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Consumer insurance and the duty of disclosure

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Summary

The landmark report by the British Insurance Law Association ("BILA"), *Insurance Contract Law Reform*, published in September 2002, was a significant influence in persuading the Law Commissions to start their current review of insurance law.[2] On 15 June 2011 the first measure resulting from that review—the Consumer Insurance (Disclosure and Representations) Bill—received its second reading in the House of Lords. The Bill is currently being scrutinised by a Special Public Bill Committee. If enacted, it will abolish the duty of disclosure in consumer insurances. This article looks at the history of the duty of disclosure and questions whether such a duty should ever have been imposed on consumers.

1. Lambert v Co-operative

The perceived weaknesses of the current law are well illustrated by the experience of Mrs Lambert, who made a claim under an all-risks policy covering her jewellery (*Lambert v Co-operative Insurance Society Ltd* [1975] 2 Lloyd's Rep 485). The claim was rejected by the insurer on the grounds that Mrs Lambert had breached the duty of utmost good faith by failing to disclose that her husband had been convicted of handling stolen goods. No doubt this came as something of a shock to Mrs Lambert. She had held the policy for over nine years and at no time had the insurer asked her any question about convictions. It is likely that she would have been even more surprised to learn that in rejecting her claim the insurer was relying on law set down in a case concerning a French raid on the Island of Sumatra during the Seven Years War.

2. The French attack Fort Marlborough

On 29 March 1760, Roger Carter, Governor of Fort Marlborough on Sumatra was faced with an unsettling sight. Two hostile French vessels, a 44 gun warship, the *Condé*, and an 18 gun frigate, the *Expédition*, had sailed into the bay outside the fort. Carter had earlier received reports that French vessels were carrying out attacks along the west coast of Sumatra and so had feared their arrival.

Fort Marlborough was an East India Company trading post with a garrison constructed to withstand attack by the native population of the island, not by a European enemy. Accounts of the forces available for its defence vary considerably, but there were probably no more 100 Europeans, 300 Malay mercenaries and 100 slaves. The strength of the garrison really lay in the difficulty of a close approach by sea, hampering any attempt to bring fire to bear from attacking vessels. Furthermore Carter was merely a mercantile not a military Governor. He had nevertheless made some hasty preparations for a defence. On

27 March 1760 an East Indiaman, the *Denham*, under Captain William Tryon had arrived at Fort Marlborough. At Carter's insistence this 499 ton vessel had remained to assist in resisting any French attack.

The French vessels were under the command of the Comte d'Estaing. D'Estaing had begun his career as a soldier. Following the outbreak of the Seven Years War, he fought with the rank of Brigadier General under the Comte de Lally in India and was at the siege of Fort George at Madras. On 14 December 1758 English forces under Lieutenant-Colonel William Draper conducted an unexpected sally from the fort. In the ensuing mêlée, D'Estaing was thrown from his horse. At the point of being sabred by two drummers, he was saved by an English officer, who took him into the fort to be held prisoner. After the siege was broken, d'Estaing gave his parole and was freed to make his way to England to surrender to George II. His parole was apparently in the usual terms, that is "not to serve directly or indirectly against the British during the present war, or until he should be regularly exchanged".

Regrettably, d'Estaing rapidly broke his word. Entering the service of the French East India Company he took command of four French ships. On 13 May 1759 he landed to the west of Gombroon and launched an attack on the English factory there. Capitulation was swift, and the terms agreed involved the English handing over the factory, its contents and a large sum of money. Next d'Estaing sailed to the west coast of Sumatra. In the north the English settlement of Natal was the first to be attacked and surrendered on 7 February 1760. On 15 February 1760 Tappanooly suffered the same fate having withstood a cannonade for three days. D'Estaing then moved south to Fort Marlborough.

On 29 March 1760, Carter decided that rather than forming part of a defence the *Denham* should be offloaded and then destroyed by fire. Accordingly the *Denham* was set ablaze the following day. For the crew, this was a troubling time. Many lost possessions which it had proved impossible to remove from the ship prior to its destruction. In addition there was doubt over their wages—their mariners' contracts provided that they would only be entitled to the initial imprest and one month's wages in every six should the ship "by danger of the sea or any other accident be destroyed, and shall not return safe to England".

Carter met with the Council of Fort Marlborough and it was agreed that the trading post should be surrendered. On the night of 31 March 1760, with morale deteriorating rapidly, the English left the fort and set off into the interior of Sumatra. The flight was chaotic, with inadequate supplies and no discernible plan. After four days, news reached the fugitives that the French had pursued them and were close by. Miserable, hungry and fearful of ill-treatment from the native inhabitants of the island, the English surrendered. Despite commitments from d'Estaing further humiliation followed – and for some, illness and death:

> "…the fugitives surrendered to the enemy, in order to avoid being cut to pieces by the natives, which they had reason to expect if they

> continued in that defenceless condition. The French commander promised that their effects and private property should be secured for them, but his proceedings were quite the contrary; he allowed his soldiers and sailors, who came thither in rags, to plunder and ransack all the houses, and put on the cloaths of the inhabitants, as well as to steal and put on board the ships all the moveable effects they could find. In June they were sent away to Batavia, and from thence to Bengal; but before they arrived at this place many died of the flux, occasioned by the bad food which they had from the French."[3]

The French remained at Fort Marlborough for at least 3 months. Two English vessels, the *Norfolk* and the *Duke of Richmond* called at Fort Marlborough on 21 July 1760 but left when the crew of the boats they sent to shore were promptly taken prisoner.

D'Estaing later attempted to return to France as a passenger on the *Boulogne*. On 6 January 1762 an East Indiaman, the *Venus*, under Captain Harrison attacked the *Boulogne*, seizing it after an hour-long battle. For a second time, d'Estaing was a prisoner of the English. He was taken to Plymouth where he was formally identified by Draper, his old adversary from Madras, who was there by mere chance, awaiting the fitting out of a ship. As he had broken his parole, d'Estaing was sent to the common prison. There was little English sympathy for d'Estaing, given his conduct. Indeed, Admiral Boscawen, then commander-in-chief in India, reportedly said that if ever he should get "the villain" in his power again, he "would chain him upon the quarter-deck and treat him like a baboon".

Nevertheless d'Estaing's stay in prison was short-lived. From secret correspondence between the Earl of Egremont and the Duc de Choiseul it appears that by 7 March 1762 he had been released at the wish of George III following the intercession of Louis XV. This was a decision the English would regret. On 13 April 1778, having achieved the rank of Vice Admiral, d'Estaing sailed from Toulon in command of 26 ships—the first French fleet sent to assist America in its War of Independence.

3. Carter v Boehm

Roger Carter had been concerned about the possibility of an attack on Fort Marlborough and the risk this would pose to his trading goods. On 22 September 1759, he had therefore written to his brother, George Carter, in London asking him to arrange a suitable insurance policy. Cawthorne, a broker instructed by George Carter, obtained cover of £10,000 at a rate of 4 per cent with a well-known London merchant and insurer, Charles Boehm. The insurance, signed on 9 May 1760, was to run from 16 October 1759 to 16 October 1760 "for the benefit of Governor Carter, and to insure him against the taking of the fort by a foreign enemy."

After the French took Fort Marlborough, Roger Carter, who had lost goods valued at £20,000, made a claim under the policy. That claim was rejected by Boehm. After a period

in Chancery, where a jury gave a decision in favour of Carter, the matter came before Lord Mansfield. Boehm argued that the earlier decision should be set aside as the state and condition of the fort and the content of three letters had not been disclosed to him at the time the policy was effected. One of these letters had been sent to Roger Carter by a Mr Winch in February 1759, and mentioned that the French had planned an attack on Fort Marlborough in the previous year. Another was written by Roger Carter to the East India Company in September 1759 warning that this plan might be revived. The third was the letter written by Roger Carter to his brother in the same month asking him to arrange insurance, and expressing fears of an attack given the difficulties the French would have in intervening in the conflict elsewhere.

Although it is clear that the duty of disclosure had been recognised long before 1766, the decision of Lord Mansfield is the first clear exposition of the obligations on insurer and prospective insured alike. We have the advantage of two reports of the case, one by Sir William Blackstone (*Carter v Boehm* 1 Black W 593) and the other by Sir James Burrow (*Carter v Boehm* (1766) 3 Burr 1905).[4] It is Lord Mansfield's words as noted by Burrow which have been most widely quoted:

> "Insurance is a contract upon speculation. The special facts, upon which the contingent chance is to be computed, lie most commonly in the knowledge of the insured only; the under-writer trusts to his representation, and proceeds upon confidence that he does not keep back any circumstance in his knowledge, to mislead the under-writer into a belief that the circumstance does not exist, and to induce him to estimate the risque, as if it did not exist.
>
> The keeping back such circumstance is a fraud, and therefore the policy is void. Although the suppression should happen through mistake, without any fraudulent intention; yet still the under-writer is deceived, and the policy is void; because the risque run is really different from the risque understood and intended to be run, at the time of the agreement.
>
> The policy would equally be void, against the under-writer, if he concealed; as, if he insured a ship on her voyage, which he privately knew to be arrived: and an action would lie to recover the premium.
>
> The governing principle is applicable to all contracts and dealings.
>
> Good faith forbids either party by concealing what he privately knows, to draw the other into a bargain, from his ignorance of that fact, and his believing the contrary.
>
> But either party may be innocently silent, as to grounds open to both, to exercise their judgment upon."

Subsequent cases, notably *Pan Atlantic v. Pine Top* [1995] 1 AC 501, have further clarified the law. It is now firmly established that a policy of insurance is a contract of the utmost good faith and that a prospective insured is therefore under a pre-contractual duty of disclosure to volunteer all material facts to the insurer. A material fact is one which would have an effect, not necessarily decisive, on the mind of a prudent insurer in assessing the risk. If the insurer is induced to offer cover by the non-disclosure of a material fact it may, on becoming aware of the true position, avoid the policy and reject any claims which have been made. This is so regardless of whether the non-disclosure was fraudulent, negligent or entirely innocent.

The present law has in some respects departed from the principles expounded by Lord Mansfield. Most obviously, Lord Mansfield considered that the obligation to act in good faith was applicable "to all contracts and dealings", whereas it has subsequently been restricted to limited classes of transactions, including insurance policies. Lord Mansfield also recognised the distinction between a concealment which the duty of good faith prohibited and mere silence.[5] And he was clear that in some cases a failure of the insurer to ask questions might amount to a waiver of information:

> "The underwriter knew the insurance was for the governor. He knew the governor must be acquainted with the state of the place. He knew the governor could not disclose it, consistent with his duty. He knew the governor, by insuring, apprehended at least the possibility of an attack. With this knowledge, without asking a question, he underwrote.
>
> By so doing, he took the knowledge of the state of the place upon himself. It was a matter as to which he might be informed various ways: it was not a matter within the private knowledge of the governor only."

Not only has the law become onerous for prospective insureds, the terminology has also changed. The fact that a policy of insurance is a contract of the utmost good faith is one of the first lessons drummed into anyone taking up employment in insurance. Leaving aside the question of whether there can be degrees of good faith, Lord Mansfield appears never to have used the phrase, referring instead simply to good faith. It is possible that the addition of "utmost", which took hold in the latter half of the 19th century, is a development from a passage from the first edition of the second volume of Blackstone's Commentaries relating to marine insurance:

> "Thus much may however be said; that, being contracts, the very essence of which consists in observing the purest good faith and integrity, they are vacated by any the least shadow of fraud or undue concealment..."

This volume was published on Friday 3 October 1766—some months after the hearing of *Carter v Boehm* on 1 January 1766.[6] No authority is given for the use of the word "purest" nor does it appear in Blackstone's report of *Carter v Boehm*, published

posthumously in May 1781.[7] The first edition of Park's "A System of the Law of Marine Insurance" published in December 1786,[8] also refers to purest good faith, but does not give Lord Mansfield as the source—rather it cites Blackstone and other writers.[9]

4. The position of consumers

Should a duty of disclosure ever have been imposed on consumers? Like many other aspects of insurance law, the rules relating to disclosure have been hammered out largely in commercial insurance cases, including disputes between insurers and reinsurers. Applying the same rules without modification to consumer insurances inevitably produces less than satisfactory results. In particular, six main criticisms may be made of the law:

- The test of materiality requires the consumer to look into the mind of a prudent underwriter—few will have the expertise to do so.
- In law there is no obligation on the insurer to ask any questions.
- The degree of culpability of the consumer is irrelevant—even innocent non-disclosure may lead to avoidance.
- Once a policy has been avoided, any claim can be rejected, even if there is no connection between the non-disclosure and the loss.
- The law encourages poor underwriting practice. An unscrupulous insurer may limit the questions it asks when a policy is sold, but if a claim is made it can search for a non-disclosure to escape liability.
- When a policy is avoided the consumer faces a triple whammy—loss of cover, loss of any claims and a future of serious difficulties obtaining cover at a manageable premium.

Lord Mansfield gave his judgment in a very different world, where mass-market consumer insurance policies did not exist. The first motor insurance policy was not issued until 1896, and certain other lines of business are much more recent—for example critical illness insurance was not available in the UK until 1984. Those personal lines products which did exist in 1766 were the preserve of the wealthy and the cover was of a rather different nature. Household policies, for instance, had been available from the 17th century but were typically limited to fire risks. With the exception of industrial branch penny policies there were no mass-market products until well into the 20th century. Current sales channels are also markedly different to those which existed in 1766. Lord Mansfield was familiar with face-to-face commercial insurance transactions in the coffee houses of Georgian London. Would he have thought that the same rules should apply to consumers buying insurance by telephone or over the internet?

Commercial insureds may value pragmatism and certainty. However, in other areas modern law recognises that consumers are deserving of a measure of protection and an approach grounded in fairness. There are at least seven factors which might lead one to question whether the duty of disclosure should apply to modern consumer insurance transactions:

Expertise

In the 18th century the sharing of risk was commonplace in the City of London; a merchant might be an insurer one day and an insured the next. Consequently it was not unreasonable for prospective insureds to be expected to understand what needed to be disclosed. Contrast this with the position of a modern consumer who will typically have no knowledge of insurance law or practice.

Knowledge

Lord Mansfield suggested that "the special facts…lie most commonly in the knowledge of the insured only". This carries more truth where custom policies on business risks are concerned. For standard consumer risks, insurers have access to a wide range of databases, research results and loss statistics. For example, 95% of the household insurance market is covered by the Claims and Underwriting Exchange, a system which records previous losses and claims and will often prove more accurate than a consumer's memory.

Bargaining power

In *Carter v Boehm*, Lord Mansfield was settling the rules to be applied to business insurances, where a prospective insured may have broadly similar bargaining power to the insurer. Nowadays, it is common for larger commercial insureds to insist that the impact of non-disclosure is modified by contractual term (see, for example, the "innocent non-disclosure" clause in *Arab Bank Plc v. Zurich Insurance Co* [1999] 1 Lloyd's Rep 262). Indeed in June 2011 the Association of Insurance and Risk Managers in Industry and Commerce published a standard wording to be used for this purpose. A consumer simply does not have this bargaining power and will typically contract on the basis of standard policy wordings drafted by the insurer.

Communications

In 1759, it might take a year or more for a letter to be sent by packet ship to Sumatra and for a reply to be received. Indeed the state of communications was such that unknown to the parties in London, Roger Carter's policy was arranged more than a month after the loss had occurred. Boehm had no opportunity for a discourse with Roger Carter—writing insurance at such a distance would have been totally impracticable unless the prospective insured could be relied upon to disclose the relevant information. Nowadays questions can rapidly be posed and answered over the web, by telephone, email, fax or post.

Absence of advice

Roger Carter's policy was arranged by a broker. In contrast, modern consumer policies are frequently purchased over the internet or telephone without the benefit of a broker's advice.

Misuse

It is often overlooked that Lord Mansfield found in favour of Carter. In doing so, he recognised that the remedy of avoidance carried risks of misuse: "If the defendant's objections were to prevail, in the present case, the rule would be turned into an instrument of fraud". What, one wonders, would Lord Mansfield have made of an insurer promising to give "careful and sympathetic consideration" to medical records when in reality its sole purpose was to seek any entry which might give grounds for avoiding or invalidating the policy (*Cuthbertson v Friends Provident* [2006] CSOH 74)? Or the insurer who rejected a leukaemia claim under a critical illness policy for the failure to disclose mild unrelated hearing loss (Ombudsman News 27, Case 27/5)? Most insurers act decently most of the time. Nevertheless, given the relatively weak position of consumers and the potential impact of avoidance, is the risk that the duty of disclosure will be misused simply too high?

Reciprocity

Lord Mansfield considered that the duty of disclosure was reciprocal. However over subsequent years, the obligations on a prospective insured appear to have become more onerous whilst the duty of disclosure on insurers has proven to extend only to matters affecting the risk or recoverability of a claim (*Banque Financière de la Cité SA v Westgate Insurance Co Ltd* [1990] 1 QB 665). Furthermore the only remedy available for non-disclosure—avoidance of the policy—is valuable to insurers as it removes the liability to pay claims, but unattractive to consumers who would prefer damages to a mere return of premiums.

5. Absence of judicial intervention

Given these factors one might wonder why the judiciary has not been successful in developing a separate set of rules for consumers. In Lambert v Cooperative the Court of Appeal was plainly unhappy with the decision it felt bound to reach – as evidenced by the comments of Mr Justice McKenna:

> "The present case shows the unsatisfactory state of the law. Mrs. Lambert is unlikely to have thought that it was necessary to disclose the distressing fact of her husband's recent conviction when she was renewing the policy on her little store of jewellery. She is not an underwriter and has presumably no experience in these matters. The defendant company would act decently if, having established the point of principle, they were to pay her. It might be thought a heartless thing if they did not, but that is their business, not mine."

In part the lack of judicial intervention may result from an earlier sparsity of opportunity. For many years it was common for consumer insurance policies to include *Scott v Avery* (1856) 10 ER 1121 arbitration clauses, giving insurers the right to insist that all disputes

on liability were referred to arbitration (for which legal aid was not available) rather than the courts. As a result of negotiations during the review of insurance contract law conducted by the Law Reform Committee from 1954 to 1957, the British Insurance Association (BIA) and Lloyd's agreed the industry would cease to use such clauses.[10] However, in more recent years the existence of successive ombudsmen schemes has continued to throttle the flow of consumer insurance cases to the courts.

6. Self-regulation, regulation and ombudsmen

The flaws in the law on disclosure have been recognised in a series of initiatives over many years. In 1975 the English and Scottish Law Commissions published their Second Report on Exemption Clauses, complete with draft Bills. Although the Law Commissions had always intended that insurance policies would be within the ambit of the proposed legislation, this possibility was opposed by the BIA. In 1977, the Government agreed that it would exempt insurers from the main provisions of what was to become the Unfair Contract Terms Act 1977, in return for the BIA promulgating two codes of practice for consumer insurances—the Statement of General Insurance Practice (SGIP) and the Statement of Long-Term Insurance Practice (SLIP).

Both SGIP and SLIP required insurers to ask clear questions about those matters generally found to be material and to provide a warning regarding the consequences of non-disclosure. SGIP indicated that an insurer should not unreasonably repudiate liability for innocent non-disclosure which had not materially influenced its judgment. SLIP provided that claims should not be rejected for non-disclosure of a matter outside the knowledge of the consumer. However, the codes were not legally binding and initially there was no ombudsman to provide a means of enforcement. The limited impact of these arrangements caused one academic to comment that "it all seems a rather pointless exercise".[11]

More dramatically, on 3 December 1980 the Guardian Royal Exchange (GRE) circulated an internal memorandum stating that for consumer non-life insurances it would no longer rely on the duty of disclosure.[12] The move was driven by Mike Harris, Assistant General Manager, who explained his reasoning in a letter published by the Post Magazine on 14 May 1981:

> "You cannot import into the way we handle bulk insurance products now the close contractual relationship derived from the time a ship or cargo owner dealt directly with an underwriter in a coffee house 300 years ago and bargained over a single voyage....
>
> Defence of the traditional duty implies that although for many years we have handled hundreds of millions of transactions we still do not know all the right questions to ask. If this be so, then surely many of us should be seeking a living in some less demanding walk of life? I do not believe it is so."[13]

The GRE reviewed this approach in 1984 and concluded it should be maintained as it had caused no difficulties in practice. With effect from 15 June 1984 the GRE also abandoned the use of basis of the contract clauses in non-life consumer insurances.

In 1986 SGIP and SLIP were enhanced as part of a deal between the Association of British Insurers (successor to the BIA) and the Government, this time to avoid implementation of the English Law Commission's proposals for reform published in 1980. Under the claims section of the amended SGIP, for instance, paragraph (b)(ii) provided that an insurer would not repudiate liability to indemnify an insured on grounds of non-disclosure of a material fact which an insured could not reasonably be expected to have disclosed. Again the academic reaction was not encouraging with the changes being described as representing "a minimalist attitude to the problem of abuses".[14]

Nor was there any movement with the introduction of statutory conduct of business regulation. SGIP, for example, was withdrawn with the introduction of ICOB—the Insurance Conduct of Business rules—on 15 January 2005. Some, but by no means all of its provisions were imported into the rules in modified form and are now to be found in ICOBS. On the duty of disclosure, ICOBS 8.1.2 largely follows paragraph (b)(ii) of SGIP but adds the odd proviso "except where there is evidence of fraud".

The real leap forward in this area must be credited to successive ombudsmen. On 31 March 1981 the Insurance Ombudsman Bureau (IOB), brainchild of Mike Harris of the GRE, opened for business. Membership was voluntary, but grew rapidly until it included nearly all insurers offering consumer policies. One major advantage of the IOB compared with the courts was that it was empowered to look beyond the strict law in making its decisions. In particular, the Ombudsman's Terms of Reference allowed him to take into account codes of practice, good insurance practice and, after an amendment initiated by the second ombudsman, Dr Julian Farrand, what was "fair and reasonable in all the circumstances". Farrand indicated that he would apply a proportionate approach in cases of unintentional non-disclosure. His successor, Laurie Slade, seemed to go further, suggesting that in the absence of clear questions at inception or renewal an insurer would be taken to have waived the requirement of disclosure[15].

In 1994 the handling of complaints relating to investment business moved to the Personal Investment Authority Ombudsman Bureau (PIAOB), which regrettably had no "fair and reasonable" power. However in 2001 both the IOB and the PIAOB were replaced by the Financial Ombudsman Service (FOS). Under section 228 of the Financial Services and Markets Act 2000 the ombudsman is obliged to make

decisions under her compulsory jurisdiction in accordance with what she regards as fair and reasonable in all the circumstances. As set out in Ombudsman News 46 as long ago as 2005, the FOS does not allow insurers to rely on the duty of disclosure—if an insurer requires information it must ask a clear question. This approach has operated successfully for a number of years, and has been adopted by all the better insurers.

In 2006-07, the last year for which figures are available, the FOS closed 1,047 complaints from consumers about issues of non-disclosure and misrepresentation. However, the FOS is not a complete remedy to the ills of the law. It cannot make binding awards in excess of £100,000 (£150,000 from 1 January 2012) and a consumer with a loss in excess of this figure must abandon the balance of their claim or face the full harshness of the law in the courts (*Andrews v SBJ Benefit Consultants* [2010] EWHC 2875). In addition the DISP Sourcebook provides a range of grounds on which cases may be dismissed without consideration of the merits.

Furthermore, the overall impact of these conflicting layers of law, self-regulation, statutory regulation and ombudsman guidance is the risk of some confusion.

7. Conclusion

The anticipated abolition of the duty of disclosure in consumer insurances is to be welcomed. It is hardly surprising that law developed in commercial litigation may result in injustice and damaging publicity for the industry when applied to modern mass-market consumer policies. Successive ombudsmen have declined to allow insurers to rely on the duty of disclosure in consumer cases. Like the earlier bold experiment by the GRE this has caused no problems in practice. The reforms in the Consumer Insurance (Disclosure and Representations) Bill will sweep away the muddled patchwork of archaic law, FSA rules, industry codes and FOS guidance, providing in its place simple, clear and fair law. BILA is to be congratulated for the part it has played in initiating this measure.

Endnotes

[1] Peter Tyldesley is Senior Research Fellow in Law at St Mary's University College, Twickenham and is undertaking a PhD in insurance law under the supervision of Professor John Birds at the University of Manchester. He is indebted to Saira Paruk of Quadrant Chambers for commenting on an earlier draft of this article; any errors remain his own.

[2] Consumer Insurance Law: Pre-Contract Disclosure and Misrepresentation 2009 (Cm. 7758), page 2.

[3] An Impartial History of the Late War, John Almon, 1763.

[4] It is clear that some of the factual details in the reports are incorrect—f or example, at [1906] Burrow confuses the two Carter brothers. For the purposes of this paper reliable contemporary records have been preferred where available.

[5] See the comments of Lord Justice Rix in *HIH Casualty and General Insurance Limited v Chase Manhattan Bank* [2001] EWCA Civ 1250.

[6] Gazetteer and New Daily Advertiser, Wednesday 1 October 1766.

[7] St. James's Chronicle or the British Evening Post, 22-24 May 1781.

[8] Morning Chronicle and London Advertiser, 25 December 1786.

[9] At page 195.

[10] From 1 July 1995 such clauses were in any event likely to be regarded as unfair and therefore not binding on the consumer by virtue of the Unfair Terms in Consumer Contract Regulations 1994. See now Schedule 2 para 1(q) of the Unfair Terms in Consumer Contract Regulations 1999 and section 91 of the Arbitration Act 1996.

[11] The Statement of Insurance Practice – A Measure of Regulation of the Insurance Contract, John Birds, 40 Mod Law R 1977, page 677.

[12] I am grateful to Nick Feldman for a copy of this memorandum, which he drafted in his role as Accident Manager (Planning) at the GRE.

[13] Why wait for Godot?, S M F Harris, Post Magazine, v 142, no 20 (1981).

[14] A D M Forte, The revised statements of insurance practice: cosmetic change or major surgery?, Mod Law

R, 1986, p 754.

[15] Annual Report 1995, page 37.