

QBE Business Insurance

PROPERTY MATTERS

JULY 2016

Made possible



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Introduction

A warm welcome to the July edition of Property Matters

The last few weeks have seen significant political, economic and societal fallout from the Brexit referendum. Few predicted the correct outcome and fewer still contemplated the sheer magnitude of aftershocks caused by the UK voting to leave the EU. They will continue to be felt for years to come; for many of our customers, for ourselves and for the rest of Europe. Predicting the final outcome of negotiations would be a futile exercise, but we can try and look-out for some of the “bumps in the road”.

Aside from Brexit, most of June witnessed further episodes of substantial localised flooding and storm damage. QBE has once again responded professionally, and promptly, to support our insureds and start the work of getting them back in business at the earliest opportunity. The ferocity of the rain has caused a number of very significant losses and our claims experts have been working tirelessly to visit some of our insureds, engage with them and to deliver the best outcome for all concerned. There is work to be done, but our past experiences have prepared us well for these catastrophic events.

In some good news, and in recognition of our handling of such events, QBE, Network Rail and vrs Vericclaim, triumphed at the recent British Insurance Awards. Winners of the Major Loss Award, the joint submission was in relation to 1000-plus storm and flood claims, at 500 locations, over the course of 33 days during 2013/14.

Thanks to the collaboration between Network Rail, QBE, vrs Vericclaim (Loss Adjuster) and forensic accountants MDD, we were able to settle the insured's material damage claims within 12 months. A record for such a large and widespread loss to the rail infrastructure.

The judges were particularly impressed with the response to these high profile, politically sensitive, highly technical and challenging claims. The widely publicised collapse of the Dawlish sea wall was just one of 1000-plus incidents of damage to Network Rail's infrastructure, causing massive and lengthy disruption to train operating companies, passengers and freight operators.

QBE's focus was to provide all necessary support and reassurance to Network Rail, to ensure that the costs being incurred to get the network back on track would be recoverable against their policy. Given the complexities of the railway claims resolution process and the difficulty in obtaining financial information on repairs and business interruption, large rail network claims typically take many years to settle.

Unlucky not to make it 2 out of 2, our Senior Claims Adjuster, Richard Hart, was nominated for Unsung Hero Award, but was unfortunate to miss out on this occasion. Up against stiff competition, he should be extremely proud to be short-listed and recognised amongst his peers for his contribution. He led QBE's response to the flood losses affecting many locations throughout England and Scotland.

Finally, we take this opportunity to look ahead to the introduction of the Insurance Act on 12 August 2016. It had been dominating the insurance press prior to Brexit, but has understandably taken a “backseat”, despite the significance of the reform. QBE welcomes the introduction of the Act and is committed to working with all stakeholders to ensure a smooth transition in the months to come.



Brexit referendum

The government has been given a mandate to leave the EU.

That outcome caused a domino-effect, which led to the departure of a Prime Minister, the implosion of the Labour party, the rise and fall and rise-again of Boris Johnson, a new Prime Minister (who backed remain) and the departure of Michael Gove (seemingly, the odd one out). There are always winners and losers, but with so much at stake for UK business, and the economy as a whole, it is time for the mechanism of government to provide stability and clear direction.

Unfortunately, even the path to the first step (triggering Article 50 of the Treaty of European Union) seems unclear and cause for debate. As a matter of English law, what is required from the UK Government and Parliament, to allow Teresa May to notify the European Council of the intention to withdraw from the EU. We know that intention is unlikely to be communicated until 2017, despite the demands of urgency from many Member States. Allowing the “dust to settle” is not unwise, but inaction could contribute to the uncertainty felt in the markets, which could cause lasting damage to the UK economy. Most will agree, if the UK is to finally exit the EU in a position of strength, our politicians will have earned their money over the next 2-3 years.

For insurance companies the result of the referendum will lead to another significant demand on finances, resource and business-focus, against the backdrop of Solvency II and the Insurance Act. When the negotiations to exit continue, most UK businesses will need to consider how they will be impacted and what post-exit challenges will need to be addressed. We take a look at a couple of key points:

1. Access to the European insurance market will be a key concern for UK insurers, starting with the right to passport into other countries via Freedom of Establishment or Freedom of Services. These passporting rights allow UK

insurers to undertake cross-border business with other member states and has been a crucial development for businesses. The loss of such an opportunity would necessitate a rethink and could well lead to disruption and additional costs, due to more complex and costly operating models. Negotiations are likely to be difficult, lengthy and will likely require some compromise on both sides. At the same time, the expectation will be that the Government does not compromise on an exclusion from the general principle of freedom of movement.

2. The regulatory environment will once again “come under the spotlight”, following the years of work, and many-millions spent, on implementing Solvency II. Whilst wholesale change seems unlikely, exactly how the UK regulatory system would align with the views of Brussels remains to be seen. In connection with 1. it will be essential for UK business to maintain access to EU markets and part of that will necessitate demonstrating the regulatory requirements of the EU.

For our customers who purchase business insurance, the impact on Brexit should not be significant. Short-term policies should not be immediately affected and the 2-year EU notice period will give insurer and insured the time to plan ahead, with any necessary amendment to the policy schedule or wording.

Similarly, the impact for claims should not be significant, but one area which might see additional consequences is claims for Business Interruption. Business Interruption insurance

covers policyholders for loss of gross profits, gross earnings or business income (the precise measure depends on the policy wording) resulting from covered damage under a property policy. The measure of the loss is normally what the insured's profit/earnings/income would have been over the indemnity period covered if the loss had never occurred. In times of uncertainty, working out how a business would have performed if a loss had not occurred can be challenging. Last year's results may not now be a reliable guide, for example. Post-Brexit, the volatility in markets and the weak pound could lead to significant cost increases for businesses who rely on EU imports. As the economy continues to adjust, this will have a knock-on effect for many businesses in the short-medium term and calculating business interruption losses (i.e. what results the business would have achieved if there had been no loss versus what actually happened) could prove more challenging. Financial projections will need to be carefully considered, particularly for those who conduct business in other EU member states.

Another area which might be impacted when we exit the EU, relates to the replacement of machinery, plant and contents. Where this is manufactured within the EU, additional import duties/tariffs may apply, subject to the any treaty negotiations. In addition, a weaker pound would mean it will be more expensive to replace from within the EU. This would fall to insurers under the terms of the material damage cover, which could have a knock-on effect in terms of policy premium, but perhaps more importantly would need to be properly assessed under the “sums insured”. The risk is that the level of cover would be inadequate, with the result being the loss would be under-insured. Whilst most policies include an uplift (circa 15%), on occasion that might not be enough.



Insurance Act 2015

110 years after the Marine Insurance Act 1906 was passed, the insurance industry is braced for the Government's attempt to bring commercial insurance into the 21st century.

British insurance law has developed significantly over the last century and the UK insurance market has become the 3rd largest market in the world, and a leading global centre for specialist insurance. The Insurance Act (the Act) comes into force on 12 August 2016 and applies to all commercial (re) insurance policies made, renewed or amended thereafter, that are subject to the law of England, Wales, Scotland or Northern Ireland.

QBE welcomes the Act and our standard position is to follow the Act, as drafted. We were fully engaged in the consultation leading up to its introduction and we embrace its aims. The key points are:

1. **Duty of fair presentation.** The duty on the insured is to make a fair presentation of the risk and is at the core of the reforms introduced by the Act. The aim is to provide greater structure and transparency at the time of placement and to encourage a proactive, rather than a passive approach by all parties. QBE believes this is simply good practice and embraces the concepts of fairness, materiality and reasonableness.
2. **Knowledge.** In terms of what needs to be disclosed, the Act clarifies whose knowledge is important, drawing a balance between what it is reasonable to expect an insured to disclose and what the insurer is taken to know and therefore doesn't need to be disclosed. Insureds are required to disclose actual knowledge of their senior management, and those responsible for placing the insurance. An Insurer will be taken to know information known or readily available to those persons involved in the decision to write the risk (e.g. the

underwriter), and are presumed to know things which are common knowledge or which an insurer writing this class of insurance business would reasonably be expected to know.

3. **Remedies for breach.** A fairer response has been introduced when the insured fails to make a fair presentation. Where there has been a deliberate or reckless breach, the insurer can still avoid the policy and keep the premium. However, in all other cases, the intention is to put the insurer into the position it would have been, had there been a fair presentation.
4. **Warranties and other terms.** Historically breach of a warranty is strict, meaning that it entitled the Insurer to avoid the policy from the date of breach. This was the case even if the breach was subsequently remedied before any loss occurred. The Act radically changes the position, so that breach of a warranty will now have the effect of simply suspending cover until the breach is remedied, if it can be.

As well as modernising insurance contract law, we believe that the more proactive approach to disclosure at the pre-contract stage will provide greater certainty and deliver positive outcomes for our customers. We acknowledge that the principles-based changes introduced by the Act present challenges, but also an opportunity to work closer with our broking colleagues and insureds. We recognise the importance of knowing their business, to allow an accurate and adequate transfer of risk, and the new duty of fair presentation promotes this. We welcome the changes introduced by the Act and are happy to provide more detail or discuss the Act directly.

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