

Private and Confidential

## **Minutes of the Legal Policy Group held on 24/10/2018**

Minutes of the Legal Policy Group Meeting held at the Army and Navy Club, London. The Meeting was held on the 24/10/2018 commencing at 10.30 hours.

### **Agenda Point 1, Competition Statement**

The BIFA Competition Statement was read out to all at the commencement of the meeting.

### **Agenda Point 2, Agree the Minutes of the Meeting of 27<sup>th</sup> June 2018**

With the exception of the surname of one of the attendees being incorrectly recorded, which was manually amended these were accepted as being an accurate reflection of the meeting. The Minutes were then signed by the Chair.

### **Agenda Point 3, Matters Arising from the Minutes of the 27<sup>th</sup> June 2018**

It was confirmed that additional Good Practice Guides had been written covering Dangerous Goods and Supplier Assessment. All guides are now open for all to view on the BIFA website.

It was noted that the Secretariat was receiving a high volume of calls regarding Customs Representation. It was emphasised that the Customs Representative must have a positive written affirmation from their customer to act as either a Direct or Indirect Representative. If this was not in place, then they would be Self Representing.

A positive incorporation of Article & of the BIFA STC was acceptable to HMRC, but it has to be clear that the signatory had seen, read, understood, and agreed to them. In other situations, such as Ex Works or DDP shipments separate Authorisations would be required.

### **Agenda Point 4, Specific questions regarding GDPR**

The consensus was that the new regulation was not causing Members unnecessary problems. Shortly after the legislation had come into force, BIFA had received numerous calls on the subject, but these had now diminished in number.

At an EU level, differences in interpretation of the legislation were noted. In the UK for instance the ICO has advised that a party receiving data is a data controller, forwarders receive data in order to process consignments and pass it on. As the data controller, the forwarder is responsible to protect the integrity of the data. In France the legal position is that the forwarder is a Data Processor.

The meeting noted that :-

- There is no case law on GDPR
- The obligations under GDPR were not that dissimilar to the legislation it replaced
- There was little case law relating to the original legislation

It was noted that GDPR placed considerable emphasis on personal rather than business data and individuals would have to prove that they had suffered a loss in order to be able to make a claim.

The ICO has emphasised that initially it will be using education rather than enforcement procedures initially to encourage compliance with the new legislation.

#### **Agenda Point 5. Guide to the 2017 edition of the BIFA STC.**

Thanks, were extended to KP, who had reviewed and updated the guidance, which gave detailed information on individual clauses. This new guidance will necessitate the review and updating of the current online STC course, plus a reconsideration of how it is delivered.

There was a brief discussion which demonstrated that Members had procedures to ensure that the STC's were incorporated into all contracts. Members commented that they had found the STC particularly useful when dealing with administrators, most of whom had little experience of shipping.

Discussion emphasised the following points:-

- It was important to establish who owned which cargoes, especially where goods were "on the water"
- Assisting Administrators to manage the situation yielded positive results

It was also noted that the new acceleration clause had been useful in ensuring prompt collection of outstanding monies.

#### **Agenda Point 6. Legal cases of interest.**

There was a discussion regarding the CMR case tried in Denmark, which concluded that if it had been heard in an English Court that the outcome would have been the same because the outcome had been determined solely by the facts. The first carrier had not passed on all relevant facts regarding delivery times to the second one, which contributed to the theft of tobacco products from latter's trailer when it was parked up overnight.

## **Agenda Point 7. Contractual relationship between the Port and Forwarder/Customs Agent.**

Due to the well documented issues at the Port of Felixstowe, BIFA had arranged meetings between Members and the Port's management. The latter had argued that forwarders were not customers, and that the ports only customers were shipping lines.

BIFA argued that its Members were the Ports Customers because the latter did provide essential quay services for them also:-

- The Port published a publicly available tariff, which included rates and service level agreements
- Certain services were provided e.g. providing the VGM were provided directly to the forwarder by the port
- The port invoiced Members directly

BIFA, could not act on behalf its members, but would put them in contact with solicitors as appropriate. To date there seemed little enthusiasm amongst Members for legal action. It was noted that action could only be commenced when it was known that the Ports IT system was correctly functioning, and the full extent of the losses known.

The wider knock on effects were discussed, and Members annoyance at carriers charging quay rent/demurrage charges and higher container restitution charges were noted.

## **Agenda Item 9 New BIFA Insurance Declaration Form**

There was a discussion regarding Form A , which is being updated after consultation with insurance brokers. This was on-going and would be discussed at the next scheduled LIPG meeting. Also, there was a discussion regarding Form B, which will be reviewed with a view to ending its use.

Consideration will be given to a Good Practice Guide on Liens, although it is still thought that insurance brokers are the best source of information on this topic.

## **Agenda Item 10, EU reviews Bloc Exemption for Container Lines**

Papers had been circulated prior to the meeting by the BIFA Secretariat regarding the Commissions review of the Lines Bloc Exemption. The Members views were sought on whether it should be renewed or ended. There were no strong views on this matter although the following points were noted.

The Lines collection of and use of shipment related data was regarded with some scepticism particularly where they were the terminal operator. There was a view that the carriers were using this data to:-

- Provide preferential service levels where the Line was conducting the activity
- Use for sales activities to approach shippers/importers directly

Because the new alliances were more formally structured than previous ones there was a view that this issue was more for Mergers and Acquisitions than Competition.

From a purely commercial standpoint it was noted that whilst service levels were poor at the moment on the other side of the coin rates were at historically low levels which benefitted shippers/importers.

There considerable support for BIFA's criticism of the imposition of fuel surcharges, which lacked clarity and also should have been included in the freight rate.