Business Insurance Law & Risk Placement Reform

Produced in association with

Mactavish

AVIVA

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The Marine Insurance Act of 1906 (the "Act") casts a significant shadow through history and across the current business landscape. It provides the legal foundation for business insurance. In turn, today's insurance industry is integral to the functioning of modern business. It provides a vital balance sheet buffer when accident or loss occurs. It supports businesses from the first day of start up and across the day to day operations of the largest conglomerate. As an industry in its own right, insurance contributes over £10bn of taxes to the UK economy.

The Business Insured's Duty of Disclosure and the Law of Warranty are currently being reviewed by both the Law Commission of England and Wales and the Scottish Law Commission (the "Law Commissions"). A significant part of this activity has involved revisiting the Marine Insurance Act to see if it is still fit for purpose. This review should act as a catalyst for greater introspection, looking beyond the legal framework to a wider re-evaluation of the manner in which the insurance industry operates as a whole. Some insureds, brokers and insurers, through their respective associations or individually, have taken the opportunity to consider what insurance must offer in the future in order to continue its vital, valued and pivotal role both within individual businesses and the economy at large.

In general, there has been industry wide acceptance that the antiquated Act does require re-consideration. What should replace it and how this should be instigated is still subject to debate. However there is common agreement that the process of review has identified some anomalies, accepted processes and historic practices which need updating. The industry itself should take greater responsibility for this process.

This document aims to both summarise the issues raised by the Law Commissions and highlight additional points and practical implications that have become evident through the consultation process. The industry may wish to reform some of these issues ahead of, or even separate to, the outcome of the Law Commissions' review. Aviva has taken this view and is already making good headway in addressing key issues.

A snapshot of the proposed reform

Duty of Disclosure and Representation
Existing duty to remain, and be reinforced and clarified using case-law, so that the duty can be more readily understood and more easily complied with.

Remedies for Non-Disclosure or Misrepresentation
Avoidance-only remedy to be replaced with alternative "proportionate" regime. Will reflect actual underwriting impact if correct information had been originally provided.

Basis of Contract Clauses
Contract clauses to be abolished removing mechanisms which allow avoidance if risk information provided is inaccurate. It will not be possible to contract out.

Remedy for Breach of Warranty
Breach of warranty to suspend liability to be proportionate to the type of loss it is intended to manage and the time/location concerned.

Breach of Other Conditions
Breach of condition to only limit liability for the type of loss it is intended to manage and at the time/location concerned.

Late Payment of Claims
Implied terms for payment of claims to be introduced so that customers have means for recourse if there is unreasonable delay in payment. It will not be possible to contract out for unreasonable late payment.

Why is Aviva championing reform?

Aviva is driving progress on a host of issues relating to insurance law reform because it is the right thing to do for clients. The primary objective of the Law Commissions' review is absolutely aligned with Aviva's core purpose – to free people from fear of uncertainty.

At the core of Aviva's proposition is the reliability of the insurance contract. Aviva is already progressing those changes it believes are fundamentally required through its "Enhanced Policy Reliability" ("EPR") route. Clients and their brokers who make EPR requests of Aviva can expect, appropriate to their segment, to participate in a forensic discussion of risk addressing several themes from this paper; such as better disclosure, clearer contracts and a fuller placement process. The nature of the process and engagement approach varies between Corporate and SME, linked to variations between those segments around risk complexity, business size and degree of broker intermediation. Aviva have already instigated a major wording review in order to create clearer contracts for all their clients. See details at rear for the appropriate Aviva contacts.

Aviva policyholders already within the EPR process enjoy what is amongst the widest coverage available in the UK insurance market, often across multiple classes and on a long term basis. EPR allows Aviva to demonstrate to both clients and brokers, in a meaningful and deal-specific way, its corporate values - create legacy, never rest, kill complexity and care more.

The Law Commissions' Considerations

There has been a lot of uncertainty and diversity of interpretation regarding the recommendations proposed by the Law Commissions and their potential impact. What has gained common support is the requirement that any changes to the status quo must provide clarity and maintain fairness (especially around some of the most outdated areas of law). The changes should ideally formalise a framework that has evolved somewhat sporadically in the wake of individual court judgments.

Clearly the world has moved on significantly since the days when wealthy merchants met brokers in Lloyd's Coffee House to discuss mysterious voyages and cargo. The Law Commissions' review questions if an early 20th Century Act is adequate for the modern world and all the complexity and information that goes with it.

The review indicates that primary legislation, rather than organic change through court judgments, is necessary. This is because the gap between the law as it is written and the needs of the market is just too big to bridge:

- Although written for marine insurance, The Act has subsequently been applied more widely to disputes involving other classes of insurance.
- Current principles of insurance law evolved from a time when the insurance market was much smaller and London-centric. Today it caters for complex and global businesses handling large volumes of risk information using sophisticated data analysis and systems.
- The common use of private arbitration to resolve disputes prevents usable precedents being set. As a result the law has not kept pace with the modern business requirement.

The review questions whether claims end up in dispute too often. It identifies the potential opportunities of a modernised but neutral law to give both the insured and the insurer a better chance of working together to establish fairer contracts. Many of the suggestions in the review simply clarify existing interpretations which have been handed down in judgments since 1906. This reflects historic attempts by judges to bring the law more closely in line with modern industry needs. This is particularly the case for the duty of disclosure, where a number of concepts have been introduced in the courts with the aim of softening the impact of the Act.

"Crest Nicholson has always focussed on the quality of its insurance risk disclosure and its insurance governance, seeking to continually improve and play our part in the insured/insurer relationship. One area which we had always been unable to meaningfully improve had been the overall contractual certainty of our insurance policies nor to modernise some of the more antiquated (but market standard) principles underpinning them. Having followed the law reform debate, and particularly viewing this in the context of our ongoing work on insurance governance we went to market looking to implement the principles from the emerging debate to create fairer, more certain and understandable insurance contracts across our main lines. In the face of some resistance in the market, Aviva (understanding that the key buying requirement was not just price) mobilised quickly and efficiently to accommodate our needs.

I was particularly impressed by the effort Aviva made to understand not just our insurance risk, but the education and disclosure control systems which underpin our market submissions, and to recognise their value. Having established real substantive insight to our insurance risk and our systems, they went to great lengths very quickly to ensure that the policy would do what we needed. Having worked hard with Aviva to deliver the improved contractual certainty and improvements we needed, we took a decision to move all of our main business insurances to Aviva from November 2013, on a multi-year deal and we had fully agreed policy wordings prior to inception; the whole process was undertaken in 72 hours.

Whatever shape insurance law reform takes, we have great comfort knowing that we now have, with Aviva, much more certainty over the performance of our policies and a new insurance partner for the coming years."

Kevin Maguire, Group Company Secretary, Crest Nicholson plc

Industry Considerations

Unlike most products, insurance is not a simple commodity - especially in the case of complex businesses. It is an intricate protection whose value is co-created through the course of identifying, explaining and placing risk.
What this means is that it may be necessary to go beyond the insurance contract law reform proposals if the industry is to achieve the fairness and clarity that is the common goal. Insureds, brokers and insurers all benefit where risks, and the protection against them, are clearly understood. Likewise all share in the pain of uncertainty – whether through a company's claim being questioned, a broker's liability being tested by a perceived limitation in advice given or an insurer's results being volatile.
The following rationale for change has been highlighted by the review and consultation process and involves either legal change or amending industry practice.

Breach of duties
The main focus of the review is on the impact of breach of duties by policyholders (whether the duty to disclose or the duty to comply with conditions and warranties). The Law Commissions seek to make the system more intuitive and to introduce more appropriate penalties.

Unfair insured outcomes
The real importance of insurance and the limitations of the existing legal system are often not realised by an insured until there is a claim. But similarly, the insurance market is not always forced to consider in advance the problems that prevent it from working as effectively as it should.

Recent research from Mactavish[i], Specialists in Insurance Governance, shows that whilst insurers may often go further than they are legally required to when settling claims, for large or complex claims there is clearly too much uncertainty unresolved up front. Whilst this may reflect the complexity of insurance contracts and often large sums at stake, it is inefficient for all concerned. Furthermore, although the Financial Ombudsman Service can play a role in settling disputes between financial services providers and small businesses, without legislation or market-wide changes there is no similar resolution route available for larger firms.

Wider contractual problems
Mactavish research[ii] also shows that the issues that the Law Commissions highlight are widespread. To take a simple example, basis of contract clauses apply to over 80% of key Property and Casualty policies reviewed. In most cases, the insured was aware neither of what these clauses meant nor that they formed part of the insurance policy.

However, this is merely a symptom of a wider problem. As part of their research Mactavish also analysed hundreds of policies to understand how likely they would be to pay out if tested by a claim. In addition to the problems flagged by the Law Commissions, Mactavish reported many policies with coverage concerns and inappropriate exclusions or obligations. These problems can arise because of a risk placement process that does not allow enough time for dialogue, review of information and verification of coverage adequacy.

The Law Commissions' review seeks to provide some much needed legal clarity, but there remains more for the industry to do to improve its practices. Disclosure will continue to lie at the heart of the UK insurance system. All parties must work together to create a system robust enough to cope with the complexity of modern business. Similarly, contracts must be clearer and more understandable to ensure that insureds are more easily able to understand and comply with policy terms. Without improved renewal processes, neither of these objectives can be achieved.

Mactavish research – unfair insured outcomes:

Major research into the regularity of claims disputes, across over 400 UK companies from 2012-14, found that:

- 40% of UK businesses consulted had suffered a significant insurance claim in recent years.
- 45% of those claims had been disputed
- The average dispute lasted nearly 3 years.

i Extensive Mactavish research programme conducted in consultation with over 400 companies across a wide range of sectors and across both mid-size and large UK businesses from 2012-14, new research awaiting publication.
ii Based on analysis of policy documentation of businesses included within the 2012-14 study above, and as part of Mactavish insurance governance advisory work throughout the same period.

Recommendations
Part 1: Disclosure

Insured's duty under the proposed legislative regime
There has been some suggestion that the insured's duty to disclose will be reduced under the proposed reforms. This is not the case. While the suggested remedies for non-disclosure would be a significant change for the industry, the fundamental requirement to disclose remains and, if anything, is reinforced by the proposed changes. This system is a key factor in the global strength of the UK insurance market. The utmost good faith principle will be retained.

The proposals aim to set out clearer expectations concerning:

(a) how information is communicated; and
(b) how proactive the insured must be in making reasonable enquiries to inform its presentation and ensuring that all relevant facts known by the broker are passed on.

Simply "data-dumping" a large volume of information with insufficient direction or structure would not be considered "fair". Similarly, limitations in dialogue between operating businesses and insurance buying departments would risk falling foul of these requirements. Likewise, if underwriters are too passive, they risk waiving their rights to information they do not request.

In short, what this means is that insureds, their brokers and insurers need to work together to ensure they are all on the same page in terms of what information is needed and that it can be understood. Companies that do this well (whichever role they are playing) should have nothing to fear from the proposed legislation but should benefit from the certainty it seeks to create.

Mactavish research - recent examples of common disclosure problems:

- FTSE 100: 3,000 pages of information provided to insurers across 150 unindexed documents/emails; limited or no adaptation to insurance relevance; significant areas of conflict between documents provided.
- Regional SME manufacturer: All information gathering conducted within the final 4-6 weeks before renewal; a mixture of partially completed proposal forms & attachments/ hand-written amendments; extensive inconsistency on basic underwriting data and significant doubt as to which documents were intended to be shared with insurers at all.

Central problem with practices, not the law

The existing 'all or nothing' avoidance-only remedy for non-disclosure is quite a blunt tool. The market would benefit from the more nuanced remedies suggested by the Law Commissions, which would encourage better disclosure and underwriting.

However, it is also the case that risk disclosure standards are in decline, and have been for some time – creating a large part of the problem. Too often, a rush to gather information in the final weeks before renewal leads to disclosure being solely targeted at core pricing data, which even then is often incomplete. When more detail is provided, "data-dumping" of large quantities of unstructured information also remains far too common. When underwriters lack sufficient time and context on which to base further enquiries, they can't engage proactively with either the broker or the insured.

A condensed timeframe also limits the chance for insureds to check the accuracy of the information provided. While the broker often has a vital role to play in helping gather data, they cannot have the same level of knowledge about a business and its activities as the business does. Therefore, even as simple a step as building in time for insured approval of material to be presented to the insurer can greatly improve the process for the benefit of all parties.

This is a clear example of how, while the proposed law reform can provide a more balanced framework, practices within the market also need to change. Without improving disclosure standards, insureds, brokers and insurers are all subject to the same uncertainty about whether the contract in place is the right one.

The whole cycle starts with good disclosure. Without risk dialogue and adequate insured approval procedures, insureds cannot be sure that their presentation of risk accurately reflects the business and covers everything material for the insurer. Similarly, brokers cannot meet their duty of care to their insureds, and insurers cannot properly evaluate the risks they are writing or tailor cover.

Disclosure - what is Aviva doing to help?

Aviva recognises that developing a deep understanding of a prospective client's risk is the cornerstone of a good insurance product, and is currently trying to help clients through this challenge in two ways:

- Firstly, Aviva has developed a unique disclosure factfinder. This is a short questionnaire, built into the client engagement process. It helps clients understand how they can improve the information being provided to the market, looking at the checks and balances in place within the business and any major gaps in presentation.

- Secondly, Aviva is working to mine Mactavish's underlying research to jointly develop sector by sector guidance for its clients on what information a "fair presentation of risk" should include. By outlining these standards, Aviva hopes to build on the risk dialogue it has with its clients and to be able to further adapt its policies to each client's specific needs.

Recommendations
Part 2: Clearer contracts

Not just conditions and warranties
Through making breach of contractual conditions and warranties only suspend insurer liability, rather than discharge it entirely, the Law Commissions' review simplifies the operation of policy wordings. By limiting the impact of breach to the locations and type of risk concerned, the punishment is made fairer whilst recognising that such obligations tend to exist for sound risk protection reasons.

However, there is also a wider issue: current wordings, across insurers and policy types, are often very difficult for insureds to understand. For example, amending 'standard' wordings through endorsement to fit individual circumstances may result in an overly complex contract, made up of many elements of documentation without clear integration or signposting. This can lead to important obligations being overlooked within an extensive document or, even worse, errors in coverage being missed instead of amended.

Contract certainty: timing vs. clarity
It has long been recognised that there is an industry-wide issue with documenting cover. The 30 day policy provision code of practice set by the (then) FSA's review into contract certainty has only partially addressed this issue.

The requirement to provide full contracts promptly after renewal is of course sensible and regulation here is aimed at a key need, but this should be the bare minimum that the industry aims for. The insured's goal shouldn't just be having a policy, it should be making it the right policy. Specifically, it should be the policy most likely to respond in the way envisaged by insured, broker and insurer. All parties benefit from having sufficient opportunity to review and adapt terms if necessary, as this clarifies coverage and also allows insureds to understand their duties under the contract and comply with them properly from day one.

Mactavish research - recent examples of policy structure leading to accidental exclusion of key risks:

- Large (£1bn+ revenue) manufacturer with main third party supplier sites inadvertently excluded from BI cover.
- SME engineering business with two of its core product / service lines excluded from liability programme via erroneous exclusions.
- Major public sector body with several key sites inadvertently sub-limited to a fraction of required value through confusion in sections of cover.

Clearer contracts - what is Aviva doing to help?

Over the last year and as a continuing project, Aviva is investing heavily in a review of every part of its standard wordings. This process intends to both respond to the key legal issues identified by the Law Commissions and to transform the user-friendliness of the documentation, making it much clearer what is expected of all parties.

Aviva is working towards fairer terms and clearer contracts for all its clients as a matter of principle. While it is important for clients to meet their obligations under contract, Aviva recognises that by removing complexity it can make the process easier for all concerned.

A second innovation arising from the disclosure factfinder is that Aviva has established a dedicated resource pool specialising in policy reform. Where client risk dialogue is exceptionally good, this team is briefed to process this enhanced risk information and handle adaptations to the normal policy wording approach – although the nature of this process will vary according to client size and complexity.

Recommendations
Part 3: Risk placement process

Clearer contracts and better disclosure both require a little more attention to get right. Otherwise too many questions can be left unanswered; from the underwriter about the risk and from the insured concerning coverage and terms.

Previous Mactavish research[iii] identified a number of supporting activities which could be built into the risk placement process to increase clarity. In addition to improving risk information and reviewing or adapting contract terms, proposed additional steps in the renewal process which insureds and their brokers might consider includes:

1. Walking through individual loss scenarios with underwriting and claims teams in advance to stress-test policies;
2. Thinking through how to manage any risk reduction and compliance requirements arising and;
3. Appraising in advance insurer large claims processes and risk engineering services.

These processes closely align with the key goal of the review of reducing uncertainty. To help achieve this, insurance specialists from risk protection, complex claims handling and policy wording design should be involved early on as an integral part of the negotiation process.

The total time investment required to make this happen is relatively little and directly reflects the importance of the insurance protection. By definition it should be worth it. Above all, the process does need to start earlier and the market needs to adapt to this standard of placement.

Mactavish case study
– risk placement innovation

FTSE 100 business implemented key process enhancements to 2013 renewal with Mactavish support:

- Reviewing key policies in the 6 months before renewal to create a compliance management tool for all obligations.
- Negotiation to amend major policy conditions where in conflict with current practices, e.g. sprinkler test timing.
- Developed sample loss scenarios for half-day workshop with broker and lead insurers across key lines (PDBI & PL).
- Process identified >10 major amendments to cover needed (e.g. a key product group excluded in error).

iii Mactavish & PwC report (2011) – "Corporate Risk & Insurance: the case for placement reform. The Mactavish Protocols".

Risk placement process - what is Aviva doing to help?

Changing standard placement practices is not something Aviva can do alone. It encourages clients and brokers to start the process earlier to ensure that sufficient time is available for appropriate dialogue – a minimum of three months before renewal, but for larger and more complex risks much longer. Closer and more meaningful collaboration is required as part of the risk placement process, including (and again, appropriate to the client segment) pre-inception:

- Surveys, in order to better understand the risks and agree any risk reduction plan.
- Loss dialogue, to cover not only attritional claims handling ability but also working through large loss scenarios to stress test the policy hypothetically, rather than waiting for a catastrophic event.

Only in this way can clients fully appreciate the services which underpin their policy.

Aviva's view on law reform

Insurance is a collaborative activity. To achieve a consensus on reform, the principles established by the Law Commissions of neutral change and fairness are essential. On this basis, all parties, whether insureds, brokers or insurers can share the desire to revise and update practices, processes and approaches. They must also share the desire to ensure the clear promotion of good business practice and to actively challenge less robust approaches. Post reform, commercial advantage should rest with the business that gains the most effective insight and leverage from implementing transparent processes.

Whether or not (or when) the proposed reform becomes law is somewhat moot. The genie is out of the bottle. The impetus to update how insurance is placed, priced and delivered has been created and a watershed is in progress. Irrespective of the timing or exact form of legislative change, Aviva is acting and has already introduced many progressive developments.

In the absence of legislative change, the benefit of voluntary reform will be highly variable and is likely to be restricted to relatively few larger/sophisticated businesses. Without the balance of a reform Bill, the likelihood grows of boilerplate wording responses which fundamentally miss the requirement for better case-specific disclosure, clearer contracts and an improved placement process. These aspects, arrived at collaboratively by all parties, are essential if greater contract certainty is to be achieved.

About Aviva

Over the course of their proud 318 year heritage, Aviva has become the world's 6th largest insurer and the UK's largest insurer with a leading position in general insurance.
If you are interested in working with Aviva to explore this area further and build real industry legacy, please get in touch with the Aviva EPR team, via your broker, your usual Aviva contact or at the details below:

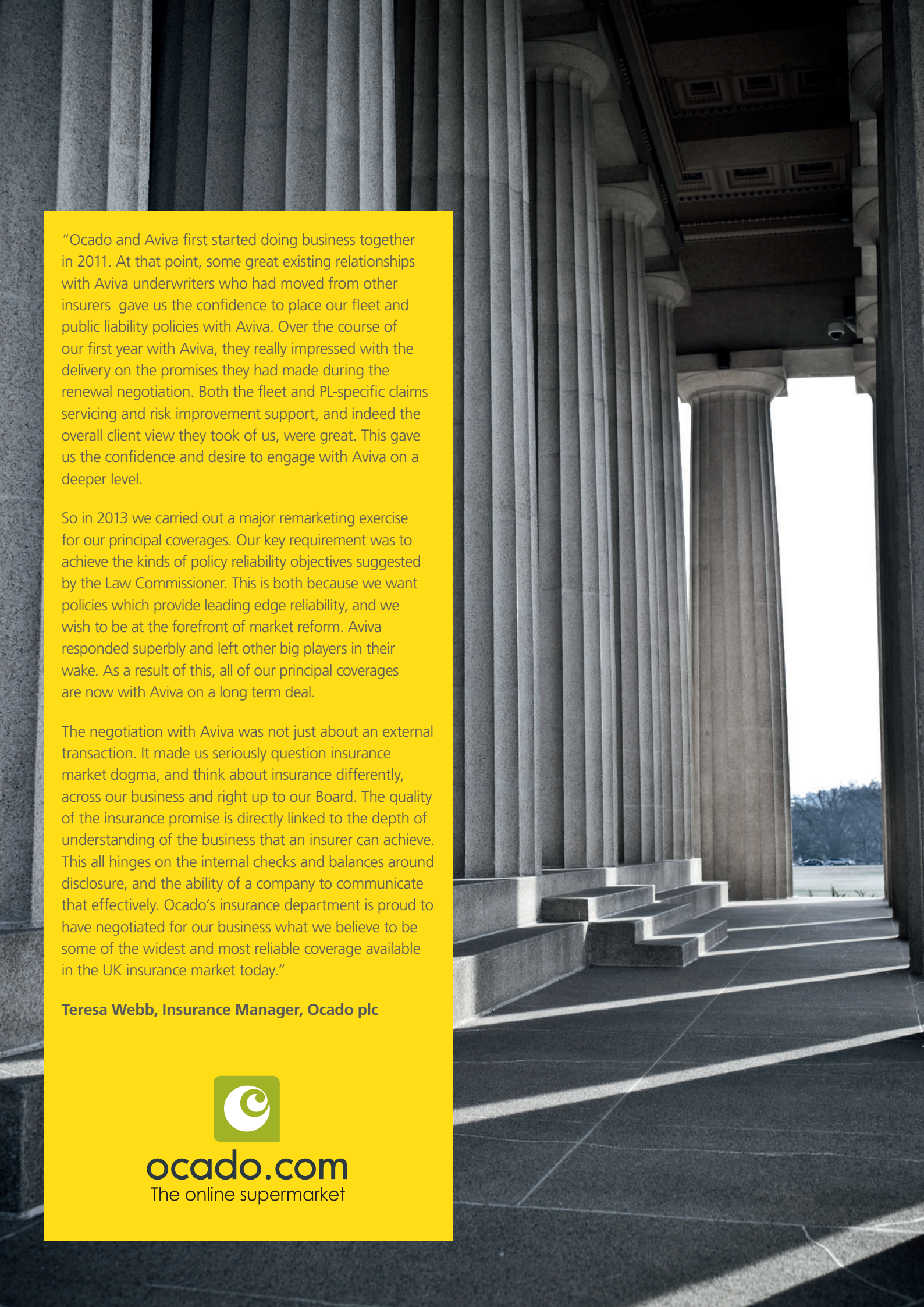
- Tim Parish (timothy.parish@aviva.co.uk) or Mike McPhee (mike.mcphee@aviva.co.uk) for Corporate and Speciality Risk

- Nick Smith (nick.b.smith@aviva.co.uk) or Jonathan Smith (jonathan.smith@aviva.co.uk) for Commercial

Mactavish

About Mactavish

Mactavish is an analytically based advisory business specialising in Insurance Governance, policy reliability and commercial risk analysis. For further information, please see www.mactavishgroup.com or contact Bruce Hepburn (mail@mactavishgroup.com) or Rob Smart (mail@mactavishgroup.com)



"Ocado and Aviva first started doing business together in 2011. At that point, some great existing relationships with Aviva underwriters who had moved from other insurers gave us the confidence to place our fleet and public liability policies with Aviva. Over the course of our first year with Aviva, they really impressed with the delivery on the promises they had made during the renewal negotiation. Both the fleet and PL-specific claims servicing and risk improvement support, and indeed the overall client view they took of us, were great. This gave us the confidence and desire to engage with Aviva on a deeper level.

So in 2013 we carried out a major remarketing exercise for our principal coverages. Our key requirement was to achieve the kinds of policy reliability objectives suggested by the Law Commissioner. This is both because we want policies which provide leading edge reliability, and we wish to be at the forefront of market reform. Aviva responded superbly and left other big players in their wake. As a result of this, all of our principal coverages are now with Aviva on a long term deal.

The negotiation with Aviva was not just about an external transaction. It made us seriously question insurance market dogma, and think about insurance differently, across our business and right up to our Board. The quality of the insurance promise is directly linked to the depth of understanding of the business that an insurer can achieve. This all hinges on the internal checks and balances around disclosure, and the ability of a company to communicate that effectively. Ocado's insurance department is proud to have negotiated for our business what we believe to be some of the widest and most reliable coverage available in the UK insurance market today."

Teresa Webb, Insurance Manager, Ocado plc

ocado.com
The online supermarket

Insurance Contract Law Reform - At a glance

	Current law and proposals	Ongoing duties for insurers	Ongoing duties for customers / brokers
Unless specified, all reforms being suggested for business insurance permit insurers to contract out of the proposed changes, provided that this is explicitly flagged to the insured in a clear and unambiguous way.			
Duty of Disclosure and Representation	• Concern: unclear duty not understood by insureds • Proposed remedy: Keep existing duty but clarify using recent case-law	• Further inquiries must be made based on information provided if a prudent underwriter would make them • Regardless of disclosure, insurers are expected to know things which are common knowledge or which an insurer writing the type of risk / customer would reasonably be expected to know	• Enhanced disclosure duty clarified in 2 key respects 1 Insureds obliged to conduct reasonable enquiries of the risk 2 Fair presentation of the risk must be made; either disclosing all material circumstances or giving sufficient information to highlight what further enquiries are necessary • Presentation must be reasonably clear and accessible, and substantially correct (if a known fact) or made in good faith (if a belief) • Disclosure should include: 1) Material generally expected to be disclosed for the type of risk 2) Any special/unusual facts about the risk 3) Particular concerns leading to purchase of the insurance 4) Everything material that is or should be known to senior management / insurance buyer & broker The duty is ongoing for material risk changes and at future renewals
Remedies for Non-Disclosure or Misrepresentation	• Concern: overly harsh remedy regime • Proposed remedy: Replace with alternative regime that retains avoidance if failure was deliberate or reckless, but otherwise reflects actual impact on underwriting: 1 Avoidance if policy would not have been written at all 2 Ability for insurer to amend terms 3 Reduction of claim settlement proportionate to what premium impact would have been	• Requires insurer to demonstrate materiality of the information not disclosed (or misrepresented) • Requires insurer to demonstrate the impact that the additional information would have made on the original underwriting decision	• Significant risk remains in the event of a major shortcoming in disclosure, i.e. policy can still be avoided or materially altered. • Insured must abide by any new terms added into the contract of insurance (whether operational or amendments to coverage)
Basis of Contract Clauses	• Concern: obscure mechanism discharging insurer liability if information provided is inaccurate, without taking materiality of information into account • Proposed remedy: abolish such clauses	N/A – clauses will have no effect and no party can contract out of the provision	
Remedy for Breach of Warranty	• Concern: disproportionate nature of blanket remedy for any breach • Proposed remedy: Breach of warranty to suspend liability (i.e. cover reinstates when remedied), and only for the type of loss that the warranty is intended to manage, at the time/location concerned	• Insurer must pay losses which occur prior to breach of warranty or after breach is remedied • Insurer must continue to pay losses which are not of the same type that the breached warranty is intended to manage (e.g. flood losses after a security warranty is breached)	• Insured must be aware of and comply with all warranties in their contracts, since they remain critical terms • Attention to be paid given potential for warranties to be created using various terminology and in various parts of a policy • Suspension of liability across all locations and across an entire risk type (e.g. theft) remains a significant limitation to coverage
Breach of Other Conditions	• Concern: lack of certainty about how individual clauses will be treated in the courts • Proposed remedy: Breach of condition can only limit liability for the type of loss it is intended to manage and at the time/location concerned	• Insurer must pay losses which are not connected to the condition that has been breached, either by type of loss or location or time	• Insured must be aware of and comply with all conditions in their contracts • Attention to be paid given potential for conditions to be created using various terminology and in various parts of policy
Late Payment of Claims	• Concern: no right to claim damages for late payment of claims, out of step with standard contract law • Proposed remedy: introduce implied term about payment of claims so that customer has recourse if there is unreasonable delay • While insurers can contract out of this implied duty, it will still apply to them if they are held to have breached it in a deliberate or reckless way	• Insurer must pay claims within a reasonable time • If there is dispute over liability or quantum, the insurer must conduct itself reasonably e.g. amending its position if new evidence comes to light	• Insured must comply with any conditions in the policy which govern post-loss action / claims handling

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IWLRW4017 06.14