

**SRA Consultation: Insurance Act 2015**

Likely in June-July 2016

- As a result of the Insurance Act coming into force in August 2016, the SRA has consulted on consequential changes to the minimum terms and conditions of solicitors PII. The main proposal is to adopt the non-consumer standard of non-disclosure.
- The analysis of responses to the consultation (now closed) is in progress, which presumably will be published before the Act comes into force.

[Click here for the consultation papers](#)

**EU Network and Information Security Directive (NISD)**

Summer 2016

- This proposed Directive would ensure a high common level of network and information security across the EU.
- Under the proposed NISD the reporting of cyber security incidents could become mandatory for certain industries. This could provide access to cyber data to improve the development of cyber pricing models.
- The European Parliament has formally adopted the NISD which will now be entered into the Official Journal and enter into force 20 days later. Member States would then have 21 months in which to implement the Directive, so whether or not it has to be implemented in the UK depends on whether the UK has exited the EU by then.

**MOJ Consultation – Legal Services: removing barriers to competition**

3 August 2016

- The government is consulting on removing barriers to entry for ABS models in legal services to allow them to be more competitive against other legal services businesses. The consultation closes on 3 August 2016.

[Click here for the consultation papers](#)

**SRA Consultations: Looking to the Future**

21 September 2016

- The SRA is consulting on an Accounts Rules review, and at the same time on “flexibility and public protection” which proposes a review of the SRA Handbook including separate Codes of Conduct for solicitors and firms. Both consultations aim to simplify their respective areas. Both consultations close on 21 September 2016. recommendations.

[Click here for the consultation papers](#)

**PPI complaints consultation**

Late 2016

- The FCA has consulted on the introduction of a 2 year deadline for making PPI complaints, and on other proposals around PPI complaints. The consultation closed on 26 February 2016 and we await the FCA’s final decision.

[Click here for the FCA’s consultation papers](#)

**Insurance Linked Securities (ILS) framework**

Likely end of 2016

- HM Treasury has consulted on views on a new regulatory and tax framework for ILS business in the UK. The consultation ended on 29 April 2016 and we await the resulting report.
- The aim of the framework is to attract ILS business to the UK to help the UK maintain its position as a leading global hub for specialist reinsurance.

2016

**The Online Court**

July 2016

- The Interim Report of the Civil Courts Structure Review, headed by Briggs LJ, proposes the development of an Online Court which aims to use IT to create a court which will enable civil disputes of modest value and complexity to be resolved without incurring disproportionate legal costs.
- A 3-tier approach is currently proposed: 1 – automated process for identifying case/defence; 2 – conciliation and case management by a case officer; 3 – determination by judges.
- A final report is due to be published in July 2016.

**SRA Consultation: Switching Regulators**

14 July 2016

- The SRA proposes amending solicitors’ PII requirements to allow firms who wish to leave SRA regulation to be regulated by another Approved Regulator. Consultation closes on 14 July 2016.

[Click here for the consultation papers](#)

**Third Parties (Rights Against Insurers) Act 2010**

1 August 2016

- 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 comes into force on 1 August 2016.

**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 bring fundamental changes to business insurance law.
- It seems likely that: the new duty of fair presentation; determining what is a reasonable search and whose is the relevant knowledge for disclosure purposes; the new remedies for nondisclosure; and whether or not opt-out clauses have been effective, are all issues that will be litigated in the Courts.
- Insurers, intermediaries and large buyers of insurance should all have procedures in place now ready for when the Act comes into force.

**Insurable Interest Consultation**

Late 2016

- The Law Commission conducted a consultation on a draft Bill on its proposals on changes to the concept of insurable interest, which closed on 20 May 2016. A report is expected later in the Autumn 2016.

[Click here for the consultation papers](#)

**Riot Compensation Act 2016**

Possible before end 2016

- This new Act reforms the Riot (Damages) Act 1886 and in particular makes it clear that consequential losses are not covered by claims under the Act.
- The Act is not yet in force, but could be in force before the end of 2016.

Please note that this timeline does not cover all insurance developments. If you would like additional information please let us know.

**Insurance Block Exemption Regulation (IBER)**

31 March 2017

- This EU Regulation protects insurance industry practices such as sharing statistics and certain joint insurance arrangements (line slips, pools, consortia, joint binding authorities) from being deemed anti-competitive practices.
- A European Commission report preliminary conclusion is that IBER should lapse when it expires on 31 March 2017.

**Insurance Distribution Directive (IDD)**

22 February 2018

- IDD, 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.
- The IDD came into force on 22 February 2016. Member States now have 2 years from that date to transpose it into national law.

**General Data Protection Regulation (GDPR)**

25 May 2018

- The GDPR, which is EU legislation, requires notification of personal data breaches to the supervisory authority and to the data subject in certain circumstances. The insurance sector therefore expects an increase in the take-up of cyber insurance policies once the GDPR takes effect.
- The GDPR applies from 25 May 2018 presuming the UK is still a member of the EU at that point.

**Other forthcoming developments**

**Damages-Based Agreements (DBAs)**

- The Civil Justice Council published its recommendations to the government on 2 September 2015 on revisions and clarifications to the draft 2015 DBA Regulations, which themselves amend the current 2013 DBA Regulations. The government requested the report – we await its decision on the recommendations.

**Driverless Cars Regulation**

- In the Queen's Speech 2016 it was announced that a Modern Transport Bill would be introduced to set the framework for autonomous vehicles. The Department of Transport says it will consult in Summer 2016 on upcoming regulations to amend the Road Traffic Act 1988 to allow the regulation of driverless cars, including the provision of insurance cover. The consultation is likely to propose the introduction of a product liability element to motor insurance.

**Insurance Fraud Reform**

- The government accepts all of the recent taskforce's recommendations for changes in the legal system, including taking a more robust approach to defending claims, considering legal changes to reduce exaggerated or fraudulent late claims, considering a fixed costs regime for noise induced hearing loss claims and toughening action by the SRA against dishonest solicitors.
- The government will set out in due course how it proposes to implement reform and expects other involved organisations to act now on recommendations involving them; it will seek an update on progress later in 2016.

2017

2018

**Late payment of insurance claims**

4 May 2017

- The Enterprise Act 2016 introduces implied terms into insurance contracts (by way of new sections 13A and 16A to the Insurance Act 2015) that insureds can claim contractual damages for late payment of insurance claims if the insurer has not paid within a reasonable time
- Contracting-out provisions are available for non-consumer insurance contracts provided that breach of the implied terms is not deliberate or reckless.
- Late payment claims can only be brought within 1 year of payment/settlement of the underlying claim.
- The Act has received Royal Assent and comes into force on 4 May 2017.

**UK exit from the EU (Brexit)**

Possibly 2018

- The results of the UK referendum on Brexit were released on 24 June 2016 and went in favour of leaving the EU. Legal changes will not take place until up to 2 years after the UK gives notice to leave, which could be extended further by agreement from the EU. In the meantime, adherence to and implementation of EU law continues.
- The insurance sector has concerns that foreign companies will move their UK subsidiaries to other EU countries for passporting purposes which could lead to UK job losses. There could also be confusion over choice of jurisdiction and law in insurance policies when the Recast Brussels Regulation no longer applies, along with issues over parallel proceedings, service of proceedings out of the jurisdiction and recognition and enforcement of judgments. Regulation may eventually change but is unlikely to relax significantly.

Please note that this timeline does not cover all insurance developments.  
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**Supreme Court cases**

- *FirstGroup v Pauley* – Judgment reserved on 15 June 2016. Issue is whether bus companies must compel other passengers to vacate the wheelchair space for a wheelchair user.
- *Versloot Dredging BV v HDI Gerling Industrie Versicherung AG* – Judgment reserved on 17 March 2016. Issue: whether the whole of an otherwise valid claim should be forfeited where the insured used a “fraudulent device” by making an untrue statement.
- *Hayward v Zurich* – Judgment reserved on 16 June 2016. Estoppel issues on revisiting settlement agreements where better evidence of fraud is subsequently discovered.
- *BPE Solicitors v Gabriel* – Hearing listed for 14/15 Dec 2016. Interim hearing on personal costs liability of Mr Gabriel’s trustee in bankruptcy (TIB) decided in his favour so the TIB is now free to pursue the appeal. 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.
- *Vidal Hall v Google* – Indications that case has settled – trial was due 31 Jan 2017. The dispute is over the use of info through cookies via Apple Safari Browser. The remaining issues are over compensation for a contravention by a data controller. These issues impact on cyber policies.
- *Swynson v Lowick Rose LLP* – hearing listed for 21/22 Nov 2016. Alleged negligent advice by accountants concerning a loan. CA said loan repayment was collateral to loss caused by breach of duty so did not extinguish the loss.
- *Gavin Edmondson Sols. v Haven Insurance* – permission to appeal granted on 18 April 2016 on grounds 2-9. Issue is whether insurers can settle with claimants directly to avoid paying costs of the claimants’ sols under CFAs.
- *Taylor v English Heritage* – permission to appeal lodged in June 2016. Occupiers Liability case on requirements to warn about obvious dangers.

**Court of Appeal cases**

- *R (Chancery (UK) LLP) v FOS* – hearing listed for 28 or 29 Mar 2017. Appeal of judicial review which held that the FOS had jurisdiction. Underlying arguments: whether accountants gave investment advice re a collective investment scheme.
- *MacCafferri v Zurich* – Hearing floating on 30 Nov/1 Dec 2016. A late notification dispute centring on construction of a condition precedent to liability using the words “likely to give rise to a claim”. Comm Ct declared Zurich liable to indemnify.
- *Orientfield Holdings v Bird & Bird* – Hearing floating on 17/18 Jan 2017. Solicitors appealing being found negligent for failing to pass on info re major school development plan.
- *MTR Bailey Trading v Barclays Bank* – Hearing floating on 11 or 12 July 2016. Interest rate swap misselling case.
- *Hawksford Trustees v Halliwells* – Hear by date 17 Oct 2016. Recoverability and quantification of mitigation costs as damages in a solicitor negligence case.
- *Wright v Lewis Silkin* – Hearing floating on 6/7 Dec 2016. Allegations against solicitors for negligence on jurisdictional matters.
- *Thornbridge v Barclays Bank* – hearing floating on 30 Nov/1 Dec 16. Whether the bank had an advisory duty to a borrower when it sold an interest rate swap as a means of seeking to limit interest rate risk on a loan.
- *Axa Versicherung v Arab Insurance Group* – Hearing listed for 31 Jan/1 Feb 2017. Comm Ct held AXA not entitled to avoid two reinsurance treaties because not likely that a fair presentation of the risk would have induced the underwriter to act differently.
- *Solland v Clifford Harris & Co* – Seeking permission to appeal, application fixed 27 Oct 16. Issue involves strike-out for not filing allocation questionnaire in a prof.neg. claim.
- *Dunhill v W Brook & Co* – Seeking permission to appeal, application fixed 1 Feb 2017. Whether counsel and solicitor negligently advised client to accept settlement.
- *Burgess v Lejonvarn* – hearing floating on 8 or 9 Mar 2017. Whether liability arising for professional where giving free advice to a friend.
- *Khanty-Mansiysk Recoveries Ltd v Forsters LLP* – Comm Ct. – Seeking permission to appeal – application fixed 16 Feb 2017. Alleged negligent drafting of share purchase agreements by solicitors and loss of chance. SJ granted because claim caught by earlier settlement agreement.

**Other cases of interest**

- *Empirical Property Group v Gateley LLP* – Comm Ct – Trial listed for 26 April 2017. Allegations of errors and deficient advice which led to failure of the property development of a site and therefore consequent losses.
- *Marme Inversiones v RBS & Others* – Comm Ct – Trial listed 25 July 2017. Allegations of EURIBOR rigging and swaps mis-selling.
- *The Connaught Income Fund, series 1 v Hewitts Solicitors – Chancery Div.* – Trial is ongoing. Allegations relating to an unregulated collective investment scheme.
- *Harlequin v Wilkins Kennedy LLP* – TCC – 6 week trial is ongoing. Claim against two accountants who allegedly helped misappropriate £30m from a construction project.
- *Property Alliance Group v RBS – Chancery Div.* – 11 week trial began 7 June 2016. Alleging interest rate swap mis-selling and LIBOR rigging.
- *Libyan Investment Authority v Goldman Sachs – Chancery Div.* – 7 week trial began 13 June 2016. Libya’s sovereign wealth fund is suing Goldman for losses arising out of alleged abuse of position as advisors to the fund.
- *Gemini v CBRE and Warwick Street LLP* – Comm. Ct.– 10-12 week trial begins 3 Oct 2016. An investment vehicle is suing valuers and a property consultancy for alleged overvaluation of a securitised property portfolio. Also claiming for swaps losses under interest rate hedging products.
- *Schubert Murphy v The Law Society – QBD.* Survived a SJ/strikeout 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.
- *Premier Motor Auctions v PWC and Lloyds bank – Chancery Div.* CMC listed between 20-22 Jul 2016. Alleging breach of fiduciary and other duties and conspiracy to cause loss by unlawful means.
- *Sartex Quilts & Textiles v Henderson Insurance Brokers* – Comm Ct. – Trial listed 26 Dec 2016 for 3 weeks. Underinsurance claim alleging that broker failed to give adequate advice on how to calculate business interruption cover.
- *Astle and Abbott & Ors v CBRE and Evans Randall* – Chancery Div. – Survived a SJ application; CMC listed 20 Jul 16. Investors allege losses suffered on their investment caused by overvaluation of property.
- *AIG v OC320301 (formerly the International Law Partnership)* – Comm. Ct – Nothing yet listed. Remitted back from CoA to decide on the facts what solicitors PI claims could be aggregated on basis of “intrinsic” connection.

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