



Worshipful Company of Insurers, Insurance Non-Executive Director Forum

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Why give your pen away?

Governance and binders: legal and regulatory perspectives

**What you don't know
can't hurt you ...?**

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The consideration of binders at board level:

What factors should an INED take into account when a proposal is made to –

- 1. enter into a binder**
- 2. renew or change authority under a binder**
- 3. terminate a binder?**

The defining concept

Willingness and ability to access data that may be material to your firm's standing



A regulatory perspective ...

FCA, “Delegated authority: Outsourcing in the general insurance market”, June 2015 (‘TR15/7’)

- Some [firms] ... do not appear to regard the delegation of activities such as underwriting or claims handling to third parties as **outsourcing** [*arrangement between an insurer and a third party for the latter to undertake important functions or activities which would otherwise be undertaken by the insurer*]
- Some insurers [proceeded] to outsource ... solely [as] an underwriting decision with **little consideration of conduct risks**
- It was not always clear that potential **conflicts of interest** ... had been identified and mitigated
- The quality of ... **oversight** ... varied significantly; as did the extent and quality of management information (MI) ... received
Some [firms] relied disproportionately on ... audit
- ... sometimes **no clear allocation of responsibilities** ...
- Some intermediaries designing insurance products did not ... recognise [they were] **product providers**
- Product providers did not ... appreciate that as the **complexity of the distribution chain** increases, so do the potential challenges in [oversight] and ... for **consumer detriment**.
 - particularly [via] **exempt or non-regulated firms**

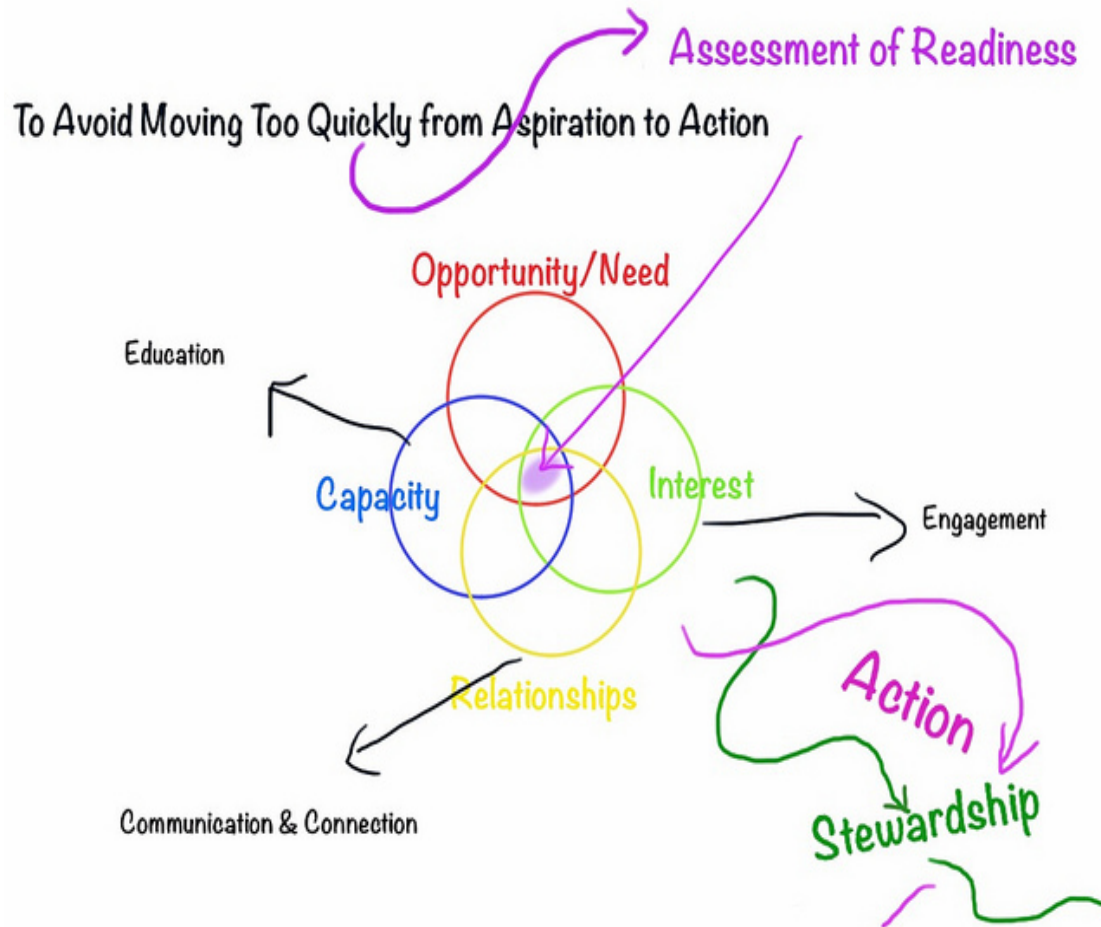
1. Entering into a binder

Evidence of
higher or lower
compliance risk



Example of compliance risk

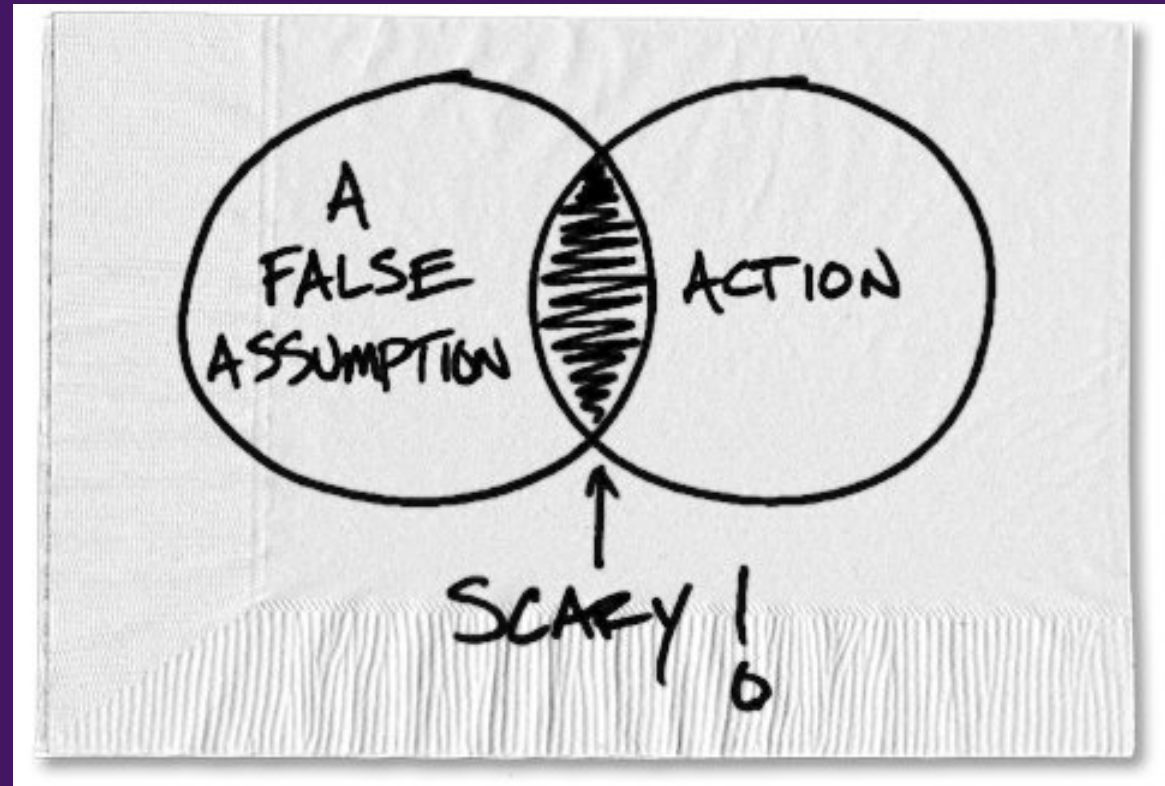
Andrea Sadler, Colin McIntosh, 01.02.16: £60k in fines and SIF prohibitions against CF1s



- Failed to exercise July 2012 – July 2013 due skill care and diligence in managing the business for which responsible
- Aderia was AR of Coverall and MGA for 2 European insurers: first Balva then Berliner
 - had 2 sub-delegate coverholders
 - AS was CF1 for Aderia; CM for Coverall
- Following the suspension of Balva’s licence, AS “*allowed herself to be sidelined*” by a non-AP from negotiations with Berliner
- Before the Berliner MGA agreement was in place, AS purported to sub-delegate Berliner’s authority to Aderia’s coverholders
- Berliner’s authority to Aderia had only 1/10th of the premium limit of Balva’s, but AS proposed that the coverholders encourage all of the insureds on the Balva book to be insured by Berliner
- CM failed to take steps to mitigate risks around Aderia’s conduct

2. Renewals

Taking nothing for granted



Example of compliance risk

Goshawk, Final Notice 10.10.05: £220,000 penalty against firm

- Breach of Principles, Sept 2002 – Oct 2003 as to –
 - due skill, care and diligence; organise / control affairs responsibly / effectively; appropriate systems / controls
- Governance failings
 - Inadequate due diligence / monitoring of the business and coverholder, eg:
 - hiatus in independent review process
 - Absence of BA committee
 - Board did not have control over underwriters' decisions, eg:
 - Sub-delegation of claims
 - Non-attendance at required review meetings
 - Firm did not have control of coverholders: authority breached as to –
 - cover limits
 - territories / licenses
 - reinsurance



3. Termination

Move on and carry on?



Example of operational-legal-compliance risk

Euro Assistance -v- Temple Legal [2007] EWHC 1785 (Comm)

(EA)'s application for interim injunctions against T to restrain conduct of the run-off of ATE which T wrote under a binder dated 01.01.03 and terminated 01.01.05

- “[T] will administer all claims matters arising from declarations under this Agreement ...”
- “a “float” of £50,000 to be held in the account to meet claims but otherwise to be paid out 65% to EA and 35% to [T]”
- T entered into sub-binders with solicitors (“coverholders”)
 - EA were aware of the terms of these but were not parties to them
- “... the “business” is [T]’s business. **The commercial and goodwill relationship with [coverholders] is [T]’s relationship.**
 - [T] created and implemented the scheme. EA has had no personal relationship with and indeed only knows who the coverholders are from [T]’s records.”

“If [T] is unable to continue the scheme, or ... coverholders are compelled to work with EA, there is a real risk of damage to [T]’s business which will be difficult both to prove and to quantify. The loss of cash flow could also be damaging to the business in ways difficult to prove and quantify.”



Conclusions

Ready, willing and able ...



Questions for firms and boards ...

TR15/7



- Why has the outsourced party been chosen
 - will it deliver outcomes that customers [and the firm] should reasonably expect
- Who designed and ‘owns’ the product
 - have they considered how the product performs for customers
- Will the claims processes deliver fair customer outcomes
- Is there appropriate monitoring and MI in place, including to assess customer outcomes
- Is it clear that the outputs of any monitoring and MI are reviewed, understood, shared and acted upon
- Who is distributing the product
 - Who has oversight of the distributors
- Will conduct issues be promptly identified and acted upon



Questions?



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