

Insurance Claims

Third edition

Author: Alison Padfield

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Book review by Jonathan Goodliffe

Alison Padfield is a barrister practising at Devereux Chambers. This is the third edition of her book covering the legal issues arising on claims against insurers and insurance brokers. It focuses on the most important points that arise in modern insurance claims practice.

In his forward to the first edition Lord Justice Waller said:

“The propositions of law are supported [in the book] by detailed but easy to follow references. She has deliberately not overloaded those references with citation of more ancient authority where modern authority will suffice”.

This fully accords with my own impression. The latest edition was aptly timed to enable the author to cover, among other things, the Consumer Insurance (Disclosure and Representations) Act 2012, which received royal assent in March 2012 and is likely to come into force in 2013.

Apart from insurance law issues the book contains a full analysis of the most significant regulatory issues arising, for instance, under the Financial Services Authority's Conduct of Business (COBS) and Insurance Conduct of Business (ICOBS) rulebooks. There is also discussion of the cause of action for breach of the FSA's rules under section 150 of the Financial Services and Markets Act (FSMA).

A wide perspective on the topic is adopted covering, among other things, litigation procedure, alternatives to litigation, double insurance and contribution, reinsurance and claims against insurance brokers.

There is no systematic discussion in the book of the Financial Ombudsman Service's approach to specific legal issues arising in the context of claims by an insured against insurers or brokers. If there were, the book would perhaps be 25% longer than it is. The focus is on the law as applied in the courts. So at page 90 the author expresses the view that damages for hardship, inconvenience or mental stress “will rarely be awarded” in insurance claims. Such compensation, however, is regularly awarded by FOS¹.

The general approach in the book is not merely descriptive but includes comment and, where appropriate, criticism. For instance at page 52 the author discusses the judgment of Mr. Justice Buckley in *Bankers Insurance Co Ltd v South* [2004] 1 Lloyd's Rep IR 1. In that case a clause in an insurance policy was held to be unfair, but the judge, instead of striking

out the clause, effectively added a proviso to it to avoid the unfairness. The author argues that this goes further than the Unfair Terms in Consumer Contracts Regulations 1999 allow and that “this issue will need to be considered by the Court of Appeal in due course”. In fact the author’s analysis was effectively upheld by the European Court in *Banco Español v Camino* case C 618/10. The author, in conjunction with Alice Carse, barrister, has provided a commentary on that case (and the *Bankers’ case* - see page 63). The *Camino* case was decided too late to be included in the book.

In general, therefore, this is one of the most useful textbooks on insurance law and probably the first one I will be referring to in its subject area.

Endnote

¹ See Goodliffe “The price of unfair treatment” BILA Journal 120 page 6