

Contents

<i>Foreword</i>	ix
Malcolm A. Clarke	
<i>Preface</i>	xi
<i>List of abbreviations</i>	xiv
PART I OVERVIEW AND INTRODUCTION	
A. Knowledge is power	1
B. Structural outline	5
C. Scope	8
1. Restriction to pre-contractual information duties of the insurer	8
2. Restriction to general consumer insurance	9
D. Terminology	12
PART II ABOUT INFORMATION AND ITS DISCLOSURE IN GENERAL	
A. Insurance and information from an economic perspective	15
1. Preliminary remarks	15
2. Why people conclude insurance contracts: the demand for insurance	18
3. Information forcing by legal regulations	22
4. Tabular systematisation of the insurer's pre-contractual information duties	39
B. General considerations and reservations about the information model	44
1. Argument of costs	44
2. Unnecessary paternalism?	48
3. Efficiency and the avoidance of misallocations	52
(a) Restricting choice	57
(b) Cooling-off periods: the idea	58
(c) Cooling-off periods: suitable for insurance contracts?	66

4. Access to information as a prerequisite for the proper functioning of the market	78
(a) The need for and the costs of information	78
(b) Adverse selection as a negative consequence of insufficient information	86
5. Is providing information futile?	97
(a) The assumption of full rationality	97
(b) Overinvestment in standardised information?	110
(c) Information overload and ways of combating it	114
6. What makes standardised information 'good' information?	
Or: presentation matters	123
(a) Orientation towards the disposition to avert loss	126
(b) Vivid and individualised instead of static and obviously standardised information	131
(c) Working against consumers' over-optimism	140
(d) Conclusion	145

PART III LEGAL BASIS FOR AND SCOPE OF INSURER'S PRE-CONTRACTUAL INFORMATION DUTIES

A. The traditional approach: good faith	149
1. Insurance contracts as contracts <i>uberrimae fidei</i> : the English law approach	149
(a) The beginnings: <i>Lex Mercatoria</i> and <i>Carter v Boehm</i>	149
(b) The continuation: section 17 of the MIA	161
(c) The missed chance: <i>Banque Financière</i>	163
(d) Conclusion	179
2. The overriding principle of ' <i>Treu und Glauben</i> ': the German law approach	180
B. More recent approaches: (predominantly) standardised information duties	186
1. Pre-contractual information duties resulting from the ICOBS	186
(a) Preliminary remarks	186
(b) Special information duties only relating to distance contracts	190
(c) Product disclosure	192
(d) Other standardised information duties and conceptual criticism of the ICOBS	198

2.	Pre-contractual information duties resulting from s 7 of the German ICA in conjunction with the ‘Regulation on information duties concerning insurance contracts (VVG-InfoV)’	200
	(a) Preliminary remarks	200
	(b) Standardised information duties resulting from the ‘Regulation on information duties concerning insurance contracts (VVG-InfoV)’	204
	(c) In particular: product information sheet	206
3.	Pre-contractual information duties resulting from the Principles of European Insurance Contract Law (PEICL)	209
	(a) Preliminary remarks: what are the PEICL and what are they meant for?	209
	(b) Access to the PEICL	218
	(c) Pre-contractual information duties resulting from article 2:201 of the PEICL: general conception	220
	(d) Pre-contractual information duties resulting from article 2:201 of the PEICL: content	227
	(e) Pre-contractual information duties resulting from article 2:201 of the PEICL: further aspects	231
C.	Modern approaches: individualised duties of the insurer	238
	1. ‘Identifying client needs and advising’ – the approach of ICOBS 5	238
	2. Advisory duties resulting from s 6 of the ICA	243
	(a) Preliminary remarks	243
	(b) Discernable cause as prerequisite for any individualised duty	245
	(c) The duty to advise and its restrictions	247
	(d) Possibility of waiver	254
	(e) Rejection of truly progressive approaches	256
	3. Duties to warn resulting from the PEICL	258
	(a) Article 2:202 of the PEICL	258
	(b) Article 2:203 of the PEICL	263
	(c) Article 2:502 of the PEICL	264

PART IV A CONCLUSION IN EIGHT FINAL OBSERVATIONS

1.	The development of insurer’s information duties at a glance	269
2.	Over-ambitious goals	271
3.	Disillusionment	273
4.	The model recipient, or: lawmakers need assumptions	274

5. Content first	276
6. Presentation. Presentation. And more presentation	281
7. What the purchase of medication and insurance cover have in common, or: brave new world?	286
8. Individualised information duties: inadequate triggers and a possible future	290
<i>References</i>	295
<i>Index</i>	325