73	The Society of Motor Manufactures and Traders Ltd
74	Mr Bill Rendall
75	Mr Lee Knight
76	Scottish Widows plc
77	The Rt Hon The Lord Mance
78	Mr Nicholas Legh-Jones QC
79	Scottish Equitable plc

80	Mr Glyn Evans
81	Browne Jacobson
82	Ms Maggie Hemsworth
83	Institution of Civil Engineers
84	Allianz Cornhill Insurance plc
85	Mr John Sinclair
86	NHI Services Ltd
87	Groupama Insurance
88	Chartered Insurance Institute
89	Legal and General
90	Norton Rose
91	Herbert Smith LLP
92	AON Ltd
93	Beachcroft Wansboroughs
94	Marsh and McLennan Companies Inc
95	ACE Europe
96	Scottish Consumer Council
97	RBOS
98	District Judge David Oldham
99	Zurich Professional
100	Mr Peter Symes
101	Mr Andrew Carrick
102	Mr Don Metcalfe
103	The Rt Hon Lord Justice Waller
104	Mr Ray Hodgkin
105	Markel International Ltd
106	Aviva plc

107	Ms Alison Green
108	Mr John Gordon
109	Balcombe Group
110	Clyde and Co
111	Fortis Insurance Ltd
112	Barlow Lyde and Gilbert
113	Law Reform Committee of the Bar Council
114	Law Society of Scotland
115	Law Reform, City of Westminster and Holborn Law Society
116	Mr Anthony Wakefield
117	Financial Services Authority
118	Judges of the Court of Session

APPENDIX D – TABLE OF RESPONSES

	Insurable interest	Statutory definition	Agency	Subrogation	“Worthless” policies	Joint insureds	Contract certainty	Post-contractual good faith	Fraud	Section 22 MIA 1906	Section 53 MIA 1906	MIA 1788	Section 83 FP (M) A 1774	Other statutory provisions	Unjustifiable delay	Reinsurance	Other areas	Codification CSB	Codification MLB
1	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	-	-	D	Y	Y	Y	Y	Y
2	Y	Y	Y	Y	Y	Y	N	Y	Y	Y	Y	Y	Y	-	Y	Y	Y	Y	Y
3	Y	-	Y	-	-	-	-	Y	Y	-	-	-	-	-	Y	-	-	Y	-
4	Y	N	D	Y	Y	-	N	Y	Y	-	-	-	-	-	Y	Y	Y	-	-
5	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	Y	-	-
6	Y	D	Y	D	N	Y	N	Y	Y	-	Y	-	-	-	Y	D	Y	D	D
7	Y	N	Y	Y	N	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
8	Y	Y	Y	Y	N	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	D	D
9	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
10	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
11	Y	Y	Y	Y	Y	Y	Y	Y	Y	D	D	D	D	D	Y	Y	D	Y	Y
12	Y	D	Y	Y	N	Y	N	Y	Y	Y	Y	Y	Y	D	Y	Y	D	N	N
13	Y	Y	Y	D	N	D	D	D	D	D	D	D	D	D	D	D	D	N	N
14	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
15	Y	Y	Y	Y	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
16	Y	Y	Y	Y	N	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
17	N	N	Y	Y	N	Y	Y	Y	N	-	Y	Y	Y	-	Y	Y	-	N	N
18	Y	N	Y	Y	N	Y	N	Y	Y	Y	Y	Y	Y	Y	N	Y	N	N	N
19	Y	N	Y	Y	N	Y	N	Y	Y	N	N	N	Y	D	Y	Y	Y	Y	N
20	Y	D	N	Y	N	N	N	D	D	Y	Y	Y	Y	Y	N	Y	Y	N	N
21	N	Y	Y	Y	N	Y	N	Y	N	Y	N	N	Y	N	Y	Y	N	Y	Y
22	D	Y	D	D	Y	Y	Y	Y	Y	D	D	D	D	Y	Y	D	Y	D	D
23	Y	Y	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
24	N	N	Y	Y	N	N	N	Y	Y	Y	Y	Y	Y	Y	N	N	Y	N	N
25	D	Y	D	Y	D	Y	Y	Y	Y	Y	D	D	D	D	Y	D	Y	Y	Y

APPENDIX D

	Insurable interest	Statutory definition	Agency	Subrogation	"Worthless" policies	Joint insureds	Contract certainty	Post-contractual good faith	Fraud	Section 22 MIA 1906	Section 53 MIA 1906	MIA 1788	Section 83 FP (M) A 1774	Other statutory provisions	Unjustifiable delay	Reinsurance	Other areas	Codification CSB	Codification MLB
26	Y	Y	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
27	Y	N	Y	Y	N	Y	N	Y	Y	Y	Y	Y	Y	D	Y	Y	Y	N	N
28	Y	D	Y	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
29	Y	N	N	N	N	N	N	Y	Y	Y	Y	Y	Y	D	Y	Y	Y	Y	N
30	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N	N	N	Y	N	Y	Y
31	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N	Y	N	Y	Y
32	Y	Y	Y	Y	N	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	D	D
33	Y	N	N	Y	N	Y	N	Y	Y	-	-	-	D	D	N	Y	Y	-	D
34	Y	N	Y	N	N	N	Y	N	Y	N	N	N	D	Y	D	N	D	Y	N
35	Y	N	N	N	N	Y	N	Y	Y	D	D	D	Y	D	N	Y	D	Y	Y
36	N	N	Y	D	Y	Y	Y	Y	Y	Y	Y	Y	D	N	Y	Y	D	D	Y
37	Y	Y	Y	Y	Y	N	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
38	Y	N	Y	Y	N	Y	N	Y	Y	Y	Y	Y	Y	N	Y	Y	Y	Y	Y
39	N	Y	Y	N	N	Y	N	Y	Y	Y	Y	Y	Y	Y	N	N	N	N	N
40	Y	N	N	Y	Y	N	N	Y	Y	N	N	N	Y	N	Y	N	N	N	N
41	Y	N	Y	Y	N	Y	N	Y	Y	-	-	-	-	-	Y	Y	Y	Y	Y
42	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	D	Y	D	Y	Y	D
43	Y	N	Y	Y	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
44	Y	N	Y	Y	N	Y	N	Y	N	Y	Y	Y	Y	N	Y	Y	Y	N	N
45	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
46	Y	D	N	Y	N	Y	N	D	Y	Y	N	Y	-	-	Y	Y	Y	N	N
47	Y	N	N	N	N	N	Y	Y	Y	Y	N	Y	N	N	Y	Y	N	Y	N
48	Y	Y	Y	D	D	D	Y	Y	D	D	D	D	D	D	Y	Y	D	N	N
49	Y	N	Y	Y	N	Y	N	Y	Y	Y	Y	Y	Y	Y	N	Y	Y	N	N
50	Y	Y	Y	Y	Y	Y	Y	Y	Y	D	D	D	Y	Y	Y	Y	Y	Y	Y

These figures should read in conjunction with paragraph 1.17(2) and (3).

APPENDIX D

	Insurable interest	Statutory definition	Agency	Subrogation	"Worthless" policies	Joint insureds	Contract certainty	Post-contractual good faith	Fraud	Section 22 MIA 1906	Section 53 MIA 1906	MIA 1788	Section 83 FP (M) A 1774	Other statutory provisions	Unjustifiable delay	Reinsurance	Other areas	Codification CSB	Codification MLB
51	Y	Y	N	Y	N	N	N	Y	Y	Y	Y	Y	Y	N	Y	Y	N	N	N
52	N	N	N	N	N	N	N	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	D	N
53	Y	N	Y	N	Y	Y	Y	N	Y	D	Y	Y	Y	-	Y	Y	Y	D	D
54	N	Y	Y	Y	Y	N	N	N	Y	Y	Y	Y	Y	Y	D	Y	Y	Y	Y
55	Y	Y	N	Y	N	N	N	Y	Y	Y	Y	Y	Y	N	Y	Y	N	N	N
56	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
57	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
58	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
59	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
60	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	D	Y	Y	Y	N	Y
61	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
62	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
63	Y	N	Y	Y	D	Y	N	Y	Y	Y	Y	Y	Y	D	Y	Y	N	Y	Y
64	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
65	N	N	N	N	N	Y	N	N	Y	Y	N	Y	Y	N	N	N	N	N	N
66	Y	N	Y	Y	N	Y	N	Y	Y	Y	Y	Y	Y	Y	N	Y	Y	N	N
67	N	N	N	N	N	Y	N	Y	Y	Y	Y	Y	D	N	Y	Y	Y	Y	Y
68	Y	N	Y	N	N	N	N	Y	Y	Y	N	Y	Y	N	N	N	N	N	N
69	Y	Y	Y	N	N	Y	N	Y	Y	D	Y	Y	D	Y	Y	Y	Y	N	N
70	Y	N	Y	Y	D	Y	N	Y	Y	D	Y	D	Y	N	Y	N	Y	D	N
71	Y	Y	N	Y	N	N	N	Y	Y	Y	Y	Y	Y	N	Y	Y	N	N	N
72	Y	N	Y	D	N	N	N	Y	Y	Y	N	D	D	D	N	Y	N	D	N
73	Y	Y	Y	D	N	D	Y	Y	Y	D	D	D	D	N	Y	N	D	Y	D
74	Y	Y	N	Y	Y	Y	N	Y	Y	Y	Y	Y	Y	D	Y	Y	Y	D	D
75	Y	N	Y	Y	N	Y	Y	N	Y	Y	Y	Y	D	D	N	Y	D	D	N

APPENDIX D

	Insurable interest	Statutory definition	Agency	Subrogation	"Worthless" policies	Joint insureds	Contract certainty	Post-contractual good faith	Fraud	Section 22 MIA 1906	Section 53 MIA 1906	MIA 1788	Section 83 FP (M) A 1774	Other statutory provisions	Unjustifiable delay	Reinsurance	Other areas	Codification CSB	Codification MLB
76	Y	N	N	N	N	N	N	N	Y	Y	Y	Y	Y	N	Y	Y	Y	N	N
77	Y	N	Y	N	N	Y	N	Y	Y	Y	Y	Y	Y	-	Y	Y	-	N	N
78	Y	N	N	Y	N	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N	N
79	Y	N	N	N	N	Y	N	Y	Y	D	-	D	D	N	N	Y	Y	-	-
80	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	D	Y	N	Y	N	Y	Y
81	Y	Y	Y	Y	N	Y	N	N	N	Y	D	Y	Y	D	Y	D	D	N	N
82	Y	N	Y	Y	Y	D	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N
83	Y	N	Y	Y	N	Y	N	Y	Y	-	-	-	Y	-	Y	Y	Y	Y	Y
84	Y	N	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	D	Y	Y	Y	Y	D
85	Y	N	Y	Y	N	Y	N	Y	Y	Y	Y	Y	-	Y	Y	Y	D	N	N
86	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	D	Y	Y	N	Y	N
87	Y	Y	Y	Y	N	N	N	Y	Y	Y	Y	Y	Y	D	Y	Y	D	Y	Y
88	Y	Y	Y	Y	N	Y	N	Y	Y	-	-	-	-	-	Y	Y	N	Y	Y
89	Y	N	Y	D	N	N	N	Y	Y	Y	Y	Y	Y	N	N	Y	D	N	N
90	Y	N	Y	Y	N	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
91	Y	Y	Y	Y	N	Y	N	Y	Y	Y	Y	Y	Y	N	Y	Y	Y	D	D
92	Y	N	N	Y	N	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
93	Y	Y	Y	Y	N	Y	N	Y	Y	Y	Y	Y	Y	D	Y	Y	Y	Y	Y
94	Y	Y	Y	Y	N	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
95	N	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	Y	Y	Y	N	N
96	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
97	Y	Y	Y	Y	Y	Y	N	Y	Y	Y	Y	Y	Y	N	N	Y	Y	D	D
98	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
99	-	N	N	N	N	N	N	N	Y	-	-	-	-	-	Y	Y	N	N	N
100	Y	N	Y	Y	Y	Y	Y	D	Y	D	N	N	Y	D	Y	Y	Y	N	N

These figures should read in conjunction with paragraph 1.17(2) and (3).

APPENDIX D

	Insurable interest	Statutory definition	Agency	Subrogation	"Worthless" policies	Joint insureds	Contract certainty	Post-contractual good faith	Fraud	Section 22 MIA 1906	Section 53 MIA 1906	MIA 1788	Section 83 FP (M) A 1774	Other statutory provisions	Unjustifiable delay	Reinsurance	Other areas	Codification CSB	Codification MLB
101	Y	Y	Y	Y	D	Y	Y	Y	Y	Y	Y	Y	Y	D	Y	D	D	Y	Y
102	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	D	Y	Y	-	N	N
103	Y	D	Y	Y	D	Y	Y	Y	Y	Y	Y	Y	Y	-	Y	Y	Y	D	D
104	Y	Y	Y	N	N	Y	N	Y	Y	Y	D	Y	Y	-	Y	D	-	Y	N
105	Y	Y	Y	Y	N	Y	N	Y	Y	Y	Y	Y	Y	N	Y	Y	Y	Y	N
106	Y	D	Y	Y	D	Y	N	Y	Y	Y	Y	Y	Y	Y	N	Y	Y	D	D
107	Y	N	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	N	Y	Y	Y	N	N
108	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
109	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
110	Y	N	Y	Y	N	Y	N	Y	Y	Y	Y	Y	Y	N	Y	Y	Y	Y	N
111	Y	N	Y	Y	N	Y	N	Y	Y	Y	Y	Y	Y	N	N	Y	Y	D	N
112	Y	N	N	Y	N	Y	N	Y	Y	Y	Y	Y	Y	Y	N	Y	N	D	N
113	Y	N	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	N	Y	Y	Y	N	N
114	Y	N	Y	Y	N	Y	N	Y	N	Y	Y	Y	Y	N	N	Y	-	-	-
115	Y	Y	N	Y	N	N	N	Y	Y	Y	Y	Y	Y	N	Y	Y	N	N	N
116	Y	N	Y	N	Y	Y	Y	Y	Y	Y	N	Y	Y	D	Y	Y	Y	-	-
117	Y	Y	-	Y	Y	Y	Y	Y	-	-	-	-	-	-	Y	-	-	-	-
118	Y	N	Y	Y	Y	Y	N	Y	N	Y	Y	Y	Y	D	Y	Y	-	N	N

APPENDIX E – OVERALL FIGURES

	Yes	%	No	%	Don't Know	%	Total	No response	Total
Insurable interest	89	88%	10	10%	2	2%	101	17	118
Statutory definition	41	41%	53	52%	7	7%	101	17	118
Agency	77	76%	21	21%	3	3%	101	17	118
Subrogation	76	75%	17	17%	8	8%	101	17	118
“Worthless” policies	29	29%	65	64%	7	7%	101	17	118
Joint insureds	76	76%	20	20%	4	4%	100	18	118
Contract certainty	33	33%	67	66%	1	1%	101	17	118
Post-contractual good faith	90	88%	8	8%	4	4%	102	16	118
Fraud	91	90%	7	7%	3	3%	101	17	118
Section 22 MIA 1906	77	84%	3	3%	12	13%	92	26	118
Section 53 MIA 1906	72	77%	11	12%	10	11%	93	25	118
MIA 1788	75	82%	6	7%	11	12%	92	26	118
Section 83 FP (M) A 1774	75	82%	2	2%	15	16%	92	26	118
Other statutory provisions	31	36%	29	34%	26	30%	86	32	118
Unjustifiable delay	77	75%	22	22%	3	3%	102	16	118
Reinsurance	84	84%	8	8%	8	8%	100	18	118
Other areas	60	63%	21	22%	14	15%	95	23	118
Codification CSB	43	45%	36	38%	17	18%	96	22	118
Codification MLB	32	33%	50	52%	14	15%	96	22	118
Averages	65	66%	24	24%	9	9%	98	20	118

These figures should read in conjunction with paragraph 1.17(2) and (3).
As a result of rounding, percentages may not add up to 100.