

## Brokers – Feeling the Heat

Ian McConkey  
DAC Beachcroft LLP

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## Insurance: a minefield

- *“Insurance is a subject notoriously replete with technical terminology and principles of which the average layman has no more than a rudimentary grasp.”*

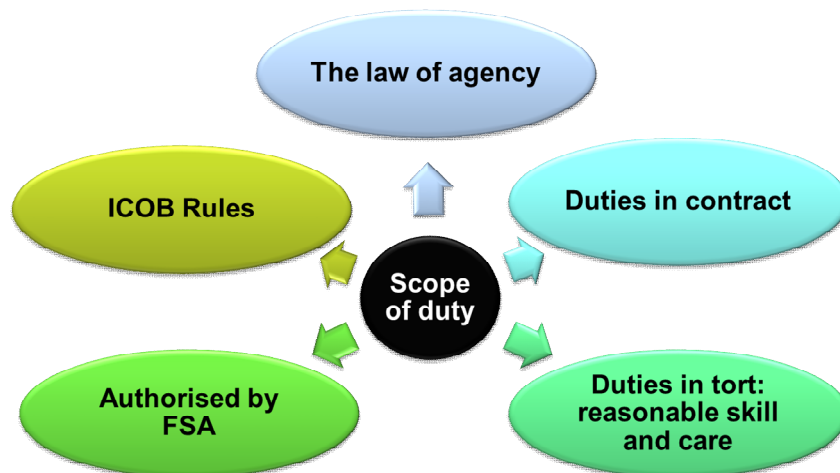
Café de Lecq v RA Rossborough (2012)

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## Claims on the increase

- Economic Climate
- Financial Pressures on Brokers
- Policy Disputes
- Brokers judged against more exacting standards

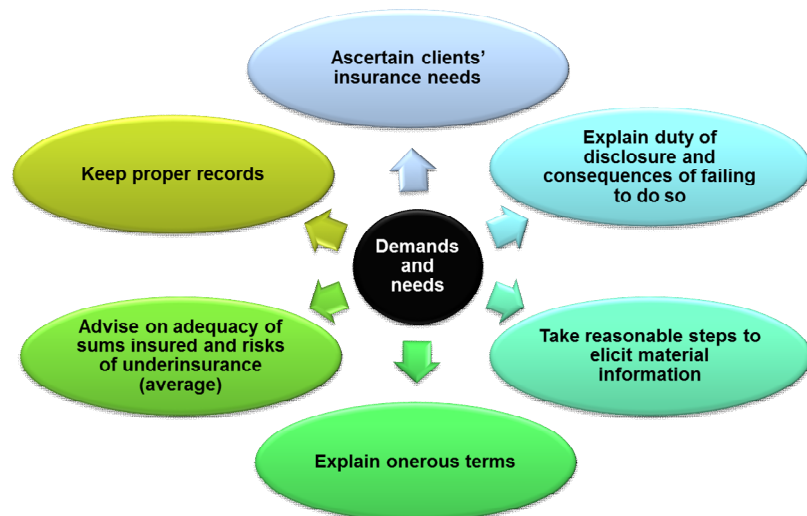
## Scope of duty



## Broker's Duties

- On placement
- On renewal
- A continuing duty

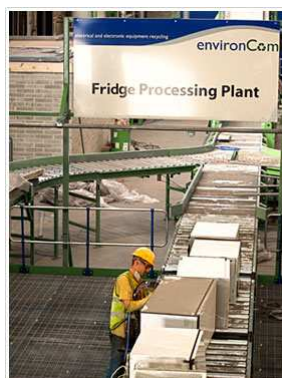
## General Principles



## General Principles

- Advise the client of the duty to disclose all material circumstances and the consequences of failing to do so
- Indicate the sort of matters which ought to be disclosed and elicit matters which the client might not think it necessary to mention
- Recommend a policy suitable for the client's demands and needs
- Seek information to identify the client's requirements having regard to the relevant details about the customer
- *(ICOB Handbook Rule 4.3 and Jones –v- Environcom [2010])*

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## Duties on Renewal

- *Jones -v- Environcom [2010]*
- Policy void for material non-disclosure
- Brokers should have enquired about previous incidents – reliance on “standard practice”
- Brokers must be satisfied that the client understands the policy conditions
  - Reliance on standard terms
  - Change of personnel

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## After Inception

- Ground Gilbey -v- JLT [2011]
- Failure to forward a Risk Improvement Notice
- Continuing duty to draw the client's attention to onerous terms
- Duty not to expose clients to unnecessary risks of legal disputes with insurers

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## Continuing Liability for an Original Error

- Standard Life Assurance v Oak [2008]
- Beazley v Travellers [2011]
- “and/or Claimant” = £33m per word
- Continuing duty to ensure policy is suitable for the client’s needs

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## Duty of Sub-Brokers/Placing Brokers

- Dunlop Hayward v Barbon Insurance [2009]
- “No worse terms than current insurance”
- Placing brokers comply with instructions but should have questioned the instructions
- Sub-broker 20% liable

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## Who is the duty owed to?

- Crowson v HSBC [2010]
- Can a party who is not instructing the broker sue?
- Directors and Officers

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## Contributory Negligence & Causation

- **Client's own conduct**
- Unlikely to be any contributory negligence (Dunlop Hayward)
- Does the insured have to sue his insurer? (Standard Life v Oak)
  - No – unless the insurer's point is hopeless
  - The duty extends to protecting the client against the unnecessary risk of litigation
- Under settlement with the insurer (Ground Gilbey v JLT)
  - Court doesn't need to consider policy point conclusively
  - Was the settlement reasonable?

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## Did the Breach make any difference?

### Ground Gilbey

- Would the client have complied with the Risk Improvement Notice
- It would at least have led to a dialogue with insurers

### Jones v Environcom

- If there had been full disclosure, the client would have been un-insurable or would have incurred expense which made the business unviable.
- Policy could have been avoided for other non disclosures

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## Learning the Lessons

- Anticipate policy wording which may be ambiguous
- Identify the clients needs – goes beyond simply acting on their instructions
- Ensure clients understand their obligations and warnings are brought to client's attention
- The client is unlikely to be found to be at fault
- Take care with standard terms
- Don't rely on "standard practice"
- Don't rely on instructions obtained on previous placements

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## Future Developments

- Solvency of Insurers
- Internet broking
- Law Commission
  - Proposed changes to remedies for
    - Material non-disclosure
    - Breach of warranty