



Insurance Law Committee response to HM Treasury consultation on the Insurance Contracts Law draft Bill

The City of London Law Society (“CLLS”) represents approximately 15,000 City lawyers through individual and corporate membership including some of the largest international law firms in the world. These law firms advise a variety of clients from multinational companies and financial institutions to Government departments, often in relation to complex, multi jurisdictional legal issues.

The CLLS responds to a variety of consultations on issues of importance to its members through its 19 specialist committees. This response in respect of HM Treasury's consultation on the Insurance Contracts Law draft Bill has been prepared by the CLLS Insurance Law Committee (the "Committee").

HM Treasury has launched a consultation to assess whether the Insurance Contracts Law draft Bill has a broad consensus of support. It has asked stakeholders to respond to four questions in order to assess whether there is a consensus. These questions are as follows:

Leaving aside the two clauses in italics:

(1) Do you agree that reform in this area is desirable?

(2) Do you agree with the general approach of the draft Bill, as explained by the Explanatory Notes?

In addition:

(3) Do you agree with the policy reflected in clause 11 (Terms relevant to particular descriptions of loss)?

(4) Do you agree with the policy reflected in clause 14 (Implied term about payment)?

The Committee's answers to these questions are set out below.

(1) Do you agree that reform in this area is desirable?

Yes.

(2) Do you agree with the general approach of the draft Bill, as explained by the Explanatory Notes?

Yes, subject to certain concerns about the drafting of particular clauses. The Committee has previously raised these concerns with the Law Commissions.

(3) Do you agree with the policy reflected in clause 11 (Terms relevant to particular descriptions of loss)?

While the Committee recognises that clause 11 will undoubtedly result in litigation where the facts of a case are complex, on balance we support the clause. Our interpretation is that the clause will apply not only to warranties but also to other terms of a policy, such as conditions precedent.

We support the Law Commissions' decision not to require the insurer to establish causation between the insured's breach of warranty (or other term) and the loss suffered.

We expect that, as with any new test, clause 11 will require decided cases to clarify, for example, the definition of "loss of a particular kind".

(4) Do you agree with the policy reflected in clause 14 (Implied term about payment)?

Yes, the Committee considers that clause 14 is a good development in principle.

We believe that insurers are generally set up to investigate and pay claims promptly. As a result, we consider that unreasonable delay should be rare in practice.

However, we expect there to be disputes regarding what constitutes a "reasonable time". We recommend that the courts are left to determine this, and suggest that the factors in clause 14(3) are removed so that the clause reads as follows: "*What is reasonable will depend on all relevant circumstances.*"

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**THE CITY OF LONDON LAW SOCIETY
INSURANCE LAW COMMITTEE**

Individuals and firms represented on this Committee are as follows:

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Simon Cooper of Ince & Co International LLP was also involved in preparing this response.