

'PLAIN ENGLISH' AS A RISK MANAGEMENT TOOL

Last month, Joanne Staphnill, a Director at DWF Law, presented a Technical Forum that focussed on the value to insurance intermediaries of writing in plain English. This Bulletin highlights some of the common areas that Joanne identified, where intermediaries routinely use over-complicated language, and some of the tips she gave for giving the same message in simpler terms. The PowerPoint slides and a full recording of the Technical Forum are available on the Member Portal. We recommend that you consider this Bulletin in tandem with the slides and recording.

THE LAW AND REGULATION

The FCA Handbook and the ICOBS Rules clearly set out that firms must communicate information to their clients in a way that is clear, fair and not misleading, and that that information must be given in good time and in a comprehensible form. Firms must also bear in mind the knowledge, experience and abilities of a typical client for that type of policy. The key words here are clear and comprehensible.

JARGON

Insurance intermediaries and insurers often use industry terminology, or jargon, to describe concepts with which they are familiar. The problem is that their clients might not be familiar with those terms or their meaning. Intermediaries must try to put themselves into their clients' shoes and really think about how much of what they are being told is actually being understood.

A good example of this is "average". Average in common usage has a meaning that is easily understood – an example of something that is neither great nor terrible, but "average". However, an "average clause" in an insurance policy has an entirely different meaning – it means that if, for example, a property is underinsured and a claim is made against that underinsured policy, then the claim value will be adjusted downwards by the percentage of the underinsurance. These are totally different applications of the same word and it is easy to see how this distinction will be lost on a client, if it has not been explained.

In essence, intermediaries need to be sure that their clients understand the meaning of all of the terms at quotation and binding.

COULD FLOWERY COMMUNICATION INADVERTENTLY CLOUD THE ISSUE?

Intermediaries also often fall into the trap of using four words when one will do, perhaps in an effort to create a polite and respectful tone. Consider, for example:

"Please note that we recommend that you consider increasing your Limit of Indemnity of £2,000,000".

This is something countless intermediaries will have written without giving it a second thought. However, the recommendation is arguably lost in translation. The intermediary is recommending that the Limit of Indemnity is increased, so the intermediary should just say:

"We recommend that you increase your Limit of Indemnity to £2,000,000".

That sentence is short, direct and easy to understand.

Another example might be:

"Your Demands and Needs: This document confirms our assessment and understanding of your insurance Demands and Needs, and the insurance Recommendations we are making to satisfy your Demands and Needs..."

Note there is repetition, but no explanation of what is meant by 'Demands and Needs'. Acceptable alternatives might be:

"Statement of Demands and Needs: ...you have reached your own decision about whether this policy meets your particular requirements...", or *"Statement of Demands and Needs: This document summarises what we believe your particular wants and needs are in relation to the insurance you are thinking of buying..."*

This is not to say, of course, that you should dumb down what you write. The advice should still be clear and easy to understand, and if you are recommending a course of action you should give reasons. A client is less likely to succeed in arguing later that it did not understand the intermediary's or insurer's recommendations, if those recommendations are clearly explained and justified.

KNOW YOUR CLIENT

You will need to know your client to assess whether they are likely to understand what you say, or whether further explanation is needed. Factors to bear in mind include: (i) whether or not the client is a veteran of the industry in which it is buying insurance; (ii) whether the client is a fluent English speaker or not; (iii) whether they might have reading or learning difficulties, or are vulnerable; or (iv) how busy they are and whether they are interested in the process. Any effort made to understand those factors is likely to bear fruit later, in affirming a strong relationship with that client.

In some instances your direct client might be another intermediary: a producing broker, for instance. Even though other intermediaries theoretically understand the industry better than a lay client, writing in plain English is still advantageous when communicating with other intermediaries. We find that being clear and direct with them is just as important as with lay clients – indeed it can prove invaluable in the event there is any subsequent issue concerning the business placed.

RISK MANAGEMENT MESSAGE

Many disputes arise because of a simple misunderstanding between the parties. Using clear language is a valuable risk management tool and reduces the potential for any such misunderstanding or confusion to occur.

We recommend that you:

- Avoid using jargon. This can create a minefield, particularly with lay clients not familiar with the insurance industry. Use language that you are sure that all parties understand. Consider whether it is also necessary to explain the effect of a particular clause or document, e.g. a Demands and Needs statement.
- Use direct language where you are recommending a course of action. Do not ask the client to *"please note that you recommend considering"* a course of action. If you are recommending a course of action then just say so.

- Do not dumb down your message so that the meaning is lost or changed. This is just as dangerous and may result in a client still not understanding the cover they have in place. As a minimum you may lose their business, as and when they realise this. Worse still, you may be exposed to a professional indemnity claim if the cover does not respond when they had expected it would.
- At all times keep in mind who your client is, their level of sophistication and understanding of the industry. This will set the tone for how you communicate with them and determine the lengths you may need to go to, to ensure the advice you are giving is understood.

This bulletin is for general information purposes only and does not provide a comprehensive or complete statement of the law relating to the issues discussed nor does it constitute legal advice. In addition, by its nature, this bulletin may be superseded by subsequent regulatory or legal developments. Professional advice should be sought where appropriate in relation to any particular circumstances.

All rights reserved. No part of this publication may be reproduced in any material form, whether by photocopying, scanning, downloading to computer or otherwise without the written permission of Griffin Managers except in accordance with the provisions of the Copyright, Designs and Patents Act 1988.

First Issued: June 2022
© Tindall Riley & Co Limited

Managers: Griffin Managers
Regis House
45 King William Street
London EC4R 9AN
Telephone 020 7407 3588
Email griffin@tindallriley.com
www.griffin-insurance.co.uk