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1. REGULATION AND LEGISLATION

UK: Nearly there – FCA publishes set of near-final IDD rules

The FCA has published its third and final Policy Statement setting out near-final rules for the implementation of the Insurance Distribution Directive (the IDD).

The Policy Statement, which can be found here (<https://www.fca.org.uk/publication/policy/ps-18-1.pdf>) covers a variety of topics on which the FCA consulted in recent consultation papers. It summarises:

- The FCA’s approach to the IDD delegated acts;
- Changes to the FCA’s requirements related to the distribution of insurance-based investment products and wider life insurance;
- Changes to the FCA’s rules to implement requirements in the IDD that apply to life and non-investment insurance business; and
- Additional changes to the Handbook.

The FCA has said that it will finalise its rules once the UK legislation which implements the IDD is in force. As we have previously reported (see: http://www.hfw.com/Insurance-Bulletin-January-2018-Edition-2#page_1), the implementation date for the IDD remains up in the air.

As things stand, member states are required to transpose and apply the IDD by 23 February 2018, but a proposal to delay the implementation date to 1 October 2018 is making its way through the EU legislative process.

Although there is widespread support for this proposal, member states must continue pressing ahead with implementation plans (or at least must continue to appear to be pressing ahead). We will report on

further developments regarding the proposal, which are expected in the next few weeks.

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2. COURT CASES AND ARBITRATION

England and Wales: With friends like these...

This case¹ involved a claim in deceit for damages by Insurers against an individual, G, on the grounds that he had fraudulently represented to the Insurers that his car had been involved in a collision with a second individual, M, who was insured by the Insurers.

A crucial aspect of the case was that it had subsequently been established that G and M were already known to each other as friends prior to the collision, and had that G had sought to conceal that fact in his dealings with Insurers, including in proceedings brought by Insurers to have set aside a county court judgment in default obtained by G against M.

In particular, the court regarded as “cogent circumstantial evidence that the collision was staged” the facts that (i) G and M were friends at the time of the collision; (ii) neither G nor M informed Insurers that they were friends; and (iii) when Insurers discovered that G and M were friends, G denied that this was the case and told Insurers, untruthfully, that “they had become friends after the collision”.

The Court noted that “it is possible for two friends to suffer a collision when driving their respective cars. It would however be a striking and unlikely coincidence. Another explanation for the collision is that the two friends had staged the collision; that would explain the apparent but unlikely coincidence.”

¹ UK Insurance Limited v Gentry [2018] EWHC 37 (QB)



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The Court noted that in cases of this kind it is “necessary to stand back and have regard to the whole of the evidence”. Having done so, the Court was satisfied that the accident was staged, because the “only credible explanation for the steps both drivers took to hide their friendship from the Claimant is that they knew that it was a staged collision and that to reveal they were friends would give the game away”.

The Court found G guilty of the tort of deceit and ordered him to pay back as damages the sums previously paid out by Insurers as a result of that deceit, plus costs.

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3. HFW PUBLICATIONS AND EVENTS

Dubai: HFW win MENA Insurance Law Firm of the Year

We are delighted to announce that for the second year in a row, our Dubai office has won the MENA Insurance Law Firm of the Year award.

We send our congratulations to Sam Wakerley, John Barlow, Wissam Hachem and the rest of the HFW Dubai team!

HFW has over 500 lawyers working in offices across Australia, Asia, the Middle East, Europe and the Americas. For further information about our insurance capabilities, please visit hfw.com/insurance-reinsurance-sectors



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