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Insurance Bill [HL]

Bill No 39

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This is latest in a series of technical legislative measures with the broad remit of updating insurance statute law. Whilst the industry and, to an extent, commercial law have moved on, some of the statutory conditions date back over 100 years. Most of the Bill is derived from recommendations from the Law Commission and Scottish Law Commission and the Bill will be treated according to the procedures associated with Law Commission measures. The Bill includes provisions on disclosure; warranties and the treatment of fraudulent claims. The Bill requires insurers to act with 'good faith'; limits the use of warranties in contracts and provides for the expansion of the groups of individuals or companies which can be affected by the existing third party rights against insurers provisions.

The Bill applies to the whole of the UK, different parts applying to Northern Ireland where appropriate.

Timothy Edmonds

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Research Paper 15/03

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Summary

Even ignoring the huge number of PPI related complaints, insurance contracts, have formed about 10% of the Financial Ombudsman's caseload in recent years. Insurance law is poorly understood by many consumers and the law often dates back a large number of years and has adapted unevenly to the modern age. This Bill, like others before it, is derived from a wide ranging review of insurance law by the Law Commission and the Scottish Law Commission. A report was published in July 2014: *Insurance Contract Law: Business Disclosure; Warranties; Insurers' Remedies for Fraudulent Claims; and Late Payment* and is the basis for this Bill. The Bill takes action in three key issues:

The duty of fair presentation

The Bill introduces the new "*duty of fair presentation*", effectively requiring (non-consumer) policyholders to undertake a *reasonable search* of information available to them that they can declare, and defining what a policyholder knows or ought to know.

Warranties and other terms

The Bill reduces the degree to which insurers can rely on specific requirements or 'warranties' in an insurance contract, to avoid paying a claim. Under the current law, breach of a warranty in an insurance contract discharges the insurer from liability completely from that point onwards, even if the breach is remedied. If there is a breach of a contractual term, under the Bill, the insurer's liability will recommence after a breach has been remedied.

Insurers' remedies for fraudulent claims

The Bill clarifies with new statutory remedies, current civil remedies for an insurer when a policyholder submits a fraudulent claim, namely if a claim is tainted by fraud, the policyholder forfeits the whole claim. The Bill also addresses a current area of uncertainty: the insurer may refuse any claim arising after the fraudulent act. However, previous valid claims are unaffected.

Because it is a Law Commission bill, it has gone through the special procedures adopted for this type of legislation. In short, truncated proceedings in the Chamber followed by more detailed consideration in a special public bill committee. The Bill began in the House of Lords and proceedings and relevant documents there can be found on the House of Lords website. The Bill is a private members bill supported by the Government. There is a wide degree of support for the Bill across most of the industry.

1 Introduction

1.1 Problems

In the year ending March 2014, 84% of new cases brought to the Financial Ombudsman were about insurance related matters.[1] Even ignoring the fact that the overwhelming majority of these (76% of new cases) were PPI related, insurance contracts have formed about 10% of the Ombudsman's caseload over a number of years.

At the heart of many complaints was failure on the part of insurers to meet the generalised expectations of consumers. Those expectations are forged in a legal framework drawn up in the 18th and 19th centuries, 'clarified' by a shipping Act at the start of the 20th century and mostly executed with all these ease and complacency of a few clicks on 21st century technology. Chief amongst these is the *Marine Insurance Act 1906* which, by default, has been applied to all (non-marine) contracts of insurance. Perhaps the wonder is that there are so few complaints rather than that there are so many, given the legal landscape which both sides have to navigate.

It has been long recognized that the interaction between insurance statute law, the body of common law interpretation of individual cases and the technological developments in society has produced an incoherent whole. The Insurance Bill's explanatory notes state that:

> Its provisions are now significantly out of line with best practice in the modern insurance market. The law has also failed to keep pace with developments in other areas of commercial contract and consumer law, and with insurance law in other jurisdictions.[2]

1.2 Legislation reviewed

This is not the first time in recent history that the Law Commission has looked at insurance law and legislation has resulted. Two recent Acts, *Third Parties (Rights against Insurers) Act 2010* and the *Consumer Insurance (Disclosure and Representations) Act 2012* looked at aspects of general applicability of the market and at one of the specific causes of a significant number of disputes between consumers and the industry, namely arguments about disclosure.[3] A third insurance – related Law Commission Report forms the basis of this new bill.

2 Law Commission Report[4]

The Report was published in July 2014: *Insurance Contract Law: Business Disclosure; Warranties; Insurers' Remedies for Fraudulent Claims; and Late Payment*. The accompanying press release from the Law Commission outlines the key elements of their recommendations [commentary added]:

> **A duty of fair presentation in non-consumer insurance**
>
> The 1906 Act imposes a duty on a prospective policyholder to disclose to the insurer "every material circumstance" which would "influence the judgment of a prudent insurer" in fixing the premium or deciding whether to take the risk.

[1] Financial Ombudsman, *Annual Review 2014*, p42

[2] Explanatory Notes pp7

[3] More information on these Acts can be found in Library Research Papers on both bills *Third Parties (Rights against Insurers) Bill* RP10/23, 8 March 2010 and the *Consumer Insurance (Disclosure and Representations) Bill* RP12/6, 20 January 2012

[4] Law Commission includes Scottish Law Commission unless otherwise stated

Many businesses have little idea of what might influence a prudent insurer. Yet the penalties for failure to disclose information to insurers are harsh. If a policyholder fails to disclose material information, the insurer may treat the policy as if it does not exist and refuse all claims under it.

We identified several problems with the current law, including:

- The duty of disclosure is poorly understood.
- Knowing how to comply with the duty is difficult, particularly for large companies.
- The law encourages data dumping by businesses.

[Data dumping is where the insured company gives an insurer a large amount of undigested information for the insurer to sort through and decide what's relevant and thus comply with its obligations.]

The law encourages underwriting at claims stage.

The remedy for failure is too harsh.

We therefore recommend:

- Replacing the duty of disclosure with a duty of fair presentation based on developments in case law, covering what should be disclosed and the form of disclosure.
- Encouraging insurers to take a more active role.
- Setting out rules concerning attribution of knowledge, particularly to non-natural persons such as companies.
- Putting the common law "inducement test" on a statutory footing.
- Providing a regime of proportionate remedies in the event of breach by the policyholder based on what the insurer would have done if it had received a fair presentation.

[The identical topic was addressed by the *Consumer Insurance (Disclosure and Representations) Act 2012* (CIDRA) as it applied to individuals who were similarly often unclear about what was required of them.]

Warranties and other terms

An insurance warranty is a promise made by the policyholder to the insurer which, if broken, has harsh consequences for the policyholder. The general principles of insurance warranty law are founded on the rulings of Lord Mansfield in the eighteenth century, and codified in the 1906 Act.

A warranty "must be exactly complied with, whether material to the risk or not". If not, then "the insurer is discharged from liability from the date of the breach of warranty". Once a warranty is breached, the policyholder "cannot avail himself of the defence that the breach has been remedied, and the warranty complied with, before loss".

We identified several problems with the current law:

- An insurer may refuse a claim for a trivial mistake which has no bearing on the risk.
- The insured cannot use the defence that the breach was remedied before any loss occurred.
- Breach of warranty discharges the insurer from all liability, not just liability for the type of loss in question. For example, a failure to install the right sort of burglar alarm would discharge the insurer from liability for a flood claim.
- A statement may be converted into a warranty using obscure words that few policyholders understand. For example, if a policyholder signs a statement on a proposal form that their answers form the "basis of the contract", this can have draconian consequences.

We make three recommendations in this area:

- Abolish "basis of the contract" clauses in business insurance, having already done so for consumer insurance in CIDRA.
- Where a warranty has been breached, the insurer's liability should be suspended, rather than discharged. Where a breach has been remedied before loss, the insurer should be brought back on risk.
- Where a term relating to a particular type of loss, or loss at a particular time or in a particular location, is breached, the insurer's liability should only be suspended in relation to that type of loss or loss at that time or place.

The final of these recommendations was not included in the Insurance Bill introduced into Parliament by the Government in July 2014.

Insurer's remedies for fraudulent claims

The law should provide clear remedies for the insurer where a policyholder makes a fraudulent claim, yet the current law appears confused and contradictory.

Under the common law, the fraudster forfeits the fraudulent claim. However, section 17 of the 1906 Act gives the insurer a statutory remedy of avoidance of the whole contract in the event of a breach of good faith. In theory, this allows the insurer not only to refuse to pay any part of the fraudulent claim, but also to avoid the entire policy from the outset, with the parties being returned to their pre-contract position. This means the insurer could recover from the policyholder any sums previously paid out on genuine claims. Although, in practice, the courts have been reluctant to apply the remedy of avoidance, its status is still uncertain.

As a result, it is not clear whether the insurer is liable to pay other genuine claims, whether they arise before or after the fraud.

[This has been a contentious issue. The insurers argue that when there is proof that a claim is fraudulent or exaggerated, unless the courts invalidate the claim entirely there is no deterrence to the making of such claims. The issue was raised by way of government new clauses added to the *Criminal Justice and Courts Bill at its Report stage in June 2014*.

Commentary on the issue can be found in the Library's standard note on the debate on the Bill in committee.[5]]

We recommend:

- Where an insured makes a fraudulent claim, the insurer should not be liable to pay the claim and should be able to recover any sums already paid in respect of it.
- In addition, the insurer should have the option to treat the contract as having been terminated at the time of the fraudulent act.
- The insurer should remain liable for genuine losses before the fraudulent act.

Damages for late payment

Where an insurer has unreasonably refused to pay a claim or paid it only after unreasonable delay, the current law in England and Wales does not provide a remedy for the insured. Notably, the insured is not entitled to damages for any loss suffered as a result of the insurer's unreasonable actions.

This differs from the law in Scotland and most major common law jurisdictions, where such damages are available. The legal position in England and Wales is anomalous and out of step with general contractual principles.

We consider that a policyholder should have a remedy where an insurer has acted unreasonably in delaying or refusing payment. However, we recognise that insurers need a reasonable time to investigate claims, and that the length of time required will depend on factors such as the type of insurance and the complexity of the claim. We also understand that the speed with which a claim can be paid may depend on the insured themselves, and other factors outside the insurer's control. Furthermore, insurers have an obligation to ensure that only valid claims are paid.

We recommend:

- An implied term in every insurance contract that the insurer will pay sums due within a reasonable time. Breach of that term should give rise to contractual remedies, including damages. In Scotland, a statutory provision would serve to confirm and clarify the position already established at common law.
- Guidance as to factors to be taken into account when considering what constitutes a "reasonable time".
- Insurers should not be liable for delays caused by genuine disputes.

The recommendations relating to late payment are not included in the Insurance Bill.

Good faith

The law currently provides for avoidance of the insurance contract where either party breaches the duty of good faith. We recommend removing this remedy. Good faith should be retained as an interpretative principle.[6]

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[5] *Criminal Justice and Courts Bill: Commons Stages*, SN6882, 14 June 2014 p29. These clauses were agreed at the Report stage of the Bill on 17 June 2014 (HC Deb cc1066).

[6] Law Commission press release 17 July 2014

3 Lords' proceedings

Because it is a Law Commission bill the Bill has gone through the special procedures adopted for this type of legislation. In short, truncated proceedings in the Chamber are followed by more detailed consideration in a special public bill committee (PBC). Proceedings and relevant documents can be found on the House of Lords website. The Minister was Lord Newby.

3.1 Public Bill Committee (PBC)

The PBC proceedings are published here.[7] It began with three evidence sessions.

First evidence session

Witnesses: Lord Newby, David Hertzell and Hector MacQueen, Law Commission.

Lord Newby, also a member of the Committee, spoke for the Government. He gave a broad outline of the purpose of the Bill and the support it had from industry and legal interests. He touched on two issues that would be referred to later, disclosure and warranties:

> The new rules envisage a two-way dialogue between the parties at the inception of contracts, mitigating the risk of passive underwriting. If the policyholder ultimately fails to make a fair presentation, the insurers will no longer have an automatic right in every case to refuse all claims as if the contract had never existed. Instead the new remedies aim to put the insurer in the situation it would have been in had it received a fair presentation. However, the Bill retains strong remedies for insurers where a policyholder has deliberately withheld relevant information or has made a claim tainted by fraud.
>
> The Bill also updates the law on warranties—terms of insurance contracts, which, if broken, currently discharge the insurer's obligation to pay any claims arising from the point of breach. It is still the case under the Bill that the insurer need not pay claims that arise while the policyholder is in breach of the warranty, but the Bill restores cover if the policyholder remedies its breach before a loss occurs.[8]

The Law Commission witness, David Hertzell, outlined the work of the Commission and the compromises they faced when trying to reform the law, especially the law surrounding business contracts:

> Consultees recommended that we separate consumers from business, and we did. Consultees were also clear that they wanted a single business regime: that is, a business regime that has to cover a microbusiness insuring his van to a global reinsurance programme at the other end of the spectrum.
>
> It is absolutely impossible these days, and probably always was, to draft law that can cover both ends of this huge spectrum of different types of business. We have drafted something that we think fits the vast majority of businesses that sit within the middle of the bell curve. At the more sophisticated end, we expect businesses to take care of themselves, as they do now with their individual contracts, and at the less sophisticated end we have the Financial Ombudsman Service. This legislation is intended to be focused on the mainstream commercial marketplace. We expect the people who operate outside that marketplace to contract on different terms, as they do

[7] HL Special Public Bill Committee; HL 81 2014/15

[8] PBC 2 December 2014 p2

> now. It is a default regime that essentially seeks to achieve as neutral an outcome as possible for its various participants.[9]

Lord Newby was asked why the Government had removed from an early form of the Bill, provisions concerning penalties to apply to delayed insurance payments. He replied:

> The Government undertook a targeted consultation with stakeholders in relation to the Bill earlier in the year, in June and July. On this issue, it was clear that there was no consensus in the market. A number of arguments were advanced against the provisions as drafted. Some people disagreed with the whole policy, and there were detailed comments about the effect that this might have in respect of claims management companies, for example, where some people argued that it could exploit uncertainty as to what constituted a reasonable time and some insurance firms anticipated disputes or litigation arising from the clause. There was a lack of the kind of consensus that we and the Law Commission think is required in order for a provision to go into this kind of Bill.[10]

David Hertzell echoed these comments:

> We were concerned about this clause coming in. We think the law here is very hard to justify. There are concerns about it, particularly from those involved in international business and about bad-faith-style litigation being imported from the US. Those are, frankly, legitimate concerns, even though they may not be domestic concerns as such.[11]

Lord Newby then pointed out that although specific late payment clauses were removed from the Bill, late payment as a business practice is regulated by the Financial Conduct Authority – "If there are any suggestions that a company has a systematic problem with late payment, the FCA is down on it like a ton of bricks".[12] Replying to a separate question, Lord Newby indicated that depending on the passage of the supporting Regulations, the Government hoped to enact the *Third Parties (Rights Against Insurers) Act* by October 2015.[13]

Second evidence session

Witnesses: Mr Kees van de Klugt, Lloyds Market Association; Ms Philippa Handyside, Association of British Insurers; Lord Justice Longmore

The ABI witness opened her testimony with an endorsement of the Bill

> The Marine Insurance Act was long overdue for reform. The excellent work of the Law Commission has produced a Bill of good quality which the ABI's members support. We had a good dialogue with the Law Commission along the way and the published draft of the Bill is a great improvement on earlier drafts. The direction of reform in relation to fair presentation of risk and remedies for a breach of the duty of fair representation are all welcomed by the industry and largely reflect modern practice. Also, the industry is supportive of the reforms regarding warranties[14]

The Lloyds witness was less universal in his praise:

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9 PBC 2 December 2014 p3
10 PBC 2 December 2014 p4
11 PBC 2 December 2014 p4
12 PBC 2 December 2014 p5
13 PBC 2 December 2014 p5
14 PBC 3 December 2014 p19

> I would like to emphasise that we support the core reforms in the Bill on proportionate remedies for non-disclosure, on banning basis clauses, on warranties becoming suspensory and on the provisions relating to fraudulent claims. We see those as the absolutely central reforms. I should say as well that I am a BILA—British Insurance Law Association—committee member, and that BILA is in the same place in relation to the main reforms as we are. But we have some problems with some of the clauses, as will become apparent.[15]

His concern was about fitting 'bespoke' Lloyd's contracts into a rigid 'model clause' format of the Bill:

> ***Mr Kees van der Klugt***: But what one could not do is standardise terms of a complete contract, because they are very much bespoke.
>
> **The Chairman:** I was thinking about special areas, particularly about something that Lloyd's feels very uncomfortable about in the proposed Bill. For example, Lloyd's could deal with the ability to contract out by model terms.
>
> ***Mr Kees van der Klugt***: I am not so sure about that. It might become apparent when we get to some of the headline questions that we have been given that, first, if one is talking about the whole disclosure scheme as set out in Clauses 3 and 4 of the Bill, and the knowledge provisions in, I think, Clauses 4 to 7, it is very difficult to contract out of the whole disclosure scheme. Contracting out of that part of the Bill is not a particularly feasible proposition. If a broker comes into the room and says to an underwriter, "I have a huge risk that I would like you to quote on. Here is the slip and here are the terms", I do not think that the underwriter is really going to say, "Well, before I even look at this and take your presentation, I want to just rewrite the law in relation to how we are going to disclose this particular matter". I do not see how we can set standard terms for contracting out of the scheme set up by the Bill—hence our worry about contracting out being simplistic.[16]

He continued:

> Clause 11 raises quite a few uncertainties that will be very difficult for the broker and the underwriter—I am obviously talking for underwriters—to resolve. First, they have to decide whether the clause goes to the whole risk or just to a type of loss than can arise. Even if one takes the Law Commission's own examples, one can argue it both ways: whether the term goes to the whole risk so that it does not really fall under the controlling mechanism of Clause 11, or whether it goes to just one type of risk. In some ways, one feels that the underwriter would need a lawyer at his hand, and even the lawyer might not be able to answer without a court deciding whether the term goes to the whole contract or just to a particular type of loss. Then one gets into all the causation difficulties when the term goes to a particular type of loss. To give a very short answer, it is something that the Law Commission itself rejected as a route in the very detailed consultations that it did.[17]

He also claimed that the costs in Part 4 of the Bill (fraudulent claims) might well be much higher than the impact assessment suggested. Most of the proposals would raise costs in the market, but quantifying these was difficult.

[15] PBC 3 December 2014 p19

[16] PBC 3 December 2014 p19

[17] PBC 3 December 2014 p20

The Committee explored the apparent differences between the Bill and the (original) Explanatory Notes to the Bill with respect to clause 4 which relates to the 'knowledge of the insured' when the insured is a company rather than human.

> **Lord Ashton of Hyde:** The Bill says, "individuals who play significant roles in the making of decisions about how the insured's activities are to be managed or organised".
>
> **Baroness Noakes:** The Explanatory Notes cannot be used unless that is unclear. It does not seem to me to be unambiguously referring to the board.
>
> ***Ms Philippa Handyside***: Mr van der Klugt is not on his own here. I am content with the wording in the Bill. The wording in the Explanatory Notes—and I appreciate your comments—detracts from the slightly wider concept contained in the Bill and it is undesirable that is does so.
>
> **Baroness Noakes:** Do you think it should be narrower?
>
> ***Ms Philippa Handyside***: I think it should be wider. The wording in the Bill is acceptable to the part of the industry that I represent. The wording in the Explanatory Notes is not.
>
> **Lord Lea of Crondall:** Given that this is going to be in statute, this definition presumably replaces any obiter dicta in other documentation. Section 4(6) says that, "'senior management' means those individuals who play significant roles in the making of decisions about how the insured's activities are to be managed or organised". Is not this question of it meaning the board of directors alone not a red herring that, if true, could lead to the immense contradiction that you want everybody in the company who is putting in the claim to step up to the plate and be responsible? I am not quite clear why you are now not able to satisfactorily accept what is actually in the Bill.
>
> ***Ms Philippa Handyside***: I am.
>
> ***Mr Kees van der Klugt:*** We are advised by two QCs, and going on the Law Commission's own notes, that "senior management" is very restricted. They consider it to be the board. We are saying the same thing; we think that is too restricted. It is the board equivalent. That is our advice.
>
> ***Lord Ashton of Hyde:*** You have just disappointed a whole lot of the executives.[18]

Lord Newby, speaking for the Government, believed that the Bill "reflected what the Law Commission wishes to achieve".[19]

The Lloyd's representative was generally unhappy with clause 4:

> That is not the end of Section 4 I am afraid, because then we go on to the reasonable search. Our problem with this is that it is broad, vague and very uncertain. If there are any difficulties it will take a huge amount of factual and expert exploration to see what search the company should have done and what it should have produced. We are very worried about this concept. One has to say that this section substantially ousts the common law, so it will be a brand new set of principles for a brand new statutory scheme which we think is relatively high risk.[20]

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[18] PBC 3 December 2014 p22

[19] PBC 3 December 2014 p23

[20] PBC 3 December 2014 p23

He claimed that Lloyd's views had been overlooked by both the Treasury and the Law Commission – "Unfortunately, everybody has been working to a tight timescale and our suggestions were rather overtaken".[21]

The ABI representative was similarly unhappy with clause 5 which put, they said, an impossible burden of discovery on firms:

> Clause 5(2)(b) fixes insurers with knowledge of information that is readily available to the individuals making the underwriting decision. I only express the concern of the modern era that a glut of information is readily available. Almost any information is readily available, and that could infect the insurer with an almost impossible burden of knowledge which in reality they will not live up to. The information that is out there on the internet, which you do not have to pay for, should not necessarily be regarded as information that is readily available to the person making the underwriting decision. You might not know that it is out there or where to find it.[22]

The Committee moved on to ask about the fraudulent claims section of the Bill. Both witnesses thought that 'fraud was fraud' and that it was not "the time to create fraud-lite".[23]

The Committee then took evidence from Lord Justice Longmore – "someone who has been involved in insurance litigation for most of their professional life". He continued:

> I am very supportive of the Law Commission's proposals. The world has not stood still since 1906. It is a very long time since Parliament has taken commercial insurance into its purview. Two or three years ago it dealt with consumer insurance, but the terms of the Marine Insurance Act, which itself was a codification even in 1906, have become very creaky. In my view, the Law Commission has done sterling work over a number of years to try to bring the law into the modern age. I am very supportive of what it has done.[24]

A lot of his evidence concerned the reasonable disclosure and search questions. In short he thought that the worries of Lloyd's were not fully supported by how courts would interpret things. He thought Lloyd's fears were overstated:

> I am not sure that it is such a departure from common law as Lloyd's may be thinking. The common law requires the insured to disclose that which he knows or ought to know. Here, we are talking only about things that, ex hypothesi, the insured does not know. So the question is: what ought he to know? These days it seems to me that the concept of a reasonable search is itself a reasonable concept. You do not have to research everything; you have to do a reasonable search. I will come back to the uncertainties behind that in a moment, but it seems that that may be right as a concept. It is not very different from referring to what the insured ought to know, although it probably qualifies it, because under the 1906 Act the insured might be said to be in a position where he ought to know a lot of things that perhaps would not be covered by a reasonable search. But there are not many, so I do not believe that it is a great departure from the common law.[25]

He agreed with the 'fraud is fraud' approach in the Bill.

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[21] PBC 3 December 2014 p26
[22] PBC 3 December 2014 p25
[23] PBC 3 December 2014 p26
[24] PBC 3 December 2014 p51
[25] PBC 3 December 2014 p51

Third evidence session

Witness: Lord Mance (Supreme Court); John Hurrell and Paul Hopkin (Association of Risk Managers – AIRMIC)

Lord Mance began by clarifying that he thought insurance included reinsurance.[26]

He expressed concern over whether the Bill would achieve what the Law Commission wanted over 'fair presentation' and 'reasonable search'.

> However, the Law Commission aims at greater predictability in the common law and the question is whether it will achieve that. In the short term, at least, they will certainly achieve room for argument. That can, of course, be said of many changes in the law. The dichotomy that it draws has two parts. The first is what is known to senior management or persons responsible for the insurance. The second part is what you ought to know, which is defined in terms of the reasonable search.[27]

He said that there were contradictory statements in the Law Commission's definition of senior management and that they had relied on an old case which had a very narrow view of what senior management was:

> Certainly modern companies do not generally operate on the basis that you entrust the whole of the business to a senior manager even if, as is very common, the board does delegate. It seems to me that the statutory wording, as has been pointed out in this Committee, is perfectly acceptable. What has gone wrong is a lot of encrustation. I fear that people do refer back to the Law Commission report and to Explanatory Notes and raise arguments on them.
>
> So in some way or other, although I think the statutory wording is acceptable, Parliament should make very clear that that is the definitive wording, otherwise there is going to be argument.[28]

He also thought that the definition of 'reasonable search' did not take into account the work of agents whose job it was to manage insurance:

> Not surprisingly, the agent's knowledge was deemed to be knowledge which the insured had and the insurance was voidable. It seems to me quite arguable that the current proposal would reverse that line of authority because, instead of the information of the "agent to know" being imputed to the principal, you have no third category of imputed knowledge. Instead, you have the obligation of reasonable search. Reasonable search is very sensible if you do not expect to have information already, but where you have an agent whose duty is to pass you information and who is charged with responsibility for the subject matter of the insurance, you will, on the face of it, have no duty to search or inquire. I am not sure how the language works in that situation. Is the language saying that you have a duty to ask people whose duty it is to tell you without asking? In other words, do you have to go through a formality before every insurance of asking all your agents who are charged with the property or activity to be insured: "Do you have information which you ought to have"?[29]

He was asked about the exclusion of the duty on insurers to pay in a reasonable time. He broadly agreed with the exclusion:

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[26] PBC 9 December 2014 p55

[27] PBC 9 December 2014 p55

[28] PBC 9 December 2014 p55-6

[29] PBC 9 December 2014 p56

> This would appear then to throw the onus on the insurer to disclose what was motivating it behind the scenes. Sometimes when insurers are investigating matters, it could even prejudice continuing investigations. Insurers often have suspicions that need careful handling and take time to explore, and there might be problems about waiver of privilege in some circumstances. How would the insurers demonstrate that they were disputing the matter reasonably without waiving privilege as to legal advice being received?[30]

He thought that the current position of relying on the remedy of interest was sufficient. His written evidence included a description of the current interest remedy.

He had ‘considerable sympathy’ for provisions which stopped insurers relying on irrelevant breaches to refuse payment and whilst the formula in the Bill was not ideal he could not improve upon it.

John Hurrell and Paul Hopkin of AIRMIC strongly supported the Bill as it addressed the issues which “have topped the ‘keep awake at night’ list of our members for as long as we can remember.” They thought that the irrelevant warranties and damages for late payment should be in the Bill. On warranties they felt that the actual incidence of relying on such warranties was low, but its existence did not improve consumer confidence in the industry generally. Mr Hurrell argued that their existence was a negotiating tactic:

> More importantly, this gives the insurer an unassailable negotiating advantage on the grounds that it is not going to trial but that its opening gambit is, “You have breached a warranty. We accept that it is an irrelevant one, but if we chose to we could avoid the policy in its entirety. Now let us negotiate”. This is quite a challenging position for the policyholder to face.[31]

Witnesses were also heard from the insurance industry and insurance broking industry. All witnesses supported the Bill including the late payment measures.[32]

Consideration of Bill

The Committee Stage ‘proper’ began on 15 December 2014. **Clauses 1-3** were agreed to without comment.

Clause 4. A number of minor government ‘clarifying’ amendments were moved. Lord Newby, speaking for the Government reminded the Committee of the purpose of the clause:

> we had considerable discussion of Clause 4 in our oral evidence sessions. It defines what an insured knows and ought to know. It therefore sets boundaries for what the insured is required to disclose under Clause 3(4). There have been some questions about how it operates. The key point is that the policyholder should disclose both what it knows and what it ought to know and therefore should disclose everything known both to its senior management and to the people who are responsible for arranging its insurance, as well as everything that ought reasonably to have been revealed by a reasonable search. Clause 4 therefore provides a comprehensive package of knowledge provisions, which have a cumulative effect.[33]

Two minor government amendments were passed without comment. Government amendment 3 concerned the relative duties of disclosure of an insurance broker who may

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[30] PBC 9 December 2014 p57

[31] PBC 9 December 2014 p61, p62

[32] PBC 9 December 2014 p66

[33] PBC 9 December 2014 p112

have confidential information from other similar clients to the insured which they cannot divulge to the insurer:

> This provision limits the extent to which the knowledge of the broker is imputed to the insured for the purposes of the duty of fair presentation. The exception is to apply when information acquired by an agent is confidential and has been acquired from other clients who have no connection with the insurance being raised. This exception should apply only to information which the insured itself does not know and which the broker knows and holds confidentially by virtue of a business relationship with a party that is unconnected with the policy for which the presentation is being made.
>
> The Government's amendments aim to make this clearer and to clarify who is taken to be connected with the contract of insurance. Amendment 3 refers to, *"the insured and any other persons for whom cover is provided by the contract"* of insurance. It also refers to parties connected with a related reinsurance contract. By specifically making provision for reinsured risks on the face of the Bill, this provision helps to make it clear that the Bill generally applies to reinsurance, without leading to the problems in defining insurance or explicitly applying the Bill to reinsurance.[34]

The amendment was agreed to.

Amendment 4 was from Baroness Noakes. She explained its origins:

> The Lloyd's Market Association and the International Underwriting Association, which provided the Committee with much useful evidence, said in their written evidence to us that the reasonable search test in subsection (4) of Clause 4 is,
>
> *"drafted in broad and vague terms which are apt to lead to disputes".*
>
> When the LMA gave oral evidence to us, we discussed the extent to which this new provision would result in disputes and the extent to which those disputes would be costly. We clearly cannot settle that conclusively in advance—it is going to be a matter of opinion rather than fact—but I believe that we should ensure that, as far as possible, the Bill avoids the scope for disputes arising.[35]

Her amendment was to 'probe' the meaning of phrases such as 'own organisation' and 'others'. A similar amendment aiming at clarifying who 'ought to know' information was presented by Lord Woolf who wanted to employ the term ''a person who may benefit from the insurance contract'. In response Lord Newby acknowledged that the clause should be considered again to see if it could improve the certainty of who it applied to. He promised to introduce amendments on Report if necessary. Amendments 4 and 5 were not proceeded with. Other government amendments were approved.

Amendments 11 and 12 were moved by Baroness Noakes and related to the definition of 'senior management'. Her comments raised the issue mentioned in the oral evidence that whereas the Bill defines 'senior management as those who play significant roles in the making of decisions', the Explanatory Notes said that this is "intended to include (and be more or less limited to) board members".[36] She thought that the Explanatory Notes wording was simply wrong, and that the existing Bill definition was too narrow. Her amendment:

> deletes the current definition in paragraph (b) [of the bill] and replaces it with the definition of senior management that is found in the Corporate Manslaughter and

[34] PBC 9 December 2014 p113
[35] PBC 9 December 2014 p114
[36] PBC 9 December 2014 p116

> Corporate Homicide Act 2007. It is wider wording than in the existing paragraph (b), as it covers those who play a significant role in managing a significant part of an organisation and therefore clearly applies below board level. Amendment 12 merely makes it clear that the term "senior management" includes the board of directors. Its intention is to make it clear that "senior management" is definitely broader than the board of directors.[37]

She mentioned that since tabling the amendment the Committee had further evidence from Lloyd's and others that supported her broader definition approach.

Responding, Lord Newby said that widening the concept of 'senior management' removed some of the intended certainty elsewhere in the clause as to who 'ought to know' something for fair presentation purposes. He explained:

> What an insured knows, for these purposes, is that which is known by individuals in the insured's senior management and information known by individuals responsible for the insured's insurance. Everything known by the senior management is, therefore, directly attributed to the insured. If someone in the senior management conceals something and it is not disclosed, then the duty of fair presentation will be breached.
>
> Because knowledge is being directly imputed to the insured, "senior management" is intended to be a relatively narrow concept. The individuals whose knowledge is directly imputed are: first, those people who are so aligned with the insured that they can properly be said to be its directing mind and will; and, secondly, those who are responsible for the particular matter at hand, which is arranging the insurance. This is framed to reflect important decisions on the common law rules of attribution in the insurance context, which have limited attributed knowledge in this way.[38]

The broader constituency of managers and others with relevant knowledge would, he contended, be caught by the duty on the senior management to conduct a reasonable search for information. He concluded:

> My concern is that widening the definition of senior management would introduce considerable uncertainty. In a large multinational, there may be very many people managing parts of the business who could not be described as the directing mind and will. This broadening could have the effect of frustrating the aim of the provision. The Law Commission considered and consulted on the definition in these terms and rejected it as too broad. The Government have, however, already conceded that the Explanatory Notes are unhelpful in their assertion that senior management is limited to the board of directors or equivalent.
>
> However, most of those who gave evidence, including the ABI, Lord Mance, Lord Justice Longmore and AIRMIC, accepted that the definition in the legislation itself is appropriately scoped.[39]

The amendment was withdrawn and **clause 4** was agreed to. **Clauses 5 to 10** were agreed to without debate.

Lord Woolf introduced a new clause that replicated the clause originally included by the Law Commission which dealt with breaches of irrelevant clauses to an insurance contract. He referred to the comments of witnesses, especially the judges, who thought the subsequent omission of this clause was a mistake.

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37 PBC 9 December 2014 p116

38 PBC 9 December 2014 p117

39 PBC 9 December 2014 p117

Lord Newby replied saying that the omission had received both approval and criticism. His main argument was not with the merits or otherwise of the proposal but that:

> Although the Government were sympathetic to the aims of the clause, the submissions put to the Government in July suggested that, as drafted, it was too controversial to go through the special procedure for uncontroversial Law Commission Bills.[40]

He indicated that the Government supported the intent behind the clause and would be "revisiting the matter at the next legislative opportunity" and they had "asked the Law Commission to explore alternative drafts which would deliver the same policy but which would gain a consensus of support." On this basis the amendment was withdrawn.

Baroness Noakes moved an amendment to **clause 12**. This would extend remedies available to insurers for fraudulent claims to any group insurance contract, not just those which would have been individual contracts had they not been in a group. Lord Newby was sympathetic to the amendment. The Law Commission had been originally unwilling to go into solely business contracts as they did not believe there was a problem. Evidence received by the Committee now suggested otherwise. He promised to consider the matter afresh on Report. The amendment was withdrawn and **clause 12** agreed to.

Lord Lea moved a new clause to reinsert provisions on late payment of claims. The clause would give broad regulation making powers to provide remedies where there has been a delay in payment by an insurer. He noted that the Law Commission had put forward proposals on the basis of its intensive study and had retracted them 'through gritted teeth' in the face of the argument that there was no consensus on the matter. This he disputed. He suggested this was an indication that "Her Majesty's Government are content to allow the Lloyd's market traders tail to wag the whole of the insurance sector dog."[41] Echoing the point made about Lord Woolf's new clause, which failed because it was too controversial, Lord Lea said:

> I dwell on this question of consensus and how one defines it because it seems that the Minister needs to respond in terms to whether he thinks it sensible to allow lawyers to wag the whole of the insurance market dog.
>
> One of my colleagues on the Committee asked me the other day, "How do we define 'controversial'?" I said that it would appear to be a term of art, but that cuts several ways round.[42]

Lord Woolf was less supportive, having had time to consider the evidence of Lord Mance. He had pointed out that if there were penalty breaches remedied by interest, logic would suggest that there could be a claim for damages too as there had been a breach of contract. He noted that this was a "complicated and technical situation, but we are dealing here not with the consumer but with large insurance for commercial concerns."[43]

Lord Newby's response began by illustrating the controversial nature of the proposals citing the possibility of speculative litigation and:

> The ABI highlighted that claims management companies could exploit an uncertainty, for example, in a bid to obtain additional income streams. We also heard from AIRMIC

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40 PBC 9 December 2014 p118
41 PBC 9 December 2014 p120
42 PBC 9 December 2014 p120
43 PBC 9 December 2014 p123

> and the British Insurance Brokers' Association that the problems are worse in theory than they are in practice.[44]

He denied that it was only Lloyd's that was worried and that

> As the potential difficulties presented by this clause appear to outweigh any practical advantage to be gained from it, this must surely place into question whether it is necessary or appropriate for these reforms to be made at the current time.[45]

He discussed the problems in defining 'controversial' and by inference 'consensual':

> There is, unhelpfully for a Minister, no precise definition of what does and does not constitute controversy for the purposes of a Law Commission Bill. If the Bill were to include matters that are clearly controversial, as this is, the question is whether they could reasonably be expected to prejudice its passage through either your Lordships' House or the House of Commons. Our view is that there is a risk that, if these amendments were agreed to, the Bill could be placed in jeopardy. I cannot say with what probability I assess that risk, not least because it would depend very much on what happened in the House of Commons—and that certainly is another place, as far as I am concerned, when it comes to understanding rules of procedure.[46]

Lord Lea put the amendment to a division, where it was defeated.

The remainder of the Bill was agreed to without discussion.

3.2 Report Stage

Lord Newby moved an amendment to **clause 4** designed to meet the objections of Lord Woolf and Baroness Noakes (see pp13-4 above) to the previous definition of what parties 'ought to know'.

> As we discussed in Committee, what is a reasonable search of information will depend on the type of cover an insured seeks and the type of entity it is. It is important that Clause 4(6) expresses a broad principle that is flexible enough to take account of the wide variety of insurance policies and types of cover which are bought in the non-consumer context.
>
> Amendment 2 clarifies that "information" which an insured ought to know may include information held by a person other than the insured, specifically mentioning that this may include,
>
> "a person for whom cover is provided by the contract of insurance".
>
> This makes clear that persons benefiting from the contract could come within the scope of the insured's reasonable search.[47]

The amendment was agreed to.

Lord Newby put forward a new clause near identical to that from Lord Woolf concerning insurers relying on irrelevant conditions in contracts. He commented that subsequent discussion amongst interested parties had now led the Government to suppose that there

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[44] PBC 9 December 2014 p124
[45] PBC 9 December 2014 p124
[46] PBC 9 December 2014 p124
[47] HL Deb 8 Jan 2015 c545

was a sufficient degree of consensus to include it in a Law Commission Bill. The new clause was agreed to.

Lastly, Lord Newby moved amendments to enable the broad principles of Baroness Noakes's amendment to **clause 12** that would have extended remedies available to insurers for fraudulent claims to any group insurance contract. The amendment was agreed to.

The Bill received a purely formal third reading on 15 January 2014.

4 Commons' Proceedings: the Bill

4.1 Introduction

The Bill before the Commons is, as the previous section points out, was amended significantly during the Lords Report stage. As it was first printed it can be found here and as it was amended here. The relevant Law Commission Report can be found here: *Insurance Contract Law: Business Disclosure; Warranties; Insurers' Remedies for Fraudulent Claims; and Late Payment*. The Law Commission's webpage, including many other documents about the Bill can be found here.

4.2 The Commons Bill

A copy of the Bill can be found here. The revised Explanatory Notes can be found here.

The three main issues that the Bill covers remain the same:

- disclosure and misrepresentation in business and other non-consumer insurance contracts;
- insurance warranties and other terms; and
- insurers' remedies for fraudulent claims.

The description of the Lords' proceedings above are a good guide to the main debating points within the Bill. The main effect of the Lords debate was to persuade the government that the bounds of what was controversial – and hence could not be included in this type of bill – were narrower than they thought and hence more could be included. This is particularly true of the warranties issue and to a lesser the last issue that of remedies against fraudulent claims.

An edited version of the commentary on the main clauses from the Explanatory Notes are shown below.

Clause 1 provides that a "consumer insurance contract" has the same definition as in CIDRA[48]. Section 1 of CIDRA defines a "consumer insurance contract" as an insurance contract between an insurer and "an individual who enters into the contract wholly or mainly for purposes unrelated to the individual's trade, business or profession". A consumer must therefore be a natural person, rather than a legal person (such as a company or corporation). In "mixed use" policies, where the insurance covers some private and some business use, one must look at the main purpose of the insurance to classify it as one or the other.

Clause 1 of the Bill defines "non-consumer insurance contract" as any contract of insurance which does not fall within the CIDRA definition of consumer insurance contract. An insurance contract may be "non-consumer" for two reasons: either the policyholder is not an individual, or they have entered into the contract wholly or in significant part for trade, business or professional reasons.

Clause 3: The duty of fair presentation

Clause 3(1) introduces a requirement on the insured (at this stage, the person or party who would be the insured if the contract were entered into) to make to the insurer a "fair presentation of the risk" before the contract is entered into.

[48] *Consumer Insurance (Disclosure and Representations) Act 2012*

The duty of fair presentation replaces the existing duties in relation to disclosure and representations contained in sections 18, 19 and 20 of the 1906 Act. However, it retains essential elements of those provisions. It is important that potential insureds provide insurers with the information they require to decide whether to insure a risk, and on what terms.

Like the existing duties, the duty of fair presentation attaches before the insurance contract is entered into. Since the law regards renewals as new contracts, the duty also applies when an insurance contract is renewed. This is in accordance with the current law.

Clause 3(3) sets out the three elements of a "fair presentation of the risk".

The first element of a fair presentation is a duty of disclosure, introduced in clause 3(3)(a) and further defined in clause 3(4), which provides two ways to satisfy the duty of disclosure. Clause 3(4)(a) effectively replicates the disclosure duty in section 18(1) of the 1906 Act. Its key features are that the insured must disclose "every material circumstance" which the insured "knows or ought to know".

The second element of a fair presentation, in clause 3(3)(b), relates to the form of presentation rather than the substance. It is intended to target, at one end of the scale, "data dumps", where the insurer is presented with an overwhelming amount of undigested information. At the other end, it is not expected that this requirement would be satisfied by an overly brief or cryptic presentation.

The third element of the duty of fair presentation is the duty not to make misrepresentations. It is contained in clause 3(3) (c) and is based on section 20 of the 1906 Act.

Clause 4: **Knowledge of insured**

Defines what the insured "knows" and "ought to know" for the purposes of the duty of disclosure in clause 3. It is based on the insured’s duty under section 18 of the 1906 Act to disclose every material circumstance known to them, including everything which "in the ordinary course of business, ought to be known" to them.

Clause 5: **Knowledge of insurer**

Defines what the insurer "knows", "ought to know" and "is presumed to know" for the purposes of the clause 3(5) exceptions to the duty of disclosure. These provisions are based on the exceptions contained in section 18(3) of the 1906 Act and the case law interpreting them.

Clause 8: Breaches of duty

This clause provides the insurer with remedies if there is a breach of the duty of fair representation. Under the current law, a breach of section 18 or 20 of the 1906 Act gives the insurer a single remedy of avoidance of the contract. Under the Bill, the insurer has different remedies depending on the situation. One distinction is whether or not the proposer’s breach of the duty of fair presentation was deliberate or reckless.

An insured will have acted deliberately if it knew that it did not make a fair presentation. An insured will have acted recklessly if it "did not care" whether or not it was in breach of the duty, but this is intended to indicate a greater degree of culpability than acting "carelessly". "Deliberate or reckless" will include fraudulent behavior.

Schedule 1 sets out insurer’s remedies for ‘qualifying breaches’ under this clause.

Clause 9: Breach of warranties

Under the current law, an insurer may add a declaration to a non-consumer insurance proposal form or policy stating that the insured warrants the accuracy of all the answers given, or that such answers form the "basis of the contract". This has the legal effect of converting representations into warranties. The insurer is discharged from liability for claims if the insured made any misrepresentation, even if it was immaterial and did not induce the insurer to enter into the contract.

This clause abolishes basis of the contract clauses in non-consumer insurance. Basis of the contract clauses in consumer insurance were abolished by section 6 of CIDRA. It remains possible for insurers to include specific warranties within their policies

Clause 10

This replaces the existing remedy for breach of a warranty in an insurance contract, which is contained in section 33(3) of the 1906 Act. Under that section, the insurer's liability under the contract is completely discharged from the point of breach. Section 34(2) makes clear that remedying a breach of warranty does not change this. Clauses 10(1) and 10(7) repeal these existing statutory rules, and any common law equivalent.

Clause 11

Before the Bill, the actual nature of the breach was irrelevant. Under the Bill in the event of non-compliance with such a term, it is intended that the insurer should not be able to rely on that non-compliance to escape liability unless the non-compliance could potentially have had some bearing on the risk of the loss which actually occurred.

Clause 12: Fraudulent claims

This clause sets out the insurer's remedies where the insured makes a fraudulent claim. It does not apply where a third party commits a fraud against the insurer or the insured, such as where a fraudulent claim is made against an insured, who seeks recovery from its insurer under a liability policy.

The clause puts the common law rule of forfeiture on a statutory footing. Where the insured commits a fraud against the insurer, the insurer is not liable to pay the insurance claim to which the fraud relates. Where the insurer has already paid out insurance monies on the claim and later discovers the fraud, the insurer may recover those monies from the insured.

It provides the insurer with a further remedy. It gives the insurer an option to treat the contract as if it had been terminated at the time of the "fraudulent act".

The issue of inflated insurance claims is not new and it is not always deliberate. For example, individuals seldom have a good idea of what their property is worth – it is possible that underinsurance is as common as inflated claims.

Recently, the insurance industry has taken a rather tougher stance on cases where it believes there is deliberate and substantial inflation of claims. Arguing that in such cases the whole of the claim should be thrown out, not just the fraudulent part, Zurich Insurance took action against a policy holder to the Supreme Court in 2012. The claim for £838,000 damages had been reduced by a County Court to just £88,716 covering the genuine part of the claim. The insurer/respondent took the case to the Supreme Court and argued that the whole claim should be dismissed. The Supreme Court dismissed their claim saying:

> We have reached the conclusion that, notwithstanding the decision and clear reasoning of the Court of Appeal in *Ul-Haq*, the court does have jurisdiction to strike out a statement of case under CPR 3.4(2) for abuse of process even after the trial of an action in circumstances where the court has been able to make a proper assessment of both liability and quantum. However, we further conclude, for many of the reasons given by the Court of Appeal, that, as a matter of principle, it should only do so in very exceptional circumstances.[1]

The industry argued that without the expectation that the complete claim would be rejected if the fraud is discovered, there is no deterrent to making inflated claims in the first place. The judgement commented on this view:

> 50. It was submitted on behalf of the defendant that it is necessary to use the power to strike out the claim in circumstances of this kind in order to deter fraudulent claims of the type made by the claimant in the instant case because they are all too prevalent. We accept that all reasonable steps should be taken to deter them. However, there is a balance to be struck. To date the balance has been struck by assessing both liability and quantum and, provided that those assessments can be carried out fairly, to give judgment in the ordinary way. The reasons for that approach are explained by the Court of Appeal in both *Masood v Zahoor* and *Ul- Haq v Shah.*
>
> 51. We accept that such an approach will be correct in the vast majority of cases. Moreover, we do not accept the submission that, unless such claims are struck out, dishonest claimants will not be deterred. There are many ways in which deterrence can be achieved. They include ensuring that the dishonesty does not increase the award of damages, making orders for costs, reducing interest, proceedings for contempt and criminal proceedings.

Clause 13 gives the insurer remedies where there is fraud by one member of a group scheme.

Clause 14: **Good faith**

Under the 1906 Act insurance contracts are ones of ‘utmost good faith’. Clause 14 removes avoidance of the contract as a remedy for breach of this duty of good faith, both from the 1906 Act and at common law. The intention of clause 14 is that good faith will remain an

interpretative principle, with section 17 of the 1906 Act and the common law continuing to provide that insurance contracts are contracts of good faith.

Clauses 15 and 16 prohibits insurers from inserting terms in an insurance contract which would leave the insured (consumer or non-consumer) in a worse position than that required by the Bill.

Clause 16 defines ‘transparency’ in respect of what an insurer must do to draw the insured’s attention of disadvantageous terms of the contract.

Clause 19 amends the *Third Parties (Rights Against Insurers) Act 2010.* The 2010 Act was another Law Commission inspired piece of legislation like the current Bill.

The aim of the Act was to provide a more certain and simplified procedure for the benefits accruing under an insurance policy to reach their intended recipient when the insured person became insolvent – either as a company or as an individual. The Act was though, anything but simple.

Clause 19 inserts a new section 19 into the 2010 Act. The new section enables the Secretary of State to make regulations adding or removing circumstances in which a person is a "relevant person" for the purposes of the 2010 Act, provided that the Secretary of State considers that the proposed circumstances involve dissolution, insolvency or financial difficulty, or are similar to those for the time being prescribed in sections 4 to 7 of the 2010 Act.

Law Commission Bills: procedure

The following explanation of the Bill procedure for Law Commission Bills was published by the Procedure Committee in February 2008.

THE PROCEDURE

7. Following first reading, a motion would be tabled, with at least three sitting days' notice, to refer the Bill to a "Second Reading Committee". This would be an innovation for the Lords. It would function like a Grand Committee, with unlimited membership, and would take place in the Moses Room. Any Member could speak and there would be no time limit on the debate. However, as in Grand Committee, there would be no provision for divisions.

8. The Second Reading Committee would only debate the bill; it would not itself decide on the motion for second reading. As for affirmative instruments which have been debated in Grand Committee, and which still have to be approved formally by the House, the Second Reading Committee would simply report that it had considered the bill, and the motion for second reading would be taken formally in the House at a later date. It would of course be possible, in the event of serious opposition to the bill, for a vote to take place at this stage, as for any other public bill.

9. Assuming the bill had been given a second reading, the next stage would be a motion to commit the bill. The *Companion to the Standing Orders* describes Special Public Bill Committees as being particularly suited to Law Commission bills, and we recommend that this existing procedure should become the norm for the committee stage for Law Commission bills.

10. Special Public Bill Committees are empowered to take written and oral evidence within a 28-day period following their appointment. Having taken evidence, they then consider the bill clause by clause and consider amendments in the usual way.

11. Special Public Bill Committees are appointed by the House on the basis of a recommendation by the Committee of Selection, and normally have a membership of nine or ten, including the relevant minister and spokesmen of opposition parties. Members of the House who are not appointed to the Committee are free to attend public meetings, speak and move amendments, but may not vote in the event of a division.

12. Once the Special Public Bill Committee has completed its work the bill is reprinted as amended. Written and oral evidence, and a verbatim report of proceedings, are also published.

13. The remaining stages, Report and Third Reading, would follow in the usual way, on the floor of the House and on separate days. Subsequent proceedings (for instance consideration of Commons amendments) would also be exactly as for any other public bill.

Source: Procedure Committee, *Law Commission Bills*, 25 February 2008, HL 63 2007-08