Insurance/
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2nd MIDDLE EAST INSURANCE INDUSTRY AWARDS 2015
LAW FIRM OF THE YEAR

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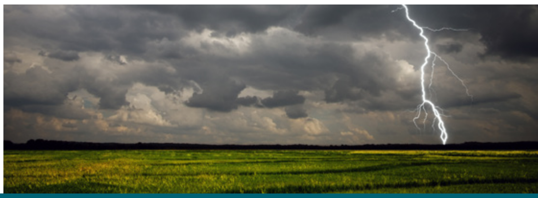


<h1>Bulletins</h1>

<h2>Insurance Bulletin, 29 September 2016</h2>

<h3>In this issue: Regulation and legislation; Court cases and arbitration; Market developments; HFW news, publications and events</h3>

<h4 class=”outer_title”>1. Regulation and legislation</h4>

<h4>UK: Financial Ombudsman Service report on PPI mis-selling – deadline on claims to follow?</h4><h5>

<p>The Financial Ombudsman Service (the FOS) has recently published a report (dated January 2016) on the impact of PPI mis-selling on the FOS. The report sets out how the FOS has responded to the vast number of PPI complaints which it has received, identifies the pressures it still faces and explores how those pressures might be reduced.</p>

<p>The eye-catching figures in the report are that over £16.5 million claims for compensation have been brought by consumers, of which £1.3 million have converted into complaints to the FOS. Over £21 billion of compensation has been paid to consumers, with a further £6 billion set aside for future payments. Some estimates suggest that the total amount paid could exceed £30 billion.</p></h5>

<p>The overall assessment of the FOS’s handling of individual complaints is positive. The report concludes that the FOS “made the right strategic decisions, that these were duly implemented and that the approach has been largely vindicated.” It notes that, while there were unwelcome delays in making decisions, steps have been taken to mitigate the impact of the delays and backlogs are being eroded.</p>

<p>The report makes a selection of recommendations for coping with future PPI complaints, which include (i) continuing to focus on the earliest possible resolution of complaints, (ii) committing to provide more assertive feedback with the explicit aim of reducing complaint volumes and (iii) sharing intelligence and working closely with the FCA as it develops its *Plevin* guidance and considers whether and how to introduce a complaints deadline.</p>

<p>The FCA guidance to which the report refers is the FCA’s publication in August of draft rules and guidance^[1] on handling PPI complaints in light of the Supreme Court judgment in *Plevin v Paragon Personal Finance Ltd*^[2]. We reported on this judgment shortly after it was handed down^[3]. The FCA’s proposals also include the imposition of a deadline for making new PPI complaints, with the aim of bringing finality and certainty to the PPI issue. The FCA’s consultation closes on 11 October 2016, and we will report on any developments arising out of the consultation.</p>

<p>For more information, please contact William Reddie, Associate, London, on +44 (0)20 7264 8758, or william.reddie@hfw.com, or your usual contact at HFW.</p>

<p>Footnotes</p>

https://www.fca.org.uk/publication/consultation/cp16-20.pdf

[2014] UKSC 61

http://www.hfw.com/Insurance-Bulletin-26-November-2014

<h4 class="outer_title">2. Court cases and arbitration</h4>

<h4>England & Wales: Product liability: *Howmet Limited v Economy Devices Limited & Others* [2016]^[1]</h4><h5>

<p>**Product liability insurers will welcome this decision, which demarcates manufacturers' liability in negligence and breach of statutory duty regarding the design and manufacture of defective products.**</p>

<p>A device (a thermolevel) was supposed to switch off the claimant's heating equipment if liquid held in a rinse tank fell below a certain level, and thus control fire risk. The Court of Appeal considered whether the knowledge of certain of the claimant's employees, that the product was defective, acquired through previous manifestations of the fault, was sufficient to bring the manufacturer's duty of care to end and/or to hold that there was no sufficient chain of causation between design and supply, and subsequent loss.</p></h5>

<p>Howmet manufactures precision components for the aerospace industry. The defective device resulted in a fire in its factory which caused damage of £20 million. Howmet brought a claim against EDL alleging that the fire had been caused by a faulty thermolevel supplied by EDL.</p>

<p>Before the relevant fire, there had been two other incidents with the same thermolevel, where it had failed to switch off the heater in the same tank and the tank caught fire. Howmet's employees managed to extinguish the fires quickly and instigated a new procedure requiring increased operator vigilance and ensuring that the problematic tank was left drained with the heaters switched off over the weekend. A float switch was also ordered to switch off the heater if the liquid level fell (although this had not been installed at the time of the relevant fire). The plant engineering technician and the facilities manager were aware of the problems with the thermolevel and the solutions which had been adopted.</p>

<p>The fire started when a Howmet employee switched on the heater in the relevant tank in error while it was empty. The level sensor failed to operate, a fire started and the flames spread.</p>

<p>At first instance, the claim was dismissed. The judge held that:</p>

- Although EDL was in breach of its duty of care to Howmet, there was no proof of causation.
- After the previous incidents, Howmet employees were aware of the issues with the thermolevel and this knowledge was to be attributed to Howmet.
- Howmet had not been relying on the thermolevel but instead had introduced a new operating procedure and were relying on operator vigilance to avoid fire.
- Applying the Popi M, Howmet had not proved that the thermolevel was defective because of EDL's negligence.

<p>The judge also found that even if he was wrong in his findings on liability, he would hold that Howmet was liable for contributory negligence to the extent of 75%.</p>

<p>Howmet appealed, but the Court of Appeal unanimously dismissed the appeal, agreeing with the trial judge that there was no proof of causation. Howmet had been aware of the issues with the thermolevel, but continued to use it regardless, so the effective cause of the fire was not the defective thermolevel but rather the failure of the system put in place by Howden to address the known problem. The knowledge of individual employees about the defect was attributable to Howmet because they were the employees entrusted by the directors with maintaining and operating the tank safely.</p>

<p>For more information, please contact Andrew Bandurka, Partner, London, on +44 (0)20 7264 8404, or andrew.banurka@hfw.com, or Rebecca Huggins, Professional Support Lawyer, London, on +44 (0)20 7264 8120, or rebecca.huggins@hfw.com, or your usual contact at HFW.</p>

<p>Footnote</p>

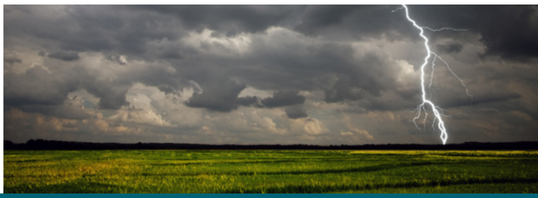
EWCA Civ 847

<h4 class="outer_title">3. Market developments</h4>

<h4>UK: Brexit and the impact on the UK insurance and financial institution industries</h4><h5>

<p>**In the aftermath of the vote by the UK to exit the European Union (EU), insurers and financial institutions will need to begin to identify potential risks and make preparations to track the development of those risks over the next two years, while the exit negotiations take place.**</p>

<p>Although the mechanics of the exit negotiations and the ultimate outcomes remain unclear, a number of short-term risks have become apparent and longer-term risks are



beginning to emerge, which will require preparation and planning on the part of insurers and financial institutions to minimize their impact.</p></h5>

<p>The short term risks include currency depreciation and the impact of the downgrade by key ratings agencies of both the Pound and Euro and high levels of uncertainty. The consequence of these downgrades is likely to be higher borrowing costs for the UK and EU in global financial markets. Funds held in the Pound or Euro will have lost value and transfers of funds in and out of the UK and EU may be disadvantageous. Uncertainties surrounding the status of UK-EU trade in the insurance market and financial services will continue until the exit negotiations are complete.</p>

<p>A number of longer-term risks have emerged, including (1) regulatory uncertainty, (2) access to the European Economic Area (EEA), and (3) people and location issues. We comment below on each:</p>

The FCA and the PRA operate within a regulatory framework which implements EU legislation. Although existing laws passed in the UK to comply with EU Directives (for example Solvency II) will remain in place following the UK's exit from the EU, EU Regulations are directly applicable to EU firms, so do not have to be implemented by domestic law and will (subject to the exact relationship between the UK and the EU following the split) cease to apply in the UK. The UK may want to continue to follow the regulatory framework set by the EU (e.g. for continuity and in order to maintain its equivalence under Solvency II) but Parliament will not be required to comply with further EU Directives once the UK's exit from the EU is complete.

Currently, UK insurance firms have direct access to a single insurance market spanning 28 countries and approximately half a billion people. Insurers can conduct cross-border business without requiring further authorisation or incurring additional local costs. Once the UK's exit from the EU is complete, UK insurance firms may be required to open EU branches in order to be able to underwrite business in their respective territories.

Depending on the terms of the final deal struck, the UK's exit from the EU may result in reduced free movement of people between the UK and the EU. UK businesses may ultimately lose EU workers, and this, combined with tighter rules on EU immigrations may reduce the talent pool in the UK and limit the numbers of skilled workers.

<p>HFW have previously reported on the vote by the UK to exit the European Union (EU) and the potential implications for our clients^[1].</p>

<p>For more information, please contact Alison Proctor, Senior Associate, London, on +44 (0)20 7264 8292, or alison.proctor@hfw.com, or your usual contact at HFW.</p>

<p>Footnote</p>

http://www.hfw.com/BREXIT-Next-steps-for-out and http://www.hfw.com/Preparing-for-Brexit-seven-things-that-re-insurance-businesses-can-do-now-July-2016

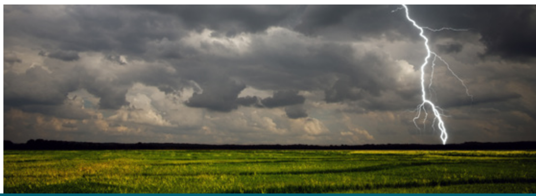
<h4>UK: FCA publishes payday lender's £34 million redress to customers</h4><h5>

<p>On 19 September the FCA issued a press release confirming that CFO Lending had agreed to provide over £34 million in redress to approximately 97,000 payday loan customers. The redress is, for the most part, comprised of reductions to customer balances of £31.9million with the rest in cash payments. The full release can be read here^[1].</p>

<p>The FCA points out that it has worked closely with CFO since August 2014 when the lender agreed to suspend outbound collections pursuant to an agreed form of Voluntary Application for Imposition of Requirements (see s.55L FSMA 2000). After two years of likely extensive investigations and reviews, including by an independent Skilled Person appointed under s.166 FSMA 2000 (the cost of which is borne by the regulated entity), the FCA is satisfied with CFO's progress and the way that it has addressed historic operational issues dating back to 2009.</p></h5>

<p>In publicising this outcome, the FCA continues to send a very robust message to lenders: they must be committed to providing consumers with services that meet stringent FCA standards and cater for payday customers who can be the most financially vulnerable of borrowers. Businesses who have been the subject of s.166 reviews will also know about the substantial costs involved, not just in terms of the Skilled Person's fees but also of engaging third party consultants and the significant imposition on management time. Customer redress is only one part of the picture.</p>

<p>For more information, please



contact William Reddie, Associate, London, on +44 (0)20 7264 8758, or william.reddie@hfw.com, or your usual contact at HFW.</p>

<p>Footnote</p>

https://www.fca.org.uk/news/press-releases/payday-firm-cfo-lending-pay-34-million-redress

<h4 class="outer_title">4. HFW news, publications and events</h4>

<h4>HFW Commodities Breakfast Seminar – the Insurance Act 2015, sanctions and cyber risks</h4>

<p>HFW's Commodities Breakfast Seminar on Tuesday 11 October will consist of presentations on the Insurance Act 2015, sanctions and cyber risks. Partner Nigel Wick will present a seminar *"The Insurance Act 2015 – what commodity businesses need to know"*, Partner Brian Perrott will discuss *"Cyber risks and commodity contracts"*, and Partner Daniel Martin's seminar will ask *"Sanctions: What are the threats and opportunities for your business?"</p>*