Insurance/
Reinsurance

26 November 2014

INSURANCE BULLETIN

Welcome to HFW's Insurance Bulletin, which is a summary of the key insurance and reinsurance regulatory announcements, market developments, court cases and legislative developments of the week.

In this week's Bulletin:

Should you require any further information or assistance on any of the issues dealt with here, please do not hesitate to contact any of the contributors to this Bulletin, or your usual contact at HFW.

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1. Regulation and legislation

1.1. Insurance Bill: amendments to be considered by Special Public Bill Committee (UK)

We previously reported on a seminar that HFW hosted on preparing for the new Insurance Bill, which is currently being examined by a Special Public Bill Committee in the House of Lords as part of the Parliamentary procedure. If the Bill progresses through Parliament and receives Royal Assent before the current Parliamentary session ends in March 2015, we expect the new Act to enter into force in mid-2016.

The Committee is due to meet on Monday 15 December to consider amendments to the Bill. In anticipation of this, the Committee is seeking the views of the public on the provisions of the Bill and any other matters that are relevant to the subject matter. Any submissions must be made by next Thursday 27 November, so the timetable for providing written evidence is very tight. The Committee is also due to hear oral evidence on the Bill at three meetings in early December.

Further information on making written submissions on the Bill can be found here: http://www.parliament.uk/documents/HoL-Legislation-Office/Special-Public-Bill-Committees/Insurance-Bill-%5bHL%5d/Call-for-evidence.pdf.

Earlier this year, HFW published a Briefing on the Bill which can be found here: http://www.hfw.com/The-Insurance-Contracts-Bill-July-2014. As we stated in this Briefing, a draft version of the Bill proposed to give a policyholder a remedy in damages where an insurer failed to pay a claim within a reasonable time. Although this remedy was removed before the Bill was introduced to Parliament, we consider that it is likely to be discussed before the Committee and may be reinstated.

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1.2. PRA proposes to collect reporting templates completed by Lloyd's managing agents (UK)

The Prudential Regulation Authority (PRA) has published a further consultation on measures for the implementation of Solvency II.

One notable proposal, in the context of reporting rules relating to Lloyd's, is a requirement for the Society of Lloyd's to submit to the PRA the solvency and asset data returns that the Society receives from each managing agent. The PRA considers that collecting these returns from the Society would enhance the level of financial information that it receives in respect of Lloyd's syndicates and would increase its knowledge of the business performance of each syndicate and the risks that they pose to the Lloyd's market and Lloyd's central assets. The proposed requirement would apply only to the Society, but the PRA has not ruled out imposing additional reporting requirements directly on managing agents.

The PRA's consultation paper also contains:

1. Rules on the appointment of actuaries and schemes of operations.
2. Draft national specific templates which relate to Lloyd's, and consequential changes to the existing reporting rules, including the introduction of the requirement described above.
3. Several draft supervisory statements which set out the PRA's expectations of firms in a variety of areas, such as regulatory reporting exemptions, the quality of capital instruments and the treatment of pension scheme risk.

A copy of the consultation paper can be found here: http://www.bankofengland.co.uk/pra/Documents/publications/cp/2014/cp2414.pdf. The consultation closes on 30 January 2015, following which the PRA will finalise and publish its rules on the implementation of Solvency II. Member states are required to transpose Solvency II into national law by 31 March 2015.

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2. Market developments

2.1. Australian Government announces measures to allow foreign insurers into insurance market (Australia)

The Australian Federal Government recently announced its intention to introduce measures aimed at increasing competition in the Australian general insurance market by allowing Australian consumers, through an Australian licensed broker, to purchase home and contents insurance from foreign insurers who are otherwise unregulated by the Australian Prudential Regulation Authority (APRA).

This move has been announced in response to recent, significant increases in the cost of premiums in disaster-prone areas, particularly in northern Queensland. These premium increases have effectively priced consumers out of the market for property insurance in these areas.

At present, insurers must be authorised by APRA to offer insurance for sale in Australia. One current exemption to this rule is where a licensed Australian broker has certified that insurance for a risk cannot "reasonably" be written with an authorised Australian insurer. The Government intends to broaden the definition of "reasonableness" to include instances where a foreign insurer is able to offer a "substantially" lower price than the premium offered by Australian insurers.

The legislation to implement these changes has yet to be introduced into Parliament. However, foreign insurers interested in entering or expanding their presence in Australia would be wise to keep abreast of these developments.

The Government media release regarding these proposed changes can be found here: http://www.financeminister.gov.au/media/2014/1023-initiatives.html

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2.2. Law firm brings appeal against High Court decision against insurer which settled with firm's clients without the involvement of the firm (England and Wales)

We understand that Gavin Edmondson Solicitors (GES), a personal injury specialist firm based in the North-West, recently filed skeleton papers at the Court of Appeal in preparation for their appeal against a High Court judgment in August in their claim against Haven Insurance (Haven).

GES claimed that Haven acted unlawfully by denying the firm of costs by settling insurance claims with the firm's clients without the involvement of the firm, and with the knowledge that the clients had instructed solicitors. The papers filed at the Court of Appeal reportedly also allege that Haven's actions induced a breach of contract, and that it misused confidential information obtained through the Road Traffic Accident portal where the clients' cases were lodged.

In the High Court judgment the subject of the appeal, it was held that nothing prevented direct contact of GES's clients by Haven, nor settlement between Haven and those clients. In that Judgment, HHJ Milwyn Jarman QC also ruled that Haven acted with explicit consent and for the administration of justice.

If GES's appeal is successful, it is possible that hundreds of other claims between Haven and other personal injury firms could be reopened. A successful appeal could also provide scope for new claims by law firms who have encountered similar issues with other insurers.

The Court of Appeal is expected to hear this case early next year.

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2.3. FCA review finds that most intermediaries do not adequately manage bribery or corruption risk (UK)

The Financial Conduct Authority (FCA) has published a report on its thematic review of whether insurance intermediaries adequately manage bribery and corruption risk. The FCA's conclusion was that most of the intermediaries it visited did not adequately manage this risk and that, for the majority, work was still in progress to implement appropriate risk management procedures.

As a result of the FCA's review, two of the intermediaries that it visited have agreed to limit their business with certain introducers and clients until appropriate remedial work has been completed. However, it was not all bad news. The FCA did observe examples of good practice during its review, and intends to update its guidance on financial crime systems and controls to incorporate these examples of good practice.

The report which sets out the findings of the thematic review and the examples of good practice can be found here: http://www.fca.org.uk/your-fca/documents/thematic-reviews/tr14-17. The proposed changes that will be made to incorporate these examples of good practice into the guidance on financial crime systems and controls can be found here: http://www.fca.org.uk/news/guidance-consultations/gc14-07-proposed-guidance-on-financial-crime-systems-and-controls.

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3. Court cases and arbitration

3.1. Law on Unfair Relationships under Consumer Credit Act 1974 altered following Supreme Court judgment on PPI case: *Plevin v Paragon Personal Finance Ltd*[1] (England and Wales)

The Supreme Court dismissed an appeal in this case concerning the sale of Payment Protection insurance (PPI) alongside a loan, significantly altering the law on Unfair Relationships under ss140A to C of the Consumer Credit Act 1974 (the CCA).

Following advice from a personal loan company, Mrs Plevin had taken a loan out with the appellant, Paragon Personal Finance Ltd (Paragon), and purchased PPI alongside the loan. 71.8% of the PPI premium was taken in commission, but neither the amount of the commission nor the identity of the recipients was disclosed to Mrs Plevin.

The CCA allows the courts to exercise a range of powers relating to credit agreements where the debtor is an individual and which it considers to be unfair, including allowing the court to reopen unfair credit transactions.

Upon reaching the Supreme Court, the only point still in issue was whether the agreement between Mrs Plevin and Paragon was unfair under s140A(1)(c) of the CCA because of something *"done (or not done) by, or on behalf of, the creditor"*. The appeal challenged the interpretation of this section of the CCA and asked whether it should be understood that an independent broker acts "on behalf of" a lender when they arrange a loan and insurance.

1 [2014] UKSC 61



The Supreme Court overturned a previous Court of Appeal decision, holding that non-disclosure of the amount of a commission was unfair for the purposes of s140A(1)(c) of the CCA. While the non-disclosure element made the relationship unfair, the Court held that the failure to conduct a needs assessment did not.

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The Supreme Court overturned a previous Court of Appeal decision, holding that non-disclosure of the amount of a commission was unfair for the purposes of s140A(1)(c) of the CCA. While the non-disclosure element made the relationship unfair, the Court held that the failure to conduct a needs assessment did not. The Court stated that it was the duty of the personal loan company to conduct a needs assessment, as they recommended the respondent under the Insurance Conduct of Business Rules. The Court held that a lender is only responsible for things done, or not done, by its agent or deemed agent under the CCA, and the personal loan company was not acting as Paragon's agent here.

Along with clarifying the meaning of "by, or on behalf of, the creditor" in the CCA, this important judgment presents the Supreme Court's views on the interpretation of the CCA's provisions on unfair relationships, and will likely lead to further analysis of current and future PPI claims.

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