



# A Guide to Understanding Policy Wordings

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# Introduction / housekeeping

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Welcome and thank you!

Webinar format – muted and video off. Interactive features – polls, Q&A

60 minutes including short period of Q&A

## Diane Jenkins

- Background in Insurance Broking Sector – technical programme design, M&A due diligence, BI reviews
- Former chair and education secretary of London Business Interruption Association

## Nick Thomas & Associates

- Specialist training, coaching and consulting to the UK Insurance Sector
- Technical insurance, sales, business and soft skills, compliance training



# Objectives

- To provide knowledge and understanding of basic policy wordings for general insurance business
- Know how to apply knowledge of principles concerning the operation of policy conditions affecting claims for general insurance business

# Why understanding a policy wording matters

## QBE defence for FCA BI test case

*“each of the policyholders of policies with the QBE Wordings acted through an authorised insurance broker intermediary at the time of the placing of the policies with the QBE Wordings whose duty, inter alia, was to advise on the suitability of the insurance being obtained”*

## Supreme Court rejects insurers' claims in landmark business insurance case

Save our SMEs

Angharad Carrick



The Supreme Court has made a landmark ruling on the business interruption insurance test case brought by the FCA.

The Supreme Court has largely ruled in favour of policyholders and the City regulator in the

# Why understanding a policy wording matters

## Marsh statement for FCA BI test case

*“The Resilience wording also clearly states that ‘this policy wording is accepted by and adopted as the wording of the insurer, notwithstanding that the policy or part thereof, may in fact, have been put forward in part or full by the insured and/or its brokers or other representatives’. As such, any ambiguity would be construed in favour of the insured”*

## Live: Supreme Court rules largely in favour of policyholders in FCA's BI test case battle



Free content: Access market and insurance reactions to the Supreme Court ruling that dismissed appeals against a High Court judgment on insurers paying out in Covid-related disruption on business interruption insurance policies and overturned the Orient Express ruling.

# Insurance contracts

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Insurance is a contract – policy is evidence of contract

Offer/acceptance

Intention

Consideration

Legal form

Capacity





# Contract certainty

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The terms must be clear and unambiguous

The insured must be provided with documentation promptly

Contract changes have to be clear and documented promptly



# Legal background

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## FCA test case

- the Supreme Court considered how the words of the contract would be understood by a reasonable person
- “It is an ordinary policyholder who, on entering into the contract, is taken to have read through the policy conscientiously in order to understand what cover they were getting”





# Legal background

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## Contra Proferentem rule

- Impact Funding Solutions Ltd v AIG Europe Insurance Ltd 2016 Supreme Court decision
  - only relevant in a case of genuine ambiguity or real doubt as to the meaning of the words used
  - have to read policy as a whole
- Rockliffe Hall Limited v Travellers Insurance Company Limited [2021]
  - contra proferentem did not apply - no ambiguity



# Legal background

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## Wood v Capita Insurance Services Ltd [2017] Supreme Court

- “The policy is to be interpreted objectively by asking what a reasonable person...would have understood the language of the contract to mean.
- This involves a consideration of the words used in their documentary, factual and commercial context. This approach applies equally to exclusion clauses.”



# Legal background

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Burnett or Grant v International Insurance Company of Hanover Ltd [2021] Supreme Court

- considered deliberate acts exclusion ‘liability arising out of deliberate acts wilful default or neglect by ...employee’
- insurers argued deliberate included recklessness
- court said if ‘deliberate’ was intended to include recklessness, the policy should have made clear
- no contra proferentem applied – no ambiguity



# Legal background

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Spire Healthcare Limited v Royal Sun Alliance 2018 Appeal Court:

- wording of the schedule and the policy must be considered together without giving greater weight to either
- review policy as it is not as might have been

Eiusdem generis



# Policy documents

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Policy is a legal document – full of legal terms and conditions

Policy booklet

Key Facts / Policy Summary

Policy Schedule

Certificate

Endorsements





# Policy wording conventions

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Whole must be read as one document

Plurals

Definitions – capitals, bold, different type

Headings





# Operative clause

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Operative clause

or

Insuring clause

or

Cover clause

What the policy is for

What the policy promises



# Definitions

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Particular meaning in policy

May restrict/limit cover

Use of dictionary



# Policy extensions

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Add to what the cover clause offers

or

Add to period of cover



# Exclusions

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Exclusions take out cover - usually, insurer has to prove exclusion applies

General v section exclusions

“Arising out of or relating directly or indirectly to”

FCA Test case – Supreme Court confirmed that where concurrent causes

- insured cause plus excluded cause = no cover (Wayne Tank and Pump Co Ltd v Employers Liability Assurance Corpn Ltd)
- insured cause plus another cause not excluded but not specifically insured = cover (JJ Lloyd Instruments Ltd v Northern Star Insurance Co Ltd (Miss Jay Jay) 1987)



# Exclusions

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## FCA test case referenced

- Crowden v QBE Insurance (Europe) Limited [2017]
- “...the interpretation of insurance exclusions which is sensitive to their purpose and place in the insurance contract”
- “...the court is entitled to prefer the construction which is consistent with business common sense” BUT
- “where the parties have used unambiguous language, the court must apply it”

Exclusion wordings may be reviewed and amended to make clearer



# Conditions

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- **Implied condition**
  - Contractual term which is implied by type of contract/relationship
  - Insurance – duty to disclose
  - Not in wording
- **Express condition**
  - Contractual term expressly agreed by parties
  - Negotiated as part of the contract
  - “Smallprint”





# Conditions precedent

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Conditions precedent are all express conditions

Wording needs to be clear

Must go to 'the substance of the contract'

Breach must affect loss



# Warranties

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## Suspensive conditions

- breach suspends liability until (if) breach is remedied
- BUT some breaches cannot be remedied (e.g., standard construction)
- if after a loss insurer can prove something that occurred whilst liability suspended contributed to loss, insurer does not have to pay claim



# ‘Standard’ policy conditions

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Choice of Law / Law applicable

Jurisdiction

Cancellation

Disputes / Mediation

Rights of Third Parties

Insurance Act / Fair Presentation

Reasonable precautions

- RR Securities & Ors v Towergate Underwriting Group Ltd 2016



# Thankyou! Questions?

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