



Insurance Wordings Predictions 2024

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1. We predict more focus on the definition of terrorism

One of the definitions of terrorism commonly incorporated into insurance policies derives from the Terrorism Act 2000. This immediately gives rise to issues: the definition in that Act has twice been amended and this is often not reflected in clauses adopted. It is materially different from the definition in the Reinsurance (Acts of Terrorism) Act 1993 which set up Pool Re. These definitions also differ from the terms used in other jurisdictions, including the Terrorism Risk Insurance Act in the USA. Some definitions require a declaration by a government body (such as the Articles for the MIB, which require a certificate to be issued by HM Treasury). Other definitions do not have this requirement, though a government declaration would likely have evidential weight. These all predate the emergence of state-backed terrorism as a concept. Recent events may put this into sharp focus. Clarity and consistency on this topic are essential if coverage disputes are to be minimised.

2. Expect further exploration of 'greening' insurance

We predict that insurers will incentivise policyholders to make investments to protect against climate change risks. Measures that insurers may use to encourage insureds to take climate change mitigation action (i.e. to reduce greenhouse gas emissions) include pricing structures and changes to cover. Terms may add a reward, or a warranty that insureds will take certain measures, or an exclusion. This may require insurers to provide information on climate mitigation and adaptation to raise awareness. Further support is required from regulators.

3. Insurers will seek to reduce exposure to climate change risks

We predict that insurers will seek to reduce exposure to climate change risks. We have already seen a degree of movement in this space from a wordings perspective. For example, LMA5570 seeks to exclude liabilities arising out of any claim alleging that an insured caused or contributed to climate change or its consequences. This is hardly surprising, considering the increase in climate change litigation over the last few years: 2,341 cases had been captured in the Sabin Center's climate change litigation database by May 2023 and the diversity in cases and number of countries in which such litigation is identified continues to increase.

4. Principles-based regulation will increase

Principles-based regulation has become more widespread in the UK in recent years and the Consumer Duty is a further example. This is to be distinguished from rules-based regulation where the limits of permitted or proscribed conduct are defined. It tends to be outcomes based and, when it works well, prevents technical compliance which ignores the intended purpose of regulations. The Consumer Duty does not attempt to set out what insurers must do in relation to specific underwriting or claims practices, or when drafting policy documents. Instead, it sets out broad principles and it is for insurers to interpret them and modify their practices and policy wordings to ensure compliance. Treating Customers Fairly was an earlier manifestation of this but it has been taken much further. The Financial Conduct Authority is likely to use this tool more widely going forward.



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