

Insurance Distribution Directive ("IDD") previously known as "IMD2"

Early 2015

- IMD2, the Mediation Directive, is an EU-wide regime for intermediaries involved in promotion, sale and administration of certain general insurance products with the intention of creating common standards, ensuring accurate advice and disclosure.
- IMD2 will, amongst others, affect insurance and reinsurance companies, brokers, claims handlers, loss adjusters and intermediaries such as aggregators.
- Political agreement between the EU Parliament, Council and Commission on IMD2 has not yet been achieved. Triologue negotiations are likely to take place in early 2015. Transposition is then expected within 2 years.

Consumer Rights Bill

30 March 2015

- The Bill replaces the UTCCR Regulations 1999 and UCTA 1977 in relation to business-to-consumer contracts (but insurance contracts will still be excluded), with the aim of extending consumer protection by listing more contract terms which may be regarded as unfair.
- This could be useful for insurers pursuing recoveries by way of subrogated actions in the name of consumer insureds, but could make it more difficult for PI insurers defending professionals who hoped to limit liability by certain terms in their consumer contracts.
- Outstanding issues on the Bill were returned to the Commons for consideration which were expected to be debated on 9 March 2015

[Click here for Bill progress](#)

Pre-Action Protocol for Road Traffic Accidents

6 April 2015

- Amendments to the Civil Procedure Rules will come into force which affect the Pre-Action Protocol for Low Value Personal Injury Claims in Road Traffic Accidents (RTA PAP).
- This accommodates the introduction from 6 April 2015 of a new system for sourcing medical reports for soft tissue injury claims brought under the RTA PAP.
- A not-for-profit company called MedCo has been set up to operate this system. It means that medico-legal experts and medical reporting organisations will need to be registered with MedCo in order to provide medico-legal reports for claims brought under the RTA PAP. A new

accreditation requirement for those experts and organisations will also be introduced to help drive up standards in medical evidence.

- Users will be able to use the MedCo Portal to search for individual experts or organisations and will receive randomly generated results, to prevent the potential for conflicts of interest between those commissioning and those providing medico-legal reports.
- The amendments will also require solicitors to undertake previous claims checks on potential claimants and to confirm to the defendant this has been done.

[Click for CPR 78th update](#)

Criminal Justice & Courts Act 2015

Possibly late 2015

- Section 56 of the Act introduces the concept of "fundamental dishonesty" in personal injury claims.
- If the Court finds that the Claimant has been fundamentally dishonest the Court must dismiss the claim, including any elements where no dishonesty proved.
- Royal Assent was granted on 12 February 2015. No implementation date has yet been given, but a date in late 2015 is possible for the Act to come into force

2015

Government fraud taskforce

March 2015

- David Hertzell (ex-Law Commissioner) is leading a government fraud taskforce aiming to broaden the scope beyond motor insurance
- Industrial deafness, household claims and the regulation of solicitors are all key areas for attention.
- The task force aims to publish an interim report in March 2015 in advance of the May election.

CPR Part 36

6 April 2015

- A revised version of CPR Part 36 is due in force on 6 April 2015 by way of the 78th update to the Civil Procedure Rules.
- Since the last revision of Part 36 in 2007 there has been a large amount of case law relating to various aspects of settlement including fraudulent claims and offers in respect of a split trial.
- The changes mostly reflect the case law and aim to simplify the rules to make them more accessible to court users, particularly litigants in person.
- "Sunset clauses" will now be allowed, meaning an offer can now contain an automatic withdrawal date.

[Click for CPR 78th update](#)

Flood Re

Q4 2015

- A scheme to provide the 1-2% homes at highest risk of flooding with affordable flood insurance, funded by a levy on insurers.
- Excluded homes include buy-to-let, new build and leasehold. Band H homes are no longer excluded. Recent agreement on certain matters allows legislation to be laid in Parliament this year which will enable Flood Re to operate as a reinsurer.
- Flood Re was due in force in Summer 2015 but it is now more likely to be the end of 2015.

Third Parties (Rights Against Insurers) Act 2010

Expected Late 2015

- This Act allows a claimant to issue proceedings directly against the insurers of an insolvent defendant. It also provides for earlier disclosure of insurance arrangements and whether the policy would respond, without the need to issue court proceedings. The third party claimant may also notify the insolvent defendant's insurers direct of its insurance claim.
- The Act is not yet in force. Amendments have been made by the Insurance Act 2015 which correct certain defects. The amendments will be effective from 12 April 2015, but the Act itself still needs an appointed commencement date by SI to come into force, which is expected to happen in late 2015.

Insurance Act 2015
12 August 2016

- The Insurance Act 2015 received Royal Assent on 12 February 2015 and comes into force 18 months after.
- The reforms propose a default scheme for business insurance in four areas of insurance law, Transparent opt-out of the scheme is permitted, except for "basis of contract" clauses (which are to be abolished). The reforms include dropping the "duty of utmost good faith".
- It seems likely that the new duty of fair presentation, determining whose is the relevant knowledge for disclosure purposes, the new remedies for non-disclosure, and/or whether or not an opt-out clause has been effective, are issues that will be litigated in the Courts.
- Insurers, intermediaries and large insurance buyers need now to start putting in place procedures which take into account the new duty of disclosure.

2016

2017

Solvency II
1 January 2016

- The Solvency II Directive is designed to introduce solvency requirements on an economic risk basis for insurers and reinsurers. It will replace EU Life and Non-life, Reinsurance and Insurance Groups Directives with the view of establishing a framework to regulate insurance across Europe.
- The transposition deadline is 31 March 2015 and implementation by firms is due 1 January 2016.
- EIOPA is currently working on guidelines and technical standards to ensure the uniform application of Solvency II.
- Solvency II could increase the amount of business going into run-off in Europe owing to higher capital requirements.

EU General Data Protection Regulation
2017

- Having been voted through by EU Parliament, the EU Council is now to review the amended Regulation.
- Articles 30 and 31 require notification of a personal data breach to the National Data Protection Authority and to the data subject. If these provisions remain, there could be a surge in the uptake of cyber risk cover and an increase in claims.
- There is no firm timetable in place by which the Council will finish its review, although the aim is Q1 2015. The Regulation is unlikely to come into force before 2017.

Supreme Court cases

- *International Energy Group v Zurich Insurance* – hearing on 27 January 2015, awaiting judgment. Issues around causation of mesothelioma in context of employer's liability policy insurance period.
- *BPE Solicitors v Gabriel* – permission to appeal granted, hearing not yet listed. Permission refused for other parties Little and High Tech. Issue: whether solicitors liable for a failure to exercise reasonable care and skill where there had been a serious drafting error in a facility letter.
- *Thevarajah v Riordan* – permission to appeal granted in Nov 14. Hearing listed for 17 Nov 2015. May provide welcome higher court authority on relief from sanctions under CPR 3.9.
- *Coventry v Lawrence* – Hearing took place in February 2015. Awaiting judgment expected in July 2015. Issue is whether the order for costs in SC's earlier judgment, which includes a large success fee and ATE premium, infringes the respondents' rights under Art 6 of the ECHR to a fair hearing.
- *The Mayor's Office for Policing and Crime v Mitsui Sumitomo Insurance Co (Europe) Ltd and others* - hearing listed for 1 day on 24 Nov 2014 on the 2nd ground of appeal only. Issue concerns the Mayor's Office's liability to pay compensation under the Riot (Damages) Act 1886 for consequential losses caused by riot damage, such as loss of profit or rent.
- *Asset Land Investment PLC v FCA* – permission to appeal was granted on 16 Dec 2014. A land bank firm was shut down by the FSA for operating a collective investment scheme (CIS) without authorisation. Issue is whether arrangements fell within the definition of a CIS under S.235 of FSMA. Potential implications for IFAs and the advice they gave.

Court of Appeal cases

- *Wellesley v Withers* – Judgment reserved on 9 Oct 2014. Defendant solicitors appealing liability for drafting an agreement negligently as a result of misunderstanding instructions.
- *FCA v Capital Alternatives* – Hearing took place on 27/28 Jan 2015, awaiting result of reserved judgment. Whether certain investments are deemed Collective Investment Schemes and so were operated unlawfully. At 1st instance the Chancery Div. gave judgment to the FCA on this issue. Potential implications for IFAs and the advice they gave.
- *Gavin Edmondson Solicitors v Prospect Legal Ltd* (Haven Insurance) – Hearing window 23 Mar 15 – 21 Jul 15. Issue is whether an insurer can lawfully make settlement offers directly to claimants in low-value personal injury claims arising from road traffic accidents when they have solicitors acting on conditional fee agreements.
- *Titan Europe v Colliers International* – Permission to appeal granted 6 Feb 2015. Hearing window 18 May 15 - 2 Nov 15. Involves allegations of negligent overvaluation by a valuer of a property that was collateral for a securitised loan.
- *Westcott v FOS* – Permission sought to appeal a Judicial Review (JR) decision. Certain IFAs who have been the subject of complaints to the FOS sought stays from FOS determination pending the result of litigation in the Comm Ct. The stays were refused so the IFAs sought JR of the decisions not to stay. FOS successful at 1st instance.

Other cases of interest

- *Barclays v Landgraf & 2 other Dewey & LeBoeuf partners – Comm Ct* – Trial listed 5 May 2015 (7-9 days). The Defendants resist payment of certain loans as they argue that the bank and their former firm induced them to take on personal debt to keep the firm afloat.
- *Mortgage Agency Services Number One Ltd v Edwards Symmons – Chancery Div* – Hearing listed 8 June 2015 (5 day window). Issue is whether the lender is entitled to recover from an allegedly negligent valuer the break costs of interest rate swaps which the lender entered into to hedge risk under certain loans against properties for which the valuer gave valuations.
- *Orientfield Holdings v Bird & Bird – Chancery Div* – Trial listed 15 June 2015 (5 days). Solicitors allegedly negligent in failing to pass on info re a major school development plan nearby which led to loss of £2m deposit when buyers pulled out of purchase after finding out about plans.
- *Cattles plc v PWC – Commercial Ct* – Trial listed 5 October 2015 (16 weeks). This is a £1.6bn auditors' negligence claim arising out of the collapse of Welcome, a sub-prime lender subsidiary of the Claimant. The FSCS declared Welcome in default in 2011 because unable to pay PPI claims against it. The claim concerns the audit of the 2006 & 7 financial years. It heralds a predicted wave of auditors' negligence cases in wake of the financial crisis.
- *Antonio Caliendo, Barnaby Holdings LLC v Mishcon De Reya* - Chancery Div – Hearing listed 30 Nov 2015 (10 days). Caliendo (former QPR chairman) alleges that Mishcon failed to secure him a good enough deal in the sale of QPR by failing to incorporate terms which would have given him a large bonus if QPR made it into the premier division, and failing to make provision for repayment of debts by QPR.
- *Deutsche Bank v Unitech – Comm Ct* – Interim judgment given on 3 Oct 14, Unitech were not ordered to pay into Ct. Final hearing not yet listed. Supreme Ct had refused the Bank permission to appeal amendments to Unitech's case on mis-selling arguments in relation to LIBOR manipulation allegations, so now a High Court battle centres around those arguments. Unitech can now put forward mis-selling arguments.
- *John Michael Sharp v Sir Victor Maurice Blank & Ors – Chancery Div* – Group Litigation Order sought in August 2014, awaiting decision. Lloyds Banking Group is being sued by 220 investors who claim being misled into supporting 2008 takeover of HBOS.
- *Schubert Murphy v The Law Society* - QBD. Survived a SJ/strike-out application in Dec 2014. Trial date not yet listed. Issue is whether the Law Society is liable for negligent misrepresentation after it listed a bogus solicitor on its "Find a Solicitor" website, who then stole money from a house purchaser.
- *Andonis Lemos v Clifford Chance* – No details yet on the court or proper case name - likely just at pre-action stage. A litigation professional funder is said to be claiming against Clifford Chance after indemnity costs were ordered against the professional funders. The allegations concern CC's role acting for Excalibur in a case about oil rights, which ended in defeat.

Other forthcoming developments

The Riot (Damages) Act 1886

- A consultation on proposals to reform and modernise the Riot (Damages) Act 1886 closed on 1 August 2014. We await the resulting report.

[Click here for consultation documents.](#)

Financial Services (Banking Reform) Act 2013

- Part 4 of this Act (SS. 36-38) introduces a new criminal offence of reckless misconduct in the management of a bank. This will likely impact FID&O insurers for costs related to investigations or prosecutions. However, prosecutions would likely only result from "cases resulting in the most serious public harm and with the most serious misbehaviour."
- Sections 36-38 of the Act are not currently in force; it is unclear when a commencement date is likely.

Small Business, Enterprise and Employment Bill

- This Bill, which was introduced to the Commons in June 2014, includes a power to order a disqualified director of an insolvent company to pay compensation to any creditors who have been caused loss by the director's conduct.
- If this provision becomes enacted it could significantly increase D&O exposure.
- The Bill is currently at the Report stage in the Lords.

[Click here to track the Bill's progress.](#)

Pension flexibility - New options from 6 April 2015

- The rules on how you can access your defined contributions pension savings are changing.
- From 6 April 2015, from age 55, you can access as much of your defined contributions pension savings as you wish. This will include taking money direct from your pension pot without having to buy an annuity or put the money into drawdown, and 25% of this sum will be tax free.
- This affects IFAs and the advice they give, as the FCA has published final rules (which also come into force on 6 April 2015) requiring that new personalised 'risk warnings' must now be given to customers when they contact a firm to access their pension savings. One of the key purposes is to encourage people who have chosen not to seek regulated advice to consider their options carefully before making an irreversible decision.