

Insurance/
Reinsurance

1 December
2016

INSURANCE BULLETIN



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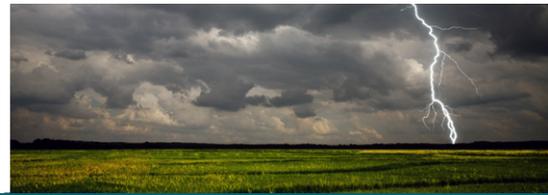
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hfw 1. Regulation and legislation

England & Wales: Government announces crackdown on whiplash claims

The Ministry of Justice has announced that it is seeking to reduce the “*unacceptably high*” number of whiplash claims. It has launched a consultation which proposes to:

- Cap the compensation for whiplash at £425.
- Pay compensation for whiplash only where a medical report was provided as proof of injury.
- Raise the limit for cases in the small claims court for all personal injury claims to £5,000.
- Ban offers being made to settle claims without medical evidence.

As we have previously reported¹, these reforms have already been proposed and then withdrawn in the past year, with both the proposal of the reforms and their withdrawal provoking strong responses from stakeholders.

The publication of the Ministry of Justice’s consultation paper has been welcomed by the Association of British Insurers and Aviva, which respectively commended the proposals as helping to “*create a more honest system that doesn’t reward those who want to exploit it*” and “*necessary and courageous*”. Aviva also pledged to pass on to its customers “*100% of the savings*” which result from the reforms.

By way of contrast, the Motor Accident Solicitors Society stated that the proposals would have “*negative unintended consequences*” and would “*fall straight into the hands of those*



If other insurers join Aviva and pledge to pass on any savings from the reforms to their customers, we suspect that public opinion will favour reform.

WILLIAM REDDIE, ASSOCIATE

who would exploit claimants”, while the Association of Personal Injury Lawyers criticised the proposals as “*heavy handed and excessive*”.

If other insurers join Aviva and pledge to pass on any savings from the reforms to their customers, we suspect that public opinion will favour reform. However, the anti-reform group may be able to sway sentiment in their favour by persuading the government to focus instead on finding a solution to what the Association of Personal Injury Lawyers called the “*scourge of cold calling*” by claims management companies.

Either way, with these proposals giving rise to strong feelings on each side of the debate, it looks like there are more twists and turns ahead.

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France: Class actions in the health sector are coming

A decree dated 26 September 2016 implements the law on the ‘modernization of the health system’, adopted on 17 December 2015, which extends the possibility of bringing class actions to victims of damage caused by health and cosmetic products.

Accredited consumer associations can bring class actions against manufacturers, suppliers and health sector professionals, as well as against their respective insurers, on behalf of individuals who were physically harmed by a health or a cosmetic product.

It is expected that about 500 consumer associations in France will meet the criteria to bring actions in the health sector, whereas only 15 associations meet the criteria to bring class actions in relation to the protection of consumer rights.

Class actions in the health sector may therefore constitute a new trend and may bring significant consequences for companies targeted by such proceedings and their insurers. In fact, it has already been announced that an association which represents a group of victims of an anti-epileptic drug (Dépakine), alleged to cause congenital malformations and neurological problems, will introduce a class action in the coming weeks.

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1 See: <http://www.hfw.com/Insurance-Bulletin-3-December-2015> and <http://www.hfw.com/Insurance-Bulletin-27-October-2016>



IAIS publishes paper setting out approaches to supervision of insurance intermediaries

On 15 November 2016, the International Association of Insurance Supervisors (IAIS) published its application paper (the Paper) on approaches to supervising the conduct of intermediaries. The Paper provides its members, who include the Prudential Regulation Authority and the Financial Conduct Authority, with a range of approaches to apply to its supervisory regime and in turn to promote the role of the insurance intermediary.



The Paper may be of use to some supervisors and regulators but it seems that its main aim was to gather insight into supervisory practices across a range of jurisdictions and understand the challenges faced by supervising insurance intermediaries.

DAVINIA COLLINS, ASSOCIATE

The IAIS

The IAIS is a voluntary organisation responsible for promoting an effective and globally consistent approach to the supervision of the insurance industry for the protection of customers/policyholders. On account of this objective, the IAIS works with other international bodies such as the Financial Stability Board and the International Organisation of Securities Commission, who promote and develop principles or standards for the global financial system.

The approaches

Insurance intermediaries are recognised as playing a key role between the customer/policyholder and the insurer and from a supervisory perspective are seen as being able to build public trust and confidence in the insurance sector. For the IAIS, this is largely helped by supervisors and their entry requirements, e.g. licensing and conduct requirements.

Section 3 of the Paper discusses the approaches of interest for insurance supervisors. The IAIS describes the approaches as “relevant considerations”, which on reading are not uncommon or new to the existing

approach taken by the FCA. Some of these “considerations” include:

- **Tri-partite relationship:** intermediation by its nature means that the intermediary acts as a “go-between” for the insurer and the customer/policyholder. Supervisors are asked to consider this relationship and ensure their framework takes account of this to ensure the fair treatment of customers/policyholders.
- **Proportionality principle:** the supervisory framework should take account of the nature and scale of the insurers operating in a particular jurisdiction as well as the range and complexity of the insurance products offered to different types of customers. Interestingly, this approach notes that the licensing and supervisory requirements should not pose unreasonable barriers to entry for emerging intermediaries.
- **Broker vs. Agents models:** the legal framework in some jurisdictions differentiate between brokers and agents. Where this distinction applies, the common approach is to consider the insurer as

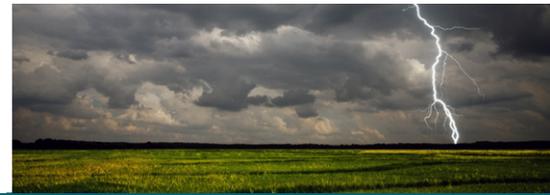
responsible for the conduct of its agent and brokers as acting for the customer.

- **Licensing requirements:** traditional regulatory requirements and licensing categories may need to be reviewed and adapted to accommodate new business models and new insurance distribution methods.

The Paper may be of use to some supervisors and regulators but it seems that its main aim was to gather insight into supervisory practices across a range of jurisdictions and understand the challenges faced by supervising insurance intermediaries.

In view of the incoming changes to insurance mediation brought on by the Insurance Distribution Directive (IDD), European supervisors and regulators may wish to consider the approaches that promote good conduct of business as discussed in section 4 of the Paper to assist with their implementation of the IDD.

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hfw 2. HFW publications and events

HFW Senior Associate Iris Vögeding awarded German Lawyers Prize

HFW are proud to announce that Senior Associate **Iris Vögeding** has been awarded the German Lawyers Prize for 2016/2017 by the Paris Bar and the German Bar Association. The members of the jury, composed of a number of high profile personalities of French and European legal institutions, rewarded Iris for her work done in relation to French and German law, and in particular a presentation on comparative aspects of French and German civil liability insurance programs which she gave in January 2016.

EU electronic signature regulation

HFW have published a briefing¹ on the eIDAS Regulation, which aims to ensure that electronic measures, such as e-Signatures and e-Seals, are mutually recognised between EU member states and have the same legal status and validity as their traditional paper-based equivalents. Although the Regulation is directly effective in member states, its impact will depend on the uptake of “Qualified Electronic Signatures”, which are equivalent to handwritten signatures and must be recognised in all EU Member States.

1 <http://www.hfw.com/EU-electronic-signature-regulation-November-2016>

HFW present seminar on the UK Insurance Act 2015 at Hong Kong Bankers Club

On Tuesday 29 November, HFW Partner **Peter Murphy** and Consultant **Rosie Ng** presented a seminar on the UK Insurance Act 2015 at the Hong Kong Bankers Club as part of HFW’s International Trade and Commodities Seminar. Speaking alongside Peter and Rosie were Partner **Andrew Johnstone**, who discussed recent developments in Hong Kong insolvency law, and Associate **Edward Beeley**, who analysed some recent court judgments.

Brexit panel discussion – the future of the landscape

On Tuesday 29 November, HFW held the latest event in our Brexit series. For our second panel we welcomed back Radio 4 ‘Today’ presenter **John Humphrys** who returned to chair the panel discussion. The panel comprised:

- **Ruth Lea** – Economic Advisor and Director of the Arbutnot Banking Group.
- **The Right Honourable Jack Straw** – Home Secretary and Foreign Secretary under Prime Minister Tony Blair.
- **Anthony Woolich** – Partner and Head of Competition & Regulation, Holman Fenwick Willan.
- **Joshua Rozenberg QC** - British legal commentator and journalist.

- **Sir Paul Jenkins QC** - formerly the UK Government’s most senior legal official and Permanent Secretary to the Attorney General.

The discussion covered a variety of topics, such as where will the UK be in two and half years’ time; will we see hard or soft Brexit; the regulatory landscape; and whether the election of Donald Trump to the US Presidency will be good for Brexit Britain and trading with the rest of the world.

We had over 100 clients attend, as well as a number of journalists in the audience.

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