

UK Insurance Lawyers Brace For New Policyholder Powers

By **William Shaw**

Law360, London (May 8, 2017, 11:36 PM BST) -- Policyholders in the U.K. will soon be testing new laws that for the first time expose insurers to damages for unreasonable delays in compensation, opening the floodgates to potentially wide-ranging litigation, lawyers say.

The new damages regime swung into force on May 4 and handed policyholders a powerful weapon for when insurers leave them hanging in a time of crisis rather than paying out promptly under an existing policy. The change means that consumer and insurance business contracts now contain an implied term that the insurer will pay out valid claims in reasonable time or face damages, plus the proceeds of the claim itself and interest.

"Lawyers will be recommending that their policyholder clients be as vigilant as possible for delays by insurers and remind insurers of the new law if they see them starting to prevaricate," said Richard Mattick, counsel at Covington & Burling LLP. "The idea was that there should be some kind of sanction applicable to insurers that caused a policyholder loss by acting unreasonably."

Amid concerns that some insurers were leaving their policyholders exposed, lawyers say Parliament slipped the controversial change into the existing Insurance Act 2015 via an amendment in the later Enterprise Act 2016, after earlier pressure from industry lobbyists.

"It wasn't introduced as part of the act. It literally came through as part of the Enterprise Act," said Sarah Turpin, a partner at K&L Gates LLP. "It's quite a major change in the law."

Insurers are now concerned about the way the court may choose to define "reasonable time" in deciding whether to hand out fines for a delayed payment.

"What insurers consider a reasonable time is unlikely to be the same as what an insured party thinks," Jonathan Drake and Eliza James of Bond Dickinson LLP said in a recent blog post. "Is two months reasonable? Six months? A year?"

According to a client note from Hogan Lovells LLP, courts may take into account the type of insurance involved, the claim's size and complexity, a firm's compliance with any rules and guidance and factors outside the insurers' control.

Lawyers now predict the lack of clarity around "reasonable time" could trigger a swathe of court cases to determine when a delay will hit a firm with damages.

While the move hands new powers to policyholders, lawyers say they shouldn't refuse to cooperate with insurers in a tenuous bid to put the brakes on. Attorneys also caution insurers against hurrying through important investigations in order to avoid later damages.

"The issue is actually if you're an insurer and someone makes a claim, it might be a good claim, but you need to make an investigation ... and not just rush to comply with a piece of legislation," said John Bradley, managing partner at Reynolds Colman Bradley LLP.

Insurers have become well-aware of the changes and enjoy a strong grasp of their new compliance requirements, he added.

"If there is a good valid claim, I find that a lot of insurers are completely genuine and will honor their obligations."

Heaping on further uncertainty, the change provides that if an insurer has "reasonable grounds" for disputing a claim and delays payment during that dispute, the company will not breach the new duty for that reason alone. This could leave insurers struggling to understand whether the investigation they want to pursue, which could reveal a bogus claim, could also trigger damages.

"The amendment is less clear on how courts will interpret 'reasonable grounds,'" said Helen Chapman, a partner at Hogan Lovells. "Generally speaking, the amendment allows courts to be flexible in their approach when seeking to interpret late payment claims."

While the changes may herald upheaval for the insurance industry, they are also expected to bring lucrative new work to lawyers as they unpick through the meaning of unreasonable. Although each case will turn on its own facts, no one knows quite how far judges are prepared to stretch that definition.

"For many in the industry, the answer to this question will always be 'wait and see,'" Chapman said. "Until a body of case law has developed, there will always be some uncertainty."

--Editing by Christine Chun.