

Dual insurance: Are your wordings up to scratch?

30 June 2025  Joanna Wallens

In *Watford Community Housing Trust v Arthur J Gallagher Insurance Brokers Ltd* [2025] EWHC 743 (Comm) (“Watford”) the Commercial Court ruled on a preliminary issue in a professional negligence claim against an insurance broker.

Watford Community Housing Trust (WCHT) suffered a data breach, which resulted in claims against it. A spreadsheet containing sensitive personal data – including sexual orientation and ethnicity was emailed to over 3,500 tenants and employees.

Watford Community Housing Trust had three insurance policies. Its broker had failed to make a timely notification of a data breach to two of the three insurers. Watford Community Housing Trust’s Cyber and Combined Policy insurers agreed to indemnify £6 million in total. However, its professional indemnity insurer repudiated liability due to late notification.

The issue

Dual insurance applies where the same party is insured with two or more insurers against the same risk, which happened in this case. There are essentially three main types of dual insurance clauses, namely:

- **Excess clauses:** These have the effect of only responding after the other policy/ies have responded first.
- **Rateable proportion clauses:** These limit the insurer’s liability to their share of the loss.
- **Exclusion/escape clauses:** These exclude liability altogether if the risk insured elsewhere.

It is worth noting that clauses can be a combination of the above (such as exclusion and escape clauses).

In the Watford case, none of the three dual insurance clauses included any rateable proportion language. The preliminary issue for the court to decide was essentially whether the effect of the dual insurance clauses in the wordings was to limit the insured’s maximum cover to the highest of the three policies (i.e. £5 million), or was it the aggregate of the three policies (assuming all policies had been notified), namely £11 million.

The decision

The court held that the limits of the policies would have stacked, essentially providing a primary ‘tower’ of £11 million.

The court applied the principle of construction from *Weddell v Road Transport and General Insurance Co.* [1932] 2 K.B. 563 (“Weddell”) that, where multiple policies have ‘other insurance’ clauses seeking to make them excess policies, the clauses cancel each other out.

The reasoning in *Weddell* was:

“it is unreasonable to suppose that it was intended that clauses such as these should cancel each other (by neglecting in each case the proviso in the other policy) with the result that, on the ground in each case that the loss is covered elsewhere, it is covered nowhere. On the contrary the reasonable construction is to exclude from the category of co-existing cover any cover which is expressed to be itself cancelled by such co-existence, and to hold in such cases that both companies are liable, subject of course in both cases to any rateable proportion clause which there may be.”

As none of the policies in Watford contained a rateable proportion clause, the policies created a ‘stack’ of coverage up to the combined limit of the policies. Absent specific language, *Weddell* applies and there no general principle limiting recovery to the highest single limit.

The court therefore found that Watford Community Housing Trust would have been legally entitled to recover an indemnity under all three policies in respect of the whole of its loss caused by the data breach up to a combined limit of £11 million if all the insurers had been notified, but that the failure to notify limited its recoverable losses to £6 million.

Implications for insurers

This is an important case as to how policies interact when they cover the same loss. The court also reaffirmed a policyholder’s right to choose on which policy to claim where cover was provided under multiple policies, including the order and extent of claims in the absence of a rateable proportion clause.

In our experience, policy wordings very often do not contain the strongest dual insurance clause available, which can result in insurers running the risk of being ‘trumped’ by a competing wording with a stronger dual insurance clause.

The Weddell case makes it clear that an insured will not be denied cover as a result of competing dual insuring clauses; the sole effect of which is to determine the apportionment and order of payment between insurers.

Insurers are therefore advised to ensure their wordings contain the strongest for of dual insurance clause to reduce the risk of being required to pay first in a situation where more than one policy responds.

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