Getting your Act together: essential skills to keep on the right side of the Insurance Act 2015

by

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Aims and objectives

By the end of the seminar, participants will be able to:

➤ understand the key duties placed on insurance professionals under sections 3 and 17 of the Insurance Act 2015.

➤ apply the principles of plain language drafting to ensure that any policy terms will meet the transparency requirements under section 17 of the Insurance Act 2015.

➤ use effective questioning techniques to carry out any further enquiries that may be necessary to comply with the duties under section 3 of the Insurance Act 2015.

The Insurance Act 2015 & Transparency

➤ Part 5 of the 2015 Act deals with contracting out.

➤ If a term puts an insured in a "worse position" the requirements of section 17 must be met.

➤ Section 17(3) – "The disadvantageous term must be clear and unambiguous as to its effect".

How do we achieve transparency?

- Keep sentences short and avoid surplus words.
- Avoid archaic words and jargon (it is hereby agreed that).
- Prefer personal pronouns (we/you).
- Avoid ambiguous terms.
- Avoid nominalizations.
- Use lists where appropriate.

Sentence length

- Long and complicated sentences will strain the reader's patience and their memory!
- The average sentence should be no more than 25 words.
- The average sentence should carry no more than one thought (use lists).

Avoid surplus words

- Working words – carry the meaning of a sentence.
- Glue words – hold the sentence together so it makes grammatical sense.

Example

Pursuant to the terms of the contract you must give notice of loading of the vessel either seven days prior to or seven days subsequent to the commencement of the loading because of the fact that if you do not do so the Buyer can reject the goods.

➢ 48 words!
➢ Too many surplus words!

An alternative in plain English

Under the contract you must give notice of loading of the vessel either seven days before or after it commences. Otherwise, the Buyer <u>may</u> reject the goods.

➢ Two sentences - one of 20 words and one of 7 words.
➢ "Pursuant to" becomes "under".
➢ "Prior to" becomes "before".
➢ "Subsequent to" becomes "after".
➢ "Because of the fact that" can become "because" or start a new sentence.
➢ What is the level of obligation? – "can" v "must" v "may" v "shall"
➢ Remember to think about the target reader!

Compound phrases

➢ as prescribed by	➢ under
➢ in accordance with	➢ by, under
➢ in the course of	➢ in, while, during
➢ in the event that	➢ if
➢ on behalf of	➢ for
➢ provided that	➢ if
➢ until such time as	➢ until

Ambiguity and the preposition pitfall

Think of the difference between:

- Within / in

- By / on or before

Archaic language - couplets

- alter or change
- cease and desist
- do and perform
- for and during the period of   Select one word and be consistent!
- full and complete
- made and entered into
- order and direct
- save and except

Nominalizations ('hidden' verbs)

10. Y shall support X Bank in the education and training of X Bank's personnel (14)

10. Y shall support X Bank to train and educate X Bank's personnel (12)

Avoid abstract language

➢ employment opportunities
  ➢ jobs
➢ remunerated employment
  ➢ paid work

Cutting down the language of agreement

It is hereby mutually agreed between the Buyer and the Seller that the goods shall be in conformity with the expressly agreed specifications and furthermore it is understood and agreed that the goods shall be delivered on the date the parties further agree as being 9 November 2016.

The Buyer and Seller agree the goods shall:
1. conform to the specifications; and
2. be delivered on 9 November 2016.

Legibility

➤ Sans serif typefaces can cause some confusion. Consider the following:

  ➤ Illness (Arial)
  ➤ Illness (Times)

➤ Gill Sans is particularly poor when it comes to differentiating between numbers and letters:

  ➤ Dilute 11ml in 1l of water (Gill Sans)
  ➤ Dilute 11ml in 1l of water (Times)
  ➤ Dilute 11ml in 1l of water (Tahoma)

Over to you - edit the following term

The due observance and fulfilment of the terms so far as they relate to anything to be done or complied with by the Insured and the truth of the statements and answers in the Proposal shall be conditions precedent to any liability of the Company to make any payment under this policy.

Taken from 'Language on Trial' by the Plain English Campaign

The alternative in plain English

We will only pay under this Policy if:

1. you have kept to the terms of the Policy; and
2. the statements and answers in your Proposal are true.

Summary

- Avoid surplus words.

- Think about sentence length and content.

- Avoid jargon, clichés, foreign and archaic words.

- Think about style and the target reader.

- Avoid nominalizations.

- Avoid ambiguity.

- Do not be wordy.

- Consider producing a style guide.

- Produce clear and modern templates.

The Insurance Act 2015 & Questioning

The duty of fair presentation

3(1) Before a contract of insurance is entered into, the insured must make to the insurer a fair presentation of risk.

3(4) The disclosure required is as follows ...
  (a) disclosure of every material circumstance which the insured knows or ought to know, or
  (b) failing that, disclosure which gives the insurer sufficient information to put a prudent insurer on notice that it needs to make further enquiries for the purpose of revealing those material circumstances.

Remember what the 2012 Act says!

3 Reasonable care
  (1) Whether or not a consumer has taken reasonable care not to make a misrepresentation is to be determined in the light of all the relevant circumstances.
  (2) The following are examples of things which may need to be taken into account . . .
      (c) how **clear, and** how **specific,** the insurer's questions were . . .

What is the purpose of the question?

There are a number of reasons why a question may be asked:

- Gather information.
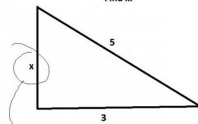
- Gain insight.

- Clarify issues.

- Identify solutions.

The problem with ambiguity …

Where was the American Declaration of Independence signed?

At the bottom.

Find x.

Here it is

Key points in any strategy

➢ Explain the reason why you are asking the questions.

➢ Think about the content and style of each question (plain English).

➢ Begin with open questions and fill in detail with closed questions (we'll look at this in the next section).

➢ Don't be afraid of naïve questions – you are not expected to be an expert!

The ABC Principle

➢ **A**ssume nothing.

➢ **B**elieve nobody.

➢ **C**hallenge everything.

This is particularly important when investigating claims.

The main types of question

There are many different types of questions. This seminar will concentrate on the following:

➢ Open

➢ Closed

➢ Probing

➢ Leading

➢ Multiple

Open questions

➢ The scope of the answer is not limited and the person answering will tend to give a narrative answer.

  ➢ Can you **describe/explain/tell me about** ...?

Advantages	Disadvantages
• Empowers the person being questioned. • Measure someone's understanding. • May reveal further areas to examine. • Enables you to understand opinions and feelings.	• Person being questioned may be unsure of the expected answer. • Irrelevant information can be given. • Can be time-consuming and the answer can be difficult to follow. • Can often result in a conversation going off at a tangent.

Closed questions

➢ Normally used to elicit "yes" or "no" answers or very specific information.

  ➢ **Does /did /will ... ?**

Advantages
- Allows you to obtain basic facts quickly.
- Provides control to the questioner.
- Good for clarifying a vague response to an open question.
- More specific and often clearer (but check language used).

Disadvantages
- Can often be leading and so produce inaccurate assumptions.
- The person being questioned can feel interrogated.
- Doesn't allow someone to express attitudes or feelings.
- Can discourage a person from openly disclosing information.

Probing questions

➢ Used to understand the rationale, reasoning or evidence behind an initial answer.

  ➢ **What is the basis for / in what way / how can you be certain that ... ?**

Advantages
- Enables the questioner to know if there is evidence to back up the answer.
- Used to clarify uncertainties.
- Can be used to test the validity of an initial answer.

Disadvantages
- Can make the person giving the answer feel as if they are being interrogated.
- Can create uncertainty.
- Can lead to someone thinking they must have given the wrong answer.

Leading questions

➢ The question suggests the answer that is expected.

  ➢ **Presumably / isn't it right to say that / surely … ?**

Advantages	Disadvantages
Any?	• Reflects badly on the person asking the question. • Exerts pressure on the person answering to say what the questioner wants to hear. • You are controlling/manipulating the disclosure!

Multiple questions

➢ This type of question has two or more parts to it and each part requires an answer.

  ➢ What is your main business activity, what was your annual turnover last year, what do you expect it to be this year and how many people do you employ?

Advantages	Disadvantages
Any?	• They are not clear and confuse the person being questioned. • Normally a sign that the questioner has not prepared properly. • The questioner loses track of whether the person answering has provided all the information.

Summary

➤ You need to properly plan the questioning process and have a strategy.

➤ Be careful to select the correct type of question and focus on the language. Be clear and specific!

➤ Avoid leading questions and multiple questions.

Thank you and please stay in touch

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