



# Insurance policy drafting and distribution

**Browne  
Jacobson**



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# Introduction

We understand the importance of clearly-drafted, user-friendly policies for all market participants.

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Even a small oversight in a policy wording can result in substantial losses for insurers, poor client service and regulatory intervention. For brokers and their clients, it is essential to protect against unexpected outcomes by ensuring policies are clear, unambiguous and that they meet the specific needs of the policyholder.

We also understand the need to ensure that, wherever you sit in the insurance distribution chain, all of your contractual documents are accurately drafted to protect your vital commercial interests and ensure regulatory compliance.

We have put together a specialist team of lawyers who dedicate most or all of their professional time to the development of:

- policy wordings, including schedules and endorsements
- extra-contractual documents including IPIDs, policy summaries, customer communications and marketing materials
- distribution agreements, including binders, TOBAs, AR agreements and collaboration agreements.

Our experienced team advise in all categories of insurance business, including marine, cyber, professional and management liability and private client. We are routinely involved in the development of bespoke wordings and programmes for intermediary-led schemes in a wide range of sectors. We also draft over 1,500 bespoke policy endorsements a year through our outsourced endorsement drafting service (through which we have already drafted over 15,000 bespoke policy endorsements).

We are particularly mindful of the need for clarity, particularly in light of the Customer Understanding Objective within the FCA's Consumer Duty. We have developed a number of truly unique solutions to maximise readability and comprehension of policy wordings and customer-facing documents, and to provide a solid evidence base to establish compliance.

Our drafting products and services provide a cost-effective solution to ensure policies respond in the way that underwriters and brokers intend, whilst minimising the risk of regulatory intervention, unintended consequences and customer detriment. We offer a range of solutions from a simple health check of existing wordings through to fully outsourced endorsement drafting, and can tailor our products and packages to suit your individual needs.

If you would like to discuss our products and services in more detail, please do get in touch.



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# Plain English and complying with the Consumer Duty

We pride ourselves on our ability to draft complex policy documents in a way that is clear and easy to understand. To ensure we do so we have, in collaboration with the University of Nottingham, undertaken a detailed academic study into the readability of insurance policies.



The research was widely greeted by the market and resulted in our lead partner Tim Johnson, being listed in The Lawyer magazine's Hot 100 in 2022.

Our ground-breaking work on readability enables us to understand scientifically the factors that impede understanding and how language can be used to make policies easier to understand. We apply the findings of the study to our work to ensure the documents we draft for our clients are clear and comprehensible.

The main findings from the study are that:

- all policies reviewed required education to at least A-level (and in most cases graduate or post-graduate level) in order to be meaningfully understood;

- policyholders routinely find it difficult to understand what is and what is not covered, when given real-life scenarios (comprehension ranged from between 32% and 66%); and
- the least readable policy that was tested could only be meaningfully understood by 13.4% of the UK adult population.

The study firmly indicates that the high reading age of the policies has a material impact upon a policyholder's understanding of the cover. However, the study also revealed that by applying the drafting methodologies summarised in the report, it is possible to significantly improve the readability of policy wordings and to improve comprehension. For example, it was possible to reduce the reading age of one policy by 10 years from doctorate level to that of

a Year 8 pupil (i.e. a 12-13 year-old). This increased the percentage of the UK population that could understand the policy by some 75%, from 13.4% to 89% (an increase of some 40.4 million people).

Overall, the study shows that much can be done to improve the readability of policy wordings, and that there are significant benefits available for those insurers that do so.

[Click here](#) to read our full report.

In addition to the learnings from the study, which we apply to all of our product development work, we are able to undertake detailed linguistic analysis for our clients. This gives our clients the opportunity to maximise comprehension, significantly reduce reading ages and – crucially – provide independent evidence that they have done so. This is particularly important in light of the FCA Consumer Duty, and the Consumer Understanding objective in particular.

For details of how you can benefit from a linguistic analysis of your wordings, please see our '[linguistic services](#)' page.

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# Our policy drafting product suite

The product levels detailed below are designed to provide you with a flavour of the policy drafting services we offer. Each level can be tailored to suit your individual needs.

## Level 1

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### Policy update

- will include all amendments necessary to deal with any specific changes to the law or your risk appetite
- recommended if you are generally comfortable with your current wordings, but changes are required for a specific legal, regulatory or risk issue.

#### **Our recent experience...**

We recently updated c.500 policy wordings and associated documents (including policy summaries and customer communications) for a large retail insurer to ensure compliance with 'silent cyber' requirements.

To assist our client with its project management, we put in place dedicated administration support and set up a specific telephone number and email address for this project.

## Level 2

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### Policy health check (PROD Reviews)

- a full legal and compliance review of wordings, whether drafted by you or others
- where a risk is identified, we will also provide recommendations for amendment
- designing and implementing ongoing product review programmes
- recommended if you are either concerned about accuracy in existing wordings or where your wordings have been drafted either in-house or by an intermediary and you want cost-effective peace of mind before 'going live' with your new policies.

#### **Our recent experience...**

We reviewed a suite of professional liability wordings for a London market insurer for legal and regulatory compliance. As a result of our review, a number of potential gaps in the wording were identified and closed.



*“What you end up with is a real partnership with us and Browne Jacobson. It feels like the solution is our solution, not something that’s been imposed on us blindly by the lawyers.”*

**Ian Jacob, Group Chief Risk Officer, Howden Group**

## Level 3

### Full policy drafting service

- policies will be drafted from the ground up in all classes of insurance business, including bespoke policies or schemes, and policies for niche insureds
- recommended if you require new wordings and want complete confidence that the wordings meet the desired intention, but you do not have the necessary experience, expertise or resources to draft the wordings in-house.

#### **Our recent experience...**

We recently drafted a new suite of policy documents (including customer communications, summaries, IPIDs and marketing materials) for a High Net Worth personal lines insurer to provide enhanced customer experience. Working closely with linguists at the University of Nottingham and brand consultants, we created a final product that was easy to read and navigate, and provided an unrivalled customer experience when reading the policy through different media.



## Level 4

### Major projects

We are regularly asked by clients to assist with major wordings projects, such as the launching of new underwriting platforms and new ways of doing business.

- a full legal, compliance and regulatory review of the new processes and procedures
- working closely with key stakeholders in your business, including underwriting managers, compliance and legal teams, as required
- creation of all required documents, including policy wordings, schedules, marketing literature, policy summaries, IPIDs and online and call scripts where required, we can also provide project management in conjunction with our policy drafting services.

#### **Our recent experience...**

We recently advised a large retail insurer in relation to an overhaul of its commercial policies, including changes to the renewals and new business process for all UK business. We advised on contractual and compliance issues, assisted with mapping out the new business and renewals procedures and drafted all required documents, including new policy wordings, policy holder and broker communications, schedules, statements of facts and all pre-contractual documentation. To assist the client, we also provided project management services, with dedicated project-specific email addresses and phone numbers.

## Outsourced endorsement drafting

- provided on a fixed monthly fee or 'per endorsement' basis fully outsourced endorsement drafting and approval service to ensure the policy meets the underwriters' intention, fits your existing house style and protects against unwanted risk
- policy endorsements are drafted within strict SLA deadlines
- we will also highlight any legal or compliance issues
- we can also review and maintain or improve your endorsement libraries. If necessary, we can work in collaboration with underwriters to create a new library
- we maintain management information so you can easily track and identify endorsement trends, and potential underwriter training needs
- recommended if you would like to guard against the risk of inaccurate endorsements, which can lead to costly and unanticipated outcomes, and minimise the time underwriters are diverted away from underwriting.

### Our recent experience...

We help clients stay up to date with the latest developments. For example, we have been instructed to draft over 100 Insurance Product Information Documents in compliance with the Insurance Distribution Directive, including advising our client on the content and layout of these new documents.



We provide an outsourced endorsement drafting service for a leading retail insurer. On a delegated authority basis, we draft and sign-off over 1,500 endorsements per year.

Endorsements are signed off within tightly agreed SLA deadlines, with 100% compliance. We also log a significant amount of MI, which is reported back to the client in an agreed format and enables the client to identify any trends and make strategic management decisions.

*“It looks like you’ve already considered, pre-empted and dealt with the query from the insured before it landed, and acted ahead of their response – what a result! Fantastic service!”*

**Senior underwriter, large retail insurer**

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# Insurance product distribution

We understand the need to ensure the contractual arrangements relating to the distribution of insurance products are drafted to ensure your vital commercial interests are protected and that you comply with your FCA regulatory and data protection obligations.

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## Our experience includes drafting and negotiating:

- TOBAs between all parties in the distribution chain;
- Binders and work transfer agreements;
- TPA Agreements and service-provider contracts, including those with software platforms and providers; and
- Quota share and excess of loss agreements.

We have specialist commercial tech and data lawyers who work exclusively or predominantly for our insurance sector clients. This allows us to offer a market leading practice that has tech and data contracts lawyers who actually understand both technology and the business case for its procurement, and the insurance market with its nuanced practices and commercial models.

## Regulatory compliance

It is essential that all of your contracts help you establish, evidence and maintain compliance with your dual regulatory obligations to the FCA and the ICO.

Our lawyers know how to comply with all applicable financial regulations, including CASS Rules, the Insurance Distribution Directive, ICOBS and the FCA Handbook generally, and data protection laws, including the GDPR, DPA and related ICO guidance. In particular, we are mindful of the obligations imposed by the Consumer Duty on all parties involved in the distribution of insurance.

Our experienced team can ensure your contractual documents comply with your obligations (and that others

with whom you are contracting are required to comply with theirs), regardless of where you sit in the product distribution chain.

## Our recent experience...

We are currently advising a client providing payment processing and automation software into the insurance distribution chain on their dual regulatory compliance as part of its journey to receive FCA registration, including assisting with the FCA registration process and responding to detailed FCA enquiries.

## Client money

With multiple relationships, it is essential your contracts align in relation to client money. We work with clients to ensure their contracts accurately deal with client money considerations and requirements, whether or not client money is being held and whether risk is transferred, cascaded and/or co-mingled.



*“Browne Jacobson have the perfect combination of specialist expertise, insurance sector knowledge and commitment to delivering fantastic service levels that we value so highly.”*

**Ashwin Mistry, Co-Founder and Executive Chairman of Brokerability and BHIB Insurance Brokers**



## **Insurance distribution**

We regularly advise insurers, brokers and MGAs on the distribution of their products, advising customers in all positions in the insurance distribution chain on their commercial and distribution contracts, including TOBAs, binders and other distribution and commercial arrangements. We advise clients on such arrangements whether they are distributing through a traditional intermediary model or through the use of technology platforms, non-regulated distributors or other distribution channels.

### **Our recent experience...**

We regularly advise insurers and brokers on their collaborations with banks, accountants and accredited bodies. This recently included advising a large company market insurer on its affiliation with an RBS subsidiary, including related software licensing, development and API construction and (more recently) the exit strategy from that relationship.

We have advised numerous insurers and intermediaries on changes to their standard distribution documents, practices and procedures to ensure compliance with requirements introduced by the insurance distribution directive.

We recently advised an insurer on how to restructure their network of brokers, including through amending and rebuilding some existing TOBAs, and related negotiations.

We worked with a software platform provider on its licensing and subscription models for insurance schemes operated by underwriters, and accessed by insurers and brokers.

## **Insurance supply chain**

With our knowledge of the insurance industry, we have also found ourselves to be well placed to advise suppliers to insurers and loss adjusters, such as damage restoration specialist service providers. We have advised both insurers/brokers and the suppliers on their contracts within this chain.

### **Our recent experience...**

We also advise providers of fire and flood damage restoration services on their terms of business and contracts with insurers in respect of insurance claims, setting out the scope of services, extent of their authority to carry out works and key provisions relating to liability.

## **Data protection**

From policy inception and the customer "quote and buy journey" through to complaints and claims handling, insurers and brokers also regularly use pricing models, risk and ratings tools and bordereaux reports as part of their daily operations, and a lot of these documents and processes involve the access to high volumes of sensitive personal data. Since 2018, the data protection landscape was overhauled throughout the EEA, with potentially heavy sanctions for non-compliance and insurers and brokers are no-exception. We have advised on data compliance from privacy policy wording, through to complex data compliance audits.

### **Our recent experience...**

A broker informed us that they were entering into a new data sharing arrangement with an insurer. We assessed the data flows and navigated complex data protection laws to ensure all data was shared in a compliant manner to avoid regulatory sanction and reputational damage, including with back office functions located in India.

We work closely with a platform provider to manage their insurance schemes and all related data flows, processing data on behalf of brokers, insurers and underwriters.

We also advise another platform provider on their data compliance (among other things) when operating a platform designed to streamline and automate the delegated authority process between insurers and their TPAs and other coverholders.

## **Digital transformation**

More players in the insurance industry are becoming swept up in the digital wave. Our team of specialist tech contracts lawyers can advise you on your contracts with platform providers, software developers and licensors and database and network hosting providers, and de-risk that process for you.

# Our linguistic services



**LIPP** LINGUISTIC PROFILING  
FOR PROFESSIONALS



## Consumer Duty compliance

Our linguistic services can help our clients establish compliance with the FCA Consumer Duty and, in particular, the Customer Understanding Objective by providing empirical evidence as to the reading age of their customer-facing communications and to evidence that difficult words have been eliminated from documents. We can also undertake customer comprehension testing to evidence that customers are able to easily understand the benefits and features of their products, and how their products respond in real life scenarios.

With our arrangements with the University of Nottingham's Linguistic Profiling for Professionals team, we are able to offer linguistic analysis as part of our policy drafting services, including:

- **Readability analysis** – we can arrange for your wordings to be analysed by experienced linguistics researchers, who will analyse the reading age of the document, identify words and sentences that are difficult to understand and make recommendations as to how to make the wording easier to read.
- **Comprehension testing** – in addition to a readability analysis, we can arrange for a questionnaire to be undertaken to assess the extent to which policyholders understand the cover granted by your policyholders. The wording will be sent out to a sample of

your target market, together with comprehension questions to test the extent to which they are able to understand the policy.

- **Eye-tracking analysis** – in addition to readability analysis and comprehension testing, we can arrange for your wordings to be read by a sample of your target market whilst using eye-tracking software. This provides a unique insight into how a customer reads a wording and identifies any aspects particularly difficult for a reader to understand.

We are usually able to provide these services for a fixed fee, once we fully understand the requirements of any particular project.

### Our recent experience...

In conjunction with linguistic analysis from the University of Nottingham, we recently redrafted a full suite of personal lines wordings for a leading insurer in order to reduce its reading age, whilst maintaining the same level of cover. We were able to successfully reduce to the reading score to 8.6 (i.e., it could be easily understood by an average Year 7 pupil in the UK).

Also, in conjunction with the University of Nottingham, we recently undertook a legal and linguistic review of a suite of commercial wordings that had been drafted in house. We were able to identify a number of issues, both legal and linguistic, that have resulted in significant improvements to the documents prior to release.



*“A huge thank you for all the work you have done to help us get this project over the line... we absolutely could not have done it without you stepping in to help, as you did. I am really very, very grateful.”*

Legal counsel, large retail insurer

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# Pricing and management information

Our approach to pricing is transparent and underpinned by a desire to keep things simple wherever possible.

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Although we are happy to act on a conventional hourly rate basis, we understand the need for certainty of pricing and we therefore have a range of pricing structures, from simple fixed fees to blended rates, in order to best suit the needs of our clients.

We also understand that value is derived not only from headline hourly rates, but also by the level at which work is undertaken. We have lawyers at all levels in our policy drafting team, including a Trainee Wording Technician. We can therefore ensure work is carried out at the appropriate level, whether that work be the creation of a complex suite of policy wordings, or the making of routine changes to large volumes of policies.

We set out some of our pricing options below, although we are extremely flexible and would be delighted to put together a bespoke package to suit your requirements.

*“High quality and very responsive, with leading client service.”*

**James Pilgrim-Morris, Head of Professional Indemnity Claims, Hiscox**

## Fixed fee

For specific projects, such as the creation of new policies or undertaking a health check of existing wordings, we regularly act on the basis of a fixed fee for the project. For larger projects, we are also happy to agree fixed fees, subject to agreeing a clearly defined project scope.

## Block purchase

For large scale projects and projects where the scope of work is uncertain, we often act for clients on a block-purchase basis. When we are instructed on this basis, we usually agree a fixed fee for a block of 100 or 200 hours' work, based upon a blended hourly rate. By 'block buying' our time in this way, we are able to offer a competitive blended rate.





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### **Outsourced endorsement drafting service**

For clients of our outsourced endorsement drafting service, we can act on a 'per endorsement' or monthly fixed fee basis. Where we act on a monthly fixed fee basis, the fee is calculated by reference to the number of anticipated referrals during the course of the year, meaning you pay the same monthly fee regardless of the number of referrals in any given month, subject to an annual 'collar and cap' arrangement.

### **'Second class post'**

We appreciate that some work is business and time critical, whereas other work is less pressured. We offer reduced fees for work you want to be undertaken but is not particularly time critical, for example tidying up existing clause libraries or policyholder communications. We are happy to undertake this type of work on a reduced fee basis, as we are able to undertake it when it suits us best during quiet periods.

### **Full retainer**

For clients who know they will require a significant amount of wordings support, we are happy to provide bespoke packages, which incorporate any combination of the above fee structures. Packaging our services together in this way helps us resource the work and enables us to give the best value to our clients. For example, for a fixed annual fee (payable monthly or annually in accordance with the client's preference) we can agree to provide up to a set number of endorsements through our outsourced endorsement drafting service, together with an agreed number of hours of fee-earner time to be used as and when required by you to review and update wordings, draft new products and advise generally on policy drafting matters. For clients who engage us on a full retainer basis, we will set up a bespoke e-mail address and telephone number for that client only, to ensure a consistent point of contact.

*“What an amazing effort and outcome. Thank you for dropping what you were working on and jumping on this for us... it will make a massive difference to our customer.”*

**Chief Underwriting Officer, London market insurer (after instructing us to update 13 policy wordings and corresponding Key Facts documents within 12 hours)**

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# Key contacts



**Tim Johnson**  
Partner, Commercial  
Insurance

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Tim heads up the firm's commercial insurance practice and has a particular specialism in insurance policy drafting and distribution. Tim advises insurers in the London and retail markets, Lloyd's syndicates, MGAs, brokers and broker networks. Tim manages major wording projects on behalf of his clients, including recently assisting a retail insurer with the update of its entire document suite in response to the implementation of a new underwriting system.

Tim is particularly well known for his work on the simplification of complex insurance products, for which he was recognised in The Lawyer Magazine Hot 100 in 2022. Tim also advises clients on regulatory compliance in relation to complex product distribution arrangements.



**Thomas Gibby**  
Senior Associate,  
Commercial

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Thomas advises on digital technology licensing contracts and data protection compliance within our financial services and insurance group. He is a senior associate and IT sourcing projects lawyer, and Certified Data Protection Practitioner within our IT and tech projects team.

He specialises in IT and large-scale technology outsourcing projects for insurers and their network of brokers, and public sector bodies and government agencies with their technology procurements and SaaS contracts. He works as part of the projects team to structure, manage and advise on large IT sourcing projects and complex pricing models, in addition to advising on related compliance areas including software licensing and data protection. Thomas also provides strategic advice to tech start-ups as part of our GROW programme.

*“Thank you so much for your work on our policy drafting project. You really have gone the extra mile and made a significant financial impact on the business. We could not have completed the work without you.”*

Head of Technical Wordings, London market insurer



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For further information about any of our services, please visit [brownejacobson.com/services/financial-service-and-insurance-advisory/policy-drafting-and-distribution](https://brownejacobson.com/services/financial-service-and-insurance-advisory/policy-drafting-and-distribution) or contact Tim Johnson:

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