

17 November 2015

Baroness Neville-Rolfe DBE CMG
Department of Business, Innovation & Skills
1 Victoria Street
London SW1H 0ET

By email: mpst.neville-rolfe@bis.gsi.gov.uk

Dear Baroness Neville-Rolfe

Re Clauses 20 and 21 of the Enterprise Bill 2015 (“Damages for Late Payment of Insurance Claims”)

The London Insurance market has expressed concerns about clauses 20 and 21 of the Enterprise Bill and some possible amendments were tabled before the Grand Committee of the House of Lords. These clauses of the Enterprise Bill as they stand now are based on work carried out by the Law Commission and were otherwise widely supported by the insurance market, brokers and policyholders.

In order to address the concerns of the London Market and to assist the future progress of the Bill, Mactavish (a leading firm of insurance governance experts) commissioned an independent opinion from a leading insurance QC.

Counsel generally supported the work of the Law Commissions and the two clauses in the Enterprise Bill. However counsel made two recommendations regarding clause 20. These are:-

1. A sentence at the end of what is to be section 13A(4) of the Insurance Act 2015 to deal with the question of legal privilege; and
2. Subsections (3) and (4) to create a special limitation period for claims for breach of the implied term.

The first recommendation will make it easier to resist speculative litigation and the second will provide insurers with some finality over their exposure and allow them to close their account for a claim without having to make provision for further claims over an uncertain period of time. We have attached the full text of the proposed amendments to this letter. A copy of counsel’s opinion is also attached.

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We are pleased to confirm that these amendments would ameliorate the concerns of London Market insurers and are agreed by all the signatories to this letter who represent the vast majority of the insurers, brokers and commercial policyholders in the UK insurance market. In our collective view both suggestions improve the current draft of clauses 20 and 21 of the Enterprise Bill without altering the substance. On the basis of these proposals, the LMA and IUA would not encourage the tabling of further amendments to clauses 20 or 21 of the Bill. We hope that these amendments will be supported by the Government.

If you would like to discuss anything in this letter further we would of course be happy to do so.

Yours sincerely

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