

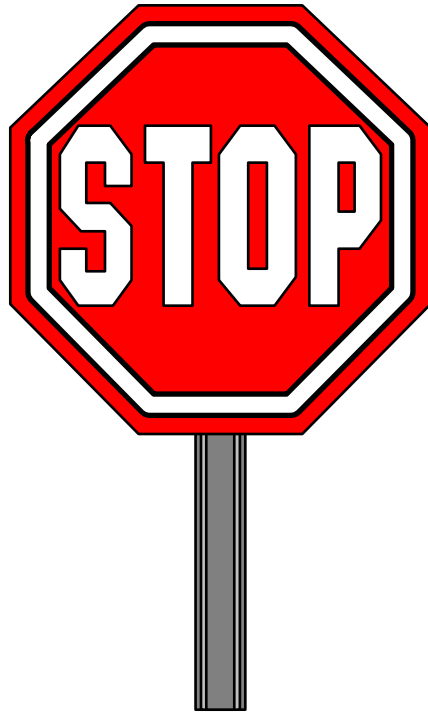
# Minimum Wordings

You can always get what you want

# Who is getting what they want ?

- Regulator and Professional Bodies
- Consumer
- Insurer

# The regulator



# Regulators compared

**The Professional Bodies, combining Regulation and Representation all see protection of the Public as an essential aim.**

- **Law society** Regulating and setting standards for solicitors to make sure they deliver a good and ethical service to consumers
- **RICS** - Maintain and promote the usefulness of the profession for public advantage

# Regulators compared

- ICAEW -the powers conferred on the Institute by the Charter relate to the protection of the **public** interest through:
  - superior education and training
  - the maintenance of high professional standards
  - technical excellence in the field of accounting in all its forms

# Regulators compared

**The FSA is an independent authority created by Statute with these objectives**

- market confidence: maintaining confidence in the financial system;
- public awareness: promoting public understanding of the financial system;
- consumer protection: securing the appropriate degree of protection for consumers; and
- the reduction of financial crime: reducing the extent to which it is possible for a business to be used for a purpose connected with financial crime.

# FSA

- Dual Regulation
- FSA power to award substantial sums in compensation, binding on the Firm
- FSA to set standards

# Suitability Assessment

ICOB 4.3.1R

reasonable steps to ensure that, if you make a personal recommendation to a customer to buy or sell a non-investment insurance contract, it is suitable for the customer's demands and needs at the time the recommendation is made

*Fitness for purpose ?*



# Sufficient information

- To enable the commercial customer to make an informed decision about the contract being prepared
- Guidance - may vary according to the commercial customers knowledge, experience and ability and
- should take account of the main benefits exclusions, limitations, and conditions of a policy (5.4.1R - 5.4.3G)

Consumer cause is championed



# Regulators want a near guarantee

Of consumer Protection at someone else's  
expense

- \*Minimum limits

- \*Wide Cover

- \*Non voidance

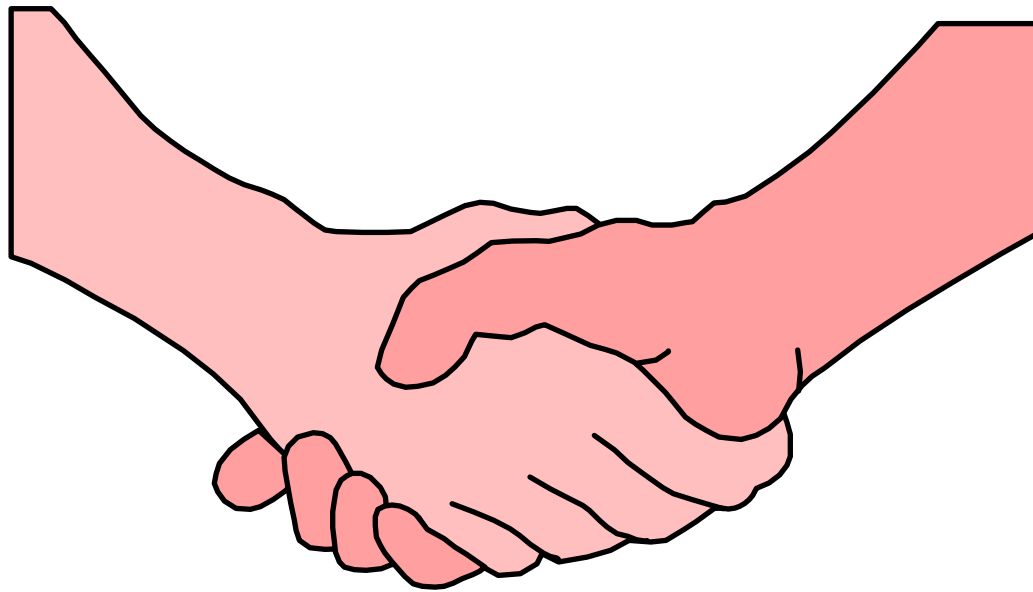
- \*Costs in addition

- \*Run Off

- \*Ombudsman awards

- \*Assigned Risks Pool

# Benefit for guarantee

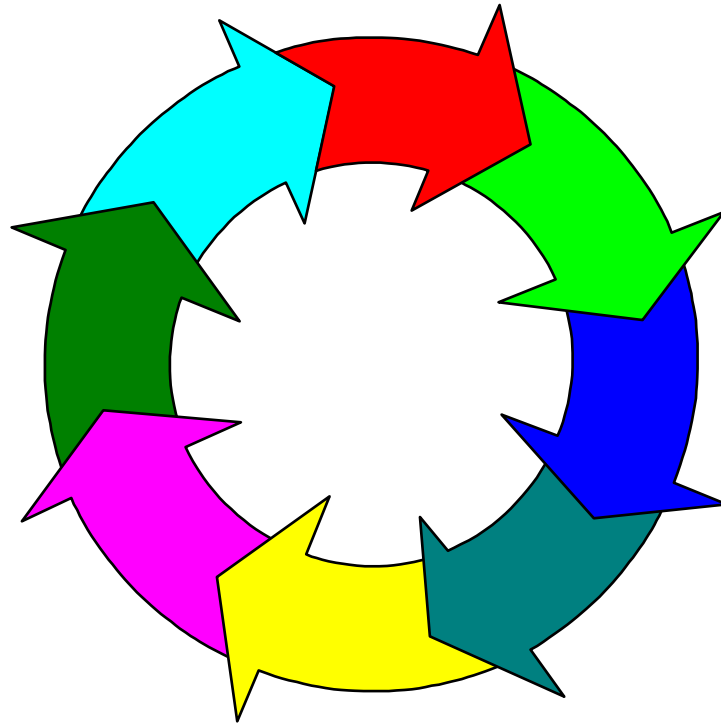


# Insurer - Potential

Previous speakers have offered these statistics

- Solicitors 116,000 in number producing £242 m of primary premium
- Surveyors 86,000 in number producing £40m of primary premium
- Accountants 124,000 producing £?
- IFA's 4000 Producing £?
- General Insurance brokers (6,000 estimated)  
part of around £1.5 to £2bn UK premium in market

What goes around comes around



# Insurers

Should be happy whatever the terms provided

- The terms mean what they think they mean  
and
- They can charge an appropriate rate

# Are Insurer provisos fulfilled

- Adequate premium Pot ?
- Is the incidence and size of claims increasing ?
- Are the terms understood (Whoops, Aggregation?) ?



# Minimum wording

What have you got ?

# Civil Liability

It is criminal how wide it is

but should it be wider? Consider the effect of successful criminal or quasi criminal prosecutions on the defence of the Civil claim

# Limiting Civil Liabilities

- Professional business, private legal practice
- Exclusions
  - By activity - D&O, supply of goods
  - By Location – USA, Canada
  - By Effect – Damage to property or person

# Selected Aspects of Civil Liability

## Fiduciary Duties

- Any one can assume fiduciary duties (including the errand boy)
- Not all breaches of duty by a fiduciary are breaches of fiduciary duties
- Its all about loyalty to the Principal's interest
- And the consequences of breach may be more costly

# Other aspects of civil liability

- Absolute obligations: solicitors' undertakings are in but accountants' and surveyors' guarantees are out
- Employment usually excluded subject to saving provisions
- Personal Injury: similarly excluded, but the residual cover can prove expensive and remember s.33 of the 1980 Limitation Act

# The not so special clauses

Anti avoidance and related clauses

Different in approach but different in  
substance ?

# Voidance & Breaches (solicitors)

No voidance and repudiation on any grounds including, non disclosure or misrepresentation whether fraudulent or not.

No reduction or denial of liability on any ground including any breach of any term or condition of insurance except to the extent that one of the exclusions apply.

But Insurers may seek reimbursement by reference to prejudice to the extent that it is just and equitable

# Voidance and Breaches

(chartered accountant)

- No voidance or discharge from liability on grounds of any non-disclosure/misrepresentation of facts or untrue statements in Proposal form or elsewhere provided Insured establishes to insurer's reasonable satisfaction that such was free of any fraudulent conduct or intent to deceive
- If non disclosure was of known circumstance cover may be limited
- Breach of conditions resulting in prejudice may entitle insurer to reduce indemnity



# Claims and circo notification

- Surveyors – circo as soon as practicable and claims as soon as practicable or within 14 days (whichever sooner) and prior to expiry
- Solicitors – minimum terms contain no requirement to notify circo or claims
- Accountants - claim or intention to make a claim or any loss suffered as soon as practicable (condition precedent) and circo as soon as practicable

# Circs validation

- Solicitors none
- Accountants – May
- Surveyors – May
- Architects (RIBA wording) – likely

# A mismatch between Proposal and wording

- Proposal may pose questions regarding details of “may” and policy may accept claims of a “likely” nature
- Exclusions of prior notifications should match

# Ombudsman and other awards

## Multi Regulatory regimes

- Designated Professionals - may be dual regulated
- RICS members have to be dual regulated if carrying out Insurance mediation
- Gentleman's agreement between the Law Society and the FSA
- Know the Complaints procedures and the Ombudsman's powers and limits
- Reserve adequately - limits may vary

# FSA definition of Designated Professional Body

- Law Societies of England Wales, Scotland and N. Ireland
- Institutes of Chartered Accountants (ICA) of England Wales, Scotland and N. Ireland
- Association of Chartered Certified Accountants
- Institute of Actuaries

Minimum terms can be changed

# Recent changes

- Accountants - 1.10.2004
- Solicitor - 1.11.2005
- Insurance brokers - IFA's w.e.f 14.01.2005
- Surveyors - other than to join the FSA for Insurance activities

# Accountants

- Excludes Fidelity
- Excludes contractual guarantees
- New exclusions -Employment disputes,  
Products exclusions (not tailored software)  
and Express warranties or Guarantees



# Solicitors

- Increased Limit - £3m or £2m
- New One claim definition
- Suspended practice clause
- Definition of Lead Insurer
- Multiple Insurer Clause and consequential amendments

# Insurance brokers

- 14th January 2005
- Minimum limits - Euro 1m each claim and Euro 1.5m in the aggregate or 10% of annual income up to a maximum of £30m OR a comparable guarantee.
- Group policies to be based on combined income with minimum limits applying to the constituent parts.

# Insurance brokers

- No prescribed wording but should include cover in respect activities of employees, or parties for whom responsible such as Appointed representatives,
- Continuous from date FSA Permissions were granted and
- provide cover in respect of Legal Defence costs

# Solicitors

- all claims against any one or more insured arising from:
  - (i) one act or omission;
  - (ii) one series of related acts or omissions;
  - (iii) the same act or omission in a series of related matters or transactions;
  - (iv) similar acts or omissions in a series of related matters or transactions;and
- all claims against one or more insured arising from one matter or transaction will be regarded as one claim.

# A thought about the change

If you have changed your aggregation clause,  
do you then need to consider your  
notification clauses

Can you tell the Profession's  
class by the exclusions they keep

