

QBE European Operations

Technical claims brief

Monthly update | June 2015



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Industry Developments

FCA sets out their findings after looking at delegated authority arrangements in the general insurance market

The Financial Conduct Authority (FCA) has published the results of its thematic review of delegated authority arrangements in the general insurance market. The full report can be found at: <http://www.fca.org.uk/your-fca/documents/thematic-reviews/tr15-07>

Delegated authority is widely used in the UK general insurance market. This can include outsourcing of all stages of an insurance product lifecycle, including underwriting, sales, claims handling and the allocation of other functions such as product design to third parties.

The FCA review highlighted that both insurers and intermediaries did not appear to have adequately considered or recognised their regulatory obligations. Some firms do not treat their delegated authority arrangements as outsourcing and improvements are needed with due diligence and the way they manage outsourced arrangements, particularly in considering and assessing customer outcomes. Fair treatment of customers is central to compliance.

The FCA reviewed 12 insurers' outsourced underwriting and claims handling arrangements and the associated activities

of 19 intermediaries and third party administrators.

The thematic review also revealed:

- Some insurers did not carry out any conduct-focussed due diligence when selecting third parties
- Some insurers had not considered whether the products they underwrite treat customers fairly; both in terms of the value and service delivered
- Some intermediaries undertaking product design activities did not recognise the extent of their responsibilities as product providers
- Insufficient oversight of the performance of products and delivery of services.

The FCA will be discussing its findings with the industry and will follow up with individual firms to address specific issues identified as part of the review. They expect insurers to have effective and risk-based controls in place, to ensure a customer's position is not adversely impacted due to the existence of a delegated authority arrangement.



Insurers will need to adopt a more hands-on approach to selecting and monitoring their outsourced service providers, with a particular focus on the interests of customers. Delegated authority arrangements are popular with large composite insurers and smaller insurers alike, with the Lloyd's market receiving approximately 30% of all premium income for 2013 through firms that held underwriting authority on behalf of Lloyd's syndicates. The FCA report underlines the importance of insurers putting their customers at the centre of their business, irrespective of whether they have given a delegated authority to a service provider.

AIRMIC publish technical briefing paper on Insurance Act 2015

The Association of Insurance and Risk Managers in Industry and Commerce (AIRMIC), has published a technical briefing paper which is designed to help commercial policyholders benefit from the changes introduced by the Insurance Act 2015, before it comes into force in the autumn of 2016. A copy of the paper, which contains the sample wordings and endorsements, can be found here: http://www.airmic.com/system/files/private/Insurance%20Act%202015_WEB.pdf

As we have previously reported, the Insurance Act represents a significant and fundamental piece of legislation for all commercial insurance stakeholders. The Act will provide additional protection for commercial policyholders, as it brings them into line with other insurance markets and underline the importance of insurers treating all customers fairly. Most insurers are already preparing for the policy changes and AIRMIC is encouraging its members to start talking to their brokers and insurers.

AIRMIC's briefing paper provides a series of sample wordings and endorsements which cover some of the key reforms introduced by the Act and include provisions relating to:

- Basis of contract clauses
- Breach of warranty
- Breach of terms unrelated to the actual loss
- Remedies for non-disclosure

They also recommend that their members review the way that they prepare underwriting information and consider the best way to conduct and record a 'reasonable search' and structure that information to give a 'fair presentation of the risk'. AIRMIC correctly identifies the importance of getting the process right, so as to avoid the various remedies open to insurers under the Act.



The introduction of such important reform will rightly call for a collaborative approach from policyholder, brokers and insurers. It will be something of a fresh-start for all concerned and so it is vitally important that preparations do begin long before the Act comes into force. QBE welcomes an open dialogue with their policyholders and brokers.





Fraud

CUE PI access to be opened to claimant lawyers

After years of debate, the askCue PI service is finally open for business and allows approved organisations to check records held on the CUE PI database before they submit a personal injury claim through the Claims Portal.

The records relate to personal injury and industrial illness incidents reported to insurance companies, which may or may not give rise to a claim. The service was introduced to meet the requirements of the Pre-Action Protocol for Low Value Personal Injury Claims in Road Traffic Accidents (the RTA Protocol) which state that Claim Notification Forms (CNF) submitted through the Claims Portal from 1 June 2015 must contain an askCUE PI search reference number generated by the service.

A failure to include the unique search reference number within a CNF will mean that the Portal clock will not begin to run until a properly completed CNF is submitted. In order to register for the askCUE PI service, claimant lawyers must have a Solicitors Regulation Authority (SRA) / Law Society number.

One of the perceived benefits of this new mandatory search process is that if the claims history that is volunteered by a potential claimant is materially different to that revealed by askCue PI, then the claimant's lawyer can make an early decision about whether they act. Claimant lawyers must obtain their client's consent prior to undertaking an enquiry.

A percentage of claims might not be taken on by certain claimant lawyers when a full and accurate history is not provided, although a significant drop in claim numbers seems unlikely. It is a positive step to open-up previous claims data to claimant lawyers, in the hope that they decline to act in appropriate instances and are able to provide legal advice based on an accurate claims history.

The search parameters are limited to the last 5 years and results will only provide a snapshot of what insurers and claimant lawyers may wish to consider and investigate.



Any reform which is designed to reduce insurance fraud should be welcomed by those who act for, and against, honest claimants. Parties to litigation should not benefit from deliberately attempting to conceal their relevant claims history and claimant lawyers can now improve their initial assessment of the client. A successful implementation will encourage an extension to employers' and public liability claims within the Portal, and it is difficult to argue against it.

Case Law

Appeal pending on Birkenhead County Court claim following disposal hearing

The Court of Appeal (CoA) has been asked to consider a claim heard in the Birkenhead County Court (Terrance Bird v Acorn Group Limited) where a Disposal Hearing had been listed. It has been asked to rule on the level of fixed costs payable under CPR 45.29 and its decision will be followed by many similar cases. Pending the CoA decision, defendants should consider seeking a stay of any assessment of costs.

The CoA determination is required as CPR 45.29 does not take into account those cases where judgment is entered (on an admission or in default of a defence), resulting in the case being listed for a short Disposal Hearing. In such circumstances, it has become common practice for claimant lawyers to seek the highest rate of Fixed Recoverable Costs (FRC) available (£2,655 for RTA claims, £3,790 for PL claims or £4,280 for EL claims) on the basis that the claim has reached the 'post-listing' stage and is effectively a trial.

However, defendants argue that is at odds with the intention of the FRC regime to compensate for legal activity actually undertaken. In these cases the claimant lawyer will not have undertaken the usual amount of work required for trial

preparation, as the Disposal Hearing immediately follows the judgment, so there is no post-allocation and listings stages of the process.

There have been conflicting District Judge decisions, so the CoA decision should provide certainty and will bind the lower courts. The outcome of the appeal could have a significant impact on the costs payable in these circumstances:

- In RTA claims the pre-allocation FRC are £1160 (plus 20% damages) so a potential saving of £1340 against the post-listing FRC (£2655 plus 20% damages)
- In employers' and public liability claims the potential saving would be £1650 and 10% of the damages (20% is payable at the pre-allocation stage, rising to 30% post listing)

Given the number of claims listed for a Disposal Hearing in Birkenhead, or neighbouring Liverpool County Court, there are likely to be hundreds of cases where this issue could come before the court before the appeal is heard.



The introduction of fixed costs was intended to provide a consistent, straightforward and uncontroversial system to calculate a claimant's recoverable costs, without the need for a summary or detailed assessment. There was fierce opposition from claimant lawyers and it is unsurprising they have sought to maximise their return from these type of claims by running this technical argument. It is to be hoped that the CoA will see the merit in the defendant's position and decide the amount of recoverable fixed costs should reflect the amount of work undertaken on the individual claim.





Completed 30 June 2015 – written by QBE EO Claims. Copy judgments and/or source material for the above available from Tim Hayward (contact no: 0113 290 6790, e-mail: tim.hayward@uk.qbe.com).

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