

Motor Insurance at the Click of a Button: Legal and Practical Risk

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Introduction:

This paper aims to highlight issues surrounding legal and practical risks of motor insurance transaction conducted on-line. The practice has been widely used in UK, on several reasons, on part of the insured – convenient and vast choices offered, and on the insurer part – financial wise and easily accessible by not only motorist in UK but all over the world.

Before we go further, it is important to stress here that there is one doctrine that covers the contract of insurance – known as *uberrimae fide* or a contract of utmost good faith, and there is no class of documents as to which the strictest good faith is more rigidly required in court of law than policies of assurance. The special element required under this doctrine puts a duty on the insured (the consumer) to disclose all facts material to an insurer's (insurance company) appraisal of the risk which are known or deemed to be known by the insured but neither known nor deemed to be known by the insurer.

This principle which is embodied in s 18 of the Marine Insurance Act 1906 has clearly put a direct responsibility on the insured to disclose all material facts in applying for insurance. In motor insurance, material facts include (but not limited) to the age of the driver, his/her physical condition, occupation, where the vehicle is kept at night, the standard of garage, accident record, any previous conviction, and declinature of the previous insurer or increase of premium.

The legal implication of this doctrine applies equally either the motor insurance contract is concluded face-to-face, by telephone or online. Because of similar legal consequence, it has created one important issue: if mistake noted as to the material facts disclosed to the insurer – would that repudiate the insurance? Can insurance company avoid liability on the ground of misrepresentation of material fact? Where and how the insured as the consumer here is protected when applying motor insurance online?

One thing for sure when applying online, as different from face-to face contract, is that the insurer has no opportunity to check the accuracy of information given, and insured in most cases will only answer questions that are given, thus is could negate the insured's claim if any material information has not been disclosed even though it was not asked in the proposal form. Insured as the consumer here could be left without an appropriate cover, or would be offered insurance cover with different terms and conditions, or in many cases the increase of the policy premium.

Online motor insurance gives the insured the right to drive the vehicle immediately on the road. Because it is compulsory as required by law to insure a motor vehicle, motorist in many cases will just go online, do search on several motor insurance quotes (in most cases cheapest motor insurance) without checking whether it is the right cover to them. It has happened where insurance proposal was accepted online and deposit was taken, but has been withdrawn after that because the insurance company could not accept the risk. The problem with this scenario is that when the proposal was

accepted, the contract is concluded and should bind both parties. For insurance company, simply withdrawing the cover after accepting it cannot be justified, even though the effect of 'utmost good faith' doctrine would allow them to do so.

This can be argued, because when applying online, the questions have been set according to insurance companies' perspective, the materiality of facts are judged by them, and no longer by the insured. This in fact has contradicted to the basic principle of 'utmost good faith' that has made insurance contract distinctive from ordinary contract.

The situation could become more complicated if the insured makes claim. Even though the insured is legally insured when the premium is paid, section 147 of the Road Traffic Act 1988 states that a policy of insurance shall be of no effect unless the insurance delivers to the policyholder a certificate in the prescribed form and with the prescribed details. This provision has to be treated with cautious. The message for insured is clear "apply online and get insured immediately, but you are not insured until the policy is sent to you". The question whether the policy definitely reaches the insured is another issue. The period when the insured is insured immediately and when the insured receives the policy and has the chance to read small prints and jargons is crucial, because it can decide the fate of a claim if accident happens within that period.

And now applying motor insurance online becomes more attractive. The Department for Transport has announced recently plans to enable motor insurance certificate to be issued electronically. It was highly welcomed by the Association of British Insurers (ABI) where Justin Jacobs, the ABI's Head of Motor Insurance, said:

"This is good news for customers and insurers. Over half of the UK household are now online, and this will enable them to arrange motor insurance more speedily. This will be especially helpful when buying and taxing a vehicle quickly. It will also help insurers provide a faster, more cost-effective service to their customers."¹

So, what all these got to do with insured or consumers?

Honestly speaking, motor insurance online has given the British motorist unlimited choices to search and browse insurance companies anywhere and anytime, and most important a cover that suits their pocket. However, as consumers, we should be given full explanation and warning as to negative effect that might cause as insurance contract is not as straightforward as buying groceries online from ASDA or TESCO. It is not as simple as "if you do not like it, simply return it and you will be refunded fully".

The writer believes that if the strictest principle of utmost good faith continues to govern the legality of insurance contract today similar as it had governed the marine insurance contract century ago, consumers might face a similar consequence as has been mentioned earlier. Of course there have been numerous attempts to define what are material of facts, what are prudent insurers, a reasonable insured test, and recommendation from Law Commission, and we have seen some good progress not to put strict responsibility on the insured alone to disclose material facts but there are still lot more to do.

The advance and sophisticated IT world has enabled the insurer to investigate and verify information given by the insured. The law should change to reflect the changes as happening now. The large amount of information about risk such as crime rate now readily available to the insurers. This make a good question whether we still need the doctrine of utmost good faith to govern insurance contract concluded online.

¹ ABI Press Release -26 March 2007

To simplify, applying motor insurance online looks so easy and straightforward, but legal and practical risks are not that straight. A law abiding motorists as consumers here could have their claim rejected because of the doctrine, not to mention they could end up meeting other's claim against them themselves.

On the data protection issue, the writer has personal experience where information given has been shared by the insurer with other non-related companies. It comes to the writer's attention after being inundated with marketing e-mails etc. This again, should be carefully monitored. Adequate warning or option should be displayed clearly whether information will be shared by other companies even though it is just for marketing purpose.

Note:

1. The Law Commissions' project on Insurance Contract Law has published a Scoping Paper on Insurance Contract law last year. The joint review between Law Commission and Scottish Law Commission had decided to look at whether reform is needed in some areas: among others are non-disclosure, misrepresentation and breach of warranty. This is very important area as far as our discussion is concerned – the law is too favourable to the insurer.
2. The Committee also considered issue on 'contract certainty', which according to Hugh Beale², the phrase could be potentially misleading. This refers to the contract concluded other than face-to –face, such as by telephone or online where policy document cannot be provided at the time when insurance is arranged. The Financial Service Act has identified some issues, two of them which are relevant to our discussion:
 - i. policyholders do not have certainty as to the details of the cover they have bought, and
 - ii. insurers do not have an accurate view of the risk they write, so may not hold appropriate levels of capital

However, while accepting that these two issues have attracted a considerable level of interest, the Commissioner viewed that these should be tackled by having an appropriate code of practice or market agreements rather than for contract law, even though he did accept that this should be explored further.

² Law Commissioner for England & Wales, responsible for the Commercial and Common Law Team