Mactavish
Expert insurance buyers

# Why standardised policies put your business at risk

Building corporate resilience.

The pace of technological change, the increase in global trade and connectivity, and the speed at which companies scale, mean that the risks a business faces are more complicated than ever. And harder to identify and quantify.

Yet, at a time when other sectors are delivering sophisticated bespoke products – from 3D-printed aeronautic parts to personalised pharmaceuticals – standardisation is becoming the standard in insurance.

One-size-fits-all policies are only helpful to your insurer and risk leaving your business more vulnerable to unrecognised threats as activities and context evolve.

## *Standardisation is not, in itself, ‘bad’ but it is only a starting point.*

Brokers and underwriters must adapt their ‘off the peg’ policies to fit the specific context, risks and complexities faced by each company. This is critical in ensuring the value of insurance.

Identification of the genuine risks that a company faces not only ensures that coverage ‘flaws’ do not arise but also that you aren’t paying for cover that you don’t need.

In our experience, when we review existing insurance policies for our clients, we routinely identify more than 50 problem areas which need to be addressed and negotiated with your insurer.

**Mactavish are expert insurance buyers. We help you to identify the true risks you need to protect against and adapt your insurance policy to cover these. This ensures your business is appropriately protected, you are only paying for what you need and are more resilient to events.**

# The road to standardisation.

**The use of standardised policies has rocketed within the insurance industry in the past three decades.**

## Insurance sector consolidation

Insurers have been through an extended period of consolidation. This is likely to continue. The broker sector has also seen increased M&A activity, with now only a handful capable of handling global client programmes.

As companies have merged, investment in technical resources has been slashed. Customer choice has also been reduced. There are now few technically-skilled brokers, with the expertise to adapt the wording of contracts to suit individual businesses and fewer insurance companies willing to do so without being pushed.

## More restricted policies

The relationship between insurers and brokers has evolved. Traditionally, brokers marketed policyholder risks to a broad range of underwriters and put forward the best offer to their clients. However, we observe that most of our clients' risk is now being placed with a pre-arranged panel of insurers or alternative facility. These panels are also typically using standardised policies with limited ability  to adapt for specific client needs.

This streamlined process saves brokers and insurers time and allows non-specialist staff to take on this work but can undermine the precise provision of risk protection that clients think they are buying. Even if a broker has the skill and time to tailor policy wordings, insurers are also increasingly rejecting any proposed wordings in favour of their own standards. With fewer policies to choose from, it is vital  to ensure that standardised policies are reviewed and adapted to be fit for purpose by technically-competent experts.

## Exclusions at renewal

Renewal is used by insurers as an opportunity to implement further standardisation. Changes to policies and exclusions are positioned as simplifying wording and creating market standards but can leave businesses paying higher premiums for cover that is not fit for purpose and with policies that expose them to new risks.

**We understand that clients know their business best but often do not have the legal or technical training to be able to evaluate policy wording in detail. That's why we work on your behalf to decipher, identify and negotiate the optimal wording to suit your business, now and in the future. No one looks forward to the day that they need to make a claim, but, with our support, you can feel more confident that if you ever need to, you have a clear policy that will pay out fairly.**

## *Our research shows that clients of all sizes and industries have been disadvantaged by standardised complex-class policies.*

Based on our research, we have selected some of the most recurrent 'flaws' or pitfalls to look out for; These are just a sample of indicative, real-life examples of how insurance can put your business at risk, rather than protecting it from risk.

## Professional Indemnity (PI) Insurance

### Definitions of 'professional activities'

Policies often articulate a very limited definition of 'professional activities'. This can inadvertently restrict cover for businesses conducting a mix of technical and more general advisory work, as well as limit cover only to the activities of staff with professional qualifications.

### Contractual liability exclusions

These aim to prevent automatic cover for non-tortious liability arising through unusual contracting arrangements, or atypical liquidated damages, unless by underwriter agreement. However, even if a client discloses such details but cannot amend the wording – or operates in a sector where all liability arises by virtue of a contract – standardised wordings may provide almost no cover.

### Dividing line between PI and product liability

Standard policy wordings can create gaps or overlaps for clients that buy both PI and PL. This is particularly the case in sectors where 'advice' is bundled, incidental and/or delivered through non-traditional channels. This can lead to neither policy being effective.

## Directors' and Officer's Liability (D&O) Insurance

### Professional indemnity (PI) exclusions

PI exclusions were introduced for the reasonable purpose of delineating D&O cover from that of PI. However, the blanket use of some broadly-worded exclusions leaves D&O cover essentially worthless for professional services sector clients.

### Environmental exclusions

These exclusions also had sound intentions – to delineate D&O cover from environmental impairment liability (EIL) cover. However, the effect of these broadly-worded exclusions can be damaging for some clients, excluding consequential claims against directors for failures in supervision or management.

### Conduct exclusions

Standard wording aims, quite fairly, to avoid underwriting deliberately fraudulent or criminal activity. However, many wordings inadvertently go further to exclude cover for an innocent party who has gained indirectly as a result of third-party dishonesty. This could be particularly problematic for some financial services firms where scope for indirect gain by directors is considerable.

## Property Damage and Business Interruption (PDBI) Insurance

### Unclear definition of what is covered

There is often a high degree of uncertainty in many PDBI wordings regarding which types of cost are insured following property damage or as part of managing business interruption. Many expected costs will not translate into standard policy wordings and need to be negotiated in advance. For example, requirements to implement uneconomic short-term workarounds, provide customer compensation in order to retain business, or to pay supply chain penalties may all fall outside of standard cover, and you may need agreed flexibility to reinstate damaged property on a different basis to what was damaged.

### Broadly-formulated exclusions

Some PDBI policies contain broad standard introductions excluding anything 'caused by/ contributing to or consisting of' numerous factors. Alongside use of vague terms such as 'operational errors' or 'wear and tear', insurers therefore have significant scope to interpret wording in order to justify exclusions when disputing a claim.

### Concurrent or subsequent causes of loss

Many policies are unclear or punitive in the event of multiple causes of loss. Scenarios resulting in loss can be complex and often unique to a business or sector. Key risk scenarios should be anticipated as far as possible and addressed directly within the policy wording to avoid unexpected exclusions at the time of claim.

## Product and Public Liability (PPL) Insurance

### Unclear definition of 'product'

Some policies are unclear as to which activities relating to a product are insured as product liability. For example, does a policy cover damage to third parties during the transport of the product?

### Unclear basis of cover for injury/damage

If a company is not sued directly, but via a retailer or intermediary following damage/ injury, it can be unclear whether the policy is required to respond. The debate centres on whether the liability is for the damage/ injury, or for financial liability to the retailer/ intermediary. Insurers may assert the latter, fundamentally undermining cover for any business that provides products or services to end-customers via intermediaries.

### Unclear definition of 'accidental'

It is a fair and common principle in insurance that deliberate acts cannot be insured – from an owner torching a factory to the publication of a known and libellous untruth. However, many PPL wordings are not clear whether loss caused by the 'deliberate' act of any employee is or more reasonably, only acts by the insured's 'controlling mind'.

**Want to know more?**
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mail@mactavishgroup.com
+44 (0) 207 046 7974

## Cyber Insurance

### Co-insurance

Cyber insurance is designed to limit the financial risk relating to any loss of information and damage caused by IT system or network disruption. Co-insurance clauses, however, can seriously limit your cover by requiring you to pay all or a portion of loss if conditions aren't 100% complied with; so, it is essential that you agree with your insurer exactly how your business implements risk protection measures (such as Multi-Factor Authentication).

### Limited cover for systems interruption

Cover for systems interruptions can be subject to varying restrictions; it may be limited only to a subset of relevant IT systems (excluding external providers or systems in development), or only to loss of income rather than the wider costs of the interruption. It may only cover the period of interruption and not cover ongoing costs incurred after the IT system is restored.

All of these mean that only a fraction of the costs arising from some interruptions may be covered and scenarios should be clarified up front.

### Terrorism exclusions

These exclusions were introduced for the reasonable purpose of delineating more general Terrorism cover from that of Cyber-specific insurance. However, given the potential for cyber attacks to be interpreted as acts of cyber terrorism, this could exclude a significant section of cover and put an unfair onus of proof on you to determine perpetrator motives. Even where the exclusion carves back cover for Cyber Terrorism, it may still exclude 'hostile' or 'warlike activities' which, if interpreted broadly, still compromise cover.

Mactavish
Expert insurance buyers

Mactavish is the UK's leading independent outsourced insurance buyer and claims resolution expert. We support our clients by helping them identify their risks, design their insurance programmes, improve the reliability of their cover, and manage costs down.

We work independently to represent policyholders' interest only and receive no commissions or fees from insurers or other third parties. Our clients value this independence and see us as a powerful force for change in an industry that all-too-often takes its customers for granted.

Our roots are in deep analysis of risk and insurance contracts, and we played an instrumental role in designing key legislation such as the Insurance Act 2015. Building on that heritage, we have developed a unique offering that combines unrivalled technical and legal knowledge, with commercial know-how and buying power.

Our clients come to us when the insurance market has let them down. They never go back to the old-fashioned way of doing things.

**Building corporate resilience.**

+44 (0) 207 046 7974 | mail@mactavishgroup.com | www.mactavishgroup.com

22a St. James's Square London SW1Y 4JH | COMPANY NO. 4099451