

The Secret Life of A Wordings Technician Past, Present and Future

Presented by Ian Anscombe and Simon Penaluna

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The Willis logo is displayed in white serif font on a dark blue rectangular background. This logo is positioned on the right side of a horizontal bar that is split into a light grey section on the left and a dark blue section on the right.

Introduction

- How the function of a Wordings Technician has grown over the last 10 years
- How Wordings are developed
- Common Pitfalls encountered
- How Wordings can vary in different countries
- Wordings Hot Topics
- The Future

Past



- In the past details of the risk was placed utilising a Slip (or anything else to hand)
- Slips often stated “Wording tba” or “as expiring” or “as original”
- Slips differed from broker to broker
- Wording prepared based on??
- Clauses identified but not attached
- Wording was only agreed when client chased or in some cases there had been a claim
- Formal Policy issued only once Wording had been agreed and then this could be queried, redrafted and amended and re-agreed



Remote

- Wordings technician often worked in insolation, with no involvement in the risk transfer process
- Limited Access to the broker who had prepared the Slip or the correspondence relating to the risk
- Wording could be prepared six months after inception
- Agreement could take years!



Backlogs

- Sometimes several years ' worth of Wordings would be agreed at the same time
- Broking houses accumulated hundreds of thousands of policy backlogs
- No regulation and no such thing as contract certainty



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What changed?

- Problems recognised by the Financial Regulator in 2002
- London Market expected to get its house in order
- Concerted effort for the removal of Backlogs
- Slip replaced by Market Reform Contract
- A Market consistent approach to format and headings on Slips/MRC
- Contract Wording had to be included or identified within the MRC prior to marketing and agreed at the inception of the risk
- No more Wording “tba” at inception
- Duplication was reduced – “Slip (MRC) and Wording” forms the contract



Outcomes of change

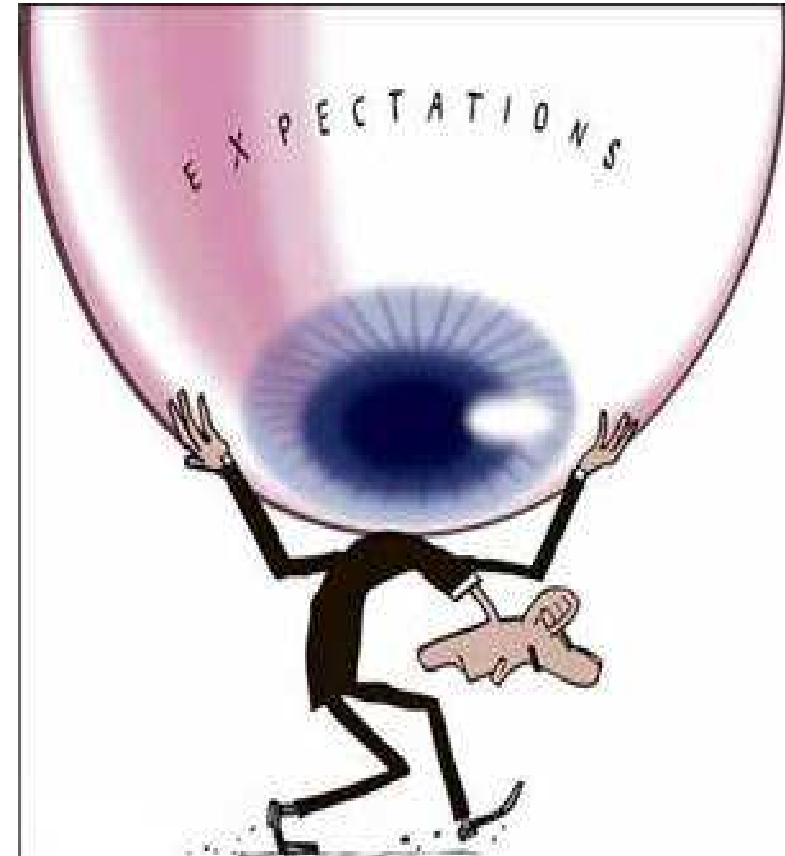
- Contract terms had to be agreed at the inception of the risk
- Final Evidence of Cover within 21 days of inception, Policy within 30 days
- Role of the Wording Technician moved from one of the last cogs in the wheel to the forefront of the insurance placement process
- Better client outcomes
- Reduced exposure to Errors and Omissions
- Reduction in Policy Disputes
- In theory, no more backlogs



Present - Client Expectations

Greater focus on:

- Sound Market security
- Cover
- Price
- Insurance capacity to meet their needs.
- Risk Managers are more focused on Wordings
- AIRMIC/external consultants are advising clients to challenge insurers/brokers to obtain a better deal



Present Wordings Role

- Prepare/Review Wordings/Compare at any early stage in the renewal process
- Making recommendations where the scope and/or clarity of coverage could be improved
- Engagement with brokers on a daily basis
- Part of the Team
- Check, Prepare MRC and sign off before broker approaches the market
- Meetings with Clients/Risk Managers/Underwriters/Lawyers
- Review/Handle day to day questions from clients on scope of coverage in existing wording



Contracts

Review Indemnity
Agreements in Client's
Contracts:

- Scope of Coverage
- Additional Insured Status for contracting parties
- Waiver of Subrogation
- Contractual liability exclusions
- Joint Ventures responsibilities



Wording Construction

- Detailed knowledge liability insurance forms
- Not novels (though they can be!)
- You do not simply read them you analyse them
- The trick is to extract the key words and phrases from the text.
- Wordings and Clause libraries
- **Contra proferentem** (Latin for “against the offeror”) (broadly speaking in the event of ambiguity the wording would be construed by the courts against the drafter of the document as he/she had the opportunity to make the wording clear.



Common Pitfalls

- Spelling, Syntax and Grammar and Punctuation
- Ensure Consistent identification of defined terms
- Use of damage, Damage, Property Damage, Injury, Bodily Injury, injury, Personal Injury
- Write Backs to Exclusions – avoid double or triple negatives
- Avoidance of Warranties/Conditions Precedent
- Subjectivities without consequences/time limits
- Clarity when using multiple triggers on layered programs
- Duplication of coverage – Dovetailing with other classes of business (Professional Indemnity, D&O, Marine)



UK Wordings

- The role of a UK Wording specialist differs to International wordings in that Simon builds up the wording from component parts (key words or phrases) whereas I breakdown the wording and analyse each component part.
- To demonstrate this approach we will review a typical insuring clause.



UK Wordings

The Insurers will Indemnify the **INSURED** for all sums (including claimant costs and expenses) which the **INSURED** becomes legally liable to pay for damages in respect of **PERSONAL INJURY** to any person loss or **DAMAGE** to Property obstruction interference with traffic loss of amenities trespass nuisance or any like cause happening anywhere in the world during the period of insurance in connection with the **Business**.

- Words in capitals are defined
- Words in red require further analysis by the drafter

UK Wordings

Typical issues found in UK Insurers wordings :-

- Advertising Liability (such as infringement of copyrights registered trade marks design rights libel and slander (if not otherwise covered is not given as standard across the market yet most if not all companies now have a website giving rise to publishing liability
- Very narrow definition of Personal Injury - does not always include libel and slander yet many people speak at conferences like ours.
- Exclusion of Personal Injury rather than Bodily Injury of employees whilst working in connection with the business. Exclusion does not dovetail against the cover provided by an Employers Liability policy.
- Define words not in alphabetical order so need to hunt them out.
- Extensions included in the wording but only operative if shown in the schedule. The Insurer does not always point out this fact within the extension.
- Cover for defence costs widened to include breach of statutory duty in any court. The policy additionally includes cover for Legal Costs relating to specific Statutory Acts which give rise to criminal prosecution.
- No central underwriting policy on how the wording should be interpreted.

Around the World

- US - ISO Forms, standard forms and endorsements
- Latin America – Local Wordings very prescriptive, lengthy lists of clauses
- France – Wordings very broad, almost always in French language
- Scandinavian – Broad coverage, multi lingual
- South Africa – London style Wordings, multiple sections
- Asia – Combination of Prescriptive carrier wordings with some more relatively broader bespoke wordings
- Israel – local wordings tend to be broad and broker wordings very broad
- Australia – Traditionally Broad Wordings, manuscript forms and carrier forms



International Wordings

- More likely to be manuscript (Lloyd's/client/historical)
- Likely to start with a broad Base Wording
- Still use PCA 94 (or variations thereof) as Primary Public/Products and Pollution Liability (or broker equivalent wording) – nearest to a market standard wording
- More focus of Master Policy/Global Liability Policies
- Combined Multi Risk/Section Wordings such as Onshore/Offshore utilising several forms



Wordings Hot Topics

- Corporate Manslaughter
- Insurance Act 2015



Corporate Manslaughter

Mind the Gap



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Introduction

- We will :-
 - Overview the breadth of cover typically provided in the UK market and the variations between insurers wordings.
 - Discuss how compliance with the Insurance Companies (Legal Expenses) Insurance Regulations 1990 may impact the insurers ability to provide the breadth of cover expected by our clients.
 - Discuss how insurers can be more transparent on the breadth of cover provided in their policies.

Typical Breadth of Cover Provided in the UK Market

- **Costs and expenses** to defend a prosecution brought under the Corporate Manslaughter and Corporate Homicide Act 2007 subject to insurers prior consent:-
 - When does cover commence – Police Evidence and Crime Evidence Act (PACE) interview?
 - Conduct and control vested with insurers - Conflict of interests between Insured/Insurers?
 - Discharge of liability clause (Insurers right to tender the limit or any lesser sum which in their view would settle the claim)
 - Event could involve the death of both employees and third parties giving rise to claims for Legal Expenses claims under Employers Liability Public Liability Directors and Officers Liability or Motor Insurance where breadth of cover sub-limits and indeed insurers vary
 - Exclusions of cover where an indemnity is provided by any other insurance policy.
 - Contribution clauses

Typical Breadth of Cover Provided in the UK Market

- **Prosecution costs** (not all insurers provide such cover)
- **Typically sub-limited** between GBP1 and GBP5M either any one prosecution or in the aggregate during the period of insurance – would this likely to be sufficient for a major global client?
- **Subject to an accompanying civil claim**
 - How is the policy constructed
 - What level of cover is an insurers permitted to give (more on that later)
- **Conflicting Cover** - Some insurers provide cover under the Public Liability Section and then include a separate **Legal Expenses section** but not always clear how the two covers interface if indeed that is the intent (more on that later)

Insurance Companies (Legal Expenses) Insurance Regulations 1990

- **Insurers exempt from the regulations:-**
 - Application
 - 3 (3) “Those regulations do not apply to anything done by a person providing civil liability cover for the purpose of defending or representing the Insured in an inquiry or proceedings which is at the same time done in the insurer’s own interest under such cover”
- **Insurers not exempt from the regulations (Parts 4 to 10 apply)**
- Requirement of a separate policy or exception
- Arrangements for avoiding conflict of interests
- Freedom to choose lawyer
- Arbitration
- Notification to Insured of his rights
- Classification of Insurance Business

The law is not entirely clear whether a licence to write legal expenses cover is required in both cases above.

How Can Insurers Be More Transparent Over The Cover provided?

- Insurance wordings must be clear on the following:-
 - When the cover for such costs commences e.g prior to a charge being brought by CPS
 - Whether cover is subject to an accompanying civil claim:-
 - If so:-
 - Expressly state cover is only operative as long as the Insurer has a direct or indirect financial interest in the outcome of the trial.
 - Delete any exclusion of cover where an indemnity is provided by any other policy or limit to where a legal expenses policy has been purchased
 - Add a provision that in the event of more than one policy providing such an indemnity each insurers will pro-rate such costs in proportion to how their limit of indemnity bears to the total limit of indemnity for such costs provided by all insurers.
 - Include prosecution costs as standard across all UK policies

How Can Insurers Be More Transparent Over The Cover provided?

- Any separate Legal Expenses cover must be shown as a separate section of the wording and comply with any relevant provisions of the Insurance Companies (Legal Expenses) Insurance Regulations 1990 .

Insurance Act 2015

Wordings Perspective

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Insurance Act 2015

- Just to recap the Act comes into force as follows
 - **Part 2 – Duty of Fair Presentation** (and Section 21) and Section 14 apply to contracts entered into after 12 August 2016 or variations agreed after 12 August 2016 to contracts of insurance entered into at any time.
 - **Part 3 – Warranties and Other Terms** and **Part 4 – Fraudulent Claims** apply to contracts of Insurance entered into after 12 August 2016
 - The delay is designed to give all stakeholders an opportunity to prepare for and be familiar with the law and to amend their wordings and work practices accordingly.

Insurance Act 2015

- AIRMIC advised its members to take advantage of the Insurance Act 2015 now and produced a model endorsement
- Prompted Clients to put pressure on their Brokers/Insurers to endorse their policies
- The AIMIC Endorsement cover focuses on the following aspects of the Act.
 - Basis clauses
 - Warranties
 - Terms not relevant to Loss
 - Remedies for non disclosure and/or misrepresentation. As Brokers care must be taken that any existing innocent non disclosure clause does not place the insured in a better position than the Act. For example some existing clauses permit the insured to pay any additional premium due and cover continues whereas the Act proportionally reduces the claim.

Insurance Act - Basis clause

- Been around for years!
- Converts statements made in a proposal into warranted statements.
- Any proposed endorsement to bring in the provisions of the Act now must expressly state such basis clauses shall be disappplied wherever they may appear

Insurance Act - Warranties

- What is a warranty and how does the law currently apply?
Good Luck [1992]
- How does the Insurance Act 2015 change this position?
 - Creates a suspensory condition
 - Insurers remain liable for losses occurring or attributable to something before the breach of warranty
 - Insurers not liable for losses attributable to something happening before the breach was remedied.

Insurance Act – Terms not relevant to the actual loss

- What is intended?
 - Prevent an insurer from relying on a breach of a term by the insured if that breach is entirely unconnected with the loss which the Insured suffered.
- What terms does section 11 apply?
 - Any warranty or other term if compliance with it would tend to reduce the risk of one or more of the following:-
 - Loss of a particular kind
 - Loss at a particular location
 - Loss at a particular time
- Which terms does Section 11 not apply?
 - Terms defining the risk as a whole

Insurance Act – Terms not relevant to the actual loss

- **What does Section 11 provide:-**

Insurer cannot rely on non-compliance to exclude limit or discharge its liability under the contract for loss if the Insured satisfies sub-section 3

Sub-section (3)

The Insured satisfies this subsection if it shows that non-compliance with the term could not have increased the risk of the loss which actually occurred in the circumstances in which it occurred.

This may apply in addition to Section 10 – Warranties

Insurance Act

- Lets consider two hypothetical claims scenarios where a term of a policy may be relevant to Section 10 – Warranties and Section 11 – Terms not relevant to the actual loss.
- Claims Scenario Example 1
- The policy contains a warranty that Fork Lift trucks are only driven by a person over the age of 21.
- A Folk lift truck overturns whilst being driven by a 20 year old causing injury to the driver of the vehicle being unloaded . Insurers deny liability due to a breach of the warranty by virtue of the drivers age at the time of the accident.

Insurance Act

- **How would section 10 apply?**
 - Was the warranty breached at the time of the accident?
- **How would Section 11 apply:-**
 - Was the warranty one of risk mitigation?
 - Loss of a particular kind
 - Loss at a particular location
 - Loss at a particular time
 - Did the warranty apply to the risk as a whole?
 - Non compliance with the term could not have increased the risk of the loss which actually occurred in the circumstances in which it occurred.

Insurance Act – Terms not relevant to the actual loss

Claims Scenario Example 2

- The policy contains a definition of territorial limits which limits cover to non manual visits by employees outside of the UK.
- A welder is set over to France to perform some work for a client. Whilst walking in Paris between sites he injures a passer by opening up his umbrella. The injured party brings a claim against the employee and his company as he was working in connection with the business at the time of the accident.
- Both parties seek an indemnity under the public liability policy by virtue of the Overseas Liability Extension.
- Could Insurers deny liability for the claim even though the accident did not arise out of manual work being performed by the Insured at the time of the accident?

Insurance Act – Terms not relevant to the actual loss

- **How would Section 11 apply:-**
 - Was the term one of risk mitigation?
 - Loss of a particular kind
 - Loss at a particular location
 - Loss at a particular time
 - Did the term apply to the risk as a whole?
 - Non compliance with the term could not have increased the risk of the loss which actually occurred in the circumstances in which it occurred.

THE FUTURE FOR THE WORKING Technicians



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The Future for the Wordings Technicians

- Wordings community getting smaller
- Need for experienced drafters to look at the complex issues
- Urgent need to transfer specialist wordings knowledge
- Encourage new Wordings drafters into insurance environment
- Eliminate the perception that Wordings is far from glamorous
- Several basic Exams courses
- Relatively few Reference Manuals and Websites (Airmic/IRMI)
- Lloyd's Wordings Repository and LMA (model wordings)

Future of Wordings

- Pressure to simplify the Wordings Process
- Over 20,000 Registered Wordings – rationalise like ISO?
- Engagement with Insurers on new Products
- Engagement between Wordings Technicians and lawyers
- Contract Clarity should support Contract Certainty

Thank you for listening
