



February 2012

# Commercial Newsletter

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# Competition

## Price comparison sites – a potential competition law trap?

*Price comparison websites could be a conduit for illegal information exchange between competitors.*

Price comparison sites have become a key tool in helping consumers shop around and find the best deals in the market. This is good for competition. But, there is a risk that price comparison websites could be a conduit for illegal information exchange between competitors.

### **The OFT's concerns with price comparison sites**

The Office of Fair Trading (OFT) has recently considered whether price comparison sites act as a vehicle for competitors to access each others' "real-time" quotes.

In its recent Call for Evidence on the private motor insurance market, concerns were voiced that certain private motor insurance providers may through price comparison sites be able to access their competitors' quote data in real time, enabling them to adjust their own quotes with reference to those of their competitors.

While the OFT did not find sufficient evidence to suggest that this is happening in this case, the OFT has made clear that it may take action in the future if evidence of this type of behaviour comes to light.

Businesses should ensure that the way in which they interact with price comparison sites does not expose them to risk under competition law.

### **What are the competition law risks?**

Companies must determine their market strategies and practices independently from their competitors.

Whilst it is legitimate for companies to "adapt themselves intelligently" to the existing and/or anticipated conduct of their competitors, competition law prohibits companies from disclosing to each other information that could enable them to align their behaviour with that of their competitors as a result of a transparent market.

Both direct and indirect exchange of commercially sensitive information between competitors raises competition law issues.

In the motor insurance investigation, the OFT investigated a number of insurance providers in relation to allegations of sharing pricing information via a third party intermediary. The OFT's investigation centred around a market data analysis product which incorporated insurers' future rating data which was provided to brokers to enable them to provide accurate quotes to consumers. On its face this was a pro-competitive product with a legitimate purpose.

However, the product was purchased not only by brokers, but also by insurers. As a result, insurers could not only access their own pricing information and rating models but also that of their competitors. The OFT characterised this as an indirect exchange of commercially sensitive information between competitors.

## What does this mean?

Businesses should ensure that any interaction with price comparison sites does not expose them to risk under competition law by exchanging, directly or indirectly, with competitors:

- non-public information – information which is not “genuinely” publicly available (eg. a fee is payable for access to the information, it is not freely available in the public domain and/or there is a cost and effort involved in collating the information)
- individualised information – disaggregated information, or information which is aggregated and anonymised but capable of being reverse engineered to identify individual companies
- recent/current/future information – information which enables companies to adjust their behaviour in alignment with the behaviour/practices of their competitors.

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# Data and Privacy

## **ICO issues new guidance on cookies**

*The ICO has issued new guidance on the use of cookies and suggests practical compliance methods with the amended Privacy and Electronic Communications Regulations.*

The Information Commissioner's Office (ICO) issued new guidance in December 2011, following its earlier guidance note published in May 2011. The initial guidance was issued following the coming into force of the Privacy and Electronic Communications (EC Directive) (Amendment) Regulations 2011 (SI 2011/1208) (PECR 2011) in May 2011. The PECR 2011 introduced a restriction on the use of cookies (small files placed on a user's computer so that it can remember a user's preferences, log in details and personalisation), unless the user has been provided with clear and comprehensive information about the purposes for which the cookie is stored and accessed, and given his or her consent.

### **How did the ICO initially advise on PECR 2011 compliance mechanisms?**

The ICO initially advised that businesses should audit their websites and assess what cookies, if any, are being used. The next step would be to identify those that are "strictly necessary", as "strictly necessary" cookies (to be interpreted very narrowly) would be exempt from the requirement for consent.

The earlier guidance note also advised that website operators assess the level of intrusiveness of each cookie and provided examples of how consent could be obtained in a manner that was compliant with the PECR 2011, ranging from pop-up boxes to personalisation settings-led consent. The guidance note made it clear that using browser settings to indicate consent would not be an option for compliance with the PECR 2011. It was also particularly silent on how to deal with third party cookies and how to obtain consent for cookies that tracked a user across sites.

Despite some level of practical compliance advice in the first guidance note issued by the ICO, there was much confusion regarding the requirements, particularly as the Article 29 Working Party had also issued a number of opinion papers on how to comply with the new requirements which was not completely in line with the ICO guidance note. The Department for Culture, Media and Sport also put their opinion forward in an open letter suggesting that retrospective consent would be considered a valid consent since the legislation did not expressly state "prior consent", which appeared to conflict with the Article 29 Working Party opinion papers on this point.

### **How does the ICO's latest guidance note clarify the position?**

The recent guidance issued in December 2011 builds on the previous guidance and suggests carrying out an analysis of the cookies being used (as per the earlier guidance note) but suggests website operators assess this in more detail, in particular they should distinguish between session and persistent cookies, and first and third party cookies. Helpfully, the ICO has provided examples of types of cookies that are likely to be considered "strictly necessary". The recent guidance re-iterates the earlier advice in relation to auditing and assessing cookies used, and suggests checking whether appropriate information has been provided and whether a proper mechanism is in place for obtaining consent.

#### *1. Information Provided to Users*

The ICO has helpfully provided guidance as to the information that should be provided to users and suggests the type of wording that may be used, as well as example lists of cookies and their uses, and an alternative table format. There are a number of suggestions provided as to how this information can be incorporated into the website and how to bring this information to the attention of the website user, such as links to cookies, "mouse-over" functionality, etc. The guidance note also states that putting such information into a privacy policy may not be sufficient, particularly where the privacy policy is not prominently positioned or linked.

## 2. Consent

The ICO has also clarified that consent is unlikely to be considered valid if it is retrospective and should involve some action on the user's part. The guidance also provides practical examples of how valid consent may be obtained for different purposes, and adds details to the initial suggestions for compliance mechanisms, by providing diagrams and "screenshot" examples of how the solution would look on a website. It sets out that users must be informed of how to change or withdraw their consent, the impact of withdrawing consent, and how to remove cookies that have already been set. The issue of third party cookies (cookies placed on a website by a third party such as an advertising network) does not appear to have been addressed, and there is no clarity as to which party would be responsible for obtaining consent. The ICO suggests that the main issue is that consent has been obtained, not who has obtained it.

Although the latest ICO guidance has certainly provided the much needed practical guidance organisations were waiting for, there are still some areas in which additional guidance would be helpful, particularly in light of the fact that organisations now only have five months to put in place a solution. Information Commissioner Christopher Graham did provide some words of comfort for organisations that may now be rushing to put in place one of the many practical solutions suggested in the recent ICO guidance, by confirming that "... when our 12 month grace period ends, there will not be a wave of knee-jerk formal enforcement actions taken against those who are not yet compliant but are trying to get there."

## **EU publishes draft Data Protection legislation**

*The EU's revised Data Protection legislation will radically reform the data protection regime in Europe.*

Two new pieces of legislation are proposed:

- a Regulation (replacing Directive 95/46/EC) for a EU-wide framework for data protection
- a Directive setting out rules on the protection of personal data for the purposes of investigating and prosecuting criminal penalties (the Police and Criminal Justice Directive).

The European Commission sees protecting an individual's personal data as vital for establishing trust in the online environment and crucial for stimulating economic growth through the establishment of a digital single market for Europe. It is a key action for its Digital Agenda for Europe and the Europe 2020 Strategy.

By implementing many of the changes by means of a Regulation rather than a Directive, the Commission will ensure that there is a consistent Europe-wide data protection framework. This will replace the fragmented and sometimes inconsistent approach to data protection in the Member States.

Key terms to note in the draft Data Protection Regulation are:

- the definition of "the data subject's consent" has been amended to refer to explicit consent which would affect many organisations' reliance on opt-out boxes or non-objections, and similar mechanisms to indicate consent.
- details of how and when personal data can be used for purposes other than that for which it was initially collected and the conditions for consent to be valid as a legal ground for lawful processing (Articles 4-7). Consent by a child (ie those under 13) will only be valid if authorised by a parent or custodian. There is a general prohibition for processing special categories of personal data (ie sensitive data categories) and the exceptions from this prohibition (Article 8).
- the introduction of the widely debated "right to be forgotten". The draft legislation sets out the conditions of such right and exemptions to the complete deletion of a data subject's personal data ie rather than just removing someone from a mailing list, organisations would have to delete the data completely, unless there is a legitimate reason to retain it. Where the personal data has been made public (eg via social networking sites or other websites), this will include the erasure of any public Internet link to, copy of, or replication of the personal data relating to the data subject contained in any publicly available communication service (Article 15).
- the introduction of direct obligations on data processors, which were notably absent from the EU Data Protection Directive 1995, Directive 95/46/EC, although these obligations are to be set out in the contract between the controller and processor. Under the draft Regulation, if the processor processes personal data other than as instructed by the controller, the processor will be considered a controller for that processing and will be subject to the rules on joint controllers. The result being that data subjects can enforce their rights against each controller (Article 23).

- the controller and the processor to implement appropriate measures for the security of processing, and the extension of that obligation to processors, irrespective of the contract with the controller.
- an obligation on data controllers to inform the supervisory body within 24 hours of any breach, and to inform data subjects of a security breach within 24 hours, if the breach endangers their personal data (Article 27 - 29).
- an obligation on data controllers to designate a data protection officer where the controller is a public authority or body, has 250 or more permanent employees, or has core activities which require regular and systematic monitoring of data subjects (Article 32).
- the imposition of administrative sanctions for non-compliance with fines up to 3% of a business annual worldwide turnover (Article 79).

A final point to note is that the draft legislation is intended to apply to data controllers established in third countries if these controllers direct activities to EU Member States.

It is clear that the new Regulation is intended to provide more practical and unambiguous obligations on anyone involved with personal data processing and sets out the responsibilities and liabilities for such obligations. It is also clear that this new legislation is designed to be more prescriptive and is certainly more onerous than previous legislation in this area.

There is time to prepare. Much debate is expected before it is finalised. Even then it will not actually apply until two years after its publication in the Official Journal.

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# Dealing with consumers

## A Consumer Rights Bill for the UK

*A Consumer Bill of Rights is proposed to implement the EU Consumer Rights Directive and consolidate existing consumer rights legislation in the UK.*

The EU Consumer Rights Directive was published on 22 November 2011. Member States will have a maximum of two years to implement the Directive into domestic legislation. The Directive aims to improve consumer rights by harmonising consumer protection rules across Member States.

As well as updating and modernising existing consumer rights to address technological change, the Directive will replace the existing EU directives on Distance Selling (97/7/EC) and Doorstep Selling (85/577/EEC), and amend existing directives on Unfair Terms in Consumer Contracts (93/13/EEC) and Consumer Sales Guarantees (99/44/EC).

### What are the key changes made by the Directive?

- new cooling off periods for distance sales – a cooling off period of 14 calendar days when consumers can change their mind when making online purchases or purchases away from business premises
- “pre-ticked” boxes on websites will be banned - consumers can no longer be required to “untick” boxes to avoid extra goods and/or services when shopping online
- pre-contractual information - the Directive obliges the trader to provide the consumer with a clear set of information requirements (eg the main characteristics of the product, geographical address and identity of the trader, the price inclusive of taxes, all additional freight, delivery or postal charges)
- rules on delivery and passing of risk to the consumer - there will be a maximum of 30 calendar days for the trader to deliver the goods to the consumer
- credit/debit card charges- when a given means of payment is used (such as a debit/credit card), traders will be prohibited from charging consumers fees that exceed the cost borne by the trader
- digital content - information on digital content will have to be clearer at the point of sale, including about its compatibility with hardware and software and the application of any technical protection measures

### How will the UK respond?

The Department for Business Innovation and Skills (BIS) has announced plans to merge all existing UK consumer protection laws and regulations, together with the requirements of the finalised Consumer Rights Directive, into a single new ‘Consumer Bill of Rights’. The Bill is also expected to consolidate powers of Trading Standards and create new rights for consumers who claim they have been the victim of misleading or aggressive business practices. A consultation on the Bill will open in early 2012.

## Concerns over EU wide contract law

*The Law Commissions and the House of Commons raise concerns over an EU-wide contractual law.*

On 10 November 2011, the Law Commission and the Scottish Law Commission (“Commissions”) published their advice on the European Commission’s proposed “Common European Sales Law” (“CESL”), which covers the sale of goods, the supply of digital content and some related services. If the CESL is implemented, traders may choose the provisions of the CESL to govern their cross-border contracts. More recently, on 8 December 2011, the House of Commons have challenged the legitimacy of the CESL.

## **What does the CESL do?**

The CESL is an optional code intended to sit alongside a Member State's domestic contract law. It can be used by parties to govern cross-border transactions where:

- at least one party is based in the EU
- both parties expressly agree to its application.

One of the suggested benefits of the CESL is that it could clarify the contractual position for businesses selling to consumers online. Businesses currently risk falling into the category of "directing their activities" to consumers in other jurisdictions. This could potentially result in the business' contractual provisions being subject to the mandatory provisions of the consumer's jurisdiction. The CESL would effectively be a separate legal regime which, if the parties agree, would take precedence over the mandatory rules of domestic law. The House of Commons has, on 8 December 2011, challenged the legitimacy of the CESL.

## **The Law Commissions' advice**

The Commissions found that the CESL covers basic contractual provisions but does not adequately address the issues presented by online sales and sales at a distance. More could be done to clarify when the contract is formed, the effect of a change of circumstances and unfair terms protection.

Whilst recognising the need for a new optional code to cover cross border sales, the Commissions consider that efforts would be better spent in developing a European code for on-line consumer sales. They argue there is stronger evidence that the current systems in place are inadequate and misleading for both consumers and businesses

## **Key issues with the CESL**

The Commissions found that the CESL in its current form:

- lacks clarity and would be easier to understand if it had:
  - separate codes for business-to-consumer contracts and business-to-business contracts
  - notes and internal references
  - an authoritative guide to accompany it
- is limited from the trader's perspective in that:
  - it is cumbersome to use for telephone sales, causing problems where traders use both online and telephone methods alongside each other
  - traders must still find out about and comply with the linguistic requirements of the Member State they are selling into
  - the consumer's extended right to reject for up to two years from the date of being expected to be aware of the fault, may discourage traders from using the CESL
- does not adequately protect consumers in that:
  - uncertainty in the provisions regarding when the parties agree to be subject to the CESL may lead to difficult arguments which could disadvantage consumers
  - the lack of damages for distress and inconvenience may also reduce the level of consumer protection.

## **Concerns over a two tiered system**

The Commissions advised that if the CESL is confined to cross-border sales, traders will need to use two systems of law, one for domestic sales and one for cross-border. The Commissions give the example of a trader based in Luxembourg doing a lot of business in the UK could use the CESL, but a trader based in Leicester could not.

This would have the unintended result of clouding the cross-border regulatory framework even further than it currently is. A further issue is that, in practice, businesses will not seek consumer agreement to contract on CESL terms, but rather leave the consumer with the choice of purchasing from the business on the CESL terms or not purchasing from the business at all. Again this could have an unintended effect of potentially lessening the rights currently afforded to consumers.

## **Challenge by the House of Commons**

The House of Commons' formal objection to the legitimacy of the legislation appears to be a holding measure. The concern is that the CESL is at risk of being rushed through without liaising with the appropriate stakeholders to ensure that the concerns identified by the Law Commissions are fully considered.

## EU proposes a new dispute resolution service for consumers

*The EU has announced a package of measures to provide an effective dispute resolution service for consumers buying online.*

The European Commission aims to assist consumers resolve contractual disputes arising from the sale of goods and services by introducing:

- a Directive on Alternative Dispute Resolution (ADR) to deal with disputes between consumers and traders
- a Regulation on on-line dispute resolution (ODR) for cross-border purchases in the EU.

Under the proposed Directive:

- an ADR provider would have to meet quality standards and be impartial, transparent, effective and fair
- the trader/business would have to inform the consumer that ADR was available to resolve disputes
- disputes under the ADR procedure would have to be resolved within 90 days.

The proposed Regulation aims to establish an EU-wide system of ODR. The absence of an effective online dispute resolution service for cross-border transactions is seen as a deterrent to the development of e-commerce and cross-border transactions in the EU. Research carried out by the European Consumer Centre Network (ECCN) found that out of 35,000 cross-border disputes notified to the ECCN, 91% of these could not be referred to ADR as this did not exist in the Member State concerned. A system of ADR in each Member State is a first step before implementing an EU-wide ODR for cross-border disputes.

A system of ODR could help resolve contractual disputes arising from cross-border transactions. Consumers and traders would be able to lodge a complaint directly with the online dispute resolution platform and the dispute could then be referred for resolution to an appropriate ADR provider in the Member State concerned.

An example of ODR, cited in the European Commission's Impact Assessment, is the service provided by the Czech Arbitration Court ([www.adr.eu](http://www.adr.eu)). This is used by trade mark owners and domain name registrants throughout the EU to resolve disputes using the Czech Arbitration Court's online platform.

The aim is for ADR to be available everywhere in the EU by the second half of 2014 and for ODR to be in place in the second half of 2015.

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# Finance and Payments

## EU Green Paper on card, internet and mobile payments integration

*Europe announces moves towards greater integration in card, internet and mobile payments.*

On 11 January, the European Commission launched two new initiatives aimed at enhancing the role of the internet economy within the EU:

- a Green Paper on the obstacles hindering further integration in the European market for card, internet and mobile payments and how these could be resolved
- an Action Plan to double the share of the internet economy in Europe by 2015 by improving access to online products and services across Europe, and by making it easier to buy and pay for products online.

The Green Paper assesses the current landscape of card, internet and mobile payments in Europe and identifies the barriers to the vision of a fully integrated payments market. Innovative payment means, including internet payments and mobile payments, is a new field for EU Policy.

The main issues identified in the paper and on which the Commission is seeking views are:

- market access and entry for existing and new service providers
- payment security and data protection
- transparent and efficient pricing of payment services
- technical standardisation
- inter-operability between service providers.

The Green Paper suggests that mobile payment use in European markets is being limited by the strong fragmentation of the mobile payment market. The m-payments market operators have not yet agreed on a viable business model for an EU-wide inter-operable payment solution, but are still controlling standards in a way that reduces access by competitors.

These findings are consistent with the investigation into the standardisation process for internet payments put in place by the European Payments Council as part of its work on SEPA (the Single European Payments Area). While the Commission supports SEPA and recognises the need for standardisation in promoting integration through inter-operability and competition, it has also emphasised that these standardised arrangements for e-payments should not be allowed to prevent innovation and lock out non-bank entrants to e-payments. These kinds of restrictions limit the use of e-commerce cross-border.

Another issue flagged in the Commission's Green Paper is the security of online and mobile payment systems. Sensitive customer information should stay within a secure payment infrastructure, both in terms of processing and storing data, the EU executive believes. "It is crucial that authentication mechanisms for payment transactions comply with this and that the number of parties having access to authentication data during or after a payment transaction is minimised," the draft paper says.

The deadline for submitting contributions to the consultation is 11 April 2012.

## Tighter rules on store cards to be implemented by 2013

*New rules on retailers offering store cards will be implemented in the Finance and Leasing Association's Lending Code by 2013*

Six years after the Competition Commission's investigation into store cards, the Government has now confirmed that new rules on retailers offering store cards will be brought in. Financial Secretary to the Treasury Mark Hoban said: "The public told us that consumers can be tempted into taking out a store card by being offered a discount at the till. We've listened to these concerns and have worked with industry to develop a strong package of measures in response."

The new rules have been drawn up by industry bodies, the Finance and Leasing Association (FLA) and the British Retail Consortium, in co-operation with the government as part of its Consumer Credit and Personal Insolvency consultation. The rules, announced last week, will be implemented in the FLA's Lending Code which is binding on its members. Nearly all providers of store card services are members of the FLA, including significant providers such as Santander Cards (formerly GE Capital). The Lending Code sets out standards of good practice and includes a section specifically dealing with store cards. The Code requires lenders to "act fairly, reasonably and responsibly" when dealing with customers.

There are three key aspects to the proposed new Lending Code rules:

- a ban on retailers offering store card customers special discounts or other perks (free gifts, vouchers etc) within the first seven days of a card being taken out - shoppers can still get money off, cash credits or other incentives but will have to return to the store after at least 7 days or will get money off future purchases using the card
- direct commission payments to staff will be banned, avoiding any personal incentive or apparent personal incentive for staff to hard sell store cards
- standardised training will be required for all retail staff who sell store cards.

Although the Competition Commission investigation had found that interest rates were too high on store cards, it has not been decided to bring in a cap on store card interest rates, although the Government will be looking closer at caps on the total charge for credit in the high interest rate credit market generally.

The proposed changes follow on a series of changes to credit card and store card provision, including the introduction of the 14 day cooling off period in February this year (as part of the implementation of European consumer credit laws) and guidance on irresponsible lending.

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# Investigations and Consultations

## Procurement bribery and corruption risks

*If you haven't already done so, it would be advisable to look now at what systems and controls you have in place to deal with procurement bribery risks.*

The SFO reported yesterday on the sentencing of four men found guilty of conspiracy to corrupt in relation to private (i.e. not government related) oil/gas contracts worth £70 million. The case involved a petrochemical company who used a procurement agency to put engineering contracts out to tender. An individual at the agency provided sensitive information to external "consultants" who then in turn offered that information to contract bidders disguised as "consultancy services" in return for corrupt payments.

On 30 January, the four individuals were sentenced to varying ranges of imprisonment between 5 years and 12 months. Two were disqualified from acting as company directors for ten years and three will be subject to confiscation proceedings under the Proceeds of Crime Act. Although this was not a prosecution under the Bribery Act as the offences pre-dated 1 July 2011, the sentences are useful in showing how the Courts will deal with individuals involved in commercial bribery.

Paragraph 4.15 of the new BS10500 standard for "adequate procedures" under the UK Bribery Act states that as part of their anti-bribery management system organisations "shall implement procurement and other commercial controls which minimise the risk of the organisation, or any of its personnel or others acting on its behalf or for its benefit, paying or receiving a bribe." Such procedures will involve tight controls on the flow of information to and from contract bidders, due diligence on the appointment of any agents dealing with procurement issues and checks on what systems those agents have to reduce bribery risks. Ensuring that a company knows and accurately records what it is receiving when it pays for "consultancy services" will be essential.

For more information, please contact our **Bribery Act team**.

## The UK Government launches consultation on proposed changes to the copyright system

*Following the Hargreaves Review of Intellectual Property, the UK Government has launched a consultation on proposed changes to modernise the UK copyright system.*

The proposals include:

- allowing private copying eg making it legal to copy a CD to a MP3 player
- widening the exception for non-commercial use to allow data mining
- introducing an exception to allow creative freedom to parody another's work
- establishing a licensing and clearance procedure for 'orphan works' (material from unknown copyright owners)
- introducing provision for voluntary extended collective licensing schemes to allow authorise collecting societies to license on behalf of all rights holders in a sector except for those who have opted out
- modernising other exceptions for copyright eg education and those with disabilities.

The Consultation ends on 12 March 2012. For further information email: [copyrightconsultation@ipo.gov.uk](mailto:copyrightconsultation@ipo.gov.uk)

## **Call for evidence on developing a Digital Copyright Exchange (DCE) in the UK**

*In November 2011, Vince Cable announced the appointment of Richard Hooper to lead a feasibility study on developing a Digital Copyright Exchange (DCE) in the UK.*

Phase 1 of the study will focus on issues surrounding copyright in the digital age. Phase 2 will look at possible solutions to any issues found.

This follows on from the Hargreaves Review last May which found that current copyright law was not fit for purpose in the digital age and that a DCE has the potential to grow the UK economy by over £2 billion.

The call for evidence asks stakeholders two questions:

- is the 'Hargreaves Hypothesis' correct in that the current copyright licensing system is not fit for purpose in the digital age?
- are the proposed definitions, including the market definition, correct?

The deadline for submissions is 10 February 2012.

The terms of reference for the study are available at the IPO website at: <http://www.ipo.gov.uk/types/hargreaves/hargreaves-copyright/hargreaves-copyright-dce/hargreaves-copyright-dce-terms.htm>

## **BIS calls for evidence on the effectiveness of TUPE regulations 2006**

*As part of the Employment Law Review, the Department for Business Innovation and Skills (BIS) has launched a call for evidence on the effectiveness of the current TUPE regulations.*

The consultation is in response to concerns raised by some businesses that the current system is 'gold-plated' and overly bureaucratic. The Consultation closed on 31 January 2012.

More: <http://www.bis.gov.uk/Consultations/call-for-evidence-effectiveness-of-current-tupe-regulations?cat=open>

## **The Law Commission launches a consultation on Insurance Contract Law: post contract duties and other issues**

The Law Commission's consultation paper covers four areas:

- damages for late payment of insurance
- insurer's remedies for a fraudulent claim
- insurable interest
- policies of marine insurance

It follows on from an earlier consultation on pre-contractual issues in consumer and business insurance. The subsequent report on Consumer Insurance Law resulted in the Consumer Insurance (Disclosure and Representations) Bill which is expected to come into force in the first half on 2012.

The consultation highlights the issues around damages for late payment of an insurance claim. Under English law, a policyholder is not entitled to recover loss suffered if an insurer wrongly delays or refuses to pay a legitimate claim under the policy. The consultation paper gives a full analysis of the problems with the current legal position and suggests that the law should be changed if it is "unfair and out of line with accepted industry practice".

The consultation summary paper and response forms are available at: [http://www.justice.gov.uk/lawcommission/consultations/post\\_contract\\_duties.htm](http://www.justice.gov.uk/lawcommission/consultations/post_contract_duties.htm)

The consultation period ends on 20 March 2012.

To respond: [commercialandcommon@lawcommission.gsi.gov.uk](mailto:commercialandcommon@lawcommission.gsi.gov.uk)

## EU consultation on European Accessibility Act

The European Commission is consulting on the development of a European Accessibility Act which is aimed at improving the accessibility of goods and services in the EU, particularly for those with disabilities and the elderly.

**Start date:** 2 December 2011

**End date:** 29 February 2012

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