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ZAŠTITA POTROŠAČA USLUGA OSIGURANJA U ENGLESKOM PRAVU

PREGLEDNI NAUČNI RAD

Apstrakt

Autor u radu analizira pravnu zaštitu potrošača usluga osiguranja u engleskom pravu, s posebnim osvrtom na prirodu i domet predugovorne dužnosti informisanja. Polazeći od važećeg pravnog okvira koji se u velikoj meri oslanja na regulatorna pravila, ukazuje na određene strukturne nedostatke u pogledu pravne izvesnosti, transparentnosti i efikasnosti u zaštiti potrošača u oblasti osiguranja. Osnovna hipoteza rada je da takvo oslanjanje na podzakonske, pre svega administrativne izvore prava, umesto na sveobuhvatno zakonsko regulisanje dužnosti predugovornog informisanja, dovodi do necelovite i manje predvidive zaštite potrošača. Radi potpunijeg uvida, englesko rešenje upoređeno je sa sistemom nemačkog prava, u kome Zakon o ugovoru o osiguranju nudi koherentan, transparentan i za potrošače pristupačan normativni okvir. Polazeći od prethodno sprovedene analize, u poslednjem delu rada autor predlaže rešenja koja bi omogućila efikasniju i pravno izvesniju zaštitu potrošača usluga osiguranja u engleskom pravu.

Ključne reči: zaštita potrošača usluga osiguranja, predugovorno informisanje, dužnost informisanja, načelo krajnje dobre vere, englesko pravo.

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I Uvod

Zaštita potrošača jedan je od temeljnih postulata savremenog ugovornog prava, pogotovo u oblasti usluga od šireg javnog interesa kao što je osiguranje. Ugovori o osiguranju, zbog svoje specifične strukture, informacione asimetrije i relativno standardizovanog sadržaja, stavljaju osiguranike, kao slabije ugovorne strane, u položaj povećanog rizika u pogledu razumevanja i pravne sigurnosti.[2] Upravo zbog toga, način na koji pravni sistem uređuje dužnost međusobnog informisanja ugovornih strana pre zaključenja ugovora od suštinskog je značaja za obezbeđivanje transparentnosti i efektne zaštite obe ugovorne strane, a naročito potrošača.

Englesko pravo u ovom domenu odstupa od klasičnog modela sveobuhvatne zakonske kodifikacije, karakterističnog za kontinentalne sisteme. Umesto jasno propisanih zakonskih normi o međusobnim dužnostima ugovornih strana kod ugovora o osiguranju, ono se u velikoj meri oslanja na regulatorni okvir koji uspostavlja Telo za finansijski nadzor (engl. *Financial Conduct Authority* – FCA), pre svega pravilima sadržanim u Priručniku za poslovanje u oblasti osiguranja (engl. *Insurance: Conduct of Business Sourcebook – ICOBS*).[3] Takvo rešenje otvara pitanja pravne izvesnosti za potrošače, efikasnosti sredstava putem kojih se utiče na smanjenje informacione asimetrije, kao i doslednosti u primeni i zaštiti prava potrošača.

Polazeći od osnovne hipoteze rada da regulatorni model zasnovan na Priručniku za poslovanje u oblasti osiguranja dovodi do necelovite i manje predvidive zaštite potrošača u sferi osiguranja budući da nije dovoljan da u pravoj meri obezbedi doslednu i sveobuhvatnu zaštitu, autor nastoji da kroz iscrpno ispitivanje postojećeg pozitivnopravnog rešenja, praćeno uporednopravnom analizom, ukaže na prednosti modela celovitog zakonskog uređenja kakav postoji u nemačkom pravu, pre svega posredstvom Zakona o ugovoru o osiguranju.[4] U tom cilju, rad je podeljen u tri celine. U prvom delu biće izložen dug put istorijskog razvoja uređenja ugovornih odnosa kod ugovora o osiguranju, sve do najnovijih izmena koje se dešavaju u poslednjih deceniju i po. U drugom delu rada biće analizirana dužnost informisanja koju međusobno imaju ugovorne strane, s posebnim osvrtom na propise koji je uređuju te pravne posledice njenog nepoštovanja. U trećem delu, na osnovu prethodno sprovedene analize normativne logike i ukazivanja na strukturnu podeljenost između zakonodavne i regulatorne sfere, autor predlaže konkretne pravce reforme i potencijalna rešenja za unapređenje engleskog sistema zaštite potrošača u oblasti osiguranja.

[2] Nataša Petrović Tomić, *Zaštita potrošača usluga osiguranja*, Beograd, 2015, 43.

[3] Financial Conduct Authority, Insurance: Conduct of Business Sourcebook (dalje u fusnotama: ICOBS), dostupno na adresi: *https://www.handbook.fca.org.uk/handbook/ICOBS/1/?view=chapter* posećeno: 15. 7. 2025.

[4] Nemački zakon o ugovoru o osiguranju iz 2008. godine (*Versicherungsvertragsgesetz*).

II Normativna osnova i razvojni put uređenja ugovornih odnosa u osiguranju

Razvoj ugovornog prava osiguranja u engleskom pravu predstavlja primer evolucije jedne grane privatnog prava koja je dugo ostala vezana za trgovačku praksu i sudsku doktrinu, da bi u 20. i 21. veku pretrpela značajne zakonodavne transformacije, pre svega u pogledu zaštite potrošača. Ugovori o osiguranju, naročito pomorskom, nastali su u kontekstu brzog širenja trgovine i rizika vezanih za transport robe morskim putem u 17. i 18. veku. U takvim trgovačkim odnosima dominirala je izrazita informaciona asimetrija gde je osiguranik najčešće raspolagao svim činjenicama značajnim za procenu rizika, dok je osiguravač morao postupati na osnovu ograničenih informacija koje mu osiguranik dostavi, često prećutkujući one od presudnog značaja.[5] Iz te asimetrije proistekla je potreba za uvođenjem načela koje bi štitilo integritet ugovornog odnosa i obezbedilo poverenje u tržište osiguranja.

Tako se postepeno razvilo načelo krajnje dobre vere (engl: *utmost good faith*), pri čemu logičku polaznu osnovu za ustanovljavanje doktrine načela krajnje dobre vere u engleskom ugovornom pravu osiguranja predstavlja mišljenje lorda Mensfilda u predmetu *Carter v. Boehm*. Lord Mensfild je formulisao opšti princip u vezi s prijavljivanjem informacija tokom pregovora o zaključenju ugovora o osiguranju, pri čemu se njegova suština svodi na dužnost osiguranika da pre zaključenja ugovora otkrije osiguravaču sve činjenice koje se mogu smatrati bitnim. Na taj način postavljen je temelj dužnosti potpunog i iskrenog otkrivanja značajnih okolnosti od strane osiguranika. To je značilo da osiguranik mora ne samo da odgovori istinito na postavljena pitanja, već i da spontano obelodani sve okolnosti koje bi mogle uticati na odluku osiguravača o prihvatanju pokrića ili njegovom dodatnom uslovljavanju.[6]

S vremenom, načelo „krajnje dobre vere" uzdignuto je od korisnog pojma koji označava naročito stroge standarde u pregovorima o osiguranju do temeljnog i organizujućeg principa prava osiguranja.[7] Do toga je došlo njegovim kodifikovanjem u Zakonu o pomorskom osiguranju iz 1906. godine, koji propisuje da je ugovor o pomorskom osiguranju „ugovor zasnovan na krajnjoj dobroj veri" i da, ukoliko jedna strana ne ispuni svoju obavezu koja proističe iz njegove sadržine, druga može tražiti raskid ugovora.[8] Iako se zakon odnosi na pomorsko osiguranje, u praksi je primenjivan

[5] John Birds, *Insurance law in the United Kingdom*, sixth edition, Alphen aan den Rijn, 2024, 22; Ben Foat, „Levelling the Playing Field – The Modernisation of Insurance Law in the United Kingdom", *International In-house Counsel Journal*, Vol. 8, No. 31/2015, 2–3.

[6] Howard Bennett, „The Three Ages of Utmost Good Faith", *The World of Maritime and Commercial Law: Essays in Honour of Francis Rose* (eds. Charles Mitchell, Stephen Watterson), London, 2020, 64–68; Jan Woloniecki, „The Duty of Utmost Good Faith in Insurance Law: Where Is It in the 21st Century?", *Defense Counsel Journal*, Vol. 69, No. 1/2002, 63.

[7] H. Bennett, 70.

[8] Engleski zakon o pomorskom osiguranju iz 1906. godine (*Marine Insurance Act 1906*), čl. 17.

kao opšta referenca i u drugim vidovima osiguranja.[9] Na taj način, ugovor o osiguranju postao je tipičan primer „ugovora krajnje dobre vere", u kome važi poseban pravni režim otkrivanja činjenica, pri čemu se njihovo prećutkivanje ili neistinito predstavljanje, čak i nenamerno, smatralo dovoljnim osnovom za raskid ugovora.[10]

Ta strogost je, međutim, s vremenom dovela do kritika, pogotovo u kontekstu masovnih potrošačkih ugovora, gde ugovarači osiguranja često nisu mogli biti svesni svojih obaveza i posledica njihovih propusta. U međuvremenu je došlo i do ozbiljnog razvoja potrošačkog prava kao odgovora na rastuću složenost tržišta i neravnotežu moći između potrošača i poslovnih subjekata. Savremeno tržište osiguranja znatno se promenilo u odnosu na vreme kada je donet zakon iz 1906. godine budući da danas dominiraju sistemi, procedure i složenija analiza podataka, uz sve veći broj osiguranih rizika i potencijalno dostupnih informacija. Zbog toga postojeći pravni okvir nije ispratio te promene i nije odražavao savremene tendencije u razvoju potrošačkog prava. Zakon je favorizovao osiguravače jer je nastao u vreme kada su oni imali slabiju pregovaračku poziciju u odnosu na osiguranike, te im je zato u slučaju povrede ugovornih obaveza od strane osiguranika davana mogućnost da u potpunosti izbegnu ispunjenje ugovora, čak i kada to nije bilo proporcionalno učinjenoj povredi.[11] Otuda je u moderno doba došlo do značajnih zakonodavnih pomaka na tom polju, naročito donošenjem Zakona o potrošačkim osiguranjima i Zakona o osiguranju.[12] Iako zajedno predstavljaju nadgradnju u odnosu na dotada važeća pravila iz Zakona o pomorskom osiguranju, njihova svrha i domen primene se razlikuju. Zakon o potrošačkim osiguranjima se primenjuje isključivo na ugovore između potrošača i osiguravača, dok se Zakon o osiguranju primenjuje na poslovnopravne transakcije odnosno komercijalne ugovore o osiguranju.[13]

[9] Paul Jaffe, „Reform of the Insurance Law of England and Wales-Separate Laws for the Different Needs of Businesses and Consumers", *Tulane Law Review*, Vol. 87, No. 5/2013, 1083–1084.

[10] Teret prepoznavanja i prijavljivanja materijalnih činjenica u smislu svake činjenice koja bi uticala na procenu rizika od strane razumnog osiguravača bio je na ugovaraču osiguranja. To pravilo je važilo čak i ako mu nije postavljeno nijedno pitanje, te je stoga često vodilo do nepravičnih posledica. Suština problema proizlazila je iz okolnosti da prosečan ugovarač osiguranja ne zna šta sve osiguravač smatra relevantnim činjenicama, pri čemu je i pored toga u slučaju propuštanja da otkrije neku bitnu činjenicu osiguravač mogao retroaktivno da raskine ugovor. Nurjannah Chew Li Hua, „The Doctrine of Utmost Good Faith: Back to Common Law to Move Forward?", *Journal of Malaysian and Comparative Law*, Vol. 39, 2012, 10–11; Ozlem Gurses, „What does 'utmost good faith' mean", *Insurance Law Journal*, Vol. 27, 2016, 124–126; B. Foat, 2.

[11] Andre Farrugia, Simon Grima, „A model to determine the need to modernise the regulation of the principle of utmost good faith", *Journal of Financial Regulation and Compliance*, Vol. 29, No. 4/2021, 455; Daniel Vásquez-Vega, „A comparative analysis of utmost good faith in colombian and english insurance law", *EAFIT Journal of International Law*, Vol. 5, No. 02/2014, 86; B. Foat, 3.

[12] Engleski zakon o potrošačkim osiguranjima iz 2012. godine (*Consumer Insurance (Disclosure and Representations) Act;* dalje u fusnotama: CIDRA); Engleski zakon o osiguranju iz 2015. godine (*Insurance Act 2015*).

[13] Takva podela je najvećim delom posledica tranzicije kroz koju je prošlo pravo osiguranja pod uticajem prava Evropske unije i potrošačkog zakonodavstva. Usled nagle ekspanzije standarda zaštite potrošača, sve više na značaju dobija podela osiguranja na potrošačka i komercijalna. Kriterijum razlikovanja jeste

Podela pravila o osiguranju na dva pomenuta propisa ima za cilj da napravi jasnu razliku između dva zasebna režima od kojih svaki odražava specifičnost odnosa između konkretnih ugovornih strana.[14] Na taj način, jasno je istaknuta razlika koja podrazumeva da potrošači moraju uživati viši stepen zaštite kroz blaže dužnosti i jasnije smernice, nasuprot poslovnim odnosima u kojima se očekuje veća informisanost i viši stepen pažnje. Stoga takva podela doprinosi većoj pravnoj sigurnosti i transparentnosti, ali istovremeno zahteva dodatan oprez zbog potrebe usklađenog delovanja tih sektorskih propisa u odnosu na brojna regulatorna pravila u cilju izbegavanja preklapanja i nedoslednosti.

Zakon o potrošačkim osiguranjima određuje svoj domen primene definisanjem potrošačkog ugovora o osiguranju kao ugovora zaključenog između osiguravača i „pojedinca koji ugovor zaključuje isključivo ili pretežno u svrhe koje nisu povezane s njegovom trgovačkom delatnošću, poslovanjem ili profesijom".[15] Osiguranik stoga mora biti potrošač koji je fizičko lice, a glavna svrha zaključenja ugovora mora biti nekomercijalna, tj. nevezana za njegove poslovne aktivnosti.[16]

Pored toga, zakon jasno propisuje šta se očekuje od potrošača i koje su pravne mogućnosti na strani osiguravača u slučaju potrošačeve povrede dužnosti informisanja. U tom smislu, uvedena je posebna dužnost predugovornog informisanja koja se razlikuje od one na nepotrošačkom tržištu, čime se uvažavaju različite potrebe osiguranja fizičkih lica kao potrošača u odnosu na sve druge subjekte. Naspram te redefinisane dužnosti potrošača, da u predugovornoj fazi postupa s dužnom pažnjom kako ne bi dao neistinite izjave osiguravaču, ne stoji korespondentna dužnost osiguravača. Za razliku od pristupa u drugim pravnim sistemima, dužnost predugovornog informisanja od strane osiguravača nije izričito uređena relevantnim zakonskim propisom. Ipak, to ne znači da pomenuta dužnost na strani osiguravača uopšte ne postoji, već jedino to da je ona uređena drugim propisima.

prvenstveno priroda rizika uz pomoćni kriterijum svojstva osiguranika. U tom smislu, ono što jednom osiguranju daje potrošački karakter jeste priroda rizika, pri čemu je bitno da je rizik pokriven osiguranjem privatne a ne poslovne (komercijalne) prirode. Određenje potrošačkog karaktera ugovora na osnovu tako postavljenih kriterijuma ima veliki praktičan značaj, naročito zbog toga što se na taj način izbegavaju problemske situacije koje mogu nastati usled različitog određenja pojma potrošača. Nataša Petrović Tomić, *Pravo osiguranja – sistem*, Knjiga I, Beograd, 2019, 285–286.

[14] P. Jaffe, 1086–1088.

[15] CIDRA, čl. 1. Ova formulacija je slična onoj iz Zakona o pravima potrošača iz 2015. godine (*Consumer Rights Act 2015*), gde se potrošač definiše kao fizičko lice koje deluje u svrhe koje su isključivo ili pretežno van njegove trgovine, poslovanja, zanata ili profesije.

[16] Primećuje se da u skladu sa izloženim shvatanjem pojmom potrošačko osiguranje mogu biti obuhvaćeni i tzv. mešoviti pravni poslovi kada lice pribavlja osiguranje delom za poslovne, a delom za privatne svrhe. Takav ugovor će se smatrati potrošačkim ako je neposlovna svrha u konkretnom slučaju dominantna. Procena se vrši imajući u vidu činjenično stanje svakog pojedinačnog slučaja. U tom smislu, ako je, na primer, u pitanju taksista koji koristi automobil pretežno za prevoz putnika, a povremeno za lične potrebe, smatraće se da nije u pitanju potrošačko osiguranje. N. Petrović Tomić (2015), 114.

Na taj način, suštinski su stvorena dva pravna režima dužnosti informisanja, gde se na svaku od ugovornih strana primenjuje poseban režim.

III Dvostruki pravni režim predugovorne dužnosti informisanja

Dužnost predugovornog informisanja kod ugovora o osiguranju predstavlja ključan mehanizam zaštite kojim se nastoji umanjiti prirodna asimetrija informacija između ugovornih strana – osiguravača kao profesionalca s jedne strane i ugovarača osiguranja, najčešće potrošača, s druge strane. Osiguranje je specifična vrsta pravnog posla čija se svrha i cena temelje na proceni rizika, pri čemu osiguravač zavisi od tačnih i potpunih informacija koje dobije, dok potrošač često ne razume u potpunosti sve elemente usluge koju kupuje. Zato je dužnost međusobnog predugovornog informisanja od presudnog značaja za transparentnost, zaštitu i ravnotežu u ugovornom odnosu. Ona obezbeđuje da potrošač donese informisanu odluku na osnovu svih poznatih okolnosti, dok istovremeno štiti i osiguravača od netačnih prikaza rizika. U tom smislu, ta dužnost nije samo instrument postizanja ravnoteže u ugovornom odnosu, već i osnova za pravno valjan i održiv ugovor o osiguranju. Upravo iz tih razloga, postojanje jasnog, ali i adekvatno uravnoteženog normativnog okvira koji uređuje dužnost informisanja u predugovornoj fazi od suštinske je važnosti za stabilnost ugovornog odnosa u osiguranju.[17]

U tom kontekstu, englesko pravo razvilo je dvostruki pravni režim, poseban za potrošače i poseban za osiguravače, uz nastojanje da se obezbedi što efikasnija zaštita obe strane, ali i da se odgovornost raspodeli u skladu sa stvarnim kapacitetima i očekivanjima svakog od učesnika ugovornog odnosa. Takav pristup, međutim, otvara niz pitanja u pogledu međusobne usklađenosti postojećih režima, njihove praktične primene i stvarne delotvornosti.

1. Dužnost informisanja osiguravača od strane potrošača

Pre donošenja Zakona o potrošačkim osiguranjima načelo krajnje dobre vere bilo je vodeća odrednica prilikom regulisanja dužnosti informisanja. Ugovarač osiguranja bio je dužan da sam iznese sve činjenice koje bi uticale na procenu rizika od strane razumnog osiguravača, pri čemu je ta dužnost postojala nezavisno od okolnosti da li je osiguravač u tom cilju postavio neko konkretno pitanje. Opravdanje

[17] Robert Cooter, Thomas Ulen, *Law and Economics*, 6th edition, Boston, 2016, 41; David Schwartz, „Resolving the Disclosure Puzzle in Insurance Law", *Business Law Review*, Vol. 6/2007, 180; Ana Keglević, „Pre-contractual Information Duty and Unfair Contract Terms – Open questions and dilemmas – ", *Insurer's Precontractual Information Duty*, Turkish Chapter of AIDA, Istanbul, 2013, 81; Ana Keglević, *Građansko-pravni aspekti obveze obavještavanja kod potrošačkog ugovora o osiguranju*, doktorski rad, Pravni fakultet Univerziteta u Zagrebu, Zagreb, 2012, 8–9.

za tako formulisanu dužnost nalaženo je u okolnosti da ugovarač osiguranja zna sve o činjenicama bitnim za procenu rizika, nasuprot osiguravaču koji o njima ne zna ništa. Ipak, s vremenom se postavilo pitanje kako ugovarač osiguranja može da zna koje se sve to činjenice mogu smatrati bitnim za procenu rizika. Prepoznavanje značaja tog problema dovelo je do formiranja izrazito naklonjene prakse prema potrošačima, kao i značajnih zakonodavnih pomaka na tom polju.[18]

Stupanje na snagu Zakona o potrošačkim osiguranjima predstavljalo je prekretnicu u oblasti predugovornog informisanja osiguravača od strane ugovarača osiguranja. Ukinuta je dotadašnja dužnost ugovarača osiguranja da samoinicijativno otkriva sve značajne činjenice koje bi uticale na odluku razumnog osiguravača, i umesto toga propisana nova, ograničena dužnost potrošača „da postupa s dužnom pažnjom kako ne bi izvršio pogrešno predstavljanje okolnosti osiguravaču".[19] To znači da potrošač više nije dužan da samoinicijativno otkriva informacije, već samo da postupajući s dužnom pažnjom tačno i savesno odgovara na pitanja osiguravača.[20] Postupanje s dužnom pažnjom se ceni na osnovu svih relevantnih okolnosti koje zakon navodi *exempli causa*: vrsta potrošačkog osiguranja i ciljno tržište; bilo koji relevantan materijal značajan za pojašnjenje, javno objavljen ili potvrđen od strane osiguravača; koliko su jasna i koliko su konkretna pitanja osiguravača; u slučaju propuštanja da odgovori na pitanja osiguravača u vezi sa obnovom ili izmenom potrošačkog ugovora o osiguranju, koliko jasno je osiguravač saopštio važnost davanja odgovora na ta pitanja; da li je za potrošača radio agent osiguranja? Zahtevani standard pažnje je pažnja razumnog potrošača. Procena da li se u svakom pojedinom slučaju zaista radi o razumnom potrošaču vrši se objektivno, uz izuzetak dve situacije kada je propisano uzimanje u obzir i ličnih (subjektivnih) prilika konkretnog potrošača. Naime, ako je osiguravač bio svestan ili je trebalo da bude svestan da je reč o potrošaču za koga se vezuju određene karakteristike ili okolnosti, one će biti uzete u obzir. Pored toga, namerno pogrešno predstavljanje okolnosti uvek se smatra nedostatkom razumne pažnje. Ti izuzeci omogućavaju da procenom u konkretnom slučaju budu obuhvaćeni i potrošači koji imaju određena posebna znanja i veštine ili koji su postupali nesavesno, dok u slučaju prosečno informisanog potrošača ostavljaju mesta za razumnu grešku pri donošenju odluke.[21]

[18] Ana Keglević Steffek, „Trust and Transparency in Insurance Contract Law: European Regulation and Comparison of Laws", *Cambridge Yearbook of European Legal Studies*, Vol. 24, 2022, 331–332; John Lowry, „Whither the Duty of Good Faith in UK Insurance Contracts", *Connecticut Insurance Law Journal*, Vol. 16, No. 1/2009, 99. Može se reći da je s vremenom došlo do toga da tradicionalna dužnost osiguranika da obavesti osiguravača o riziku polako biva zamenjena, ili barem dopunjena, dužnošću odnosno potrebom osiguravača da sam pribavi bitne informacije, tj. da se sam angažuje u cilju informisanja o potrebama konkretnog klijenta. Herman Cousy, „The Principles of European Insurance Contract Law: the Duty of Disclosure and the Aggravation of Risk", *ERA Forum 9 (Suppl 1)*, 2008, 123.

[19] CIDRA, Section 2.

[20] N. Petrović Tomić, 254.

[21] CIDRA, Section 3; Engleski Predlog zakona o potrošačkim osiguranjima iz 2011. godine (*Consumer Insurance (Disclosure and Representations) Bill [HL]*; dalje u fusnotama: CIDRA Bill), tač. 30, dostupno na adresi: *https://publications.parliament.uk/pa/bills/lbill/2010-2012/0068/en/2012068en.htm*, posećeno: 27. 7. 2025.

Napuštanje ranijeg rešenja koje je podrazumevalo dobrovoljno i samoinicijativno informisanje osiguravača o činjenicama značajnim za procenu rizika predstavlja značajno olakšanje za potrošača. Njegova dužnost se suštinski sada sastoji u tome da s razumnom pažnjom pročita pitanja koja mu je postavio osiguravač i da na njih odgovori tačno i što potpunije. Više ne mora brinuti da li će neku od bitnih činjenica propustiti jer je osiguravač taj koji postavlja pitanja za koja se pretpostavlja da su značajna za procenu.[22] Tako se prevazilaze brojne prepreke na tržištu osiguranja poput informacione asimetrije, uz istovremeno omogućavanje da se kroz ovakav mehanizam različite usluge osiguranja prilagode svakom pojedinačnom potrošaču.[23]

Ako potrošač prekrši dužnost informisanja osiguravača, radiće se o pogrešnom predstavljanju okolnosti značajnih za ocenu rizika (engl. *misrepresentation*). Odgovor na pitanje da li je u konkretnom slučaju reč o pogrešnom predstavljanju okolnosti daje *common law*, pri čemu o tome postoji značajna sudska praksa. Često se ističe da se čak i izjava koja je sama po sebi tačna može smatrati pogrešnim predstavljanjem ako je nepotpuna.[24] U praksi se to pitanje može javiti kao naročito značajno prilikom obnove ugovora, kada se od potrošača zahteva da potvrdi ili izmeni prethodno dostavljene informacije. Zakon u ovom slučaju izričito propisuje da se takvo propuštanje može smatrati pogrešnim predstavljanjem.[25]

Prosto neizvršenje dužnosti informisanja u vidu pogrešnog predstavljanja okolnosti značajnih za ocenu rizika ipak neće biti samo po sebi dovoljno da osiguravaču dâ pravo na određeno pravno sredstvo kojim bi zaštitio svoje interese. Pored povrede dužnosti informisanja, potrebno je da bude ispunjen i jedan dodatni uslov. On podrazumeva postojanje pretpostavljenog uticaja pogrešnog predstavljanja okolnosti na odluku osiguravača o prihvatanju rizika, odnosno uslovima prihvatanja.[26] To znači da osiguravač mora dokazati da ne bi zaključio ugovor ili bi to učinio pod bitno drugačijim uslovima da nije bilo pogrešnog predstavljanja, pri čemu je potrebno subjektivno dokazivanje stvarne zavisnosti odluke osiguravača od izjave potrošača, a ne samo hipotetička relevantnost izjave za razumnog osiguravača.[27]

[22] N. Petrović Tomić (2015), 254; Slično rešenje postoji i u nemačkom pravu. Prema čl. 19 st. 1 nemačkog zakona o ugovoru o osiguranju, ugovarač osiguranja dužan je da pre zaključenja ugovora o osiguranju saopšti osiguravaču sve okolnosti koje su bitne za odluku osiguravača da li će zaključiti ugovor pod predviđenim uslovima. On to čini odgovarajući na pitanja koja je osiguravač izričito postavio u pisanoj formi, najčešće putem upitnika koji su posebno prilagođeni ovoj svrsi. Manfred Wandt, Kevin Bork, „Disclosure duties in German insurance contract law", *Zeitschrift für die gesamte Versicherungswissenschaft*, Vol. 109/2020, 82–83.

[23] A. Keglević Steffek, 337.

[24] CIDRA Bill, tač. 23.

[25] CIDRA, Section 2.

[26] CIDRA, Section 4.

[27] Zakon ovde suštinski kodifikuje pravno shvatanje iz slučaja *Pan Atlantic Insurance Co Ltd v Pine Top Insurance Co Ltd [1995] AC 501*. Ono odražava stav da za uspešnu odbranu osiguravača od pogrešnog predstavljanja informacija nije dovoljno samo da je pogrešno predstavljena činjenica koja se smatra

Kada je reč o pravnim posledicama pogrešnog predstavljanja okolnosti značajnih za cenu rizika, vidljiv je jasan prelazak sa sistema „sve ili ništa" na „sistem srazmernosti". Naime, pravilo sve ili ništa počiva na shvatanju da povreda dužnosti informisanja prouzrokuje nedostatke u volji ugovornih strana, zbog kojih posledica takvog postupanja ne može biti ništa drugo sem raskid ugovora. S druge strane, zbog stava da pomenuto pravilo nepravedno stavlja ugovarača osiguranja u mnogo lošiju poziciju, princip srazmernosti napušta prethodno shvatanje i zamenjuje ga ekonomičnijim modelom koji se zasniva na ravnoteži između stvarnog rizika i visine premije. Uz određene izuzetke i u zavisnosti od prirode povrede dužnosti, princip srazmernosti podrazumeva da se ugovor izmeni odnosno prilagodi situaciji srazmerno stepenu povrede. Zaključujemo da je namera zakonodavca očigledno bila da se na taj način podstakne međusobno poverenje i nastavak ugovornog odnosa, čak i pod izmenjenim uslovima visine premije ili drugih ugovornih elemenata.[28]

Da bi primena principa srazmernosti na konkretni ugovorni odnos bila moguća, nakon utvrđivanja povrede dužnosti informisanja, potrebno je utvrditi potrošačev subjektivni odnos prema istinitosti predstavljene informacije. U tom smislu, ukoliko potrošač učini pogrešno predstavljanje činjenica prilikom davanja odgovora na postavljeno pitanje, pravna sredstva koja osiguravaču stoje na raspolaganju zavise od subjektivnog odnosa potrošača prema iznetim činjenicama. Ako se pogrešno predstavljanje koje je učinjeno smatra poštenim i razumnim (engl. *reasonable misrepresentation*), osiguravač nakon nastupanja osiguranog slučaja nema pravo da odbije isplatu, već je dužan da plati potraživanu naknadu iz osiguranja. U tom slučaju smatra se da je potrošač postupao s pažnjom razumnog potrošača, uzimajući u obzir različite objektivne okolnosti, pri čemu se subjektivne okolnosti potrošača ne uzimaju se u obzir, osim ako su bile poznate ili su morale biti poznate osiguravaču. Ako je ipak pogrešno predstavljanje bilo posledica potrošačeve nepažnje (engl. *careless misrepresentation*), osiguravač ima pravo na srazmerno pravno sredstvo koje zavisi od toga kako bi postupio da je potrošač dao tačan i potpun odgovor. U slučaju da tada ne bi ni zaključio ugovor, može da ga raskine uz obavezu vraćanja uplaćenih iznosa premije. S druge strane, ako bi ugovor ipak zaključio, ali pod drugačijim uslovima, smatraće se da je zaključen upravo pod takvim uslovima.

bitnom, već osiguravač mora i da dokaže da je na osnovu te informacije bio zaista i subjektivno naveden da zaključi ugovor pod tim uslovima. Drugim rečima, nije dovoljno da neki hipotetički razuman osiguravač bude pod uticajem netačno predstavljenih informacija već mora postojati i odlučujući uticaj na volju tog razumnog osiguravača da bi se konkretno pogrešno predstavljanje smatralo bitnim. Takođe se ističe da bi priznavanje osnova za odgovornost zbog netačnog predstavljanja čak i kada volja konkretnog osiguravača nije bila pogođena takvom okolnošću bilo suprotno zdravom razumu i pravičnosti. Paul Walker, „Non-disclosure: Some comparisons", *Victoria University of Wellington law review*, Vol. 26/1996, 832; Laura Reeves, „The Duty of Pre-Contractual Disclosure in English Insurance Law: Past and Future – Does the Law Need to be Changed?", *Southampton Student Law Review*, Vol. 5/2015, 3.

[28] A. Keglević Steffek, 341.

Konačno, ako je pogrešno predstavljanje učinjeno s namerom ili krajnjom nepažnjom (engl. *deliberate or reckless misrepresentation*), osiguravač ima pravo da poništi ugovor i odbije odštetni zahtev. U tom slučaju, osiguravač može da zadrži uplaćene iznose premije, osim ako bi to bilo nepravično prema potrošaču. Da bi se pogrešno predstavljanje okolnosti smatralo namernim ili učinjenim iz krajnje nepažnje, potrebno je dokazati da je, na osnovu svih poznatih okolnosti, potrošač: 1) znao da je izjava netačna ili obmanjujuća, ili da mu je bilo svejedno da li je tačna ili ne; 2) znao da je predmetna činjenica relevantna za osiguravača, ili da mu je bilo svejedno da li je relevantna ili ne. Teret dokazivanja da je došlo do pogrešnog predstavljanja na taj način leži na osiguravaču. Međutim, zakon predviđa oborive pretpostavke: 1) da je potrošač imao znanje koje bi imao razuman potrošač; 2) da je potrošač znao da je činjenica o kojoj je osiguravač postavio jasno i precizno pitanje bitna za donošenje odluke o zaključenju ugovora.[29]

Na taj način uspostavljen je jasan sistem koji pravne posledice temelji na stepenu krivice osiguranika, štiteći pri tome kroz princip srazmernosti pravičnost i interese obe ugovorne strane. Pošto mogu da prilagode ugovor nakon saznanja za „nove" rizike, bilo smanjenjem iznosa naknade, bilo povećanjem premije, osiguravači nemaju potrebu da ulažu vreme i novac u iscrpne predugovorne provere s ciljem da izbegnu raskid ili poništenje ugovora. Upravo zato, princip proporcionalnosti predstavlja dobitnu kombinaciju za obe ugovorne strane.[30]

2. Dužnost informisanja potrošača od strane osiguravača

Predugovorne dužnosti osiguravača prvenstveno su usmerene na zaštitu svih potencijalnih ugovarača osiguranja, a naročito potrošača. Ugovarač osiguranja predstavlja slabiju stranu u ugovornom odnosu i kao takav zaslužuje posebnu zaštitu, jer je, po pravilu, ekonomski slabiji i poseduje manje znanja o uslugama osiguranja od

[29] CIDRA, Section 5, Schedule 1; CIDRA Bill, tač. 36–40. Andrew Hutchinson, Helena Stoop, „Misrepresentation in Consumer Insurance: The United Kingdom Legislature Opts for a Reasonable Consumer Standard", *South African Law Journal*, Vol. 130, No. 4/2013, 710–712.

[30] A. Keglević Steffek, 346. Princip srazmernosti prihvata i nemačko pravo uz određene specifičnosti. Ako je do pogrešnog predstavljanja došlo iz obične nepažnje, osiguravač ima pravo da odustane od ugovora u skladu sa opštim pravilima građanskog prava o raskidu ugovora. S druge strane, ako je u pitanju namera ili gruba nepažnja, osiguravač može da raskine ugovor uz jednomesečni otkazni rok. Ipak, pravo na raskid se može ostvariti samo ako ugovor ne može biti prilagođen okolnostima koje nisu bile otkrivene, jer princip srazmernosti ima prvenstvo u primeni u nemačkom pravu. Ukoliko bi osiguravač u trenutku zaključenja ugovora, da je znao za relevantne činjenice, pristao na ugovor pod drugačijim uslovima, tada je dužan da izvrši prilagođavanje ugovora, čime te činjenice postaju sastavni deo ugovora. Da bi došlo do primene principa srazmernosti, moraju dodatno biti ispunjena dva uslova: 1) da postoji uzročno-posledična veza između neotkrivene okolnosti i procene rizika, i 2) da bi osiguravač, iako pod izmenjenim uslovima, ipak zaključio ugovor. Robert Koch, „German Reform of Insurance Contract Law", *European Journal of Commercial Contract Law*, Vol. 2, No. 3/2010, 169–170.

osiguravača. Osnovni vid zaštite ogleda se u pružanju svih potrebnih informacija koje potencijalnom ugovaraču omogućavaju donošenje informisane odluke. Osiguravač u tom smislu ima dužnost da pruži te informacije ne samo pre zaključenja ugovora već i tokom njegovog trajanja. Ta dužnost proizlazi kako iz posebnih zakonskih propisa u oblasti osiguranja tako i u slučaju njihove odsutnosti iz opštih pravnih načela, poput savesnosti i poštenja ili odgovornosti za štetu nastalu u fazi pregovora. Ipak, zbog složenosti i značaja te materije, opšta pravna načela nisu dovoljna te se javlja potreba za preciznim normiranjem putem posebnih pravila.[31]

Većina pravnih sistema odlučila se za jasno zakonsko uređenje te dužnosti. Tako je, na primer, u nemačkom zakonu o ugovoru o osiguranju predugovorno savetovanje i informisanje ugovarača osiguranja postavljeno kao centralni segment njegove zaštite. Dužnost informisanja važi za sve ugovore o osiguranju, bez obzira na konkretnu vrstu pokrića, pri čemu za potrebe primene normi zaštitnog karaktera zakonodavac ne pravi razliku između fizičkih i pravnih lica. Ona je jedino umanjena kada je reč o osiguranju od velikih rizika. O značaju koji se predugovornom informisanju pridaje u nemačkoj dodatno govori i činjenica da je nakon donošenja zakona posebno doneta i Uredba o dužnosti informisanja koja dalje razrađuje zakonsku obavezu detaljno objašnjavajući u čemu se ona tačno sastoji.[32]

Za razliku od jasnog i preciznog rešenja nemačkog prava, englesko pravo ima drugačiji pristup u regulisanju predugovorne dužnosti osiguravača. Naime, glavna specifičnost engleskog rešenja jeste to da Zakon o potrošačkim osiguranjima uopšte ne uređuje osiguravačevu dužnost predugovornog informisanja, usredsređujući se isključivo na olakšavanje potrošačevog položaja kroz redefinisanje njegove dužnosti u vezi s predstavljanjem okolnosti značajnih za ocenu rizika. Zato se načelo krajnje dobre vere iz Zakona o pomorskom osiguranju iz 1906. godine i dalje primenjuje na dužnosti osiguravača u predugovornoj fazi, kao i na odnos ugovornih strana nakon zaključenja ugovora. Potencijalni razlog za takvo opredeljenje zakonodavca treba tražiti u poslovnoj praksi u kojoj je široko rasprostranjeno mišljenje da je mnogo efikasnije oblikovati postupanje osiguravača prema standardima transparentnosti i pravičnosti sadržanim u samoregulatornim aktima i pravilima osiguravajuće delatnosti, a ne nužno prema strogim zakonskim pravilima.[33]

[31] N. Petrović Tomić (2015), 127; Samim Ünan, „Insurer's Pre-contractual Duties to Inform and Warn/Advise", *Insurer's Precontractual Information Duty*, Turkish Chapter of AIDA, Istanbul, 2013, 9–10; A. Keglević (2012), 8.

[32] Nemačka uredba o dužnosti informisanja iz 2008. godine (*Verordnung über Informationspfl ichten bei Versicherungsverträgen*). Nataša Petrović Tomić, „Informisanje korisnika usluga osiguranja u nemačkom pravu", *Tokovi osiguranja,* časopis za teoriju i praksu osiguranja, br. 4/2015, 5–18; M. Wandt, K. Bork, 88–92; R. Koch, 166–168. Sličnu logiku prate i Principi evropskog ugovornog prava osiguranja (*The Principles of European Insurance Contract Law*) koji u čl. 1:101 propisuju da se primenjuju kada „se ugovorne strane, bez obzira na ograničenja u izboru merodavnog prava po pravilima međunarodnog privatnog prava, saglase da se oni primenjuju na njihov ugovor".

[33] A. Keglević Steffek, 324–325.

U skladu s načelom krajnje dobre vere, osiguravač mora postupati tako da potrošaču ne prećuti nijednu informaciju koja se smatra značajnom za zaključenje ugovora. Stoga je on pre zaključenja ugovora dužan da obavesti saugovornika o svim okolnostima značajnim za zaključenje ugovora a da mu saugovarač o njima i ne postavi neko pitanje, pri čemu je inače dužan da se uzdrži od svakog pogrešnog predstavljanja okolnosti.[34]

S obzirom na to da ispunjenje osiguravačeve obaveze u skladu s načelom krajnje dobre vere ne rešava u potpunosti problem informacione asimetrije na potrošačevoj strani, javila se potreba za preduzimanjem daljih koraka. Zarad potrošačeve što potpunije zaštite, najpre je poslovna praksa, a kasnije i regulatori na tržištu osiguranja, nastojala da pronađe rešenje u jasnijim i strožim regulatornim aktima i pravilima osiguravajuće delatnosti. Kao posledica tog nastojanja, čak deceniju pre donošenja Zakona o potrošačkim osiguranjima, formirano je Telo za finansijske usluge (engl. *Financial Services Authority – FSA*) kao jedinstveni zakonski regulator finansijskih usluga. Ono je objavilo priručnik koji je sadržao posebna pravila za potrošačka osiguranja pod nazivom Pravila poslovanja u osiguranju – pravila o neotkrivanju i pogrešnom predstavljanju okolnosti (engl. *Insurance Conduct of Business Sourcebook – Rules on Non-disclosure and Misrepresentation (FSA Handbook – ICOBS Rules)*),[35] koja su, između ostalog, propisivala i dužnost osiguravača da postavlja jasna pitanja u vezi sa svim okolnostima bitnim za ugovaranje osiguranja. Nakon što je Telo za finansijske usluge ukinuto 2013. godine, Telu za finansijski nadzor (engl. *Financial Conduct Authority – FCA*) je pripao deo njegovih nadležnosti, te ono danas nadzire pružanje finansijskih usluga i postupanje finansijskih institucija u Velikoj Britaniji, s ciljem zaštite potrošača i očuvanja integriteta tržišta. Donet je i novi akt pod nazivom Priručnik za poslovanje u oblasti osiguranja kao sastavni deo posebnog priručnika Tela za finansijski nadzor donetog na osnovu Zakona o finansijskim uslugama.[36]

Priručnik za poslovanje u oblasti osiguranja sadrži detaljna pravila kojima se uređuje ponašanje osiguravača u odnosima s potrošačima na tržištu osiguranja u Ujedinjenom Kraljevstvu. U tom smislu, osiguravači su dužni da postupaju pošteno i u skladu s najboljim interesima svojih klijenata u svakoj fazi ugovornog odnosa, od početka pregovora, preko zaključenja ugovora, pa sve do eventualne realizacije osiguranog rizika.[37] Pored toga, sve informacije koje se pružaju potrošaču, uključujući

[34] H. Bennett, 70–74.

[35] Financial Services Authority, Insurance Conduct of Business Sourcebook – Rules on Non-disclosure and Misrepresentation (FSA Handbook – ICOBS Rules), dostupno na adresi: *https://www.handbook.fca.org.uk/handbook/ICOB/2/?date=2005-01-14&view=chapter&timeline=True*, posećeno: 6. 8. 2025.

[36] Zakon o finansijskim uslugama iz 2021. godine (*Financial Services Act 2021*). A. Keglević Steffek, 326; Andrew Schmulow, Baladev Dayaram, Sian Mullen, „Consumer Protection in Insurance Contracts: The Need for a 'Treating Customers Fairly' Regime", *The International Review of Financial Consumers*, Vol. 8, No. 1/2023, 60–62.

[37] ICOBS, čl. 2.5.1R.

reklame i prodajne izjave, moraju biti jasne, sažete i ne smeju dovesti potrošača u zabludu.[38] Pre zaključenja ugovora, osiguravač mora potrošaču da predoči sve potrebne informacije o usluzi, uključujući: osnovne karakteristike same usluge; obim pokrića i isključenja; trajanje ugovora; visinu premije i uslove plaćanja.[39] Propisana je i dužnost dostavljanja standardizovanog dokumenta koji sadrži sažete i lako razumljive informacije o usluzi, a koji omogućava potrošačima da lakše uporede različite usluge i donesu informisanu odluku.[40] Takođe, potrošaču se mora omogućiti jednostavno i pravovremeno ostvarivanje prava iz ugovora, uključujući pravo na raskid ugovora u određenom roku, kao i jasne informacije o postupku po prigovoru.[41] Konačno, propisani su i posebni standardi ponašanja u pogledu upravljanja uslugama, koji uključuju dužnost osiguravača da razvijaju i vrše distribuciju usluga koje odgovaraju potrebama ciljnog tržišta, čime se potrošači dodatno štite od usluga koje nisu primerene njihovim interesima i potrebama.[42]

Pored priručnika, značajno mesto u sistemu zaštite potrošača usluga osiguranja zauzima i Služba finansijskog ombudsmana (engl. *Financial Ombudsman Service – FOS*) kao nezavisno i nepristrasno telo čija je glavna dužnost rešavanje po pritužbama potrošača usmerenih ka pružaocima finansijskih usluga, uključujući i osiguravače. U tom cilju on redovno tumači pravila i standarde ponašanja, uključujući pravila iz Priručnika za poslovanje u oblasti osiguranja, u svetlu pravičnosti i najboljeg interesa potrošača. Na taj način on doprinosi razvoju prakse zaštite potrošača, jer njegovi stavovi i načini rešavanja sporova često utiču na ponašanje osiguravača i tumačenje pravila od strane zakonodavca i regulatora tržišta. Upravo zato, mnogi stavovi koje je on zauzeo u praksi kasnije su znatno uticali na oblikovanje Zakona o potrošačkim osiguranjima. Služba finansijskog ombudsmana je, dakle, ključni mehanizam alternativnog rešavanja sporova u sektoru osiguranja, koji omogućava brzo, efikasno i lako dostupno rešavanje sporova, bez potrebe za pokretanjem sudskog postupka. Njegova uloga stoga nije samo zaštitna, već i preventivna, ali i korektivna, u odnosu na ponašanje osiguravača.[43]

[38] ICOBS, čl. 2.2.2R
[39] ICOBS, čl. 6.1.5R
[40] ICOBS, čl. 6, aneks 3.
[41] ICOBS, čl. 7.1.1R i 7.2.1R.
[42] ICOBS, čl. 4.2A.6R i 4.2A.13R.
[43] Ugochi Amajuoyi, Andrea Fejős, „Mind the Consumer Protection Gap: the UK Financial Ombudsman Service, Fairness and Reasonableness, and the Law", *Protecting Financial Consumers in Europe Comparative Perspectives and Policy Choices* (eds. Piotr Tereszkiewicz, Mariusz Golecki), Brill Nijhoff, Leiden/Boston, 2023, 259–264; Mary Donnelly, „The Financial Services Ombudsman: Asking the Existential Question", *Dublin University Law Journal*, Vol. 35/2012, 231–234; B. Foat, 5–6.

IV Efikasnost strukturne podeljenosti i regulatorna (ne)usklađenost zaštite

Sagledavanjem svega na šta je prethodno ukazano, zaključujemo da se zaštita potrošača usluga osiguranja u engleskom pravu osiguranja karakteriše izrazitom strukturnom podeljenošću između zakonodavne i regulatorne sfere. S jedne strane, Zakon o potrošačkim osiguranjima kao sektorski propis uređuje pitanja koja se odnose na dužnost potrošača u vezi s davanjem tačnih i potpunih informacija pre zaključenja ugovora, dok, s druge strane, regulatorni okvir koji uređuje ponašanje osiguravača suštinski proizlazi iz pravila sadržanih u Priručniku za poslovanje u oblasti osiguranja. Takvo stanje dovodi do dvostruke normativne logike, jedne koja je usmerena na dužnosti potrošača, te druge usmerene na dužnosti osiguravača, pri čemu one nisu nužno sistemski usklađene, niti su načelno strukturirane u okviru jedinstvenog sektorskog zakonskog teksta, kao što je to često slučaj u kontinentalnim pravnim sistemima.

Nemačko pravo, kao klasični predstavnik kontinentalne pravne tradicije, nudi koherentniji model zasnovan na integraciji svih ključnih pravila zaštite potrošača u zakonski okvir, pre svega kroz Zakon o ugovoru o osiguranju. Taj zakon direktno i transparentno propisuje obaveze osiguravača da pruže sve značajne informacije pre zaključenja ugovora, uključujući tzv. listu sa informacijama o usluzi osiguranja, a sve u skladu s pravilima harmonizovanim na nivou Evropske unije. Time se obezbeđuje veća pravna sigurnost i transparentnost, kako za potrošače tako i za osiguravače kao pružaoce usluga.[44]

Nasuprot tome, engleski sistem postavlja regulatorna pravila izvan samog Zakona o potrošačkim osiguranjima, što može dovesti do pravne fragmentacije i nedovoljne predvidivosti za njegove krajnje korisnike. Iako pravila iz Priručnika za poslovanje u oblasti osiguranja imaju obavezujući karakter, njihov status je formalno podzakonski, što može otvoriti dodatna pitanja u pogledu hijerarhije pravnih izvora i zaštite prava potrošača u slučaju spora.

Međutim, može se tvrditi da ta podela ima i određene prednosti u pogledu fleksibilnosti i prilagodljivosti tržišnim promenama, jer Telo za finansijski nadzor kao regulator može brže intervenisati i menjati pravila ponašanja u praksi nego što bi to bilo moguće kroz klasični zakonodavni proces. U tom smislu, efikasnost strukturne podeljenosti zavisi od stabilnosti regulatornog režima, ali i od sposobnosti prosečnog potrošača da razume razliku između zakonske i regulatorne zaštite. Samim tim, iako je zaštita potrošača u engleskom pravu osiguranja suštinski snažna, strukturna podeljenost i regulatorna razuđenost mogu otežati njeno ispoljavanje u praksi, naročito u poređenju s modelima u kojima je normativna osnova jedinstvena i sistematizovana.

[44] M. Wandt, K. Bork, 88–92; R. Koch, 166–168.

Ta složenost zaštitnog okvira naročito dolazi do izražaja kroz regulatorne intervencije poput one koju je sprovelo Telo za finansijski nadzor u periodu 2017–2018. godine, poznate kao Transparentnost pri obnavljanju polise osiguranja (engl. *Renewal Transparency*). Ta intervencija, sprovedena izmenama Priručnika za poslovanje u oblasti osiguranja, imala je za cilj da unapredi transparentnost ponuda za obnovu polisa osiguranja i time zaštiti potrošače od štetnih posledica koje trpe time što ostaju kod istog osiguravača bez aktivnog poređenja ponuda. Naime, utvrđeno je da mnogi osiguravači nisu na jasan način prikazivali cenu iz prethodnog perioda, niti su potrošače obaveštavali o mogućnosti da obnove polisu pod povoljnijim uslovima kod drugih osiguravača. Stoga je uvedena dužnost osiguravača da jasno prikaže iznos premije iz prethodne godine u novoj ponudi, kao i da istakne poruku kojom podstiče potrošača da preispita sopstvene potrebe i razmotri druge opcije na tržištu.[45]

Pomenuta praksa ukazuje na mogućnosti koje regulatorna fleksibilnost pruža u pogledu prilagođavanja zaštite realnim problemima u tržišnom ponašanju, ali istovremeno i to da bi bez regulatorne fleksibilnosti Tela za finansijski nadzor zaštita potrošača ostala nepotpuna. Stoga bi se moglo zaključiti da takav model pre svega suštinski zavisi od regulatorne inicijative, a ne od stabilnog zakonskog okvira, što znači da potrošač često može ostati nedovoljno zaštićen ako Telo za finansijski nadzor ne reaguje pravovremeno.

U svetlu navedenih izazova, moguće je razmotriti niz institucionalnih i normativnih rešenja u cilju unapređenja zaštite potrošača. Kao prvo, integracija osnovnih sektorskih pravila, poput standarda sadržanih u Priručniku za poslovanje u oblasti osiguranja, u jedinstveni zakonodavni akt, kao npr. kroz izmenu Zakona o potrošačkim osiguranjima, mogla bi doprineti većoj pravnoj sigurnosti i jasnoći primenljivih pravila. Nadalje, iako se trenutno očekuje da osiguravači saopštavaju informacije u skladu s načelom „jasno, pošteno i neobmanjujuće",[46] uvođenje izričite zakonske dužnosti pružanja ključnih informacija pre zaključenja ugovora, po ugledu na nemačku listu sa informacijama o usluzi osiguranja, doprinelo bi delotvornijem smanjenju informacione asimetrije. Ta potreba za zakonskim učvršćivanjem informacione dužnosti osiguravača naročito dobija na značaju u svetlu činjenice da se regulativa engleskog prava osiguranja tradicionalno oslanjala na materijalno odnosno sadržinsko uređenje u smislu fokusiranja pravila na sadržaj ugovora i ponašanje aktera, a ne na transparentnost kao osnovni instrument zaštite potrošača. Ta istorijska tendencija, proistekla iz ranog razvoja osiguranja kao posebne, stručne delatnosti, dovela je do dugotrajnog zanemarivanja uloge informisanog pristanka potrošača i pasivne uloge nadzornih tela prema dinamici tržišnih odnosa. Tek u novijim

[45] Financial Conduct Authority, Evaluation Paper 19/1: An evaluation of our general insurance renewal transparency intervention, 1–5, dostupno na adresi: *https://www.fca.org.uk/publication/corporate/ep19-1.pdf*, posećeno: 31. 7. 2025.

[46] ICOBS, čl. 2.2.2R.

reformama, uključujući aktivnosti Tela za finansijski nadzor, započet je zaokret ka modelu koji vrednuje jasnoću i dostupnost informacija kao preduslov pravičnosti ugovornih odnosa.[47] Pored toga, unapređenje institucionalne odgovornosti kroz uvođenje zakonske obaveze Tela za finansijski nadzor da redovno izveštava o sistemskim rizicima i potencijalno štetnim praksama u sektoru osiguranja omogućilo bi proaktivnu, a ne reaktivnu zaštitu potrošača. Ti izveštaji bi služili da se njima identifikuju prakse koje mogu dovesti do povreda prava potrošača i pre nego što se one pojave kroz konkretne pritužbe pred ombudsmanom ili postupke pored sudom. Na kraju, razmatranje osnivanja koordinacionog tela koje bi pratilo usklađenost zakonodavnog i regulatornog okvira, naročito u kontekstu digitalizacije, primene veštačke inteligencije i novih usluga tržišta osiguranja, predstavlja važan korak ka celovitijem i koherentnijem sistemu zaštite.[48]

Iako bi predložene reforme zahtevale sistemsku intervenciju i visok stepen koordinacije između zakonodavnih i regulatornih tela, one bi ujedno predstavljale mogućnost da se strukturna podeljenost engleskog sistema transformiše iz faktora kompleksnosti u siguran izvor fleksibilnosti i prilagodljivosti. Time bi se potrošačka zaštita u oblasti osiguranja učinila ne samo normativno dostupnijom već i funkcionalno delotvornijom.

Zaključujemo da efikasnost strukturne podeljenosti u engleskom pravu osiguranja zavisi pre svega od kvaliteta regulatorne usklađenosti i jasnoće međusobnog odnosa između zakonskih i podzakonskih izvora prava. Dok regulatorna razuđenost može omogućiti brze reakcije na promene tržišta i inovacije u sektoru osiguranja, ona istovremeno nosi rizik od nejasnoća, preklapanja i otežanog pristupa pravima za potrošače kao krajnje korisnike usluga osiguranja. Stoga, bez obzira na to što engleski sistem pruža visoke standarde zaštite u suštinskom smislu, njegova stvarna efikasnost zavisi od usklađenosti i dostupnosti tih standarda u praksi, a time i od postojanja institucionalne volje da se regulatorna struktura zakonski uobliči, harmonizuje i učini transparentnijom za potrošače.

V Zaključak

Razvoj engleskog ugovornog prava osiguranja u poslednjim decenijama svedoči o postepenom, ali odlučnom napuštanju tradicionalnog pristupa zasnovanog na oštrom formalizmu i snažnom oslanjanju na načelo krajnje dobre vere,

[47] Daniel Schwarcz, „Transparently Opaque: Understanding the Lack of Transparency in Insurance Consumer Protection", *UCLA Law Review*, Vol. 61/2014, 456.

[48] Zofia Bednarz, Kayleen Manwaring, „Keeping the (Good) Faith: Implications of Emerging Technologies for Consumer Insurance Contracts", *Sydney Law Review*, Vol. 43, No. 4/2021, 486–487; Paul Klumpes, „Coordination of cybersecurity risk management in the U.K. insurance sector", *The Geneva Papers on Risk and Insurance – Issues and Practice*, Vol. 48/2023, 336–339.

u korist modernijeg i uravnoteženijeg režima zaštite ugovornih strana, a prvenstveno potrošača. Usvajanje Zakona o potrošačkim osiguranjima ali i Zakona o osiguranju predstavlja ključnu tačku u tom pravcu, ne samo kao izraz zakonodavne svesti o potrebi unapređenja zaštite na tržištu, već i kao rezultat šire transformacije razumevanja pravičnosti i razumnosti u ugovornim odnosima.

Kroz detaljno promatranje dužnosti obe ugovorne strane kod ugovora o osiguranju, dužnosti potrošača da pruži tačne i potpune informacije, kao i dužnosti osiguravača da transparentno informiše i ne dovede potrošača u zabludu, ukazano je na težnju zakonodavca da se postigne ravnoteža u podeli rizika i odgovornosti. Upravo ta ravnoteža predstavlja osnovu za poverenje u osiguranje kao specifičnu vrstu usluge čija je ciljna funkcija pružanje zaštite, ali i postavlja granice u kojima pravna pravila treba da štite slabiju stranu, bez narušavanja tržišne dinamike i efikasnosti.

Analiza regulatornog okvira zaštite dalje pokazuje da i pored visokog stepena zaštite koju engleski sistem osiguranja pruža, njegova strukturna podeljenost i složena regulatorna razuđenost mogu predstavljati prepreke za efektivno ostvarivanje prava potrošača. Neusklađenost termina, fragmentacija izvora i odsustvo institucionalne koordinacije zahtevaju sistemske korekcije, koje bi mogle doprineti boljoj dostupnosti pravne zaštite, većoj predvidljivosti i jačanju poverenja u regulatorni okvir. U tom smislu, engleski model može poslužiti i kao primer mogućnosti, ali i izazova u izgradnji modernog sistema prava osiguranja, u kojem pravna sigurnost, zaštita potrošača i fleksibilnost tržišta nisu suprotstavljene vrednosti, već međusobno zavisni elementi jednog održivog i savremenog pravnog okvira.

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CONSUMER PROTECTION OF INSURANCE SERVICES IN ENGLISH LAW

REVIEW SCIENTIFIC PAPER

Abstract

In this paper, the author analyses the legal protection of consumers of insurance services under English law, with particular reference to the nature and scope of the pre-contractual duty of disclosure and provision of information. Proceeding from the current legal framework, which largely relies on regulatory rules, the author identifies certain structural shortcomings in legal certainty, transparency, and the effectiveness of consumer protection in the field of insurance. The central hypothesis of the paper is that such reliance on subordinate legislation, primarily administrative sources of law, rather than on comprehensive statutory regulation of the pre-contractual duty to inform, results in fragmented and less predictable consumer protection. For the purpose of obtaining a more complete perspective, the English approach is compared with the German legal system, in which the Insurance Contract Act provides a coherent, transparent, and consumer-accessible normative framework.

On the basis of the foregoing analysis, the final part of the paper proposes solutions that would enable more effective and legally certain protection of consumers of insurance services under English law.

Keywords: consumer protection in insurance services, pre-contractual disclosure, duty to inform, principle of utmost good faith (*bona fides*), English law.

I Introduction

Consumer protection is one of the fundamental postulates of modern contract law, particularly in the field of services of broader public interest, such as

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the insurance industry. Insurance contracts, owing to their specific structure, informational asymmetry, and relatively standardised content, place policyholders, as the weaker contractual parties, in a position of increased risk regarding comprehension and legal certainty.[2] Precisely for this reason, the manner in which a legal system regulates the mutual pre-contractual duty of disclosure and provision of information between contracting parties is of essential importance for ensuring transparency and effective protection of both parties, and consumers in particular.

In this domain, English law departs from the standard model of comprehensive statutory codification characteristic of continental legal systems. Rather than relying on clearly prescribed statutory provisions governing the respective duties of contracting parties in insurance contracts, it largely depends on a regulatory framework established by the *Financial Conduct Authority* (FCA), primarily through the rules contained in the *Insurance: Conduct of Business Sourcebook* (ICOBS).[3] Such a solution raises questions concerning legal certainty for consumers, the effectiveness of mechanisms to reduce informational asymmetry, and consistency in the application and protection of consumer rights.

Proceeding from the principal hypothesis that a regulatory model grounded in the ICOBS results in fragmented and less predictable consumer protection within the sphere of insurance, to the extent that it is insufficient to ensure consistent and comprehensive protection, the author tends, through a thorough examination of the existing positive legal framework accompanied by a comparative legal analysis, to highlight the advantages of a model based on comprehensive statutory regulation, such as that found in German law, primarily through the German Insurance Contract Act.[4] For that purpose, the paper is divided into three parts. The first part outlines the lengthy historical development of the regulation of contractual relations in insurance contracts, culminating in the most recent amendments introduced over the past decade and a half. The second part analyzes the duty of disclosure and provision of information owed mutually by the contracting parties, with particular reference to the rules governing this duty and the legal consequences of its breach. In the third part, drawing on the previous analysis of the normative logic and the identified structural division between the legislative and regulatory spheres, the author proposes specific reform directions and potential solutions for improving the English system of consumer protection in the field of insurance.

[2] Nataša Petrović Tomić, *Zaštita potrošača usluga osiguranja*, Beograd, 2015, 43.

[3] Financial Conduct Authority, *Insurance: Conduct of Business Sourcebook* (hereinafter in footnotes: ICOBS), available at: *https://www.handbook.fca.org.uk/handbook/ICOBS/1/?view=chapter*, accessed on 15 July 2025.

[4] German Insurance Contract Act of 2008 (*Versicherungsvertragsgesetz*)

II Normative Basis and the Developmental of the Regulation of Contractual Relations in Insurance

The development of insurance contract law in English law represents an example of the evolution of a branch of private law that long remained closely tied to commercial practice and judicial doctrine, before undergoing significant legislative transformations in the twentieth and twenty-first centuries, particularly with regard to consumer protection. Insurance contracts, especially marine insurance, emerged within the context of the rapid expansion of trade and the risks associated with the maritime transport of goods throughout the seventeenth and eighteenth centuries. Within such commercial relationships, pronounced informational asymmetry prevailed, whereby the insured typically possessed all facts material to the assessment of risk, while the insurer was required to act on the basis of limited information provided by the insured, who often failed to disclose facts of decisive importance.[5] From this asymmetry arose the need to introduce a principle that would safeguard the integrity of the contractual relationship and ensure confidence in the insurance market.

Thus, the principle of *utmost good faith* gradually developed, the logical foundation for the establishment of this doctrine in English insurance contract law being found in the opinion of Lord Mansfield in *Carter v. Boehm*. Lord Mansfield articulated a general principle concerning the disclosure of information during negotiations for the conclusion of an insurance contract, the essence of which lies in the duty of the insured to disclose to the insurer, prior to the conclusion of the contract, all facts that may be regarded as material. In this manner, the foundation was laid for the duty of full and frank disclosure of material circumstances by the insured. This meant that the insured was required not only to answer truthfully the questions asked, but also voluntarily to disclose all circumstances that might influence the insurer's decision whether to accept the risk or to impose additional conditions on coverage.[6]

Over time, the principle of *utmost good faith* was elevated from a useful concept denoting particularly stringent standards in insurance negotiations to a foundational and organising principle of insurance law.[7] This occurred through its codification in the Marine Insurance Act 1906, which prescribes that a contract of

[5] John Birds, *Insurance law in the United Kingdom*, sixth edition, Alphen aan den Rijn, 2024, 22; Ben Foat, „Levelling the Playing Field – The Modernisation of Insurance Law in the United Kingdom", *International In-house Counsel Journal*, Vol. 8, No. 31/2015, 2–3.

[6] Howard Bennett, „The Three Ages of Utmost Good Faith", *The World of Maritime and Commercial Law: Essays in Honour of Francis Rose* (eds. Charles Mitchell, Stephen Watterson), London, 2020, 64–68; Jan Woloniecki, „The Duty of Utmost Good Faith in Insurance Law: Where Is It in the 21st Century?", *Defense Counsel Journal*, Vol. 69, No. 1/2002, 63.

[7] H. Bennett, 70.

marine insurance is "a contract based upon the utmost good faith" and that, if either party fails to observe the duty arising therefrom, the other party may rescind the contract.[8] Although the act pertains to marine insurance, in practice it has been applied as a general point of reference for other forms of insurance as well.[9] Thus, the insurance contract became a typical example of a contract of *utmost good faith*, subject to a special legal regime governing the disclosure of facts, whereby their non-disclosure or misrepresentation, even if unintentional, entitled the insurer to rescind the contract.[10]

However, such strictness gradually attracted criticism, particularly in the context of mass consumer contracts, where proposers were often unaware of the extent of their obligations and the consequences of their omissions. Concurrently, consumer law underwent substantial development as a response to the growing complexity of markets and the imbalance of power between consumers and commercial entities. The modern insurance market has changed considerably since the enactment of the 1906 Act, with contemporary practice characterised by sophisticated systems, procedures, and more complex data analysis, alongside an expanding range of insured risks and potentially available information. As a result, the existing legal framework failed to keep pace with these developments and did not reflect contemporary trends in consumer law. The act favoured insurers because it originated at a time when they occupied a weaker bargaining position in relation to insureds; accordingly, in cases of breach by the insured, insurers were given the opportunity to avoid the contract in its entirety, even where such a response was disproportionate to the breach.[11] For these reasons, the modern era has witnessed significant legislative progress in this field, particularly through the enactment of the Consumer Insurance Act and the Insurance Act.[12] Although these acts collectively

[8] Marine Insurance Act 1906, Art. 17.

[9] Paul Jaffe, „Reform of the Insurance Law of England and Wales-Separate Laws for the Different Needs of Businesses and Consumers", *Tulane Law Review*, Vol. 87, No. 5/2013, 1083–1084.

[10] The burden of identifying and disclosing material facts, namely, any fact that would influence the judgment of a prudent insurer in assessing the risk, rested upon the proposer. This rule applied even where no questions had been asked and therefore frequently led to unfair consequences. The essence of the problem lay in the circumstance that the average proposer was unaware of which facts the insurer considered relevant; nevertheless, a failure to disclose a material fact enabled the insurer to rescind the contract retroactively. Nurjannah Chew Li Hua, "The Doctrine of Utmost Good Faith: Back to Common Law to Move Forward?," *Journal of Malaysian and Comparative Law*, Vol. 39, 2012, 10–11; Ozlem Gurses, "What Does 'Utmost Good Faith' Mean?," *Insurance Law Journal*, Vol. 27, 2016, 124–126; B. Foat, 2.

[11] Andre Farrugia, Simon Grima, „A model to determine the need to modernise the regulation of the principle of utmost good faith", *Journal of Financial Regulation and Compliance*, Vol. 29, No. 4/2021, 455; Daniel Vásquez-Vega, „A comparative analysis of utmost good faith in Colombian and English insurance law", *EAFIT Journal of International Law*, Vol. 5, No. 02/2014, 86; B. Foat, 3.

[12] The Consumer Insurance (Disclosure and Representations) Act 2012 (hereinafter: CIDRA) and the Insurance Act 2015.

represent an upgrade to the previously applicable rules of the Marine Insurance Act, their purpose and scope of application differ. CIDRA applies exclusively to contracts concluded between consumers and insurers, whereas the Insurance Act governs business transactions, that is, commercial insurance contracts.[13]

The division of insurance rules between these two acts is intended to make a clear distinction between two separate regimes, each reflecting the specific nature of the relationship between the contracting parties.[14] In this manner, a clear distinction is made, underscoring the premise that consumers must benefit from a higher level of protection through less onerous duties and clearer guidance, as opposed to commercial relationships in which a greater degree of knowledge and diligence is expected. Such differentiation contributes to enhanced legal certainty and transparency, while simultaneously requiring additional caution to ensure the coordinated operation of these sector-specific statutes in relation to numerous regulatory rules, thereby avoiding overlap and inconsistency.

CIDRA defines its scope of application by characterising a consumer insurance contract as one concluded between an insurer and "an individual who enters into the contract wholly or mainly for purposes unrelated to the individual's trade, business, or profession".[15] Accordingly, the insured must be a consumer who is a natural person, and the principal purpose of concluding the contract must be non-commercial, i.e. unrelated to the individual's business activities.[16]

Moreover, the statute clearly prescribes what is expected of consumers and the legal remedies available to insurers in the event of a consumer's breach of the duty to inform. In this respect, a specific pre-contractual duty is introduced that

[13] This division is largely the result of the transition undergone by insurance law under the influence of European Union law and consumer legislation. With the rapid expansion of consumer protection standards, the distinction between consumer and commercial insurance has gained increasing importance. The criterion of differentiation is mainly the nature of the risk, supplemented by the status of the insured. Accordingly, what confers a consumer character upon insurance is the private rather than commercial nature of the covered risk. Determining the consumer character of a contract on the basis of these criteria has significant practical implications, particularly because it avoids problematic situations that may arise from differing definitions of the concept of consumer. Nataša Petrović Tomić, *Pravo osiguranja – sistem*, Knjiga I, Belgrade, 2019, 285–286.

[14] P. Jaffe, 1086–1088.

[15] CIDRA, Art. 1. This formulation closely resembles that contained in the *Consumer Rights Act 2015*, where a consumer is defined as a natural person acting for purposes wholly or mainly outside that person's trade, business, craft, or profession.

[16] It should be noted that, in accordance with this understanding, the concept of consumer insurance may encompass so-called mixed-purpose transactions, where a person obtains insurance partly for business and partly for private purposes. Such a contract will be regarded as consumer insurance if the non-business purpose predominates in the particular case. The assessment is conducted in light of the factual circumstances of each individual case. Thus, for example, where a taxi driver uses a vehicle predominantly for transporting passengers and only occasionally for personal needs, the insurance will not be considered consumer insurance. N. Petrović Tomić (2015), 114.

differs from the duty applicable in the non-consumer market, thereby recognising the distinct insurance needs of natural persons acting as consumers in comparison with other entities. Opposite this redefined duty of the consumer, to exercise reasonable care during the pre-contractual stage so as not to make misrepresentations to the insurer, there is no corresponding statutory duty imposed upon insurers. Unlike the approach adopted in other legal systems, the insurer's pre-contractual duty to provide information is not expressly regulated by the relevant statute. Nevertheless, this does not mean that such a duty is entirely absent on the part of the insurer; rather, it is governed by other regulatory instruments. In this manner, two distinct legal regimes governing duties of disclosure have been established, with a separate regime applicable to each contracting party.

III Dual Legal Regime Governing the Pre-contractual Duty of Disclosure

The pre-contractual duty of disclosure in insurance contracts constitutes a key protective mechanism aimed at reducing the inherent informational asymmetry between the contracting parties – the insurer, as a professional, on the one hand, and the proposer, most often a consumer, on the other. Insurance is a specific type of legal transaction whose purpose and price are grounded in risk assessment, whereby the insurer depends on accurate and complete information, while the consumer frequently does not fully understand all elements of the service being purchased. Accordingly, the parties' respective pre-contractual duties of disclosure are of decisive importance for transparency, protection, and balance within the contractual relationship. They ensure that the consumer makes an informed decision on the basis of all known circumstances, while simultaneously protecting the insurer from inaccurate presentations of risk. In this sense, the duty is not merely an instrument for achieving balance in the contractual relationship but also a foundation for a legally valid and sustainable insurance contract. For these reasons, the existence of a clear yet appropriately balanced normative framework governing pre-contractual disclosure is essential to the stability of the insurance relationship.[17]

Within this context, English law has developed a dual legal regime, one applicable to consumers and another to insurers, with the aim of ensuring effective protection for both parties, while allocating responsibility in accordance with the

[17] Robert Cooter, Thomas Ulen, *Law and Economics*, 6th edition, Boston, 2016, 41; David Schwartz, „Resolving the Disclosure Puzzle in Insurance Law", *Business Law Review*, Vol. 6/2007, 180; Ana Keglević, „Pre-contractual Information Duty and Unfair Contract Terms – Open questions and dilemmas – "*Insurer's Precontractual Information Duty*, Turkish Chapter of AIDA, Istanbul, 2013, 81; Ana Keglević, *Građansko-pravni aspekti obveze obavještavanja kod potrošačkog ugovora o osiguranju*, doktorski rad, Pravni fakultet Univerziteta u Zagrebu, Zagreb, 2012, 8–9.

actual capacities and reasonable expectations of each participant in the contractual relationship. Such an approach, however, raises a number of issues concerning the coherence of the existing regimes, their practical application, and their overall effectiveness.

1. The Consumer's Duty to Disclose Information to the Insurer

Prior to the enactment of the Consumer Insurance, the principle of utmost good faith served as the guiding standard in regulating the duty of disclosure. The policyholder was required to disclose all facts that might influence a prudent insurer's assessment of the risk, and this duty existed regardless of whether the insurer had made any specific questions for that purpose. The justification for such a broadly formulated duty lay in the assumption that the policyholder had full knowledge of the facts material to the risk assessment, in contrast to the insurer, who was presumed to know none. Over time, however, the question arose as to how a policyholder could reasonably be expected to identify which facts were material to risk assessment. Recognition of this problem led to the development of a strongly consumer-oriented practice, as well as significant legislative advances in this area.[18]

The entry into force of CIDRA marked a turning point in the pre-contractual disclosure obligations owed to insurers by proposers. The previous duty requiring policyholders voluntarily to disclose all material facts impacting the decision of a prudent insurer was abolished and replaced with a new, more limited obligation requiring consumers "to take reasonable care not to make a misrepresentation to the insurer".[19] This means that consumers are no longer obliged to voluntarily disclose information, instead, they must take reasonable care to provide accurate and complete answers to the insurer's questions.[20] Whether reasonable care has been exercised is assessed in light of all relevant circumstances, several of which are identified *exempli causa* in the statute: the type of consumer insurance and its target market; any relevant explanatory material produced, published, or endorsed by the insurer; the clarity and specificity of the insurer's questions; in cases relating to renewal or variation of a consumer insurance contract, the extent to which the

[18] Ana Keglević Steffek, „Trust and Transparency in Insurance Contract Law: European Regulation and Comparison of Laws", *Cambridge Yearbook of European Legal Studies*, Vol. 24, 2022, 331–332; John Lowry, „Whither the Duty of Good Faith in UK Insurance Contracts", *Connecticut Insurance Law Journal*, Vol. 16, No. 1/2009, 99. It may be observed that the traditional duty of the insured to inform the insurer of the risk has gradually been replaced, or at least supplemented, by the insurer's duty to obtain material information independently, that is, to take an active role in identifying the needs of the particular client. Herman Cousy, „The Principles of European Insurance Contract Law: the Duty of Disclosure and the Aggravation of Risk", *ERA Forum 9 (Suppl 1)*, 2008, 123.

[19] CIDRA, Section 2.

[20] N. Petrović Tomić, 254.

insurer clearly communicated the importance of responding to such questions; and whether an insurance agent acted on behalf of the consumer. The applicable standard is that of the reasonable consumer. The assessment of whether a consumer meets this standard is primarily objective, subject to two exceptions requiring consideration of the consumer's personal (subjective) characteristics. First, where the insurer knew or ought reasonably to have known that the consumer had particular traits or was subject to specific circumstances, those factors must be taken into account. Second, a deliberate misrepresentation is invariably regarded as a failure to exercise reasonable care. These exceptions ensure that the assessment captures consumers with specialised knowledge or skills, as well as those acting in bad faith, while still allowing room for reasonable error on the part of the average consumer when making a decision.[21]

The shift away from the earlier model, under which policyholders were expected to volunteer facts material to risk assessment, represents a significant easing of the consumer's burden. The consumer's duty now essentially consists in reading the insurer's questions with reasonable care and answering them accurately and as fully as possible. The consumer no longer needs to be concerned about omitting a material fact, since it is the insurer who asks questions presumed to be material to the assessment of risk.[22] In this way, numerous obstacles in the insurance market, most notably informational asymmetry are mitigated, while simultaneously enabling insurance services to be tailored to the needs of individual consumers through such a mechanism.[23]

If a consumer breaches the duty of disclosure, the result is a misrepresentation of circumstances material to the assessment of risk. The determination of whether a misrepresentation has occurred is governed by common law and supported by substantial case law. It is frequently emphasised that even a statement that is literally true may constitute a misrepresentation if it is incomplete.[24] In practice, this issue is particularly significant at the stage of contract renewal, when the consumer is required to confirm or amend previously provided information. In this case, the statute expressly provides that a failure to do so may constitute a misrepresentation.[25]

[21] CIDRA, Section 3; *Consumer Insurance (Disclosure and Representations) Bill [HL];* (hereinafter: CIDRA Bill), para. 30, available at: *https://publications.parliament.uk/pa/bills/lbill/2010-2012/0068/en/2012068en.htm*, accessed: 27 July 2025.

[22] N. Petrović Tomić (2015), 254; A similar solution exists in German law. Under Art. 19(1) of the Versicherungsvertragsgesetz, the policyholder must disclose all circumstances material to the insurer's decision whether to enter into the contract on the agreed terms. This obligation is fulfilled by responding to questions expressly posed by the insurer in written form, most commonly through questionnaires specifically designed for that purpose. Manfred Wandt, Kevin Bork, "Disclosure Duties in German Insurance Contract Law", *Zeitschrift für die gesamte Versicherungswissenschaft*, Vol. 109/2020, 82–83.

[23] A. Keglević Steffek, 337.

[24] CIDRA Bill, para. 23.

[25] CIDRA, Section 2.

However, the breach of the duty of disclosure in the form of a misrepresentation of circumstances material to the assessment of risk will not, in itself, be sufficient to entitle the insurer to a remedy for the protection of its interests. In addition to the breach, a further requirement must be satisfied, namely, the misrepresentation must be presumed to have influenced the insurer's decision whether to accept the risk and on what terms.[26] The insurer must demonstrate that it would not have entered into the contract, or would have done so only on materially different terms, had the misrepresentation not occurred. This entails proof of the insurer's actual reliance on the consumer's statement, rather than simply establishing the hypothetical relevance of the statement to a prudent insurer.[27]

With respect to the legal consequences of misrepresentation of circumstances material to the assessment of risk, a clear shift is noticeable from the traditional "all-or-nothing" approach to a "proportionality-based system". The all-or-nothing rule rests on the view that a breach of the duty of disclosure renders the parties' consent defective, with the consequence that avoidance of the contract is the only available remedy. On the other hand, the principle of proportionality rejects this rigid approach in favour of a more economically rational model based on balancing the actual risk against the level of the premium. Subject to certain exceptions and depending on the nature of the breach, the principle of proportionality requires that the contract be amended or adjusted in proportion to the degree of fault. It can be concluded that the legislature's evident intention was to promote mutual trust and the continuation of the contractual relationship, even under modified terms relating to the premium or other contractual elements.[28]

For the principle of proportionality to apply, it is necessary, once a breach of the duty of disclosure has been established, to determine the consumer's subjective attitude toward the accuracy of the given information. The remedies available to the insurer depend accordingly on the consumer's state of mind. Where the misrepresentation is honest and reasonable (*reasonable misrepresentation*), the insurer may not refuse payment after the insured event has occurred and must satisfy the

[26] CIDRA, Section 4.

[27] The statute effectively codifies the legal position articulated in *Pan Atlantic Insurance Co Ltd v Pine Top Insurance Co Ltd [1995] AC 501*. It reflects the view that, for an insurer successfully to rely on misrepresentation, it is not sufficient that the misrepresented fact be material; the insurer must also demonstrate that the statement induced it to enter into the contract on those terms. In other words, it is insufficient that a hypothetical prudent insurer might have been influenced by the inaccurate information, there must be a decisive effect on the actual insurer's decision for the misrepresentation to be regarded as material. It is further emphasised that recognising liability for misrepresentation where the will of the particular insurer was unaffected would be contrary to common sense and fairness. Paul Walker, "Non-disclosure: Some Comparisons", *Victoria University of Wellington Law Review*, Vol. 26/1996, 832; Laura Reeves, "The Duty of Pre-Contractual Disclosure in English Insurance Law: Past and Future – Does the Law Need to be Changed?", *Southampton Student Law Review*, Vol. 5/2015, 3.

[28] A. Keglević Steffek, 341.

claim. In such cases, the consumer is deemed to have acted with the reasonable care expected of a reasonable consumer, taking into account relevant objective circumstances; subjective characteristics are considered only if known, or ought reasonably to have been known, to the insurer. Where the misrepresentation results from the consumer's careless misrepresentation, the insurer is entitled to a proportionate remedy determined by how it would have acted had accurate information been provided. If the insurer hadn't entered into the contract, it may rescind the contract and return the premiums paid. Conversely, if it had been contracted on different terms, the policy is treated as having been concluded on those terms. Finally, where the misrepresentation is deliberate or reckless, the insurer may rescind the contract and reject the claim, retaining the premiums unless doing so would be unfair to the consumer. To establish that a misrepresentation was deliberate or reckless, it must be proven, on the basis of all relevant circumstances, that the consumer 1) either knew the statement was untrue or misleading, or was indifferent as to whether it was true; and 2) knew the fact in question was relevant to the insurer, or was indifferent as to its relevance. The burden of proving such misrepresentation rests with the insurer. However, the statute provides for rebuttable presumptions: 1) that the consumer possessed the knowledge reasonably expected of a reasonable consumer; and 2) that the consumer knew that a fact forming the subject of a clear and specific question was material to the insurer's decision whether to conclude the contract.[29]

In this manner, a clear framework has been established in which legal consequences are determined by the degree of the insured's fault, while the principle of proportionality safeguards fairness and the interests of both contracting parties. Because insurers are able to adjust the contract upon becoming aware of previously undisclosed risks, either by reducing the indemnity or increasing the premium, they are less compelled to invest time and resources in exhaustive pre-contractual investigations aimed at avoiding avoidance or rescission. For this reason, the principle of proportionality represents a mutually beneficial solution for both parties.[30]

[29] CIDRA, Section 5, Schedule 1; CIDRA Bill, paras. 36–40. Andrew Hutchinson, Helena Stoop, „Misrepresentation in Consumer Insurance: The United Kingdom Legislature Opts for a Reasonable Consumer Standard", *South African Law Journal*, Vol. 130, No. 4/2013, 710–712.

[30] A. Keglević Steffek, 346. German law likewise embraces the principle of proportionality, subject to certain specific features. Where a misrepresentation results from ordinary negligence, the insurer is entitled to withdraw from the contract in accordance with the general rules of civil law governing termination. Conversely, where the misrepresentation is intentional or the result of gross negligence, the insurer may terminate the contract subject to one month's notice. However, the right to terminate may be exercised only where the contract cannot be adjusted to reflect the undisclosed circumstances, as the principle of proportionality takes precedence under German law. If, at the time of conclusion, the insurer would have agreed to the contract on different terms had it been aware of the relevant facts, it is obliged to adjust the contract accordingly, thereby incorporating those facts into the contractual framework. For the principle of proportionality to apply, two additional conditions must be satisfied: 1) a causal link must exist between the undisclosed circumstance and the assessment of risk; and 2) the insurer must have been willing to

2. The Insurer's Duty to Inform the Consumer

The insurer's pre-contractual duties are primarily directed toward protecting all prospective policyholders, and consumers in particular. The policyholder represents the weaker party in the contractual relationship and, as such, warrants special protection, being typically in a weaker economic position and having less knowledge of insurance services than the insurer. The primary form of protection lies in the provision of all necessary information enabling the prospective policyholder to make an informed decision. In this regard, the insurer is under a duty to provide such information not only prior to the conclusion of the contract but also throughout its duration. This duty arises both from specific statutory provisions governing insurance and, in their absence, from general legal principles such as good faith and liability for damage incurred during the negotiation phase. Nevertheless, given the complexity and significance of this subject matter, general principles alone are insufficient, thereby precise regulation through specific rules is needed.[31]

Most legal systems have opted for a clear statutory regulation of this duty. For example, under the German Insurance Contract Act, pre-contractual advice and disclosure are positioned as a central component of policyholder protection. The duty to inform applies to all insurance contracts regardless of the specific type of cover, and for the purposes of protective provisions the legislature makes no difference between natural and legal persons. The duty is limited to cases involving large risks. The importance attributed to pre-contractual disclosure in German law is further evidenced by the adoption of the Regulation on Information Duties, which elaborates the statutory obligation by specifying its precise scope and content.[32]

In contrast to the clear and detailed solution adopted in German law, English law follows a different approach to regulating the insurer's pre-contractual duty. Namely, the Consumer Insurance (Disclosure and Representations) Act does not regulate the insurer's pre-contractual duty of disclosure at all, focusing instead exclusively on alleviating the consumer's position by redefining the consumer's duty in relation to the presentation of circumstances material to the assessment of risk. Consequently, the principle of utmost good faith originating in the Marine Insurance Act 1906

conclude the contract, albeit on modified terms. Robert Koch, "German Reform of Insurance Contract Law", *European Journal of Commercial Contract Law*, Vol. 2, No. 3/2010, 169–170.

[31] N. Petrović Tomić (2015), 127; Samim Ünan, "Insurer's Pre-contractual Duties to Inform and Warn/Advise", *Insurer's Precontractual Information Duty*, Turkish Chapter of AIDA, Istanbul, 2013, 9–10; A. Keglević (2012), 8.

[32] *Verordnung über Informationspflichten bei Versicherungsverträgen* (2008); Nataša Petrović Tomić, „Informisanje korisnika usluga osiguranja u nemačkom pravu", *Tokovi osiguranja*, No. 4/2015, 5–18; M. Wandt, K. Bork, 88–92; R. Koch, 166–168. A similar logic is reflected in *the Principles of European Insurance Contract Law*, which provides in Article 1:101 that they apply where "the contracting parties, notwithstanding any restrictions on the choice of applicable law under private international law, agree that these Principles shall govern their contract".

continues to apply to the insurer's duties in the pre-contractual phase, as well as to the relationship between the contracting parties following the conclusion of the contract. A possible explanation for this legislative choice lies in business practice, where it is widely considered more effective to shape insurers' conduct in accordance with standards of transparency and fairness embedded in self-regulatory instruments and rules governing insurance activities, rather than through rigid statutory provisions.[33]

In accordance with the principle of utmost good faith, the insurer must act so as not to withhold from the consumer any information considered material to the conclusion of the contract. Therefore, even in the absence of a specific inquiry from the counterparty, the insurer is obliged, prior to contract formation, to disclose all circumstances material to the contract and to refrain from any misrepresentation.[34]

Since compliance with the insurer's obligation under the principle of utmost good faith does not entirely resolve the problem of informational asymmetry on the consumer's side, further measures proved necessary. In order to ensure the fullest possible consumer protection, business practice, and subsequently insurance market regulators, sought solutions in clearer and more stringent regulatory instruments and rules governing insurance activities. As a result, nearly a decade prior to the enactment of the Consumer Insurance (Disclosure and Representations) Act, the *Financial Services Authority* (FSA) was established as the single statutory regulator of financial services. It issued a handbook containing specific rules for consumer insurance, entitled the *Insurance Conduct of Business Sourcebook – Rules on Non-disclosure and Misrepresentation (FSA Handbook – ICOBS Rules)*,[35] which, *inter alia*, required insurers to make clear questions concerning all circumstances material to the formation of the insurance contract. Following the abolition of the Financial Services Authority in 2013, part of its mandate was transferred to the *Financial Conduct Authority (FCA)*, which now supervises the provision of financial services and the conduct of financial institutions in the United Kingdom with the aim of protecting consumers and safeguarding market integrity. A revised Insurance Conduct of Business Sourcebook was subsequently adopted as part of the FCA Handbook, issued pursuant to the Financial Services Act.[36]

The Insurance Conduct of Business Sourcebook contains detailed rules governing insurers' conduct in their dealings with consumers on the United Kingdom insurance market. Insurers are required to act honestly, fairly, and professionally in accordance

[33] A. Keglević Steffek, 324–325.

[34] H. Bennett, 70–74.

[35] Financial Services Authority, Insurance Conduct of Business Sourcebook – Rules on Non-disclosure and Misrepresentation (FSA Handbook – ICOBS Rules), available at: *https://www.handbook.fca.org.uk/handbook/ICOB/2/?date=2005-01-14&view=chapter&timeline=True,* accessed on 6 August 2025.

[36] *Financial Services Act 2021*. A. Keglević Steffek, 326; Andrew Schmulow, Baladev Dayaram, Sian Mullen, "Consumer Protection in Insurance Contracts: The Need for a 'Treating Customers Fairly' Regime", *The International Review of Financial Consumers*, Vol. 8, No. 1/2023, 60–62.

with their customers' best interests at every stage of the contractual relationship, from the initiation of negotiations through contract formation to the potential occurrence of the insured event.[37] Moreover, all information provided to consumers, including advertising and promotional statements, must be clear, fair, and not misleading.[38] Prior to the conclusion of the contract, the insurer must present the consumer with all necessary information regarding the service, including: the main characteristics of the services; the scope of cover and exclusions; the duration of the contract; the premium, and the terms of payment.[39] Insurers are also required to supply a standardised document containing concise and easily comprehensible information about the service, thereby enabling consumers to compare different products more readily and to make an informed decision.[40] Additionally, a consumer must further be afforded a simple and timely means of exercising its contractual rights, including the right to cancel the contract within a specified period, as well as clear information concerning complaint procedures.[41] Finally, specific conduct standards relating to product governance are prescribed, including the duty of insurers to develop and distribute products aligned with the needs of the target market, thereby providing additional protection against products that are unsuitable for consumers' interests and requirements.[42]

In addition to the Handbook, an important role within the system of consumer protection in insurance services is played by the *Financial Ombudsman Service (FOS)*, an independent and impartial body whose principal function is to resolve complaints brought by consumers against financial service providers, including insurers. In fulfilling this role, it regularly interprets rules and standards of conduct, including those contained in the Insurance Conduct of Business Sourcebook, in light of fairness and the consumer's best interests. In this way, it contributes to the development of consumer-protection practice, as its stances and dispute-resolution approaches frequently affect insurers' behaviour as well as the interpretation of rules by legislators and market regulators. Thus, many positions first adopted in its practice have subsequently considerable impacted the shaping of the Consumer Insurance (Disclosure and Representations) Act. The Financial Ombudsman Service thus constitutes a key alternative dispute resolution mechanism within the insurance sector, enabling disputes to be resolved swiftly, efficiently, and accessibly without recourse to judicial proceedings. Therefore, its role is not merely protective, but also preventive and corrective win relation to insurers' behaviour.[43]

[37] ICOBS, Art. 2.5.1R.
[38] ICOBS, Art. 2.2.2R.
[39] ICOBS, Art. 6.1.5R.
[40] ICOBS, Art. 6, annex 3.
[41] ICOBS, Arts. 7.1.1R and 7.2.1R.
[42] ICOBS, Arts. 4.2A.6R and 4.2A.13R.
[43] Ugochi Amajuoyi, Andrea Fejős, "Mind the Consumer Protection Gap: the UK Financial Ombudsman Service, Fairness and Reasonableness, and the Law", *Protecting Financial Consumers in Europe Comparative*

IV Effectiveness of Structural Division and Regulatory (In)Coherence in Consumer Protection

In light of the foregoing analysis, consumer protection in English insurance law is characterised by a pronounced structural division between the legislative and regulatory spheres. On the one hand, the Consumer Insurance (Disclosure and Representations) Act, as a sector-specific statute, governs matters relating to the consumer's duty to provide accurate and complete information prior to the conclusion of the contract. On the other hand, the regulatory framework governing insurers' behaviour stems primarily from the rules contained in the Insurance Conduct of Business Sourcebook (ICOBS). Such an arrangement results in a dual normative framework - one directed at consumer duties and the other at insurers' obligations. These frameworks are not necessarily systemically aligned, nor are they, as is often the case in continental legal systems, structured within a single sector-specific legislative instrument, as is often the case in continental legal systems.

German law, as a standard representative of the continental legal tradition, offers a more coherent model based on the integration of the principal consumer-protection rules within a statutory framework, most notably through the German Insurance Contract Act. The Act directly and transparently prescribes insurers' obligations to provide all material information prior to contract formation, including the insurance product information document, in accordance with rules harmonised at the EU level. This approach enhances legal certainty and transparency for both consumers and insurers as service providers.[44]

By contrast, the English system sets regulatory rules outside the Consumer Insurance (Disclosure and Representations) Act, which may give rise to legal fragmentation and reduced predictability for end users. Although the rules contained in the Insurance Conduct of Business Sourcebook are binding, their formal status remains subordinate legislation, which may raise additional questions regarding the hierarchy of legal sources and the protection of consumer rights in the event of a dispute.

Nevertheless, this division may also offer certain advantages in terms of flexibility and responsiveness to market developments, as the Financial Conduct Authority (FCA), acting as regulator, is able to intervene and amend rules of conduct more rapidly than would be possible through the ordinary legislative process. In this respect, the effectiveness of structural division depends both on the stability of the regulatory regime and on the average consumer's ability to understand the distinction between statutory and regulatory protection. Accordingly, although

Perspectives and Policy Choices (eds. Piotr Tereszkiewicz, Mariusz Golecki), Brill Nijhoff, 2023, 259–264; Mary Donnelly, "The Financial Services Ombudsman: Asking the Existential Question", *Dublin University Law Journal*, Vol. 35/2012, 231–234; B. Foat, 5–6.

[44] M. Wandt, K. Bork, 88–92; R. Koch, 166–168.

consumer protection in English insurance law is substantively robust, structural division and regulatory dispersion may undermine its practical operation, particularly when compared with models founded upon a unified and systematised normative basis.

The complexity of this protective framework is especially evident in regulatory interventions such as the FCA's 2017–2018 initiative known as *Renewal Transparency*. Implemented through amendments to the Insurance Conduct of Business Sourcebook, the intervention aimed to enhance the transparency of renewal offers and thereby protect consumers from the harmful effects of remaining with the same insurer without actively comparing alternative offers. It was found that many insurers failed to present the previous year's premium clearly, nor did they inform consumers of the possibility of renewing their policies on more favourable terms with other insurers. Consequently, insurers were required to prominently display the amount of the prior year's premium in the renewal offers and to include a message encouraging consumers to reassess their needs and consider alternative market options.[45]

This practice demonstrates the capacity of regulatory flexibility to adapt consumer protection to real market problems, while simultaneously illustrating that, without such flexibility on the part of the Financial Conduct Authority, consumer protection would remain incomplete. Therefore, it may be concluded that this model depends primarily on regulatory initiative rather than on a stable statutory framework, meaning that consumers may often remain insufficiently protected where the regulator fails to act in a timely manner.

In light of these challenges, a number of institutional and normative solutions may be considered with a view to enhancing consumer protection. First, the integration of core sectoral rules, such as the standards contained in the Insurance Conduct of Business Sourcebook, into a single legislative act, for example through amendments to the Consumer Insurance (Disclosure and Representations) Act, could contribute to greater legal certainty and clarity. Furthermore, although insurers are currently expected to communicate information in accordance with the principle that it be "clear, fair and not misleading",[46] the introduction of an explicit statutory duty to provide key information prior to contract formation, modeled on the German insurance product information sheet, would further reduce informational asymmetry. The need to reinforce the insurer's duty of disclosure becomes particularly evident in light of the fact that English insurance regulation has traditionally relied on substantive regulation, focusing rules on contractual content and the conduct of market actors, rather than on transparency as a primary instrument of consumer protection. This historical tendency, stemming from the early development of insurance

[45] Financial Conduct Authority, Evaluation Paper 19/1: An evaluation of our general insurance renewal transparency intervention, 1–5, available at: *https://www.fca.org.uk/publication/corporate/ep19-1.pdf,* accessed: 31 July 2025.

[46] ICOBS, Art. 2.2.2R.

as a specialised professional activity, contributed to the prolonged neglect of informed consumer consent and to the relatively passive role of supervisory bodies in relation to evolving market dynamics. Only in more recent reforms, including initiatives undertaken by the Financial Conduct Authority, has a shift begun toward a model that values clarity and accessibility of information as prerequisites for fairness in contractual relations.[47] Moreover, strengthening institutional accountability by introducing a statutory obligation for the Financial Conduct Authority to report regularly on systemic risks and potentially harmful practices within the insurance sector would facilitate proactive, rather than reactive consumer protection. Such reports would assist in identifying practices likely to result in consumer harm even before they materialise through complaints submitted to the ombudsman or through judicial proceedings. Finally, consideration should be given to establishing a coordinating body tasked with monitoring the alignment of legislative and regulatory frameworks, particularly in the context of digitalisation, the deployment of artificial intelligence, and emerging insurance services, as an important step toward a more comprehensive and coherent system of protection.[48]

Although the proposed reforms would require systemic intervention and a high degree of coordination between legislative and regulatory bodies, they would also present an opportunity to transform the structural division of the English system from a source of complexity into a reliable source of flexibility and adaptability. Consumer protection in the field of insurance would become not only normatively more accessible but also functionally more effective.

Therefore, it may be concluded that the effectiveness of structural division in English insurance law depends primarily on the quality of regulatory coherence and the clarity of the relationship between statutory and subordinate sources of law. While regulatory pluralism may enable rapid responses to market developments and innovation within the insurance sector, it simultaneously carries the risk of ambiguity, overlap, and impeded access to rights for consumers as the end users of insurance services. Although the English system provides materially high standards of protection, its practical effectiveness depends on the coherence and accessibility of those standards, and thus on the willingness of institutions to formally structure, harmonise, and make the regulatory framework more transparent for consumers.

[47] Daniel Schwarcz, "Transparently Opaque: Understanding the Lack of Transparency in Insurance Consumer Protection", *UCLA Law Review*, Vol. 61/2014, 456.

[48] Zofia Bednarz, Kayleen Manwaring, "Keeping the (Good) Faith: Implications of Emerging Technologies for Consumer Insurance Contracts", *Sydney Law Review*, Vol. 43, No. 4/2021, 486–487; Paul Klumpes, "Coordination of cybersecurity risk management in the U.K. insurance sector", *The Geneva Papers on Risk and Insurance – Issues and Practice*, Vol. 48/2023, 336–339.

V Conclusion

The development of English insurance contract law in recent decades reflects a gradual yet decisive departure from the traditional approach characterised by strict formalism and a strong reliance on the principle of utmost good faith, in favour of a more modern and balanced regime for the protection of contracting parties, and consumers in particular. The adoption of the Consumer Insurance (Disclosure and Representations) Act, as well as the Insurance Act, represents a pivotal step in this direction, not only as an expression of legislative awareness of the need to enhance protection within the insurance market, but also as part of a broader transformation in the understanding of fairness and reasonableness in contractual relations.

A detailed examination of the duties of both contracting parties to an insurance contract, namely, the consumer's duty to provide accurate and complete information and the insurer's duty to communicate transparently and refrain from misleading the consumer, reveals the legislature's intention to achieve a balanced allocation of risk and responsibility. This balance constitutes the foundation of trust in insurance as a distinctive service whose primary function is the protection, while simultaneously defining the boundaries within which legal rules must safeguard the weaker party without undermining market dynamics and efficiency.

The analysis of the regulatory framework further demonstrates that, notwithstanding the high level of protection provided by the English insurance system, its structural division and regulatory complexity may impede the effective exercise of consumer rights. Terminological inconsistencies, fragmentation of legal sources, and the absence of institutional coordination call for systemic adjustments that could enhance the accessibility of legal protection, improve predictability, and strengthen confidence in the regulatory framework. In this respect, the English model may serve both as an illustration of the opportunities and as a reminder of the challenges inherent in constructing a modern system of insurance law, one in which legal certainty, consumer protection, and market flexibility are not competing values, but interdependent elements of a sustainable and contemporary legal framework.

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